

Neutral Citation Number: [2023] ECC Bla 6



Faculty – Unopposed petition for the reservation of a single-width, double-depth, full burial gravespace within the churchyard – Sufficient space remaining within the churchyard for between five and seven, and possibly up to ten, years but there is further land belonging to the church available for consecration when the present churchyard is full – PCC recently passed a resolution not supporting any new grave reservations except in existing graves – Vicar, churchwardens and PCC not consenting to the petition – Whether, and, if so, for what period of time, and on what terms, the petition should be granted – Faculty granted for seven years, with permission to apply by letter to extend the reservation beyond that time

Petition No: 53 of 2023

**IN THE CONSISTORY COURT OF
THE DIOCESE OF BLACKBURN**

Date: Sunday, 29 October 2023

Before:

THE WORSHIPFUL DAVID HODGE KC, CHANCELLOR

In the matter of:

St Paul, Caton-with-Littledale

THE PETITION OF:

Mr Peter West and

Dr Zoe Tootell

This is an unopposed petition determined on the papers and without a hearing

There were no formal objections to the petition; but the vicar, the churchwardens and the PCC all withheld their consent to the petition

The following authorities are referred to in the judgment:

Re St Margaret, Lower Halstow [2023] ECC Can 3

Re St Mary, Newchurch-in-Pendle [2023] ECC Bla 5

Re St Mary, Standon [2023] ECC StA 1

Re St Mary, Thame [2022] ECC Oxf 2

JUDGMENT

Introduction and background

1. By a petition, dated 5 August 2023, Mr Peter West, who is 66 years of age, and his partner, Dr Zoe Tootell, who is aged 78, seek a faculty authorising the reservation of a double gravespace (to be designated by the church) for the full burial, when their time comes, of their human remains, one on top of the other. Although she does not consent to this petition, the vicar has provisionally suggested plot 235 pending its final disposal; and she has marked that plot on her graveyard plan until she hears further about the application.

2. According to the petition, Mr West first lived in the parish at Caton (between 1979 and 1989); and, since 2011, he has lived within the parish at Brookhouse. Four of his five children were baptised at the church of St Paul; and Mr West has sung with the church choir. Dr Tootell has lived in Brookhouse since 1982, and she has contributed financially to the church. The petitioners are said to have lived together for more than 12 years in a loving, caring, and stable relationship. Mr West is firmly of the opinion that he would like both of them to be buried together in St Paul's burial ground; and Dr Tootell is happy with this. The petitioners wish to be laid to rest "together", in a single grave space, one beneath the other, rather than next to each other, so they want a single-width, but double-depth, grave plot. Both petitioners are resident in the parish, but neither is on the church electoral roll.

3. According to the section of the petition signed by the vicar, the present churchyard will be full in between five and seven, but possibly as many as ten, years. However, there is further land belonging to the church, currently in use as a recreational area, that is available for consecration when the present churchyard is full which would enable burials to continue for approximately 50 years.

4. The minutes of a meeting of the Parochial Church Council, held on 31 July 2023, and attended by the vicar, the secretary, two deanery synod members (one of them the churchwarden), and five other members, record (at item 07, under the heading '*Graveyard update*') that the PCC had a discussion about the granting of faculties. It was decided that "*the PCC will not support new faculties except for those of existing graves. A vote was taken that supported this action.*" This petition was presented five days later.

5. In a letter dated 8 August 2023, and addressed *To Whom it May Concern*, the Vicar states that:

The PCC, incumbent and churchwarden have made a decision that we will no longer support new applications for faculties for full burial spaces. This is due to the fact that we believe we have approximately 25 spaces left in the 'new' graveyard, and if we have faculties of 25 years+, even though we can find spaces elsewhere, and ultimately consecrate a new piece of land, it nevertheless complicates planning and the use of existing space if we have several plots of land which are not able to be used for decades.

6. The vicar has certified that the usual public notices were duly displayed between 5 September and 3 October 2023. No formal objections have been received to this petition.

7. When the papers were first referred to me, I determined, pursuant to rule 14.1 of the Faculty Jurisdiction Rules 2015 (as amended), that, having regard to the overriding objective in Part 1 of those Rules, it was expedient to order that this petition should be determined on consideration of written representations instead of by way of a hearing. On 13 October 2023, therefore, I directed the Registry to write to the petitioners, inviting them, within 14 days, to submit in writing their views upon that course; and, if they were so content, to supply any written representations upon which they would wish to rely in support of their petition. I directed that they should be supplied with, and invited to address, the letter from the parish dated 8 August 2023, explaining their decision no longer to support reservations, as well as the PCC Minutes of the meeting of 31 July where that decision had been made.

8. The petitioners responded by email on 14 October 2023. They have provided a "*potted outline*" of their lives. Both had a Christian upbringing. Dr Tootell qualified as a doctor of medicine and finally settled in Brookhouse in 1982, 41 years ago. She worked locally in community medicine; and her only child, a daughter, attended St Paul's school. She is now also a doctor, and emigrated to Australia in 2004. Having previously lived in Caton for ten years, when his eldest two children attended St Paul's school, Mr West moved back to Brookhouse in 2011 to be with Dr Tootell. The petitioners say that they have been together for more than 12 years, and they are very happy and content. Whilst not being regular church attenders, they do support the church (with Dr Tootell having had a standing order in favour of the church for many years). They consider themselves to be law-abiding citizens, living with kindness to others and charitable acts. Brookhouse is, and has been, their "*forever home*", and they wish to be buried there.

9. With respect to the PCC meeting on 31 July 2023, and the PCC's decision on grave spaces, the petitioners say that they have spoken to the vicar and they now understand that: (a) more graves spaces will be made available at some future date, and (b) the issue is essentially one of timing: "*i.e. not now at the July meeting; also (c) when, or if, to allow the few remaining spaces to be reserved which may influence or compromise (a) & (b)*". From their perspective, the petitioners would wish to have "*a degree of certainty*" that a space is available for them within the churchyard when their time comes. Whilst they are both currently reasonably able both physically and mentally, Dr Tootell is now 78 years old, although Mr West is younger, and is now aged 66. The petitioners say that they have no preference as to the siting of their grave within the churchyard.

The legal framework

10. I have recently had occasion, as the Chancellor of this Diocese, to consider the principles governing the determination of a petition to reserve a grave space: see paragraphs 11 to 17 of my judgment in the case of *Re St Mary, Newchurch-in-Pendle* [2023] ECC Bla 5. I invite the Registry to supply the petitioners with a copy of that judgment. During the course of my judgment in that case, I cited from paragraph 27 of my earlier judgment (as the Chancellor of the Diocese of Oxford) in *Re St Mary, Thame* [2022] ECC Oxf 2, as follows:

From this review of the authorities, I derive the following propositions (which are not intended to be exhaustive):

- (1) The reservation of a grave space is entirely within the discretion of the consistory court, to be exercised having regard to the particular circumstances of the case.
- (2) The court will be more inclined to grant a faculty to a petitioner with the right to be buried in the churchyard than to one without such an entitlement. Those who have such a right are the persons living within the parish, and those on the electoral roll of the parish church.
- (3) The court may nevertheless grant a faculty to a petitioner with no right to be buried in the churchyard where they can demonstrate a personal, or a substantial family, connection to the church and/or its churchyard, or some other some good and sufficient reason to be buried there.
- (4) Where there is sufficient space within the churchyard, and the incumbent minister gives their consent, the court may well grant a faculty to such a petitioner, unless the Parochial Church Council have a policy of opposing the reservation of grave spaces.
- (5) Such a policy cannot be conclusive, and it cannot remove the court's overarching discretion; but where the PCC have adopted a policy that is considered, reasonable and fair, the court will only be justified in departing from that policy in exceptional circumstances; and 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.
- (6) Where, however, the remaining space within the churchyard is limited, then a faculty will not normally be granted, and the petitioner will have to demonstrate sufficient justification for the court to take the exceptional course of allowing a reservation in such circumstances, because of the risk that such a reservation will prejudice the rights of those parishioners or worshippers who would otherwise be entitled to be buried in the churchyard.
- (7) Even where such a justification is demonstrated, it will not usually be right to extend the duration of the faculty beyond the period for which the churchyard is likely to have space for burials, unless there are exceptional circumstances (including evidence of a particularly strong connection to the church and/or the churchyard) in favour of doing so.
- (8) Should a faculty for a grave space reservation be granted for a limited duration, it remains open to the petitioner to apply for an extension of the

period of its validity. Whether or not any extension is to be granted will depend upon the prevailing circumstances, including: (1) the petitioner's personal circumstances; (2) whether arrangements have been made to provide additional space for burials, whether by the acquisition of further land, or the re-use of parts of the churchyard, or otherwise; (3) the views of the incumbent minister; and (4) any current policy of the PCC towards the reservation of grave spaces.

At paragraph 30, I concluded that:

Even though the petitioner has shown sufficient justification for the grant of a faculty for the reservation of a grave space in the churchyard, however, it would not be right to extend the initial period of duration of that faculty beyond the time during which the churchyard is likely to have sufficient space available for future burials.

11. At paragraph 15 of my judgment in *Newchurch-in-Pendle*, I also cited from paragraphs 7 and 8 of the judgment of Chancellor Lyndsey de Mestre KC in *Re St Mary, Standon* [2023] ECC StA 1 (in the diocese of St Albans), emphasising that, although not necessarily determinative of the outcome of a faculty application in all cases, a “*clearly expressed thread running through those cases where PCCs had adopted policies of not supporting grave reservations is that the Consistory Court will generally support a policy of non-reservation unless such a policy reveals bad faith or is unreasonable*”.

12. Since my judgment in *Newchurch-in-Pendle*, there has been one further relevant decision, that of Commissary General Robin Hopkins (in the Commissary Court of the Diocese of Canterbury) in *Re St Margaret, Lower Halstow* [2023] ECC Can 3, decided on 4 October 2023. In that case, the petitioners wished to reserve a single-width, double-depth grave space. They did not live in the parish, but they attended the church occasionally and supported it financially. Some parishioners objected to graves being reserved, saying that interments should be on a ‘*first come, first served*’ basis. The Commissary General determined that it was appropriate to grant a faculty in that case: the petitioners had shown a sufficient connection with the church; at the time when the petition was lodged, the PCC had no formal policy about grave reservations; the PCC had supported the petition; and there was space in the churchyard for 20-30 years of burials. As the Commissary General emphasised in the course of his judgment, decisions of this kind tend to be based upon case-specific factors, rather than any inflexible rules; and the facts of that case were very different from those of the instant case.

13. Nevertheless, in my judgment, two consistent themes emerge running through all the authorities: First, where a PCC have adopted a policy governing the reservation of gravespaces that is considered to be reasonable and fair, it would not be right to override that policy unless there is an exceptional reason for doing so. Secondly, where the remaining space within the churchyard is limited, it will not usually be right to extend the duration of any reservation faculty beyond the period for which the churchyard is likely to continue to have space for burials.

Analysis and conclusions

14. In light of the case law, and on the facts, as summarised above, my decision is that it is appropriate to grant these petitioners a faculty for the reservation of a single-width, double-depth full burial plot (as designated by the vicar), limited in time to a period of seven years, with permission to apply (by letter) to extend beyond that time.

15. My reasons can be summarised as follows:

(1) The petitioners are residents of the parish, and they presently have a right of burial in the churchyard. If either of them were to die before the existing churchyard is full, they would be entitled to be buried there.

(2) The petitioners have established a sufficient historical connection to the church. even though they do not worship there.

(3) There was no formalised and transparent policy governing the reservation of gravespaces in place until immediately before the time this petition was lodged. The fact that such a policy has only recently been formulated is significant because, in the present case, there can be no question of any unfairness to parishioners who have chosen to subordinate their own personal preferences and wishes to a policy adopted by the elected PCC.

(4) Of crucial importance in this case are the ages of the petitioners, and the remaining capacity of the churchyard. The elder of the two petitioners is 78; there is space remaining for between five and seven, and possibly up to ten, years' burials; and there is further land belonging to the church available for consecration when the present churchyard is full. Limiting the initial duration of the faculty to a period of seven years should ensure that no-one else with a right of burial is prejudiced by the grant. Therefore in this case, capacity constraints do not militate against the granting of this limited faculty.

(5) Limited in this way, the faculty does not offend against the rationale underlying the PCC's recently adopted policy. According to the vicar's letter, the grant of reservation faculties of 25 years or more complicates future planning, and the use of existing grave spaces, because it results in grave plots which cannot be used for decades. This time-limited grave reservation faculty will not do so.

(6) The decision of this court is based on case-specific factors, rather than any inflexible rules. This decision will therefore have no prejudicial effect in terms of creating any precedent for other petitions that may be presented in respect of this churchyard.

(7) Although the vicar, the churchwardens, and the PCC have all withheld their consent to this petition, there is no-one who has formally opposed it.

16. For these reasons, I will grant the faculty as asked; but I will limit it, in the first instance, to a period of seven years from the date of the grant, with permission to the petitioners to apply by letter (and for no further fee), within the last year of the term of the faculty, for its duration to be extended. Whether or not the faculty is extended will be for my successor, who, I am sure, will pay all due regard to the fact that the petitioners have already had the benefit of a reservation in their favour. But whether the faculty is extended will depend upon all the circumstances prevailing at that time, including the availability of space for the interment of human and cremated remains within the existing churchyard, and any additional consecrated land that may have become available for such purposes, the views of the then incumbent and the PCC, and the personal circumstances of the petitioners. The faculty will be subject to the following conditions:

(1) The benefit of the reservation is personal to the petitioners, and is non-assignable.

(2) Any fees payable under the current diocesan parochial fees order must be paid to the minister and the PCC of the parish within 56 days of the grant of this faculty.

(3) The reservation shall be for the period of seven years from the date of the grant of the faculty.

(4) Permission is granted to apply for an extension to the duration of the reservation by letter to the court (and for no further fee) within the last year of the term of the faculty.

(5) The reservation shall be recorded in the parish records; and the location of the reserved grave plot shall be marked on the ground by a suitable, and durable, marker.

17. The petitioners will bear the costs of this petition; but, in the usual way, I charge no fee for this written judgment.

David R. Hodge

The Worshipful Chancellor Hodge KC

The Twenty-first Sunday after Trinity