

Neutral Citation Number: [2024] ECC Bla 1



***Faculty** – Petition for the reservation of a grave space for full burial within the churchyard– Petitioners long-standing residents of the parish – Only sufficient space remaining within the churchyard for about 8 fresh graves – PCC no longer support grave reservation applications - Whether, and for what period of time, and on what terms, the petition should be granted – Faculty refused*

Petition No: 62 of 2023

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

Date: Thursday, 25 January 2024

Before:

ARABA OBODAI, DEPUTY CHANCELLOR

In the matter of:

St Wilfrids Standish

THE PETITION OF:

Brian Whittle and June Whittle

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

There were no objections to the petition.

The following authorities are referred to in the judgment:

Re St John, Stockcross [2023] ECC Oxf 8

Re St Mark, Ocker Hill Tipton [2022] ECC Lic 4

Re St Mark, Ocker Hill Tipton [2022] ECC Lic 5

Re St Mary Magdalene, Bolney [2022] ECC Chi 4

Re St Mary, Standon [2023] ECC StA 1

Re St Mary, Thame [2022] ECC Oxf 2

Re St Peter, Wolviston [2023] ECC Dur 1

Re St Leodegar, Hunston [2023] ECC Chi 1

JUDGMENT

Introduction and background

1. By an undated petition, Mr Brian Whittle and his wife Mrs June Whittle born in 1941 and 1943 respectively, who are both resident in the Parish but are not on the electoral role, seek a faculty authorising the reservation of a grave space for full burial for 25 years. They set out the grounds for seeking this faculty in their Petition thus:

“We have been residents in the Standish Parish for 58 years. Both of our children were christened at St Wilfrid’s Parish Church. They both attended St Wilfrid’s Primary and Junior school and Standish High School. My wife was a caretaker at Standish High School for 23 years. My ancestors came from Standish. My great grandfather worked in Standish smithy as a blacksmith. My great aunt Olive Kirkham, re Mason, was a member of the Standish choir for many years. My grandmother Martha Mason was a resident on Almond Brook road in the 1800s. My aunts and uncles are buried in Standish Parish Church. Joe Hunter Senior, Joe Hunter Junior, and his wife Joan Hunter re Kirkham. Stanley Whittle, Doreen Whittle and many others. All members of Standish Parish Council. In the 1800s the family owned The Globe Inn, near to the cenotaph which served the community. This is documented in Standish Records history.

My wife took confirmation at St Wilfrid’s when we moved back to Standish in 1966 and lived with Olive Kirkham. We would like to be buried alongside the rest of the family.”

2. The minutes of a meeting of the PCC which took place on Tuesday 14 November 2023 record (without naming names) that the Rector had received a request for a graveyard reservation. The minutes go on to say that, as they now have a lack of space in the graveyard, a decision was made in 2022 that the space must be kept for people who live and worship in the Parish and that the PCC do not now support applications for grave reservations. In reaching that decision the PCC also recognised that, the ultimate decision was one for the [Deputy] Chancellor.

3. The Rector has duly certified that the required public notice was displayed for the requisite 28 day period on 5 November 2023; and no objections have been received to the petition.

4. However, in a letter dated 10 December 2023, the Rector wrote to the Clerk to the Registry as follows:

“Following discussion at the PCC, Members were concerned that with now very limited space, probably for no more than eight fresh graves that there was little to offer in Section R of the Churchyard. We have, and please note the relevant section in the Churchyard Policy, cleared and made ready for use, Section T. Using that area will have its difficulties and it is only when a Grave is dug in Section T will we be able to confirm the depth or even use of a particular plot. The reason for this is the former use of the Land in the

Churchyard, basically an overgrown area which on clearing has given us, we hope, sufficient within the Area for about 20+ plots. Our objection to this application is purely based on the popularity of Section R since it was begun in the late 1990's. The PCC have recorded their objection to further applications after a number, historical, reservations over the last five years or more. We would see the current rate of new Graves being used up in the next 18-24 months. I would urge the Chancellor not to grant Faculty but know that it his judgement, not mine, to make."

5. When the papers were first referred to me, I asked the Clerk to the Registry to write to the Petitioners in the following terms:

In furtherance of the overriding objective in Part 1 of the Faculty Jurisdiction Rules 2015 (as amended) of dealing with this case justly, cost-effectively, proportionately, expeditiously and fairly, I consider that it is expedient to order (pursuant to FJR 14.1), that this petition should be determined on consideration of written representations instead of by way of a hearing. I therefore direct you to write to the petitioners inviting them, within 14 days, to submit in writing their views on that course; and, if they are so content, to supply any written representations upon which they might wish to rely in support of their petition. They should be supplied with copies of the Rector's letter of 10 December and its enclosures and invited to address the parish's concerns. They should also be supplied with copies of the recent decisions in Re St Mary, Newchurch-in-Pendle [2023] ECC Bla 5 and Re St Paul, Caton-with- Littledale [2023] ECC Bla 6. If I do not hear from Mr and Mrs Whittle within that 14 day period, I will proceed to determine the petition on the existing papers.

I also said the letter should be copied to the Rector, on behalf of the PCC. He should be invited to state whether he, or the PCC, would wish to receive special notice of the petition under FJR 9.1 with a view to becoming a party opponent. If not, they should state whether they would wish to add anything to the Rector's letter. If they did, then this response should be copied to the petitioners and their views invited on its contents.

6. On 3 January 2024 the Clerk to the Registry received a call from the Rector who said that he was content to rely on submissions already made to the court. He went on to say that there would be no more representations to be made and he was happy for the matter to be decided upon written representations.

7. Mr and Mrs Whittle replied to confirm that they preferred written representations regarding their application. They reiterated that they had lived in Standish since 1966 and that their two daughters attended St Wilfrid's school; that all past members of their family were buried in the churchyard going back hundreds of

years and they wished to be buried with them in the churchyard. They asked for a reconsideration of their application.

The legal framework

11. I have been greatly assisted in dealing with this Faculty application by previous judgments handed down by other Chancellors, in particular the judgment of the Chancellor of the diocese of Blackburn, David Hodge KC, (who is also the Chancellor of the diocese of Oxford) in Re St Mary, Thame [2022] ECC Oxf 2, which he handed down on 28 April 2022 in his capacity as Chancellor of the diocese of Oxford. In that case, he considered the principles upon which a petition to reserve a grave space should be determined where there was only sufficient space remaining in the Churchyard for another seven to ten years of burials. From his review of the authorities, he derived the following, non-exhaustive propositions:

(1) The reservation of a grave space is entirely within the discretion of the consistory court, to be exercised having regard to the particular circumstances of the case.

(2) The court will be more inclined to grant a faculty to a petitioner with the right to be buried in the churchyard than to one without such an entitlement. Those who have such a right are the persons living within the parish, and those on the electoral roll of the parish church.

(3) The court may nevertheless grant a faculty to a petitioner with no right to be buried in the churchyard where they can demonstrate a personal, or a substantial family, connection to the church and/or its churchyard, or some other some good and sufficient reason to be buried there.

(4) Where there is sufficient space within the churchyard, and the incumbent minister gives their consent, the court may well grant a faculty to such a petitioner, unless the Parochial Church Council have a policy of opposing the reservation of grave spaces.

(5) Such a policy cannot be conclusive, and it cannot remove the court's overarching discretion; but where the PCC have adopted a policy that is considered, reasonable and fair, the court will only be justified in departing from that policy in exceptional circumstances; and anyone seeking to reserve a grave space in the face of such a policy will need to show that their case is markedly out of the ordinary.

(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.

(7) Even where such a justification is demonstrated, it will not usually be right to extend the duration of the faculty beyond the period for which the churchyard is likely to have space for burials, unless there are exceptional circumstances (including

evidence of a particularly strong connection to the church and/or the churchyard) in favour of doing so.

(8) Should a faculty for a grave space reservation be granted for a limited duration, it remains open to the petitioner to apply for an extension of the period of its validity. Whether or not any extension is to be granted will depend upon the prevailing circumstances, including: (1) the petitioner's personal circumstances; (2) whether arrangements have been made to provide additional space for burials, whether by the acquisition of further land, or the re-use of parts of the churchyard, or otherwise; (3) the views of the incumbent minister; and (4) any current policy of the PCC towards the reservation of grave spaces.

In his judgment, he concluded that even though the petitioner had shown sufficient justification for the grant of a faculty for the reservation of a grave space in the churchyard, it would not be right to extend the initial period of duration of that faculty beyond the time during which the churchyard is likely to have sufficient space available for future burials.

12. Since his decision on that petition, there have been a number of further decisions of other Chancellors on petitions seeking to reserve a grave space within a churchyard. In *Re St Mary Magdalene, Bolney* [2022] ECC Chi 4, in the diocese of Chichester, the petitioner, who did not live in the parish, and therefore had no legal right to be buried within it, wished to reserve a double depth grave in the churchyard for himself and his wife, next to the grave of their son, who had died in a tragic accident at the age of 24. The associate priest objected (without becoming a party opponent) on the grounds that spaces for burial were limited, and since 2021 the parish had had a policy of not approving further grave reservations, as the churchyard was likely to be full within about six years. In the circumstances, Chancellor Hill KC felt that it would be unfair to override the parish policy; and he refused to grant a faculty.

13. Expressly endorsing Chancellor Hodge KC's view in *Re St Mary, Thame* that "it will not usually be right to extend the duration of the faculty beyond the period for which the churchyard is likely to have space for burials, unless there are exceptional circumstances ...", in *Re St Mark, Ocker Hill Tipton* [2022] ECC Lic 4 Deputy Chancellor Verduyn, in the diocese of Lichfield, granted a faculty for the reservation of a grave space for 20 years, rather than for the customary 50 years. In view of the number of spaces available, and the rate of interments, the graveyard could be full and closed before any longer reservation would need to be exercised. The Chancellor gave the petitioner leave to apply for an extension of the period of 20 years within six months of its expiry. In the contemporaneous case of *Re St Mark Ocker Hill Tipton* [2022] ECC Lic 5, the same Deputy Chancellor granted a faculty for the reservation of a double depth grave space for the full period of 50 years usually allowed. In a brief judgment, he explained why he had not followed the recent precedent of allowing 20 years (with a possible extension) for a double reservation for burial in the same graveyard: in the latter case, one of the joint petitioners was terminally ill, so that the double plot would be in use quite soon.

14. In *Re St Peter, Wolviston* [2023] ECC Dur 1 Chancellor Iles, in the diocese of Durham, refused to grant a faculty for the reservation of a grave space. Although several relatives of the petitioner were buried in the churchyard, the petitioner was not a parishioner – indeed, he did not even live within the diocese of Durham - and he did not have a legal right to be buried in the churchyard. Also, the reservation of a grave would use up a space in a churchyard which would be full in about two years, and would prevent the burial of another person, who would otherwise have had a legal right to be buried there.

15. In *Re St Mary, Standon* [2023] ECC StA 1, in the diocese of St Albans, the petitioner wished to reserve a single depth grave space in the churchyard. She was a resident of the parish and was on the church electoral roll, and she attended church occasionally. There were an estimated 248 graves available. However, the parochial church council had passed a resolution in 2021 adopting a policy of not supporting any further grave reservations, except in exceptional circumstances. Chancellor Lyndsey de Mestre KC considered that the reasons given for the policy were reasonable, and that there were no sufficiently exceptional circumstances to justify the grant of a faculty. At paragraphs 7 and 8, the Chancellor emphasised that although not necessarily determinative of the outcome of a faculty application in all cases, a *“clearly expressed thread running through those cases where PCCs had adopted policies of not supporting grave reservations is that the Consistory Court will generally support a policy of non-reservation unless such a policy reveals bad faith or is unreasonable”*.

16. In another decision by Chancellor Hodge KC in *Re St John, Stockcross* [2023] ECC Oxf 8 (in the diocese of Oxford) he considered the case of the petitioner, who was 60 years of age and had been resident in the parish for the past 15 years. The Rector had certified that the average number of burials in the churchyard was three per year; and he estimated that the remaining space in the churchyard would be sufficient for the needs of the parish *“for 11+ years”*. He granted a faculty for the reservation of a grave space, but limited in duration, in the first instance, to a period of eleven years from the date of 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. He indicated that he had every sympathy for the petitioner’s wish to have some degree of assurance that, when his time should come, he would be laid to rest in the churchyard of the village in which he lived, and which he had come to love. However, he considered that there were no special reasons why he should grant a faculty for the standard period of 25 years from the outset (as the petitioner had invited the court to do).

17. In a more recent case Chancellor Mark Hill KC in *Re St Leodegar, Hunston* [2023] ECC Chi 1 considered two separate petitions where each sought reservation of a grave space in the churchyard of St Leodegar, Hunston where there are very few remaining in the churchyard. The unchallenged documentation from the parish was that it will be full within five years. Notwithstanding, the PCC had unanimously passed a resolution approving the application for the reservation of a grave space in each case. He said at the start of his judgment that, *“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.”

18. He too summarised various case law including *Re St Mary, Thame* and said this:

“The recent decision of Chancellor David Hodge KC in Re St Mary, Thame [2022] ECC Oxf 2 provides an exhaustive randschau 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) “

Chancellor Hill KC went on to say that 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.

Analysis and conclusions

19. Since this is an unopposed faculty petition, and the petitioners are content with this course, I am satisfied that it is expedient, in the interests of justice, and in furtherance of the overriding objective of the Faculty Jurisdiction Rules 2015 (as amended) of dealing with this case justly, cost-effectively, proportionately, expeditiously and fairly, for me to determine this petition without any hearing, and on the basis of the written materials that have been presented to the court.

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, historical, reservations over the last five years or more. As the Rector said in his letter referred to above, 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.

24. In the circumstances, the petition is dismissed.

25. I charge no fee for this written judgment.

Araba Obodai

Deputy Chancellor of the diocese of Blackburn

25 January 2024