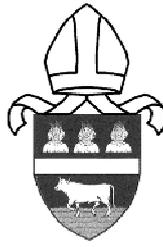


Neutral Citation No: [2022] ECC Oxf 2



Neutral Citation No: [2022] ECC Oxf 2

Faculty – Reservation of double grave space – Petitioner and her partner (respectively 56 and 44 years of age) former residents of the parish with continuing substantial personal and family connections to the church and its churchyard – Only sufficient space in the churchyard for another seven to ten years – Principles on which petition should be determined – Faculty granted for ten years with permission to apply to extend

Petition No: 10877

IN THE CONSISTORY COURT
OF THE DIOCESE OF OXFORD

Date: Thursday, 28 April 2022

Before:

THE WORSHIPFUL DAVID HODGE QC, CHANCELLOR

In the matter of:

St Mary, Thame

THE PETITION OF MS MANDY LOUISE MACINTOSH

Unopposed petition determined on the papers and without a hearing.

The following cases are referred to in this Judgment:

Re Churchyard of Wick, St Lawrence (Bath & Wells CC, 4 November 2013)

Re Dilborne Churchyard (2001) 6 Ecc LJ 77

Re Holy Trinity, Belbroughton & Fairfield [2021] ECC Wor 3

Re Holy Trinity, Belbroughton & Fairfield [2021] ECC Wor 4

Re St Andrew, Leyland [2021] ECC Bla 1

St Augustine, Kirkby-in-Cleveland [2021] ECC Yor 5

Re St Clement, Terrington [2020] ECC Ely 3

Re St George, Fatfield [2021] ECC Dur 4

Re St. George, Fatfield [2021] ECC Dur 5

Re St Giles, Exhall [2021] EACC 1, (2022) 24 Ecc LJ 116; reversing [2020] ECC Cov 1, (2021) 23 Ecc LJ 118 at first instance

Re St James, Brownhills [2020] ECC Lic 3

Re St John the Baptist, Ashley [2020] ECC Lic 1

Re St John the Baptist, Cold Overton [2021] ECC Lei 4

Re St Leonard, Blithfield (Lichfield CC, 16 October 2014)

Re St Mary, Doddington [2020] ECC Ely 2

Re St Mary, Dodleston Churchyard [1996] 1 WLR 451

Re St Mary & St. Radegund, Postling [2021] ECC Can 1

Re St Mary, Woodkirk [2020] ECC Lee 3, (2021) 23 Ecc LJ 250

Re St Michael and All Angels, Muncaster [2021] ECC Car 2

Re St Nicholas, Baddesley Ensor [1983] Fam 1

Re St Oswald, Methley with Mickleton [2016] ECC Lee 2

Re St Thomas à Becket & St Thomas the Apostle, Heptonstall [2021] ECC Lee 2

Re West Pennard Churchyard [1992] 1 WLR 32, [1991] 4 All ER 125

JUDGMENT

Introduction and background facts

1. This is an unopposed faculty petition, presented by Ms Mandy Louise Macintosh on 12 December 2021, seeking the grant of a faculty authorising, for herself and her partner of some 25 years, Mr David Edward Weller, the reservation of a double grave space (Plot 027 in Row 5) in the new part of the churchyard of St Mary, Thame as close as possible to the grave of her late father, Mr John Porter, for the usual period (in this Diocese) of 25 years from the date of the grant of the faculty. Since it would be cruel to keep the petitioner in suspense, at the outset of this judgment I announce that I propose to grant the petition for the period of ten years from the date of the grant of the faculty, with permission for the petitioner to apply, on paper, within six months before its expiry, for an extension of that period, supported by evidence of her prevailing circumstances, and of the views of the minister, the churchwardens and the PCC at that time. Without in any way seeking to pre-judge the outcome of any such application, whether or not any extension is granted is likely to depend upon: (1) the personal circumstances of the petitioner and her partner at that time; (2) whether, by that time, arrangements have been made to provide additional space for burials in the town of Thame, 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 at that time; and (4) the current policy of the Parochial Church Council (**the PCC**) towards the reservation of grave spaces. I am setting out my reasons in the form of this written judgment solely because this churchyard is likely to be full before the petitioner's time should come in the normal course.

2. Both the petitioner and Mr Weller live in Hampshire and their names are not currently entered on the church electoral roll of the parish. At present, therefore, they have no right of burial in the churchyard. The petitioner is 56 and Mr Weller is 44 years of age. The petitioner's late father, who was resident in Thame, died on 22 November 2020, aged 79, and his remains rest in Plot 015 of Row 3. The remains of the petitioner's stillborn son, who died on 11 August 1989, rest in the old part of the churchyard. According to the petition, the petitioner was formerly resident in the parish of Thame from 1980 to 2002; and her mother, and all her immediate family, still live in the area. In the petition, the minister and the churchwardens consent to the reservation of the grave space; and they certify that this will not interfere with the rights of parishioners to be buried in the churchyard. They certify that the average number of burials is 15 per year; and they estimate that the remaining space in the churchyard will be sufficient for seven to ten years. At its meeting on 24 November 2021, the PCC unanimously approved the petitioner's request for the reservation of a burial space in the churchyard. The minutes record that before doing so, there was some discussion about "... using existing family graves where enough time has elapsed to re-use for new family members".

3. According to the grave plot details incorporated within the petition, the new part of the churchyard was consecrated in 2018, and the first three rows of grave spaces there are already fully occupied (apart from a double gravespace which has been reserved for the Sisters of Providence), as are five of the nine grave plots in row four. The details record that the number

of burials: (1) in the period August to December 2018 was six, (2) in 2019 was eleven, (3) in 2020 was six, and (4) in 2021 was five. This would seem to be less than the 15 burials per year certified in the petition, although the difference may be explained on the basis that there have been burials into existing double grave plots in the old part of the churchyard.

4. On reviewing the petition, I entertained concerns about this faculty petition. I acknowledged that the petitioner had strong family connections with both the parish and the churchyard, not least because the remains of her stillborn son rest there. I also recognised that her petition had the consent of the minister and the churchwardens, and that it had received the full support of the PCC. However, the petitioner was only 56 years old; and, according to the petition, she had not lived in the parish for 20 years. Crucially, there was only enough space remaining in the churchyard to accommodate further burials for another seven to ten years, so long before the petitioner's normal time should come, the churchyard would be full, and the reservation would prevent someone with a present right of burial from being buried there. I invited the Registry to convey my concerns to the petitioner and to the minister, and to ask them whether they wished to provide any further evidence or material in support of the petition. This the Registry duly did. In response, the Registry received an email from the petitioner, dated 1 February 2022, which reads:

“... although my partner and I have been together for 20 years we did not move away from the area until April 2013. This was due to a change in his employment. My two daughters and their families still live in the area as does my brother and family and my mother. It is our intention to move back to Thame as soon as we retire if not before. We still spend a vast amount of our free time in Thame which we regard as home. I hope this information will be of help. I was married in Thame church and my second child was christened in St Mary's. Thame is regarded as home to us all.”

The Registry also received an email dated 3 February 2022 from the Vicar of St Mary's and the Rector of Thame. After correcting obvious typographical errors, this reads as follows:

“Upon further enquiry, I understand that Ms Macintosh has spent considerable prior time to 2013 in the Parish. The family has ties to the church: having been married in St Mary's and having a daughter christened here too. Both of Ms Macintosh's two daughters and their families still live in the area as does her mother and brother. I am satisfied that there is the strong intention to move back to Thame as soon as Ms Macintosh retires in seven years or sooner. Thame is the family home. Both I and the PCC support the application (both churchwardens are copied to my reply to you), especially in the knowledge that the town council has identified where the new burial yard will be located in the parish. I hope that this further detail will reassure the Chancellor to grant the faculty.”

5. Upon reading these emails, I noted an apparent discrepancy between the petition and the petitioner's email: the latter document stated that the petitioner and her partner had not moved away from the area until April 2013, yet paragraph 3 (c) of the petition stated that the petitioner had lived in the parish from 1980 to 2002. I invited the Registry to ask the petitioner to clarify this apparent discrepancy. This the Registry duly did. The petitioner responded to this inquiry in an email dated 7 February 2022. She apologised for the discrepancy in the information in the forms; and she explained that they “... definitely moved away in April 2013. At the time of filling

in the forms for you we were in the middle of moving house and very complex renovations so my brain was not functioning as it should.”

6. I also directed: (1) that if this had not already been done, the usual public notices should be displayed inside the church building, and on all the notice boards within, or leading to, the churchyard; and (2) pursuant to rule 9.1 of the Faculty Jurisdiction Rules 2015 (as amended), that notice of the petition (and a copy thereof) were to be given to the Town Clerk to Thame Town Council. My concern was that since there is only enough space remaining in the churchyard to accommodate burials for another seven to ten years, the churchyard would be full long before the petitioner’s normal time should come, and that any reservation would therefore prevent someone with a present right of burial from being buried there. I considered that this might be a matter of potential interest and concern, not only to the PCC and to those who worship at the church of St Mary, but also to residents of the town more generally. I therefore directed that notice should be given to the Town Council, so that it could consider the position from the perspective of the residents of the town generally, and so that the interests of all those with a present right of burial in the churchyard (subject to there being sufficient space remaining) might be taken into consideration, even though they do not actively worship in the church.

7. Notice of this faculty petition was duly given to the Town Clerk; and the usual public notices were duly displayed in accordance with my directions. By email dated 24 February 2022, the Town Clerk responded stating that:

“Having discussed this with my colleagues we are going to advise the council as a ‘note’. As the Church are happy with the arrangement, we do not feel at this time there is a need to comment or object.”

No objections have been received in response to the usual public notices.

8. In light of this, I directed that the Registry should ask the petitioner whether she would wish me to deal with the petition by way of written representations and, if so, to provide such representations within the next seven days. By email dated 22 April 2022, the petitioner stated that she would prefer her application to be disposed of in writing rather than by way of a hearing. Since the petitioner would prefer this course, and her petition is unopposed, I am satisfied, in accordance with rule 14.1 of the Faculty Jurisdiction Rules 2015 (as amended), that it is expedient, having regard to the overriding objective, for this faculty petition to be determined on consideration of written representations instead of at a hearing.

9. By a further email, dated 21 April 2022, the petitioner stated, by way of written representations, as follows:

“ As we have mentioned previously we have strong connections with Thame having lived there for so many years. I was married in St. Mary’s church. My first child is buried in the churchyard as is my father. My daughters were christened in St Mary’s. My mother will one day be buried with my father.

Although we presently live away it is our intention to come back to Thame as soon as our work commitments allow us to. My daughters and their families all live in the area as does my brother and his family. We visit my mother and our girls practically every weekend as well as seeing my brother and numerous friends too.

My partner David Weller's mother lives up north and his father in Ireland. He has a greater relationship with my family and regards Thame as home. We plan to marry next year to secure our relationship even more for us both and our families.

Whenever we visit the graves in the churchyard we do feel a great sense of peace and really do regard Thame as home."

10. I note that in May 2021 I granted a faculty authorising the reservation of a plot for the interment of ashes in the ashes section of the new area of this churchyard, for the usual period (in this Diocese) of 25 years, in favour of a petitioner and her husband (respectively aged 59 and 62). Not only did that petition have the full support of PCC, but the petitioner in that case had been resident in the parish of Thame ever since her marriage in September 1981 (and therefore had a present right of burial in the churchyard, space permitting). That petitioner also had historic connections with the church; and there were special considerations, involving a vulnerable adult son, which made it desirable for there to be a known resting place for his parents' remains when their time should come. On that occasion, I was therefore prepared to put aside my concerns that the churchyard was fast running out of space to accommodate future interments. About a month earlier, I had also granted a faculty authorising the reservation of a double grave plot for the burial of the remains of two Sisters of Providence when their time should come. This plot was situated next to an existing double grave plot which already accommodated the remains of another Sister (and which, in due time, should accommodate the remains of yet another of the Sisters). Although they were no longer resident in Thame, the Sisters of Providence had a longstanding connection with the parish; and the reservation of this second grave plot for the Sisters had enjoyed the full support of the PCC. All three Sisters were in their mid to late 70s. I am satisfied that the circumstances of these two earlier grave space reservation petitions are in no way truly comparable with those of the present petition.

11. My perception has been that over the last couple of years there has been an increase in the number of petitions seeking the grant of faculties authorising the reservation of grave spaces. This may reflect thoughts and concerns raised by the Coronavirus pandemic. In order to test whether this was indeed the case, I have obtained from the Diocesan Registry details of the number of such petitions presented in each of the years between 2012 and 2021, and also for the first three months of the current year (2022), up to the end of March. The number of petitions are as follows:

2012 - 43
2013 - 55
2014 - 54
2015 - 54
2016 - 40
2017 - 47
2018 - 36
2019 - 34
2020 - 31

2021 - 48

2022 - 22 (in three months)

These figures appear to bear out my perception that the number of gravespace reservation petitions increased in 2021 and has increased again so far this year. It is impossible to predict whether this trend will continue, or whether this is merely a temporary increase which will abate as the pandemic (hopefully) continues to recede.

The applicable law

12. 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, whether by a parishioner or a non-parishioner, otherwise than by way of the grant of a faculty on application to the Chancellor of the Diocese, the matter being entirely within the Chancellor's discretion. There have been a number of recent consistory court decisions in which grave space reservations have been refused to persons not living in the parish, and not on the church's electoral roll, because there were only a limited number of grave spaces left within the particular churchyard. Although the petitioners in those cases had some historic links with the parish in question, in each case the Chancellor had determined that, with few grave spaces remaining within the churchyard, the rights of parishioners enjoying a right of burial there would be prejudiced by the grant of a faculty; and they had therefore declined to grant one.

13. In my judgment in Re St Andrew, Leyland [2021] ECC Bla 1, in the Diocese of Blackburn, I explained (at paragraph 10) why, when dealing with faculty applications seeking to exhume human or cremated remains from consecrated ground, I find it helpful to consider the decisions of consistory courts in earlier cases, not as precedents slavishly to be followed, or even as tramlines guiding my way forward, but as affording potentially helpful indications as to how the particular circumstances of other, similar, but not identical, cases have been viewed when considering whether it is right to make an exception to the Christian principle of the permanence of human burial. I reminded myself of the desirability of securing equality of treatment, so far as circumstances should permit, as between petitioners, and of treating similar cases in similar ways, avoiding over-fine distinctions; but also that, ultimately, the duty of the court is to determine whether the circumstances of the particular case, properly considered and evaluated, are such as to justify making an exception to the presumption of the permanence of Christian burial. I consider that similar considerations of consistency and equality of treatment should apply when considering any application for a faculty authorising the reservation of a grave space. As Chancellor Leonard QC explained in Re St Mary Doddington [2020] ECC Ely 2 (in the Diocese of Ely), in the context of a grave space reservation petition (at paragraph 12):

“Chancellors will tend to look at previous decisions of the Court of Arches and other Chancellors when exercising their discretion.”

This faculty petition provides an appropriate opportunity for this court to review some of the recent decided cases on the reservation of grave spaces, and to identify some of the principles to be applied when considering such petitions, particularly in the context of a churchyard which is almost full.

14. I begin with two relatively recent decisions of Chancellor Hill QC in the Diocese of Leeds. In Re St Mary, Woodkirk [2020] ECC Lee 3, (2021) 23 Ecc LJ 250 the issue was the propriety of the use, in an inscription on a headstone, of words or phrases in a language other

than English. (This was before the decision of the Court of Arches in the leading case of *Re St Giles, Exhall* [2021] EACC 1, (2022) 24 Ecc LJ 116, which reversed the decision of Chancellor Eyre QC at first instance: [2020] ECC Cov 1, (2021) 23 Ecc LJ 118.) In the course of his judgment, Chancellor Hill QC noted (at paragraph 11) that:

“One of the features of a Church by law established is that its civic functions are not confined to its members (howsoever defined) but extend to the population as a whole.”

Those civic functions include burial (as well as marriage). The right to be buried, or to have one’s 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 church electoral roll of the parish, provided that the churchyard has not been closed for burials by Order in Council, and provided there is still room available for burials within the churchyard. If not resident within the parish, eligibility for entry on the church electoral roll of the parish requires one to have habitually attended public worship there during the preceding six months, unless prevented from doing so by illness or other sufficient cause: see paragraph 1 of the *Church Representation Rules* contained in Schedule 3 to the *Synodical Government Measure 1969*.

15. In *Re St Thomas à Becket & St Thomas the Apostle, Heptonstall* [2021] ECC Lee 2, the petitioner, who lived in Oxfordshire, wished to reserve a grave in a churchyard in West Yorkshire, due to “her affection for literature and the proximity of the grave of Sylvia Plath”. Both the interim priest-in-charge and the PCC had no objections to the reservation. There were in excess of 450 grave spaces available, and burials averaged five per year. After discussing the principles which a chancellor should consider when deciding whether to exercise the discretion to grant a faculty to someone who had no legal right to be buried in a churchyard, Chancellor Hill QC determined that, in the particular circumstances of that case, there was no reason to refuse a faculty. The Chancellor considered the ecclesiastical law on the reservation of grave spaces at paragraphs 6 to 10 of his judgment as follows¹:

“6. A faculty may be granted for the reservation of a particular grave space for a parishioner or non-parishioner, the matter being entirely within the discretion of the consistory court. Due weight will be given to any PCC policy and to the consent or otherwise of the incumbent. If granted, a faculty will prevent the incumbent from conducting a future burial in the plot to which it relates.

7. The Court will be more disposed to grant a faculty in respect of a person with a right to be buried in the churchyard, as opposed to one without such an entitlement. The Court will have to be satisfied that there is sufficient space in the churchyard so that those with a right to burial are not prejudiced. In my earlier decision in this diocese in *Re St Oswald, Methley with Mickleton* [2016] ECC Lee 2, I formulated certain principles which were largely derived from the judgment of Newsom Ch in *Re West Pennard Churchyard* [1991] 4 All ER 125². I repeat them here with minor revisions, and incorporating changes to the statutory provisions occasioned by a recent consolidating Measure.

¹ I have inserted the correct references to provisions of the 2018 Measure, which were changed due to late amendments during the process of its enactment.

² In the Diocese of Bath and Wells. The case is also reported at [1992] 1 WLR 32.

- i. At common law, every parishioner has a right of burial in the churchyard of the parish unless it is closed by due legal process;
- ii. The common law right extends also to all persons dying in the parish, whether or not they are parishioners;
- iii. By statute, a similar right is enjoyed by all persons whose names are on the church electoral roll of the parish: see s. 88 (1) of the *Ecclesiastical Jurisdiction and Care of Churches Measure 2018*;
- iv. A person who does not have the right of burial in the churchyard, may not be buried there without the consent of the parish priest: see s. 88 (4) of the *Ecclesiastical Jurisdiction and Care of Churches Measure 2018*.
- v. The parish priest has power at common law to prescribe where in the churchyard any burial is to take place: but that is the extent of their discretion in respect of cases where the deceased had a legal right of burial;
- vi. As freehold owner of the churchyard, the parish priest may grant consent to the burial of the remains of a person who has no legal right of burial. In doing so, they should consider the space available in the churchyard and the extent to which those with rights of burial may be prejudiced;
- vii. In deciding whether to give consent, the parish priest is also required to 'have regard to any general guidance given by the parochial church council of the parish with respect to the matter': see s. 88 (5) of the *Ecclesiastical Jurisdiction and Care of Churches Measure 2018*;
- viii. These common law and statutory rights crystallise only when the person in question dies.

8. In a key section of his judgment in *Re West Pennard Churchyard*, Newsom Ch says this:

'If a person with a legal right of burial wishes in his lifetime to assure his personal representatives of a right to bury his remains in a particular place in the churchyard, he must apply to this court for a faculty to reserve that grave space. Whether such a faculty shall be granted rests wholly in the judicial discretion of the court. If there is plenty of room in the churchyard it is freely granted to a petitioner who has a legal right of burial. What such a faculty does is to protect the petitioner against the hazard of losing his legal right in his lifetime (e.g. by ceasing to live in the parish), and to require whoever is the incumbent when the petitioner dies to allow his remains to be buried in the position in the churchyard defined in the faculty. To this extent, therefore, the faculty deprives the incumbent of his right to prescribe the position where a burial is to take place; and it deprives the parishioners generally of the space becoming available if the petitioner moves away. [126 j-127 b]

Such a faculty can also be applied for, with the concurrence of the incumbent, by a person who does not have a legal right of burial. The grounds on which such a faculty is granted vary; among them are the association of the petitioner with the church or with the parish, or the presence in the churchyard of the remains of relatives of the petitioner.'

9. Approving and applying this passage, Briden Ch, sitting in the Consistory Court of the Diocese of Bath and Wells in *Re Churchyard of Wick, St Lawrence* (4 November 2013), stated as follows:

‘Thus in deciding whether or not to grant a faculty [to reserve a grave space] the Court must consider whether the minister’s consent to the burial has been signified, and in its absence the petition ought to be dismissed. To do otherwise would be to subvert the purpose of [what is now s. 86 (4) of the *Ecclesiastical Jurisdiction and Care of Churches Measure 2018*], since the provision of a space reserved by faculty would override the minister’s power to give or withhold consent to the eventual burial.’

10. Where churchyards are nearly full, there is a general presumption that reservations will not be granted. This is particularly the case in respect of persons who do not have a legal right of burial. As I observed in *Re St Oswald, Methley*, at paragraph 10:

‘Where, as here, pressure of space is acute, it would be wrong for any Consistory Court to grant the reservation of a grave space such as to prejudice future burials. Those with a legal right of burial must therefore be interred in the order in which they die until such time as the churchyard is full.’”

Against that general background, I turn to consider other recent authorities.

16. In *Re St John the Baptist, Ashley* [2020] ECC Lic 1, in the Diocese of Lichfield, the petitioner wished to reserve a grave space in the churchyard for herself and her partner, next to the plot in which her father had recently been buried. She lived outside the parish but not far away, she had strong connexions with the church and the locality, and she was hoping, in the fullness of time, to move into the parish, or at least into the local area. Chancellor Eyre QC recognised that the petitioner had a close connection to this church, sound reasons for wanting to make provision for her interment at the time of the petition, and a good reason for seeking to reserve the space in question. Moreover, her petition was supported by the incumbent and the PCC. Nevertheless, the Chancellor refused to grant a faculty. There were only 50 available spaces, and burials averaged seven a year, so the churchyard was likely to be full within about seven years. The petitioner (aged 31) and her partner (aged 32) were both unlikely to die before the remaining spaces were required, within about seven years’ time, by those legally entitled to be buried in the churchyard, and so a reservation would prevent parishioners being buried in the remaining spaces. The Chancellor had been informed that the PCC were giving consideration to what should be done when the space currently available in the churchyard was used up, but there was no indication that it had been able to identify a solution, whether by obtaining additional land or by re-using parts of the churchyard. At paragraphs 8 and 9 Chancellor Eyre QC said this:

“8. Where there is ample space in a churchyard and consent from the incumbent and in the absence of a policy by the Parochial Church Council of opposing the reservation of grave spaces a faculty will readily be granted for a reservation. However, where space is limited or where there is such a policy then a faculty will not normally be granted and justification for taking the exceptional course of allowing a reservation in such circumstances will have to be shown.

9. The reason why a reservation will not normally be authorised when space is limited is because of the risk that such a reservation would prejudice the right of those parishioners who would otherwise be entitled to be buried in the churchyard.”

The reasons put forward by the petitioner for seeking to reserve a gravespace and, indeed, to reserve the particular space in question were cogent and genuinely-felt but they did not amount to the exceptional grounds which would be needed to justify the grant of a faculty in the present circumstances. The faculty was therefore refused. If arrangements were made in due course to provide extra space in the churchyard, whether by the acquisition of further land or by way of the re-use of parts of the churchyard or otherwise, then it would be open to the petitioner to make a fresh application, which would be “considered on its merits but against the principle that a reservation will not be permitted where there is a substantial risk of prejudicing the rights of parishioners”: see paragraph 15.

17. In *Re St Mary Doddington* [2020] ECC Ely 2 the petitioner, who was 49 years old, wished to reserve a grave space in the churchyard next to the grave of her father, who had not lived in the parish but had been buried there a little over a year earlier. Several of her relatives were buried in the churchyard, and her uncle and aunt had reserved plots there. The petitioner did not live in the parish, but in another parish in the same benefice about two miles away, and she was not on the church electoral roll. For at least 15 years the PCC had had a policy of not supporting any applications for the reservation of grave spaces, as a result of which several letters of objection were received from parishioners (and the incumbent and the assistant minister) in response to the application, all making the point that to allow the petition would be unfair to others who had not sought reservations because of the PCC’s policy. The remaining spaces available for burial would only meet the needs of the parish for a further ten years (or possibly less if there was insufficient space to fit in an additional row of graves). Chancellor Leonard QC determined that the PCC’s policy, which did not favour parishioners over non-parishioners, was not unreasonable, but was justified and fair; and he could find no sufficient grounds to go against that policy. He therefore refused to grant a faculty.

18. At paragraph 12 of his judgment, Chancellor Leonard QC indicated that he had considered the following judgments:

(1) *Re Dilborne Churchyard* (2001) 6 Ecc LJ 77 and *Re St Mary Dodleston Churchyard* [1996] 1 WLR 451, which are authority for the proposition that the Consistory Court will generally support a PCC policy of non-reservation unless such a policy reveals bad faith or is wholly unreasonable.

(2) *Re St Nicholas, Baddesley Ensor* [1983] Fam 1: when considering an application by a family member living outside the parish who wanted to reserve a gravespace in a churchyard in which his relations were buried, Chancellor Aglionby acknowledged that, as communities are subject to greater manoeuvrability, 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? The Chancellor accepted that the court must assess the reasons why a non-parishioner wished to be buried in a particular churchyard, which would centre around the links the non-parishioner had with the parish, including the natural desire to be buried close to one’s family members.

19. At paragraph 13 of his judgment, the Chancellor explained that his decision had been influenced by the following factors:

(1) For at least 15 years there had been in place a policy voted on by the PCC not to support any applications to reserve a grave space. The Chancellor emphasised that the PCC could not stop the process of reserving a plot, which remained entirely in the discretion of the Chancellor.

(2) The PCC's policy did not favour parishioners over non-parishioners because the PCC 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.

(3) Bearing in mind that there were few spaces left even in 1998, when the policy had been adopted, it had been a fair and just policy to put in place. It seemed that no one had challenged that policy by applying for faculty until the petitioner had done so in 2019. One reason for that might be that the parishioners accepted it as a fair way of dealing with the lack of space within the churchyard.

(4) The Chancellor should support the PCC policy of non-reservation unless such a policy revealed bad faith or was wholly unreasonable, which this policy was not. 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 was not the case here.

(5) The availability of spaces on land elsewhere in the village, and assuming that the land, or part of it, would be consecrated in the near future, was no reason for allowing a petitioner to reserve a gravespace in the consecrated ground surrounding the church. There were many villagers who had relations buried in the churchyard, and who would like the opportunity to be buried close to them. In those circumstances, it was difficult to argue that this petitioner was a special case.

(6) The Chancellor had to assess the reasons why a non-parishioner wished to be buried in a particular churchyard, which would centre round the links the non-parishioner had with the parish, which would include a natural desire to be buried close to family members. In this case, the residential link between the petitioner's family and the parish had been broken for three generations.

(7) It was 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 were buried elsewhere.

The Chancellor concluded his judgment on the petition thus:

“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."

20. The case of *Re St Mary, Doddington* demonstrates the weight the court will give to a policy adopted by the PCC of refusing to support any applications to reserve a grave space where such a policy is perceived as being justified and fair. However, such a policy will not be determinative of the outcome of a faculty application, as can be seen from the case of *Re St Mary & St. Radegund, Postling* [2021] ECC Can 1. In that case, a priest who (and whose family) had several connections with the church and the parish, wished to reserve a grave space. The PCC were opposed in principle to the reservation of grave spaces, preferring decisions about burials to be made at, or around, the time of death instead. This was based upon a concern for the fair and pastorally sensitive stewarding of the limited space available for burials. The PCC therefore objected to the petition on the basis that it had made a policy decision in 2012 (re-affirmed in 2020) of not approving any reservations of grave spaces, but of having a 'first-come, first-served' policy, although the present incumbent and the self-supporting minister of the parish supported the present application. The Commissary General of the Diocese of Canterbury (Robin Hopkins) stated that weight should always be given to such a PCC policy, but that it could not override the discretion of the chancellor should an exceptional case arise. At paragraph 22 he said this:

"I therefore conclude that I should apply the exceptionality threshold, i.e. that I should ask whether the facts of this petition are sufficiently exceptional to justify granting [a] faculty notwithstanding the significant weight to be given to the PCC's position. The law is clear that, even if there is a clear PCC policy, such policies cannot admit of no exceptions or otherwise tie the Court's hands."

The Commissary General decided that in this case the petitioner had shown such a degree of exceptionality as to justify the grant of a faculty. This was because: (1) the petitioner had two generations of forebears (including his own parents) buried in the churchyard, near whom he wished to be buried, (2) his family's connection with the parish spanned nearly half of the twentieth century, (3) the petitioner was not only self-evidently a committed Christian, but one who had served both the village and its church, and (4) both the incumbent and the self-supporting minister supported the petition. Those who would be able to mount a comparable justification for the reservation of a grave space would be few and far between. The Commissary General did not suggest that any, or all, of these four factors were part of a checklist or a legal test. Assessing the key features of this petition in the round, however, the Commissary General was satisfied that the exceptionality threshold was met, and that the faculty should be granted. He made it clear that none of this called the PCC's policy of not approving such petitions into question. It was entitled to maintain such a policy, and to take the same position in any future petitions as it had done in this one. Petitioners who sought a faculty from the court, notwithstanding the PCC's position, would need to do what this petitioner had done, i.e. put forward a sufficiently persuasive case for why they met the exceptionality threshold. Each case would need to be assessed on its merits, including by reference to the number of grave spaces that should remain at the time the petition was submitted. The floodgates concern identified by some of the objectors was entirely reasonable, but insufficiently weighty to tip the balance in this particular case. The granting of a faculty to this petitioner was not a signal that anyone else who sought a grave space reservation would automatically get one.

21. Earlier in the course of his judgment (at paragraphs 16 and 17), the Commissary General had cited summaries of the applicable legal principles from two previous authorities:

(1) The judgment of Chancellor Tattersall QC (in the Diocese of Carlisle) in *Re St Michael and All Angels, Muncaster* [2021] ECC Car 2 at paragraph 16:

“Although the determination of whether to grant such a faculty is entirely within the discretion of the consistory court, the court will have particular regard to two matters. Firstly, it will have due regard to any PCC policy as to the reservation of grave spaces, largely on the ground that it likely to have a better understanding of local needs and wishes than the court will have but the court is not bound by to apply any such policy. Secondly, it will have due regard to the consent or otherwise of the incumbent because if a faculty is granted, such would prevent the incumbent from conducting a future burial in the plot to which it relates.”

(2) The judgment of Chancellor Eyre QC (in the Diocese of Lichfield) in *Re St Leonard, Blithfield* (2014) at paragraphs 15 and 16, which was applied more recently in *Re St James, Brownhills* [2020] ECC Lic 3 at paragraph 15:

“15. ... there is scope for a legitimate difference of opinion as to the appropriateness or otherwise of allowing reservations. A policy of opposing the reservation of grave spaces is not inherently unreasonable. As Coates Dep Ch indicated any given Parochial Church Council is likely to have a better understanding of local needs and wishes than the Court will have. It follows that where such a policy has been adopted by a Parochial Church Council the Court should take account of it and give it considerable weight in the exercise of the Court’s discretion.

16. Such a policy cannot be conclusive and cannot remove the Court’s discretion. Moreover, if the policy were shown to have been the result of an illegitimate hostility to a particular person or to have been based on a misunderstanding of the appropriate provisions then it would have no weight. Even a legitimate policy cannot be conclusive because there will always be the possibility of particular (and potentially unforeseen) circumstances which justify an exception. However, in my judgment it will only be where there are exceptional circumstances that the Court will be justified in departing from the policy adopted by a Parochial Church Council. Anyone seeking to reserve a gravespace in the face of such a policy will need to show that their case is markedly out of the ordinary. The need for exceptional circumstances flows not just from the respect which the Court should give to the views of the Parochial Church Council but is also a matter of fairness. Where such a policy has been adopted by a Parochial Church Council there are likely to have been a number of people who have accepted that a gravespace cannot be reserved even though their preference would have been for a reservation. Fairness to those who have subordinated their own preferences to the decision of the elected Council requires that the Court should only allow reservations in exceptional cases. Failure to do so would run the risk of those who are forceful and articulate being able to circumvent rules which others have followed...”

I note that in the *Brownhills* case, Chancellor Eyre QC summarised the position (at paragraph 16) thus:

“16. It follows that neither the prospect of prejudice being caused to parishioners nor the existence of a parochial policy of opposition to reservation are absolute bars to the grant of a faculty for the reservation of a gravespace but both are potent considerations. Where those factors are present something exceptional needs to be shown to warrant the grant of such a faculty.”

22. In *Re St Clement, Terrington* [2020] ECC Ely 3 Chancellor Leonard QC had to consider four applications for faculties to reserve grave spaces in the churchyard. The Chancellor was concerned that there were very few grave spaces left unoccupied, and that the PCC had already applied for closure of the churchyard in six months’ time, although he considered this to be premature. At paragraph 7 of his judgment, Chancellor Leonard QC identified

“... a moral issue in respect of reservation which has been brought to my attention, that the faculty system advantages those who can afford to pay the fee for a faculty over those who may not be able to do so but nevertheless have a right to burial.”

At paragraph 18, Chancellor Leonard QC said that:

“Looking at the decisions of the Consistory Courts the pre-eminent factor in determining a petition for reservation will be the number of spaces remaining for future burials; where there are not many a faculty will normally be refused or granted for a limited period which is determined by the number of years left for which there is the space to fulfil the needs of the parishioners.”

At paragraph 30, the Chancellor did not consider that having a relative buried in the churchyard was of itself a sufficient reason to grant a faculty to reserve a grave space in favour of a person with no legal right to be buried there, although it might strengthen an application by someone with a legal right to be buried in the churchyard. Having a relative already buried there was

“... a factor which could affect my decision whether to grant a faculty in circumstances where there was space within a churchyard for burials for decades to come, but it does not provide a reason on its own for usurping the legal right of others to be buried in the churchyard.”

The Chancellor decided to grant reservations in two of the instant applications, where the applicants were in their late 60s and their 70s, they were resident in the parish, and they had strong connections with the church; but he refused the other two applications, where the applicants were in their 30s and 40s, they did not live in the parish, and they had little connection with the church beyond the fact that close relatives were buried in the churchyard.

23. In *Re Holy Trinity, Belbroughton & Fairfield* [2021] ECC Wor 3, the petitioners wished to reserve a double grave space in the churchyard extension. They lived in the parish and therefore had the right to be buried in the churchyard so long as it remained open for burials. Chancellor Humphreys granted a faculty; but she limited it to 10 years, having been advised that the churchyard was likely to have space for burials only for that period. The Chancellor took the view that it was not right to grant a faculty for longer than the churchyard was likely to remain open. At paragraphs 11 and 12 she said:

“11. A reservation for longer than the churchyard is likely to remain open gives the person reserving a space more than simply the right to a particular space for the stated period. It also has the effect of preventing others with the right of burial in that

churchyard exercising that right at all, if at the time of their death the reserved spaces are the only ones left.

12. Therefore, unless there are particular circumstances that suggest that [either of the petitioners] has a connection to the particular space requested, or that this particular space has additional significance to them beyond a simple preference or desire, it would not be right to extend the faculty beyond the duration for which the churchyard is likely to have space for burials.”

Chancellor Humphreys concluded her judgment by saying (at paragraph 15):

"It remains open to the petitioners to apply at any time for an extension of the 10-year period, for example, should their personal circumstances change or in the event that more space becomes available in the churchyard such as by the consecration of an extension to the churchyard or a policy on re-use of older graves being adopted."

Chancellor Humphreys adopted precisely the same approach in the contemporaneous case of *Re Holy Trinity, Belbroughton & Fairfield* [2021] ECC Wor 4 where, although the petitioners did not live in the parish, and so did not have a legal right to be buried in the churchyard, the application was supported by the incumbent and churchwardens and the PCC.

24. In *Re St George, Fatfield* [2021] ECC Dur 4 the petitioners, who were husband and wife, wished to reserve a grave space in the churchyard. They did not live in the parish or regularly attend the church, and therefore did not have a legal right to be buried in the churchyard. The reason for their application was that the remains of a number of close relatives of the husband (including his younger sister who had died in a car accident at the age of 11) were buried in the churchyard and he had been born in the parish and had lived there until he married in 1970, when he had moved out of the parish to live nearby. There was “only a limited number of grave spaces left” in the churchyard. Chancellor Iles determined that, with “only limited grave spaces left” in the churchyard, the rights of parishioners would be prejudiced by the grant of a faculty, and he therefore declined to grant one. He realised this would be disappointing to the petitioners, “but it would not be appropriate in this case to override the rights in law of parishioners”. In the contemporaneous case of *Re St. George, Fatfield* [2021] ECC Dur 5 the petitioners, who were husband and wife, wished to reserve a grave space in the churchyard. They did not live in the parish or attend the church, and they therefore had no legal right to be buried in the churchyard. The reason for their application was that, although they had no relatives whose remains were already interred in the churchyard, their son and daughter-in-law had reserved a grave next to the plot which the petitioners wished to reserve. Although the petitioners had some historic links with the parish, Chancellor Iles again determined that, with few grave spaces left in the churchyard, the rights of the parishioners would be prejudiced by the grant of a faculty; and he therefore declined to grant one.

25. In both decisions, the only authority cited was the judgment of Chancellor Collier QC in the Diocese of York in the case of *St Augustine, Kirkeby-in-Cleveland* [2021] ECC Yor 5 at paragraphs 7 and 8:

“7. The reservation of grave spaces is always a difficult matter. The matter is entirely within the discretion of the consistory court. The principles that are generally applied include the court being more inclined to grant a faculty in respect of a person with the right to be buried in the churchyard than in respect of 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. The Court also has to be satisfied that the parishioners' rights will not be prejudiced.

8. It is very rare, in my experience, to allow a reservation of a plot, by someone who does not have a right of burial.”

However, paragraph 8 of Chancellor Collier QC's judgment continues:

“I have sometimes granted such a faculty to those who have a real connection to the church through having been members of it and who regularly attended at some time in the past. Very occasionally I have allowed a faculty where there is a substantial family connection to the church and churchyard.”

In that case, a faculty was refused by Chancellor Collier QC because (as stated at paragraph 14):

“As the applicants have no real connection to this church, and have no right to be buried in the churchyard, and have no wish for a Christian funeral, I am not satisfied that any case is made out for the reservation of a burial plot in this case.”

It would appear that Chancellor Collier QC may have been less ready to grant grave space reservation faculties than I have. My own practice has been to tend to grant such faculties either where: (1) the petitioner has a personal connection to the church or its churchyard, or (2) there is a substantial family connection to the church or its churchyard; provided (in each case) that: (a) the petition has the positive support of the minister, the churchwardens, and the PCC, and (b) there is sufficient space in the churchyard to accommodate such a reservation without affecting the legitimate expectations of those with a common law or statutory right to be buried in the churchyard.

26. The judgment of Chancellor de Mestre QC (in the Diocese of Leicester) in *Re St John the Baptist, Cold Overton* [2021] ECC Lei 4 concerned two separate faculty petitions by a husband and wife for the reservation of adjoining grave spaces. The married couple, in their early to mid-seventies, were resident in the parish and so (subject to there being sufficient space remaining) they had a right of burial in the churchyard. The wife had served on the PCC for 25 years, and as a churchwarden for 10 years; and the couple had worshipped in the church, and had supported it financially. It was estimated that there was sufficient burial space in the churchyard for at least 15 years. Despite an objection from a former churchwarden (on a particular ground which, in the event, the Chancellor rejected as unfounded on the facts) the Chancellor granted the faculties sought, limited to a period of 20 years, in view of the petitioners' strong connections with the church. At paragraphs 19 to 23, the Chancellor indicated that she had given some thought to the appropriate duration of the reservations. She noted that the right to be buried in the churchyard

“20. ... cannot be given effect if there is no space available in [the] 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*, [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."

27. From this review of the authorities, I derive the following propositions (which are not intended to be exhaustive):

- (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.

Decision

28. In the present case, the remaining space within the churchyard is limited. A faculty should therefore only be granted if the petitioner can demonstrate sufficient justification for the court to take the exceptional course of allowing her to reserve a grave space, despite 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. In my judgment, the petitioner has demonstrated such a justification. She has strong personal and family connections with each of the parish, the church, and the churchyard. The petitioner lived in the parish for many years. She was married in the church and her daughters were christened there. Although the petitioner and her partner presently live away, it is their intention to come back to Thame as soon as their work commitments allow them to do so. Her daughters and their families all live in the area, as does the petitioner's brother and his family. The petitioner and her partner visit her mother and their daughters practically every weekend, as well as seeing the petitioner's brother and numerous friends. The court must recognise the realities of a more geographically mobile society, in which the prospects of living one's whole life in a single community in which one was born and brought up have greatly diminished. Not only is the petitioner's father buried in the new part of the churchyard, and her mother is likely to be buried with him when her time comes, but the remains of the petitioner's stillborn son have rested in the old part of the churchyard for more than 30 years. A caring, compassionate and Christ-like church must attach great weight to the bond between mother and stillborn child, and must recognise the mother's understandable desire to be buried near to him.

29. This petition has the consent of the minister and the churchwardens, and has received the full support of the PCC, even though its members must have been mindful of the constraints on the space remaining within the churchyard because, at the same meeting, they apparently discussed the possible need to re-use existing family graves where enough time had elapsed to re-use them for new family members. The Rector has stated that he is "... satisfied that there is the

strong intention to move back to Thame as soon as Ms Macintosh retires in seven years or sooner. Thame is the family home. Both I and the PCC support the application ... , especially in the knowledge that the town council has identified where the new burial yard will be located in the parish.” Not only have no objections been received in response to the usual public notices, but notice of this faculty petition has also been given to the Town Clerk; and having discussed this with her colleagues, they have determined that, since the Church are happy with the arrangement, the Town Council feel no need to comment or to object.

30. Even though the petitioner has shown sufficient justification for the grant of a faculty for the reservation of a grave space in the churchyard, however, it would not be right to extend the initial period of duration of that faculty beyond the time during which the churchyard is likely to have sufficient space available for future burials. I will therefore limit the duration of the grave space reservation faculty to the period of ten years from the date of grant, with permission for the petitioner to apply, on paper, within six months before its expiry, for an extension of that period, supported by evidence of her prevailing circumstances, and the views of the minister, the churchwardens and the PCC at that time. Limiting the duration of the faculty in this way is consistent with the approach adopted by Chancellor Humphreys in the two cases concerning *Holy Trinity, Belbroughton & Fairfield*. Without in any way seeking to pre-judge the outcome of any such application, whether or not any extension is to be granted is likely to depend upon: (1) the personal circumstances of the petitioner and her partner at that time; (2) whether, by that time, 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 minister at that time; and (4) any current policy of the PCC towards the reservation of grave spaces.

31. Although the present case bears some similarity to the case of *Re St John the Baptist, Ashley*, I consider that the case of this petitioner is stronger because of the presence in the churchyard of the remains of her stillborn baby son, and also because she is 25 years older than the petitioner in the *Ashley* case. Further, and understandably because of the relative youth of the petitioner in that case, Chancellor Eyre QC appears to have given no consideration to limiting the duration of the faculty to the period of time during which the churchyard in that case was likely to have sufficient space available for future burials. The case of *Re St Mary, Doddington* is readily distinguishable because Chancellor Leonard QC decided the case on the basis that he could find no grounds on which to allow a gravespace reservation which went against the PCC's policy. If he were to have favoured the petitioner in that case, he would have had to do so to the detriment of other parishioners who had accepted the PCC's policy as being both sensible and fair to all. The two petitions where reservations were refused in *Re St Clement, Terrington* were cases where the applicants were in their 30s and 40s, they did not live in the parish, and they had little connection with the church, beyond the fact that close relatives were buried in the churchyard. Those facts are very different from those of the present case. Given the ages of those petitioners, faculties of limited duration would probably have been of no real use to them. The circumstances of the second of the cases concerning *St George, Fatfield* were very different to those of the present case. However, I acknowledge that my decision to grant a faculty in the present case may appear out of line with the decision in the first of those two cases. I note that Chancellor Iles's judgment is brief; and I consider that he may have been influenced by the statement, which he cited from paragraph 8 of the judgment of Chancellor Collier QC in *Re St Augustine, Kirkby-in-Cleveland*, that it was “very rare ... to allow a reservation of a plot, by someone who does not have a right of burial”. I have already indicated (at paragraph 25 above)

that that statement does not accord with my own experience or practice; and that Chancellor Collier QC immediately went on to qualify the statement cited by Chancellor Iles. I have no doubt that the actual decision of Chancellor Collier QC was entirely correct, on the basis that the applicants in the case before him had no real connection to the particular church, they had no right to be buried in the churchyard, and they had no wish for a Christian funeral. I also note that the judgment of Chancellor Iles does not indicate how limited was the number of grave spaces left in the churchyard or how long they might last; and he does not appear to have considered granting a time-limited faculty, expiring before the churchyard should be full.

Conclusion

32. For the reasons I have given, I therefore grant a faculty for a grave space reservation as asked, limited to the period of ten years from the date of grant, with permission for the petitioner to apply, on paper, within six months before its expiry, for an extension of that period, supported by evidence of her prevailing circumstances, and the views of the minister, the churchwardens and the PCC, at that time.

33. The petitioner must pay the court fees for the petition, and the reasonable costs of any additional time that may have been spent by the Registry in dealing with, and corresponding about, this petition. For pastoral reasons, and because my judgment is directed to seeking to establish points of principle, I will make no charge for this written judgment.

David R. Hodge

The Worshipful Chancellor Hodge QC

Thursday, 28 April 2022