

**In the matter of St Margaret's, Lower Halstow**  
**Petition for faculty for a grave reservation**

**Introduction**

1. The petitioners, Mrs Dinah Jurksaitis and her husband, Mr Francis Jurksaitis, petition for faculty for the reservation of a double grave space – specifically, a single-width but double-depth plot – in the churchyard of St Margaret's, Lower Halstow. They live in Lewisham, rather than in the parish of Lower Halstow, and require the exercise of this Court's discretion to grant them the faculty they seek. The PCC supported this petition, but a number of objections have been received and responded to.

**Relevant facts**

2. The most pertinent facts relevant to this petition can be summarised concisely, as follows:
  - (i) Mrs Jurksaitis was born in 1946. Mr Jurksaitis is approximately the same age. According to their petition, they are not resident in the parish and do not own property there, but I understand that they are subscribers to the funds of this church.
  - (ii) On 16 February 2023, the petitioners applied to be added to the electoral roll. It is not clear that, at the time of this petition (17 March 2023) they had in fact been entered onto the electoral roll. It may be that their application was made in the context of this petition, though I do not have conclusive information on that point.

- (iii) Mr and Mrs Jurksaitis periodically visit Mrs Jurksaitis' brother, a former churchwarden of this church who now resides in a care home locally. They have tended to attend services at the church when they are in the area.
- (iv) According to the incumbent, this churchyard has approximately 20 years' worth of space for burials (approximately 30 available plots; 3 burials have taken place over the last 2-3 years). I am told that there is also a crematorium with alternative burial provision approximately 2 miles away from this church.
- (v) The PCC considered the petitioners' requests at a meeting on 17 March 2023. They were unanimously opposed to the petitioners' original proposal to reserve a double-width grave, but voted by a clear majority (5 in favour, 1 against, 1 abstention) to support the petitioners in reserving a single-width, double-depth plot in a specified location within the churchyard.
- (vi) A letter of 22 March 2023 from the incumbent, Rev'd Julian Staniforth, accordingly invited the Court to grant faculty for the reservation of a single-width, double-depth plot.
- (vii) In response to public notices, 7 objections were submitted to the Registry, with all of the objectors being content for their objections to be taken into account as part of my determination. One objection is from one of the Associate Priests for this benefice, the Rev'd Jacqueline Davis.
- (viii) The objections can be summarised as follows. The objectors (or some of them) understood that there was in practice a policy of "first come, first served" in terms of allocating grave spaces in this churchyard, with priority given to local residents and those with a sufficiently strong involvement with this church. The objectors share a concern that the granting of faculty in this case would set a new and unhelpful precedent that would be unfair to those to whom the prevailing approach had been applied and to those with stronger connections to this parish and/or this church who may miss out on opportunities to be buried here because the spaces had been reserved (and in

particular, reserved by persons who were not considered to have sufficiently strong connections to this parish and/or this church).

(ix) The petitioners provided a letter of response to the objections in June 2023. That letter included a number of reflections on theological and pastoral matters, and also explained that the Jurksaitis' attendance at this church had necessarily been "patchy", but that their sense of connection to it – built up over periodic attendance from the 1980s onwards – was very strong.

(x) I asked a number of questions of the PCC in directions dated 16 August. In response to my enquiry about a PCC policy on grave reservations, the PCC responded:

*"There is no formal policy for grave reservation requests; the established practice has been that any request is dealt with on the basis of eligibility and availability at the time of application. In practice this has meant parishioners have had priority. The PCC discussion was clear that a link with the parish is a necessary requirement for applications to be considered."*

(xi) As to the formalisation of a policy position applicable to future cases, I am told that the PCC unanimously passed the following resolution on 31 August 2023:

*"The PCC of St Margaret of Antioch Lower Halstow has an established practice of the right of burial for residents or for those with a long-established association over a significant period of time. Each case outside these stipulations will be considered on its own merits, with due regard for circumstances and appropriate pastoral care."*

(xii) The PCC explained that the petitioners had historically attended the church on a monthly basis, but that they had attended less frequently since Easter 2023. The PCC noted that some concerns had been expressed about the strength of the Jurksaitis' connections to the parish and/or the church and about the risk of setting an unfair precedent. I am told, however, that *"it was felt that the Jurksaitis' circumstances were unusual and unlikely to be replicated in future applications. It*

*is likely further applications, judging by the tone of the meeting on 31<sup>st</sup> August [2023], would be less likely to be supported by the PCC”.*

### **Legal principles**

3. I summarised some of the applicable principles in my judgment in *Re St. Mary & St. Radegund Postling* [2021] ECC Can 1. In that case, I decided that the petitioner had a sufficiently strong connection to the church to meet the exceptionality threshold for granting faculty for the reservation of a grave space notwithstanding opposition from the PCC.
4. I restate the salient principles from that judgment here, and also take account of certain other decisions of Consistory Courts in comparable circumstances, which shed light on how such issues have been approached by those Courts.
5. This Court clearly has the power to grant faculty for the reservation of a grave space, whether the petitioners are parishioners of this church or not: see for example *Re St Thomas a Becket and St Thomas the Apostle, Heptonstall* [2021] ECC Lee 2.
6. As summarised in *Re St Michael and All Angels, Muncaster* [2021] ECC Car 2 at paragraph 16:

*“Although the determination of whether to grant such a faculty is entirely within the discretion of the consistory court, the court will have particular regard to two matters. Firstly, it will have due regard to any PCC policy as to the reservation of grave spaces, largely on the ground that it likely to have a better understanding of local needs and wishes than the court will have but the court is not bound to apply any such policy. Secondly, it will have due regard to the consent or otherwise of the incumbent because if a faculty is granted, such would prevent the incumbent from conducting a future burial in the plot to which it relates.”*

7. I also take into account the following summary from *Re St Leonard, Blithfield* (Lichfield 2014), applied more recently in *Re St James, Brownhills* [2020] ECC Lic 3:

*“15... 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 gravespaces 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.*

*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...”*

8. As to comparable cases considered by other Consistory Courts, I take note in particular of the following judgments:

- (i) *Re St. Augustine Kirkby-in-Cleveland* [2021] ECC Yor 5: faculty for a grave reservation was refused for a couple who did not live in the parish and whose only connection with the parish was that their granddaughter had attended the nursery and primary school there.

- (ii) *Re All Saints Heathfield* [2013] (Chichester): a significant factor in the refusal of faculty was that there were only four or five empty grave spaces left in the churchyard.
- (iii) *Re All Saints Ashwicken* [2016] ECC Nor 4: the Chancellor granted faculty, but placed a limit of 12 years on the reservation, as it was anticipated that the churchyard would be full within 12 years.
- (iv) *Re St. Clement Terrington St. Clement* [2020] ECC Ely 3: the Court granted faculty for reservations for petitioners in their 60s and 70s who were longstanding residents with strong connections with the church. Faculty was refused in respect of petitioners who were in their 30s and 40s, who did not live in the parish and who had little connection with the church. The Chancellor did not consider that having a relative buried in the churchyard was of itself a sufficient reason to grant a faculty to reserve a grave.
- (v) *Re St Leonard, Blithfield* (Lichfield 2014 (cited above): the petitioners sought to reserve a grave in the churchyard next to the grave of their daughter. The priest in charge and churchwardens objected on the grounds that the PCC had for many years had a policy of resisting the reservation of grave spaces and of operating a “first come first served” approach, which many parishioners had followed. The Court refused to grant a faculty because, where there was a long-standing PCC policy in place, it would be unfair to override that unless there was an exceptional reason for doing so.

## **Decision**

9. In light of the illuminating case law and the salient facts as summarised above, my decision is as follows.
10. It is appropriate to grant faculty for this petition, i.e. for the reservation of the single-width, double-depth plot identified in this petition for the burial of Mr and Mrs Jurksaitis in time.

11. My reasons can be summarised as follows:

- (i) In my view, the petitioners have established a sufficient connection to this church to justify granting the faculty they seek. I refer in particular to their pattern of periodic attendance over many years, as outlined above. Particularly when assessed in the context of the other factors I identify below, this constitutes a sufficient connection to justify granting faculty in this case.
- (ii) It appears to me that, whatever the PCC's approach has in practice tended to be in recent years, there was no formalised and transparent policy in place at the time this petition was lodged. I acknowledge that, at its meeting on 31 August 2023, the PCC formalised its position on such petitions (see paragraph 2(xi) above). Even if that policy had been formalised transparently at the time of this petition, however, it is by no means clear that granting this faculty would be contrary to that policy. In this regard, I note that the recently formalised policy refers to "*a long-established association over a significant period of time*" and, quite properly, refers to the particular merits of any given case. For the reasons I summarise in the subparagraph above, my view is that these petitioners have had a long-established association with this church over a significant period of time.
- (iii) I give significant weight to the fact that, at its meeting on 17 March 2023, the PCC voted by a clear majority to support this petition. I also give significant weight to the support of the incumbent. I acknowledge that the PCC's position is not unanimous, and also that not all members of the clergy team for this benefice are supportive, but those points do not suffice for refusing this particular petition.
- (iv) I also give significant weight to the fact that, according to the information provided by the incumbent as part of this petition, there is likely to be space for burials in this churchyard for around 20-30 years. Taking account of the age of the petitioners, my view is that capacity constraints do not militate against granting faculty in this case.

- (v) I give weight to the understandable concerns raised by the objections, as outlined above. In my view, however, granting this faculty would not amount to any overriding unfairness to anyone who may have had their requests to reserve grave spaces in this churchyard refused in previous years: I have no details about that ever having happened in fact, but in any event the PCC's practice (as now formalised with effect from 31 August 2023) provides for each case to be assessed on its merits. Fact-specific decisions in unknown historic cases do not determine the merits of these petitioners' case.
  
- (vi) I do acknowledge the objectors' concerns about the risk of a precedent being set whereby people with insufficient connections to this parish and/or church could reserve grave spaces, but my view is that the policy that the PCC has now formalised mitigates against that risk. Both the PCC's policy and this decision of this Court are based on case-specific factors, rather than any inflexible rules. I do not consider that this decision would have any prejudicial effect in terms of a precedent for other such petitions that may be made in respect of this churchyard.
  
- (vii) Drawing those points together, my view is that the majority of the PCC reached an appropriate decision to support this proposed reservation of a single-width but double-depth grave in this churchyard.

12. For those reasons, I grant this faculty.

13. Costs to be paid by the petitioner.

ROBIN HOPKINS  
Commissary General

4<sup>th</sup> October 2023