

Neutral Citation Number: [2017] ECC Chr 2

Re St Wilfrid Davenham

In the matter of a Petition to reserve a grave space

Judgment

1. By a petition dated 18th June 2017 Mr Jim Kemp (71) applied on his own and on his wife's behalf for the reservation of burial plot GG12 in the churchyard of St Wilfrid for a period up to 30 years. His wife is in poor health and he, not unreasonably, considered she did not need to be troubled by personal participation in the application.
2. The petition does not, for reasons I shall explain, have the support or consent of the incumbent, churchwardens or PCC.
3. In fairness, it is abundantly clear to me that the PCC has found itself somewhat upon the horns of a dilemma and has, understandably, struggled to reach a principled decision whilst at the same time being alive to the pastoral sensitivities of Mr Kemp's perfectly reasonable request.
4. In a recent e mail to the Registrar the Rector very fairly and helpfully conveyed that the parish would be happy to accept and honour any decision I made.
5. All parties have accepted the matter can and should be dealt with upon written representations, which I considered entirely appropriate.
6. I have considered with care the various documents presented and submissions made.
7. The circumstances are somewhat unusual and in a number of respects, in hindsight, unfortunate.
8. Mr Kemp and his wife moved to the parish in 2001 and, it is accepted, have been heavily involved in church life and activity since.
9. Following training, Mr Kemp became a licensed Reader in 2010. He pursued a foundation degree in mission and ministry between 2007-2012.
10. There is no dispute that, as he himself put it, 'St Wilfrid's has become a very special place for myself, ...socially, emotionally and especially spiritually'.
11. He and his wife apparently have no immediate family and they have been keen - for some time - to make appropriate arrangements for a 'family grave' for them both.
12. To that end, and aware that the churchyard was rapidly filling, Mr Kemp, in 2010, requested reservation of a grave by an approach to the previous Rector.
13. Clearly, neither man was alive to the need of faculty for this important step.
14. In the then Rector's case that was somewhat surprising.
15. He, by a letter of 8th September 2010, wrote to the couple in these terms: 'I write to confirm the reservation of a grave, plot number GG12, in St Wifrid's churchyard'.
16. That letter, of course, was of no legal effect, but it is not difficult to see the reassurance it may falsely have afforded the Kemps, who believed all was now in order.
17. Regrettably, they do not seem to have been alone as recipients of that Rector's no doubt well intentioned but ill-informed approach. Another individual was

apparently given a similar informal assurance about (I have assumed) a different plot.

18. In both cases, I was told, 'pencilled annotation' was added to the 'graveyard records'.
19. In circumstances which are unclear to me, but which underline the need for most careful record keeping in respect of any reservation, it seems that other individual's purported reservation was somehow overlooked and that grave has since been occupied.
20. One can well imagine the possible distress or disappointment that may have caused. That individual was subsequently written to by the parish. I am not told if any further correspondence has followed.
21. Unlike that plot, the 'Kemp' grave potentially remains available, though the situation is now complicated still further by the fact that it is said to be one of only two remaining in the churchyard.
22. The parish's future plans for burials are unclear to me at present.
23. Further, in 2015, (as a PCC Minute of 17th July 2017 later recorded it) '...the PCC received a similar request [for reservation] from a local parishioner which was respectfully and sensitively declined'.
24. In fact, I had considered that petition (027/15), which was from a couple, and, not without real regret, refused it in a judgment dated 18th January 2016, essentially upon the ground that the churchyard was almost full and that possible closure was in contemplation.
25. Mr Kemp has expressed understandable frustration, first, that he had not been advised in 2010 a faculty was required, and, second, that he did not learn until 2017 that something of a 'precedent' had been set by a refusal of reservation in 2015.
26. He explained how he now felt 'utterly devastated' by the PCC's objections, stating: ' I feel very strongly that to inform me two years later and seven years after the initial permission was granted is penalising me, for something that was very special in so many ways, and seems so unjust'.
27. The Minutes I have referred to encapsulated the PCC debate which led to a clear majority in support of opposition to the petition.
28. Whilst there was ready (and appropriate) recognition that St Wilfrid was Mr and Mrs Kemp's 'spiritual home' and that an 'informal commitment' had been given, there was also recognition the churchyard was virtually full and that another request had been declined in 2015/16. That, it was considered, established a precedent from which it would be wrong to depart.
29. There was also concern the parish might be thought unjustly to be favouring a church 'insider' over and against other parishioners with a right to burial.
30. These sensitivities were all relevant matters and the Minute, to my mind, conveyed a careful, thoughtful, decision making process by the parish.
31. The law on the subject of reservation of grave spaces has been considered at length in a number of cases. For example **Re West Pennard Churchyard** [1991] 4 All ER 125; **Re St Nicholas, Pevensey** (Chichester CH136/11).
32. It is beyond argument a faculty is required. The decision is ultimately one for the Court's discretion. That discretion must be exercised judicially in the light of all the circumstances. If granted, there is no doubt a faculty deprives the incumbent of his right to prescribe the position where a burial is to take place and (potentially) other parishioners generally of available space – an issue which becomes acute when a churchyard is soon to be full.

33. Applicants may or may not have a legal right to burial. Where space is short Consistory Courts have generally considered it wrong to grant reservation of spaces such as to prejudice future burials. That was my approach in the 2015 petition and my previous judgment in that matter.
34. Further, as Hill QC Ch said in **Pevensey**, it is not the case that ‘...support of the church’s ministry can give rise to a presumptive priority for a certain class of individuals when the number of available burial plots has become so few’ (para 20).
35. In some cases parishes decline all reservation requests as a matter of open or published policy. Subject to the exercise of judicial discretion in an individual case, such policies will generally be upheld. In all cases the views of church officers and the PCC will merit the utmost consideration and respect. (See my earlier decision in **Grappenhall, St Wilfrid**, 18th February 2015)
36. In this case, absent the unusual history and the passage of time since 2010, I would very likely have refused the petition for what might be considered entirely conventional reasons, echoing my previous decision. I would also, of necessity, have refused the petition had the grave space in question as a matter of fact become unavailable.
37. However, I have concluded that in the exercise of my discretion I should in this case, somewhat exceptionally, grant the petition. Mr Kemp made what I do not doubt he saw as a formal request some seven years ago. That request purported to be granted upon a mistaken legal basis. It may very possibly have been granted then in any event had a timely petition been issued as the law required. Mr Kemp and his wife have entertained a reasonable expectation for some time as to their burial arrangements. Their sense of distress and frustration (which I accept is real) has undoubtedly been augmented by a further apparent failure to alert them to a possible difficulty at the time of the 2015/16 decision.
38. They are individuals with a right to burial in the parish. Their contribution to parochial life, however significant, is not the basis of my decision, though their affection for the church and long held aspiration to be buried there is the pastoral context in which I must attempt to reach a fair conclusion. My concern is principally to mitigate the effect of unfortunate errors made, for which others are primarily responsible and for which Mr and Mrs Kemp ought not now to be penalised.
39. Nothing in this ruling should be interpreted as in any way setting a precedent for any other case at St Wilfrid or elsewhere, let alone be read as implying criticism of the present Rector or PCC. The latter have struggled to reach a principled decision, recognising as they must that the ultimate exercise of discretion in any individual case remains with the court.
40. I grant the faculty for reservation for a period of 25 years with permission to apply by letter for extension prior to the expiry of such period.
41. The benefit of this reservation is personal to the petitioner and his wife and is not assignable.
42. Any fees payable to the Rector or PCC shall be paid within 56 days of the date of this order and the petitioner shall be responsible for the costs of and incidental to the petition in the usual way.
43. The parish shall record the reservation clearly in the churchyard or burial records and, if appropriate, place a marker (at the cost of the petitioner) upon the reserved plot.

David Turner

His Honour Judge David Turner QC
Chancellor of the Diocese of Chester

11th December 2017