

IN THE CONSISTORY COURT OF THE DIOCESE OF GLOUCESTER  
IN THE MATTER OF ST MICHAEL & ALL ANGELS  
BLAISDON  
RESERVATION OF A GRAVE SPACE

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JUDGMENT

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1. The church of St Michael & All Angels, Blaisdon, is a mediaeval church, heavily Victorianised, standing at the edge of the Forest of Dean, the village being excluded from the ancient bounds of the Forest in 1300, by claiming that it had only been afforested since the reign of King John. So unlike in the churchless Forest proper, a church was built at Blaisdon in mediaeval times. Of this, only the 15<sup>th</sup> century tower remains, the rest of the church having been rebuilt in 1867-69 by F.R. Kempson of Hereford. It had such severe problems of damp that a Listed Places of Worship Roof repairs grant was accepted in 2015 to deal with those issues, as its condition was then described as “poor” with “slow decay”.
2. The church and its parish form part of the Severn Vale Deanery. The parish now forms part of the benefice of Westbury-on-Severn, with Flaxley, Blaisdon and Minsterworth. The numbers on the electoral church roll and for attendances at churches vary slightly from year to year, but, being charitable, are not very large. However, the church has a Family Communion service on a Sunday morning, aiming at families in the village.

Westbury and Minsterworth are probably the larger and more striking of churches in the group, and cater for more people. In fairness, the number of parishioners has never been large from Elizabethan times onwards, not helped by a very serious fire in 1699 which burned the village.

3. The village of Blaisdon itself in Gloucestershire would be known for two things, the famous Blaisdon red plum, renowned for jam making from the 19<sup>th</sup> century onwards, and the Blaisdon Stud Farm, on the road to the Church, which was the home of the world's largest shire horse the "Blaisdon Conqueror", whose bones are, it is said, in the British Museum. Now it remains a small commuter village in a delightful rural landscape. The church, damp and, flying, metaphorically, a rather small and somewhat tattered flag for the Church of England, would be missed, as it forms a background for weddings funerals and services. Its parishioners and those in the village might be rather surprised and upset if it was not there.
  
4. I set out this background history really to show that this village is typical of hundreds and thousands of small villages in England. It is its very ordinariness which is of importance in what brings this church, or rather its churchyard, before me. Local families lived here for generations, and assumed they would be buried here in their churchyard. Indeed, even those villagers who died elsewhere are remembered for in the grave yard: there is a gravestone to Lance Cpl Harold Jones of the Monmouthshire Regiment (the village being close to the county border), who was killed in France in 1917, and is buried at the AIF cemetery in Bapaume France. He is recorded here by a gravestone in the graveyard at Blaisdon.

## THE PETITION

5. On 29<sup>th</sup> July 2019 Mrs Karen Pearce applied for grave space reservation for two persons measuring 8' x 3' in the graveyard of St Michael and All Angels Blaisdon. She was proposing this reservation to be for herself and her partner. The Priest-in-charge of the Parish, the Rev. Mr Stephen Taylor, did not consent on her application form. In an undated letter, he wrote stating that he objected to this Petition "on the grounds that it is contrary to PCC policy". In all other aspects, Mrs Pearce's Petition was correct and showed a more than sufficient reasons to justify her application. She is a parishioner, resident in the parish. Her parents and grandparents were buried in the graveyard. She had been told by the incumbent that there was about 50 years of burial space left in the graveyard, there having been only some 3 burials in the previous three years. She was prepared to pay the necessary money to reserve this plot. An attached photograph showed that her proposed plot would lie along a line proposed for new graves, but it also backed up adjacently to the graves of her parents and paternal grandparents. From the photographs before me I can see that there is lots of potential available space in the graveyard for, at the current rate, lots more burials.
  
6. So far, straight forward, so that this petition would, in normal circumstances, have been approved without any difficulty had the incumbent agreed. Mrs Pearce would have ensured her reserved plot; the Parish would have got some money to go towards the upkeep of the graveyard, a fact that many bereaved families forget. They bury a relative, but leave the Parish to pick up the expense of graveyard upkeep, and to clear away the dead flowers. However, matters have become more complicated.

7. Whether triggered or not by Mrs Pearce's enquiries, the Blaisdon Parochial Church Council decided on 15<sup>th</sup> July 2019 that they should adopt a "no reserved graves" policy.
8. Not surprisingly Mrs Pearce, born and brought up in the Parish and having been told that there were 50 years' worth of future burial space, was puzzled. She was aware that other nearby parishes in the Diocese had reserved grave spaces in their church yards. Not surprisingly she brought this to my attention in early September 2019.
9. Enquiries were put in hand to find out what was happening. A Church Warden wrote to the Diocesan Registrar on 2<sup>nd</sup> November 2019 stating as follows: -
  - i. *The Blaisdon PCC had resolved on 15<sup>th</sup> July 2019 that under no circumstances will the PCC support a Faculty application to reserve a grave space.*
  - ii. *However, every reasonable pastoral and practical support will be offered to the applicant.*
  - iii. *The formation of the policy was not taken lightly and full details and reasons are enshrined in their Policy statement (to which I refer below)*
  - iv. *This policy statement has been, writes the Church Warden, **"entered into the Terrier and the Logbook, and is endorsed by Steve Taylor (Incumbent), Amanda Howell (Churchwarden) and Jill Rodgett (Church Warden).***

10. Also, before me is this Policy statement. It is headed: ***“Faculties for reservation of a Grave space at Blaisdon”***. It sets out that on Monday 15<sup>th</sup> July 2019 an extraordinary Meeting of the Blaisdon PCC was held at the church. There were eight members present and one apology for absence. Those present had ***“extensive discussion and visited the (by which I assume they mean ‘inspected’) the church yard.”*** They then passed the resolution which I have set out above.
11. It does not seem to have been any public notice leading to a discussion to the parishioners of this new policy. I note, in passing, that next Spring there will be the annual parish meeting, when those on the PCC may have to explain their action and views to those attending, who may want to exercise their democratic rights to challenge the views held by the current PCC members, and stand for office themselves if they are dissatisfied or wish to change the “no reservation of grave space policy” put in place by the PCC. . Even within the Church of England, there are procedures to accommodate democratic dissent.
12. However, to return to the document before me, it states: ***“The reasoning behind this resolution did not relate in any way to the specific case that had given rise to the discussion.”*** The fact that Mrs Pearce’s petition is thus referred to obliquely might be perceived as unfortunate. Why bother to mention this Petition? However, I note that the dates appear to suggest that Mrs Pearce’s application had been mentioned to the Priest -in-Charge.

13. Given the few burials in the graveyard every year, I am puzzled as to why an extraordinary meeting of the PCC had to be called. There is nothing before me to show that the PCC had been inundated with a wave of grave space reservations applications. Indeed, I cannot recall any such applications from Blaisdon, as distinct from other parishes, arriving on my desk in the last 30 years. Maybe it was that, as this Petition was so unusual, that they feared an influx of such applications, so that the idea for this resolution was triggered. That view is, indeed, reflected in their policy statement which I refer to in detail below. As no one wishes to bring the matter formally before me by way of a Consistory Court, so that the objections are made informally on paper, I can but speculate.

14. Now the law in respect of the reservation of grave spaces deals in great part with cases concerning individual applications. Has X or Y made out a case to the Chancellor of a particular diocese to obtain for the payment of a fee the right to reserve a particular plot of ground in an open graveyard for a finite number of years? Many cases turn on the average number of burials, the remaining space in any churchyard, and the connection of the Petitioner with that churchyard for such a reserved grave space. It would seem, from case law, to be that in the last 50 years or so Parochial Church Councils (PCCs) have been seeking to take a more active role in endeavouring to have a say in who gets buried where in “their” graveyard. It may be of assistance to such PCCs just to review the legal position. Many PCCs appear to think they “own” their Church graveyard and/or they can decide/control who is buried there.

## THE LAW IN RESPECT OF THE RESERVATION OF A GRAVESPACE

15. It is well established in common law that **every parishioner**, that is every person resident in the parish, has a right of burial in the churchyard of their parish, so long as the churchyard is open for burials, whether they are or are not churchgoers. This right extends to all persons dying in that parish, whether or not they are parishioners in the church going sense. If they live and die in the parish, they have a right to be buried in their parish graveyard, provided it is an open graveyard and has not been closed by Order of the Privy Council.

I have been faced on other occasions with objections, especially with regard to gravestones, *“But X or Y was not a church goer so why should they be “allowed” to be buried in ‘our’ graveyard, let alone have a gravestone there”*. **Any person resident in a parish has a right to be buried there, if the graveyard is still open, i.e. in use.**

16. This situation did not just arise by chance; there were reasons for it. This care for the dead reflected the Church of England as a national church, responsible for all people living within their parish, should they want it, are entitled to be buried in the open Churchyard of the Parish in which they each lived. At a time of a more static population people might expect to be buried in the same graveyards as generations of their relatives. Also, historically, it must not be forgotten that a traveller dying in any parish would have to be buried there for reasons of public health and decency. Certain clergy in the later 19<sup>th</sup> century objected to burying dissenters in “their churchyard”. This was a contentious issue in the General Election of 1880. Mr. Gladstone’s government passed the **Burial Laws Amendment Act 1880**, still in force, to strengthen the rights of non-Anglican resident parishioners to be

buried in the churchyard, even without **any or no religious service**: see Section 6 of the 1880 Act. Further, in accordance with **Section 6 of the Church of England (Miscellaneous Provisions) Measure 1976**, the right to be buried in a churchyard was extended and is now afforded to all persons whose names are on the electoral roll of the parish. This tried to deal with the wishes and expectations of a more mobile population. This extension covered people who may have moved away over a parish boundary but who have retained sufficient links with their former parish, driving there for church from another parish and putting/keeping themselves on the electoral role of their old parish.

17. **It is also possible, however, for any person who has no legal right of burial in that churchyard to be granted permission to do so by the incumbent.** Now, for instance, Sir Winston Churchill was not a parishioner living in the parish of Blaydon, but the incumbent could give permission for his interment there where his family was buried, if a grave space had not been already reserved.

18. However, in granting burial to a non-parishioner, the incumbent is required by statute to **“have regard to any general guidance given by the PCC with respect to the matter”**. Now for instance, a PCC may say to an incumbent: *“we have only a few more years of burial spaces left for our own resident parishioners, and we don’t want outsiders to take up the diminishing number of our spaces because they like the view or have happy memories of the area”*. It should be noted that the legal ability of the incumbent to grant a grave space to someone not already legally qualified for such a space covers **a burial space**, a grave plot, not **their request for the reservation of a specific burial plot**. For the duration of his incumbency, it is the incumbent’s churchyard and he can de-

cide to permit the burial of someone from outside the Parish, even if it means reducing the future grave space available for his current parishioners. The incumbent can authorise the burial and where it should be in “his” graveyard, but he has no legal power to assign in advance the reservation of a particular grave plot.

## **GRAVE SPACE RESERVATIONS**

19. People living outside a parish, or not on the parochial role, cannot know what any incumbent will do after their death. The incumbent may or may not permit an “outsider” to be buried in his graveyard, let alone in a particular spot they would like. Other resident parishioners may be ahead of them in a queue. The PCC may have their own plans about the graveyard lay out. Some people, within or without a parish, seek to reserve a particular spot in a graveyard, near deceased relatives or because they had nostalgic family memories of where they had once worshipped or lived. There appears, in some Parishes, to be a growing desire to “reserve” a grave space. Some Churches in this Diocese appear to have parishioners who do this more frequently than others. Some excessively so, to the point that I am concerned that the parishioners of at least one Gloucestershire Church appear to be thinking: *“if I don’t reserve, I won’t be let in”*. As I have set out above, if you live in the parish and the graveyard is open you have a right to be buried there (but not necessarily to have the choice of a particular spot). An incumbent and the family of the deceased may reach an agreement as to where a particular burial should be to accord with the deceased’s wishes, but in the absence of a reservation it is a matter for the incumbent as to where the next grave should be dug. He may well want to follow the views of his PCC as to planned future layout of the graveyard. He may not.

## **BUT WHAT ABOUT RESERVING A PARTICULAR SPOT IN THE GRAVE YARD?**

20. For many people the choice of area within a graveyard within which to be buried appears to be of importance: near deceased relatives, or a flowering tree or away from the bit of the graveyard which floods, or with a view of the Church. Can or should people be able to reserve in advance of death a particular place in a Churchyard? The answer to this question appears to be **“Yes, but...”**. At the moment such Petitions for graveyard reservations are legal within the Church of England (but subject to various restrictions). Does it extend beyond those with “an existing legal right of burial in their parish”? Can the non-resident apply to reserve a grave space in a Parish not his own, and thus avoid the risk that an incumbent may refuse to bury him (a stranger) in that incumbent’s parish. As I have said above, the incumbent of a parish can give permission, after death to non-parishioners to be buried in “his” churchyard where he directs, and also to direct where entitled parishioners with “non pre-booked” grave space reservation are to be buried, **but only the Chancellor of any Diocese can grant the reservation of a particular grave space before the death of the person(s) who wanted to reserve a specific space**. That applies to both resident parishioners and others outside the parish (in respect of whom the incumbent’s permission for burial within “his” churchyard must be obtained).

21. Now, sensibly, many incumbents try to accommodate the wishes of the deceased or their family when choosing a spot for a grave space in a grave yard to avoid hassle, or, to put it more tactfully, to provide proper ongoing pastoral care for the deceased’s family. However, problems can arise when the wishes of a dead parishioner’s family as to where their loved one should be buried, and the views of the incumbent, aided and abetted by his PCC, as to the carrying out of their plans for an orderly, easy to maintain grave yard. I

understand that in many theological colleges there was a saying: “Happy the cleric who has a closed churchyard”, as problems over graves, warring divorced families, designs of headstones, exhumations etc can get in the way of the very real pastoral opportunities and can cause upset and rancour within a parish. More positively, burying the dead may also be seen as an important part of the mission of the Church of England.

## THE LAW

22. So, against the above background, what guidance does case law provide to any Diocesan Chancellor? Judicial discretion is to be exercised in determining whether to grant a petition to reserve a grave space, and helpful comments which I amplify below in relation to this were set out by Newsom Ch in **Re West Pennard Churchyard**, as follows:

*“The court is usually disposed to grant the reservation petition of a person who has a legal right to burial. Such a case may be further strengthened if the remains of one or more of the petitioner’s relatives are buried nearby. Or it may be weakened if the churchyard is on the point of being full. ....”*

But

*“As freeholder of the churchyard, the incumbent is also entitled to grant consent to the burial in the churchyard of the remains of a person who has no legal right of burial; in doing so he is to that extent ousting those who have existing prospective rights. In deciding whether to give consent in such a case, he is therefore required by statute to ‘have regard to any general guidance given by the parochial church council of the parish with respect to the matter’: see s 6(2) of the 1976 Measure; These common*

*law and statutory rights crystallise only when the person in question dies.”*

In other words, the decision to a grant of a specific reserved space lies with the Chancellor of the Diocese, not the incumbent or PCC. (I suppose an incumbent might give conditional consent to a non-resident obtaining a reserved space consent such as: “I agree but only in that particular spot” which may not be what the Petitioner wants but which accords to the PCC’s wishes). Such stand-offs should really be avoided. There are sensible reasons for a decision by a Chancellor; the parish may be in a vacancy; there may be parish feuds where X is liked or not liked; there might be allegations of favouritism. The Chancellor is not part of the day-to-day running of any parish, but can and must take an impartial view. An installed Chancellor is not a creature of his Bishop, nor of the Diocesan organisation; the Chancellor, one of Her Majesty’s Judges, is, and must be, judicially independent, otherwise why should any litigant in a Consistory Court, or, any Petitioner when making a Faculty application have any belief to trust that fair and impartial application of the law is being applied in their case if the Chancellor were seen to be a mere mouthpiece of the senior management of any Diocese, whose views may fluctuate with liturgical fashions over the years. A knowledge of the quirks of a Diocese is necessary for any Chancellor, but their judicial independence, as embodied in the judicial oath is essential if their role is to be regarded as nothing but rubber stamp of any current episcopal/clerical trend. Parishioners, like members of the public in the Courts of this country, should be able to regard their Ecclesiastical Judges as a shield against overweening clerical or lay bullying or silliness, by a fair application of the law as it applies in the Church Courts. Like any law, such can be altered by General Synod as approved by Parliament, but it exists and must be applied. Parishioners, incumbents may or may not like a particular outcome of a Chancellor’s decision, but they should be able to see how and

why a particular outcome has been decided upon fairly and even-handedly by their Chancellor in accordance with the law. Chancellors are not to be seen as mere facilitators of the current ideology of the time. Liberty as perceived by a majority to impose their views can seem unfair to minority objectors, whether it be pew removal or a re-ordering. Only by trying to apply consistent legal tests can a decision be explained fairly. Otherwise, why bother? Of course, Judges can and do get things wrong. The Court of Arches (and the Court of Appeal) exist for the purpose of dealing with those instances. All one can say is that we are all “miserable sinners”, but we try. Nor should it be forgotten that Chancellors can and do, within the law, provide far greater freedom for parish development that they would have under the state planning system.

23. What, then, are the guiding principles for a Chancellor to apply in relation in this area? These were usefully summarised by the Worshipful Mark Hill QC in **Re St Oswald Methley [2016] ECC Lee 2** as follows:

- i. At common law, every parishioner has a right of burial in the churchyard of the parish unless it is closed by due legal process;
- ii. The common law right extends also to all persons dying in the parish, whether or not they are parishioners;
- iii. By statute a similar right is enjoyed by all persons whose names are on the electoral roll of the parish: see Church of England (Miscellaneous Provisions) Measure 1976, s 6(1);
- iv. **The incumbent has power at common law to prescribe in what position in the churchyard any burial is to take place: but that is the extent of his power in respect of cases where the deceased had a legal right of burial;**

- v. As freeholder of the churchyard, the incumbent is also entitled to grant consent to the burial in the churchyard of the remains of a person who has no legal right of burial; in doing so he is to that extent ousting those who have existing prospective rights. In deciding whether to give consent in such a case, he is therefore required by statute to ‘have regard to any general guidance given by the parochial church council of the parish with respect to the matter’: see s 6(2) of the 1976 Measure;
- vi. These common law and statutory rights crystallise only when the person in question dies.”

In that case, the objection of the Incumbent (and the fact that the graveyard was getting perilously full) meant that the Petition was refused.

It is sub-paragraphs underlined above which are of importance here. Only after death do they apply What of a person’s wish to reserve a grave space before death?

However, Briden Ch, sitting in the Consistory Court of the Diocese of Bath and Wells, in **Re Churchyard of Wick, St Lawrence (4 November 2013)**, in a case where the petitioner had no legal right of burial, stated:

*“Thus, in deciding whether or not to grant a faculty [to reserve a grave space] the Court must consider whether the minister’s consent to the burial has been signified, and, in its absence, the petition ought to be dismissed. To do otherwise would be to subvert the purpose of Section 6(2) of the Church of England (Miscellaneous Provisions) Measure 1976, since the provision of a space reserved by faculty would override the minister’s power to give or withhold consent to the eventual burial”.*

So, if an incumbent holding the freehold of his graveyard refuses to agree to a parochial “outsider’s” (i.e. neither a resident parishioner nor on the elec-

toral roll application for a grave space), he is entitled to do that. The Petitioner is blocked and (absent unreasonableness or mala fides) there can be no reservation. But Mrs Pearce does not fall into that category. She is a resident parishioner with a right to be buried in that churchyard. She can Petition for a reservation, **but** others (including the PCC and the Incumbent) could formally object to her Petition for a reservation, as Chancellor Newsom made clear. In the absence of any plan of graves in a churchyard, it would be open to others to say: “our relative is already buried there”, or make some similar objection. The Chancellor would then have to decide.

24. This, as I have said above, was considered by the late Chancellor Newsom in **Re West Pennard Churchyard [1991]1 WLR 32**. In that case, a very senior Chancellor and noted writer on ecclesiastical law, pithily decided, as the headnote makes it clear: -

*“.... that every parishioner and any other person who died within the boundaries of the parish had a right at common law to be buried in the parish churchyard, unless it had been closed; that any person with a legal right of burial who wished in his own lifetime to assure his personal representatives of the right to bury his remains in a particular place in the churchyard had to petition the consistory court for a faculty to reserve a grave space, the grant of which rested wholly in the judicial discretion of the court, **but that a parochial church council was entitled to appear in opposition to petitions for the reservation of grave spaces as a matter of internal policy, subject to the risk of fees and costs; that the court was generally disposed to grant the reservation petition of a person with a legal right of burial, particularly if one or more relatives were buried nearby, unless the churchyard was on the point of being full; and that, accordingly, the petitioner, whose only living close relative was a resident of the parish and whose mother's remains had already***

*been buried in the churchyard, should succeed in her petition (post, pp. 33C-G, 34E-H, 35C-D)."*

Chancellor Newsom went on to say at 1 WLR 33 C: -

*"At common law, every parishioner has a right of burial in the churchyard of the parish (unless it is closed by due legal process). The common law right extends also to all persons dying in the parish, whether or not they are parishioners. By statute a similar right is enjoyed by all persons whose names are on the electoral roll of the parish: see the Church of England (Miscellaneous Provisions) Measure 1976, section 6(1). **These are legal rights and the parochial church council is not concerned in any way with their exercise.** The incumbent has power at common law to prescribe in what position in the churchyard any burial is to take place; but that is the extent of his power in respect of cases where the deceased had a legal right of burial. **However, as freeholder of the churchyard, the incumbent is also entitled to grant consent to the burial in the churchyard of the remains of a person who has no legal right of burial; in doing so he is to that extent ousting those who have existing prospective rights. In deciding whether to give consent in such a case, he is therefore required by statute to "have regard to any general guidance given by the parochial church council of the parish with respect to the matter:"** see the Church of England (Miscellaneous Provisions) Measure 1976, section 6(2). These common law and statutory rights crystallise only when the person in question dies. If a person with a legal right of burial wishes in his lifetime to assure his personal representatives of a right to bury his remains in a particular place in the churchyard, he must apply to this court for a faculty to reserve that grave space. **Whether such a faculty shall be granted rests wholly in the judicial discretion of the court.** If there is plenty of room in the churchyard, it is freely granted to a petitioner who has a le-*

*gal right of burial. What such a faculty does is to protect the petitioner against the hazard of losing his legal right in his lifetime (for example, by ceasing to live in the parish), and to require whoever is the incumbent when the petitioner dies to allow his remains to be buried in the position in the churchyard defined in the faculty. To this extent, therefore, the faculty deprives the incumbent of his right to prescribe the position where a burial is to take place; and it deprives the parishioners generally of the space becoming available if the petitioner moves away”.*

The Chancellor also considered the rights of a person **not resident** in a particular parish to apply to reserve a grave space. **There, it was clear that the incumbent must agree before such a reservation would be granted.**

*“Such a faculty can also be applied for, with the concurrence of the incumbent, by a person who does not have a legal right of burial. The grounds on which such a faculty is granted vary; among them, are the association of the petitioner with the church or with the parish, or the presence in the churchyard of the remains of relatives of the petitioner. In the past some incumbents added substantially to their stipends by selling rights of this kind: thus, in *De Romana v. Roberts* [1906] P. 332 the incumbent had charged for a grave space "capable of burying two persons", the sum of 22 guineas. In our present money that was something like £750. (*sic in 1991*). This practice was not then technically irregular, but the court discouraged it in that case and it has since become obsolete. However, even then the grant was not binding on the successors of the incumbent unless confirmed by a faculty; in *De Romana v. Roberts* the faculty was granted. But, as I understand it, no interment of a person not having a legal right of burial can take place at all, and no*

*faculty for such a burial ought to be granted, unless the incumbent has signified his concurrence. In such a case he appears to me to have a veto. I think that this conclusion is implicit in the remarks of Tristram Ch. in De Romana v. Roberts [1906] P. 332, 336.”*

For a recent discussion of the subject as a whole see also *In re St. Nicholas's, Baddesley Ensor [1983] Fam. 1* discussed below.

It is to noted that 22 guineas in 1906 was serious money! Newsome Ch by most measures understated its 1991 value at £750, but even 1991 is now very much past history. Updating historic values for inflation is notoriously difficult and uncertain, but 22 guineas in 1906 using an index of wages in 2018 would be about £8,971.

25. The *De Romana [1906] P. 332 case* is of interest as from the head note it is clear that Dr Tristram KC, sitting in the London Consistory Court, was hearing a case from Perivale, then not a built-up London suburb. A non-resident had applied for a grave space reservation. A Church Warden objected as he said it would reduce the space available for parishioners, but this argument carried little weight as there were then only 46 people in the parish, dying at the rate of about 1 per year, and there was room for another 70 graves. What really irritated Chancellor Tristram was that, it would appear that the Rector and his predecessors had been, what one gloomily might these days describe, as “taking substantial backhanders”. The headnote reads:

*“It was admitted that the rector had received the amount of twenty-two guineas in respect of the grant of the reservation mentioned in the petition. .... The petitioner (who had applied*

*for her grave space to be reserved) has paid a special burial fee to the rector in accordance with what has been the practice in the parish of Perivale for very many years - certainly from 1813 - in consideration of the reservation of a grave space in the churchyard; and whatever otherwise might have been her rights in respect of this grant made by the rector, she has come to the Court in order to obtain a legal title to this reservation in perpetuity, and whether the amount of the fee paid by the petitioner should be retained wholly by the rector or divided between him and the churchwardens is not a question with which the petitioner has any concern.”*

The Chancellor granted the Faculty to reserve the grave space, but ordered that that incumbent should make no further grants or reservations of grave spaces to non-parishioners during his tenure of the living. The Church Wardens’ real grudge in objecting to the proposed Faculty appears that they were not getting a rake-off from the additional moneys paid for the reserved plot.

The Church Wardens argued that if they had had a bit of the Petitioner’s “additional” payment to the Incumbent, they (the Church Wardens) could have used their cut to keep the churchyard in order or invest to cover the costs of future graveyard expansion. In the event, in the year 1905/06 only one resident parishioner was buried in this Churchyard, compared to 14 non-parishioners, each of these non- parochial interments costing between 20-40 guineas, depending on the number of reserved plots, the costs of tombstones being extra. It was noted that the rector’s stipend was then £210 per annum. Dr Tristram made it clear that good title to a reserved grave space would only pass with a faculty.

What is of more useful interest here is Dr Tristram's views on grave space reservations in general by non-Parishioners, as the head note makes clear:

*“The grant of a faculty of this kind in the case of a non-parishioner is not unusual or unreasonable, and has been approved of in the Court of Arches in the case of In Re Sargent [1890] P 15, where the practice of this Court on the point was referred to, and no serious detriment to the burial rights of the parishioners will be occasioned by the reservation to the petitioner of the very small portion of the churchyard mentioned in the petition, having regard to the small number of the parishioners - forty-six in number - and the existing accommodation for interments in the churchyard.”*

Chancellor Tristram noted that such reservation payments had been going on for two hundred years.

26. In **St Nicholas Baddesley Ensor [1983] Fam. 1**, there had been an ill-tempered family wrangle, complicated by an argument over a tombstone design, and “who said what to whom” allegations. However, the point made by Chancellor Aglionby is of use in this present case. He decided: -

*Held*, (1) that the court had no power to review an incumbent's refusal of the consent required by section 6 (2) of the Church of England (Miscellaneous Provisions) Measure to the burial of a non-parishioner in a parish burial ground; **that once consent had been given an incumbent was estopped from withdrawing it if the consent had been acted upon and the non-parishioner would be prejudiced by its withdrawal** but, on the evidence, no such consent had been given by the incumbent in respect of the petitioner and his

wife and accordingly, the second prayer of the petition would be rejected (post, pp. **5D-F, G-H, 8D**).

(2) That, as the petitioner was not a personal representative of the grandmother, he could not pursue the matter of the reservation of a grave space for her (post, p. **8D**).

In other words, if an incumbent objected to a non-parishioner's Faculty to reserve a grave space, that was the end of the matter: it would not be granted, but, if the incumbent had agreed on it, he could not renege on his word. As I say, it may be that if a Petitioner proved bad faith or malice or something similar, then the Consistory Court might look more carefully at any incumbent's purported objection.

However, I now return to the remainder of what Chancellor Newsom goes on to say in the **West Pennard** case with regards to the views of a PCC. :-

*"There is before me a copy of the resolution of the parochial church council dated 22 July 1987 in the following terms: "It was agreed that it should definitely not be possible to buy burial plots. What criteria should be met to allow people to be buried in the churchyard was discussed. It was very difficult to lay down exact rules so it was proposed and seconded that it should continue to be at the vicar's and churchwardens' discretion but that they should be a little stricter."*

*In this resolution, the first sentence deals with "buying" burial plots, which of course is and always has been impossible. Further, the churchwardens are not concerned at all. However, the parochial church council cannot interfere with the powers of the consistory court to grant reservations of grave spaces. Its only right is to enter appearance when the citation for the desired faculty is published and seek to persuade the court by reasonable argument not to grant it. The rest of the resolution appears*

*to have been framed on the basis that no one has a legal burial right. As I have explained, a good many people do have such a right. Further, the resolution falls short of giving the "general guidance" to the incumbent in allowing the burial of the remains of people not having a legal right to burial as is permitted to the parochial church council by the Measure of 1976. The parochial church council is, of course, entitled, as a matter of its internal practice, to decide that it always will oppose petitions for the reservation of grave spaces. But that is in no way binding on the court; and, like any other litigant, the parochial church council will litigate at its own risk as to court fees and costs”*

I have set out this case in some detail as the facts have some similarity to the current case before me. Indeed here, at Blaisdon there are fewer annual burials, more space, and also the possibility of re-burial, using the ground at least once before closure need even be contemplated. I also note that any reservation only lasts (varying from Diocese to Diocese) some 75 years. No grave space can ever be “bought” for ever and a day. How many families visit the graves of their great grandparents on a regular basis, as distinct from following an interest in family history? No grave space can be ring-fenced from church building expansion, introduction of electricity and sewers across the churchyard, the building of a church hall or road widening, closure, sale of the site and clearance (especially, for instance, in the City of London or other inner city areas). A parish Church is a living organism. No one would do any of the above without thought and proven need, **but it happens.** Again, Chancellor Newsom dealt with this point in **West Pennard:** -

*“The court is usually disposed to grant the reservation petition of a person who has a legal right of burial. Such a case may fur-*

*ther be strengthened if the remains of one or more of the petitioner's relatives are buried nearby, as is the case here. Or it may be weakened if the churchyard is on the point of being full. Here there are said to be about eight burials a year and some 24 spaces left in the churchyard. This latter statement presumably refers to spaces which have never previously been used. But I should point out that no churchyard is full and ripe for closure until all the parts of it in which reburial is possible have been buried over again at least once. And, until closure, all legal burial rights continue. Over the centuries, churchyards have been buried in several times over and it cannot be said that a churchyard is nearly full by considering only the areas which have never been used for burials. When there are no unused spaces, parishes sometimes seek to apply for closure in order to pass the expense of running the churchyard to the local authority”*

I have rehearsed this case in detail, because it seems to be a high-water mark of a Chancellor's approach to the reservation of a grave space, which, unsurprisingly, he granted. Mrs Pearce falls squarely into the facts of this case: she is a parish resident with a right to be buried in this graveyard, she wants to be laid very close to her family and there are years of room. In the absence of a grave space reservation, all an incumbent could do was to indicate and direct where he wants her to be buried in his churchyard. However, a Chancellor could grant Mrs Pearce her request for a reservation.

27. It is right to say that there has been some weakening in that general approach in the intervening years, often because more PCCs have taken active steps to limit or oppose any grave space reservations.

## **DO THE PCC HAVE POWER TO REFUSE TO RESERVE A GRAVE SPACE?**

28. In the **Re West Pennard Churchyard** case, Chancellor Newsom noted that the Chancellor is to give serious consideration to the position of the PCC but cannot be bound by it. It is clear from the case law that there has not been a consistent approach taken. In fact, there appears to be a disparity between Chancellors in the weight they afford to the PCC's decisions. However, there have been inconsistent approaches from individual Chancellors thereafter, and nothing binding from the Court of Arches. I consider below the reported approach of individual Chancellors in time order to see if some common ground over the last 30 years can be extracted to provide some unity of guidance.

29. Chancellor Newsom's approach in **Re West Pennard Churchyard** to "freely grant" a faculty where there is plenty of room available and the persons have the legal right to burial, has been criticised by those who prefer a stricter approach. In **Re St Mary Dodleston Churchyard, [1996] 1WLR 45** Lomas Ch. stressed that there ought to be a more careful appraisal of the relevant circumstances and that may be contingent on numerous possibilities. The facts of that case were a little more bizarre. The Petitioner had power of attorney for his daughter and her husband, who were on a yacht, circumnavigating the world, a journey then estimated as going to take another four or five years. Neither his daughter nor her husband was on the electoral roll. The young people did not live in the parish, though the daughter had been brought up there. The Petitioner wished to be buried in the grave of his late wife in this graveyard (there being room). The Petition to reserve a space for his daughter and her husband was refused; the young couple were too young, their connection with the parish was tenuous and their claim appeared to be based on nostalgia, as the girl had loved returning

to her parents' house, the Old Rectory. Their reservation would block potentially for years ahead the legal rights of exiting elderly parishioners, and, in any event a reservation for 100 years was far too long. Whatever the views of the PCC on reservation of grave spaces, it would appear that on these facts it would be unlikely that any Chancellor would have granted such a reservation. In fact, in this case the incumbent and the Church wardens did not object, but Lomas Ch. stressed that there ought to be a more careful appraisal of the relevant circumstances and that the granting of a grave yard space reservation might be contingent on numerous possibilities.

30. By 2001. in **Re Dilhorne Churchyard (2001) ECCLJ 233, 16 CCCC No 2** Coates Dep Ch was clear that any given PCC was likely to have a better understanding of local needs and wishes than the Court will have. The judgment of **Re Dilhorne Churchyard (2001)** grappled with the central issue of whether the PCC's policy of opposing reservation had been adopted *ad hominem*, the PCC playing the man not the ball as it were, **“with the view of thwarting the desires of the particular petitioner.”** The test appeared to be one of whether the PCC acted in good faith with the conclusion being as follows:

*“This court cannot ‘freely’ ignore the exercises of their [the members of the Parochial Church Council’s] discretion whether it be exercised on matters of policy or in individual circumstances unless such a discretion was exercised, for example, mala fides or could not in the circumstance as a whole be reasonably supported”.*

I accept that a Chancellor should and must carefully consider the views of a PCC about grave space reservations, whether formally presented in a Con-

sistory Court or, as here, informally. I make it clear that in this present case I do just this.

31. But what about a general policy (as distinct from a particular PCC individual objection) by a PCC not to support grave space reservation, or, indeed to purport to refuse any reservation completely?

32. In the case of **Re Brightlingsea Churchyard [2004] 8 ECC LJ 233**, Pulman Ch upheld the PCC's "no-reservation policy". It is important, however, to distinguish this from **Re St Wilfrid, Grappenhall [2015]** (see below).

33. Moving on to **Re St Andrew Bainton [2009] 11 ECC LJ 235** the introduction of an iron bench into the graveyard in memory of the deceased teenage son of a non-churchgoing family, it was stressed that the right of affording burial (to a non-resident) falls to the incumbent, not the PCC.

34. The disparity in the case law demonstrates how different Chancellors take various stances on how readily faculties in this area should be granted. A number of more recent cases have stressed that 'considerable weight' ought to be given to the PCC's policy of opposing the reservation of graves paces. This arises from the reasoning that the PCC are best-placed to understand the needs of the local area. The stark difference in language between Lomas Ch and Newsom Ch has even been commented upon in the judgment of Chancellor Stephen Eyre in **Blithfield, St Leonard 2014**. In that case, it was stressed that a policy opposing the reservation of grave spaces was not in itself inherently unreasonable, and that where such a Policy had been adopted, the Court ought to "give it considerable weight in the exercise of the

Court's discretion." I have given much consideration to this thoughtful and sensitive judgment by Chancellor Eyre, especially the following passage: -

*"In the light of that assessment, I turn to consider the weight to be given to a Parochial Church Council policy of resisting reservations. I have already explained that there is scope for a legitimate difference of opinion as to the appropriateness or otherwise of allowing reservations. A policy of opposing the reservation of grave spaces is not inherently unreasonable. As Coates Dep Ch indicated any given Parochial Church Council is likely to have a better understanding of local needs and wishes than the Court will have. It follows 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 grave space 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 grave space 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 al-*

*low 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. I must emphasise that in this case Mr. & Mrs. Boston are not seeking to get special treatment out of any sense of arrogance or queue-jumping. They see the sense of the general policy, but seek an exception because of their particular loss and because of the wishes of their late daughter.”*

35. In this judgment, therefore, fairness to those who had acted in accordance with the PCC’s decision “*requires that the Court should only allow reservations in exceptional cases.*”

Certainly, it could be argued that **Blithfield St Leonard 2014** demonstrates a view that the PCC’s policy should be adhered to unless ‘exceptional circumstances’ prevent the Chancellor from doing so. This judgment upheld the PCC’s ‘first come, first serve’ policy and did not allow a petition to reserve a grave plot next to the petitioner’s deceased daughter. Other Chancellors, however, such as Chancellor Newsom, have adopted an approach which requires an examination of what is reasonable in the particular factual circumstances of an individual case.

36. It *might* be described as the complete opposite to the view expressed in **West Pennard**. I have considered it carefully but I am not bound by it, nor any other first instance decisions, which are exercises of a particular Chancellor’s discretion on particular facts. The views of the PCC might, I find, to have been of more weight if they had been approved at the annual meeting of the parishioners themselves. Just because something has become an accepted norm for a parish does not carry as much weight as if the PCC motion had reflected the approved views of the parish obtained at a public meeting. If a PCC gave notice of their proposed objections to grave space

reservation, and the Parish accepted that after their annual meeting, and, maybe some time thereafter was given (say 6-12 months) so that any parishioners could have the opportunity to petition for a Faculty to reserve a grave space, that might be sufficient time for fair and open notice to have been given for a change of PCC policy. The Parishioners would have had due notice, and their opportunity to petition for a reservation if any of them wanted to.

37. It is important to note that the reasoning in the **Blithfield St Leonard** case has been stretched in some later judgments to conclude that the PCC are better placed to make such a decision than the Chancellor and/or Court.

38. Some later judgments have also attempted to curtail the broader approach adopted in **Re West Pennard Churchyard** by suggesting that this position was reached solely because of the PCC's "misunderstanding of the legal position". The judgment of **Allithwaite, St Mary 2016 CAR 1** went on to confirm that the "*exercise of discretion should have regard to such policy because the PCC is likely to be well-placed to know the needs and desires of the local parishioners and the circumstances of the churchyard.*" The Churchyard there was becoming overfull. The reality is that the language applied and the approach adopted in **Re West Pennard Churchyard** is very different as explored in this case. The views of Chancellor Tattersall had supported the reasoning of the PCC and the lack of "exceptionality" of the Petitioner's reasons.

## **IS IT JUST A QUESTION OF EXCEPTIONALITY?**

39. In using their judicial discretion, some Chancellors have opted to ask a question of exceptionality. In **Barlaston, St John the Baptist, [2017] ECC Lic**

7 the Chancellor determined that the question was whether the petitioner's position was "***exceptional so as to justify the grant of a faculty notwithstanding the policy of [non-reservation by] the Church Council.***" In answering this question, the Chancellor felt that the primary consideration had to be whether the policy was "adopted to thwart a particular application", and whether the "policy can be adopted on reasonable grounds." The conclusion that a petition should only be granted exceptionally where there is a PCC policy against reservation of burial spaces has been adopted in some case law and in doing so, great weight had been placed on the need to avoid 'unfairness' to other applicants who have been prevented from reserving a burial space due to the PCC's policy of non-reservation.

I was particularly struck by the reported views put forward by the Petitioner in that case: -

*"The first is that no advance notice was given of the change of policy on the part of the Parochial Church Council. Miss. Winnett contends that it would have been more appropriate if notice had been given of a date after which reservations would not be supported. Miss. Winnett says that this would have enabled those with strong connexions to the churchyard to make applications before the new policy came into effect.*

*The second point made by Miss. Winnett is to say that her personal circumstances and connexion with the churchyard are such that reservation is exceptionally justified in her case. Miss. Winnett is aged 54. She has lived for the last 51 years in one of the only two houses in the village which overlook the churchyard. Miss. Winnett's mother was buried in the churchyard in May of 2017 and it is intended that in the course of time her father should be buried in the same plot as her mother. Miss. Winnett has stayed living at home caring for her aged parents. Mrs. Winnett was buried in a plot which can be seen from the family home and Miss. Winnett seeks to reserve the plot adjacent to it or, as a less-attractive alternative, a plot diagonally in front of it. In her submissions Miss. Winnett emphasises the*

*proximity of her family home to the churchyard; the fact that her mother is buried in the churchyard; her frequent visits to her mother's grave; her closeness to her parents; and the close and long-standing connexion between her home and the churchyard. Miss. Winnett says that her situation is unique and that "no one else in the village has such an emotional attachment to the place or has it so entrenched in their lives as I do."*

The first point is, I think of importance. In Blaisdon, this motion appears to have been done in a hurry with no notice to the whole parish. Now it might be argued that Notice might have produced a stampede of Petitions for grave space reservations well. It might have, but as no-one, apparently with- in living memory had so applied, the PCC motion might only cause disruption and all the other matters the PCC were concerned about which had not occurred before they bothered to pass this motion, a point noted by Chan- cellor Eyre. However, if one attempts to restrict or remove a legal right, I am of the view it cannot be done behind closed doors and the PCC decision announced as a *fait accompli*. I am not satisfied that adult parishioners can be treated in a "nanny knows best" manner and just told that (absent excep- tional circumstances, and these seem from the cases to be as rare as hen's teeth), dislike of the Petitioner or bad faith "you can petition but our PCC motion will block you ". I put that crudely but that appears to be the reality of that approach, however well-meaning a PCC might be and however good their reasons. If these reasons are so compelling, put them to an open meeting of the parish. What is a PCC who does not do that afraid of? Laughter or loss of Office? Surely, they can publicly and sensibly justify their proposals?

40. On the other hand, what of the parishioner who has not applied for a res- ervation because he is aware of the PCC policy, but then sees another apply for a reservation and have it granted by their Chancellor? At least, in the

Blaisdon case the PCC resolution is of very recent origin, so few parishioners may have been so affected. I accept the argument that this might be of concern in Parishes with more long-standing resolutions. All the more reason for a PCC to take the Parishes with them before launching (or continuing) on such a course.

41. Similarly, as well as in **Re Blithfield St Leonard (Lichfield 2014)**, **Re Wallall: Wood St John (2015)**<sup>23</sup> the Chancellor accepted that, although the PCC had not formally adopted a motion opposing reservations, everyone knew of their views. A petition to reserve was refused, but, subsequent to the judgment the vicar notified the Court that the grave which the Petitioner sought to reserve would be kept for her, and that no other burial would take place in “her” plot as the lay-out of new grave plots would allow this: a sensitive and sensible outcome. It seems that there, the significant issue when grappling with a petition where the PCC has adopted a policy of resisting the reservation of grave spaces was again, whether the PCC had acted in good faith. That is a high test to demonstrate otherwise.

42. But if there is space and the PCC still object to reservation? This was examined in the case of **Re St Wilfrid Grappenhall [2015]**. Here, the Chancellor deemed that the PCC’s “no reservation” policy was reasonable, in spite of the churchyard having sufficient spaces for another twenty to thirty years. There appears to have been an undercurrent that there were objections to non-churchgoers reserving spaces. Well, I suppose they may have been non-churchgoers (albeit parishioners) when they applied, but any cleric might reasonably hope that by preaching, example and approaching old age they too might become active church members. In reaching this decision, Chancellor Turner referred to the two previous Lichfield cases, which I set out above, which both conclude that the Consistory Court should not ig-

nore the reasonable bona fides and propose exercise of a PCC's discretion and whilst this policy is not conclusive, there should be 'fairness' to those who have accepted such a policy. He set out the law clearly and succinctly.

43. Again, I note in the case before me that the parishioners at Blaisdon have not, as yet, had the opportunity at their annual meeting of expressing a view which their PCC appears just to have foisted upon them. The Parishioners may or may not agree with their PCC; as yet, their views are unknown.

## **RIGHT OF PROPERTY**

44. As explained above, the incumbent has the right to grant an application by someone without a legal right to reserve a burial space in their churchyard provided they consider 'general guidance' by the PCC. It is important, however, to take care as to what is meant by 'general guidance.' In the case of **Re West Pennard Churchyard** the PCC's decision stated as follows:

*"It was agreed that it should definitely not be possible to buy burial plots. What criteria should be met to allow people to be buried in the churchyard was discussed. It was very difficult to lay down exact rules so it was proposed and seconded that it should continue to be at the vicar's and churchwardens' discretion but that they should be a little stricter."*

Chancellor Newsom states that this resolution not only falls short of giving the 'general guidance' to the incumbent, but also stresses that the PCC "cannot interfere with the powers of the consistory court to grant reservations of grave spaces." It is important to note that it is incumbent who has the rights of property in "his" churchyard. Whilst the churchyard is subject to the jurisdiction of the faculty, the Rector is the freehold owner of the rights arising from the ownership of the land comprising his churchyard, and this cannot be excluded

by the faculty (save for parishioners' rights of burial) nor the PCC. The PCC, in contrast, takes on a far more advisory role.

45. This was applied in **The Churchyard of Wick St. Lawrence [2013]**. Briden Ch. held as follows:

*“Thus, in deciding whether or not to grant a faculty [to reserve a grave space] the Court must consider whether the minister’s consent to the burial has been signified, and in its absence the petition ought to be dismissed. To do otherwise would be to subvert the purpose of Section 6(2) of the Church of England (Miscellaneous Provisions) Measure 1976, since the provision of a space reserved by faculty would override the minister’s power to give or withhold consent to the eventual burial.”*

46. Further, in **Re St Andrew Bainton [2009]** it was highlighted that the respect of affording the right to burial falls to the incumbent and not the PCC. The view of the incumbent in this matter is unclear, but if it supports the application to reserve a burial space, then it should be afforded greater weight than the PCC’s policy. In this judgment, Hill Dep. Ch stresses the role of the incumbent as follows:

*“on the part of the bereaved conditional upon attendance at church would be ungracious, undignified and unchristian.”*

47. In the course of writing this judgment the decision of Chancellor Eyre in **St James Brownhills [2020] ECC Lic 3** has been published. There the graveyard would be “full” in about 6 years’ time with an average burial rate of 18 per annum. The PCC had not passed an anti-reservation policy formally, but that had been their known policy for about 5 years. Some grave spaces had, however, been reserved but the PCC were concerned about expense if there were to be used in error. There was no incumbent as the church was in an interregnum. The Chancellor decided that the *“neither the pro-*

*spect of prejudice caused to parishioners nor the existence of a parochial policy of opposition to reservation {of a grave space}} are absolute bars to the grant of a faculty but both are potent considerations”*

The existence of a few other reserved grave spaces, the rationale of the intent to create a family grave space to join other deceased family members already buried there, the PCC’s sympathy to the Petitioner’s request (and other somewhat personal matters involving the Petitioner) resulted in the Chancellor granting the Faculty for a reserved grave space, though he stressed it was the combination of these factors which allowed him to come to that decision.

48. The general trend, therefore, is that case law has clearly indicated that it is the incumbent who has a final say on the use of burial space by virtue of their right to property. He can grant or refuse burial to a non-parishioner (as distinct to a parishioner or someone on the electoral role) A non-parishioner can apply for a reservation of a grave space, but that may only be granted if the Chancellor approves AND if the incumbent agrees.

49. **However, as far as parishioners or those on the parochial electoral role are concerned, the incumbent can only direct a burial in a particular grave space in “his” churchyard (his space: his property right) UNLESS the Chancellor has granted a grave space reservation, which trumps any objection by the incumbent.**

50. If there is a conflict between the views of the PCC/the incumbent and a parishioner (or person on the electoral roll) who seeks to reserve a space? Whilst case law has indicated that considerable weight should be given to the policy of the PCC, even as being better-placed than the Court on occa-

sion, the greater emphasis lies with the incumbent's views and their right to property, and the Chancellor. The approaches differ among the views of various Chancellors, as can be seen from the above cases, but, in general, the more recent authorities seem to indicate a preference to affording serious weight to the PCC's policy **unless it was reached in bad faith or unfairly designed in response to a particular application**. The theme that emerges is one of a willingness to determine that the PCC are better-placed to understand the local needs. That being said, each judgment cited in this note is clear that the PCC's policy is not "conclusive", and, whilst serious weight ought to be given to the PCC's policy against the reservation of burial spaces, it is within judicial discretion to determine what is reasonable in the particular factual circumstances.

## **THE BLAISDON PETITION**

51. I consider it both polite and important to the Petitioner and to the incumbent and PCC for them all to be appraised of the state of the law when I now, at last, turn to Mrs Pearce's Petition. I have set out above the Petitioner's reason for her application and her status as a Parishioner with long family ties with this graveyard. I need say no more on that.

52. What I do now know are the reasons for the PCC's objections, which are set out before me, and which I must, and do, give consideration. I consider their nine objections to the reservation of grave spaces in Blaisdon in turn: -

***(1) The desire to treat all applications similarly***

I am unsure just what is meant by this. The Faculty procedure, carried out at arms' length by any Chancellor when considering an application for a reserved grave space, provides a transparent procedure whereby a fair decision can be reached depending on the Petitioner's reasons for making an

application for a reservation of a grave space, balanced against the Parish's own availability for remaining space to accommodate grave space for its resident parishioners over a number of years. The decision of a (distant) Chancellor ensures no feeling of refusal or grant being the results of local favouritism/ill will etc. The current application system enables a Chancellor to refuse or grant a Petition from far parts of the country for, as I have had, "a spot in a peaceful Cotswold Churchyard", notwithstanding that the petitioner may live in the North of Scotland or a major conurbation. Resident Parishioners are first in the queue, then others who can demonstrate a real connection. I make it clear here that I am speaking of reservations of grave spaces. This is totally separate from the right of any non-parishioner dying while resident in the parish to be buried in his local parish grave yard (assuming it is still open for burials). In my experience, it is the non-churchgoing dead parishioner whose reserved burial plot really irritates a PCC. This current argument is about the opportunity to reserve a particular spot within that church yard. I can see no difference between the application of the law by a Chancellor as against by a PCC with their own agenda to run. A parishioner may feel that all are being treated the same by a distant Chancellor rather than by (some) of their neighbours.

***(2) The desire to avoid setting a precedent***

As I rather surmised, the PCC appeared to be concerned that if one reservation was allowed, others would follow. At present, the reservation of a grave space is legal within the Church of England, subject to the conditions I have set out above in detail. If and when General Synod changes that legal position to make grave space reservation illegal, and such a Measure were to be approved by Parliament, the situation would be different. I and my brother Chancellors have to apply the law as it now stands. Otherwise, it would be like a local authority deciding that the speed limit on their section of a motorway should be what they wanted it to be, instead of having to conform to national limits. They may not like it but there it is.

***3) The desire to avoid choosing between applicants***

Happily, that does not need to trouble any incumbent or PCC. Indeed, such a situation could be invidious. It is the Diocesan Chancellor who makes the decision as to whether a grave space should be reserved. All the local parish need concern themselves about is whether there is space, and, if so, for how long. All local personalities/feuds or favouritism are irrelevant. The PCC have no power to grant any individual reservation. They, of course can informally object as here. They may have good reasons for objecting to a particular plot: perhaps it floods, or they have advanced plans to build a church hall or church extension there provided such an objection should be not just a fantasy wish list conjured up to block the Petition.

***(4) The desire to retain all spaces in sequence for subsequent burials.***

Now I can well understand a desire for some order in a grave yard to facilitate grass cutting etc, but I cannot see that it is beyond the wit of man with a proper graveyard plan (which ALL churches should keep to avoid later squabbles as to who is buried where) to mark out a reserved plot to be

utilised on the death of the person who reserved it (marked as Mrs Pearce proposes with a small “R” sign) while continuing a line of new graves on each side of an empty plot, until that plot is needed. A reservation need not stop an orderly sequence of burials.

***(5) The lack of an accurate plan of the graves in the churchyard***

Well, I do not want to be brutal, but whose fault is that? Certainly not Mrs Pearce’s. I ask myself, or, more pertinently, the PCC, why they have not been keeping a burial plan for their graveyard? Even if any church has not got an existing one, they should start creating one as soon as possible. The problems of lost or disturbed graves are a perennial one, and can cause all kinds of difficulties, such as the requests for exhumations, arguments over people being buried on top of a different family etc. Not keeping an up to date plan of graves (even if old ones cannot be named or identified) is really very important. If Blaisdon does not have one, the sooner they start organising one the better.

***(6) The lack of any written evidence of previous similar faculties in Blaisdon***

Well, so what? No-one is compelled to reserve a grave space, but there is an ongoing existing legal right for any Blaisdon parishioner or any parishioner within this Diocese or any Diocese in the Church of England to apply for a Faculty if they fancy doing so. Subject to the legal tests I have set out above, it is a free country and a petition to reserve a grave is legal. If General Synod with Parliament’s approval overturn that right, so be it, but that is not now the law.

***(7) The need for consistency across the Benefice.***

I am not told of the other churches in this benefice which have purported to pass similar resolutions, but they would all be bound by the existing state of

ecclesiastical law. There is nothing to stop other parishioners within this benefice applying for a grave space reservation, which a Chancellor would consider on its merits and applying the existing law. If any PCC wanted to object to such a Petition, they could do so. Mrs Pearce tells me that a neighbouring Parish in the benefice had a policy on reservations and then reversed it. I accept that views may change and alter, but I am of the view that those views should reflect the views of an annual meeting of the Parish, and not just the PCC,

***(8) The fear that space in the Churchyard might prove more limited than expected***

Well there is always the possibility of the building of an enormous housing estate but no evidence of that was forthcoming. Such a risk might well be balanced by the continuation of the churchyard for cremation burial. A garden of remembrance, which takes up less space, could obviate any growth problem. If a churchyard becomes full, it is closed, but, in reality, reburials often can go on as graves become uncared for, and unmarked. Given a thousand years of reburials, most grave yards in this country are rarely full. Only the squeamish find it difficult to admit the reality of reburial.

***(9) The wish to avoid affordability as a filter for applications***

In comparison, the cost of the average grave stone can be far in excess to the cost of a grave space reservation. By chance I have just authorised a grave stone in this Diocese costing nine times as much as the cost of a reservation in the graveyard at Blaisdon. Whatever one's private views as to the morality or necessity of spending such money on a grave stone, we do not have sumptuary laws restricting such expenditure. It may be difficult to enforce moral charitable giving for the living in exchange for gravestones for the dead, often ordered in an early excess of grief (or sometimes guilt).

However, people are legally free to spend their money as they want. This point sounds superficially attractive, but I wonder if this Benefice's next step is to tell people they are restricted as to how they should memorialise their dead. No money spent on a grave space reservation might mean more money on bigger, more gaudy tomb stones, even within our Churchyard regulations. Their own point 6 above shows that the sensible parishioners of Blaisdon have got on perfectly contentedly without applying for a grave space reservation, but the freedom for one of them to apply exists. If this starts a craze in the Parish to reserve a space, such petitions, if granted, will at least ensure a healthy surplus of funds for the upkeep of the graveyard. Such a craze seems implausible.

I note that the PCC policy document states that "their policy will allow ***considerable discretion*** about the location of any given grave, when it is needed for burial". It seems to me that that may only introduce an opportunity for complaint about favouritism and objections at the very worst time of a funeral. It just pushes a request under the carpet until it becomes a problem.

53. Mrs Pearce's reply to this motion covers much of what I have set out above, but she makes the following points: -

- a) No one else in the parish made any objection to her Petition save the PCC;
- b) She has been a lifelong parishioner and wants to be buried very close to her late parents, her Mother indeed having been a Church bell ringer, she being their only child. Mrs Pearce herself is the bell-ringer treasurer for the Parish. She visits her parents' grave regularly and has noticed that other families are buried together notwithstanding different death dates.

c) She had first raised her wishes with the incumbent in January 2019. Nothing happened. Then her local funeral director said he would raise it.

d) The incumbent visited the petitioner in April 2019, and said there was about 50 years' worth of burial space left. He advised the Petitioner to speak to a Churchwarden, which she did in May 2019. That Churchwarden was unsure about the best way forward but said she would make enquiries. No further information was provided to the Petitioner.

e) The incumbent had told the Petitioner that there was to be a PCC meeting on 18<sup>th</sup> June 2019. In the event that appears not to have taken place until 15<sup>th</sup> July 2019, when Mrs Pearce first raised her request (albeit informally). There was then no PCC motion in place. Her formal petition is dated 29<sup>th</sup> July 2019.

f) Mrs Pearce remembers that the incumbent told her at their April meeting that someone had done a good job with the grave spaces' plan. She is puzzled by Point 5 in the PCC resolution and the reference to no such plan.

g) She strongly objects to point 9 of the PCC's resolution and its rider about "discretion" as to the location as to a grave when it is needed for a burial. Her very point is that a spot near her late parents may have "gone" when she herself will need it. This is precisely why she has applied for a reserved grave space.

54. I have considered the particular circumstances where Chancellors have appeared to take a more restrictive approach and stresses the importance of the views of the PCC. None of those circumstances exist on the facts here, most significantly, the Blaisdon policy is very recent and no issue of "fair-

ness” to others who have acted upon any such policy arises. I have considered with care the written views of all involved in this matter. All have expressed their views in good faith and the matter comes before me to decide. I am satisfied that Mrs Pearce has made out the grounds for her Petition for a double grave space where she wants it. I am not satisfied that the PCC objections as set out before me are well founded. Indeed, I find that some of them may even, unintentionally if pursued I acknowledge, give rise to future trouble and difficulty.

Her Petition is granted.

I direct that a copy of this Judgment be displayed for 3 months on the Noticeboard of the church.

23<sup>rd</sup> February 2020

June Rodgers  
Chancellor