

IN THE CONSISTORY COURT
OF THE DIOCESE OF CARLISLE

RE ST MICHAEL AND ALL ANGELS MUNCASTER

JUDGMENT
delivered on 31 May 2021

Introduction

1. By their Petition dated 17 October 2020 Catherine Julie Todd, James Andrew Todd and Helen Margaret Todd [‘the Petitioners’], then aged 47, 45 and 31 respectively, seek to reserve two double depth grave spaces [plots 526 and 527] in the churchyard of St Michael and All Angels in Muncaster [‘the Church’].
2. The Petitioners are all siblings. Although none of them currently reside in the Parish or are on the Electoral Roll, they each were born, baptised and confirmed in the Parish, resided in the Parish until very recently and their great grandfather, grandparents, uncle and mother are all interred in the churchyard. Their father James is still alive and in due course could be interred with his recently deceased wife Catherine Todd [‘the Deceased’].
3. Although at the present rate of burials, the churchyard will only be able to accommodate those wishing to be interred there for about 10 years, in all my years as Diocesan Chancellor I have not regarded such as inhibiting my exercising my discretion to grant a faculty for the reservation of a grave space in an appropriate case.
4. Having considered all relevant matters, on 23 March 2021 I determined that a faculty should be granted for the reservation of the two grave spaces, as sought, and issued a judgment to that effect: [2021] ECC CAR 1. I did so on the erroneous assumption that a Public Notice had been displayed for the requisite period and that there were no objections thereto.
5. In his letter dated 26 March 2021 Mr David Dickinson, the PCC Secretary, pointed out to me that no such Public Notice had been displayed because it had never been received from the Diocesan Registry. In such circumstances, being satisfied that I had determined the Petition in the absence of a Public Notice, I immediately directed that the faculty should be set aside and the application re-heard after the display of the Public Notice.

6. The Public Notice has now been appropriately displayed.

7. The display of the Public Notice has given rise to 4 letters of objection from those members of the Parochial Church Council [‘PCC’] who, as appears below, voted not to support the Petitioners’ application to reserve the two grave spaces when it was considered by the PCC on 6 December 2020. By contrast there are some 24 letters in support of such application from a total of about 34 persons, together with letters from one member of the PCC who supported the application and Revd Canon Gill Hart [‘the incumbent’], who retired in February 2021, who was then an ex officio member of the PCC.

8. None of those writing letters of objection have exercised their right to become parties to these proceedings but they have requested that I should take their views into account in determining this Petition. Having decided that is expedient to determine this Petition on the basis of all such written representations, I now determine this Petition, having regard to all the representations made both against and in favour of the Petition.

The meeting of the Parochial Church Council on 6 December 2020

9. The Petition was considered at a meeting of the PCC on 6 December 2020 and the minutes recorded the following:

‘The Rector confirmed that the Todd family would like to reserve two plots (numbers 526 and 527) next to their mother’s grave so that the three children could eventually be buried with their parents. She went on to explain that the PCC needed to vote on this request so that the Todd family application could be complete. The vote would be an expression of members opinion and not a decision as only the Chancellor has the power to authorise the reservation of grave spaces. The PCC was given the option to discuss the option to discuss the application or just to vote on the request and chose to vote without discussion. David Dickinson reminded that notices would be displayed giving parishioners 28 day(s) to comment on the proposal.

The vote to support the application was taken with 2 in favour, 4 against and one abstention. The PCC therefore withheld its support of this application.’

10. Mr Dickinson says that these minutes were drafted by the incumbent. Although they do not record any explanation of the reasoning of the majority, he did not believe it was appropriate to challenge its brevity because the majority would have been able to explain their reasoning in response to the Public Notice.

11. Those voting in favour were the incumbent and Mr Peter Frost-Pennington and those voting against were Mr Dickinson and his wife Mrs Margaret Dickinson and Dr Robert Tebb and his wife Mrs Kathleen Tebb. I do not know who abstained.

12. Each of these lay people referred to above have been heavily involved in parish matters. Each is a long- standing member of the PCC. Mr Frost-Pennington has been a member

of the PCC for over 20 years and has served as its Treasurer, Vice-Chairman and as Churchwarden for the last 10 years. Mr Dickinson has served as PCC Secretary since 2002, has been a member of the West Area Deanery Synod, being its chair for 5 years, Diocesan Synod and the Diocesan Advisory Committee. Mrs Dickinson served two terms on the Diocesan Board of Education and for 13 years was a member of the Deanery Synod. Mrs Tebb has been PCC Treasurer since 2013. Mr Dickinson, Mrs Dickinson and Dr Tebb are currently Churchwardens. I apologise if this summary of these persons' involvement in church activities is in any way inaccurate. No discourtesy is intended and indeed, each of these persons are each to be sincerely congratulated for their service to the Church.

13. For the avoidance of any doubt, I confirm that I have seen an email sent by Mr Dickinson and his wife to Archdeacon Richard Pratt on 29 January 2021 in which he complains that a letter sent by the incumbent to me dated 8 January 2021, which I refer to below, is 'a blatant attempt to influence the Chancellor into granting the application'.

14. Although in such email Mr Dickinson takes issue with the incumbent's comments and indicates that, but for the incumbent's imminent retirement, he and his wife would have considered invoking disciplinary proceedings against her, I do not regard such matters as relevant to the issue which I have to determine. In my view, although comments must, of course, be appropriately expressed, as I believe they were here, the incumbent had the right to express her views, even in forthright terms, about the merits of the Petitioners' petition, as had everyone else.

The legal position

15. It is settled law that a faculty may be granted for the reservation of a grave space for parishioner or non-parishioner: see in particular *Re St Thomas a Becket and St Thomas The Apostle, Heptonstall* [2021] ECC Lee 2.

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 by 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.

17. As to those two matters, it may be noted that at the time of the Petition being considered the PCC had not established any policy as to the reservation of grave spaces, in the sense that it had not passed a formal resolution to that effect, and that the incumbent supports the granting of a faculty.

18. Further, as was observed by Hill Ch in *Heptonstall*, the court will be more disposed to grant as faculty in respect of a person with a right to be buried in the churchyard, as opposed to a person without such entitlement who may not be buried in the churchyard without the

consent of the incumbent who is required to 'have regard to any general guidance given by the PCC': see section 86(2) of the *Ecclesiastical Jurisdiction and Care of Churches Measure 2018*.

19. As appears below, when the Petitioners' mother died in 2020 she did not have any right to be buried in the churchyard because the family had recently moved out of the Parish into their nearby retirement home in another parish. Faced with such a situation, given the family's longstanding connection with the parish, the incumbent had no difficulty in agreeing to the mother's burial in the churchyard and she says that no objections were raised by any members of the PCC whom she consulted. Although it is not known which members of the PCC she consulted, it seems common ground that there was a fairly relaxed policy of allowing burials in the churchyard of persons who had a link with the parish.

The letter of the incumbent in support of the Petitioners' Petition

20. In her letter dated 8 January 2021 the incumbent wrote in support of the Petitioners' Petition in the following terms:

'I would like to write in support of the application to reserve two grave spaces next to Catherine Todd, to enable her three adult children to be buried next to their parents.

Catherine Todd died after a long illness but relatively suddenly during the first national lockdown. Catherine left a husband, James and three unmarried adult children in a new home, that they had purchased for their retirement. The family have always lived together and whilst none of us can foresee the future, it seems likely now that they always will. The request for a grave space reservation is an expression of their desire to stay together as a family.

Catherine was one of five sisters, each married and settled in the local farming community. For most of their lives, James and Catherine lived and worked on the Muncaster Estate, working the land and catering for visitors to the Castle, respectively. At her death Catherine was the longest serving employee on the estate and well known locally. Her daughter is employed as chef at one of the Estate hotels. They have family buried in the churchyard. Despite their very recent move to a neighbouring parish, I was satisfied that Catherine qualified to be buried in the churchyard. I received no objections from members of the PCC to her funeral taking place in Muncaster Church or her subsequent burial there. I was then surprised by the PCC objection to the request to reserve spaces for the Todd children next to their mother. I knew that other spaces in the churchyard had been reserved in the relatively recent past and there had never been any indication that the PCC wished to change this permissive policy. St Michael's PCC is composed of the Rector and six lay members which includes two sets of married couples. These four members are the objectors to the application. ... Sadly, I feel that the members of the PCC who are objecting to this request may not fully appreciate the damage it will do to the reputation of the Church in the area. I have some sympathy with the argument that space in the churchyard is at a premium. However, I think that to deny this family the opportunity to be together is to inflict actual pastoral hurt now rather than the possible pastoral damage of running out of

space in the future. The PCC have time to find solutions to the burial needs of the parish, but this family's peace of mind can only be delivered by this one act of granting them a faculty.'

Letters of others in support of the Petition

21. Mr Frost-Pennington had supported the application at the PCC meeting on 6 December 2020. He also did so in his letter dated 20 April 2021 and raised the following matters in support of the Petition.

21.1. Firstly, the PCC had always adopted 'a relaxed and fairly open policy not to object to persons with a link to the parish' being interred in the churchyard.

21.2 Secondly, the Petitioners' application was voted on at the meeting on 6 December 2020 but had been discussed at an earlier meeting. He had been shocked and distressed by the attitude of those 4 members of the PCC, whose views are set out below, to 'a family that has lived in this Parish for generations and long had a close affinity to the Church'. When his efforts to persuade such members of the damage which might be caused to relationships between the church and the local community failed, he felt it necessary to resign from the PCC after 32 years, having previously served as Treasurer, Vice-Chairman and for the last 10 years as Churchwarden. In so resigning, he expressly recognised the commitment of those 4 members of the PCC to the church and their belief that they were doing what they believed to be the best for both the Church and local community.

21.3. Thirdly, whilst accepting the PCC was rightly concerned at the rapidly reducing space for burials in the churchyard, he opined that possible solutions for the local community had yet to be debated.

21.4. Fourthly, he said that the Todd family were very close. There was a desire that they should each be buried next to their parents and that although they would have been content to be ultimately interred in the same grave, modern burial regulations no longer permitted this.

21.5. Fifthly, he urged me to grant the faculty sought so that the wounds which he believed had recently opened up between the Church and the local community could begin to heal.

22. There were numerous others who supported the application. They were over 30 local residents who supported the application. For the purposes of this judgment, it is not necessary to identify them by name but all of them speak of the high regard with which the Todd family is held in the local community, having farmed the dales for generations. They are variously described as a vital or key part of the local community. Others speak of them as a close-knit and hard-working local family who have supported many people in the community over the years. Others speak of the deep hurt which the decision of the PCC not to support this

application has caused the Todd family and the many other similar families who have lived in the community for generations.

23. Although I do not determine this application by the counting of heads, it has to be recognised that very many people have taken the trouble to write in support of this application and it is my experience that whilst many people may write to object to a proposal, few take the trouble to write to support it.

Letters of objection to the Petition

24. In his letter dated 14 April 2021 Mr Dickinson adopted the contents of his letter dated 23 March 2021 and additionally made four points by way of objection to the Petition.

24.1. Firstly, that conversations between one PCC member who had a special responsibility for the churchyard and the undertaker responsible for most burials, had established a *de facto* policy that once the western row of graves [plots 508 to 522] were filled, the remaining graves [plots 523 onwards] would be filled on a 'first-come first served' basis and he contended that this was now the Church's established practice.

24.2 Secondly, that the Petitioners had no connection with the church and in particular that they had never worshipped in the Church and did not contribute to the Church financially.

24.3. Thirdly, that because the churchyard was unlikely to remain open for more than 10 years, if grave spaces were reserved for the Petitioners, plots 526 and 527 would remain unused when the rest of the churchyard was closed.

24.4. Fourthly, that, because of actions by the incumbent, the PCC had been deprived of asking me to make it a condition of any faculty granted that an annual sum should be paid as a contribution to the general cost of maintaining the church and churchyard, as provided for in the Churchyard Regulations.

25. I remind myself that in his earlier letter dated 23 March 2021 Mr Dickinson had referred to the fact that the reason why there had only been minimal discussion at the PCC meeting on 6 December 2020 was because an earlier request by the Todd family, which had been only in respect of one grave space, namely plot 526, had been rejected at an earlier PCC meeting on 12 October 2020. He stated that the incumbent had insisted on the further PCC meeting on 6 December 2020 in the hope that the PCC might change its stance, which it did not.

26. In her undated letter Mrs Dickinson raised three matters of objection.

26.1. Firstly, that there at most 25 spaces remaining in the churchyard and no prospect of acquiring further land to extend the churchyard.

- 26.2. Secondly, that during all her time attending the church, she had never met any member of the Todd family and that none of them had contributed financially to the Church.
- 26.3. Thirdly, that granting the faculty sought could open the floodgates for people who could afford to apply for a faculty, leaving those who had given committed service to the Church with no available space to be found in the churchyard.
27. In his letter dated 13 April 2021 Dr Tebb made a number of observations by way of objection.
- 27.1. Firstly, that had the application by the Petitioners been for the reservation of one grave space and not two, the voting might have been different: the inference is inevitably that in such circumstances both he and his wife might have supported such application. This is confirmed by Mrs Tebb.
- 27.2. Secondly, that given the limitations on the future capacity for burials in the churchyard, he would be reluctant to support any application for the reservation of a grave space because such an approach would probably lead to the churchyard becoming full earlier than would otherwise be the case and thus be unavailable to eligible parishioners.
- 27.3. Thirdly, that from 1994 he was unaware of any application made to reserve a grave space and that in so far as the incumbent in her letter dated 8 January 2021 expressly stated to the contrary, she was incorrect.
- 27.4. Fourthly, that the Todd family neither attended the Church nor supported it financially.
- 27.5. Fifthly, that he only discovered that the Petitioners wished to seek permission to reserve grave spaces on the day of the funeral of Catherine Todd and immediately voiced his concerns.
- 27.6. Sixthly, he asked that if a faculty was granted it should only be on condition that the Petitioners make an annual contribution towards the cost of maintaining the Church and churchyard.
28. In her letter dated 11 April 2021 Mrs Tebb raises the following matters by way of objection.
- 28.1. Firstly, given that space is limited in the churchyard, to grant a faculty to reserve two grave spaces would potentially deprive other families of plots in which to bury their loved ones. Mrs Tebb would have supported an application for a single grave space.
- 28.2. Secondly, the Todd family had no involvement in the Church, its fundraising or events in the community, despite living in the Parish.

- 28.3. Thirdly, that Mr Frost-Pennington who was at the time a churchwarden and a director of the Muncaster Estate, failed to declare an interest as the Todd family were tenants of the Muncaster Estate, that the late Catherine Todd was the Muncaster Estate's longest serving member of staff and that the youngest Petitioner was employed as a chef at a hotel owned by the Muncaster Estate.
- 28.4. Fourthly, that the incumbent was incorrect not to say that for many years the Church had accepted the burial of former residents such as the Deceased and that the Deceased's children would be offered the same opportunity, space permitting and that grave spaces had been reserved in the relatively recent past.
- 28.5. Fifthly, she too urged me that if I granted a faculty, I should do so on condition that the Petitioners made an annual financial contribution to the Church.
29. I note with some sadness that both Mr and Mrs Dickinson and Dr and Mrs Tebb have a relative interred in the churchyard: in the former's case a grandson and in the latter's case a son. However, I am wholly satisfied that the views which they have expressed in this case are not influenced by such matters.
30. I appreciate that each of those making objections as set out above do so in a reasoned and sympathetic way and say that they will fully accept whatever decision I might make.

Determination of the Petition

31. It seems uncontroversial that it is the intention of James Todd, Catherine Todd's surviving husband, to be buried in Catherine's grave in due course. The question thus arises whether it is appropriate that I should grant a faculty to reserve two grave spaces so that the Petitioners may in due course be interred in plots 526 and 527.
32. The determination as to whether I should grant the faculty sought is a matter for the exercise of my discretion.
33. There is a dispute between the incumbent and those objecting to a faculty being granted as to whether, as is contended by the incumbent, 'other grave spaces had been reserved in the relatively recent past'. I am unable to resolve this dispute but am satisfied that it is not necessary to determine such dispute in deciding this application, bearing in mind that all the lay members of the PCC from whom I have received submissions acknowledge that there was a relaxed policy of not objecting to the burial of persons in the churchyard who had a link with the parish, notwithstanding that the churchyard was becoming full.
34. I now address the matters raised by those who object to the granting of a faculty.
35. It is common ground that the churchyard is likely to be unable to accommodate further burials in about 10 years. In such circumstances it would have been readily apparent to all members of the PCC that it might be appropriate to consider whether it should adopt a policy

of allowing the remaining plots in the churchyard to be used as people die, which is what is meant by 'first come, first served', in which case it would be necessary for the PCC to resolve that adopt such a policy and to resist all applications for the reservation of a grave space.

36. I am satisfied that on the facts of this case the PCC did not adopt such a policy and so resolve. For such a policy to be one to which I could have regard, the matter would have to have been discussed by the PCC and the PCC would have had to resolve to that effect, it is not suggested that there has been any such discussion or consequent resolution. Although Mr Dickinson submits that conversations between the unidentified member of the PCC responsible for the churchyard and the undertaker responsible for most of the burials gave rise to a *de facto* policy that applications for the reservation of grave spaces would be resisted, I reject such submission.

37. I am satisfied that, in the knowledge that the churchyard was becoming full, the PCC had established no policy as to the future use of the churchyard or as to its stance in relation to applications for the reservations of grave spaces. Such conclusion is in my view supported by the fact that Dr Tebb states that had the Petitioners applied for the reservation of only one grave space the voting might have been different and Mrs Tebb states that in such circumstances she would have supported the application.

38. Each of those objecting to the granting of a faculty refer to the fact that they do not attend the Church nor make any financial contributions to the Church. By contrast, those supporting the granting of a faculty refer to the fact successive generations of the Todd family have farmed the land in the immediate vicinity of the Church for generations, are a vital part of the community who have supported many people in the community over the years.

39. On the facts of this case, I am inclined to, and do, adjudge that the Todd family's contributions to the life of the local community are to be considered as of equal weight to any financial contributions which they could have, but did not in fact, make to the Church. I can well understand the local feelings in the community, demonstrated by the letters in support of the granting of a faculty, of the huge disappointment at the stance taken by the majority of the PCC and the unnecessary hurt, and damage to the reputation of this Church which would be felt if I were to refuse this application.

40. It is argued that plots 526 and 527 might remain unused when the rest of the churchyard was closed. Whilst I accept that such would be the inevitable consequence of my granting the faculty sought, such consequence flows from the fact that, in the absence of any policy discussed and approved by the PCC for future burials in a churchyard with fairly limited space, I might exercise my discretion to grant the faculty sought in relation to the children of parents who wish to be interred with them in due course.

41. Although it was contended by Mrs Dickinson that to grant the faculty sought would open the floodgates for people who could afford to apply for a faculty to reserve a grave space, leaving no available spaces for those who have given committed service to the Church, this derives simply from the fact that the PCC had no established policy in relation to the future use of the churchyard to which I would have had regard to, albeit not be bound by.

42. Finally, if I were to grant the faculty sought, I am asked to do so on condition of a payment of an annual sum towards the cost of the maintenance of the church and churchyard. I agree that such a condition can, but not must, be imposed but this is dependent on whether the PCC have resolved to apply a policy of asking that such an annual payment should be made when granting a grave space reservation. There was no such policy in force at the time of this application and I do not think that it is fair or just that on the facts of this case I should impose any such condition now, were I to grant the faculty sought.

43. In my judgment the Petitioners' case for the reservation of two grave spaces is formidable. They were each born, baptised, confirmed and brought up as residents of the Parish. They all continue to live together as a family, albeit that at a short time before their mother's death they had moved away from the Parish to reside with their parents in their retirement home. Unsurprisingly, they wish to reserve the grave spaces so they can be buried alongside their parents in due course.

44. Although, as I have said earlier, I do not need to resolve the accuracy of the incumbent's observation that other grave spaces in the churchyard have recently been reserved in the relatively recent past, it is common ground that the parish has adopted a relaxed approach of not objecting to persons being buried in the churchyard. In such circumstances I think that the same relaxed approach should be applied in respect of applications for the reservation of a grave space.

45. There was no discussion at the PCC on 6 December 2000 before the vote was taken [with 4 votes out of the 7 attendees] to not support the Petitioners' Petition. No reasons were given in the minute for such decision although I now been given reasons why the majority felt unable to support the application and have taken such reasons into account in exercising my discretion.

46. I note that, for the reasons set out in her letter cited above, the Petitioners' Petition is supported by the incumbent, albeit that she has now retired. I respectfully agree with her, Mr Frost-Pennington and the many others who support this application that to refuse to grant the relief sought would be unjust in all the circumstances and will result in unnecessary pastoral hurt being caused to each of the Petitioners.

47. Having regard to all the matters set out above I have concluded that, in the exercise of my discretion, I should grant a faculty for the reservation of the grave spaces as sought. In my judgment it is just, fair and reasonable that I should do so, notwithstanding that, for reasons not given, the Petition was not supported by a majority of the PCC for reasons which have never been explained.

48. I thus grant the faculty sought for the reservation of two grave spaces [plots 526 and 527]. Such faculty will expire 40 years from today but may be renewed by any of the Petitioners on application to this court and without payment of any further fee.

49. Usually, the practice of the court would be that the Petitioners should pay the costs of the determination of this Petition but in this case, for pastoral reasons, I waive any fees to which I might be entitled to for such determination. It is not appropriate that I should order that any fees payable to others should be waived.

GEOFFREY TATTERSALL QC

Chancellor of the Diocese of Carlisle