

**IN THE CONSISTORY COURT AT LINCOLN**

In the matter of St Andrew, Horbling and Mr John Ward, deceased.

Judgment

1. By a Petition dated 15/11/21 Kevin Ward seeks a Faculty for the exhumation and re-interment of the remains of his father John Ward who was buried on 16/7/20 in plot C17 in the churchyard of St Andrew, Horbling.
2. The background to this Petition indicates with great clarity the importance of an up to date churchyard plan being easily available in the church to visiting clergy, undertakers and grave diggers. The absence of such a plan has created the circumstances in which confusion and misunderstanding have arisen about whether a grave space has or has not been reserved. This has of course caused great upset and distress to the family of Mr Ward. All Mr Ward's immediate family support this Petition. It is also supported by the Rural Dean and the Churchwarden Dr Bunker- the church is in interregnum at the moment.
3. I understand that in the investigation into this matter the Rural Dean has found that there is no record of any burials in the churchyard since 2017 which is very troubling. I have seen a page of the burial register with burials from 17/1/20. I will have more to say about these issues at the end of this Judgment.

4. Mr Ward died on 2/7/20 aged 89 and interred in plot C17. It appears that there was an understanding by the Petitioner Kevin Ward that his mother would be interred next to his father in plot C18. Regrettably no Petition for a Faculty was ever sought to reserve this plot. It is however clear from the email of 8/2/21 from Fr Knox to the Petitioner that both of them assumed that C18 had been reserved for Mrs Ward, because this correspondence between them concerns the Petitioner reserving for himself the space adjacent to the one identified for his mother. Fr Knox sent the Petitioner an application form for him to reserve this adjacent plot (C19). The PCC supported his application in their minutes dated 10/3/21.
5. It appears that around March 2021 Fr Knox moved parishes to one in Devon. He has told the Petitioner that on 26/3/21 he submitted a churchyard plan to the churchwarden Dr Gavin Bunker. The plan showed that C18 had been reserved for Mrs Ward.
6. On 3/10/21 the Petitioner visited his father's grave and found that there had been an interment in C18. That burial was of Iris Zuehlke who was interred in that plot in September 2021.
7. Upon establishing these facts the Petitioner contacted Fr Knox and then the Rural Dean. He also telephoned the churchwarden Dr Bunker about the churchyard plan sent to him by Fr Knox before he left the parish. The response he received, as recalled by the Petitioner, was deeply unsatisfactory.
8. The Petition seeks the exhumation of Mr Ward's remains and their reinterment in the row behind (row D) so that his wife can be buried next to him, as was always the plan, and the Petitioner can go next to her when the time comes. Exhumation is the lifting of the human remains from the ground and can only be permitted in limited

circumstances. The Christian theology of burial is that it is final following the committal of the deceased and exhumations are only permitted in limited circumstances.

9. However, Mr Barnacle a very experienced gravedigger used by the undertakers, is confident that the grave conditions will be such that it will be possible to dig a trench from C17 where the remains of Mr Ward are currently buried so that the coffin can be pulled into the next row (row D) and fill that grave space. The email of 17/1/22 from the undertakers confirms this having spoken to Mr Barnacle.
10. I am satisfied that such a procedure would not constitute exhumation of the body because at all times the remains would not be lifted from the ground but remain at the depth at which they were buried. A Faculty is required for this process because it interferes with human remains after burial, which would be unlawful without lawful permission, but because it is not an exhumation the legal framework set out in In re Blagdon 2002 Court of Arches does not apply.
11. I am satisfied that an error has been made which should in fairness to the Petitioner and his family be corrected if this is lawful. I am satisfied that it is. There was no mistake in the interment of Mr Ward in C17 on 16/7/20 but there have been subsequent mistakes by the church in failing to have an up to date churchyard plan available at all times which have led to an interment taking place in C18 which was reasonably understood by the Petitioner and his family to have been reserved for Mrs Ward.
12. I grant a faculty for the digging of a trench from C17 up to the next row (Row D) and for the coffin of Mr Ward to be pulled along that trench and into the new grave space. An application for a faculty

to reserve the grave space adjacent for Mrs Ward will have to be made in the usual way (and likewise if the Petitioner wants to reserve the plot adjacent to his mother).

13. Conditions of the faculty are:

- (i) the work must be carried out behind screens and at such a time as not to cause offence or distress to others visiting the churchyard
- (ii) the work must be carried out under the supervision of the Rural Dean
- (iii) the work must be completed as soon as possible and no later than 28 days from the issuing of this Faculty
- (iv) an up to date and accurate churchyard plan must be prepared under the supervision of the Rural Dean and a copy placed in the Vestry for reference by visiting clergy, undertakers and gravediggers.

14. I make the Churchwardens of St Andrew, Horbling parties to these proceedings. I note that the Petitioner has accepted liability for the faculty fees, but not for the costs of the undertaker in the works that I have authorised. I am minded to require the PCC of St Andrew Horbling to pay or make a contribution to these costs but will not do so until:

- (i) the PCC and in particular the churchwarden Dr Bunker, have an opportunity to make any submissions to me
- (ii) the undertakers have provided a bill of costs for the works.

15. I will give the undertakers 28 days to submit the bill of costs in respect of the works required. The PCC have 28 days thereafter to

make any representations to me why they should not be required to pay the undertakers' costs (or a contribution thereto).

16. From my experience of this Diocese over many years, I am confident that churchwardens understand the vital role they play in the life of their parish churches, particularly during interregnum. However, in this case I am concerned that the responsibility held by the churchwardens in the management of the churchyard has not been fully understood. The failure to have an accurate churchyard plan easily available has led to this distressing and wholly avoidable situation. In an interregnum it is even more important that their responsibilities are discharged with care and completeness. I would therefore be grateful if the Rural Dean, who has already been involved in this matter, could investigate this issue so that I am reassured that the churchwarden's responsibilities under Canon E1 are fully understood by those that serve in this office at St Andrew's.
17. I waive my fee.

The Revd and Worshipful Chancellor HH Judge Mark Bishop

22/1/22