

**Neutral Citation Number: [2023] ECC StA 1**

**IN THE CONSISTORY COURT OF THE DIOCESE OF ST ALBANS**

**IN THE MATTER OF THE CHURCHYARD AT ST MARY'S, STANDON**

**and**

**IN THE MATTER OF THE PETITION OF AMANDA JOHNSON**

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JUDGMENT

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1. By a Petition dated 10 November 2021, the petitioner, Amanda Johnson, seeks the reservation of a single depth grave space in the churchyard at St Mary's church, Standon. Ms Johnson is 61 years old, a resident of Standon and is on the church electoral roll. She attends church occasionally but has no other connection with it<sup>1</sup>.
2. Ms Johnson's request is not supported by the PCC<sup>2</sup>. There are no party opponents in this matter.
3. The churchyard covers approximately two and a half acres of steeply sloping land, divided into a lower and an upper section and an adjacent meadow (purchased by the church and opened in 1999). There are currently 248 grave available spaces in the churchyard meaning that there is, it is estimated, a further 35 years' worth of space available<sup>3</sup>. However, at a meeting held on 21 September 2021 the PCC voted unanimously to adopt a policy not to support future applications for grave space reservations. Pursuant to my directions, the PCC provided a statement explaining its position in more detail, and I will refer to that response further below.

Procedural history

4. Ms Johnson has been provided with all materials and responses and has been given opportunities to respond to those and to put before the court her own reasons for advancing her Petition. Her email dated 27 September 2022 contains her substantive reply.
5. Ms Johnson has indicated her consent to this matter being dealt with on paper<sup>4</sup> and has been provided with a cost booklet.

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<sup>1</sup> Per Petitioner's answer to question 5 of the petition form.

<sup>2</sup> By directions issued by this court on 20 September 2022 the PCC's submission of its policy opposing the reservation of grave spaces together with the minutes of a meeting at which the PCC voted unanimously to reject Mrs Johnson's application have been deemed, for the purposes of these proceedings, equivalent to a written notice of objection.

<sup>3</sup> The population of the parish is approximately 4000 and the average yearly number of burials over the past 3 years is 7p.a.

<sup>4</sup> Email 1 December 2022.

## Discussion

### Legal position

6. I have had regard to the judgment of Ch. Hodge KC in *Re St Mary, Thame*<sup>5</sup> which contains a comprehensive review of decisions relating to grave reservations by other Chancellors, including cases where PCCs had adopted policies of not supporting grave reservations. Although not bound by the decision of the learned Chancellor in that case or decisions made in the cases from other Dioceses cited in his judgment, such decisions of consistory courts in earlier cases do, as Ch. Hodge KC observes, provide potentially helpful indications as to how the circumstances of other similar cases have been viewed.
7. A clearly expressed thread running through those cases where PCCs had adopted policies of not supporting grave reservations is that the Consistory Court will generally support a policy of non-reservation unless such a policy reveals bad faith or is unreasonable (see *Re Dilhorne Churchyard*<sup>6</sup>; *Re St Mary, Doddestone Churchyard*<sup>7</sup> and *Re St Mary, Doddington*<sup>8</sup> amongst others). The chief rationale for this approach is as expressed by Chancellor Aglionby in *Re St Nicholas, Baddesley Ensor*<sup>9</sup>: “*If I was to favour the Petitioner I would have to do so to the detriment of other parishioners who have accepted the PCC’s policy as being both sensible and fair to all.*”
8. Such a policy will not necessarily be determinative of the outcome of a faculty application in all cases. In *Re St Mary & St Radegund, Postling*<sup>10</sup> the Commissary General of the Diocese of Canterbury observed that an exceptionality threshold existed, whereby it was open to the Court to decide that the position was sufficiently exceptional to justify granting a faculty notwithstanding the significant weight to be given to the PCC’s position. In that case (and similarly in some other cases cited by Ch. Hodge KC in *St Mary, Thame*) it was held that the exceptionality threshold had been met on the grounds of the degree of family connection to the church and churchyard, coupled with the petitioner’s particular service to the village and the church.

### Evaluation of the St Mary’s PCC policy

9. In the case of St Mary’s, the PCC’s adoption of its policy is relatively recent. It was introduced by unanimous vote on 21 September 2021. There is a reflection of the case law position contained in the resolution, in that it is expressly noted that exceptions to the general policy are still possible.

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<sup>5</sup> [2022] ECC Oxf 2

<sup>6</sup> [2001] 6 ECC LJ 77

<sup>7</sup> [1996] 1 WLR 451

<sup>8</sup> [2020] ECC Ely 2

<sup>9</sup> [1983] Fam 1

<sup>10</sup> [2021] ECC Can 1

10. When directed to provide further information regarding the policy, the PCC provided a helpful note setting out its rationale and the way in which the policy has so far been observed, the key parts of which note the following factors:

10.1. There has been a surge of burials in recent years, possibly influenced by the increase in the cost of cemetery burials. There has also been an increase of interest in the reservation of grave spaces;

10.2. In principle, the PCC prefers to allocate space as and when need arises, i.e. on death. This affords an equal chance and makes for an orderly use of spaces row by row. It is felt that this best serves the community as a whole;

10.3. The churchyard is successfully managed for wildlife conservation, which is part of the attraction of the churchyard. The level part of the meadow is filling rapidly and the sloping remainder is likely to require terracing, both of which will affect and reduce the conservation area. The PCC wish to avoid reserved spaces further hastening encroachment into the unused and meadow areas of the churchyard, and avoid the need for terracing, as part of their active conservation plan;

10.4. The approach of the PCC is not intended to be doctrinaire. It is expressly capable of exception in exceptional circumstances. Since its inception, the PCC have allowed only one exception to its policy by supporting the case of a seriously ill person with a particularly strong connection with the churchyard (in particular, long service as one of the maintenance team) and (which was the decisive factor in the case) had submitted their application for reservation of a space before the PCC's policy was passed.

11. Having considered the PCC's reasons for introducing the policy I conclude that they are clearly articulated, readily understandable and objectively reasonable. The evidence of the PCC's application of its policy since its introduction indicates that it is being applied consistently. The decision to introduce the policy is justified, having been motivated by an increase in burials and grave space reservation enquiries and it is based on reasonable considerations of fairness to the community and a concern to minimise and slow the impact on conservation. There is nothing to suggest bias, bad faith or unfairness.

12. It may be said that there is a counterpoint to this assessment arising from the fact that the churchyard retains 35 years' worth of available grave spaces. In comparison with some other churchyards where such policies are sometimes legitimately introduced in light of limitations due to lack of space, this is relatively ample. However it does not seem to me that this is a factor of any particular weight given that there is an essential fairness in adopting a policy which places all parishioners on a level playing field at a time when there is sufficient space, rather than imposing such a policy later in the day when it is likely that some, but not all, will have secured their grave reservations by getting in early.

13. In these circumstances I consider that the policy is legitimate and that the starting point is that this Court should afford significant weight to the PCC's policy of non-reservation in

the determination of this petition, allowing only exceptional circumstances to justify departure from it. The need to show exceptional circumstances arises 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 have not, sought reservations because of their acceptance of the PCC's policy.

Evaluation of exceptionality

14. I turn next to the question of whether the facts of this petition are sufficiently exceptional to justify granting a faculty notwithstanding the significant weight to be given to the PCC's policy. For the reasons which follow I conclude that they are not.
15. Ms Johnson has been invited to provide this Court with any information to support her petition, in particular the reasons why she believes her case to be an exceptional one justifying departure from the PCC policy. A letter from the Registry dated 20 September 2022 enclosed case law illustrating the scope of legal issues the Consistory Court must consider when evaluating requests for grave space reservations and clearly spelled out for Mrs Johnson the need to "...provide in writing any reasons why you consider that an exceptional course should be taken in this case granting a reservation despite the PCC's policy of opposing reservations". A further opportunity for Ms Johnson to do so was later directed on 29 November 2022, following receipt of the PCC's response.
16. Ms Johnson complied with the directions and her explanation clearly and concisely expresses her motivations for petitioning the Court for a faculty:

*"...My reason for requesting a burial plot was for peace of mind.*

*I have lived in the village from the age of 3 and obviously it's home to me. As the years pass one feels as though plans need to be made. Thinking of my children/grandchildren I thought it would be nice for them to have somewhere to visit locally. Standon is such a beautiful village and where I wish to be laid to rest..."*

17. The reasons Ms Johnson gives – (i) a desire to honour the fact that she has spent almost her entire life living in the parish, coupled with her feelings that (ii) she would like her family to be able to retain that connection after her death through visits to her grave, and (iii) a personal need to introduce some certainty about her plans – are readily understandable. They succinctly articulate desires which will be common to many in the parish and elsewhere.

18. However, demonstrating exceptional circumstances requires a petitioner to show that their case is “*markedly out of the ordinary*”<sup>11</sup>. Ms Johnson has not pointed to any factors which mark her position out as exceptional. In these circumstances her petition must be refused.

### Conclusion

19. For the reasons I have given I refuse to grant a faculty for a grave space reservation in this case.

**Lyndsey de Mestre KC**  
**Chancellor of the Diocese of St Albans**

**1 February 2023**

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<sup>11</sup> Per Chancellor Eyre in *Re St James, Brownhills* [2020] ECC Lic 3.