

In the matter of St Mary Magdalene, Bolney

Judgment

1. By a petition dated 11 March 2022, Mr James Hyatt seeks a faculty for the reservation of a double-depth grave space for himself and his wife, Lorraine in the churchyard of St Mary Magdalene, Bolney. The petition is opposed by the Revd Michael Windridge, Associate Priest and the PCC on the basis that the space for burials is limited and since 2021, the parish has had a policy of opposing all further reservations. However, they have not elected to become parties opponent.
2. Having taken into account the views of the petitioner, I determined that it was expedient to determine this matter on written representations and I afforded all concerned the opportunity to respond to the points made by the other. In short, I have had regard to:
 - i. the pro-forma petition and particularly the handwritten statement of reasons;
 - ii. a letter of support from Mr Hyatt dated 1 May 2022;
 - iii. an email from Mr Windridge dated 18 May 2022;
 - iv. a letter in response from Mr Hyatt dated 4 June 2022.
3. The background, as I understand it, is as follows. Mr and Mrs Hyatt's son, Alfie, was killed in a tragic accident at the age of 24. He was buried in Bolney churchyard. Mr and Mrs Hyatt wish to be buried next to him, and accordingly seek to reserve the double-depth plot immediately adjacent to their son's grave. However, there are currently only 18 grave spaces remaining for future burials in the churchyard. As there are approximately three burials per year, the churchyard will be full in a little over six years. The parish revised its churchyard policy in January 2021. The additional text reads as follows:

As the churchyard is rapidly running out of grave space, the PCC have agreed in line with the policy of the Diocese of Chichester, that it will no longer be able to consider any requests to reserve grave spaces. The PCC considers it is fair and right that all remaining spaces should be used as and when required by the relatives of eligible deceased persons. The only exception will be a request to reserve an already occupied double depth grave by a close family member

4. Before I turn to determine Mr Hyatt's petition, I think it would be helpful if I were to summarise the principles of ecclesiastical law that govern both the right to be buried in a Church of England burial ground and the separate issue of reservation of grave spaces.

Right to burial

5. As discussed in this Court in *Re All Saints, Heathfield* (2013) and *Re St Nicolas, Pevensey* (2012), at common law, every parishioner has a right of burial (if space allows), as do those dying in the parish, and those whose names are on the parish's electoral roll. This is also set out in the

Churchyard Regulations for this diocese. In addition, the incumbent may consent to the interment of a person without a legal right of burial, provided the rights of parishioners (and others with a legal right to burial) are not prejudiced.

6. Mr Hyatt concedes that he and his wife do not have a right of burial in the churchyard, despite living close to the parish boundary and having long-standing and significant connections with the church. Their son, Alfie, similarly had no right of burial but the parish priest consented to his burial. It seems to me that were Mr Hyatt or his wife to die, their links to the parish are sufficiently well-established that a future parish priest, in the exercise of his or her discretion, would permit their burial in the churchyard. The presence of their son's remains further strengthens their claim. Mr and Mrs Hyatt could put the matter beyond any doubt by having their names added to the electoral roll.

Reservation of grave spaces

7. The practice of reserving grave spaces was once prevalent but is becoming less so as the available space in burial grounds diminishes: *Re Brightlingsea Churchyard* (2005). A person with a legal right to burial has the strongest case for a reservation. Those without such a right generally require the support of the incumbent, who is the freehold owner of the churchyard: *Re West Pennard Churchyard* (1991), although this can be overridden by the Court in exceptional cases.
8. There is no right to the reservation of a grave space, even when an individual has a right of burial. It is a matter for the Court to decide whether or not to grant a faculty. In a graveyard with many spaces remaining, the Court will readily permit the reservation of a grave space to someone with a right of burial and may similarly do so in cases where the petitioner has a strong connection with the churchyard. However, where there are relatively few grave spaces remaining, reservations will not be permitted, because this will adversely affect the burial rights of parishioners. The Church of England is an established church with legal duties owed to all those living within a parish, irrespective of their beliefs or church attendance. In this diocese reservations are sparingly conceded where a churchyard is likely to be full in ten years, and are almost invariably refused where that will happen within five. In such cases, people will be buried in the order in which they die until such time as the churchyard is full. Where, as here, the uncontested figures suggest that the churchyard will be full within a little over six years, it is most likely that a faculty will be refused.

Parish policy

9. In determining petitions for the reservation of grave spaces, the Court will have regard to policies adopted by PCCs. I have set out the relevant section of this PCC's policy earlier in this judgment. It is not well worded, and it is unclear to which diocesan policy it is referring. It states that the PCC 'will no longer be able to consider any requests to reserve grave spaces'. It is for the Court (not the parish) to consider and determine petitions for reservations. What it should have said was that the parish priest and PCC would not support any future petition for a reservation. The second bullet refers to 'relatives of eligible deceased persons' whereas the actual use of the burial space is by the deceased not their surviving relatives. It should more properly read 'the PCC considers it fair and right that all remaining spaces should be used by those with a right of burial in the churchyard or as otherwise approved by the parish priest, as they die'. The third bullet is unnecessary. A grave space in which there has already been an interment cannot be reserved. It is for the surviving

family members to decide what (if any) additional interments may take place in such graves, which will depend upon the circumstances of the original burial.

10. Notwithstanding the infelicitous wording of the policy, its effect is clear, namely that with so few grave spaces remaining the parish would not support any future applications for reservation, whether from those with a legal right to burial or those without. The parish priest and PCC have followed that policy in objecting to the current petition.

Discussion

11. I have considered this case with care, hence the time taken in deliberating. I have enormous sympathy for Mr and Mrs Hyatt for the tragic loss of their son, a young adult with the fullness of his life ahead of him. Their grief is unimaginable and I hope that they derive some comfort from their daily visits to Alfie's graveside to pay their respects and to keep it immaculate.
12. I accept that Mr Hyatt was informed of the parish policy on reservations when he sought consent for his son's burial in the churchyard. I also accept that he may not have taken in what he was told due to the rawness of his grief at the sudden loss of his son, being in the grip of considerable emotional distress.
13. In the exercise of my discretion, I would not have been minded to grant a reservation in circumstances such as this where the churchyard will be full in just over six years (perhaps less if the Covid pandemic increases the mortality rate). The existence of the parish policy (which I suggest be reworded) puts the matter beyond question. It would have applied even had Mr Hyatt and his wife been in possession of the legal right of burial. They would be well advised to have their names entered on the electoral roll of the parish, which would entrench their right to be buried in the churchyard. In the event that one of them were to die before all the remaining eighteen grave spaces were used, that person could then be laid to rest in the same burial ground as Alfie, albeit not necessarily immediately adjacent. Were that grave dug to a double depth, there would be space for the survivor to be interred when their time came.
14. What the Court cannot do is to show preference to Mr and Mrs Hyatt. Its duty to bury extends to all parishioners and to reserve a space for one couple would reduce the available space for future burials. Fairness dictates that those with a legal right to burial be buried in the order in which they die.
15. There are veiled allegations of discrimination within the papers. I can see no basis for them. Notwithstanding that their son was not technically a resident of the parish, he was allowed to be buried there. And I can see no reason why a similar pastoral gesture will not also be extended to Mr and Mrs Hyatt were they to die before the churchyard becomes full. And they can have the peace of mind of making this a certainty by having their names entered on the electoral roll. The policy of not supporting reservations applies across the board, including to those with a legal right to burial. It has been enforced routinely, at some pastoral cost to those concerned, and it would be unfair and unjust for this Court to override the policy unless there were sound and persuasive reasons for making an exception. I can find none here. Indeed, all relevant factors point to upholding the policy. Objection has been

taken to the deployment of the term ‘travelling community’ but clearly no offence was intended, and I can see no evidence to suggest that Alfie received less-favourable treatment because he married into a family of proud traveller heritage. To the contrary, the parish was open and generous, reaching out to the family in their grief.

16. For completeness, in giving directions, I raised for consideration the enlarging Alfie’s grave to be a triple, so as also to accommodate Mr and Mrs Hyatt when their time came. This was rejected on two grounds: first, because Mr Hyatt did not wish his son’s remains to be disturbed by the technical exhumation required in placing them lower in the ground; and secondly because his widow wished that she also be buried in what was intended as a double depth plot, and that there be no other interments in the grave.
17. I have sought to keep this judgment as brief and as light on legal content as possible. For the reasons I have given, both individually and cumulatively, this is not an appropriate case for the reservation of a grave space, and accordingly the petition must be dismissed. The costs of and occasioned by the petition are to be paid by the petitioner.

The Worshipful Mark Hill QC
Chancellor of the Diocese of Chichester

14 July 2022