

**IN THE CONSISTORY COURT  
OF THE DIOCESE OF CARLISLE**

**RE ST MARY ALLITHWAITE**

**JUDGMENT  
delivered on 28 March 2016**

*Introduction*

1. By his Petition dated 6 August 2015 Ian Strickland Drury [‘the Petitioner’] seeks a faculty for the reservation of a double grave space in the churchyard of St Mary Allithwaite for himself and his wife Christine Drury.
2. The Petition is not supported by the Parochial Church Council of St Mary Allithwaite [‘the PCC’].
3. The Petitioner and his wife, who at the date of the petition were aged 63 years, have close links with the parish. The Petitioner was born and brought up in Allithwaite and he and his wife have resided most of their lives there. The Petitioner’s mother and many other family members are buried in the churchyard. He wishes to reserve a grave space adjacent to his mother’s grave.
4. The PCC’s lack of support for the Petition derives from the fact that there are on average 4 burials in the churchyard each year and that, at the present rate of burials, the churchyard will be full in about 10 years. So it was that on 8 July 2009 the PCC resolved to accept a recommendation of its Standing Committee that ‘Given that we have a small churchyard and limited spaces the PCC does not support reservation of grave spaces’. There was one abstention. I have no doubt that such policy exists because allowing the reservation of grave spaces runs the risk of prejudicing others who die in the near future and who have a right to be buried in the churchyard.
5. Mrs Pat Rowsell, the PCC Secretary has confirmed that since such resolution was passed in 2009 there have been no petitions for grave space reservations other than that made by the Petitioner.

6. When the PCC considered this Petition at its meeting on 12 October 2015 the minutes record that 'PCC had previously resolved not to support the reservation of grave spaces ... and have therefore rejected the current application to reserve a grave space'.

7. Thus there is no personal objection to the Petitioner. The PCC's lack of support for the Petition derives from a general policy that no grave spaces should be reserved and that, presumably, graves should be utilised as and when those who have a right to be buried in the churchyard die.

8. In her letter to the Petitioner dated 4 January 2016 Mrs Rowsell referred to such general policy but, correctly, advised the Petitioner that, notwithstanding the PCC's lack of support for the application, the Petitioner was at liberty to petition the Chancellor who, in determining such petition, would take into account all the circumstances including that the Petitioner's mother was buried in the churchyard, that the plot sought to be reserved was next to the grave of the Petitioner's mother and that he had lived in Allithwaite all his life.

9. Having considered the application I was satisfied, pursuant to Rule 14.1 of the Faculty Jurisdiction Rules 2015, that it was expedient to determine the proceedings on consideration of written representations and I thus caused both the Petitioner and the PCC to be asked whether they would agree in writing to my determining the application on consideration of written representations.

10. Both parties having consented to my determining the petition on consideration of written representations, I now do so.

11. I also invited the Petitioner and the PCC to make such further additional submissions as they wished. The Petitioner filed further submissions but the PCC did not wish to do so.

*The Petitioner's further submissions*

12. In his letter dated 11 March 2016 the Petitioner states that after his mother's funeral in 2011 he approached the incumbent and asked whether he could reserve the grave space adjacent to his mother's grave and was told that he did not see why not because the churchyard was owned by and for the people in the village. Although I do not question whether such was said, such was an incorrect statement of the legal position in that the freehold of a churchyard vests in an incumbent and, such fact notwithstanding, the only lawful way in which a grave space may be reserved is by a faculty granted by the Diocesan Chancellor.

13. Some time later when the Petitioner visited the incumbent to complete the faculty application the incumbent stated 'that the PCC was not keen on the reserving of grave spaces, due to the area available' at that time. As to this I do wonder whether the Petitioner has unintentionally underestimated this given that since there can be no doubt that since 2009 the PCC has had the policy of not supporting grave space reservations and there have been no other applications to reserve grave spaces.

14. The Petitioner also recollects the incumbent stating that the present churchyard should last another 10 years [which seems to be common ground] but that when the churchyard is full there is adjoining land which will be available. He said this was unofficial. I am not told that there any future proposals to extend the churchyard. Accordingly I must deal with this petition on the basis that the churchyard is almost full and that there are no plans to extend it. Of course, if in the future any such proposals come to fruition, it may be that the PCC will adopt a different and more relaxed approach to the reservation of grave spaces and in that eventuality the Petitioner would be at liberty to make a further petition.

15. At the heart of the Petitioner's letter is the simple, dignified and restrained submission that 'with my mother, my wife and I are the last of the family and it would be nice to be kept together if possible'. That said he states that he will fully abide by my decision.

#### *The law*

16. The Petitioner resides in Allithwaite and I have assumed that he is a parishioner. As such he has a right of burial in the churchyard unless it is closed by legal process which it is not. Although a similar right would be enjoyed by all persons whose names are on the electoral roll of the parish [see section 6(1) of the Church of England (Miscellaneous Provisions) Measure 1976] neither the Petitioner nor his wife are on the electoral roll.

17. In *Re West Pennard Churchyard* [1991] 4 All ER 124, at 126, Newsom Ch stated:

'If a person with a legal right of burial wishes in his lifetime to assure his personal representatives of a right to bury his remains in a particular place in the churchyard, he must apply to this court for a faculty to reserve that grave space. Whether such a faculty shall be granted rests wholly in the judicial discretion of the court. If there is plenty of room in the churchyard it is freely granted to a petitioner who has a legal right of burial. What such a faculty does is to protect the petitioner against the hazard of losing his legal right in his lifetime (eg by ceasing to live in the parish), and to require whoever is the incumbent when the petitioner dies to allow his remains to be buried in the position in the churchyard defined in the faculty. To this extent, therefore, the faculty deprives the incumbent of his right to prescribe the position where a burial is to take place; and it deprives the parishioners generally of the space becoming available if the petitioner moves away.'

18. At 128, Newsom Ch made helpful observations as to how the judicial discretion might be exercised in a case of this type. He stated:

'The court is usually disposed to grant the reservation petition of a person who has a legal right of burial. Such a case may be further strengthened if the remains of one or more of the petitioner's relatives are buried nearby. Or it may be weakened if the churchyard is on the point of being full'.

19. In that case Newsom Ch granted the faculty sought notwithstanding that the petition for the reservation of a grave space was opposed by the parochial church council partly because of its policy that no grave spaces should be reserved [and Newsom Ch concluded that such policy was illegitimate because it purported to interfere with the discretionary powers of the consistory court to grant reservations of grave spaces] and partly because the petitioner was aged only 36 years.

20. In *Re St Nicolas Pevensey* [28 March 2012 : Chichester] Hill Ch expressly addressed the question of whether a faculty should be granted where there were very few grave spaces remaining in the churchyard. He said this:

‘Where, as here, pressure of space is acute, it would be wrong for any Consistory Court to grant the reservation of a grave space such as to prejudice future burials. Those with a legal right of burial must therefore be buried in the order in which they die until such time as the churchyard is full’.

21. Although Newsom Ch’s reasoning in *Re West Pennard Churchyard* was based on conjecture as to the stage as which a churchyard is full, like Hill Ch in *Re St Nicholas Pevensey* I would be reluctant to adopt such an approach.

#### *Determination*

22. Whether it is desirable or not to allow for the reservation of grave spaces is a matter on which different views, including that of Chancellors, can be held legitimately. In such circumstances it is appropriate that the court exercises a discretion as to whether to grant a faculty for the reservation of a grave space.

23. I have no doubt that the policy adopted by the PCC since 2009 is capable of being justified on reasonable grounds and is not inherently unreasonable. It is designed to achieve fairness to all who have a right to be buried in the churchyard and the absence of any faculties being granted to reserve grave spaces suggests that the policy has been accepted by others since such time.

24. In my judgment my exercise of discretion should have regard to such policy because the PCC is likely to be well-placed to know the needs and desires of local parishioners and the circumstances of the churchyard. The position would be different if, as in *Re West Pennard Churchyard*, the purported policy of the parochial church council was illegitimate because it was based on a misunderstanding of the legal position.

25. That is not to say that such a policy is conclusive and removes this court’s discretion. However, fairness to those who have subordinated their own preferences to the PCC’s policy suggests that this court should only allow reservations in exceptional cases.

26. I am not satisfied that this is an exceptional case.

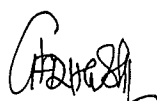
27. On the facts of this case, there are hardly any grave spaces available in this churchyard and to reserve one for any particular individual would serve to prejudice the public right of burial enjoyed by all parishioners until such time as the churchyard is full.

28. Although the Petitioner has a right of burial in the churchyard and although on the facts of this case there may be factors, in particular the burial of his mother in the adjoining grave, I am satisfied [as was Hill Ch in *Re St Nicolas Pevensey*] that 'the very limited number of adjacent plots is such that, even with the most generous exercise of judicial discretion, it would not be appropriate or just for this court to authorise the grant of a faculty'.

29. Moreover I am satisfied that where space in a churchyard is limited, as is the case here, it is appropriate that individuals with a legal right of burial should be buried in the order in which they die until such time as the churchyard is full. To conclude otherwise would create a real injustice to those who in circumstances of loss have accepted the PCC's policy and others who have a legal right to burial who pre-deceased Petitioner and his wife.

30. It therefore follows that for the reasons set out above this petition is dismissed and, in accordance with the practice of the court, the costs of an occasioned by it are to be borne by the Petitioner.

31. I know that the Petitioner will understand and accept the reasons for this adverse decision.



**GEOFFREY TATTERSALL QC**

Chancellor of the Diocese of Carlisle