

Neutral Citation Number: [2026] ECC Gui 3

IN THE CONSISTORY COURT OF THE DIOCESE OF GUILDFORD

Rev HHJ Sarah Whitehouse KC, Deputy Chancellor

4 September 2026

In the parish of West Horsley, St Mary

In the matter of a petition for a faculty for the re-use of grave spaces

JUDGMENT

The Petition

1. The Petitioners seek a faculty to reuse a section of the graveyard of St Mary's Church West Horsley for new burials. The parish will not re-use any space where the grave is less than 75 years old or where there is an existing memorial stone in place. Where evidence of a previous burial is discovered, the grave will be dug to a deeper depth and the remains reinterred.
2. The Petitioners have provided a plan showing the portion of the graveyard where it is proposed that the new burials are to be located.
3. The parish carried out a consultation on these proposals between 24.3.25 and 31.5.25. The consultation document was published to the congregation in verbal notices and by email, and then published to the wider community in the parish magazine, on the church website and on social media. The consultation document was also used as a poster which was displayed in and around the churchyard for a period of 6 weeks. No objections to the proposal were received.
4. On 28.4.26, the Parochial Church Council approved a resolution to support the incumbent, Revd Philip Herrington, in making this Petition.
5. The Petition is unopposed. However, it is appropriate to deliver a written judgment since I can identify no recent judgment in relation to such a Petition in the Diocese of

Guildford. Furthermore, in view of the increasing scarcity of grave spaces in the Diocese, it is likely that there will be more such petitions coming before the consistory court. As Newsom QC Ch observed in *Re West Pennard Churchyard* [1992] 1WLR, “no churchyard is full and ripe for closure until all the parts of it in which reburial is possible have been buried over again at least once. And, until closure, all legal burial rights continue. Over the centuries churchyards have been buried in several times over and it cannot be said that a churchyard is nearly full by considering only the areas which have never been used for burials.”

The Church and the Statement of Needs

6. St Mary’s is a grade 1 listed church. It is believed that the foundations were laid in 1030 AD, where a Saxon church was built on the site of the present nave. The graveyard dates back to the earliest times of St Mary’s and there are burial records (stored in the Surrey History Centre Archives) that date back to 1600. Permission was granted for a new area of land to the south west of the original graveyard to be set aside for burials in 1957 with two smaller additions added in 1996 and 2005. That additional space has now reached capacity and there is no further land attached to the church available for use as burial space.

Archaeological recommendations

7. The Archaeological Advisor to the Guildford DAC, Tony Howe BA MCIFA, has considered the proposals and has advised that he has no archaeological concerns in relation to any graves dating between 75-99 years. However, different considerations apply to burials which are more than 100 years old because they are of known individuals and will have value.
8. Mr Howe recommends that, if the faculty is approved, the “lie and deepen” principle be applied formally: any in-situ remains encountered should be reinterred in a deepened grave as indicated in the application, but they should be excavated in such a way as to preserve their physical integrity where possible (not wholly with a machine) and placed in a container of some sort, such as a wooden box, to ensure they remain identifiable as the remains of the individuals marked on the existing plan.

9. Mr Howe also recommends that the DAC Archaeologist or a representative should be invited to visit, observe and record the proceedings: at least on the first two occasions, as this will provide information about the preservation of any remains and allow the strategy to be adapted if necessary, and inform any future applications.
10. Alternatively, a number of graves might be opened and deepened at the same time, to provide capacity for some years going forward. If that proposal were to be adopted, then the operation should be monitored by a contracted archaeologist who would be able to be on site for the duration of the work to make any observations and carry out more dedicated recording.
11. There has been no specific archaeological assessment of the church and churchyard. Since it is possible that there has been a church on the site since the 9th century, there could be significant archaeological remains. However, in Mr Howe's opinion, 1,000 years of burials will have had significant impact on the state of presentation of any archaeological layers.

The Law

12. Where a churchyard has not been closed by Order in Council, further burials may take place in existing graves without a faculty. This position is, however, subject to specific considerations arising under the Burial Act 1857, s.25 of which makes it a criminal offence to remove buried human remains without a licence from the Secretary of State or, in relation to land consecrated according to the rites of the Church of England, a faculty.
13. The principles in relation to the re-use of grave spaces are well-established. I have, specifically, considered the judgments in *Re West Pennard Churchyard* (see above); *Re St Michael's Heighington* [2016] ECC Dur 3; and *Re All Saints Biddenden* [2020] ECC Can 1 and the Opinion of the Legal Advisory Commission of the General Synod ("the Advisory Commission Legal Opinion").
14. The practice of re-using grave spaces has been adopted for centuries in older churchyards. It does not offend the principle that human remains buried in consecrated ground are intended to be permanent: any such remains as there may be can be reverently reinterred in a deepened grave. The re-use of grave spaces after

a satisfactory lapse of time is neither contrary to Christian doctrine, nor otherwise objectionable.

15. Different views have been expressed as to what constitutes a “satisfactory lapse of time”. The range appearing in various judgements is between 50 and 100 years and the Advisory Commission Legal Opinion observes that no period of time between burials is laid down by law, though general considerations of decency and pastoral sensitivity suggest that there should be a lapse of at least 50 years and perhaps more, depending on the presence of memorials and the existence of any surviving relatives visiting the area in question.
16. The natural and ordinary purpose of a consecrated churchyard is for the purposes of burials and the incumbent and PCC are under a duty to so use it where the churchyard has not been closed, so that the burial rights of parishioners and persons on the electoral roll can be exercised. The practice of re-using grave spaces is sustainable and sensible, and avoids the distress caused to parishioners who would otherwise be denied their right to be buried in the churchyard of their parish church.

Decision

17. Extensive efforts have been made to consult the church community and local residents and no objections to this Petition have been made. Applying the principles summarised above, I shall grant a Faculty.
18. The conditions of the grant of the Faculty are that any human remains uncovered as burials occur are to be reverently treated and there is to be proper care and recording, as appropriate, of any archaeological artefacts. The parish are to follow the recommendations by the DAC Archaeologist. I will leave it to the good sense of the incumbent and PCC as to whether they adopt the course of re-opening several graves at once, or on an individual basis.

Revd HHJ Sarah Whitehouse KC

4th September 2026

Deputy Chancellor