

Neutral Citation Number: [2018] ECC Chd 1

IN THE CONSISTORY COURT OF THE DIOCESE OF CHELMSFORD

St Mary and St Hugh, Harlow

Petition for Faculty No. 2326: Re-use of area for burials

JUDGMENT OF CHANCELLOR GEORGE PULMAN QC

1. This is the judgment in respect of Petition No. 2326 brought by the vicar and churchwardens of St Mary and St Hugh, Harlow in the Diocese of Chelmsford. The Petitioners seek a faculty to re-use land within the churchyard for burials of coffins containing the human remains of people who have died.
2. All the formal steps, including Public Notice, have been taken in good time. The publicity was widespread following my direction on this.
3. The Petition is opposed solely by Mr Cheesman, a loyal member of the congregation for many decades. His family have been members of this church for longer than he has been alive.
4. On the face of the Petition there is no defect in the grounds for seeking the faculty. There is no procedural defect. It is agreed that the churchyard has not been closed by Order in Council but that burials can now only take place in existing graves.
5. Mr Cheesman, who appeared in person, raised the following objections. They are set out in his undated document at p.65 of the bundle. I abbreviate these objections because I expand them in greater detail below.

6. Objection 1

The incumbent is soon to retire. The application should be considered by the new incumbent.

I do not regard this as a relevant objection. In fact the incumbent, Rev. Dave Welch is still the priest in this Parish and has not yet retired. It is likely that there would be a delay of about one year from now for any decision on this Petition to be taken if Mr Cheesman's objection was allowed. This is because it is at least 6 months before the vicar can retire. There would as is usual be at least a 6 month interregnum. During this time funerals could not take place. Depriving people of a burial space has no benefit and causes distress.

Sir George Cooper gave evidence. He was called by Mr Woollams who is a Petitioner and the churchwarden who presented the Petitioners' case. He said that he and his wife lived in the parish and that they are Christians who worship at a different church. Their daughter also lives in the parish. They wish to be buried in the churchyard because this will give some comfort to their daughter.

Mr Cheesman did not pursue this objection.

7. Objection 2

The Church views on many issues change over the years.

I understand Mr Cheesman to mean by this that burial used to be the only way in which earthly remains of dead people were dealt with but that nowadays cremation is accepted.

I do not regard this as relevant as an objection. The fact that cremation is now permitted does not mean that burial in consecrated ground is forbidden or to be discouraged.

Mr Cheesman did not pursue this objection.

8. Objection 3

The notice was incorrect as it states "The churchyard is open for burials".

I do not regard this as relevant. Mr Cheesman did not pursue it. So I add no more.

9. Objection 4

The D.A.C. consulted in their advisory capacity which has no legal authority.

While a correct statement, it is not helpful to Mr Cheesman's case. The fact of the D.A.C.'s support adds weight to the Petitioners' case and it would be wrong for me to disregard this. The weight which I give to it is a matter for me.

As Mr Cheesman did not pursue the point, I add no more.

10. Objection 5

"An area has recently been set aside to inter ashes."

This objection does not preclude or forbid burials in graves. The area is in addition to the area for burials.

Mr Cheesman did not pursue this objection.

I am not able to say that it has any weight or any relevance.

11. Objection 6

"Recently a stone cross has been completed for the purpose of loved and dead persons to be remembered..."

This again is not relevant. The burial of human remains may be in this churchyard or elsewhere. But the installation of this striking horizontal cross at waist level does not influence burial one way or the other.

Mr Cheesman did not pursue the objection.

12. Objection 7

"The graves are 'all over 100 years old'. These persons are not going to complain."

This is not a material objection. It was not pursued by Mr Cheesman.

13. Objection 8

“As a church many steps have been taken to address the lack of further space for dead people.”

This is not a reason for not allowing burials in available space within the churchyard.

Mr Cheesman did not pursue this objection. I add no more.

14. Objection 9

“As a church we have a greater duty of care to the living rather than the dead.”

While this is true and is unquestioned, it is not relevant to the use of the churchyard.

Mr Cheesman did not pursue this issue. It is not relevant.

15. Objection 10

“Mowing the grass will be made more difficult...” and “The different alignment of Muslim and Christian headstones... there will not be a neat line of cut for a mower if a Christian and Muslim are buried next to each other.”

- a. The space offered for a Muslim grave will be space available in the churchyard. If not acceptable to a Muslim, his family will seek burial elsewhere.
- b. The mowing issue arises wherever burial occurs. Mr Cheesman suggests an adjoining field should be made available. The mowing issue – if it had any weight at all – is the same there.

I do not regard either of these issues as having any weight. So I dismiss these two objections.

16. Objection 11

“Often children move away and do not tidy graves.”

I do not regard this as an arguable reason for not allowing burials in a churchyard. It is for the P.C.C. to make arrangements for keeping the churchyard tidy. This will sometimes be done by allowing sheep or goats to graze the churchyard. It can also be done by mowing.

This is an objection which has no weight. I dismiss it.

17. Objection 12

“There is a field adjacent to the churchyard. This land is owned by the Diocese of Chelmsford... The lease could be terminated and at least 100 graves dug.”

This is the objection on which Mr Cheesman founded his case at the hearing. It was the only objection he pursued at the hearing. His arguments were (1) that the field

would provide many more burial places; and (2) that use of the field would avoid disturbing the churchyard.

He had been told by letter several weeks before the hearing that the field was (1) owned by the Diocesan Board of Finance (D.B.F.) and not by the Parish Church; and (2) that it was let out on a tenancy which provided an income to the D.B.F.. He said at the hearing that he had not contacted the D.B.F. to check or to ask questions about these matters.

As the field is unavailable, his argument inevitably fails.

But his argument is also inconsistent with his other arguments. Mowing the field would cause the same problems if graves were there. The positioning of Muslim graves (if any) could make mowing even more difficult. So Mr Cheesman's major arguments, even though not pursued, would be the same in respect of the churchyard as in respect of the field.

Mr Cheesman did not regard the loss of rental income in respect of the field as of significance. But I do. It would be mistaken for the D.B.F. to lose this income when space is available in the churchyard.

So all of Mr Cheesman's objections are dismissed.

Costs

1. The usual rule on the hearing of a faculty application is that the Petitioners bear the costs of the Chancellor and the Registrar. In this case however I order Mr Cheesman to pay a major part of the costs, to include all the costs of the hearing on Friday 18th May 2018.
2. The reasons for this are as follow.
 - i. All of Mr Cheesman's objections were without foundation, irrelevant or contrary to the only evidence available. He knew this.
 - ii. Mr Cheesman was invited to consent to a hearing by written representation. This procedure exists to save legal costs in particular where factual issues do not arise, as here. The invitation was based on the fact that no material evidence was in dispute. He refused this option. It was repeated by letter shortly before the hearing. Again, it was refused. I consider that both refusals were unreasonable on the facts as he knew them to be. It is his right in law to have a hearing in open court. But it is not his right to require others to pay for this.

- iii. Mr Cheesman refused to contemplate any form of compromise.
 - iv. Mr Cheesman disregarded the uncontradicted evidence but called no evidence, other than what he asserted, in reply.
3. The hearing was concluded by 1pm so only a half day was required. This was the result of the conduct of both Mr Woollams (churchwarden, for the Petitioners) and Mr Cheesman (Party Opponent). Neither took unnecessary time during the hearing. Each answered questions in a non-combative manner, reasonably and quite shortly. I commend each for their conduct at the hearing.
 4. It is in these circumstances that I limit the costs payable by Mr Cheesman to the hearing itself. I have limited the costs to the costs of the hearing and no more than £1,500 which is at the lowest end of the statutory range.

ORDER

The Petition is therefore allowed. I direct that a faculty as sought issue. The Party Opponent is ordered to pay the Court's costs limited to £1,500. The balance of legal costs is to be paid by the Petitioners.

George Pulman Q.C.
Chancellor