

IN THE CONSISTORY COURT OF THE DIOCESE OF COVENTRY

ST PETER AD VINCULA: HAMPTON LUCY

ON THE PETITION OF STANLEY COOPER

JUDGMENT

- 1) James Cooper was murdered in April 2011 just three days after his twenty-fifth birthday. Mr. Cooper was buried in the churchyard of St Peter ad Vincula in Hampton Lucy.
- 2) James Cooper was the only son of Stanley and Sandra Cooper. Mr. and Mrs. Cooper are parishioners in Hampton Lucy and Mr. Cooper petitions with the support of the incumbent, the Revd Andrew Larkin, and of the Parochial Church Council for a faculty to reserve for himself and his wife the gravespace adjoining the plot in which their son is buried.
- 3) There have been two letters of objection which I will consider below but the writers of those letters have both chosen not to become parties to these proceedings.
- 4) I informed Mr. & Mrs. Cooper that I was minded to determine the case on the basis of written representations and invited their representations as to that course. They indicated that they were content for that approach to be taken and accordingly I will determine the case on that basis.

The Stance of the Incumbent and the Parochial Church Council.

- 5) Mr. Larkin and the Parochial Church Council support this petition. Mr. Larkin has helpfully provided the information that the population of the parish is 566; that there are approximately 63 spaces remaining in the churchyard; and that in the period of the last five years there have been an average of two burials per annum.

- 6) Mr. Larkin has also confirmed that neither he nor any member of the Parochial Church Council has any knowledge of that Council having adopted any formal policy with regard to the reservation of gravespaces.

The Objectors' Submissions.

- 7) There have been letters of objection from Chris Robinson and Mrs. G. Spellar. Mr. Robinson and Mrs. Spellar both express their understanding of and sympathy for the tragic circumstances of Mr. and Mrs. Cooper's loss of their son.
- 8) Mr. Robinson is a former churchwarden and treasurer of St Peter ad Vincula. He talks of the need to apply the Churchyard Regulations "to all without exception". Mr. Robinson expresses the fear that the grant of the faculty sought could trigger a number of applications for such faculties "which, if successful, would see the space in this very small churchyard pre-allocated to the disadvantage of others". Finally, Mr. Robinson says that to grant the faculty sought by Mr. and Mrs. Cooper would be to give them a "dispensation" and contends that the Coopers "either do not understand or accept that these regulations applied impartially are for the benefit of all".
- 9) Mr. Robinson appears to have misunderstood the effect of the Churchyard Regulations which set out the characteristics of those memorials which an incumbent is authorised to permit without faculty and which give guidance as to the approach which the Court will normally take to faculty applications of particular kinds. I have set out at [17] below the provisions of the current Churchyard Regulations in relation to the reservation of gravespaces. Those Regulations came into force in November 2019 replacing earlier Regulations which made no reference to the reservation of gravespaces. It will be seen that the Regulations do not operate as a general bar to the grant of a faculty such as that sought here. To the extent that Mr. Robinson believed that such a course was not permissible he was mistaken. It was always the position that a gravespace could not be reserved without faculty but that cannot affect the question of whether a faculty should be granted when sought.
- 10) Mr. Robinson's letter caused me to suspect that space was limited in this churchyard such that the reservation sought could prejudice the rights of others

and also to suspect that the parish had adopted a policy of resisting the grant of reservations. In the light of that I caused the Registry to ask Mr. Larkin to confirm the position. That confirmation provided the information I have set out at [5] and [6] above. That information makes it clear that there is no parochial policy against the reservation of gravespaces in this church. It also makes it clear that there is sufficient space in the churchyard to meet the needs of those wishing to be buried there for the next thirty years or thereabouts.

- 11) I am driven to the conclusion that Mr. Robinson's objection to this faculty is influenced by mistaken beliefs as to the relevant rules and as to the amount of space available in the churchyard when compared to the average number of burials taking place there.
- 12) Mrs. Spellar's objection is to the effect that the proposed reservation would have an adverse effect on the appearance of the churchyard in that there would be a gap in what would otherwise be a continuous row of graves. As well as being unsightly such a gap will also hinder, Mrs. Spellar believes, the proper maintenance of the churchyard and I note that Mrs. Spellar is engaged in assisting in keeping the churchyard tidy. I will consider the effect of that below.

The Petitioner's Submissions.

- 13) Mr. and Mrs. Cooper have responded to the objections by pointing out in restrained but powerful terms the depth of their grief at the untimely loss of their only son explaining that knowing that they will be buried alongside him will provide them with a modest degree of comfort. They also explain that both at the time of their son's death and since their conversations with Mr. Larkin and with his predecessor led them to believe that there would be no difficulty in obtaining the reservation they now seek.

The Approach to be Taken.

- 14) I explained my understanding of the competing factors for and against the reservation of gravespaces in my decision in the Lichfield Consistory Court in 2014 in *Re St Leonard, Blithfield* saying at [6]

"6. Whether it is or is not desirable to allow gravespaces to be reserved is a matter on which differing views can be held legitimately.

“7. Those in favour of allowing reservation would say that it gives proper and appropriate assurance and comfort in particular to those with departed relatives in a particular churchyard. It can be seen as part of a process of making proper provision for one’s end. Moreover, that assurance and comfort can be legitimate reinforcement of a person’s connexion with and commitment to the particular church and to the wider Church. The practice of gravespaces for family members being reserved alongside each other or close to the existing graves of other family members gives expression to legitimate family feeling. It will also be said that the potential prejudice to others can be prevented by ensuring that reservation is not permitted where there is a real risk that it will prevent parishioners who die before those benefiting from the reservation from being buried in the churchyard.

“8. Those who resist such reservations say that they detract from the principle of equality as between the departed. It is said that even if care is exercised there remains a risk that the rights of parishioners will be prejudiced. That risk will materialise if before the death of those to be buried in the reserved plot other space in the churchyard is used up. In such circumstances there will be persons who cannot be buried in a churchyard even though space remains in the churchyard in question because that space has already been reserved. In addition it can be said that the presence of unoccupied but reserved plots amongst other plots detracts from the appearance of the churchyard and so impairs its function of providing a fitting setting for the church in question and a fitting resting place for the departed.

“9. The Court has a discretion whether to allow or to refuse a petition for reservation of a gravespace. In most cases that discretion will be exercised in favour of reservation particularly where the faculty is sought by those who have a right of burial in the churchyard. This is on the proviso that it can properly be said that there is no substantial risk to the rights of other parishioners. The reported cases do, however, show that different chancellors have taken different views as to quite how readily such faculties will be granted. Thus there is a difference of emphasis to be seen between the language of Newsom Ch in *Re West Pennard Churchyard* [1992] 1 WLR 32 and of Lomas Ch in *Re St Mary, Dodleston, Churchyard* [1996] 1 WLR 451.”

15) I explained the risk which the reservation of a gravespace can pose to the rights of parishioners and the way in which that risk must be assessed as follows in *Re St Benedict Biscop, Wombourne* [2019] ECC Lic 2 at [14]:

“... The court has power to make such a grant even though the grant prevents others who have an entitlement to burial in the churchyard from being buried in the particular plot. However, just as the court’s power to reserve a gravespace in a churchyard will not normally be exercised when its effect would be to prejudice the burial rights of parishioners The approach to be taken to reserving a gravespace in a churchyard is in part a matter of fact and degree. Any reservation has the potential for prejudicing the rights of others to be buried in the churchyard in question. The court will, however, look at the practicalities of the number of remaining spaces in a churchyard and the likely level of usage with a view to considering the degree of risk that a reservation would preclude the burial in the churchyard of someone who would otherwise be entitled to be buried there before the interment of the person in whose favour a reservation is made. The greater the risk that the grant of a reservation would mean that a parishioner was prevented from being buried in the churchyard because the reserved plot was being kept vacant and unoccupied awaiting the later death of the person with the benefit of a reservation then the less appropriate it will be to grant a reservation.... Accordingly, regard is to be had to the

available space and the degree of risk that the reservation will prevent a person entitled to be interred ... from being buried there when there would otherwise be sufficient space.”

16) Different considerations apply where a the Parochial Church Council has a policy of resisting the reservation of gravespaces and different chancellors have expressing differing views as to the weight to be given to such policies (see the survey of the authorities in *St Michael and All Angels, Blaisdon* [2020] Ecc Glo 3) but there is no such policy here and I need not address that debate at this time.

17) The Coventry Churchyard Regulations explain the approach to be taken to the reservation of gravespaces in these terms:

“85) No gravespace may be reserved without a faculty. Details of the procedure for applying for the reservation of a gravespace can be obtained from the Registry.

“86) When a gravespace has been reserved it is important that a proper record is kept of its location and of the fact of reservation. The reserved plot should be recorded on a plan of churchyard. It should also be suitably marked on the ground by a marker which is sufficiently visible and durable to ensure that the reservation is readily noticed. In a churchyard where gravespaces have been reserved the incumbent and the Parochial Church Council should decide upon a suitable standard form of marker for the reserved spaces. There are a number of ways in which such spaces can be marked including small wooden crosses; small metal markers; and small stone tablets. The Archdeacon and the Diocesan Advisory Committee can advise on options which might be appropriate for a particular churchyard. In a churchyard where a standard form of marker has been agreed upon by the incumbent and the Parochial Church Council that form should be adopted unless the petitioner can establish, on application to the Chancellor, that exceptional circumstances exist justifying the use of a different form of marker. The grant of a faculty for the reservation of a gravespace will normally be conditional on arrangements being made for a suitable marker to be installed.

“87) It is open to a Parochial Church Council to adopt a policy stating that it does not support the reservation of gravespaces in its churchyard. Such a policy is not binding on the Chancellor and an application seeking a faculty to reserve a gravespace in such a churchyard will be decided on its merits. In considering such an application the Chancellor will normally invite the Parochial Church Council to explain the factors which caused it to adopt the policy. However, very considerable weight will be given to such a policy and the applicant for a faculty will normally have to show exceptional circumstances to justify a departure from such a policy. A policy of opposition to the reservation of gravespaces should only be adopted after consultation with parishioners and should be subject to debate and approval by a formal resolution of the Parochial Church Council.

“88) Even where such a policy is not in place the Chancellor will not normally authorise the reservation of a gravespace where a reservation is likely to interfere with the rights of parishioners and where there is a substantial risk that the churchyard will be full an appreciable period before the reserved space is used by the person in whose favour it has been reserved. Whether a particular reservation is likely to have this effect will depend on the age of the petitioner; the number of

spaces remaining in the churchyard; and the number of interments which normally occur in the churchyard. The Chancellor will not normally allow a gravespace to be reserved in cases where there is no more than 10 years space remaining in a churchyard.

“89) Reservations will normally be limited to a period of 50 years but will be renewable on application made before the end of that period.”

- 18) It follows that the court’s discretion will normally be exercised in favour of a reservation where the faculty is sought by parishioners who have a right of burial in the churchyard and where there is no substantial risk to the right of parishioners but that different considerations will apply where there is such a risk or where the Parochial Church Council has adopted a policy of opposing the reservation of gravespaces.

Assessment.

- 19) Here Mr. and Mrs. Cooper are parishioners and have been resident in the Hampton Lucy parish for 14 years; they are in their late 60’s; at the current rate of burial there is enough space in the churchyard for the next 30 years; and Mr. and Mrs. Cooper have a powerful reason for wishing to be buried in a particular plot in the churchyard. Those considerations all point to the grant of the faculty sought. Do the arguments put forward by the objectors lead to any different conclusion?
- 20) I have already explained that Mr. Robinson’s objections appear to be based on a number of misunderstandings and I can attach little weight to them. Mrs. Spellar raises practical and aesthetic concerns but those also can carry little weight in circumstances where the Parochial Church Council being the elected representatives of the parishioners together with the incumbent support the Petition. Any aesthetic effect will be modest and the extent to which the reservation will hinder the maintenance of the churchyard will also be modest. Moreover, it is apparent that to the extent that Mr. Larkin and the Parochial Church Council had any concerns in those regards such concerns did not prevent them from expressing support for the Petition. That is a significant factor given that the responsibility for the maintenance and appearance of the churchyard lies with the incumbent and the Parochial Church Council.

21) In those circumstances the objections cannot prevail against the powerful considerations in favour of the grant of the reservation sought and a faculty will be granted.

STEPHEN EYRE
HIS HONOUR JUDGE EYRE QC
CHANCELLOR
13th August 2020