

**In the Consistory Court of the Diocese of Worcester**  
**Archdeaconry of Dudley: Parish of Astley, St Peter**  
**Petition 09-08 relating to reservation of gravespace for S E and M Bower**

## **Judgment**

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### *The petition*

1. This petition is for a faculty for the reservation of gravespace for the interment of the bodies of Mr Samuel Edgar Bower and his wife Matilda Bower in the churchyard of St Peter's Astley.
2. The petitioner, Mr Bower, has explained that the bodies of his grandparents are buried in the churchyard of St Peter's, as are those of three uncles and two aunts.
3. More recently, Mr and Mrs Bower's daughter Deborah died at the age of 26 in a road traffic accident. She had attended the Church of England school in Astley, as does her young son. At the time, the Bowers lived in Areley Kings, but there was no space in the churchyard there. Exceptionally, therefore, the then Rector of Astley (Mr Heaps) allowed the burial of Deborah's body in the churchyard at St Peter's, on 24 April 2001.
4. Mr Bower applied to the registry by a letter of 2 May 2001 for a faculty for the reservation of a gravespace in the churchyard at St Peter's, next to the grave of their daughter. It is not clear what happened to that application.
5. In 2002, Mr and Mrs Bower moved to live in Astley. They have now once again sought the reservation of the space next to their daughter's grave, for the burial of their own bodies in due course.

### *The objections*

6. The present Rector, Mr Norketts, has explained that there have been a number of requests for the reservation of gravespaces in the churchyard. Such requests have generally been refused, due to concern that the space in the churchyard would be used up very quickly. The secretary to the PCC has explained that the PCC has consistently refused to grant such applications "on the basis that it is not practical because of changing circumstances over time." He also notes that "to grant one such application now would be very unfair to all the parishioners who have made such requests direct to the PCC in the past, and we also think is not a practical proposition."

7. Twelve other residents of the parish have also objected to the petition, on similar grounds, as has one non-resident.

#### *Other issues*

8. There has also been considerable concern as to the activities of badgers in the churchyard, and Mr Bowers has suggested that a very discreet border of marble stones be created around their daughter's grave, to deter them.
9. As is normal in such cases, the DAC has not offered any view on the petition to reserve a gravespace, although it has contributed some useful suggestions on the problems arising due to the activities of the badgers.
10. None of those mentioned above has requested or required the holding of an oral hearing, and I am satisfied that it is expedient for this petition to be determined solely on the basis of written representations.
11. The Rector has stated that there is sufficient capacity for burials until around 2028 – assuming, obviously, that burials continue at the present rate.

#### *The law*

12. The principles governing the determination of a petition for the grant of a faculty for the reservation of a gravespace were considered by this court in *Re Beoley, St Leonard*, as follows:

##### *“General principles*

3. The starting point is that an incumbent has the absolute right to choose where in a churchyard any given burial shall take place. Further, but subject to that discretion on the part of the incumbent, all those who are either on the church electoral roll or resident within the ecclesiastical parish have a right to be buried in the churchyard for as long as space remains available. The grant of a faculty for the reservation of a particular space for a particular petitioner thus deprives both the incumbent and, perhaps more importantly, the parishioners of those rights.

4. Notwithstanding that, a faculty will normally be granted by the court for the reservation of a space for the burial of a person who would have a right to be buried in the churchyard concerned – whether because on the church electoral roll or as a resident of the ecclesiastical parish. However, the court will be less disposed to grant a faculty – particularly to a non-parishioner – where a churchyard is on the point of being full.

5. It is for these reasons that an application for the reservation of a gravespace must always be accompanied by:

- (a) a statement giving the opinion of the incumbent as to the likely future capacity of the churchyard concerned (together with that of any extension or replacement facility that may be presently envisaged) – assuming, obviously, that burials continue at the present rate; and

- (b) evidence of support for the application by the incumbent and the PCC (the latter on behalf of the present and future parishioners).

6. In addition, it may be helpful for any parish where there is more than the occasional petition of this kind to have in place a policy as to the principles on which such support will be given or withheld. Amongst the factors that might feature in such a policy would be the following:

- (a) the extent of any link between the person for whose body the space is to be reserved and the church as a worshipping community;
- (b) the extent of any link between that person and the churchyard concerned, for example, whether close family members have been buried there;
- (c) the extent of any link between that person and the town or village concerned; and
- (d) any compelling pastoral or other circumstances.

I emphasise that the above list is not intended to be exhaustive.

7. Thought might perhaps be given to the preparation of a standard policy for the Diocese, which could be simply adopted (with or without amendments) by parishes in this situation.

8. I must emphasise that nothing I have said so far prevents anyone with sufficient interest from seeking a faculty for the reservation of a space, whether or not the application complies with any policy adopted by the PCC, and whether or not there exists such a policy. However, my present view is thus that any application for the reservation of a gravespace is likely to be greeted more sympathetically if:

- (a) the application is in accordance with a policy adopted or confirmed by the PCC at some time in the ten years prior to the application; or
- (b) there are compelling and exceptional personal circumstances as to why the petitioners (or those on behalf of whom the petition is made) are not content simply to take their turn in the normal course of events along with others entitled to burial in the churchyard concerned.

9. In particular, where there is, on current rates of burials, estimated to be less than ten years space remaining, I would almost always expect to see a clear policy in place, and evidence of how the particular application complies with it, before I would consider granting a faculty.

#### *Duration of faculty*

10. Secondly, although I note and understand the reluctance of the PCC in the present case to distinguish between applicants on the basis of age, I consider that for spaces to be reserved for too long unduly restricts the freedom of the incumbent and the PCC to order or re-order the churchyard as may seem to them best at some time in the future, and that of future parishioners to be buried in it. And I see no reason why someone who in the future still has a good case to justify a continuing reservation of a space could not make a fresh application after the expiry of a suitable period after the initial reservation.

11. It therefore seems to me that – in the absence of compelling reasons to the contrary – every faculty granted for the reservation of a gravespace should be expressed to endure for not more than twenty-five years or until further order.”

13. The general principle laid down in *Beoley* is thus that a faculty will normally be granted by the court for the reservation of a space for the burial of the body of a person who would have a right to be buried in the churchyard concerned – whether because on the electoral roll or as a resident of the ecclesiastical parish. However, the court will be less disposed to grant a faculty – particularly to a non-parishioner – where the churchyard is on the point of being full. The latter phrase is not particularised, but it is suggested that there should be in place a parish policy as to reservation of gravespaces where there is estimated to be less than ten years’ space remaining.

*Application to the present case*

14. In the present case, the petitioner and his wife both reside in Astley. When the time comes, they will therefore have a right for their bodies to be buried in the churchyard at St Peter’s – subject to there being space available at the time. The purpose of the present petition could therefore be either that they particularly wish their bodies to be buried next to the spot where their daughter’s body is buried; or that, if space in the churchyard runs out before their death, they will nevertheless be entitled to be buried along with their daughter.
15. As I have already noted, there is estimated to be sufficient space in the churchyard for burials for around another 18 or so years. The churchyard is not therefore on the point of being full.
16. The incumbent has stated that there is in place a policy as to the principles by which the parish supports (or withholds support from) such petitions. However, the rules relating to the churchyard at St Peter’s make no provision as to the reservation of gravespaces – although they do explicitly forbid kerbstones around graves – and there seems to be no other formal policy. Nevertheless, it appears that the approach of the Rector and the PCC to such requests has been consistently to refuse them, albeit simply on the basis of fear as to the churchyard becoming full.
17. It is clear that the present petition does not comply with the general policy of the PCC as to reservation, albeit that that policy is not explicitly couched in the terms envisaged at paragraph 6 of the judgment in *Beoley*. It therefore does not fall to be greeted sympathetically under paragraph 8(a).
18. However, paragraph 8(b) suggests that a petition may nevertheless be supported “if ... there are compelling and exceptional personal circumstances as to why the petitioners ... are not content simply to take their turn in the normal course of events along with others entitled to burial in the churchyard concerned.” And in determining whether there exist such compelling and special circumstances, it seems to me that I should properly have regard to the matters raised at paragraph 6.

19. In the present case, I have not seen any evidence as to the links (if any) between the Bowers family and the church as a worshipping community. However, it seems to me that there are indeed strong links between them and the churchyard at St Peter's, in particular by virtue of the fact that a number of close family members have been buried there, and between them and the village of Astley. More especially, I also consider that there are compelling pastoral circumstances justifying a space being reserved, namely the circumstances of their daughter's untimely death.
20. I therefore consider that this is a case in which an exception should be made, and a faculty granted for the reservation of a gravespace – either the one sought or, if that is no longer available, the closest one to it.
21. As for the concerns expressed by the objectors to the petition, it is noticeable that there have in fact been no petitions over the last twelve or so years for the reservation of a gravespace at St Peter's (I do not have available data from before 1998), even though it would of course have been possible for any of those who in the past made an unsuccessful request to the PCC to petition for a faculty. That alone indicates that this petition is "exceptional". And it is to be hoped and expected that the tragic circumstances of Deborah's death will not often recur.
22. I therefore do not see that the grant of a faculty in this case will in any way open the floodgates to future reservations. The PCC may thus continue to exercise its policy (albeit unwritten) as hitherto, subject to perhaps being slightly more willing to accommodate requests in truly exceptional cases.

### *Conclusion*

23. A faculty should therefore issue for the reservation of a gravespace for twenty-five years or until further order, subject to conditions:
  - (a) that the right thereby reserved is to be marked and endorsed on an up-to-date churchyard plan; and
  - (b) that the space thereby reserved is to be physically marked on the ground in some small and discrete way.
24. Finally, in view of the concerns raised by the Rector, it should be clearly noted that the second condition does not authorise the erection of kerbstones or any similar structure either on the space reserved or on the grave of Deborah.

**CHARLES MYNORS**

Chancellor

20 October 2010