

In the Consistory Court of the Diocese of Norwich NR211/15

Re All Saints, Ashwicken

## Judgment

1. On 21 December 2015 I granted a faculty for the reservation of a gravespace in the churchyard of All Saints, Ashwicken for the exclusive right of burial of Lucy Dora Carter and her husband Michael Anthony Carter, aged 75 and 76 respectively.
2. Mr and Mrs Carter do not live in the parish but instead live 200 miles away in Hampshire, although Mrs Carter clearly has strong links to the parish. The incumbent, churchwardens and PCC have all consented to the reservation.
3. The information provided to me indicates that the churchyard has space for burials for approximately the next 12 years. In light of that information and in accordance with practice in this Diocese, I limited the period of the reservation to twelve years whilst giving the petitioners the opportunity to make representations about why a longer period of reservation should be granted. It was noted in my directions that the granting of a reservation for a longer period would be an exceptional order given that it would interfere with the long established rights of parishioners to be buried in the consecrated graveyard of the parish whilst space remains. This is reflected in the information published on the Diocesan Registry website and in the Guidance Notes sent out with the petition form which clearly state:

“Unless there are exceptional circumstances...the reservation will normally last for a maximum of 30 years. This is to avoid blocking spaces in churchyards for unduly long periods of time. However, where there is space in the churchyard for less than 30 years' worth of anticipated burials, any faculty for a grave space reservation is likely to be limited to a shorter period, to match the expected capacity of the churchyard. So if there is only room for 5 years' worth of burials, any reservation is likely to be limited to just 5 years.”

4. Mrs Carter has made written representations (which I take to be on behalf of herself and her husband) in a letter dated 23 January 2016 seeking to satisfy me that exceptional circumstances exist which would justify an extension of the twelve-year reservation already granted. In that letter Mrs Carter states:

“...it is very important to me, in particular, to believe I should be buried with the rest of my family, since my mother, father, sister, aunt and grandmother are all buried in the same area...”

She also relies upon the fact that their only son currently lives only approximately 45 miles away and may live in Ashwicken itself in the fullness of time, thus “he would find it easier to visit all family graves together”. The reserved plot next to Mrs Carter’s family graves is also in the older part of the churchyard which is unlikely to be brought back into use.

5. I must ask myself whether these arguments amount to a good reason sufficient to interfere with the rights of parishioners to burial in their churchyard. I make it clear that the fact that Mr and Mrs Carter are not parishioners (and therefore do not have a subsisting right to burial in the churchyard) does not prevent faculty being granted – indeed a faculty *has* been granted in this case. I am satisfied that Mrs Carter’s links to the parish and the churchyard, together with the consent of the incumbent, churchwardens and PCC, mean that a faculty is appropriate in this case. If there were adequate space remaining in the churchyard I would not hesitate to grant a reservation for the full 30 years. The only factor which militates against that is the fact that there is at present space for only approximately twelve years.
6. I dealt with a similar application in the case of *Re St Margaret, Drayton* (5 March 2015). In that case I stated:

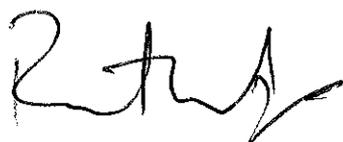
“The granting of a reservation impinges upon the legal rights of others. Firstly, it limits the incumbent’s authority, both in determining the position of burials within the churchyard and in permitting the burial of those not otherwise entitled to be interred. Secondly, and in my view more importantly, it prejudices the rights of others with a right to burial in the churchyard who predecease the petitioners.

As the established church in England, the Church of England benefits from privileges and also bears responsibilities. For example, it has the duty to marry and to bury all parishioners who seek it, regardless of their faith or lack of it. As Chancellor Hill put it in the *Pevensey* case:

“In relation to burial, it matters not whether the deceased is Christian, has attended worship or has donated money to the church during his lifetime. All are treated alike ... When space in a churchyard is limited individuals with a legal right of burial must be interred in the order in which they die until such time as the churchyard is full. Neither the provision of alms in the past nor regular attendance and support of the Church’s ministry can give rise to a presumptive priority for a certain class of individuals ...”

This reflects the fact that an incumbent has the cure of *all* souls within that parish and also the Christian principle of equality before God, for "God shows no partiality"<sup>1</sup>. In my view, where there is a real risk that a faculty for the reservation of a gravespace would prejudice the rights of others with a legal right of burial that faculty should only be granted in exceptional circumstances."

7. I have considered whether the factors set out by Mrs Carter in her letter of 23 January amount to exceptional circumstances and I cannot find that they do. Her position is no different from that of many people who may wish to be interred in Ashwicken churchyard. Even the fact that the reserved plot is in an area which "is unlikely to be brought back into use" does not assist, as whilst space remains in the churchyard (regardless of its location) parishioners are entitled to burial, such that it may be necessary to bring that area back into use when all other space is exhausted.
8. I know that this decision may be disappointing to Mr and Mrs Carter but I hope that that disappointment will be eased by remembering that there is still a good likelihood that they will ultimately be interred with Mrs Carter's family in Ashwicken churchyard. They have the benefit of a reservation of their chosen plot for a period of twelve years and it is, of course, open to them to apply for an extension of that period at a later date should the need arise. Whereas I cannot prejudge the outcome of any such application, if there remains adequate space available then (either through a lower rate of burial than currently anticipated or through the provision of additional burial spaces), it is possible that any needed extension could be granted.



Ruth Arlow  
Chancellor of the Diocese of Norwich

5 February 2016

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<sup>1</sup> Romans 2v11