



Faculty – Petition for the reservation of a grave space within the churchyard – Petitioner 72 years of age and resident in the parish for over 50 years – Only sufficient space remaining within the churchyard for about the next three years – Incumbent, churchwardens and PCC all supporting reservation of a grave space next to the grave of the petitioner’s recently deceased husband – Whether exceptional circumstances justifying reservation – Faculty granted for the usual period of 25 years

Petition No: 11029

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

Date: Sunday, 11 August 2024

Before:

THE WORSHIPFUL DAVID HODGE KC, CHANCELLOR

In the matter of:

St James the Great, Radley

THE PETITION OF:

Mrs Priscilla Bowers

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, Brownhills [2020] ECC Lic 3

Re St John, Stockcross [2023] ECC Oxf 8

Re St Leodegar, Hunston [2023] ECC Chi 1

Re St Leonard, Blithfield (Lichfield, 2014)

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

Re St Paul, Caton-with-Littledale [2024] ECC Bla 2

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

Re St Peter, Hilton [2024] ECC Yor 1

Re St Wilfrid, Standish [2024] ECC Bla 1

JUDGMENT

Introduction and background

1. This petition raises the short question whether the petitioner has demonstrated exceptional circumstances justifying the reservation of a grave space in her parish churchyard where only about three years space remains available for future burials.

2. By a petition, dated 28 December 2023, Mrs Priscilla Bowers seeks a faculty authorising the reservation of a grave space (I XI), in the new churchyard of St James the Great, in the Parish of Radley, between Oxford and Abingdon, for the exclusive burial of her mortal remains for the usual period of 25 years from the date of grant of the faculty. According to her petition, Mrs Bowers is 72 years of age; and she has been resident in the parish for over the last 50 years. Entirely understandably, Mrs Bowers wishes to be laid to rest in the burial space next to that where her late husband, Mr William (Bill) Bowers, was recently buried following his death on 13 March 2023. By a certificate forming part of the petition, and dated 27 January 2024, the Rector and the two churchwardens have certified that the average number of burials is six per year; and they estimate that the remaining space in the churchyard will be sufficient for the needs of the parish for only three years. At a special online meeting held on 3 January 2024, the Parochial Church Council (the **PCC**) unanimously passed a resolution supporting this faculty application. I note that the same resolution also resolved to support faculty applications for the reservation of two further spaces in the churchyard, one for a full body burial and the other for cremated remains.

3. When the petition was first referred to me, on 30 January 2024, I noted that it appeared that the churchyard would be full within the next three years; and that (in accordance with the authorities) the burden of proof would lie on the petitioner to demonstrate (on the balance of probabilities) sufficient justification for the court to take the exceptional course of allowing a reservation when there was only limited space remaining in the churchyard for future burials.

4. Once the display period for the usual public notices had passed without any objections, I caused the Registry to issue the following directions:

(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 three more years. In doing so, the court is likely to have regard to the principles set out in its earlier decision in *Re St Mary, Thame* [2022] ECC Oxf 2, and 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 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.

And upon it appearing that it may be expedient, in furtherance of the overriding objective in Part 1 of the Faculty Jurisdiction Rules 2015 (as amended) of dealing with this case justly, cost-effectively, proportionately, expeditiously and fairly, 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:

(4) The petitioner, Mrs Priscilla Bowers, is to write to the Registry within 28 days after service of the court's directions order setting out her views on whether she is content to proceed on the basis of written representations, rather than by way of a hearing. If she is so content, she is to send any written representations upon which she might wish to rely in support of her 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 existing papers.

5. On 12 July 2024 the Registry forwarded to me an email from the Rector, dated 9 July 2024. This stated that the PCC had now agreed that no new reservations should be made in the graveyard. However, since Mrs Bowers's application was one of two that had been discussed before the PCC made that decision, it had their blessing. The Rector reported that the parish were also discussing either extending the graveyard or finding alternative space for additional burials.

6. On 25 July 2024 I received from the Registry witness statements from the petitioner and her daughter-in-law, Mrs Rebecca Bowers, each verified by a statement of truth; and an unsigned letter from the Rector of the church, the Reverend Robert Glenny.

7. The substantive part of the petitioner's witness statement reads as follows:

I would like to set out my reasons as to why I am asking you to make an exception to the current rule and grant my petition for a Gravespace reservation in Radley Churchyard. These reasons are in no particular order and are all important to both myself and my family.

Firstly, I am a resident of the Parish. I have been a resident since I got married in 1972 and moved into Woodlands with my husband William (Bill) Bowers who is now buried in the Churchyard and whose service was conducted in the Church, and whom I would like to be buried next to. Both my parents and his parents lived in the Parish and are buried in the older Churchyard in Radley and I tend to all 3 grave sites keeping them in the best condition I am able to. I have no intentions of moving from the Parish and will be resident here until I die. Both my sons, their wives and their children also live in the Parish. My youngest son was married in the Parish Church and all 3 of my grandchildren attended the School, using the Church frequently as part of their schooling. All 3 grandchildren were Christened in the Church as well as both of my Sons. I am sure you will agree this is a special place to us all as a family, myself especially so. This I hope would align with the applicable law and shows that I would have a 'right' to be buried in the Churchyard.

As a member of the Romany Gypsy Community it is my hope and belief that I should be buried alongside my life partner. This is inherent in our beliefs and I do not feel I can ever rest if I am not with him. I was aware when burying my husband that we would not be able to have a double depth grave so that we could be buried together due to the water levels in the churchyard, hence the application for the space to his side. Whilst this is unusual for those of Romany Descent, it was the next best option allowing me to still be 'with him'. At the time of conversation with the Church in respect of this, no issue was foreseen in regard to this not being a possibility. We believe we should be buried as opposed to cremated in order that we have our possessions with us for what is to come and this is something that I do not believe possible in cremation.

At the time of our application there were no rules, we are aware of, in place in respect of the remaining 'shelf life' of the graveyard, as I believe is referenced in the support letter from The Rev Rob Glenny and the PCC, and I would wish for my application to be taken on the merit of the date of our original discussion of this reservation which was on the passing of my husband back in March of 2023. We made the application and filled in the forms from an email sent to us dated 21.03.2023 and thought the matter had been taken care of from our end. It was not until 29.12.2023 that we were made aware the forms had not been received and our original email had 'slipped off the radar' in regard to our application. We of course took action on this date sending the forms again as per instructions. Again, at that time we were still not aware of any issues with the potential grant of the faculty.

Perhaps we did not understand the process correctly, but it was a shock when we received the letter advising that the gravespace had not been reserved and that now the burden of proof lies with us to try and persuade the Chancellor as to why this application may be granted.

I have recently been diagnosed with Skin Cancer myself. Please find a copy of the letter attached as proof. As you will see from the letter, I am likely to wait 10-12 months for treatment to even start. I am sure you can imagine how stressful this period is going to be for myself and my family, as my husband died from cancer, after a long and protracted fight lasting 7 years, and this is not something we would wish to put anyone else through. If my family could have the peace of mind that if something happened to me, I would be with my

beloved husband, this would alleviate some of the stress for them, and for myself. Whilst I do not wish to think of things in this manner, I must accept the possibility with this diagnosis that my life may be cut short and I may need the space sooner than I would have hoped. At Common Law, every parishioner has a right of burial in the churchyard of the parish unless it is closed by due legal process. I would hope that this would be applicable in my case.

I understand it could be seen to be an exceptional course to grant the application, but I believe I have laid out sufficient justification for this to be granted. Please also see the attached letter from The Rev Rob Glenny and the PCC who have written in support of this application. As you will see he offers support in two veins and I wholly believe it would not be prejudicial to other members of the Parish who wish to be buried within the Parish in allowing me this faculty, especially when, at my age, and with this diagnosis, I do not know how long I have left, and it may be shorter than any of us hope for.

I look forward to your decision.

8. The attached letter, dated 3 July 2024, is from a consultant dermatologist at the Churchill Hospital and records a meeting in the skin cancer screening clinic to review a lesion on the petitioner's left lateral cheek that has been present for the past 12 years but which has been growing and has recently become more prominent, reaching the point where she now needs to cover it up with make-up. There is no past history of skin cancer. The diagnosis is that this is consistent with a basal cell carcinoma. There was very little sun damage overall, and no other lesions of concern. The consultant has arranged to have the carcinoma excised under local anaesthetic; and has apologised for the very long wait (of 10 to 12 months). The lesion "*should only continue to grow very very slowly in this time*". I infer from this that the skin cancer is not life-threatening.

9. The witness statement of Mrs Rebecca Bowers reads:

My name is Rebecca Bowers and I am one of the daughters in Law of Priscilla Bowers (Chrissy). I would like to write to you also in support of her application for the reservation of a gravespace in Radley Churchyard, next to her husband, my Father in Law, William (Bill) Bowers. Thank you for allowing me the opportunity to do so.

As you will see Chrissy and Bill were married in 1972 and lived in Radley their entire married life, where she now still lives as a Widow. While Bill was suffering with Cancer and all the atrocities it inflicted on him and his body, she was a devoted and caring wife under exceptionally arduous circumstances. Bill suffered tremendously through his illness, needing a Tracheotomy for many years and this meant that Chrissy had to be with him at all times to care for him and his needs. Communication was often difficult but their love for one another pulled them through and as a family we managed a very tough, but incredible 7 years of making memories with our children so that they would remember their Pampy in times to come. Chrissy was there through all of it, and they were devoted to one another. As a Romany Gypsy there are strong familial beliefs and traditions determining that Spouses should be buried with one another, traditionally in a double depth grave with a joint headstone. As a family we were aware that would not be possible in Radley due to the water levels, but this is something we discussed while Bill was still here, and it was agreed that being next to each other would be 'just as good'. I know you are probably not able to judge on matters of the heart, but this is literally breaking her heart at the thought of not being with Bill when it is her time. Bill was part of a larger family, and recently we lost the last

brother and his wife, all within a short few months. They have been buried together as is tradition and this is really all that Chrissy wishes for, for herself and Bill.

I have been involved in the discussions with the Rev Rob in March of 2023 on Bill's passing, and we honestly thought the matter was concluded and that the assurances we had been given then, that the grave would be reserved, were something that would be honoured. As I know has gone into her statement, we filled in all the relevant forms in March of 2023 and it was not until very late December of 2023 that we were advised our email had 'slipped through the cracks' and that the forms had not been received or dealt with and we were asked to re-send them. We duly re-filled them in and sent them again but I would ask if it would please be possible to deal with this case on the basis that the original application was sent in March of 2023, instead of the December date. I believe this would make a difference as to the stance of the applications at the time and would hopefully mean this application would be able to be granted.

Chrissy worked her married life in Radley College and has been a part of Radley life and community since the day both her and Bill moved to the Village. She has no intention of moving away and would never leave her family. If anything were to happen meaning she would no longer be able to live on her own, or would need care, our family would step up and take this on, either with help in her current address (No Stairs) or her moving in with one of us. We all live in Radley and so she would still remain within the Parish at all times. We love her dearly and are upset at how much this is weighing on her mind. Despite being diagnosed with cancer herself, all she can currently think about is potentially not being with her husband. I really hope you can see what sort of effect this is having on her and the family and I would urge to please consider allowing the application to be granted and giving both herself, and ourselves, that peace of mind.

I thank you for your time and patience.

10. The Rector writes on behalf of himself and the PCC in support of Mrs Bowers's petition, as follows:

Noting that there is now limited space within the churchyard, and that exceptional circumstances need to be described to justify a reservation, we nonetheless offer our support for two reasons:

(1) The PCC has passed a resolution to the effect that we would now not support any further reservations of graves. However, this application and conversation about it with the Bowers family began before that resolution had taken place, following a funeral and burial of another member of the Bowers family. We believe that for pastoral reasons, a faculty should be granted on the basis that there was sufficient space when the initial conversation took place.

(2) Whilst there is currently limited grave space remaining in the churchyard, the PCC has begun consultation with the Parish Council, Diocese of Oxford, and other agencies to find additional space for more burials in the parish. We recognise that this is a process which may well take some time, but good progress is being made and two potential sites have been identified. We are optimistic that we will be able to provide this space within the next few years and to meet further demand for burials in the parish.

11. It is probably implicit within her witness statement that the petitioner is content for me to proceed on the basis of written representations, rather than by way of a hearing. However, I invited the Registry to confirm this with her expressly. The Registry therefore contacted the petitioner's daughter-in-law, who has been helping her with everything. Mrs Rebecca Bowers has sent an image of a handwritten letter, signed by the petitioner, and dated 26 July 2024, confirming that she is "*happy and content for this matter to be dealt with by way of written representations*".

12. Since this is an unopposed faculty petition, I am satisfied that it is expedient for me to determine this petition without any hearing, and on the basis of the written materials that have been presented to the court. This course is entirely consistent with the interests of justice, and in furtherance of the overriding objective of the Faculty Jurisdiction Rules 2015 (as amended) of dealing with this case justly, cost-effectively, proportionately, expeditiously and fairly.

The legal framework

13. 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 I had occasion to consider the principles upon which a petition to reserve a grave space should be determined where there was only limited space remaining in the churchyard for future burials. The petitioner wished to reserve a double grave space for herself and her partner. The petitioner had been resident in the parish until 2013, the remains of her father and her stillborn child were buried in the churchyard, and all her immediate family still lived in the area. The normal period allowed for the reservation of a grave in the diocese of Oxford is 25 years, but the evidence suggested that there was only room in the churchyard for burials for a further seven to 10 years. I granted a faculty, but limited it to 10 years, giving permission for the petitioner to apply for an extension within 6 months of the expiry of the 10 years. 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.

14. Since my decision on that petition, there have been several decisions of other Chancellors concerning petitions for the reservation of grave spaces within churchyards. I reviewed those decisions at paragraphs 11 – 14 of my most recent decision on this subject as the Chancellor of this diocese, the case of *Re St John, Stockcross* [2023] ECC Oxf 8. I concluded that none of those authorities should lead me to reconsider the (non-exhaustive) list of propositions I had formulated in the *Thame* case. I also stated that it was important to bear in mind the many other, unreported decisions on faculty petitions seeking the reservation of a grave space in which the approach I had adopted in the *Thame* case had been applied without challenge. In the *Stockcross* case, the petitioner was 60 years of age. It was estimated that there were enough grave spaces in the churchyard for about another 11 years. Because of this, I had given a preliminary indication that I would only be prepared to grant a reservation for 11 years, rather than the usual period of 25 years allowed in this diocese. The petitioner objected to such a short period. After receiving, and considering, his further representations, I concluded that the petitioner had demonstrated no special reasons why I should grant a faculty for the standard period of 25 years from the outset (as the petitioner invited the court to do). I therefore determined that a faculty should be issued reserving a grave space for 11 years, and giving the petitioner permission to apply for an extension during the final year, at which time my successor would have to decide whether to allow any extension, depending on the circumstances prevailing at that time.

15. I had occasion to revisit this issue in my capacity as the Chancellor of Blackburn in the case of *Re St Paul, Caton-with-Littledale* [2024] ECC Bla 2. The petitioner in that case, who was aged 51 and had lived in the parish all his life, wished to reserve a grave space in the churchyard for 25 years. There was only space remaining in the churchyard for burials for a further five to seven, but possibly as many as ten, years. There was, however, an additional piece of land, currently belonging to the church and used as a recreation area, which could be brought into use, and would accommodate burials for some 50 further years. The PCC had decided not to support any further reservations of grave spaces; and, together with the minister and the churchwarden, they opposed the petition. In view of the petitioner's limited life expectancy, which, owing to paralysis following an accident, was only estimated at 7 – 10 years, and for pastoral reasons, I decided to grant a faculty reserving a grave space for a period of seven years, so that no-one else with a right of burial would be prejudiced by the grant before the space for further burials was full. I gave the petitioner permission to apply by letter for an extension during the seventh year. In doing so, I followed the approach I had taken in an earlier decision concerning the same churchyard (*Re St Paul, Caton-with-Littledale* [2023] ECC Bla 6, (2024) 26 Ecc LJ 239). There I had identified (at paragraph 13) 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.

I had also emphasised (at paragraph 15 (6)) that the court's decision was based upon "case-specific factors, rather than any inflexible rules", so the decision would "have no prejudicial effect in terms of creating any precedent for other petitions that may be presented in respect of this churchyard".

16 In the course of my judgment in the later case, I noted that since handing down my judgment in the *Stockcross* case, there had been two further relevant court decisions. The first 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.

17. The second decision is that of Deputy Chancellor Obodai (in the Diocese of Blackburn) in *Re St Wilfrid, Standish* [2024] ECC Bla 1. The petitioners, husband and wife, were both in their early eighties, and were resident in the parish, although their names were not entered on the church electoral roll. They sought a faculty authorising the reservation of a grave space for full burial for 25 years. Dismissing the petition, the Deputy Chancellor said this (at paragraphs 20 to 23):

20. It is clear from the petition that the petitioners and their families do have a long standing connection with the Parish going back hundreds of years. I can see and understand why, in those circumstances, they would wish to be buried in the graveyard. However, that is against a backdrop of there now being limited space and the evidence that the PCC have recorded their objection to further applications after a number [of] historical reservations over the last five years or more. As the Rector said in his letter ... , it would see the current rate of new Graves being used up in the next 18-24 months.

21. I do not consider the PCC's policy unreasonable and/or unfair because of the popularity of the particular plot of land, Space R, and the likelihood of running out of grave space in the near future. Nor do I consider the possibility of a further Space T becoming available as a reason to override the PCC's policy because for the moment nobody can say whether the proposed plot will be viable, because it is only when a grave is dug in Space T that anyone will be able to confirm the use or depth of a particular plot.

22. It is clear from the case law that I will only be justified in departing from the PCC's policy in exceptional circumstances; and it is for the petitioners who wish to reserve a grave space in the face of such a policy to show that their case is markedly out of the ordinary and that there is sufficient justification for the court to take the exceptional course of allowing a reservation in such circumstances.

23. I have considered very carefully all the information before me and have reached the decision that there is no sufficient justification for the Court to take the exceptional course of allowing a reservation when there is only space for burials for a further 18 to 24 months. I have every sympathy for the petitioners because, in different circumstances, their familial history and ties to the Parish are likely to have produced a different outcome. They are indeed clearly worthy of burial in the churchyard. However, I must take into account that with so little space remaining and the uncertainties about Space T, if I were to allow the reservation

it will prejudice the rights of other parishioners or worshippers who would otherwise be entitled to be buried in the churchyard. The policy that the PCC have adopted is designed to be fair to everyone and it is one with which I agree.

18. In my judgment, I indicated my full agreement with the decision of the Deputy Chancellor in that case, where, according to the Rector, there was probably room for no more than eight fresh graves in the relevant section of the churchyard, and these were likely to be used up within the next 18 to 24 months. However, I went on to say this (at paragraph 13):

In other cases, however, where there is rather more – albeit, still limited – remaining space, the options available to the consistory court may not involve a simple binary choice between the grant, or the refusal, of a faculty, but may encompass a third option: that of granting a faculty, but for a restricted period of time. Such a course may be justified where:

- (1) the grant of a reservation would be justified but for the limited space remaining within the churchyard;*
- (2) the grant of a faculty for a limited period of time would not offend against the rationale underlying any policy adopted by the PCC governing the reservation of gravespaces; and*
- (3) the grant of such a time-limited faculty would serve some useful purpose.*

19. Since then, there has been one further relevant authority, the decision of Chancellor Lyndsey de Mestre KC in *Re St Peter, Hilton* [2024] ECC Yor 1 (in the Diocese of York). In that case, a married couple (aged 80 and 81) who had lived in the village for 46 years each applied to reserve a grave space. The PCC did not support the applications, as they had previously adopted and applied a policy of not supporting the reservation of grave spaces in view of the fact that the churchyard retained only some 15 years' worth of available grave spaces. Chancellor de Mestre KC considered that the policy was legitimate, and that the starting point was that the court should afford significant weight to the PCC's policy of non-reservation in the determination of the petition, allowing only exceptional circumstances to justify any departure from it. The need to show exceptional circumstances arose both as a consequence of the respect which the court should afford the autonomy of a PCC in determining its views by proper, thoughtful and democratic process, and as a matter of fairness to those who may have wished to, but had not, sought reservations because of their acceptance of the PCC's policy. Demonstrating exceptional circumstances required a petitioner to show that their case was "*markedly out of the ordinary*": see paragraph 22, citing a decision of Chancellor Eyre QC in *Re St James, Brownhills* [2020] ECC Lic 3 (in the diocese of Lichfield) adopting a test he had earlier formulated in an previous case in the same diocese (*Re St Leonard, Blithfield*), decided in 2014, at paragraph 16. The petitioners had been invited to put forward any exceptional circumstances, but they had not pointed to any factors which marked their position out as exceptional. In those circumstances, Chancellor de Mestre KC refused their petitions.

Analysis and conclusions

20. The petitioner is a long-standing resident of the parish, where she has lived since her marriage to the late William Bowers in 1972. Subject to there being sufficient available space, she has a legal right to be buried in the churchyard. She has an understandable wish to be buried in a grave next to her recently deceased husband. Her petition has the support of the incumbent, the churchwardens, and the PCC. The first question for the court is whether, in light of all of this, the petitioner has demonstrated sufficient exceptional circumstances to justify elevating her

presumptive right to be buried in the churchyard over the rights of those with a similar right who may predecease her after the churchyard is full. Are the petitioner's circumstances markedly out of the ordinary in the context of a grave reservation petition? If so, a second question then arises: For how long, and on what terms, should any reservation faculty be granted to the petitioner?

21. In my judgment, the petitioner's circumstances are markedly out of the ordinary in the context of a grave reservation petition. She has demonstrated sufficient justification for the court to take the exceptional course of authorising the reservation of a grave space next to the grave of her late husband even though she is 72 years of age, and there is only enough space available for future burials for another three years or thereabouts. The factors which lead me to this conclusion are as follows:

(1) The petitioner has resided in the parish since she got married in 1972 and moved into a home with her late husband, Bill Bowers. He died in March 2023 and is buried in the new churchyard, following a funeral service conducted in the church. Understandably, the petitioner wishes to be buried as near to her late husband as possible. But that wish has a heightened resonance for this petitioner.

(2) As a member of the Romany Gypsy Community, it is the petitioner's hope and belief that she should be buried alongside her life partner. This is inherent in their beliefs, and the petitioner does not feel that she can ever rest if she is not with him. Due to the water levels in the churchyard, the petitioner was aware, when burying her late husband, that they would not be able to have a double depth grave, enabling them to be buried together, and that is why she is applying to reserve a grave space next to his grave. Whilst this is unusual for those of Romany descent, it was the next best option, allowing the petitioner still to be '*with him*'. At the time of her conversation with church representatives about this, no issue was raised or foreseen about this not being possible. Romany people believe that they should be buried, rather than cremated, so that they may have their possessions with them for what is to come; and this is something that the petitioner does not believe would be possible if she were to be cremated. So, exceptionally, in this case interment in the same grave as her late husband is not a realistic option for this petitioner.

(3) At the time her late husband was laid to rest in the new churchyard, and she first discussed the issue of reserving a grave space with the church authorities, the petitioner was not made aware of any rules regarding the remaining '*shelf life*' of the churchyard. To that extent, it could be argued that the petitioner arranged for her late husband to be laid to rest in the churchyard in the mistaken belief that there would be no impediment to her being laid to rest in a grave next to him. Were the court to refuse her application to reserve a grave space to facilitate this, in theory it would be open to the petitioner to apply to exhume his remains from their present resting place, with a view to their reinterment in some other grave space where, in due course, she could be laid to rest with him. That is a course that should be avoided if at all possible.

(4) Apart from the grave of her recently deceased husband, the petitioner has other close family ties with the wider churchyard. Both of her own parents, and both of her late husband's parents, lived in the parish and are buried in the older churchyard in Radley; and the petitioner tends to all three graves, keeping them in the best condition she can.

(5) The petitioner has strong, and continuing, links to the parish. She has no intention of moving away from the parish, and expects to continue living there until she dies. Her two sons, their wives, and their children also live in the parish. Her younger son was married in the parish

church; and all three of her grandchildren attended the local school, using the church frequently as part of their schooling. All three grandchildren were christened in the church, as were the petitioner's two sons.

(6) Despite recognising that there is now limited space within the churchyard, and that exceptional circumstances need to be established to justify a reservation in such circumstances, the Rector and the PCC nevertheless support the reservation application. They do so for two clearly articulated, and sensible, reasons:

(a) The PCC have now passed a resolution that they will no longer support any further reservation of grave spaces, thereby addressing the shortage of space in the churchyard for the future. However, they recognise that the present application, and the conversations about it with the Bowers family, began before that resolution had taken place, following the funeral and burial of another member of the Bowers family. The PCC believe that, for pastoral reasons, a faculty should be granted. They do so expressly on the basis that there was sufficient space when the initial conversation took place. Whilst I would not accept that there was sufficient space in March 2023, I recognise that the expectation entertained by the petitioner at the time of her late husband's funeral that she would be able to be laid to rest next to his grave constitutes a valid pastoral reason supporting the reservation.

(b) Whilst there is currently limited grave space remaining within the churchyard, the PCC have begun consulting the Parish Council, the Diocese of Oxford, and other agencies with a view to finding additional space for more burials in the parish. The PCC recognise that this is a process which may well take some time; but they consider that good progress is being made, and two potential sites have been identified. They are optimistic that the PCC will be able to provide this space within the next few years, and thereby meet the further demand for burials within the parish.

22. Whilst none of these factors, individually, would justify the court in taking the exceptional course of authorising the reservation of a grave space when there is only enough space remaining within the churchyard for another three years or so of future burials, when taken in combination, they operate to take this case markedly outside the norm for a grave reservation petition. This particular decision is based upon case-specific factors, rather than any inflexible rules. It will therefore have no prejudicial effect in terms of creating any precedent for other petitions that may be presented in respect of this churchyard, particularly in light of the PCC's recently formulated, and articulated, policy of no longer supporting any further reservation of grave spaces. I have already noted that at the same time as they passed the resolution to support this petition, the PCC also voted to support two other reservation applications. These are not before me; and I know nothing about the circumstances of either application. This decision should not be regarded as affording any guide to the outcome of either of those two applications should they ever come before me. The circumstances of the present application are exceptional.

23. The petitioner asserts that she made her application by filling in the forms sent to her with an email dated 21 March 2023, and thought that the matter had been taken care of from her end. It was not until 29 December 2023 that she was made aware that the forms had not been received, and that her original email had '*slipped off the radar*' as regards her reservation application. She immediately re-submitted her application. She says that it was a shock to receive a letter

advising her that the gravespace had not been reserved, and that the burden of proof now rested with the petitioner to try and persuade the Chancellor why her application should be granted. The petitioner would wish her application to be judged by reference to the date of her original discussions about this reservation, which was on the passing of her husband back in March of 2023. I attach no weight to this factor because even if I had been considering this application back in March 2023, I would still have had to be persuaded that the court should take the exceptional course of granting a grave reservation with only some four years of available space remaining within the churchyard.

24. The petitioner also relies upon the fact that she has recently been diagnosed with skin cancer. She is likely to have to wait some 10-12 months for treatment even to start. I understand how stressful this period is going to be for the petitioner and her family, particularly as Mr Bowers died from cancer, apparently after a long and protracted fight, lasting seven years. I also recognise that it would alleviate some of the stress for the petitioner and her family to have the peace of mind of knowing that if something should happen to her, the petitioner would be with her beloved husband. Whilst I have every sympathy for the petitioner and her family, I do not consider that this diagnosis of skin cancer, whether taken alone or in combination with other factors, should take the case outside the norm for reservations petitions. I infer from the terms of the consultant dermatologist's letter, and her acquiescence in a ten to twelve months' wait for any surgical intervention, that there is no appreciable risk of the petitioner's life being cut short by this diagnosis, or that she may need a grave space any sooner than she might otherwise have hoped.

25. 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 her late husband of more than 50 years. I must therefore go on to consider the separate question of whether it would be right to extend the initial period of duration of that faculty for longer than the period when the churchyard is likely to have sufficient space available for future burials. In the special circumstances of this case, I have concluded that there are special reasons why I should grant a faculty for the standard period (for this diocese) of 25 years from the date of grant.

26. Where there is only space remaining within a churchyard for less than 25 years of future burials, fairness to those living and/or dying within the parish, and due deference to their rights of burial in the parish churchyard, will usually point decisively towards a lesser period than 25 years for the duration of a reservation faculty. In the present case, however, any limitation of the faculty to an initial period of three years would serve no sensible or useful purpose. There is no evidence that the petitioner is suffering from any life-threatening illness that might restrict her life expectation to any period less than three years. There is no suggestion that additional space to meet the demand for future burials within the parish will be secured within the next three years. Further, the petitioner's need is not for a grave space anywhere within the churchyard, but a specific space next to the grave of her recently deceased husband. To grant her that comfort for a limited period of three years, even with the hope of renewal towards the end of that period, will not satisfy her needs. Here, it seems to me that the court is faced with the binary option of either refusing the petitioner the grave reservation she seeks, or granting her a reservation for the full standard period of 25 years (for no other period sensibly suggests itself). For the reasons I have given, I will grant the petitioner a faculty for the reservation of the grave space numbered I

XI in the new churchyard of St James the Great, in the Parish of Radley, for the usual period of 25 years from the date of grant. The faculty will be subject to the following conditions:

- (1) The benefit of the reservation is personal to the petitioner and is non-assignable.
 - (2) Any fees payable under any current diocesan parochial fees order must be paid to the minister and the PCC of the parish within 56 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.
27. In the usual way, I charge no fee for this written judgment.

David R. Hodge

The Worshipful Chancellor Hodge KC

The Eleventh Sunday after Trinity

11 August 2024