

IN THE CONSISTORY COURT OF THE DIOCESE OF LINCOLN

In the matter of St Mary Magdalane, Fleet

Judgement

1. This is a Petition for a Faculty to permit the reuse of any area of the churchyard north east of the north aisle of the church. The area is delineated on a Google aerial photograph of the area. It is an area of the churchyard where there are no existing memorials.

2. There is one objector, Mr Burrell, to this Petition although he has not sought to become a party opponent. I have read his letter dated 22 May 2016 and have taken what he has written into account.

3. The Petitioners have responded by their letter dated 30 June 2016.

4. I have recently given a judgement in another Petition for permission to reuse an area of the churchyard for burials. The church in question is St Mary Magdalene, Gedney which is part of the same group (or benefice) and Mr Burrell was an objector to that Petition too. As I wrote in that judgement, it 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.

The proposal

5. The church is grade 1 listed. This is open for burials. The Petitioners explain that the churchyard is becoming full. One recent interment had to take place in another churchyard because there was no unreserved space left.

6. The proposed area for reuse is in the churchyard to the north east of the north aisle of the church and is now a grassed area. I have seen photographs of the area and it is clear that it is a grassed area where no memorials stones are located. The petitioners have made clear that they do not seek to reuse any area where there are memorial stones currently standing above graves.

The legal framework.

7. In the judgement I gave in the St Mary Magdalene, Gedney petition, I said that, 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. As with the parish church in Gedney, the land around this church too 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).

8. However, notwithstanding this, it is essential that the period before which land can be reused for burials is a suitably lengthy period. I explained the reason for this in the Gedney judgement in these terms:

"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".

9. Although there are no prescribed periods before which re use 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'

10. I adopt the same approach as set out in the Gedney judgement: no reuse of land could be contemplated before a period of at least 75 years has elapsed since the last burial in that area. 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.

11. In this case it is clear from the lack of memorial stones that no burials have taken place in this land for many years and certainly more than 75 years. I see no reason why this land should not be re- used for burials.

12. Mr Burrell's objection is to the principle of reuse and I have found that this cannot be a sustainable objection. His also concerned that the area of reuse is to be in an area where his relatives are buried, but the Rector has made clear that there the area to be re used has no burials marked by memorials and I am satisfied that there have been no burials in the area for more than 75 years. Mr Burrell raises the question of acquiring

more land for an extension to the churchyard. This is plainly an issue which the PCC will want to consider in due time if a land purchase is possible, but there is a current need for space in the churchyard for burials. The area that has been defined can be so used.

13. Mr Burrell raises the issue of a new cemetery being opened but this must be a matter for the secular authorities.

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

(i) the extent of the land that may be reused for burial will correspond with the area identified in the Google aerial photograph in the papers. The Archdeacon is to agree with the Petitioners the precise dimensions of the area and this is to be recorded and kept with the churchyard plan.

(ii) 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.

Mark Bishop

Chancellor

30 August 2016