

In the matter of St Peter, Terwick
And in the matter of the reuse of burial grounds

Judgment

Background

1. Amongst the many challenges of the current age is the national shortage of burial space. The eighth report of the Select Committee on Environment, Transport and Regional Affairs (21 March 2001) included amongst its recommendations:

If the public are to continue to have access to affordable, accessible burial in cemeteries fit for the needs of the bereaved, there appears to be no alternative to grave reuse.

2. The report was particularly scathing regarding the chronic failure by central and local government to engage with the current and future demands for the burial the dead.

129. We did not come to the subject of cemeteries expecting to find that all was well. Even so, we were taken aback by the sheer magnitude of the problems facing our cemeteries. The almost complete failure on the part of public authorities to take the action necessary to address those problems - from the Home Office's decision not to issue the consultation paper on the reuse of graves to local authorities' refusal to treat this essential service with the seriousness which it deserves - is inexcusable. We trust that, now Ministerial minds have been focussed on the subject of cemetery services, this situation will begin to change. Indeed, the situation must change. Otherwise, the bereaved will be denied the service to which they are entitled at a most vulnerable time in their lives; the urban renaissance will be deprived of an opportunity to restore places of meaning and history in the heart of our cities; and the nation as a whole will face the loss of a unique recreational and historical resource. Our cemeteries are too important for this to be allowed to happen.

3. The Law Commission has noted that there is increasing pressure on existing burial space and 'it has been estimated that half of the 25,000 burial grounds in England and Wales will be full by 2030'. However, successive Governments have been reluctant to address the problem. The practice of 'lift and deepen' has become procedurally more straightforward in recent years due to a legislative change. On 1 January 2015, section 2 of the Church of England (Miscellaneous Provisions) Measure 2014 came into force, amending section 25 of the Burial Act 1857. Previously, an exhumation from a consecrated churchyard for reinterment deeper in the same burial ground required both a faculty and a licence from the Secretary of State. This was anomalous, because had the proposed reinterment been in a separate consecrated burial ground then a faculty alone would have sufficed. Ending the dual jurisdiction has removed a disincentive for projects of 'lift and deepen' which create an additional layer of usable burial space.
4. In June 2007, the Ministry of Justice, which had assumed the responsibilities of Department for Constitutional Affairs, published its final response to the 2004 consultation, *Burial Law and Policy in the 21st Century: The Way Forward*. In a written Ministerial Statement, the Secretary of State, Harriet Harman, said that the Government was satisfied that it would be

right to enable graves to be reused, subject to appropriate safeguards. Not much happened, however. In a Commons debate in September 2014, Simon Hughes, then Minister of State at the Ministry of Justice, said that a report by the University of York Cemetery Research Group had suggested that the lack of progress resulted from difficulties in establishing who owns monuments the administrative complexity of identifying grave ownership' (HC Deb, 5 September 2014, c 627).

5. The House of Commons Library briefing on *Key Issues for the New Parliament 2015* identified funerals and burial space as one of the matters that needed to be addressed. As recently as 22 December 2015, Caroline Dinenage, Parliamentary Under-Secretary at the Ministry of Justice, stated that: '... the re-use of burial space is a sensitive issue and any potential changes in this area, including any legislation, would require careful consideration. We have been actively engaging with stakeholders and will consider whether there is a need for government to take action in due course' (Written Question 20166).
6. A helpful collation of these developments can be found in David Pocklington, 'Re-use of graves in England – the faculty jurisdiction' in *Law & Religion UK*, 18 January 2016, and, more recently, in a House of Commons Briefing Paper, Catherine Fairbairn, *Reuse of Graves*, (House of Commons Library, No 04060, 6 June 2017). Junior Justice Minister Phillip Lee indicated in November 2016 that the Government was considering whether the issue of reuse of graves should be kept under review (HC Deb, 29 November 2016 c1487).

The current petition

7. Against this over-lengthy background comes the current petition in respect of the churchyard of St Peter Terwick, which for reasons that are not immediately apparent dates from as long ago as 7 September 2015. The petitioners comprise the incumbent, Revd Edward Doyle, and churchwarden, Lady Nixon. The Schedule of Works states simply:

“Re-use of part of the south graveyard for burials”

8. The outline of works, as set out in the request for advice from the DAC, states:

“The north churchyard was extended in 1936 and is filling up at the rate of a row every 10 years. At present there remains a lawn area which is used for open air public events. We wish to keep this available.

The south churchyard has one grave [from] 1920 but the others date from 1742-1918. There are large areas with no grave markers and no recorded burials, though there are likely to be old graves there.

It has already been the practice to re-use burial sites and we understand that any human remains must be reverently re-buried.

We have five grave [spaces] remaining in the north churchyard and would expect the first burial in the south churchyard to be in about 2018. This new area could accommodate the needs of the parish for the next 100 years.”

9. This information is supplemented in a very helpfully drafted Statement of Needs. It reveals that ground penetrating radar has shown that there are no significant buried features in the

area to be re-used. Similarly the Statement of Significance outlines a bucolic idyll, with this small twelfth century church set in a field, remote from any settlement. Reference is made to some disastrous nineteenth century ‘improvements’ but as they relate to the interior, I need not be troubled by them for present purposes. The church’s tranquil setting in the South Downs makes it popular for various *al fresco* events involving the community, but as the petitioners properly acknowledge, a parish must concern itself not merely with the living, but also with the dead, mindful of the legal right of deceased parishioners, irrespective of their faith, to be buried in the graveyard so long as space allows.

10. The proposal with which the court is concerned was the subject of an article in the *Rogate and Ternick News* in September 2014, and there was a well-informed article in the *Petersfield Post* the same month. Parishioners were invited to express their views.
11. The churchyard plans have been meticulously maintained recording the locations of all grave markers and their inscriptions.

Consultation

12. Helpful comments, not least on archaeological methodology, were obtained from Ms Carol Brown of the South Downs National Park Authority. Ms Brown properly indicated that the issue of re-use was for the consistory court, not the local planning authority to decide.
13. Lady Nixon sought the advice of Historic England by email dated 3 March 2017 but received no reply despite a reminder. I directed special citation, and on 10 May 2017 received a letter saying they did not wish to comment.
14. On 15 December 2016, the DAC issued a certificate recommending the proposal subject to certain wise and practical provisos.

Assessment

15. It is for the petitioners to satisfy the court on the civil standard that a faculty should issue. In my assessment they have discharged the burden of proof by a considerable margin. They have recognised in timely manner that the available space for burial is diminishing. They have rejected the soft option of having the burial ground declared full thereby passing the obligation onto the local authority. They have thought responsibly about what it means to be an established church in the twenty-first century at grass roots level, making provision for the entire community, not merely churchgoers. They have consulted widely and openly with parishioners and throughout the wider locality. They have taken professional advice from, amongst others, the DAC and its experienced archaeological advisor in particular. They commissioned a specialist ground penetrating radar survey, which revealed nothing more than conduits for utilities in the section they want to reuse. They have consulted with the inspecting architect.
16. I have no hesitation in ordering that a faculty pass the seal, authorising the reuse of part of the south graveyard for burials, subject to the following conditions:

- (1) That no existing memorials are moved, and no additional burials be authorised in marked grave spaces;
- (2) That prior to any burial, the intended grave space is rodded to detect the presence of an existing coffin;
- (3) In the event that human remains are discovered, the same be decently and reverently reburied as directed by the incumbent.

17. I wish to add two concluding observations: one specifically for this church and one of wider application throughout the diocese. In relation to St Peter's, Terwick ("the Church in the Field"), the parish's commendable statement of significance begins "the setting is the most significant feature of this small rural church". The photographs endorse this description. I cannot pass on without mentioning a concern I have in this regard. It would be unfortunate and regrettable if the church's setting were to be compromised by serried ranks of unimaginative catalogue headstones. I would look favourably upon an application to authorise bespoke churchyard regulations for this section of the south graveyard which limits the type of memorial which might be introduced to prescribed categories which are appropriate for unique setting of this fine grade II* listed building. Clearly this is a matter for the incumbent and PCC to consider, and one consideration is not to be so restrictive as to place the cost of a qualifying headstone beyond the reach of some parishioners. But the matter deserved some thought and I therefore stay the issue of the faculty until such time as the matter has been addressed and referred back to me for further direction.

18. It will be apparent from the tone of this judgment, that I have been impressed not merely with the proposal itself, but with the exemplary manner in which the parish has set about converting its aspiration into reality. The project has been on the PCC's radar since at least 2014 and not only have the parish been industrious, they have also been patient. For the delay while the matter has been on my desk, I apologise, but I trust that the successful navigation of this petition to a happy conclusion will act as an example throughout the diocese as to how sensible reuse of burial grounds can help meet an undoubted societal need. Here, the parish was fortunate in that there were very few grave markers and little by way of obstruction in the area concerned. Parishes elsewhere should not be deterred by the need to 'lift and deepen' or to re-position memorials. In future cases, the court will be happy to give directions to address and determine preliminary issues where proposals for the reuse of graveyards are under consideration.