

IN THE CONSISTORY COURT OF THE DIOCESE OF CARLISLE

In the matter of:

St. John the Evangelist, Houghton

THE PETITIONS OF:

- (1) Mr. Peter Bainbridge**
- (2) The Rev. James McAllen**
- (3) Mr. Alan Wolstencroft**

JUDGMENT

Delivered on 14 August 2025

A. Introduction

1. This judgment concerns three related grave space reservation petitions, each of which seeks a faculty reserving burial plots in the churchyard at St. John the Evangelist, Houghton.
2. Paragraph 4(c) of each of the petitions identifies that at the present rate of burials, only about 4 years' space presently remains available. This means that I must decide whether to grant the application despite the remaining space in this churchyard being so limited.
3. Although he does so in tentative and most respectful terms, Mr. Bainbridge has objected to Mr. McAllen's petition. He has not chosen to become a formal party opponent. The other two petitions are unopposed. All 3 applications are supported by the PCC.

B. Law

4. Applications for grave space reservation are ordinary straightforward. That, unfortunately, is not so where the churchyard in question is nearly full. In such cases, the relevant law is helpfully summarised in *Re St. Mary, Haversham* [2025] ECC Oxf 2, a decision of Chancellor Hodge, KC (in the Diocese of Oxford). This is the law I have applied in ruling on these 3 applications. That decision sets out the principles to be applied where (as in this case) there is a petition to reserve grave space, but only limited space remaining within the churchyard for future burials. The *St. Mary, Haversham* case concerned a churchyard where it was estimated that the remaining space would only be sufficient for the parish's needs for another 5 years.
5. By reference to his earlier decision in the matter of *Re St. Mary, Thame* [2022] ECC Oxf 2, (2023) 25 Ecc LJ 114 Chancellor Hodge, KC identified the following, non-exhaustive propositions:
 - “(1) *The reservation of a grave space is entirely within the discretion of the consistory court, to be exercised having regard to the particular circumstances of the case.*
 - (2) *The court will be more inclined to grant a faculty to a petitioner with the right to be buried in the churchyard than to one without such an entitlement. Those who have such a right are the persons living within the parish, and those on the electoral roll of the parish church.*
 - (3) *The court may nevertheless grant a faculty to a petitioner with no right to be buried in the churchyard where they can demonstrate a personal, or a substantial family, connection to the church and/or its churchyard, or some other some good and sufficient reason to be buried there.*
 - (4) *Where there is sufficient space within the churchyard, and the incumbent minister gives their consent, the court may well grant a faculty to such a petitioner, unless the Parochial Church Council have a policy of opposing the reservation of grave spaces.*
 - (5) *Such a policy cannot be conclusive, and it cannot remove the court's overarching discretion; but where the PCC have adopted a policy that is*

considered, reasonable and fair, the court will only be justified in departing from that policy in exceptional circumstances; and anyone seeking to reserve a grave space in the face of such a policy will need to show that their case is markedly out of the ordinary.

- (6) *Where, however, the remaining space within the churchyard is limited, then a faculty will not normally be granted, and the petitioner will have to demonstrate sufficient justification for the court to take the exceptional course of allowing a reservation in such circumstances, because of the risk that such a reservation will prejudice the rights of those parishioners or worshippers who would otherwise be entitled to be buried in the churchyard.*
 - (7) *Even where such a justification is demonstrated, it will not usually be right to extend the duration of the faculty beyond the period for which the churchyard is likely to have space for burials, unless there are exceptional circumstances (including evidence of a particularly strong connection to the church and/or the churchyard) in favour of doing so.*
 - (8) *Should a faculty for a grave space reservation be granted for a limited duration, it remains open to the petitioner to apply for an extension of the period of its validity. Whether or not any extension is to be granted will depend upon the prevailing circumstances, including: (1) the petitioner's personal circumstances; (2) whether arrangements have been made to provide additional space for burials, whether by the acquisition of further land, or the re-use of parts of the churchyard, or otherwise; (3) the views of the incumbent minister; and (4) any current policy of the PCC towards the reservation of grave spaces."*
6. I also remind myself of the decision of Chancellor Hill, KC in *Re St. Leodegar, Hunston* [2023] ECC Chi 1 (see paragraph 15 of Chancellor Hodge, KC's decision in *Re St. Mary, Haversham*). That case concerned an application to reserve 2 grave spaces in a churchyard that it was anticipated would be full within 5 years. The applicants in that case had long associations with the parish and the church. They had family graves within the churchyard, the support of the PCC and there were no objections. In other words, the facts of that case are like those of Mr. Bainbridge's present application.

7. Chancellor Hill KC noted (paragraph 8) that the burden of proof lay on the petitioner to show on the balance of probabilities that there was a sufficient justification to take the exceptional course of allowing a reservation when the remaining space in the churchyard is limited. He found there was none, despite the support of the PCC, and the absence of objections.

8. The Chancellor then added (paragraph 13):

“This decision should not be interpreted as a determination that neither Mr Martin nor Ms Lewis are worthy of burial in the churchyard. It is not a judgment on their character nor their nexus, and that of their families, with the parish of Hunston. They undoubtedly have very substantial links with the parish, even though neither may have the legal right of burial. Were they to die when one or more spaces remain unused, then I would expect the incumbent to exercise their discretion to permit their burial in the churchyard. However, it would be improper for a grave space to be reserved when so few remain, even had they enjoyed a right of burial. The remaining spaces must be filled by the burial of individuals with a right of burial or a strong connection with the church in the order in which they die, until such time as the churchyard becomes full.”

9. Finally, I refer to the decision of Chancellor Lyndsey de Mestre, KC in *Re St Peter, Hilton* [2024] ECC Yor 1 (Diocese of York) (see paragraph 16 of Chancellor Hodge, KC’s decision in *Re St. Mary, Haversham*). Like Chancellor Hodge KC, I would respectfully agree with Chancellor de Mestre, KC that to demonstrate exceptional circumstances requires a petitioner to show that their case is “markedly out of the ordinary”.

C. Mr. Bainbridge’s Petition

10. Mr. Bainbridge and his wife, Mrs. Hilary Bainbridge, are both worshippers at St. John the Evangelist. Although they do not own or occupy property in the parish, they both have relatives buried in the churchyard. Mr. Bainbridge is on the parish electoral roll, although Mrs. Bainbridge is not.

11. Mr. Bainbridge is 77 years old, and Mrs. Bainbridge is 74.

12. Paragraphs 4 to 6 of Mr. Bainbridge's petition contain information about the churchyard, the grave space intended to be reserved, and as to the PCC's stance. On 11 March 2025 the incumbent Vicar countersigned the petition confirming that the information given in those paragraphs is true to the best of his information and belief.
13. Paragraph 4 of the petition identifies that the average yearly number of burials in the churchyard over the last 10 years has been 3. At that rate, it is identified by paragraph 4(c) of the petition that the churchyard only has enough space for a further 4 years' worth of burials.
14. Since Mr. Bainbridge has raised concerns about the speed with which his application has been dealt with, it may assist him if I record my understanding of the relevant procedural history.
15. Mr. Bainbridge signed his petition on 2 March 2025, and it was countersigned by the incumbent Vicar on 11 March 2025. His petition was then sent to the Registry, which then supplied the PCC with the necessary form of public notice.
16. Mr. Bainbridge's petition was advertised between 23 March 2025 and 23 April 2025. No objections were received.
17. The petition is supported by the incumbent and the PCC. The PCC minutes for its meeting on 13 May 2025 shows that this application received the unanimous approval of the PCC.
18. After the PCC minutes were received at the Registry on 30 May 2025 the petition was sent to me.
19. Having noted the very limited space remaining in the churchyard, on 3 June 2025 I enquired whether there were said to be any exceptional circumstances in this case. I also asked whether there was any prospect of the churchyard being extended.
20. On 4 June 2025 I was informed by the Registry that the PCC secretary had confirmed that so far as she was aware there were no exceptional

circumstances in this case, and that there was no prospect of the churchyard being extended.

21. On 13 June 2025 I received from the Registry a copy of Mr. Bainbridge's email to the Bishop of Penrith complaining about the delay in processing his application to buy a burial plot. He writes that he began that process in October 2023.
22. I have set out my understanding of the procedural history of Mr. Bainbridge's application above, to reassure him that it has indeed been dealt with promptly by the Registry.
23. Given Mr. Bainbridge's concerns, however, I supplied an earlier draft of this Judgment (solely as it related to him) to Mr. Bainbridge on 16 June 2025. The purpose of doing so was to reassure him on the point just mentioned, and to invite him to confirm whether I had a complete and accurate understanding of the factual circumstances of his application. At the same time, I asked Mr. Bainbridge to state whether he wished to make further arguments in support of his application, either in writing or in person. I explained that the decision set out in my draft Judgment, to refuse his application, represented my provisional view: that stood to be revisited once I had received his response.
24. Since then, in a number of emails, some with other documents attached, Mr. Bainbridge has advanced strongly expressed arguments in support of his application. I have read all those documents and taken them fully into account in reaching my decision. The salient arguments he puts forward concern:
 - (a) His very long standing personal and family association with the church, having been brought up opposite the church and worshipped there since he was a young child;
 - (b) His wish to be buried with family members, and near the grandfather to whom he was particularly close, and whose grave he continues to visit many years after his death; and
 - (c) The significant community service he has given, and continues to give, in the area generally and at the church specifically.

25. As I have already mentioned, Mr. Bainbridge also makes strong criticism of the delays he identifies in dealing with his grave space reservation application. I have already dealt with the history of the petition after it was sent to the Registry.
26. After receiving Mr. Bainbridge's submissions I gave procedural directions for a final round of written submissions, and asking him, Mr. McAllen and Mr. Wolstencroft to raise any objection to me dealing with their applications together and on the basis of their written submissions.
27. Those directions have run their course, without any objection being taken to me dealing with the applications as I proposed. I have decided not to accede to Mr. Bainbridge's request that I should delay dealing with his application until October this year. He intimated that by that time some further evidence might be available concerning the way his application was handled before submission to the Registry. In my judgment any such further evidence would not bear on the merits of his application. Furthermore, given Mr. Bainbridge's complaints about slow progress to date, it seems wrong to me to introduce further delays into the process.
28. I now turn to the application of the law, as just stated, to the facts of Mr. Bainbridge's case.
29. Mr. & Mrs. Bainbridge are worshippers at St. John the Evangelist church. As already mentioned, although they do not live in the parish or own property there, Mr. Bainbridge is on the electoral roll. As such he has a right to be buried in the churchyard. Both Mr. & Mrs. Bainbridge have relatives buried in the churchyard. They have the support of the PCC for their application.
30. Were it not for the limited remaining space for burials I would have little hesitation about granting the faculty Mr. Bainbridge seeks.
31. Since, however, the churchyard will be full within around 4 years' time I must consider the law set out above. This is not case where it is anticipated that the churchyard will be extended.
32. It is in these circumstances that I have come to the decision, with regret, that I must refuse Mr. Bainbridge's application. In my view there are no factors

sufficient to justify taking the exceptional course of allowing reservation of a grave space in this churchyard where there is such a limited amount of space left. In my judgment, the factors Mr. Bainbridge has emphasised, of his personal and family connection with the church, and his history of service to it, are not, in the necessary way, markedly out of the ordinary.

D. Mr. McAllen's Petition

33. Although Mrs. McAllen is on the electoral roll of the parish, Mr. McAllen is not: nor do either of them own or occupy property within the parish.
34. Mr. McAllen served as Vicar at St. John's Houghton between 1980 and 1991, and in retirement, he and Mrs. McAllen continue regularly to worship there.
35. I have already mentioned that Mr. Bainbridge chose to object to Mr. & Mrs. McAllen's application, while saying that he did so "*with great heartache*": describing them as a "*lovely couple*" for whom he "*has a great regard*".
36. Although Mr. McAllen's service as Vicar at the church for over a decade must, of course, lend weight to his application, the question I must consider is whether that is something not only "*out of the ordinary*", but "*markedly*" so. Again, with regret, I have come to the decision that Mr. McAllen has not demonstrated sufficient justification to displace the normal rule that a faculty will not be allowed where the remaining space in a churchyard is limited.

E. Mr. Wolstencroft's Petition

37. Both Mr. & Mrs. Wolstencroft, as owners or occupiers of property in the parish, and being on the electoral roll, have a right to be buried in this churchyard.
38. In support of their case that there are exceptional circumstances attaching to their application, Mr. Wolstencroft refers to the facts that he has lived in the parish for some 65 years, for 50 of which he has served as a Lay Preacher at the church. During that time, he was elected Church Warden on a number of

occasions and served on the PCC. Furthermore, he and Mrs. Wolstencroft were youth leaders at the church for many years.

39. It is clear from this that both Mr. & Mrs. Wolstencroft have given long-standing and, I am sure, valuable service to the church. This they have in common with Mr. & Mrs. Bainbridge and the Reverend James McAllen and Mrs. McAllen.
40. The question, however, once more, is whether their circumstances may fairly be characterised as exceptional and markedly out of the ordinary. In their case too, I am afraid to say, my decision is that they have not overcome that substantial hurdle.

F. Conclusions

41. In reaching this decision I wish to emphasise that this is no adverse judgment on the characters of Mr. & Mrs. Bainbridge, the Reverend James McAllen & Mrs. McAllen or Mr. & Mrs. Wolstencroft, or the quality of their connection with the parish. Rather it is a question of managing the limited space remaining in this churchyard consistently with the legal principles that apply in difficult circumstances such as these.
42. I charge no fee for this written judgment, but the Petitioners must pay the costs of their respective petitions, including any fees incurred by the Registry in dealing with these faculty applications.

JAMES FRYER-SPEDDING

Chancellor

14 August 2025