

Neutral Citation Number: 2017 ECC Chr 1

**In the Consistory Court of the Diocese of Chester
In the Parish of Eaton with Hulme Walfield**

**In the matter of an application for the reservation of a grave space for Harold
James Coppenhall and Gwendoline Coppenhall**

JUDGMENT

1. By a petition dated the 29th September 2016, Mr and Mrs Coppenhall (both aged 85 years) seek a faculty for the reservation of a (full) grave space, yet to be identified, in the churchyard of the parish of Eaton with Hulme Walfield.
2. No objection resulted from public notice of the petition, publication of which was certified on 18th January 2017. However, in Schedule 2 of the petition it was indicated that the incumbent and Churchwardens did not consent to it.
3. The reasons for that opposition were set out in a document dated the 16th November 2016, prepared by the vicar, the Revd. Ian Arch, headed: ‘Policy regarding burial in churchyard of those without legal right’, in these terms: “No formal policy has been adopted by the parishes of Marton, Siddington with Capesthorpe and Eaton with Hulme Walfield regarding the burial in the churchyard of those without a legal right to burial. However, established and notified practise (sic) is that those who were baptised in the church concerned are accepted for burial there in new graves. Those with a strong connection to the parish (for example having lived a significant part of their lives in the parish and retaining a link with the parish) are also often buried in the churchyards. In these cases the Vicar considers the strength of the request in consultation with the churchwardens, and with others as necessary before making a decision”.
4. Although I have not myself seen any minute of the discussion, it seems the Parochial Church Council (PCC) supported opposition to the petition at its meeting on 10th January 2017 (see an e mail from Mr Arch to the Registrar dated 7th February 2017).
5. Section 2 of the petition further indicated that, assuming the current rate of burials, the churchyard was unlikely to be full before 2100.
6. Mr Arch (and the PCC) evidently declined to become parties opponent to the petition, content that I should take account of the written objection.
7. In a further e mail to the Registrar of 16th February 2017 Mr Arch explained that the PCC’s opposition was not “practical, but ideological. They wanted to protect the churchyard as a churchyard, and not set a precedent. There are many from nearby Congleton who would love to be buried at Hulme Walfield if they could, given that municipal facilities are rather limited – but that wouldn’t last very long”.
8. The vicar conceded the parish had ‘space for 100’, adding ‘we’re not very pushed’. This is, thus, not one of those cases where available space is in significantly short supply.

9. The petitioners neither reside in the parish nor are they on the electoral roll. Although they live nearby, they appear not to have had any personal connection with the church or parish.
10. That said, in the petition Mr and Mrs Coppenhall pointed out that Wendy and Jerry Hayes, their only daughter and her husband, their son in law, had themselves been permitted reservation of a space in the churchyard by a faculty which I had granted on 27th June 2001.
11. Further, and significantly, Mr Jerry Hayes' parents, who died in 1997 and 2003 respectively, are buried in the churchyard.
12. The petitioners state they: "would like to reserve a grave so that we can all eventually (be) laid to rest together to enable our grandchildren to visit us all".
13. Their daughter, Mrs Hayes, helpfully expanded upon their wishes in her letter to the Registrar of 12th May 2017: "My mother has lived in Congleton her whole life; my father who is catholic was born in Sandbach but has lived in Congleton since they married 63 years ago. They are both elderly and will be 86 this year; they are eager to reserve a resting place at Hulme Walfield. I am their only child; both myself and my husband and our children mean everything to them. They have requested to be buried at Hulme Walfield as they think it is a beautiful, peaceful resting place and so that eventually we will all be together and our children will be able to visit and remember us all. I appreciate that grave spaces are limited but the churchyard is surrounded by farmland and hopefully it could eventually be extended in time. From the paperwork you attached, there does not appear to have been any objection to the public notice from the local community".
14. The faculty I had granted in 2001 had, it must be noted, been granted with the consent of the then incumbent, Revd. Barry Roberts, and the PCC. That, Mrs Hayes reasoned, potentially constituted 'a strong link to the church with two generations eventually being buried there'.
15. The law in respect of burial rights and reservation of grave spaces is clear. I set it out in a recent ruling in this diocese in **Re St Wilfrid Grappenhall** 2015, in which I considered it right to approve a PCC 'policy' – in that case for non-reservation.
16. Only parishioners, those on the electoral roll of a parish or those dying in the parish have a right to burial in the churchyard. Burial with the consent of the incumbent as freeholder of the churchyard may, of course, always be granted to those without any legal right to burial.
17. Where an incumbent grants such a right he/she is, of course, to some extent ousting those who have existing prospective rights. In deciding whether to give consent in such a case, he/she is therefore required by statute to 'have regard to any general guidance given by the PCC of the parish with respect to the matter': see s 6(2) of the Church of England (Miscellaneous Provisions) Measure 1976.
18. Sitting in the Consistory Court of the Diocese of Bath and Wells in **Re Churchyard of Wick, St Lawrence** (4th November 2013), Briden Ch (citing and applying the well known authority **Re West Pennard Churchyard** (1991) 4 All ER 125 (Newsom Ch)) added: '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 1976 measure, since the provision of a space

reserved by faculty would override the minister's power to give or withhold consent to the eventual burial'.

19. It follows from this that, despite my personal sympathies and, I trust, genuine understanding of Mr and Mrs Coppenhall's wishes and feelings, the legal position is that reservation should not be granted.
20. The fact that reservation was permitted to Mr and Mrs Hayes some 16 years ago, under different circumstances and with consent, does not, in my judgment, alter the present situation or trigger some overriding exception.
21. Neither Mr nor Mrs Coppenhall has (as things stand) any right of burial in the churchyard. The incumbent and churchwardens oppose reservation being permitted. The PCC appears, albeit informally, to have adopted a policy in respect of reservation deserving respect. In the circumstances the petition must, regrettably, be refused.
22. I well understand - and regret - that my judgment will be a disappointment to Mr and Mrs Coppenhall and the family. Unfortunately the law permits no other outcome here.
23. The petitioners must pay the costs of and incidental to the petition in the usual way.

His Honour Judge David Turner QC
Chancellor of the Diocese of Chester

16th May 2017