

In the Consistory Court of the Diocese of Ely

In the Matter of a Faculty Petition

The Churchyard of St Mary Doddington

Petitioner: Alison Allen

THE APPLICATION

1. Mrs Alison Allen (“the Petitioner”) has petitioned to reserve a gravespace in the third row of graves in the last space but one which is adjacent to that of her father, Robert Jones, who did not live in the parish but was buried there on 16th August 2019. She has listed her relations, going back to her great grandparents, who have been buried in the churchyard and had identified that her uncle and aunt have reserved plots in the churchyard.
2. The Petitioner is not resident in the parish but lives Wimblington which is less than two miles from the parish. The parish in which she lives is part of the same benefice of six churches as St Mary’s. She is not on the Electoral Roll at St Mary’s, does not subscribe to parish funds and attends the church only on “family occasions”. She is 49 years old, married and has children. In this diocese a faculty application for a gravespace, if granted, provides a right of burial in an identified gravespace for a period of 25 years. It is, therefore, quite likely, and to be hoped, that a reservation if granted now would lapse before the Petitioner died.
3. In her various letters the Petitioner expresses her strong wish to be buried with other members of the family as she represents the next generation; she has explained the importance to her of the “core value” of family. She has inherited agricultural land within the parish on her father’s death. She cannot understand how the vicar could have the power to decide whether she is to be buried in the churchyard without considering the impact on her personally. She has set out what that impact is on her and her family. She has been deeply devastated by being told that she could not be buried there and by the refusal of the PCC to support her application for a faculty. She points to the fact that, although there is very limited space in the churchyard, there is a new graveyard available for Doddington’s residents.
4. I have read and taken account of the communication in support of the Petitioner’s application from Elizabeth Welcher.

5. Part B of the form has been completed by the Rural Dean, Revd Andrew Smith. He identified 40 spaces as being available for burial which should meet the needs of the parish for a further ten years. The PCC unanimously confirmed their policy towards the reservation of a gravespace and did not support the Petitioner's application for a faculty. In a separate letter he set out that it has been the PCC's policy since about 2005 to oppose all applications to reserve spaces made by parishioners and non-parishioners alike. The spaces were to be filled up as and when someone died; the burial of ashes in family graves or in the area reserved for ashes continues. There are about 15 reserved spaces from before that time. He explained that there is a cemetery maintained by the village's Parish Council (as opposed to the church and PCC) which is filling up and there is a further new and as yet unused cemetery near to Doddington Hospital, not far from St Mary's Church. At present this is unconsecrated ground and the plans to have the ground consecrated are not yet in place.
6. In an email dated 20th May 2020 Eileen Clapham, a Churchwarden at St Mary's, contested whether there were as many spaces left in the churchyard as the Rural Dean had suggested on Form B. She is concerned that there is insufficient room between the current row of graves and the church wall to fit in an additional row which the Rural Dean had taken into account when calculating that there were 40 spaces left. She was also able to date the rejection of applications for reservations back to 1998. Having seen a letter from Revd Lynda Brady dated 6th November 2019, the discrepancy in dates is explained by the policy being in place since 1998 but only properly voted upon and minuted by the PCC in 2005. Whether there are 40 spaces remaining or substantially less makes no material difference to my decision.
7. Eileen Clapham is concerned that, to allow a gravespace to be reserved after so many years of refusing applications to parishioners will cause uproar amongst those villagers who have had their requests rejected. Whilst I understand the point that she makes and whilst the PCC are entitled to have a blanket policy in respect of refusing to support any application for the reservation of a gravespace, it is not the PCC who makes the decision. Any such application has to be made to the Consistory Court and only the court can decide whether to grant or refuse an application. What seems to have happened is that, being aware of the PCC's policy, no parishioner has sought to apply for a faculty and they have been content to abide by the PCC's policy.
8. There have been letters of objection received by the Registry from Victoria Collett, Stephen Tooke, Revd Sheila Tooke, the incumbent and assistant minister (Revds Ian and Lynda Brady), Patricia Chambers, Susan Harlock, Gemma Watts, Richard and Jennifer Holding, Sally Graham, Ernest Graham, H

Bradshaw, Gillian Wyles, Jane Archer, Eileen Clapham, Lucy Spencer, Andrew and Elizabeth Dunkley, Victoria Smith, June Valentine, Alan Davis, Raymond Mason, L Payne, D Wheatley and someone in Newgate Street whose signature is illegible. They all make similar points; they object because it is unfair to others who have not sought reservations because of the policy of the PCC if this application was allowed, They have as good as, and some would consider better, claims to a reserved gravespace than the Petitioner. None of the objectors have wanted to become party opponents in this matter.

9. The Petitioner responded to those letters on 21st September 2020. She found the tone and language used by the objectors to be totally unacceptable which has added to the complete upset and distress over the whole application. She repeated her concerns about the way in which the press had become involved and the involvement in this of Eileen Clapham. She wants it to be clearly stated that, to make the application to reserve a gravespace does not amount to “pushing her luck” or to seeking “special rights or privileges”, and “not abiding by the rules”, expressions she has lifted from the documents written by the objectors. She submits that she does not want to cause issues within the village because she lives close by. She contends that no one gave her the option of having her cremated remains buried with her father. She does not accept that St Mary’s churchyard is only for the use of the parishioners of Doddington. Her father and his parents were buried there although they lived in March and attended the church of St Wendreda there. There is another churchyard where parishioners living in Doddington can be buried, but she wants to be buried along side her father.

THE LAW

10. The right to be buried, or their ashes interred, in a consecrated churchyard extends to anyone who lives within the parish, or who dies within the parish, or who is on the Electoral Roll of the parish provided that it has not been closed for burials by Order in Council, and provided that there is still room for burial.
11. By s.65(4) of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 the exclusive right to a burial place may not be granted or acquired by a parishioner or non-parishioner otherwise than by faculty on application to the Chancellor of the Diocese, the matter being entirely within his discretion.
12. Chancellors will tend to look at previous decisions of the Court of Arches and other Chancellors when exercising their discretion. With that in mind, I have considered the following judgments:
 - (a) Re Dilhorne Churchyard (2001) 6 Ecc LJ 77 and Re St Mary Dodleston Churchyard [1996] 1 WLR 451: the Consistory Court will

generally support a PCC policy of non-reservation unless such a policy reveals bad faith or is wholly unreasonable.

- (b) Re St Nicholas Baddesley Ensor [1983] Fam 1: the court was considering an application by a family member who lived outside of the parish who wanted to reserve a gravespace in a churchyard in which his relations were buried. In his judgment Chancellor Aglionby acknowledged that, as the community is subject to greater manoeuvrability, so the chances of living one's whole life in a single community diminish. Consequently, burial in the parish of one's birth or marriage may not be possible. It may also mean that it is impossible to have a legal right to be buried with one's wife or children unless faculties are granted. In exercising the court's discretion, one of the guidelines should be, are the parishioners being harmed because of a lack of physical space in the churchyard if a faculty is granted? He accepted that the court must assess the reasons why a non-parishioner wishes to be buried in a particular churchyard which will centre round the links the non-parishioner has with the parish which will include a natural desire to be buried close to family members.

DECISION

13. My decision is influenced by the following factors:

- (a) There has been in place for at least 15 years a policy voted on by the PCC not to support any applications to reserve a gravespace. It is unfortunate that this was represented in a letter dated 6th November 2019 from Revd Lynda Brady to the Petitioner as being "...the process of "reserving" a plot was stopped at Doddington a number of years ago...". The PCC cannot stop the process of reserving a plot which is entirely in the discretion of the Chancellor.
- (b) The PCC's policy did not favour parishioners over non-parishioners because they would not support any application for a reservation. This was to provide a position where the spaces left in the churchyard could be allocated as and when a death occurred.
- (c) Bearing in mind that there were few spaces left even in 1998 it was a fair and just policy to put in place. It seems that no one has challenged that policy by applying for faculty until the Petitioner did so in 2019. One reason for that may be that the parishioners in Doddington accepted it as a fair way of dealing with lack of space within the churchyard.
- (d) As Chancellor I should support the PCC policy of non-reservation unless such a policy reveals bad faith or is wholly unreasonable. I

do not find bad faith and I find the policy wholly reasonable. Had the PCC allowed reservations for parishioners but not for non-parishioners that might have amounted to a reason for overriding the PCC's policy, but that is not the case here.

- (e) The availability of spaces on land elsewhere in the village, and assuming that the land, or part of it, will be consecrated in the near future, is not a reason for allowing a petition to reserve a gravespace in the consecrated ground surrounding the church of St Mary's. As the letters of objection show, there are many villagers who have relations buried in the churchyard and who would like the opportunity to be buried close to them. In those circumstances it is difficult to argue that the Petitioner is a special case.
- (f) I must assess the reasons why a non-parishioner wishes to be buried in a particular churchyard which will centre round the links the non-parishioner has with the parish which will include a natural desire to be buried close to family members. From what the Petitioner has written, although her father's family may have originated in Doddington, her father and his parents lived in March and worshipped there, and the Petitioner lives outside the parish. It seems very likely that her grandparents and her father were able to reserve spaces to be buried there or her grandparents were accommodated in the churchyard when there was less pressure on space. Whether I am right or wrong about that, the residential link between the Petitioner's family and Doddington has been broken for three generations.
- (g) It is open to the Petitioner to apply for her ashes to be buried in the grave of her father or consideration could be given to a memorial stone to be erected in her memory whilst her remains are buried elsewhere.

14. Having considered all the competing arguments I come down firmly in favour of refusing the application. In so doing I want to make it clear that it was the Petitioner's absolute right to apply for a faculty despite the PCC's stated policy and she cannot be criticised for doing so. Any other parishioner or non-parishioner has had and continues to have a right to apply to this court for a faculty.

15. In my judgment the PCC's policy is justified and fair. Whilst I have great sympathy for the Petitioner's position and her natural desire to be buried with her forebears, I can find no grounds on which to allow a gravespace reservation which goes against the PCC's policy. If I was to favour the Petitioner I would have to do so to the detriment of other parishioners who

have accepted the PCC's policy as being both sensible and fair to all. This application for a faculty is refused.

POSTSCRIPT

16. The petitioner was distraught by the fact that the details of her application had been posted on the websites of each of the six churches within the benefice, on Doddington's Doing's FB page and on the Doddington Cams Online Community page. She contacted the Registry on the same day that they must have been posted, 6th March 2020. Having gone online I note that, in respect of the six churches in the benefice, it is just about the only information which appears and the first you come to. The local press took an interest in the application and an article appeared in the Cams Times. I make no complaint about the press interest; they are entitled to report anything which is in the public domain and thought to be of legitimate interest.

17. The placing of notices on the noticeboard outside the church required under the Faculty Rules was complied with on 6th February 2020. I cannot see what purpose the details in respect of the Petitioner's application placed on the various websites served, nor why they are still there in September 2020 long after any objections could be received. Care should always be taken to protect an individual's right to privacy under Article 8 of the European Convention on Human Rights, except as is in accordance with the law and is necessary in a democratic society or for the protection of the rights and freedoms of others.

18. Each website begins with the words:

"The Parochial Church Council (PCC) of St Mary's Doddington with Benwick provides the following information to assist in clarifying the situation as regards the reserving of grave spaces, which has recently become the subject of a Faculty."

However, the details then concentrate on the particular application of the Petitioner by name rather than, as the PCC is entitled to do, giving general information about the process without particularisation. I hope that the PCC and the benefice will take steps to remove the material which is presently on the site forthwith and, if they wish, replace it with material which accurately identifies what the PCC's policy towards applications for a faculty to reserve a gravespace is and which does not contain the misleading words that "...the PCC passed a resolution saying that no one would be able to reserve a grave space..." which is not within their power. The PCC may wish to amend their resolution at a PCC meeting to reflect what they are in fact permitted to do which is to refuse to support the application, see Part B, Question 3 of the petition form.

19. Further I would invite the PCC to investigate or proceed with the following:
- (a) The consecration of all or part of the ground within the new cemetery by Doddington Hospital.
 - (b) Identification with the assistance, if necessary, of an undertaker of the number of spaces which remain to be filled in the churchyard. The viability of a further row of graves up to the church wall needs to be resolved.
 - (c) Whether any of the ground could be considered for re-use for burial. So long as the churchyard has not been closed by Order in Council, it is lawful to re-use a churchyard or any part of it that has previously been used, even if memorials are still standing and which can be removed by an application for a faculty. The Registry will be able to provide guidance on this.
20. It would benefit parishioners and non-parishioners alike if St Mary's was able to find a way to create more space within its churchyard.
21. I appreciate that this application has caused substantial distress not only to the Petitioner but to many of the parishioners at St Mary's. Now that this application has been resolved, the church and its members must work together to heal wounds and to love God and their neighbours.

His Honour Judge Leonard QC
Chancellor of the Diocese of Ely
2nd October 2020