

**In the Consistory Court of the Diocese of Lincoln**

**In the matter of St Mary Magdalene, Gedney**

**Judgement**

1. This is a Petition for a Faculty to permit the reuse of the south east corner of the churchyard of St Mary Magdalene, Gedney for new burials. The area that is proposed for reuse had the memorial stones relocated along the south east wall of the churchyard in 1965-1966 leaving the area grassed. The memorials indicate that burials in the area were being made over 150 years ago.

2. There are objectors to this Petition although none of the objectors have wished to become party opponents. I have read all the objectors' letters and have taken their points into account in my decision. The objectors were:

- (i) Mr Richard Burrell: letters dated 10 November 2015 and 22 May 2016
- (ii) Mrs K Burrell: letter dated 10 November 2015.
- (iii) Alan Jones: email received 29 February 2016
- (iv) Mr and Mrs C Beba: letter received 29 February 2016
- (v) Mr P Jones: letter received 29 February 2016
- (vi) Alan Howman: letter dated 22 February 2016
- (vii) Linda Wright: letter dated 11 February 2016
- (viii) Mr M Mastin: letter dated February 5th 2016

3. The chronology of this proposal and the Petition is as follows:

- 6.10.15 DAC recommend to the Chancellor the proposed reuse of the south east corner of the churchyard for burials
- 19.10.15 Public Notice displayed
- 25.10.15 PCC pass a resolution to apply for the Faculty
- 10.11.15 Mr and Mrs Burrell's letters of objection
- 19.11.15 Petition for a faculty dated and submitted

- 23.11.15 Registrar's letter to Mr and Mrs Burrell setting out options open to objectors in participating in the faculty process as party opponents
- 26.11.15 The Petitioners reply to Mr and Mrs Burrell's objections
- 7.12.15 Mr Burrell's visit to the Registrar's office. Amongst other points discussed Mr Burrell complained that insufficient notice had been given in putting the notice on the church door. He submitted many people did not know about the proposal. I have read the note by the Registrar of the points made by Mr Burrell in this meeting
- 8.12.15 Mr Burrell letter responding to the Petitioner's replies to his objection to the Petition. Amongst other points he repeats the lack of awareness amongst local people of the proposal
- 18.12.15 Chancellor orders that there should be a special citation giving notice of this Petition in the parish magazine and also on a notice at the entrance to the churchyard
- Feb 2016 the parish magazine explains about the proposal to reuse part of the churchyard for burials inviting objections by 29.02.2016
- 1.2-1.3.16 Notice given on the noticeboard inside the church, and on the principal door outside the church, and on the church gate
- 5.2-29.2.16 Further objectors' letters received (see above)
- 23.3.16 Response to the further objections by the Petitioner
- 17.4.16 Further request for information by the Chancellor
22. 4 .16 Further information supplied by the Petitioners

4. I have set out the history of this matter because of the concerns raised by, amongst others, Mr Burrell concerning whether adequate notice had been given. Although I was satisfied the strict legal requirements of notice had been met, in the light of these points I required the further notice to be given within the parish to bring this matter to the attention of those who may be concerned by it. This has now been done.

5. It is entirely understandable that any proposal to reuse an area of a churchyard for burials can be met with anxieties about the propriety of doing this. I have therefore examined this proposal with great care as well as the objections raised. I know the churchyard and have visited it.

### The proposal

6. The church is Grade 1 listed and in a conservation area. The churchyard has no known scheduled monuments in the churchyard nor any Tree Protection Orders. The churchyard is not yet full but it is anticipated that it will become full by 2017. There are currently 5-10 burials a year in the churchyard. The area to the north of the church has an extensive area of memorials and gravestones that would not now be compliant with the Churchyard Regulations. There are 1 or 2 spaces left there but that area is clearly not suitable for any significant future burials. There have been no burials there for 15 years. Ashes are interred there.

7. There is an area to the west of the church which is used for burials and beyond that the car park which has been in use as such since 1974. The church is located on a busy road and the Petitioners submit that the car park is an essential requirement for a busy church with large weddings, funerals and memorial services, as well as supporting other activities of the church.

8. The proposed area for reuse is in the south east corner and is now a grassed area. In 1965 the memorial stones were all moved to the adjacent boundary wall and they face into the churchyard. From the dates on these stones it would appear that the burials were in the 18th century the last being around 150 years ago.

9. The area for reuse will provide 30 further graves in each strip.

### The legal framework.

10. As a matter of law, there is nothing to prevent land which has been used for burials in the past being used again for that purpose. Before memorial stones were introduced into churchyards in the 18th century land around churches would often be reused for burials. All the land around this church will have been used probably many times over the centuries for burials (as well as land within and beneath the church for the oldest burials).

11. However, notwithstanding this, it is essential that the period before which land can be reused for burials is a suitably lengthy period. Respect for those who have died inevitably involves respect for the places where they are interred and where people go to remember them. This sense of respect for the dead is also closely linked to people feeling a sense of their own belonging and worth within a community. It is therefore extremely important that any decisions about reuse of land for burials are taken after careful thought and opportunity is given for people to know what is proposed and give their views about it.

11. Although there are no prescribed periods before which reuse should not take place, the Legal Advisory Commission opinion (revised May 2006), para 13 states that

'it is generally accepted that a period of 50-100 years should elapse since the last known burial, the precise period depending upon all the circumstances of the case'

12. My approach is that no reuse of land could be contemplated before a period of at least 75 years has elapsed since the last burial. However every churchyard reuse scheme needs to be considered separately and I see this not strictly as a matter of law but a pastoral judgement .

13. In this proposal the land was last used for burials around 150 years ago and the memorial stones have been moved to one side in the 1960s. There can therefore be no possibility that anyone now alive visits any interment in this spot to pay their respects to a deceased relative. There is no risk that the sensibilities of relatives of those interred in this area will be caused distress given the length of time that has elapsed since the last burial. The concerns that have been raised by objectors is to the principle of land being reused for burials. I am quite satisfied that given the length of time since the last burial in this land there can be no reason by this land cannot be brought back into use for burials and there is no principle which prevents this.

14. I now deal with some of the specific points that have been raised by objectors:

*(i) the land being reused has been purchased as a burial plot by the families of those interred there and the church should not now reuse that land and let new people purchase the land for their burials.*

This is a very significant misunderstanding about graves in churchyards. They are not purchased. A fee is paid at the time of burial as a contribution towards the upkeep of the churchyard, but the land has not been sold by the church to the family of the deceased.

*(ii) there is enough space left in the existing churchyard for many years to come (Mr and Mrs Bebu say for 25 years at least). The car park land could be brought into use for burials.*

I accept the evidence of the Petitioners that the churchyard will run out of space some time next year. The current rate of burial is around 5-10 a year. It is important that the parish plan ahead and local people continue to feel confident that there will be a place for the burial of themselves and their family members in the parish churchyard. I do not accept that there is enough 'unused' land left. The churchyard will become full soon if this land is not used. I am quite sure that a church with this level of activity needs to have a car park for the use of those attending services as well as the other church related activities. The proximity of the main road and the school mean that a church car park is essential and I do not consider bringing this land into use for burials as suitable,

even though as part of the curtilage of the church it forms part of the consecrated land.

*(iii) Mr Howman is concerned about shallow graves.*

In any burials in the area undertakers and gravediggers will have to proceed with caution (as I am sure they do throughout the churchyard). Given the number of years since the last burial I do not believe that this will present a problem, even if the 18th century graves were shallow.

*(iv) the Petitioners should consider opening another churchyard somewhere else rather than reuse this land*

There is no need for the parish to go to the expense of buying more land if there is land available in the churchyard which can properly be used for burial. Parishioners have a right to be buried in the parish churchyard as long as it is not closed or full. There is no reason why this land cannot be reused for burial given the time that has elapsed since the last burial. No additional land is therefore required.

15. I will therefore grant this Faculty on the following conditions:

(i) the first strip of burials will be nearest to the wall of the south east corner.

(ii) the extent of the land that may be reused for burial will correspond with the area coloured yellow on the Google map in my papers. The Archdeacon is to agree with the Petitioners the precise dimensions of the area coloured yellow and this is to be recorded and kept with the churchyard plan.

(iii) gravediggers are to proceed with caution. If any disarticulated human remains are uncovered which cannot be buried at a greater depth than the new grave, work should stop and directions obtained from this court on how to proceed.

16. I am grateful for the work done in the careful preparation of this Petition and the care with which the community has been consulted. I thank the objectors too, for responding to the notice and giving me their views. I am sorry that my decision will not be welcome to them.

**Mark Bishop**

**Chancellor**

**30 July 2016**