

IN THE CONSISTORY COURT OF THE DIOCESE OF LEICESTER

RE ST JOHN THE BAPTIST, COLD OVERTON

**IN THE MATTERS OF TWO PETITIONS FOR THE RESERVATION OF
ADJACENT GRAVE SPACES**

**IN THE MATTERS OF THE PETITIONS OF RICHARD BATES AND PATRICIA
BATES**

JUDGMENT

Introduction

1. On 20 May 2021 I received two petitions for the reservation of adjacent single depth grave spaces in the churchyard of St John the Baptist, Cold Overton. I will deal with them together in this judgment as they are entirely overlapping in their content. The petitions were brought by wife and husband Patricia and Richard Bates (the “Petitioners”) who live in the village of Cold Overton. The plots requested were designated on the enclosed map as R4 & R5 and lie side-by-side at the South East of the church yard, near the roadside retaining wall and next to grave plot 57.

The petitions

2. The petitions contain the following information:
 - a. Mr and Mrs Bates live in Cold Overton. They therefore have a right to burial in the churchyard, but without the reservation of plots this is subject to the space available at the time of their deaths. In addition Patricia Bates is on the electoral roll. Richard Bates is not.
 - b. The Incumbent and Churchwardens support the petitions.
 - c. The PCC unanimously supports the petitions (by its resolution dated 27 April 2021).

3. With each petition is a standard form of consent from the Incumbent and Churchwardens which provides the following additional information:
 - a. The average number of burials in the churchyard is 0.7 per year (i.e. 2 in the past 3 years).
 - b. It is estimated that the remaining space for burials in the churchyard will be sufficient for the parish for around 15 years
 - c. There is no policy in place as to the principles upon which petitions are supported or not supported.

4. The form also explains that the reasons for the PCC's unanimous support of the petitions are that Patricia Bates has been a long-standing member of the PCC (for over 25 years) and has also served as a church warden for 10 years. Richard Bates has supported Patricia in her duties as churchwarden and financially supports the church. Both are regular worshippers at the church.

Factual and procedural history

5. On 6 July 2021, shortly before the expiry of the public notice period, an objection to both petitions was received by email to the Registry¹. The objection was lodged by Mr Leslie Spanswick, a former churchwarden who lives in the parish. The objection makes the following main points:
 - a. Mr Spanswick has studied the church and churchyard for over thirty years and the map of marked graves which accompanies the petitions was produced by him;
 - b. The area chosen may contain at least one Victorian grave (R4);
 - c. There may still be the remains of a medieval cross in the area of R5;
 - d. The southern area of the churchyard is full of (mostly 19th century) unmarked graves;
 - e. A suitable alternative area is available to the left of marked grave 38.

¹ Objections by email have been permitted during the pandemic.

6. Some other matters were also raised by Mr Spanswick but these do not bear directly on the issue of whether or not Mr and Mrs Bates' petitions should be granted.
7. With a view to avoiding the escalation of formal proceedings I allowed the parties time to meet, discuss the issues between them and come to an agreement. Accordingly on 8 July I gave directions as follows:
 - a. The Petitioners and incumbent were to be informed of the objection and sent a copy of it;
 - b. Proceedings were to be stayed until 3 September 2021 to allow the parties and incumbent time to meet (by whatever means they chose), discuss terms and reach agreement if possible;
 - c. If agreement had not been reached by 30 September 2021 then I was to be informed and would give further directions giving Mr Spanswick the opportunity to become a party opponent.
8. In due course I was informed that the incumbent had offered three dates to Mr Spanswick to meet and discuss the issues he had raised in his objection, but had not received any reply from him to her letters.
9. I was also provided with an email from Mr and Mrs Bates who, by contrast, had managed to meet with Mr Spanswick. He had attended their home and met with Mrs Bates alone over a cup of tea, where his objections were discussed. Mr Spanswick repeated his objections and indicated that he wished to organise an archaeological dig in the area the couple sought to reserve their spaces as he had "*...noted the area in his studies of the churchyard but could not give his sources.*" Mrs Bates reported that she had suggested it would be helpful if Mr Spanswick could note on a copy of the grave map where he believes any other artefacts are likely to be buried, including the medieval cross he is concerned about as this would guide future church officers in making decisions. However Mr Spanswick replied that this was pointless as his work was always ignored. It appears from Mr and Mrs Bates' email that Mr Spanswick also attended their home on another occasion unexpectedly to inform Richard Bates of his objection. Mr Bates understood Mr Spanswick to say that an original 12th century cross in the graveyard had been removed at some time in the Victorian era and the shaft used

in construction of the west window. The remains of this cross, namely the base and the arms, are what Mr Spanswick thinks may be in the location of the plot R5.

10. I pause here to note that the same email explained – relevantly - that the plot locations requested by Mr and Mrs Bates had been chosen by them after significant thought. They were selected on the basis that they are located next to the church gate which would assist Patricia in the event that she survives Richard, as she increasingly suffers from mobility problems.
11. Turning back to the meetings that had taken place between the Petitioners and Mr Spanswick, no agreement as to a way forward was ultimately reached between them during those meetings. Following receipt of emails from the incumbent and Petitioners outlining the points above, and at the expiry of the period for negotiation specified in my directions, the Registry wrote to Mr Spanswick on 23 September 2021 to ascertain his position at that stage. He replied confirming that he had spoken to the Petitioners but that he still stood by the content of his objections. The Petitioners followed up for a final time by phone with Mr Spanswick on 25 September 2021. They were informed that he had nothing to add and that he had received a letter from the incumbent but would not be replying to it – accordingly in his view the matter was closed.
12. In addition to the information above, I have also been informed that the incumbent spoke, on 12 August 2021, with a well-respected and highly experienced local gravedigger, Alan Barnacle. Mr Barnacle informed the incumbent that he had never heard any mention of a medieval stone cross in the churchyard.
13. Having received all of the above information, on 7 October 2021 I gave directions that Mr Spanswick should be contacted with the relevant forms inviting him to elect within 21 days either to become a party opponent in the petitions (together with appropriate information regarding risk and costs) or to leave me to take into account his email of objection without becoming a party to the proceedings. I also directed that the area in question be rodged during the same period.
14. The time for election to become a party opponent has now passed (the period expired on 28 October 2021) and nothing further has been heard from Mr Spanswick. He has

therefore not elected to join these proceedings as a party. However I do take into account the contents of his email of objection in reaching my decision in these matters.

Review of Mr Spanswick's objections

15. Mr Spanswick is a former churchwarden, clearly has a deep interest in the church and churchyard and states that he has made a close study of them. The issues he has raised can therefore be considered to arise out of genuine concern on Mr Spanswick's part and to have been made after careful thought. They must not be dismissed lightly. It is for this reason that I have allowed time for his objections to be developed, articulated and looked into carefully by those affected by them, and also why I ordered that the plots at the heart of these petitions be rodded in order to ascertain whether there is material in those areas which supports Mr Spanswick's theories.
16. However Mr Spanswick has chosen not to provide further detail or evidence to support his concerns. There are a number of issues with the objections he has raised:
- a. His objections - on the basis that there might be the remains of a medieval cross in the location of plot R5 and that plot R4 may contain at least one Victorian grave - are vague. Despite opportunity, including a stay specifically in order to allow the matter to be more clearly understood, they have never been fully articulated or evidenced in any way;
 - b. I find that when asked, over tea with Mrs Bates, for details and sources underlying his concerns he refused or was unable to produce any. Nor has he done so at any other point in relation to these petitions;
 - c. Mr Spanswick has failed to respond to requests from the incumbent to meet in order to discuss matters further and he has not provided any further information to the Registry to support his views;
 - d. Despite Mr Spanswick's interest in and knowledge of the churchyard, his objections are gainsaid by the acknowledged² experience and understanding of the gravedigger Alan Barnacle (who is also part, I am told and accept, of a very experienced and well-respected family of local gravediggers who might reasonably be expected to have an in-depth understanding of this churchyard).

² By the incumbent.

Mr Barnacle reported to the incumbent, and I accept, that despite his own knowledge of this churchyard he has never heard of the existence of the remains of a medieval cross, nor come across any evidence of one;

- e. I have been provided with an email from Rudy Ike, a churchwarden, who states that on 16 October 2021 the grave digger thoroughly rodded the locations of plots R4 and R5 by digging holes to 3 feet and then driving a metal rod down by a further 3 to 4 feet. I accept the evidence reported by Mr Ike that no obstruction was found and there was no evidence of a stone cross or foundations for such a cross.

17. Taking the points above together, and there being nothing concrete to support Mr Spanswick's assertions to the contrary, I conclude that the objections to the reservation of plots R4 and R5 as grave spaces are unfounded.

Conclusion as to grants of reservations

18. It follows that there are no reasons why those plots are not available for reservation by Mr and Mrs Bates. They have explained the reasons why the particular plots in question are particularly desirable in view of Mrs Bates' mobility issues and they have followed the correct procedure in applying for reservation. They are residents in the parish and are unanimously supported by the incumbent, churchwardens and PCC in their petitions. These factors allow me to grant the grave space reservations that are sought and I do so.

Duration of the reservations

19. The appropriate duration of the reservations is a matter I have given some thought to. There is, I find, 15 years' worth of space left in the churchyard available for burials. As articulated in judgements by other Chancellors including *St John the Baptist, Ashley* [2020] ECC Lic 1; *The Churchyard at St Clement, Terrington* [2020] ECC Ely 3; *Re Holy Trinity, Belbroughton and Fairfield* [2021] ECC Wor 4, all those who live in the parish, or are on the parish electoral roll at the time of their death, and those who die in the parish, are entitled to burial in the churchyard if there is space available. That right

is a common-law right (enhanced by statute in the case of those on the electoral roll) and is not dependent on faith or involvement with the parish church.

20. The right cannot be given effect if there is no space available in churchyard. The reservation of a space hastens the declining spaces available. It ultimately removes the availability of the relevant plot for a person who would otherwise have the right of burial in the event that the only plots available at the time of death are those that have been reserved for other people. If people are turned away on the ground that the churchyard is full, when there is apparently space physically available, the reservations may cause ill-feeling. On the other hand, the requirement to display a public notice of the Petition gives some of those who might be affected the opportunity to raise any objection to the potential loss of their right.
21. For these reasons I am concerned with how likely it is that the reservations I grant will cause a person with the right of burial in the churchyard to be excluded from that right. Broadly speaking this is a combination of the life expectancy of the Petitioners and the rate of use of spaces in the churchyard. I am also concerned to understand any arguments on the Petitioners' behalf for giving preference over an as yet unknown person who has the right of burial, and on whose death there might be a notional competition for the space.
22. In the present case the Petitioners are in their early- to mid-70s. I have no other information to suggest anything other than that they are likely to live for many more years. If I allow a reservation for longer than the likely period of available space this is likely to have the effect of interfering with the rights of a person who, on death, would have the right of burial in the churchyard.
23. However, I note that I retain a discretion to grant a faculty which will have such an effect (see for example the reasoning of Chancellor Leonard in *Re St Clement Terrington, St Clement* [2020] ECC Ely 3 and that of Chancellor Eyre in *St John the Baptist Ashley* [2020] ECC Lic 1). The discretion may be exercised where the Chancellor evaluates that there are exceptional circumstances (including evidence of a particularly strong connection to the church) in favour of doing so. In this case the noteworthy length of devoted service and valuable contribution to the life of the church by Patricia Bates, plus Richard Bates' financial contribution together with the

desirability of his plot being adjacent to that of his wife, mark these petitions out as exceptions based on a strong connection to the church. Additionally, I note the particularly slow rate of burials in this churchyard (only 2 in the last 3 years) and the small population of the village (c.70 residents) which suggests that the risk of the problems I have outlined above is relatively low. These factors in combination mean that I will (unusually) allow a slightly longer period than the spaces available would ordinarily indicate as being appropriate. I will, accordingly, permit both reservations for a period of 20 years each.

Lyndsey de Mestre QC

Chancellor of the Diocese of Leicester

4 November 2021