



Faculty – Petition for the reservation of a grave space within the churchyard next to the grave of the petitioner’s recently deceased mother – Petitioner 44 years of age and resident in the parish for over 39 years – Only sufficient space remaining within the churchyard for about the next five years – Incumbent, churchwardens and PCC all supporting reservation – Parish proposing to re-use burial plots that have (a) not had a burial in at least 150 years and for which there are (b) no records and (c) no monuments so as to create at least another 50 grave spaces – Whether exceptional circumstances justifying reservation – Relevance of re-use of existing burial spaces – Faculty granted

Petition No: 11065

**IN THE CONSISTORY COURT OF
THE DIOCESE OF OXFORD**

Date: Wednesday, 19 March 2025

Before:

THE WORSHIPFUL DAVID HODGE KC, CHANCELLOR

In the matter of:

St Mary, Haversham

THE PETITION OF:

Mr Marcus James Smith

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

There were no objections to the petition

The following authorities are referred to in the judgment:

Re St James the Great, Radley [2024] ECC Oxf 5

Re St Leodegar, Hunston [2023] ECC Chi 1

Re St Mary, Thame [2022] ECC Oxf 2, (2023) 25 Ecc LJ 114

Re St Michael Heighington [2016] ECC Dur 3, (2017) 19 Ecc LJ 266

Re St Paul, Caton-with-Littledale [2023] ECC Bla 6, (2024) 26 Ecc LJ 239

Re St Peter, Hilton [2024] ECC Yor 1

Re Streatham Cemetery [2023] ECC Swk 3, (2024) 26 Ecc LJ 122

JUDGMENT

Introduction

1. This petition raises the short question whether the court should grant a faculty authorising the reservation of an identified grave space within their parish churchyard for the interment of the mortal remains of the petitioner and his wife in circumstances where only about five years' space presently remains available for future burials but the Parochial Church Council (the **PCC**) have resolved to re-use burial plots that have not had any burial in at least 150 years so as to create at least another 50 grave spaces.

Background

2. By a petition, dated 29 August 2024, Mr Marcus James Smith seeks a faculty authorising the reservation of an identified grave space in the churchyard of St Mary, in the Parish of Haversham, just north of Milton Keynes, in the County and Archdeaconry of Buckingham. The reserved grave space is to accommodate the mortal remains of the petitioner and his wife for the usual period of 25 years from the date the faculty is granted. According to his petition, Mr Smith is only 44 years of age. His wife is even younger. Mr Smith currently resides in the parish. He has done so for more than 39 years. Following her death last June, Mr Smith's mother has recently been buried in the churchyard. Mr Smith wishes to reserve the grave plot next to his mother's grave.

3. The minister for this group of parishes (who is also the Area Dean) and the two churchwardens consent to this petition. By a certificate forming part of the petition, and also dated 29 August 2024, they have certified that the average number of burials in the churchyard is less than one per year. However, even at this rate, the minister and churchwardens estimate that the remaining space in the churchyard will only be sufficient for the parish's needs for the next five years. At a meeting of the PCC, held on 16 July 2024, they unanimously passed a resolution that an identified grave space should be reserved in the churchyard for the interment of the mortal remains of the petitioner and his wife. In a letter to the Registry enclosing the petition, and dated 31 August 2024, one of the churchwardens writes: "*Whilst accepting that grave spaces are limited in the said churchyard, the application was as you will see, strongly supported by the PCC considering their long association with the church and parish.*"

4. When the petition was first referred to me, in September 2024, I noted that the petitioner was a long-standing, and apparently popular, resident of the parish; and that his petition had the consent of the minister and churchwardens, and the full support of the PCC. However, I also

noted the petitioner's relative youth; and that there was only some five years' space remaining in the churchyard. I directed that the usual public notices should be displayed. In light of the overriding objective in Part 1 of the Faculty Jurisdiction Rules 2015 as amended (the **FJR**) of dealing with the case justly, cost-effectively, proportionately, expeditiously and fairly, I formed the provisional view (subject to any representations to the contrary) that it might be appropriate to order (pursuant to FJR 14.1) that this petition should be determined on consideration of written representations instead of by way of a hearing. I therefore directed the Registry to issue the following directions, once the display period had passed without any objections:

(1) The issues on which the court requires evidence are:

(a) why the minister, the churchwardens, and the PCC support this reservation petition; and

(b) whether there is sufficient justification to take the exceptional course of allowing a reservation when the remaining space in the churchyard is sufficient for the needs of the parish for only some five more years. In doing so, the court is likely to have regard to the principles set out in its earlier decisions in *Re St Mary, Thame* [2022] ECC Oxf 2 and *Re St James the Great, Radley* [2024] ECC Oxf 5, and also to the decision of Chancellor Hill KC in *Re St Leodegar, Hunston* [2023] ECC Chi 1 (to which the petitioner, the minister, the churchwardens, and the PCC are all referred).

(2) Any witness statement or statements from the minister, the churchwardens, the PCC and/or the petitioner setting out the evidence to be given by any witness on those two issues are to be sent to the Registry, and served on the minister, the churchwardens, the PCC and the petitioner (as appropriate), within 14 days after service of the court's directions order.

(3) Any witness statement must be:

(a) verified by a statement of truth in the following form —

"I believe that the facts stated in this witness statement are true."; and

(b) signed and dated by the witness.

(4) The petitioner is to write to the Registry within 28 days after service of the court's directions order setting out his views on whether he is content to proceed on the basis of written representations, rather than by way of a hearing. If he is so content, he is to send any written representations upon which he might wish to rely in support of his petition to the Registry, and to serve copies upon the minister, the churchwardens, and the PCC, within the same period of 28 days after service of the court's directions order.

(5) If no response is received from the petitioner within the period of 28 days after service of the court's directions order, the court will proceed to determine the petition on the papers which are then before it.

I also asked the Registry to send copies of the three authorities mentioned above to the recipients of these directions.

5. After the display period for the usual public notices had expired without any objections, I received, on 11 December 2024, a written response from the petitioner and an email, dated 7 December, from the minister and one of the churchwardens.

6. The petitioner explained that his reasons for applying to reserve a grave space in his local churchyard are as follows:

(1) The petitioner was raised in the parish since 1985.

The petitioner's family moved to Haversham when he was five years of age, and the village has very much become part of his heritage. Apart from an eight-year gap (to raise a family of his own) the petitioner has always resided there. His family remained in Haversham, allowing the petitioner to maintain a deep connection to the parish and the local community.

(2) In 2013 the petitioner moved back to Haversham with a family of his own.

As a child the petitioner attended Sunday School at St Mary's Church and he has always instilled his faith and guidance from the church into his own son. As a family, they throw themselves into the community, arranging fetes, charity pig roasts, hosting St Mary's carols on the green, to name but a few.

(3) The petitioner and his wife were married at St Mary's Church in 2016.

The petitioner's wife has worked as a teaching assistant in the village primary school for ten years. She has been instrumental in developing community cohesion and strengthening relationships within the church and the wider community. Her time as a parish councillor saw new playground equipment installed at the village park, and she helps to promote St Mary's in school with event communication and assisting with class visits to St Mary's Church to support the children's religious education.

(4) Consideration of the plot.

At the age of 44 years old, a plot reservation at St Mary's Church in Haversham has hit prematurely in the petitioner's family's time. The plot the petitioner is seeking to reserve lies next to the grave of his mother. Tragically, she died unexpectedly in June 2024. After experiencing this tragic loss, it has never felt more important to the petitioner to be reunited in death. A burial in the family's local beloved church is the only calm hope of a resurrection to glory for them.

(5) The petitioner understands that the churchwardens and the PCC have not objected to this process.

The petitioner raised no objection to this petition being disposed of by way of written representations.

7. In their email, the minister and the churchwardens record that at their previous meeting, in mid-November 2024, the provision of grave spaces was on the PCC's agenda. That was the second time the PCC had looked at this subject; but, due to the pressure of other business, it was deferred to the next meeting of the PCC, in January 2025. In particular, the PCC had identified (1) a number of plots pre-dating 1837 that have no memorial stone, and (2) a number of plots that have illegible memorial stones that also pre-date 1837. An accompanying churchyard plan shows identifiable memorials dating between 1694 and c. 1837. It was proposed to remove these memorials to an area to the inside of the western churchyard wall. That would free up an area to the south and east of the churchyard that would be free of all memorials, and which could then be re-used for further burials and/or as a cleared outside space. At its next meeting, the PCC would consider whether the plots so identified should become the subject of a faculty application so as to permit those in (1) to be re-used, and those in (2) to have their monuments relocated.

On that basis, I was invited to defer any decision on this faculty application until after the PCC should have met again; and should the PCC decide to proceed with such changes to the churchyard, to further defer my decision until after any relevant faculty application had been determined.

8. I responded to the Registry, by email dated 11 December 2024, stating that, in light of the minister's email, I proposed to defer any decision on this faculty petition until after the PCC had met again. Should they decide to propose changes to the burial arrangements in the churchyard, I proposed to further defer my decision until any faculty application seeking approval to those changes had been finally determined. I considered that such deferral would be in the petitioner's best interests (as being more conducive to a successful outcome to his petition than if I determined it at that time). In the meantime, I indicated that I would expect the minister to leave the gravespace which the petitioner was seeking to reserve vacant so that the delay should occasion no prejudice to him. I invited the Registry clerk to notify both the parish and the petitioner of my interim decision, and to keep the matter under review. The Registry duly communicated my interim decision to the minister and to Mr Smith. It invited the minister to report back after the PCC had met in January 2025.

9. Following a meeting of the PCC on 21 January 2025, the minister informed the Registry by email that it looked as though there was a maximum of 88 graves with (1) no records, (2) no monuments and (3) next to graves which are at least 125 years old. The PCC had unanimously decided to re-use those grave spaces provided they were allowed to. The minister offered to supply a 'map' with details if necessary. The Registry clerk was invited to confirm that the parish could use these spaces, and whether the parish had to inform the local community or seek other permission first. On that basis, the parish had at least 50 grave spaces available.

10. In response, by email dated 22 January 2025, the Registry clerk attached the Registry's guidance on the re-use of burial plots. She recommended the parish to consider this as soon as possible as there were some processes to be gone through, such as carrying out public consultations, seeking the advice of the diocesan archaeological adviser, and so forth. The Registry clerk noted that there would be at least 50 plots available if the parish went ahead with the re-use of existing burial plots. She inquired whether the parish had definitely decided to do this so that she could then inform the Chancellor of the number of available plots, which would allow him to continue to determine Mr and Mrs Smith's faculty application. Following a chasing email, on 3 March, seeking confirmation that the PCC still wished to continue with this course, the minister sent an email to the Registry on the late evening of 12 March apologising for the delay. The email continued:

The PCC voted on 10th March, unanimously to reuse burial slots that have (a) not had a burial in at least 150 years and for which there are (b) no records and (c) no monuments. That is at least 50 places.

We will notify the village in the parish magazine.

Hope that is ok.

11. These email exchanges were conveyed to me by way of an email from the Registry dated 13 March 2025. This reminded me that the public notice had expired, and that no objections had been received. It asked whether I was now content to determine this application. It attached all

the email exchanges with the minister, and explained that the PCC had now met, and had addressed the number of available burial plots within the churchyard.

The legal framework

12. I begin my discussion of the legal framework underlying this petition by considering the principles upon which any petition to reserve a grave space should be determined where there is only limited space remaining within the churchyard for future burials. I had occasion to consider this issue in my judgment in *Re St Mary, Thame* [2022] ECC Oxf 2, (2023) 25 Ecc LJ 114, handed down on 28 April 2022 as Chancellor of this diocese. The petitioner wished to reserve a double grave space for herself and her partner. She had resided in the parish until 2013; the remains of her father and her stillborn child were buried in the churchyard; and all of the petitioner's immediate family still lived in the area. The normal period allowed for the reservation of a grave space in the diocese of Oxford is 25 years. However, the evidence suggested that there was only room in the churchyard for burials for a further seven to ten years. I granted a faculty; but I limited it to ten years, giving permission for the petitioner to apply for an extension within 6 months of the expiry of that ten year period. My judgment contains a review of previous decisions relating to grave reservations by other Chancellors, including cases where the relevant PCC had adopted a policy of not supporting grave reservations. At paragraph 27 of my judgment, I concluded 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 determined 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.

13. Since my decision on that petition, there have been a number of further judgments of different consistory courts involving petitions for the reservation of churchyard grave spaces. I reviewed many of those decisions in my judgment in the recent case (in this diocese) of Re St James the Great, Radley [2024] ECC Oxf 5. I remain satisfied that there is no good reason to revisit the (non-exhaustive) list of propositions that I formulated in the Thame case.

14. It is sufficient to refer briefly to three further statements in the authorities. The first is an extract from my judgment, as Chancellor of the Diocese of Blackburn, in the case of Re St Paul, Caton-with-Littledale [2023] ECC Bla 6, (2024) 26 Ecc LJ 239. At paragraph 13, I identified two consistent themes which seemed to me to run 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.

15. The second relevant court decision is that of Chancellor Hill KC (in the Diocese of Chichester) in Re St Leodegar, Hunston [2023] ECC Chi 1. In that case, Chancellor Hill KC refused to grant faculties for the reservation of two separate grave spaces in the churchyard, notwithstanding the applicants' long associations with the parish and the church, the presence of family graves within the churchyard, the support of the PCC, and the absence of any objections. This was because the unchallenged evidence from the parish was that churchyard would be full within five years. At paragraph 8, the Chancellor summarised the 'legal backdrop' against which the two petitions fell to be determined thus:

The burden of proof lies on the petitioner in each instance to demonstrate (on the balance of probabilities) a sufficient justification to take the exceptional course of allowing a reservation when the remaining space in the churchyard is limited.

At paragraphs 12 and 13, the Chancellor set out his decision in the following terms:

12. I have considered very carefully all the material placed before the Court in the case of each petitioner, searching for any matter which might demonstrate a sufficient justification for the Court to take the exceptional course of allowing a reservation when there is only space for burials for a further five years. I regret I can find none. The ordinary practice of the Court is not displaced. I note that the PCC supports each of the petitions and that no objections were forthcoming following public notice. But local support and the absence of objection are not, whether individually or cumulatively, sufficient to displace the restraint which the Court must exercise in order to preserve the rights of parishioners and worshippers.

13. This decision should not be interpreted as a determination that neither Mr Martin nor Ms Lewis are worthy of burial in the churchyard. It is not a judgment on their character nor their nexus, and that of their families, with the parish of Hunston. They undoubtedly have very substantial links with the parish, even though neither may have the legal right of burial. Were they to die when one or more spaces remain unused, then I would expect the incumbent to exercise their discretion to permit their burial in the churchyard. However, it would be improper for a grave space to be reserved when so few remain, even had they enjoyed a right of burial. The remaining spaces must be filled by the burial of individuals with a right of burial or a strong connection with the church in the order in which they die, until such time as the churchyard becomes full.

16. The final authority is the decision of Chancellor Lyndsey de Mestre KC in Re St Peter, Hilton [2024] ECC Yor 1 (in the Diocese of York). At paragraph 22, the Chancellor considered that to demonstrate exceptional circumstances requires a petitioner to show that their case is “markedly out of the ordinary”. I would respectfully agree with this formulation.

17. I turn then to the law governing the re-use of burial plots in consecrated land. This has recently been the subject of consideration by the Law Commission in their *Consultation Paper on Burial and Cremation* (No 263), published in October 2024. Grave re-use in consecrated ground is considered at paragraphs 6.28 to 6.30, as follows (omitting foot-note references):

6.28 In a churchyard, there is no law preventing the reuse of old grave sites for fresh burials after a period of time has passed. No faculty is required for grave reuse, unless the removal of monuments or large-scale schemes involving the levelling of mounds is intended, or unless reuse will involve the exhumation of remains.

6.29 Different dioceses may take different approaches to reuse. The Diocese of Southwark has stated that there is merit in bringing larger areas of a churchyard into reuse. Incumbents should publicise policies for reuse from 75 years after the date of the last interment in a particular grave, so that those arranging burials can be aware of what may happen in the future.

6.30 We understand from stakeholders that much of the grave reuse that has happened in recent years in London is in fact conducted in consecrated land under the jurisdiction of a faculty, rather than the provisions of the [London Local Authorities Act 2007]. We understand that this is due to graves in consecrated land being older, and therefore more

suitable for reuse, rather than any preference for operating under faculty jurisdiction rather than the scheme in the 2007 Act.

18. A convenient starting-point is the judgment of Deputy Chancellor Iles (in the Durham Consistory Court) in the case of *Re St Michael Heighington* [2016] ECC Dur 3, (2017) 19 Ecc LJ 266. There the vicar and churchwardens had sought the consistory court's authority to conduct a survey of the churchyard in order to ascertain, by rodding, where further burials could take place, including burials in the older part of the churchyard over existing graves. A neighbour, whose house windows looked out directly on to the older part of the churchyard, objected to its re-use, and the possible disturbance of existing graves, stating that interments carried out near his windows would be distressing and affect his enjoyment of his property. He claimed that such re-use would amount to a nuisance, and would also blight his property. Granting a faculty, the Deputy Chancellor determined that the PCC were legally entitled to re-use an old burial ground until such time as the churchyard was formally closed; and that such re-use could not amount in law to a nuisance.

19. Deputy Chancellor Iles addresses the law at paragraphs 25-30 of his judgment. I would articulate his approach in the following propositions (for which authority can be found cited in the Deputy Chancellor's judgment):

(1) At common law, every parishioner has a right of burial in their parish churchyard unless it has been closed by due legal process (i.e. closed by Order in Council). That common law right extends also to all persons dying within the parish, whether or not they are parishioners. By Church of England Measure, a similar right is given to all persons whose names are on the electoral roll of the parish. The incumbent has the power at common law to prescribe the precise location within the churchyard where any burial is to take place.

(2) The result of being buried in consecrated ground is that the site is under the exclusive control of the ecclesiastical courts. A body buried in such ground cannot be moved from its place of interment without the sanction of a faculty from the consistory court of the diocese wherein the churchyard is situated.

(3) Subject to the restriction that the removal of human remains from its place of interment in consecrated ground must be authorised by faculty, there is in general no legal impediment to the re-use of old grave sites for fresh burials after a suitable period of time has elapsed. For this purpose, no faculty is required except where the removal of gravestones is involved. Depending on all the circumstances of the case, a period of around 75 years should have elapsed since the last known burial before a grave plot is re-usable.

(4) The practice known as *'lift and deepen'*, i.e. lifting the remains in a grave and re-burying them at a greater depth in order to provide additional space, is permissible in respect of graves in consecrated ground. This facilitates the efficient use of burial space. If human remains are not moved, save to be placed deeper in the ground, the general presumption against exhumation does not apply. Respect for the dead, however, dictates that human remains should be disturbed as little as possible. A Home Office licence is not required to rebury a body at a deeper level within the same plot of consecrated land.

At paragraph 36, Deputy Chancellor Iles summarised the position as follows:

In so far as the re-use of burial space is concerned, it is clear that the law permits it provided a satisfactory lapse of time has taken place since the previous burial, and it is clear,

furthermore, that the Church encourages it. It is neither contrary to Christian doctrine, nor repugnant or immoral or otherwise objectionable

20. A recent illustration of the re-use of burial space within two areas of consecrated ground forming part of a local authority cemetery is afforded by the case of *Re Streatbam Cemetery* [2023] ECC Swk 3, (2024) 26 Ecc LJ 122. There, Chancellor Petchey (in the Diocese of Southwark) directed the issue of a faculty authorising the re-use of two areas of ‘common graves’ that were largely free of any memorials. The Chancellor considered that, in principle, the proposals were both acceptable and commendable, facilitating the economical use of land and addressing the continuing shortage of grave space. He therefore granted a faculty. The Chancellor considered that 75 years was generally an appropriate period after which the re-use of graves might take place.

21. The Registrar of the Diocese of Oxford has issued helpful, four-page written guidance on the ‘Re-use of churchyard burial space’. The current (2nd) version was issued in April 2019. The guidance addresses, first, authorisation for new burials. It explains that:

*If the churchyard has not been **formally** closed for burials then, in principle, no legal permission is required to authorise the re-use of the land for new burials. This is on the basis that ‘re-use’ involves burying on top of existing, older graves without interference with human remains. But if there is any interference (planned or otherwise) of articulated remains (that is, those which are largely complete) it must be authorised in advance under a faculty granted by the Chancellor of the diocese.*

Under the heading ‘Preparations and practical considerations’ the guidance addresses other steps to overcome, and for the PCC to consider, before any new burials can be carried out. The first step might be to carry out a visual inspection and to create a plan of the churchyard as it is currently laid out, identifying all known burials and memorials within and upon it. The guidance emphasises that a “*faculty will be required to authorise any movement of/works to memorials or ledgers, or to exhume any human remains (including cremated remains)*”. It also explains that:

PCCs need not consider re-use of the whole of a churchyard at once. It would be perfectly in order to consider present and future needs and resources and identify the best area(s) of the churchyard for imminent re-use. Schemes for re-use of areas would be better than approaching the issue on a grave-by-grave basis.

This guidance also addresses administrative steps and matters of process. It further considers the future planning and management of churchyards. There are two annexes which set out the Chancellor’s directions as to (1) the rodding and (2) the digging of graves.

22. Against this factual and legal background, I now turn to the determination of the instant petition.

Analysis and conclusions

23. But for the present shortage of available burial space within this churchyard, I would have no hesitation in granting Mr Smith’s reservation petition and directing that a faculty should issue in favour of Mr and Mrs Smith. Mr Smith is a long-standing resident of the parish. Subject to there being sufficient available space, he has a legal right to be buried in the churchyard. Mr Smith and his family have strong ties with the parish, the church, and the churchyard. Mr Smith

has an understandable wish to be buried in the grave next to his recently deceased mother. His petition has the support of the incumbent minister, the churchwardens, and the PCC.

24. I am therefore satisfied that the petitioner has shown sufficient justification for the grant of a faculty for the reservation of a grave space in this churchyard, next to the recently created grave of his late mother, provided this would not interfere with the rights of others who have a right of burial in the churchyard, and who may die before him. The difficulty is that there is only about another five years' space available for burials within the churchyard. Given the relative youth of Mr and Mrs Smith, the remaining grave space will almost certainly have become exhausted many years before effect has to be given to any grave reservation. In the present case, however, the incumbent minister, the churchwardens, and the PCC are taking appropriate steps to address the future needs of the parish for additional burial space by identifying the best areas within the churchyard for imminent re-use. That is thoroughly commendable. It is in accordance with the past practices of the Church of England. The guidance note on the re-use of churchyard burial space provided for the Diocese of Oxford by the Diocesan Registrar begins:

Many of our churchyards have been used for burials for centuries. Bodies have been laid to rest in the churchyard until space has run out many times over. When there were no more burial spaces left burials were simply carried out again, on top of the existing burials.

25. The PCC's original proposal to remove a number of pre-1837 memorials to an area to the inside of the western churchyard wall so as to free up an area to the south and east of the churchyard that would be free of all memorials and could then be used for further burials would clearly have required the prior authority of a faculty. Had that been the present proposal, then, acceding to the minister's invitation to that effect, I would have deferred any further consideration of this reservation petition pending the final determination of that further faculty application. It would not have been appropriate for this court, in any way, to anticipate or seek to pre-empt the outcome of that faculty application, or to have run the risk of being seen to do so. To preserve the position in the meantime, I would have invited the minister to leave the grave space which the petitioner is seeking to reserve vacant so that the resulting delay should occasion no prejudice to him.

26. However, as I understand them, the PCC's present proposals are less drastic in their effect. I am told by the minister that:

The PCC voted on 10th March, unanimously to reuse burial slots that have (a) not had a burial in at least 150 years and for which there are (b) no records and (c) no monuments. That is at least 50 places.

Since this proposal will involve no removal of, or any works to, any memorials or ledgers, no faculty will be required on this ground. However, a faculty will be required if any particular reburial will require the exhumation of any human or cremated remains. Investigations will need to be carried out, by way of rodding, in order to determine the likely depth of any identifiable remains within the area proposed for reburials. The parish may also need to seek the advice of the diocesan archaeological adviser (through the Diocesan Advisory Committee) regarding any likely disturbances to human remains, as well as issues involving the re-siting of any exhumed remains and the knock-on effects of any other local or environmental factors (such as any known historic plague or cholera pits). The parish will need to pay particular attention to the practical "steps to overcome and for the PCC to consider before new burials can be carried out" identified at section 2 of the Diocesan guidance on the 'Re-use of churchyard burial space'. I would draw the

PCC's attention, in particular, to the matters of process identified in section 3, including the following:

If the last burial was more than 100 years ago and there are no extant reservations, then:

(i) Rod the graves (in accordance with the Chancellor's general directions as to rodding at Annex 1);

(ii) Consider further exploratory digs in proposed new grave layout (so long as there is no interference with articulated (that is, largely complete) remains);

(iii) On a case-by-case basis dig each grave in accordance with the Chancellor's general directions as to the digging of graves (at Annex 2 below) and if there are no articulated (that is, largely complete) remains and if no coffins are found then the burial can be carried out in that location.

The new burials should then be registered in the church's burial registers and a new burial plan of this area should be updated accordingly.

27. I note that, according to the minister's certificate incorporated within the petition, the rate of new burials in this churchyard is less than one a year. In light of that, and the fact that, at the time of the petition, it was estimated that the remaining space in the churchyard would be sufficient for the needs of the parish for five years, the first burial in a re-used grave space is unlikely to take place for some four or five years. When the parish do start to re-use existing grave spaces, the number of re-burials in such spaces is likely to be limited to no more than one or two a year. I am therefore satisfied that it is just and convenient to grant the faculty sought by Mr Smith since this is not likely to interfere with the rights of others who enjoy a right of burial within this churchyard. Before the faculty is issued, however, I must be provided with, and approve, a copy of the resolution passed at the PCC's meeting on 10 March 2025. Clearly, I must be satisfied that its terms are adequate to address the existing shortage of burial space within the churchyard.

28. For the reasons I have given, I will grant the petitioner a faculty for the reservation of a double-depth grave space for the interment of mortal remains in the location he has identified in the churchyard of St Mary, in the Parish of Haversham. The faculty will last for the usual period of 25 years from the date of grant, with the right to apply in writing for an extension of that period within the last six months of the faculty period. The faculty will be subject to the following conditions:

- (1) The benefit of the reservation is personal to the petitioner and his wife and is non-assignable.
- (2) Any fees properly payable to the minister or the Parochial Church Council must be paid within 28 days of the grant of the faculty.
- (3) The reservation shall be recorded in the parish records; and the location of the reserved grave space shall be marked on the ground by a suitable, and durable, marker.

The faculty is only to be issued after I have seen, and approved, a copy of the resolution passed at the PCC's meeting on 10 March 2025 and I am satisfied that its terms are adequate to address the existing shortage of burial space within the churchyard.

29. In the usual way, I charge no fee for this written judgment.

David R. Hodge

The Worshipful Chancellor Hodge KC

19 March 2025