

In the matter of St Leodegar, Hunston
And in the matter of the conjoined petitions
of (1) Leslie Martin and (2) Sherrié Ané Lewis

Judgment

1. In separate petitions, Mr Leslie Martin and Ms Sherrié Ané Lewis each seek the reservation of a grave space in the churchyard of St Leodegar, Hunston.
2. Unfortunately, there are very few spaces remaining in the churchyard. The unchallenged documentation from the parish is that it will be full within five years.
3. It is generally not the practice of this Court to grant a faculty for the reservation of a grave space in circumstances such as this. The petitioners were alerted to the likelihood that the Court would not sanction further reservations.
4. With the concurrence of the petitioners, this matter has been dealt with on written representations in accordance with rule 14 of the Faculty Jurisdiction Rules 2015 (as amended).
5. The PCC unanimously passed a resolution approving the application for the reservation of a grave space in each instance. It is unclear whether the legal position had been brought to the PCC's attention. Wisely in my view, the incumbent has declined to express an opinion as to the disposal of this petition.

The applicable law

6. I had occasion to summarise the law in a judgment I delivered in the diocese of Leeds: *Re St Thomas à Becket & St Thomas the Apostle, Heptonstall* [2021] ECC Lee 2. The relevant passage reads:
 6. A faculty may be granted for the reservation of a particular grave space for a parishioner or non-parishioner, the matter being entirely within the discretion of the consistory court. Due weight will be given to any PCC policy and to the consent or otherwise of the incumbent. If granted, a faculty will prevent the incumbent from conducting a future burial in the plot to which it relates.
 7. The Court will be more disposed to grant a faculty in respect of a person with a right to be buried in the churchyard, as opposed to one without such an entitlement. The Court will have to be satisfied that there is sufficient space in the churchyard so that those with a right to burial are not prejudiced. In my earlier decision in this diocese in *Re St Oswald, Methley with Mickletown* [2016] ECC Lee 2, I formulated certain principles which were largely derived from the judgment of Newsom Ch in *Re West Pennard Churchyard* [1991] 4 All ER 1252. I repeat them here with minor revisions, and incorporating changes to the statutory provisions occasioned by a recent consolidating Measure.
 - i. At common law, every parishioner has a right of burial in the churchyard of the parish unless it is closed by due legal process;

- ii. The common law right extends also to all persons dying in the parish, whether or not they are parishioners;
- iii. By statute, a similar right is enjoyed by all persons whose names are on the church electoral roll of the parish: see s. 88(1) of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018;
- iv. A person who does not have the right of burial in the churchyard, may not be buried there without the consent of the parish priest: see s. 88(4) of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018.
- v. The parish priest has power at common law to prescribe where in the churchyard any burial is to take place: but that is the extent of their discretion in respect of cases where the deceased had a legal right of burial;
- vi. As freehold owner of the churchyard, the parish priest may grant consent to the burial of the remains of a person who has no legal right of burial. In doing so, they should consider the space available in the churchyard and the extent to which those with rights of burial may be prejudiced;
- vii. In deciding whether to give consent, the parish priest is also required to 'have regard to any general guidance given by the parochial church council of the parish with respect to the matter': see s. 88(5) of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018;
- viii. These common law and statutory rights crystallise only when the person in question dies.

8. In a key section of his judgment in *Re West Pennard Churchyard*, Newsom Ch says this:

'If a person with a legal right of burial wishes in his lifetime to assure his personal representatives of a right to bury his remains in a particular place in the churchyard, he must apply to this court for a faculty to reserve that grave space. Whether such a faculty shall be granted rests wholly in the judicial discretion of the court. If there is plenty of room in the churchyard it is freely granted to a petitioner who has a legal right of burial. What such a faculty does is to protect the petitioner against the hazard of losing his legal right in his lifetime (e.g. by ceasing to live in the parish), and to require whoever is the incumbent when the petitioner dies to allow his remains to be buried in the position in the churchyard defined in the faculty. To this extent, therefore, the faculty deprives the incumbent of his right to prescribe the position where a burial is to take place; and it deprives the parishioners generally of the space becoming available if the petitioner moves away. [126 j-127 b] Such a faculty can also be applied for, with the concurrence of the incumbent, by a person who does not have a legal right of burial. The grounds on which such a faculty is granted vary; among them are the association of the petitioner with the church or with the parish, or the presence in the churchyard of the remains of relatives of the petitioner.'

9. Approving and applying this passage, Briden Ch, sitting in the Consistory Court of the Diocese of Bath and Wells in *Re Churchyard of Wick, St Lawrence* (4 November 2013), stated as follows:

'Thus in deciding whether or not to grant a faculty [to reserve a grave space] the Court must consider whether the minister's consent to the burial has been signified, and in its absence the petition ought to be dismissed. To do otherwise would be to subvert the purpose of [what is now s. 86 (4) of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018], since the provision of a space reserved by faculty would override the minister's power to give or withhold consent to the eventual burial.'

10. Where churchyards are nearly full, there is a general presumption that reservations will not be granted. This is particularly the case in respect of persons who do not have a legal right of burial. As I observed in *Re St Oswald, Methley*, at paragraph 10: 'Where, as here, pressure of space is acute, it would be wrong for any Consistory Court to grant the reservation of a grave

space such as to prejudice future burials. Those with a legal right of burial must therefore be interred in the order in which they die until such time as the churchyard is full.’ ”

7. The recent decision of Chancellor David Hodge KC in *Re St Mary, Thame* [2022] ECC Oxf 2 provides an exhaustive *rundschau* of subsequent consistory court decisions arising out of the reservation of grave spaces, which I read as augmenting the foregoing statement of principle, rather than detracting from it. One point he develops concerns the weight to be afforded to PCC policies, which is not an issue in this case. He helpfully frames the issue of limited usable space in the following language at paragraph 27(6):

Where, however, the remaining space within the churchyard is limited, then a faculty will not normally be granted, and the petitioner will have to demonstrate sufficient justification for the court to take the exceptional course of allowing a reservation in such circumstances, because of the risk that such a reservation will prejudice the rights of those parishioners or worshippers who would otherwise be entitled to be buried in the churchyard. (emphasis added)

8. It is against this legal backdrop that the two petitions fall to be determined. The burden of proof lies on the petitioner in each instance to demonstrate (on the balance of probabilities) a sufficient justification to take the exceptional course of allowing a reservation when the remaining space in the churchyard is limited.

Discussion

9. Mr Martin outlines lengthy associations with the parish notwithstanding he no longer lives there, as he had to move to a bungalow outside the village due to his failing health. He was born there and lived there for sixty-six years. Both his parents lived in the parish until their deaths and they are both buried in the churchyard. He wants to be interred close to their graves.

The petition of Mr Martin

10. Mr Martin’s daughter, Miss Jacqueline Kelly, has written in support of her father’s application. She mentions her father’s willingness to contribute to the costs of rebuilding the flint boundary wall, although she properly concedes this should not be a factor in the determination of his petition. She says it would be ‘not only cruel but unchristian’ to deny her father the peace of mind of knowing he can be buried alongside his parents. Despite suffering from dementia, he has treasured memories of his time in Hunston. She says he worked in the churchyard performing tree felling and also at the vicarage. She maintains that one of the previous vicars (she does not specify which) promised him a grave spot and wishes that promise to be honoured. She says that the current uncertainty has affected his well-being and mental health and asks that his one and only wish be honoured.

The petition of Ms Lewis

11. Ms Lewis states that her grandparents are buried in the churchyard, and her parents have reserved a double grave space there. She speaks of long and substantial connections of her family and the church. She speaks of her great-great-grandfather transporting masonry by cart to repair the spire of the cathedral. The cart overturned in Hunston, the stones never reached

Chichester and were instead incorporated into the building of a house which became known as Spire Cottage. She refers to her great grandfather becoming head boy at the Prebendal School and a chorister at the cathedral. She speaks with force and passion about the duration and meaningfulness of her family connections with the village and church of Hunston.

Decision

12. I have considered very carefully all the material placed before the Court in the case of each petitioner, searching for any matter which might demonstrate a sufficient justification for the Court to take the exceptional course of allowing a reservation when there is only space for burials for a further five years. I regret I can find none. The ordinary practice of the Court is not displaced. I note that the PCC supports each of the petitions and that no objections were forthcoming following public notice. But local support and the absence of objection are not, whether individually or cumulatively, sufficient to displace the restraint which the Court must exercise in order to preserve the rights of parishioners and worshippers.
13. This decision should not be interpreted as a determination that neither Mr Martin nor Ms Lewis are worthy of burial in the churchyard. It is not a judgment on their character nor their nexus, and that of their families, with the parish of Hunston. They undoubtedly have very substantial links with the parish, even though neither may have the legal right of burial. Were they to die when one or more spaces remain unused, then I would expect the incumbent to exercise their discretion to permit their burial in the churchyard. However, it would be improper for a grave space to be reserved when so few remain, even had they enjoyed a right of burial. The remaining spaces must be filled by the burial of individuals with a right of burial or a strong connection with the church in the order in which they die, until such time as the churchyard becomes full.
14. In the circumstances, therefore, both petitions are dismissed.
15. The costs of and occasioned by the petitions are to be borne by the respective petitioners, with the fees for this judgment being apportioned equally.