

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

ST JAMES: BROWNHILLS

ON THE PETITION OF MARTIN PREECE

JUDGMENT

- 1) Martin Preece petitions to reserve a gravespace in the Barnett's Lane Cemetery of St James, Brownhills. He proposes that the gravespace be reserved to provide a triple depth grave for himself and his brother and sister.
- 2) Mr. Preece and his siblings are in their early 50's. They are all single. The cemetery already contains the graves of their grandparents, father, and younger sister. It is intended that in the fullness of time their widowed mother will be buried in the grave currently containing the remains of their father. Mr. Preece lives in Brownhills but the papers do not disclose whether his siblings are also parishioners.
- 3) There are approximately 120 spaces left in the cemetery and over the last five years interments have been an average rate of 18 per annum meaning that the cemetery will become full in about six years' time.
- 4) The parish is in interregnum and so there has been no input from an incumbent but the Parochial Church Council has passed a resolution opposing the proposed reservation. The Parochial Church Council has helpfully set out the reasons for its approach in a letter from its secretary, Mrs. Brenda Stanford, but has chosen not to become a party to this petition.
- 5) I concluded that it was expedient for this matter to be determined on the basis of written representations. Mr. Preece consented to that course and has provided brief further submissions expanding on those which accompanied the petition and commenting on the material provided by Mrs. Stanford.

The Reasons for the Policy of the Parochial Church Council.

- 6) The Church Council explains that it has a policy of not supporting the reservation of gravespaces and that the policy has been in place for at least forty years and probably nearer to fifty years. There does not appear to have been a formal

resolution establishing such a policy but I accept that it has been the settled practice of the Parochial Church Council over that period.

- 7) Mrs. Stanford explains that the reason why this practice has been adopted is a concern that there will be difficulties in marking the reserved gravespaces. Mrs. Stanford says that the concern is that a reserved space may be used in error. The fear is that the correction of such an error would involve the Parochial Church Council in expense and would involve distress to the bereaved families involved.
- 8) I have already noted that the parish is in interregnum. Mrs. Stanford explains that although the Parochial Church Council was very sympathetic to Mr. Preece's request for a reservation it resolved to record its opposition to the proposal in part because it took the view that it was not appropriate to change the settled practice in an interregnum.
- 9) The Parochial Church Council's practice of opposing the reservation of gravespaces does not preclude application to this court and it appears that faculties reserving gravespaces have been granted notwithstanding the stance of the Church Council. However, I note that this has only happened on a couple of occasions.

The Petitioner's Submissions.

- 10) Mr. Preece points to the number of Preece family members who are already buried in the cemetery. Mr. Preece explains that he and his siblings have a particular antipathy to cremation as the result of having spent prolonged periods of time visiting a family member in a burns unit and says that this is part of the motivation for wishing to reserve a space in which the three siblings can be buried. In addition Mr. Preece has set out matters which are of an intimate nature and which need not be detailed in this judgment. However, I accept those mean that a refusal of the petition with the consequent risk that interment in this cemetery will not be possible will cause a particularly high level of distress.
- 11) Mr. Preece accepts that it has been a longstanding practice of the Parochial Church Council to oppose the reservation of gravespaces but he questions how fully this has been implemented. In that regard he points out that in addition to

reserved plots marked on the churchyard plan there are at least two sets of graves where family members are buried alongside each other notwithstanding intervals of several years between their deaths. In the light of that Mr. Preece suggests that there has been a degree of de facto reservation of gravespaces. In that regard I proceed on the basis that the Parochial Church Council has indeed had a longstanding practice of opposing the reservation of gravespaces but that there have been some limited exceptions to that both by way of faculty and also by less formal arrangements.

- 12) As to the rationale for the Parochial Church Council's stance Mr. Preece says that there will be no risk of mistaken use of the space which is to be reserved if a faculty is granted. He says that he would comply with the normal condition for a marker to be placed at the petitioner's expense on the gravespace. He also points out that the reserved plot will be marked on the churchyard plan as are the two plots which are currently the subject of reservations granted by faculty.

The Applicable Principles.

- 13) Where there is ample space in a churchyard and consent from the incumbent and in the absence of a policy by the Parochial Church Council of opposing the reservation of gravespaces a faculty will readily be granted for a reservation. However, where space is limited or where there is such a policy then a faculty will not normally be granted and justification for taking the exceptional course of allowing a reservation in such circumstances will have to be shown.
- 14) As I explained in *St John the Baptist, Ashley* [2020] Ecc Lic 1 the reason why a reservation will not normally be authorised when space is limited is because of the risk that such a reservation would prejudice the right of those parishioners who would otherwise be entitled to be buried in the churchyard.
- 15) The existence of a policy of opposition to the reservation of gravespaces on the part of a Parochial Church Council is also a very potent factor. I explained the approach to be taken in that regard in *St Leonard, Blithfield* (Lichfield 2014) in these terms at [15] and [16]:

“15. ... 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.

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

16) It follows that neither the prospect of prejudice being caused to parishioners nor the existence of a parochial policy of opposition to reservation are absolute bars to the grant of a faculty for the reservation of a gravespace but both are potent considerations. Where those factors are present something exceptional needs to be shown to warrant the grant of such a faculty.

Analysis.

17) In the circumstances of this case it is clear that allowing the reservation sought creates a real risk that there will be prejudice to the rights of parishioners entitled to be buried in the churchyard in that the plot may well remain reserved and unused after the rest of the churchyard is full and when there are parishioners who will not be able to be buried in the churchyard. That is a powerful consideration.

18) In addition the longstanding practice of the Parochial Church Council has been to oppose the reservation of gravespaces. The rationale put forward for that practice is not compelling. As Mr. Preece has pointed out the potential risk of a reserved plot being used in error can be minimised by the use of a marker and by appropriate marking on the churchyard plan. Moreover, it is apparent that there have been some exceptions to the practice. However, I accept that those

exceptions have been few in number and I also accept that there are likely to have been persons who wished to have the comfort of reserving a gravespace but who have not done so because of the stance of the Parochial Church Council. The unconvincing rationale and the existence of exceptions including informal exceptions mean that the Council's approach has less weight than it might otherwise have had but it is nonetheless a significant factor against the grant of a faculty if solely because of the long period of time for which the practice has subsisted.

19) Are there exceptional circumstances in this case warranting the grant of a faculty for reservation notwithstanding the factors operating against it? I am satisfied that the combination of the following considerations means that this is an exceptional case in which it is appropriate to grant the faculty sought. The first is that the proposed reservation is for a plot into which three family members are to be interred and the creation of family graves is a legitimate and desirable objective. That is combined with the fact that this churchyard already contains the graves of a number of members of the Petitioner's family. Finally I take account of the particular personal concerns set out by Mr. Preece. I am satisfied that these are genuine and real and I note that they caused the Parochial Church Council to note that its members were very sympathetic to the request. No one of those elements by itself would have been likely to have been sufficient to warrant the grant of a reservation in the circumstances of this churchyard but in combination they do create an exceptional case where that course is warranted.

20) Accordingly, the faculty sought will issue for reservation of the plot identified by Mr. Preece.

STEPHEN EYRE

HIS HONOUR JUDGE EYRE QC

CHANCELLOR

9th February 2020