

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

WALSALL: WOOD ST JOHN

PETITION OF CONSTANCE CAUSER

JUDGMENT

- 1) On 3rd October 2014 the late Albert Causer was buried in the detached burial ground of St John Walsall Wood. His widow, Constance Causer, seeks a faculty to reserve the gravespace next to that in which her late husband is buried. Mrs. Causer is now aged 79 and the Petition has been conducted on her behalf by her grandson, Richard Broadhurst. I am grateful to Mr. Broadhurst for the clarity and moderation of the submissions made on his grandmother's behalf and for the understanding he has shown when a misunderstanding in the Registry caused a delay in dealing with this matter.
- 2) This Petition is not supported by the Parochial Church Council. On 19th November 2014 that Council voted unanimously to advise me that it "*does not wish to encourage further reservations because of the shortage of space in the churchyard and therefore cannot support the application.*" The Parochial Church Council does not wish to become a party to the Petition but has asked me to take account of its resolution together with further information which has been supplied in accordance with directions I made on 18th May 2015.
- 3) I concluded that it was expedient to determine the Petition on the basis of written representations. Initially the Petitioner took the view that she wished to have a hearing but on reflection she has consented to determination on written representations. In addition to the Petition I have considered the undated written submissions of Mr. Broadhurst.
- 4) As I have already said Mr. Causer was buried on 3rd October 2014. The Petition to reserve the adjacent gravespace was presented on 20th October 2014. Since then the gravespace in question has been marked and unused pending the determination of the Petition.

The Petitioner's Contentions.

- 5) Albert and Constance Causer were married for 57 years and lived in Walsall Wood for 47 years. In recent years they have lived very close to the church and the burial ground. Both Albert and Constance Causer wished to be buried rather than cremated and Albert wished and Constance Causer now wishes that they be laid to rest alongside each other. Mr. Broadhurst's submissions are made eloquently but they boil down to saying that it is fitting and appropriate that this couple who were married for such a long time and who lived locally for such a period should be buried alongside each other. Mr. Broadhurst explains that knowing that she will be buried alongside her husband would give Constance Causer some comfort in her loss and that a refusal of the Petition would cause her distress.

The Circumstances of the Churchyard and the Position of the Parochial Church Council.

- 6) It is important to note the circumstances of the burial ground. It serves not only the parish of Walsall Wood but also those of Shelfield and High Heath both of which were formerly part of the Walsall Wood parish. The Parochial Church Council estimates that there are only 50 – 55 gravespaces left in the burial ground. In the years 2010 – 2014 there were an average of 9 -10 (arithmetically the average is 9.6) interments in new plots each year. The Parochial Church Council believes that the new plots will be exhausted in 7 – 9 years and this is clearly a realistic estimate.
- 7) The problem is compounded by the high water table in the relevant part of the burial ground. This means that it is not practicable for there to be double-depth burials. The only way in which the remains of married couples can be interred together is for burial in adjoining plots or for one or both of the couple to be cremated with his or her remains being interred in the burial plot already occupied by the remains of the spouse who died first.
- 8) In its submissions the Parochial Church Council explains that it has not adopted a formal written policy but the matter has been discussed regularly at meetings of the Council particularly those held in November of each year when parochial fees

are considered. The Council has been conscious of the shortage of space and has sought for the last five years to make local funeral directors aware of the issue and of the Council's approach which is to resist further reservations of gravespaces. In that period the approach appears to have been accepted by the families of those interred in this burial ground and no faculties have been sought for the reservation of gravespaces here.

9) Revd Nigel Carter is the Vicar of Walsall Wood and I have been provided with copies of e-mails exchanged between him and Mr. Broadhurst before the burial of Albert Causer.

a) On 22nd September 2014, two days after Mr. Causer's death, Mr. Broadhurst contacted Mr. Carter explaining that the family wished Albert Causer to be buried in the burial ground. Mr. Broadhurst said that he had been told by funeral directors that there were no double plots in the cemetery and asked if he could "purchase" two single plots alongside each other. The funeral directors had told Mr. Broadhurst that this was something which had been possible at Walsall Wood in the past but had recently stopped.

b) Mr. Carter replied on 23rd September 2014. He explained that the purchase of plots was not possible. Mr. Carter went to explain that the burial ground was operated on a "*next available plot basis*". He told Mr. Broadhurst that a faculty would have to be sought for the reservation of a gravespace and that the decision would rest with this Court. However, Mr. Carter did warn Mr. Broadhurst that "*owing to the shortage of available plots and some of the difficulties which we encounter in managing the churchyard we [sc the PCC] would not normally support such an application.*"

10) It follows that although the Parochial Church Council has not adopted a formal policy in terms of an express document it has followed the consistent practice for a number of years of opposing the reservation of gravespaces; that approach has been notified to local funeral directors; and the approach has been adopted because of the limited space for future interments available in the burial ground. Moreover, at the time when Mr. Causer's remains were buried in the churchyard his family knew that a faculty would be needed for the reservation of a

gravespace and that for the foregoing reasons the Parochial Church Council would not support the petition for such a faculty.

The Applicable Approach.

11) In my judgment in the case of *Blithfield St Leonard* in this Court in October 2014 I set out the approach to be taken in cases where a petitioner seeks to reserve a gravespace in circumstances where the relevant Parochial Church Council has a policy of opposing such reservation. I said at paragraph 15 that:

“...where such a policy has been adopted by a Parochial Church Council the Court should take account of it and give it considerable weight in the exercise of the Court’s discretion.

“Such a policy cannot be conclusive and cannot remove the Court’s discretion. Moreover, if the policy were shown to have been the result of an illegitimate hostility to a particular person or to have been based on a misunderstanding of the appropriate provisions then it would have no weight. Even a legitimate policy cannot be conclusive because there will always be the possibility of particular (and potentially unforeseen) circumstances which justify an exception. However, in my judgment it will only be where there are exceptional circumstances that the Court will be justified in departing from the policy adopted by a Parochial Church Council. Anyone seeking to reserve a gravespace in the face of such a policy will need to show that their case is markedly out of the ordinary. The need for exceptional circumstances flows not just from the respect which the Court should give to the views of the Parochial Church Council but is also a matter of fairness. Where such a policy has been adopted by a Parochial Church Council there are likely to have been a number of people who have accepted that a gravespace cannot be reserved even though their preference would have been for a reservation. Fairness to those who have subordinated their own preferences to the decision of the elected Council requires that the Court should only allow reservations in exceptional cases. Failure to do so would run the risk of those who are forceful and articulate being able to circumvent rules which others have followed.”

12) I remain of the view that this approach is correct and I note that it was adopted by Turner Ch in *Grappenhall: St Wilfrid* (Chester Consistory Court 2015). It

follows that where a Parochial Church Council has such a policy a faculty reserving a gravespace will only be granted in exceptional circumstances.

Application of that Approach to Walsall Wood.

13) As already stated although the Parochial Church Council of St John's has not set out a formal policy document I am satisfied that it has an established policy of resisting the reservation of gravespaces. That policy has been maintained for a number of years; it has been publicised; and it is based on well-founded concerns as to the limited amount of space available in the burial ground. It follows that exceptional circumstances must be established in order for me to grant a faculty reserving a gravespace.

14) The desire of Mrs. Causer to be buried alongside her husband in this burial ground after their long marriage and their long residence in Walsall Wood is both understandable and legitimate. I am also conscious of the fact that a refusal of this Petition is likely to cause additional distress to Mrs. Causer over and above that already caused by the sad loss of her husband. However, this is not a case where there are exceptional circumstances. The situation of Mrs. Causer is perhaps not run of the mill but it is not so exceptional as to justify overruling the legitimate approach of the Parochial Church Council. Space is at a premium in this burial ground and if I were to grant a faculty reserving this gravespace to Mrs. Causer there would be a very real risk that I would be unfairly prejudicing someone else with an equally legitimate claim to be buried here. In addition it is relevant to note that at the time when Mr. Causer was buried his family knew of the approach of the Parochial Church Council. They knew that a faculty would be needed but that the grant of a faculty would be opposed by the Parochial Church Council for the reasons already set out.

Accordingly, it is not appropriate to authorise a reservation and the Petition must be dismissed.



STEPHEN EYRE

HIS HONOUR JUDGE EYRE QC

CHANCELLOR

11th July 2015

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NOTE

- 1) For the reasons set out in my Judgment I have had to refuse Mrs. Causer's Petition. However, I have had a discussion with Revd Nigel Carter with a view to seeing what can be done by way of pastoral provision.
- 2) I am able to record that Mr. Carter has agreed that the gravespace next to the grave of Albert Causer will be the last space to be used in this burial ground unless it is before then it comes to be used for the interment of the remains of Constance Causer. Until all other spaces in the burial ground have been used up this plot will remain unused and will remain identified by a marker on the ground. I am grateful to Mr. Carter for agreeing to this course. I invite Mr. Carter to take steps to ensure that this Note and a record of his agreement to this arrangement be retained with the burial ground papers to ensure that the plot in question is not inadvertently used in the meantime.
- 3) The effect of this is that if Mrs. Causer were to die while there are still spaces available in this burial ground then she can be laid to rest next to her late husband and no other interment will take place in that plot in the meantime. If the time comes when all the other spaces have been used up then the plot next to Albert Causer's grave will also have to be used.
- 4) I must emphasise that both I and Mr. Carter hope that Mrs. Causer lives for many more years which will mean that she is unlikely to be able to be buried in the plot next to her late husband. However, if Mrs. Causer does die while there is still space in this burial ground then she can be assured that she will be buried in the plot next to her late husband.



STEPHEN EYRE
HIS HONOUR JUDGE EYRE QC
CHANCELLOR
11th July 2015