

Neutral citation number: [2024] ECC Bla 2



Faculty – Unopposed petition for the reservation of a single, full burial gravespace within the churchyard – Sufficient space remaining for between five and seven, and possibly up to ten, years’ burials but additional land belonging to the church available for consecration when the present churchyard is full – Recent PCC resolution not supporting any new grave reservations except in existing graves – Vicar, churchwarden and PCC not consenting to the petition – Whether, and, if so, for what period of time, and on what terms, the petition should be granted – Faculty granted for seven years, with permission to apply by letter to extend the reservation beyond that period

Petition No: 71 of 2023

**IN THE CONSISTORY COURT OF
THE DIOCESE OF BLACKBURN**

Date: Sunday, 28 January 2024

Before:

THE WORSHIPFUL DAVID HODGE KC, CHANCELLOR

In the matter of:

St Paul, Caton-with-Littledale

THE PETITION OF:

Mr Christopher Ian Powell

This is an unopposed petition determined on the papers and without a hearing

There were no formal objections to the petition; but the vicar, the churchwarden, and the PCC all withheld their consent to the petition

The following authorities are referred to in the judgment:

Re St Leodegar, Hunston [2023] ECC Chi 1

Re St Paul, Caton-with-Littledale [2023] ECC Bla 6

Re St Wilfrid, Standish [2024] ECC Bla 1

JUDGMENT

Introduction and background

1. By a petition, dated 16 November 2023, Mr Christopher Ian Powell, who is 51 years of age, seeks a faculty reserving burial plot number 233 in the churchyard of St Paul, Brookhouse, in the parish of Caton-with-Littledale, for the usual period (in this Diocese) of 25 years. Mr Powell resides in the parish; and his name is entered on the church electoral roll.

2. In his petition, Mr Powell explains that he has lived in the parish all his life, attending the local primary school and progressing to the local Church of England secondary school. As he grew up, Mr Powell attended the local cubs and Sunday school, and he was baptised and confirmed in the parish church. He also played in the local football and cricket teams. All of Mr Powell's immediate family live in the parish and attended the local school. Due to a spinal injury sustained in his twenties, Mr Powell is paralysed from the neck down, and he is heavily reliant upon family and friends in the village. They are a very close family. Mr Powell's mother, aunt and cousin are all buried adjacent to plot 233. These family members were instrumental in helping to promote Mr Powell's well-being since his accident, and to rest with them would be a great comfort to Mr Powell. He wishes to remain, and to be buried, in the parish, where he has lived all his life, supported by the church and people who have given him some independence. *"To be in the plot next to my cousin, who has been like a brother, with mum and my auntie around, is the best outcome for me."*

3. According to the section of the petition signed by the vicar, the present churchyard will be full between five and seven years, but possibly as many as ten years, from then. However, there is additional land belonging to the church (currently in use as a recreational area) that is available for consecration when the present churchyard is full. This would enable burials to continue for approximately another 50 years. The minister, the churchwarden, and the Parochial Church Council (the **PCC**) have all refused their consent to this petition.

4. The minutes of a meeting of the PCC, held on 31 July 2023, and attended by the vicar, the PCC secretary, two deanery synod members (one of whom is the churchwarden), and five other PCC members, record (at item 07, under the heading 'Graveyard update') that the PCC had a discussion *"about the granting of Faculties. It was decided that the PCC will not support new faculties except for those of existing graves. A vote was taken that supported this action."*

5. In a letter dated 17 November 2023, and addressed *'To Whom it May Concern'*, the vicar writes:

I am enclosing an application for a faculty for a full burial space for an individual in the parish, who wishes to reserve a space in which to be buried.

The PCC, incumbent and churchwarden have made a decision that we will no longer support new applications for faculties for full burial spaces. This is due to the fact that we believe we have approximately 25 spaces left in the 'new' graveyard, and if we have faculties of 25 years+, even though we can find spaces elsewhere, and ultimately consecrate a new piece of land, it nevertheless complicates planning and the use of existing space if we have several plots of land which are not able to be used for decades.

The gravespace wanted is no. 233, and I have marked that on my graveyard plan until I hear further about the application. If reserved a marker will be placed in that space.

Obviously, if the registrar believes that faculties should still be granted, I will abide by that decision. I have communicated to this applicant that the PCC are not supporting new applications, due to space in the existing graveyard, but he wished to proceed.

6. The vicar has certified that the usual public notices were duly displayed during the period from 23 November to 21 December 2023 (inclusive). No formal objections have been received to this petition.

7. When the papers were first referred to me, on 22 December 2023, I determined, pursuant to rule 14.1 of the Faculty Jurisdiction Rules 2015 (as amended), that, having regard to the overriding objective in Part 1 of those Rules of dealing with this case justly, cost-effectively, proportionately, expeditiously and fairly, that it was expedient to order that this petition should be determined on consideration of written representations, instead of by way of a hearing. I therefore directed the Registry to write to the petitioner, inviting him, within 21 days (allowing for the festive holiday period), to submit in writing his views on that course; and, if he was so content, to supply any written representations upon which he might wish to rely in support of his petition. I directed that Mr Powell should be supplied with a copy of my recent decision concerning the reservation of a full burial plot in this same churchyard bearing the neutral citation number [2023] ECC Bla 6 (and cited at paragraphs 9 and 10 below).

8. On 17 January 2024, I received an email from the Registry attaching a letter from Mr Powell confirming that he was happy to submit his reservation application by way of written representations (rather than a court hearing). I was concerned that this letter did not state, in terms, that Mr Powell had no further written representations beyond those he had already provided; and I invited the Registry to seek clarity on that point. On 23 January, I received a further email from the Registry, attaching a letter from Mr Powell dated 21 January 2024. This reads:

I am writing regarding further representation to secure plot 233 in the graveyard of Caton St Paul's Church.

I was born in the parish in 1972 & have lived permanently in the parish to this day. My parents have been residents of the parish since 1966, my mother died in 2016 & is buried in the churchyard. My father is still living within the parish. My two sisters were born in the parish in 1966 & 1967 & continue to live in the parish with their families.

My sister was married at the church and I had a church blessing for my marriage that I had overseas to continue my connection to the church throughout my life.

When I left school, I worked as a builder within the parish where I made good friends and worked for many of the church community who sadly now reside in the churchyard I wish to

be in. I worked hard helping in the parish people that struggled needing essential help over the years until my untimely accident that left me paralysed.

I grew up with my cousin in the village where we were very close all our lives & were both each other's best men at our weddings his being at the church of St Paul's & he was my biggest support after my accident until his untimely death at the age of 57 which left me absolutely devastated & this has brought to the fore my own mortality and health risks.

I suffered a C5/6 complete spinal injury in 1997, the impact of my injury has greatly reduced my life expectancy. The impact of my spinal injury not only paralysed me from the neck down; it impacts the processing of my brain to other organs of my body. I've been told by my consultant that I am at risk of heart failure, life threatening blood clots of which I have already experienced and survived only by chance, pneumonia and sepsis.

My life expectancy with current medical conditions is estimated at 7-10 years, which is why I have undergone trying to secure the plot next to my cousin with my family also around me in the same area.

I spend a great deal of time visiting my family & still talking to my cousin Carl which may sound strange but gives me enormous comfort & so reducing my anxiety for my future.

Since the untimely death of my cousin Carl, his wife Julie Padgett & Daughter Rose who is 12 who live in the parish have & are still suffering from PTSD & grief that she has expressed to the current Reverend Helen Scamman & feel it would be a great comfort to know that I would be by his side again as for now we support each other in our grief & my impending death.

I thank you for considering my petition to reserve this particular plot. I am fully aware that these issues have to be carefully considered & again I thank you for your time.

The legal framework

9. Five days after the PCC resolution noted at paragraph 4 above (on 5 August 2023), a petition was presented by two parishioners (aged 66 and 78) seeking a faculty authorising the reservation of a double gravespace (to be designated by the church) for the full burial of their human remains, one on top of the other. For the reason set out in a detailed, seven-page judgment dated 29 October 2023 (*Re St Paul, Caton-with-Littledale* [2023] ECC Bla 6), I granted those petitioners a faculty for the reservation of a single-width, double-depth, full burial plot (as designated by the vicar), limited in time to a period of seven years, with permission to apply (by letter) to extend the faculty beyond that period. I note that the present petition was presented just over a fortnight after that judgment was handed down.

10. At paragraphs 10 to 13 of my judgment, I set out my understanding of the principles governing the determination of any petition seeking a faculty for the reservation of a grave space. I concluded by identifying two consistent themes which seemed to me to run through all the authorities:

First, where a PCC have adopted a policy governing the reservation of gravespaces that is considered to be reasonable and fair, it would not be right to override that policy unless there is an exceptional reason for doing so. Secondly, where the remaining space within the churchyard is limited, it will not usually be right to extend the duration of any reservation

faculty beyond the period for which the churchyard is likely to continue to have space for burials.

Those restrictions are appropriate 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. At paragraph 15 of my judgment, I summarised my reasons for granting a time-limited faculty in that case. I explained that the ages of the petitioners, and the remaining capacity of the churchyard, were of crucial importance in that case. The elder of the two petitioners was 78; there was space remaining for between five and seven, and possibly up to ten, years' further burials; and there was additional land belonging to the church available for consecration when the present churchyard was full. Limiting the initial duration of the faculty to a period of seven years should ensure that no-one else with a right of burial was prejudiced by the grant. Therefore, in that case, capacity constraints did not militate against the granting of a time-limited faculty; and, so limited, the faculty did not offend against the rationale underlying the PCC's recently adopted policy. I emphasised that the court's decision was based upon "*case-specific factors, rather than any inflexible rules*", so the decision would "*have no prejudicial effect in terms of creating any precedent for other petitions that may be presented in respect of this churchyard*".

11. Since I handed down my judgment in that case, there have been two further relevant court decisions. The first is that of Chancellor Hill KC (in the Diocese of Chichester) in *Re St Leodegar, Hunston* [2023] ECC Chi 1. In that case, the Chancellor refused to grant faculties for the reservation of two separate grave spaces in the churchyard, notwithstanding the applicants' long associations with the parish and the church, the presence of family graves within the churchyard, the support of the PCC, and the absence of any objections. This was because the unchallenged evidence from the parish was that churchyard would be full within five years. At paragraph 8, the Chancellor summarised the '*legal backdrop*' against which the two petitions fell to be determined thus:

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.

At paragraphs 12 and 13, the Chancellor set out his decision in the following terms:

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.

12. The second recent decision is that of Deputy Chancellor Obodai (in this diocese) in *Re St Wilfrid, Standish* [2024] ECC Bla 1. The petitioners, husband and wife, were both in their early eighties, and were resident in the parish, although their names were not entered on the church electoral roll. They sought a faculty authorising the reservation of a grave space for full burial for 25 years. Dismissing the petition, the Deputy Chancellor said this (at paragraphs 20 to 23):

20. It is clear from the petition that the petitioners and their families do have a long standing connection with the Parish going back hundreds of years. I can see and understand why, in those circumstances, they would wish to be buried in the graveyard. However, that is against a backdrop of there now being limited space and the evidence that the PCC have recorded their objection to further applications after a number [of] historical reservations over the last five years or more. As the Rector said in his letter ... , it would see the current rate of new Graves being used up in the next 18-24 months.

21. I do not consider the PCC's policy unreasonable and/or unfair because of the popularity of the particular plot of land, Space R, and the likelihood of running out of grave space in the near future. Nor do I consider the possibility of a further Space T becoming available as a reason to override the PCC's policy because for the moment nobody can say whether the proposed plot will be viable, because it is only when a grave is dug in Space T that anyone will be able to confirm the use or depth of a particular plot.

22. It is clear from the case law that I will only be justified in departing from the PCC's policy in exceptional circumstances; and it is for the petitioners who wish to reserve a grave space in the face of such a policy to show that their case is markedly out of the ordinary and that there is sufficient justification for the court to take the exceptional course of allowing a reservation in such circumstances.

23. I have considered very carefully all the information before me and have reached the decision that there is no sufficient justification for the Court to take the exceptional course of allowing a reservation when there is only space for burials for a further 18 to 24 months. I have every sympathy for the petitioners because, in different circumstances, their familial history and ties to the Parish are likely to have produced a different outcome. They are indeed clearly worthy of burial in the churchyard. However, I must take into account that with so little space remaining and the uncertainties about Space T, if I were to allow the reservation it will prejudice the rights of other parishioners or worshippers who would otherwise be entitled to be buried in the churchyard. The policy that the PCC have adopted is designed to be fair to everyone and it is one with which I agree.

13. I entirely agree with the decision of the Deputy Chancellor in that case, where, according to the Rector, there was probably room for no more than eight fresh graves in the relevant section of the churchyard, and these were likely to be used up in the next 18 to 24 months. In other cases, however, where there is rather more – albeit, still limited – remaining space, the options available to the consistory court may not involve a simple binary choice between the grant, or the refusal, of a faculty, but may encompass a third option: that of granting a faculty, but for a restricted period of time. Such a course may be justified where:

- (1) the grant of a reservation would be justified but for the limited space remaining within the churchyard;
- (2) the grant of a faculty for a limited period of time would not offend against the rationale underlying any policy adopted by the PCC governing the reservation of gravespaces; and
- (3) the grant of such a time-limited faculty would serve some useful purpose.

Analysis and conclusions

14. It is clear that Mr Powell has a long-standing, and close, connection with this parish, this church, and this churchyard. I recognise that he has a present right of burial in the churchyard, and very good reasons for wishing to be buried in this particular burial plot. I have every sympathy for Mr Powell as a result of the physical restrictions that have so unfairly been placed upon his freedom of movement. But I also recognise the soundness of the reasons underlying the PCC's recently adopted policy of not supporting new reservation faculties for full burial spaces, except for existing gravespaces, due to the limited number of burial spaces remaining within the existing churchyard. Mr Powell bears the burden of demonstrating (on the balance of probabilities) a sufficient justification to take the exceptional course of allowing a reservation, and contrary to a policy adopted by the PCC that is both reasonable and fair.

15. Sadly, for Mr Powell, I can discern no sufficient justification, from the material that Mr Powell has placed before the court in the present case, for granting a reservation that would prejudice the rights of those parishioners or worshippers who would otherwise be entitled to be buried in the churchyard. I can understand, and I sympathise with, the great comfort that Mr Powell would take from the knowledge that, in death, he would again be by the side of his late cousin, so untimely taken away, and near to the remains of others of his relatives. I acknowledge that Mr Powell is worthy of burial in this churchyard. But the sad fact is that there will be other parishioners, and worshippers, who are similarly worthy of burial there; and, if their time comes before Mr Powell passes away, then their loved ones should not be prevented from seeing them buried in the churchyard because burial plot number 233 has been reserved for Mr Powell. For these reasons, therefore, I cannot accede to Mr Powell's wish for a reservation for the usual period of 25 years.

16. I therefore turn to consider whether I should follow the course that I took in my decision last year, and grant a reservation limited to seven years (with the right to apply for an extension). In doing so, I recognise the need for consistency of approach, and for treating like cases alike, although, as I explained in my judgment, the decision in that case was based upon case-specific factors, rather than any inflexible rules. Of critical importance in that case was the age of the petitioners, the elder of whom was 78. In the present case, the petitioner is only 51. Normally, I would be most unlikely to grant a reservation to someone that young because their average life expectancy (according to data from the Office for National Statistics, based on the 2021 Census) would be 84 years. However Mr Powell states that his life expectancy, with his current medical conditions, is estimated at 7-10 years. On that basis, I consider that I should grant a reservation for seven years, with permission to apply by letter to extend the reservation beyond that period. I do so for the following reasons:

- (1) Mr Powell is resident within the parish, and his name is on the church electoral roll. He therefore presently has a right of burial in this churchyard. If he were to die before the existing churchyard is full, he would be entitled to be buried there.

(2) Mr Powell has a long-standing, and close, connection with this parish, this church, and this churchyard. He also has very good reasons for wishing to be buried in burial plot number 233. Even without a formal reservation, I consider that sound pastoral reasons would justify leaving that plot vacant until all other burial plots were full in order to accommodate Mr Powell's human remains should he pass away before the existing churchyard was full.

(3) There was no formalised and transparent policy governing the reservation of gravespaces in place until shortly before the time this petition was lodged. The fact that such a policy has only recently been formulated is significant because it reduces the risk of any unfairness to other parishioners who may have chosen to subordinate their own personal preferences and wishes to a policy adopted by the elected PCC.

(4) Of crucial importance in this case are Mr Powell's stated limited life expectancy, and the remaining capacity of the churchyard. He estimates his life expectancy at seven to ten years. There is space remaining for between five and seven, and possibly up to ten, years' burials; and there is further land belonging to the church available for consecration when the present churchyard is full. Limiting the initial duration of any faculty to a period of seven years should ensure that no-one else with a right of burial is prejudiced by the grant, whilst at the same time potentially fulfilling some useful purpose. Because of Mr Powell's valid reasons for wishing to be buried in plot 233, I would expect that this plot would be left vacant, for sound pastoral reasons, until the churchyard was nearly full. Therefore, in this case, capacity constraints do not militate against the grant of a time-limited faculty.

(5) Limited in this way, the faculty does not offend against the rationale underlying the PCC's recently adopted policy. According to the vicar's letter, the grant of reservation faculties of 25 years or more complicates future planning, and the use of existing grave spaces, because it results in grave plots which cannot be used for decades. This time-limited grave reservation faculty will not do so.

(6) The decision of this court is based on case-specific factors, rather than any inflexible rules. This decision will therefore have no prejudicial effect in terms of creating any precedent for other petitions that may be presented in respect of this churchyard. Whilst I acknowledge that I am granting grave reservations on two separate petitions in close succession, there are sound reasons for doing so in each case. Mr Powell is at least as deserving as the petitioners in the earlier case; and the principle of equality of treatment militates in favour of a similar outcome. Any PCC policy is always subject to the overarching, but principled, exercise of the discretion of the consistory court.

(7) Although the vicar, the churchwardens, and the PCC have all withheld their consent to this petition, there is no-one who has formally opposed it.

17. For these reasons, I will grant the faculty as asked; but I will limit it, in the first instance, to a period of seven years from the date of the grant, with permission to the petitioner to apply by letter (and for no further fee), within the last year of the term of the faculty, for its duration to be extended. Whether or not the faculty is extended will be for my successor, who, I am sure, will pay all due regard to the fact that the petitioner will already have had the benefit of a reservation in his favour. But whether the faculty is extended will depend upon all the circumstances prevailing at that time, including the availability of space for the interment of human and cremated remains within the existing churchyard, and any additional consecrated land that may have become available for such purposes, the views of the then incumbent and the

PCC, and the personal circumstances of Mr Powell. The faculty will be subject to the following conditions:

- (1) The benefit of the reservation is personal to the petitioner, and is non-assignable.
 - (2) Any fees payable under the current diocesan parochial fees order must be paid to the minister and the PCC of the parish within 56 days of the grant of this faculty.
 - (3) The reservation shall be for the period of seven years from the date of the grant of the faculty.
 - (4) Permission is granted to apply for an extension to the duration of the reservation by letter to the court (and for no further fee) within the last year of the term of the faculty.
 - (5) The reservation shall be recorded in the parish records; and the location of the reserved grave plot shall be marked on the ground by a suitable, and durable, marker.
18. The petitioner will bear the costs of this petition.

David R. Hodge

The Worshipful Chancellor Hodge KC

Septuagesima Sunday

28 January 2024