

IN THE CONSISTORY COURT OF THE DIOCESE OF PETERBOROUGH

RE: WERRINGTON ST. JOHN THE BAPTIST

HEARING DATE: 30th November 1990

J U D G M E N T

1. These proceedings arise from three Petitions for the reservation of grave spaces in the churchyard of St. John the Baptist Church at Werrington near Peterborough. The Petitions are opposed by the Incumbent the Rev. J.R. Littlewood, and also by the Ven. Bernard Fernyhough, Archdeacon of Oakham (representing the views of the Diocesan Advisory Committee). The Petitioners are Mr. and Mrs. W.R. Bunten, Mr. and Mrs. J. T. Cole and Mr. and Mrs. T.J. Goodman. In each case what is sought is the reservation of a double-depth grave space for the burial in due course of the Petitioners. Mr. Bunten is aged 70, Mr. Cole is aged 49 ~~and~~ and Mr. Goodman is aged 60. The objections are based upon the fact that only a relatively small number of grave spaces remain in the churchyard and it is felt preferable not to reserve any further spaces but to allow all the remaining spaces to be available for burials as and when parishioners die. At the time when the D.A.C. considered the matter it was assumed that there were only 16 remaining spaces available in the churchyard and the D.A.C.'s advice to the Chancellor (and the Archdeacon's decision to object) were on that basis. As a result of the evidence given on behalf of the Petitioners at the hearing and also of the inspection of the churchyard carried out with the assistance of the Archdeacon and in the presence of all parties, it now appears clear that there are certain additional spaces available in the churchyard. The precise number of available spaces is still somewhat in dispute. Mr. Littlewood eventually put the total number at about 22. The Petitioners asserted that there were as many as 64. My own inspection suggested that there were 43 spaces

and I believe that the Archdeacon took a similar view. Certainly I am prepared to find, and do find, that there are not less than 40 spaces available in various places in the churchyard, these being all places where there has never at any time been a previous interment. The Archdeacon said in his evidence (which took place after the inspection of the churchyard) that if the D.A.C. had known that there were not less than 40 spaces still available it might have given different advice and he was himself inclined to the view that it would be not unreasonable to allow the applications of the three pairs of Petitioners, but thereafter to place a restriction on any further reservation of grave spaces (subject to a proposal which I shall mention later in relation to certain other applicants who were at one stage petitioning for grave spaces but whose Petitions were withdrawn).

2. The Pleadings. Mr. and Mrs. Bunten presented their Petition on 26th August 1989. Their application was considered by the Parochial Church Council on 7th September 1989 and, after expressions of concern by the P.C.C. over the problems arising in the churchyard from lack of spaces, it was decided nevertheless that the application should be supported. This was by a majority of 16 votes for, 4 votes against and with 3 abstentions. By about this time the applications of Mr. and Mrs. Cole and Mr. and Mrs. Goodman had also been received by the P.C.C., but in addition there were four other applications (which led to Petitions) from Mr. and Mrs. Hardy, Mr. and Mrs. King, Miss. King and Miss. Cottingham. The P.C.C. feared that there might be a flood of applications and was also concerned about too many of the remaining 16 spaces being reserved. It therefore wrote a letter dated 26th September 1989 addressed to the Registrar, for onwards transmission to the D.A.C., expressing the concerns and stating a preference ~~that~~ the remaining grave spaces should be used up "in the order of people requesting burials from within the parish as and when they actually died". The letter

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drew attention to/pastoral problem which was arising within the parish.
That was the letter which was considered by the D.A.C, together with the
information that there were only 16 spaces remaining. With knowledge of
the D.A.C's advice against the Petitions, the Incumbent gave Notice of
Objection to all seven Petitions which had by then been presented and he
gave Particulars of Objection on 7th December 1989, largely repeating what
had been said in the letter of 26th September 1989. The Archdeacon of
Oakham gave Notice of Objection and lodged Particulars of Objection on
6th December 1989. This was on the assumption that there were only 14
grave~~s~~ spaces remaining. He referred to the fact that the P.C.C. wished
to apply for an order in council closing the churchyard as soon as the
remaining spaces had been filled and he said: "For grave spaces to be
reserved by people knowing that this is the case would, by reserving
virtually all the available spaces, deprive parishioners who die within
the next 2 or 3 years of the right to burial in the churchyard". He
pointed out that there was an area for burial of cremated remains, set
aside by Faculty dated 13th November 1985, which would continue to be
available in the case of cremations. He added that, in addition to making
objection on behalf of the D.A.C. he was also entering an appearance in
order to give the individual Petitioners an opportunity, at a hearing of
the Consistory Court, to demonstrate any special reason which they might
have in support of their Petitions.

3. Mr. and Mrs. Bunten responded by written answer dated 14th
January 1990. They suggested that the number of spaces available for
burial in the churchyard might not be limited to either 14 or 16 for various
reasons. One reason was that they believed that there were spaces in the
churchyard where over-burial could take place. In some areas the burials
had taken place over 100 years earlier and there were graves where there
were no memorials and it would be reasonable for the Incumbent to allow
burials in such spaces as these, provided that, after examination of the

church's burial registers (kept in the vestry) it emerged that there were no known relatives of the person previously buried in that space. In their evidence at the hearing on 30th November 1990 they expanded upon this by referring to a passage at page 59 of the churchyard's handbook published by the Central Council for the Care of Churches as follows:

"There is no legal objection to burial in a grave which had already been used, even though the person to be buried is not related to any of those already buried in that grave. Clearly this could cause distress if done indiscriminately and, in practice, especially if a tombstone has been erected, further burials in the grave were usually to be confined to members of the same family. There may however be some grave spaces where it is many years since any burial took place, or where it is known that the person buried has no surviving relatives, and where therefore it might not be inappropriate to use the grave for the burial of someone unconnected with the person or persons already buried there. This will be easier if no tombstone has been erected.... It is usual for a gap of at least 50 years to elapse between burial and re-burial" I will deal with this point now. Following my inspection of the churchyard I came to the conclusion that it would not be right to consider such re-burials in the part of the churchyard nearest to the road, i.e. to the west, south and east of the church, but that in part of the churchyard to the north where memorials indicate that burials have not occurred within the last 80 years or so it would be possible to allow a limited number of re-burials in spaces where there is no existing memorial, subject to being satisfied from the burial register that there are no known surviving relatives of the person buried in that space who might possibly object to a re-burial. This however does not in my view very substantially increase the number of spaces available in the churchyard and I feel it best for the purposes of this judgment to ignore the possibility of such spaces, but to concentrate on those spaces which are still available and where there has never been a burial in the past. Mr. and Mrs. Buntin went on to say

that the Archdeacon's observation in relation to the area for cremated remains did not assist them because they preferred burial. They did not consider themselves to be trying to obtain an advantage over other parishioners by reserving grave spaces, but they regarded themselves as merely making an application which they were permitted in law to make and which was similar in nature to applications which had been made in earlier years by other parishioners and which had resulted in reservations of grave spaces in this particular churchyard. In particular they referred to the fact that a grave space had been reserved by a Faculty for Mr. and Mrs. Richardson as recently as August 1989 (this having been supported by the P.C.C. and allowed because at that time there was no opposition to it).

4. In relation to their personal situation they said that they had lived in Werrington for a total of 27 years and had done a great deal of work in looking after the churchyard, to which they were strongly attached. Mr. Bunten had helped to maintain the churchyard on a voluntary basis for over 25 years. Mrs. Bunten had helped to maintain it for over 15 years and had been paid a small monthly sum by the P.C.C. for this work. She had mowed the churchyard, cleared rubbish, swept the footpaths, pruned trees and made contact with many people visiting the churchyard. Mr. Bunten is the chairman of the Werrington local history group which over recent years has recorded all the memorial inscriptions in the churchyard and produced a comprehensive index, with maps, and the wording of all the inscriptions, extending to 86 pages, a copy of which was produced in evidence. Mr. and Mrs. Bunten live next door to the churchyard in an attractive house and it is entirely understandable that with their strong connections with the church and the churchyard they should wish to have a reserved grave space. Apart from the P.C.C.'S concerns over the pastoral situation arising from reservations for remaining spaces it is obvious that Mr. and Mrs. Bunten have a very

strong claim to reservation, according to the ordinary principles which are normally applied. By reference to the maps in the survey of memorial stones to which I have referred the Buntens went on to locate various areas of the churchyard where they said additional spaces were available. The survey divides the churchyard into six "plots" and maps of each are provided. Plot A is to the west of the church. Plot B is to the south and east of the church. Plots C, D E and F are parallel to each other and are to the north of the church and plot G is in a further northward extension. They said that in plot G there were a total of 21 spaces for burial (this being the area where the P.C.C. identify 16 remaining spaces). In plot C the Buntens considered that there were 8 spaces. They considered that in plot D there were 15 spaces, in plot E there were 20 spaces, a total of all the spaces being according to them 64. They also suggested that there might be certain areas in plot E where there had never been any burials as there are no memorial stones in these areas. This could possibly provide a further 10 to 15 spaces, but it could not be proved whether or not there were existing burials in these areas without conducting a survey by means of rodding, a practice which they said was used by grave diggers and others. These additional areas are shown by asterisks on the map of plot E which appears at page 18 of the bundle of documents used at the hearing.

5. The Petition of Mr. and Mrs. Kole is dated 26th August 1989. They do not reside in the parish but live at 8 Wyman Way, Orton Waterville, Peterborough. Mr. Kole is the twin brother of Mrs. Bunten. Their parents and earlier forebears have been buried in the churchyard at St. John the Baptist, Werrington. In all four generations of the predecessors of Mr. Kole and Mrs. Bunten have been buried in this churchyard and in all there are 25 of their forebears buried there. Mr. and Mrs. Kole have no children and wish to be buried in the same churchyard as their parents

and in due course Mr. Kole's sister. The parents were buried in the churchyard as recently as 1985. The parents were not resident in the parish but lived near to Mr. and Mrs. Kole in Orton Waterville. By the time this Petition came to be considered by the P.C.C. on the 7th September 1989 the P.C.C. was already aware of a total of 7 applications. They opposed the Petition of Mr. and Mrs. Kole on the ground that they were not resident within the parish and therefore (unlike Mr. and Mrs. Bunten and Mr. and Mrs. Goodman) they did not have a legal right of burial in the churchyard at Werrington. The P.C.C. felt that it would be establishing an unacceptable precedent to allow reservation in a case of non-residents. They declined to support the application by 21 votes against and no votes in favour, but with 2 abstentions. The Incumbent and the Archdeacon put in similar Particulars of Objection to this Petition as in the case of the Buntens. By a written answer lodged early in January 1990 the Koles stressed their strong connection with the churchyard at Werrington arising from the burials of their relatives.

6. Mr. and Mrs. Goodman's Petition is dated 14th August 1989. They reside at 13 Camelia Close, Werrington and are on the Electoral Roll of the church. They were married in the church and have been resident in the parish for 33 years. Mrs. Goodman's parents are buried in the churchyard. On 7th September 1989 the P.C.C. resolved to support the Petition by 16 votes in favour and 1 against, but they noted their concern over the pastoral problem arising from reservations and 6 P.C.C. members abstained from voting. Objections by the Incumbent and by the Archdeacon were the same as in the other cases. In August and September 1989 the other four Petitions to which I have referred were lodged and directions were given. When it became clear that a hearing would be required these other Petitioners wrote to the Registrar asking leave to withdraw their Petitions and as a result their Petitions were dismissed. However in considering the existing Petitions it is necessary for me to

take into account what may be the effect of granting leave to reserve grave spaces to the three pairs of Petitioners when it is part of the background of the matter that there are four other Petitioners (or pairs of Petitioners) who in many respects rank equally with the three pairs of Petitioners with whom I am dealing and who might well have some sense of grievance if I were to allow the present Petitions and entirely refuse any opportunity for those other Petitions to be reinstated. I propose to approach the question of whether or not in principle the present Petitions should be granted upon the basis that I may well in reality be dealing with a total of 7 Petitions rather than 3. Therefore in considering whether there are enough available spaces in this churchyard to justify some further reservations, I shall consider this on the footing that 7 spaces rather than 3 are likely to be required.

7. The hearing of this matter lasted a full day and took place in the church at Werrington. None of the parties was legally represented and in the circumstances such representation would not have assisted. Mrs. Bunten presented the case on behalf of herself and her husband and it was clear that they had done a great deal of research into the history of the churchyard and into the possibility of the additional spaces being available. Evidence was given by Mrs. Bunten, a supporting witness Mr. Savage, Mr. Cole, Mr. Goodman, the Rev. John Littlewood and the Arch-deacon. Mrs. Bunten gave some of her evidence as a supporting witness for Mr. Cole. Each of the Petitioners put in a written statement by way of the substance of their evidence in chief. I accept Mrs. Bunten's evidence (supported by Mr. Savage) as to the history of Werrington churchyard. A number of maps and photographs were produced which confirmed their evidence. There was an ancient church on the site from about the 12th century but the present building was largely a reconstruction in the first half of the 19th century (incorporating some 13th and 14th century features). In 1853 a parish was formed consisting of Walton and Werring-

ton, Werrington having before that time been a chapel in the parish of Paſton. In 1888 Walton was separated and was re-attached to Paſton and Werrington became a separate parish. There are no memorial stones in the churchyard earlier than 1851, indicating that the burials prior to that date took place elsewhere. Originally the only area for burials was to the front of the church (i.e. on the west south and east sides). To the north of the church there was an ancient and dilapidated cottage and there were also some tenements on the east side of the church. In 1884 the Rev. Holdich was instrumental in clearing away these dwellings and adding their sites to the churchyard. In 1887 Mr. Edward Peach gave a piece of land for the enlargement of the churchyard, this being to the north and being areas C, D and part of E in the survey maps. The north east edge of this new churchyard was bounded by a solid dry-stone wall about 5' high and this can be seen in the photographs supplied during the course of the evidence. Just inside this wall on the churchyard side a row of lime trees was planted and these still exist. In the early 1930s, when the Rev. Parsons was the vicar, the churchyard was again enlarged by the purchase of a strip of field to the north east of the then churchyard. In late 1949 and early 1950 the part of the stone wall which divided off this new section of the churchyard from the existing churchyard was removed and the new area of churchyard was drained. Concrete paths were laid in areas C, D, E and F. Subsequently the churchyard was extended northwards into area G. Most of the additional grave spaces which Mr. and Mrs. Bunten have found in the churchyard are along the line where the old wall was demolished. As burials in this part of the churchyard had taken place before the wall was demolished and graves were placed some feet away from the wall on either side, there is room for a row of 8' graves to be placed side by side along the length of the wall. Having looked at the ground I have concluded that there is no objection in principle to burials along this line and assuming (as must be the case) that all memorial stones will comply with Diocesan Churchyard Regulations, I do not think that new

memorial stones along this line will be significantly out of keeping with the existing memorial stones in the area.

8. Mr. and Mrs. Bunten also suggested that they would be willing to sell to the P.C.C. at a realistic price a piece of land which they own to the north east side of section G. This measures 76' x 17' and has been used for growing vegetables. I examined this site and it is level and suitable for use as a small extension to the churchyard. It would be possible to have two rows of graves, each row being 8'6" wide. This is perhaps a little less than the desired length for a grave space, but I believe that in this particular area it would be sufficient. Access to this area could be achieved from the path which runs through the middle of section G and then by making a small additional path in the area of a shed which is at present sited at the extreme north east corner of section G. On the other hand Mr. Littlewood said that he and the P.C.C. did not wish to have a further extension of the churchyard as this would only allow about 12 more grave spaces. This would merely put off the time when the entire churchyard would be full. Since it was the intention of the P.C.C, when the churchyard was full, to apply for the churchyard to be closed, and thereafter to apply for it to be taken over and maintained by the Local Authority, he considered it better for the P.C.C.'s proposals to be implemented, rather than putting off the time when this would be possible. My finding about this is that the P.C.C's position is reasonable and that it would be wrong for me or anyone else to put pressure on the P.C.C. to acquire the additional site for burials if this is not what the P.C.C. wishes to do. It is a matter for the Incumbent and P.C.C. and neither under the Faculty Jurisdiction nor by virtue of any other legal process can the P.C.C. be required to undertake responsibilities for an additional piece of land which it does not wish to acquire. Therefore, however good may be the suggestion with regard to the additional plot, I am not in a position to impose this solution on the P.C.C. I would add that in any

event I find acceptable their argument that to acquire this land would only be to postpone the problem of an end of available grave spaces for a short time and I cannot think that there is a sufficient argument for so doing.

9. With regard to the proposal for over-burials Mrs. Bunten said that this would be possible mainly in area C and she said that over-burials are currently taking place in another churchyard about 3 miles distant, where this was being done discreetly and without any objection. I have made my observations already about this proposal in relation to Werrington. In cross-examination by Mr. Littlewood there was a difference of opinion as to the dimensions required for a grave space. Mrs. Bunten said that a space of 8' x 4' is sufficient and where the ground is hard a length of 7'9" would be enough. Mr. Littlewood said that the space required was 6'6" for the hole and 1'8" each end, making a total of 9'10". Mrs. Bunten's comment to this was that that might be the required space in an area which was being newly dug, where there might be some risk of the sides of the hole collapsing, but that so large a space would not be required where the adjacent ground was solid, and this would be the case where graves were being dug in a line between existing graves as she proposed.

10. Mr. Savage gave evidence in support of Mr. and Mrs. Bunten. He supplied a written submission. He said that the village of Werrington had grown from a population of some 1,000 in the 1930s to its present size of some 16,000 inhabitants, the great expansion having occurred since 1970. He had been church warden from 1933 to 1958 and had served under five Incumbents. He had been a lay reader since 1951. From his own knowledge of the churchyard he was able to support the historical information provided by Mrs. Bunten. He agreed that the Buntens had a strong link with the church and he felt that the grounds put forward against their Petition

for reservation were insufficient. He was asked by the Court whether he feared a flood of applications for reservations if the present Petitions were allowed and he said that he did not believe this would be the case, although the four withdrawn applications might be revived. He believed that those people in the parish who might be interested in reserving grave spaces were the older residents, most of whom had been in the village prior to its expansion in 1970, and he thought that the number of such families who might wish to reserve grave spaces would be limited to 10 couples including the three which were before the Court and the four other known applications. Mr. Littlewood suggested to him that 10 was too low a figure but he held to this. I have no reason to dispute Mr. Savage's view about the number of possible additional applications for reserved spaces. It seems to me to accord with what actually happened in the summer of 1989, when Mr. Richardson's application was granted and immediately afterwards there were the 7 further applications. The situation with regard to the churchyard at Werrington must have been widely discussed at that time amongst the older residents of the village and, if there had been others concerned to obtain reservations, one would have expected them to ^{have} put in their applications at that stage. This suggests that there not a very large number of other possible applications which might be submitted over and above the four which are known about.

11. Mr. Cole explained that Orton Waterville is an area to the south of Peterborough where he had lived for some 29 years. He had lived in and around Peterborough all his life and knew Werrington very well because his twin sister lived there. He did not accept that his link with the churchyard at Werrington was "tenuous" as his parents were buried in the churchyard as were many previous members of the family. He explained that he was a man who wished to have all his affairs in order at the time of his death. He believed that the P.C.C. had voted against his application

without full knowledge of his very close connection with the churchyard. Mrs. Bunten gave evidence in support of Mr. Kole and referred to page 57 of the Churchyard Handbook where it is stated: "Although in the case of persons who are not parishioners nor on the Electoral Roll nor die in the parish there is no right to burial in the churchyard, permission may be given by the Incumbent for such burial. Such permission should be granted sparingly for it infringes the rights of the parishioners for whose interment the churchyard was primarily intended.... Provided however that ample grave space is available there is no reason why such burials should not be allowed on payment of a suitable charge bearing in mind that this payment would normally be applied towards the maintenance of the churchyard.... It should be remembered that there are certain categories of persons, such as ex-parishioners and non-parishioners with family graves or vaults in the churchyard, or who have close relatives buried there, who may be regarded as almost having a customary right of burial and who deserve a special concern and consideration". She argued that, as Mr. Kole has 25 relatives buried at Werrington and also has his connection with Mr. and Mrs. Bunten, he should be regarded as falling within the special category referred to in this passage. Mrs. Bunten pointed out, by reference to the survey, that there are five burials of non-residents in the new part of the churchyard (area G) and that her own parents (buried in 1985) were non-residents.

12. At a later stage of the hearing Mr. Kole asked permission to add an alternative basis of application to his Petition, designed to cover the problem arising from his being a non-resident. The Court gave him leave to put forward his alternative case. This is that he will apply for himself and his wife to be buried in the existing grave of one of his predecessors, namely his great-great-grandfather Mr. Dexter. This is the grave space marked 80 on the plan of area B (to the east of the church).

I examined this grave space and it is a double-width grave space, where the burial occurred many years ago, and it appears to be perfectly suitable for a re-burial. Mrs. Bunten, as the only other relative of the Dexters gave her approval to Mr. Kole's proposals, and subsequently the Archdeacon indicated in his evidence that he considered the proposal to be an acceptable one. The inscription on the grave stone at plot 80 (as taken from the survey page 44) is as follows: "In Loving Memory of Henry Dexter who fell asleep February 2nd 1909 aged 88 years. Also of Mary wife of the above who fell asleep January 3rd 1890 aged 70 years. Peace Perfect Peace". Accordingly the latest burial in that plot was nearly 82 years ago and I consider that upon general grounds it is reasonable for there to be a re-burial in this plot in due course, for the use of Mr. and Mrs. Kole. This approach to their Petition means that they would not be using up a space in the part of the churchyard which is available for residents of the parish and it therefore seems to me that a reasonable approach by the Incumbent and P.C.C. might be to support this alternative application for reservation by Mr. and Mrs. Kole on the basis that it does not create any pastoral problem. The Dexter grave space could not be used for the burial of any person resident in the parish because this could only be done with the permission of the surviving relatives of Mr. and Mrs. Dexter, namely the Koles and the Buntens, and the evidence does not suggest that they would consent. On general grounds, because of the strong connection which Mr. and Mrs. Kole have (through deceased relatives) with this churchyard, one would expect an Incumbent and P.C.C. normally to look favourably upon their application. Of course the Court cannot direct the Incumbent and P.C.C. to concur, when the time comes, in the burial of a non-resident, and it is a discretion to be exercised by them and not by the Court. Nevertheless the Court's approach ought to be upon the basis that the then Incumbent and the then members of the P.C.C. will act reasonably and, if in the Court's

judgment at this time it would appear reasonable for such Incumbent and P.C.C. to allow a burial when the time comes, then the Court should now approach the question of a Faculty to reserve a grave space by a non-resident, in the light of that judgment as to reasonableness.

13. Mr. Goodman gave evidence on behalf of himself and his wife. They have lived in the parish since 1956. Mrs. Goodman's father is buried in the churchyard at Werrington and her mother is still alive and will be buried there in due course. He reminded the Court that their Petition had been supported by the P.C.C. He adopted the evidence of Mrs. Bunten as to the number of spaces available in the churchyard and as to its history. He said that he and wife were the first applicants after the Petition by Mr. and Mrs. Richardson had been granted in August 1989. He said that he was not interested in the ~~an~~ alternative of being cremated and he referred to an issue of the Diocesan Periodical "Cross-keys" in which there was an article by the Diocesan Bishop which he (Mr. Goodman) had read as a commendation of the traditional practice of funerals leading to burial of the mortal remains of the deceased, as against the practice of cremation. If he could not be buried in Werrington where his widow would continue to reside, his body would have to be buried in the public cemetery at Eastfield some 4 miles distant from Werrington and this would create difficulty for his widow as she was not a car driver and there was no direct bus service. I will say now that, apart from any problem of lack of available spaces in the churchyard, I would regard Mr. and Mrs. Goodman as people who would normally be expected to receive permission to reserve a grave space. The same also applies to Mr. and Mrs. Bunten and Mr. and Mrs. Kole (the latter on the basis of their alternative application).

14. One comes therefore to consider the question of lack of avail-

able spaces and whether or not in that context it would be right to allow these three reservations, and possibly a few more if the four previous applications were revived. Mr. Littlewood gave evidence as to the problem faced by himself and the P.C.C. in August and September 1989 when there was a minor flood of applications. The P.C.C. had been in a dilemma. It had supported the applications of the Buntens and the Goodmans, but had not supported the application of the Coles (because they were non-resident) and had referred this problem to the D.A.C. The P.C.C. had supported the Incumbent in putting in formal objections to all the Petitions after it had been made aware that the D.A.C. supported its concerns about having any more reserved grave spaces in a churchyard which was rapidly becoming filled. Mr. and Mrs. Richardson had been regarded as a special case by the P.C.C. as Mr. Richardson had been a member of that P.C.C. for many years. Previously a grave space had been reserved by Faculty for Mr. Savage, whose application had also been supported by the P.C.C. on the basis that his was a special case. The voting in relation to the other four applications was as follows:

Miss. Cottingham	for	15,	against	2
Mr. and Mrs. Hardy	for	15,	against	2
Mr. and Mrs. King	for	17,	against	4 (2 abstentions)
Miss. King	for	11,	against	9 (3 abstentions)

(Miss. King was only some 40 years of age and was therefore much younger than the other applicants)

He agreed that all these persons (other than Miss. King) could be described as "the older residents of Werrington". The concern of the P.C.C. had been over having to announce to parishioners that, although the remaining spaces in area G did not yet contain burials, they were not available when people died, because those spaces were reserved. It was felt that a considerable pastoral problem would arise and the P.C.C. wanted to keep a situation where during the last 2 or 3 years use of the churchyard all

the spaces would be available, without any further reservations. In the last few years ~~a number of~~ burials have been at the rate of some 6 per year. He agreed that some 4 spaces might be available along the line of a disused footpath just to the north of the church in area C and there were 18 spaces still available in area G, making a total of 22 spaces. It was the intention of the P.C.C. to apply in due course for a Faculty to build an extension to the church at the west end of the church and the diocese's "budget of opportunity" scheme included provision to assist the church with such an extension. He accepted that this would not affect the issue within the present proceedings of the availability of grave spaces because it was not being suggested by Mrs. Bunten that any of the additional spaces were to the west of the church. He gave his reasons for saying that a total of 9'10" was required for the length of a grave space, saying that he had received this information from the City Council and the Co-operative Society which does many of the interments in the Peterborough area. My finding on this issue as between the evidence of Mrs. Bunten (supported to some extent by Mr. Savage) and the evidence of the Incumbent is that, in the areas proposed by Mrs. Bunten for the extra grave spaces a length of 8' will be sufficient and that graves can therefore be fitted in to the areas described by her, but with not so high a density as she claims. In some of the areas the length available is 9'. Where a length of only 8' is available it is clear that, because the hole will be dug in existing solidified ground, it will not be necessary to have a distance of 1'8" between the end of the hole and the foot or head of the adjacent grave. While such a distance would be ideal, I believe that a distance of some 9" at either end (where this is all that is available) will suffice. In many places the lines of graves are marked by headstones only (i.e. without kerbstones extending down to the foot of the grave). It is only where there are ~~full~~ fully-kerbed graves that any significant difficulty arises. In my presence during the inspection of the churchyard the Archdeacon measured the length of the grave spaces

available and I was satisfied that there were a total of 43 spaces which could be used, including the 18 spaces at the top of area G. Mr. Littlewood then dealt with the question of the plot offered by Mr. and Mrs. Bunten and with their proposals for some re-burials in area C, and I have already indicated my findings on these matters. In relation to the additional spaces available in plot D he said that graves in this area might interfere with the roots of the lime trees to which reference has already been made. Having visited the site and noticed that these trees are very mature (having been in position for some 80 years) I do not consider that any significant problem will arise in relation to roots. There was evidence before me that graves were dug in this area in 1970 and in 1979 for Mr. and Mrs. Stimpson. These were only single-depth grave spaces, but, having regard to the maturity of the trees, I see no reason why some grave spaces should not be double depth if required. With regard to Mr. and Mrs. Kole's alternative proposal of reserving a right of re-burial in the Dexter grave Mr. Littlewood said that he would need to discuss this proposal with the P.C.C., but he did not dismiss the proposal in principle. I have already indicated my own view that the proposal is reasonable and this is supported by the Archdeacon. Mrs. Bunten asked questions of Mr. Littlewood, the result of which was to disclose a well-advanced proposal for the township of Werrington to have its own burial ground, which would then be available for residents of the parish. A working party has already been set up and the planning department of the Local Authority has suggested a site. Although these plans are not yet final it did appear to the Court that there was a prospect that if some 41 spaces remain available in Werrington churchyard after allowing the three existing Petitions (one of which now relates to the existing Dexter grave) this may well leave enough spaces for use, at the rate of some 6 per year, until a new township burial ground becomes available. That would certainly be a happy solution.

15. The view took place at the conclusion of Mr. Littlewood's evidence and my findings were that there are 6 spaces available on the right of the path in area G and 12 available at the far end of area G on the left of the path. There are 15 or thereabouts available on the site of the old wall in area D, being to the north of the path there, and there are about 10 in area E which is the south end of the site of the old wall. It is reasonable to place burials on the site of this wall because the ground is basically level, the length of grave space available is some 8'6" and in area E there are already graves which are sited along the line of the old wall, namely graves numbers 45, 46, 52, 54 and 56. The total of these spaces numbers 43. After the view the Archdeacon gave evidence and he explained that the D.A.C.'s advice had been given on the basis of the information coming from the parish at the time, this being that there were only some ^{14 or} 16 spaces left, against which there were 7 applications. The D.A.C. had noted that there had been abstentions in the P.C.C. in the case of the Buntens and the Goodmans and that the P.C.C. had voted against the ~~Koles~~' application. The Archdeacon had put in his objection because of the D.A.C.'s inability to support the Petitions. When the four other Petitions were dismissed the Archdeacon considered it still appropriate to maintain his objection so that there could be a Court and the matter could be considered in detail. The questions raised in the proceedings were of relevance to the diocese as a whole and not merely to this individual parish. The Archdeacon indicated his sympathy for the present Petitioners. As a result of the evidence given by Mrs. Bunten as to the additional spaces available, and his confirmation of much of this arising from an examination of the site, he now concluded that the number of spaces available was in the region of 40. He commended Mr. ~~Kole~~'s alternative proposal to reserve a right of re-burial in the Dexter grave. On that basis the existing Petitions would require reservation of only two new grave spaces. He felt that if the D.A.C. had been considering the matter on the basis of

the facts as they were now known to be it might well have taken a more generous view towards the three Petitions. On the other hand he was concerned that the Incumbent and P.C.C. would have an on-going problem over reservations if some direction were not given by the Court to put a limit on future reservations. Even if some 40 or so spaces remained available it would be undesirable for more than a few further grave spaces to be reserved. In the Archdeacon's view the spaces remaining available after that should not be reserved but should be available for use as and when parishioners died. Questioned by Mrs. Bunten he indicated that there had been no contested case of a reservation of a grave space within the last 15 years of so within the diocese and as a result there was no recent precedent to look to in relation to the principles to be applied. He said that there was nothing unusual in the P.C.C. wishing to have a churchyard closed when it was full; indeed the legislation encouraged this in that it provided for a Local Authority to take over responsibility for the maintenance of a closed churchyard and it was reasonable for a P.C.C. (which otherwise had responsibility for a churchyard) to wish to pass this responsibility to another body.

16. The principles involved. The passages quoted to me by Mrs. Bunten from the **Churchyard Handbook** are in my view correct expressions of the legal position with regard to rights of burial of parishioners and non-parishioners respectively and with regard to the reservation of grave spaces. With regard to the giving of permission for a non-parishioner to be buried it is worth quoting another passage from page 58 of the **Churchyard Handbook** in relation to the respective responsibilities of the minister of the parish on the one hand and of the P.C.C. on the other. This reads as follows: "There has in the past been some doubt as to the person whose consent is required as to the burial of non-parishioners but this has now been resolved by Section 6(2) of the Church of England

(Miscellaneous Provisions) Measure 1976 which provides that:

No person, other than a person having a right of burial in the churchyard or other burial ground of a parish, shall be buried therein without the consent of the minister of the parish, but in deciding whether to give such consent the minister shall have regard to any general guidance given by the Parochial Church Council of the parish with respect to the matter"

The discretion is therefore that of the Incumbent or priest in charge, but he must obtain the views of the P.C.C. and take those views into account. This is the way in which the question of Mr. and Mrs. Cole's alternative application must be considered within the parish. The decision is that of the Incumbent. . Chancellor G.H. Newsom at page 143 of his "Faculty Jurisdiction of the Church of England" says: "If the Incumbent declines to allow the burial of a person who has no right of burial his decision cannot be called in question in the Consistory Court". The reference is to Re: St. Nicholas, Baddesley Ensor (1983) FAM 1. The reason why the P.C.C should ~~not~~ be consulted is that the P.C.C. has legal responsibility for the upkeep of the churchyard, including such tasks as mowing and weeding, and has an interest in the introduction of grave memorials which will affect these responsibilities.

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17. Although as I have said there is/common law a right for a person who dies within a parish to have his mortal remains buried in the churchyard of the parish church this right does not carry with it any similar right for the reservation of a grave space. The right to burial only arises upon death and, since an application to reserve a grave space is being made before that other right comes into existence, the grant or refusal of a reservation is a matter for discretion of the appropriate authority. The reservation of a grave space is a matter within the province of the Consistory Court and not of the Incumbent because the

Incumbent's rights in relation to the churchyard only extend for the period of his Incumbency and he is not legally in a position to commit any Incumbent who may have the freehold of the churchyard at some later date when the person for whom the grave space has been buried eventually dies. Subject to the limited rights of the Incumbent as the holder for the time-being of the churchyard the person who has authority over the churchyard is the Diocesan Bishop and this authority arises from the fact of consecration by him(or his predecessor)of the churchyard. The Diocesan Bishop exercises his jurisdiction in respect of churchyards through his appointee, the Chancellor of the Diocese, who is the judge of the Consistory Court, and who is responsible for the administration of the Faculty Jurisdiction under the Faculty Jurisdiction Measure 1963 and the Rules which go with it. It is in those circumstances that reservations of grave spaces are granted only by way of Petition for Faculty to the Consistory Court. Although the judge of the Consistory Court makes the decision, he will take into account the views of all concerned, but particularly the views of the Incumbent for the time being and of the P.C.C. for the time being, since those are representative of the view of the parish and since any direction of the Consistory Court will have to be implemented by these persons. In the case of an application for reservation by a non-resident the Chancellor has an additional duty to take into account the views of the Incumbent. This arises from the position which I have already dealt with, namely the fact that it is the Incumbent who has the right to decide whether or not a non-resident shall, upon his death, have the right for his mortal remains to be buried in the churchyard. Chancellor G.J. Newsom deals with this at page 164 of his book where he refers to a decision of Chancellor Tristram in Re: The Perivale Faculty (1906) P.332 at 336 where he said that a Faculty for the reservation of a grave space for a non-parishioner should not be granted without the concurrence of the Incumbent. In the present case of Mr. and

Mrs. Cole I do not have at present the concurrence of the Incumbent because he has quite properly said that he should consult with the P.C.C. before he makes his decision. On the other hand I have indicated my own views that if the grave space ~~to~~ to be reserved for Mr. and Mrs. Cole is the grave of Mr. and Mrs. Dexter it would be reasonable for the P.C.C. and the Incumbent to concur. I must not assume that they will, but I think there is a reasonable expectation that they will. In those circumstances if I make a decision in favour of the Coles' application it must be subject to the concurrence of the Incumbent before a Faculty passes the seal and is issued to the Coles.

18. In the same case Chancellor Tristram went on to say that a Faculty should not be granted for reservation in favour of a non-parishioner unless the Court is satisfied that this can be done "without serious risk of depriving parishioners, present or future, of their right of being buried in the churchyard". I will follow that statement of the law, but there are two reasons why in the present case it ought not to prevent a Faculty in favour of Mr. and Mrs. Cole. If the reservation is to relate to the existing grave of Mr. and Mrs. Dexter, no question can arise of "depriving parishioners" since as I have already explained parishioners would not be entitled to re-burial in the Dexter grave. Secondly the whole question of depriving parishioners has to be seen in the context of the fact that this churchyard will be full within about 7 years in any event, if burials continue at the rate of some 6 per year. If at the end of such a period of time no parishioners will be able to be buried in this churchyard (except of course for the use of double depth grave spaces (where there has only been one burial so far) and for cremated remains) then there will come a time when parishioners will inevitably be "deprived" and it could possibly be said that matters are not made much worse if that time is reached marginally earlier than otherwise. There is a pastoral problem to be faced and to some extent the precise moment at which that

problem crystallises; is not significant.

19. What I do consider to be an important principle is that during the last few years of the use of the churchyard there should be spaces available as and when people die and that this availability should not be diminished by any reservations during those final years. The Archdeacon said in his evidence that there should^u certainly be no reservations within the last 3 years of the use of the churchyard. If there are 43 spaces available and 2 of them are to be used up by the present Petitions, that will leave 41 spaces. At the rate of 6 burials a year for 6 years there are spaces available for approximately another 6 years, still leaving some 5 other spaces. Anticipating that perhaps 2 or 3 of the other four applications will be successfully revived, so as to use up some of those 5 spaces, there will still be enough^l burial spaces for about 6 years. In principle I consider that this is a satisfactory state of affairs and that the^{existence of the} remaining burial plots, as proved to my satisfaction by Mrs. Bunten's evidence and by my own examination of the site, indicates that there will be no infringement of the basic principles if I allow the applications of Mr. and Mrs. Bunten and Mr. and Mrs. Goodman and allow also the application of Mr. and Mrs. Kole (in relation to reuse of the Dexter grave).

20. I have come to the conclusion therefore that because of the additional grave spaces which have been proved to be available, the position in this case is not as it was represented to be at the time when the D.A.C. considered the matter and when the Archdeacon put in his Notice of Objection. The position is that there are some 43 spaces available, rather than only 16 spaces, and that in my view alters the position substantially. I would probably have refused reservation if 3 spaces out of a remaining 16 were to be taken. I am satisfied on the other hand that we are dealing with a different situation with 43 spaces avail-

able and only 2 needing to be reserved (the one for the Coles not having to come out of the available 43). With 41 spaces remaining I do not think that any pastoral problem of a grave dimension will exist. In reaching this conclusion I take into account that some or all of the other four applications may be revived and that, if this is done within the very strict time limit I propose and which is dealt with below, it is possible that I may decide to allow one or more of those other four applications. Even if all four were to be granted (which I think is unlikely) that would still only reduce the pool of spaces from 41 to 37, and I would consider 37 spaces to be a sufficient number to leave the parish without a significant pastoral problem. It is possible that others would wish to apply for grave spaces knowing that the 3 with which I am dealing have been granted. I propose to impose a strict time limit on any further applications and to direct that after the expiry of that time limit no further applications for reservations may be submitted. As I have general jurisdiction over the churchyard on behalf of the Diocesan Bishop and reservation of grave spaces is a matter entirely within my discretion I have power to direct, with regard to a particular churchyard, that no further Faculty Petitions for reservation will be presented in relation to such churchyard. My direction therefore will be that after the expiry of a period of 6 weeks from the issuing of this Judgment to the parties in the present proceedings the Registrar will not receive on my behalf any further Petitions for reservation in respect of this churchyard. I do not wish to encourage any of the four Petitioners who agreed to their Petitions being dismissed to re-submit their applications, but I am not debaring them from doing so. I consider it would be wrong if I were not to give them an opportunity, within the period of 6 weeks, to put forward their Petitions, since they may not have been in possession of the full facts with regard to the churchyard which have now emerged and as a result they may not have been in a position fairly to evaluate the chances of success if they were to go ahead with their Petitions. It would seem to me

to be wrong to allow the three Petitions which I have before me and to totally rule out the possibility of any renewal of application by the four Petitioners whose cases have been withdrawn. On the other hand a strict time limit within which to re-petition is justified because of the need to impose a control in future in respect of this churchyard and to prevent a flood of applications. I have noted that Miss. King is considerably younger than the other applicants and that the P.C.C. takes the view that her case is less strong than the others. I have not considered any of the other four Petitioners on their merits and do not wish to give any indication whatever as to whether or not these Petitions might succeed, even if restored within the time limit.

21. My order therefore will be that Faculties will issue to Mr. and Mrs. Bunten and Mr. and Mrs. Goodman for the reservation of the particular grave spaces which are referred to in their Petitions. These grave spaces must be marked on the ground so that they can be identified later and the usual fees payable on the reservation of a grave space must be paid to the Incumbent and to the P.C.C. In relation to Mr. and Mrs. Kole I will direct that, subject to the Incumbent indicating to the Registrar in writing his willingness to concur in a reservation of the Dexter graves (number 80 in area B) for re-use by Mr. and Mrs. Kole, a Faculty may issue for the reservation of the Dexter graves for re-use by Mr. and Mrs. Kole. Again this will be subject to the usual fees being paid to the Incumbent and P.C.C.

22. It will further be directed and ordered, as a condition of the Faculties being granted in the present case, that, after the expiry of a period of 6 weeks from the issuing of the Judgment and orders upon these three Petitions, no further Petition for a reservation shall be made to the Consistory Court or submitted to the Registrar of the Diocese of Peterborough for the reservation of any grave space in the churchyard of

St. John the Baptist Church at Werrington. A copy of the order which I make should be sent by the Registrar to each of the Petitioners in the other four Petitions so that they are aware of the position.

23. Costs and Fees. None of the parties to the proceedings being legally represented and no application having been made as between the parties for any order for costs, I direct that there shall be no order for costs as between the parties. The questions of the Court fees and the fees of the Registrar incurred during the course of the preparation of these proceedings and in the drawing up and implementation of the order, are more difficult. In a secular court some of these fees and expenses would be met centrally out of public funds. That system does not apply to proceedings in the Consistory Court where the expense of having the Court (including the fees of the Chancellor and Registrar) have to be met by the parties. Here we have three pairs of Petitioners on the one hand and on the other the Incumbent and the Archdeacon. The Petitioners have been successful, but in the Consistory Court it is not an invariable rule that "costs follow the event". To a considerable degree the objections raised by the Incumbent (effectively on behalf of himself and the P.C.C.) have been reasonable and he believed that he had a measure of support from the D.A.C. The parish's concern over a pastoral problem arising was a genuine concern. On the other hand I consider that the parish's research into the number of available grave spaces remaining was somewhat inadequate. In particular a discussion with Mrs. Bunten would have produced the evidence of the other spaces which was eventually produced at the hearing, so that it is not impossible to envisage that the Incumbent and P.C.C. might have been able to alter their position, so that a hearing would have been avoided. My task is to decide where the burden of the fees and expenses should lie as between the various participants. In relation to the Archdeacon I have to say that his position has been entirely reasonable throughout. The D.A.C. acted on the information given to it by the P.C.C. (that

there were only 16 spaces available) and I accept that it would probably have taken a different view had it known that there were 43 spaces. The Archdeacon came before the Court to represent the views of the D.A.C. As soon as it appeared that there were more spaces available the Archdeacon gave different advice to the Court, indicating that it would not be unreasonable to allow these Petitions, subject ^{to} control over any future reservations. Nevertheless where the Archdeacon is involved as a party in the proceedings it may be not unreasonable that the Diocesan Board of Finance should make a contribution towards what has to be paid, since the Archdeacon, if he has some liability for the fees and expenses, is entitled to be fully reimbursed by the Diocesan Board of Finance. He himself said that one of his reasons for putting ⁱⁿ a Notice of Objection in the proceedings was to enable a Court to be held, this being at least in part with a view to obtaining some guidance for future cases within the diocese of a similar nature, there having been no guidance for at least the last 15 years. Therefore it is hoped that my judgment and orders in the present proceedings may be of some value to the diocese as a whole. The diocese has an interest in all Faculty proceedings because the diocese is not ^a body independent of the individual parishes and has an involvement and concern even in relation to the affairs of particular parishes. It is in the interests of the diocese that disputes which arise within an individual parish should be settled by means of the Consistory Court. I consider it reasonable therefore that the diocese should contribute to some extent towards the fees and expenses (through an order made by the Court against the Archdeacon). I do not consider that it would be right to place a financial burden on Mr. and Mrs. Bunten and Mr. and Mrs. Goodman in respect of their applications, since they have succeeded, and since the outcome has very largely been the result of the very full investigation carried out by Mrs. Bunten. I believe it would be reasonable to expect Mr. and Mrs. Cole to contribute because it was only as a result of the late amendment which they made about halfway through the hearing that they were able to

overcome a very substantial difficulty arising from their being non-resident. Indeed they have not yet fully succeeded in the proceedings because a Faculty cannot be granted to them unless and until the Incumbent indicates his concurrence (as I hope he will). I consider however that the contribution of Mr. and Mrs. Kole ought not to be a large one because they are only responsible in any sense for one-third of the overall costs and, as basically successful parties, they ought only to have to bear a proportion of that one-third. I propose to order that Mr. and Mrs. Kole will pay one-sixth of the total fees and expenses involved and that Mr. and Mrs. Buntin and Mr. and Mrs. Goodman shall not be required to make any contribution. That will leave five-sixths to be provided in part by the Incumbent (no doubt indemnified by the P.C.C.) and by the diocese. I will order that ^{third} one $\frac{1}{3}$ of this (i.e. $\frac{5}{18}$ ths of the whole) shall be paid by the Incumbent and ^{for two-thirds (i.e. $\frac{10}{18}$ of the whole)} $\frac{2}{3}$ shall be paid by the Arch-deacon (indemnified by the Diocesan Board of Finance). It is always an extremely difficult matter for the Court to decide on how these fees and expenses should be paid and experience indicates to me that no order which I make in this area is likely to meet with approval from all those concerned. I have endeavoured to explain the reasons for my decision but in the end those involved must simply accept the order which I have made. In due course the Registrar will prepare a schedule of his fees and expenses and those will be submitted to me for approval. A total figure will then be available and this will be apportioned by the Registrar in accordance with my direction and orders will then be sent out to the individual parties responsible for payment and my direction is that payment will then be made within 28 days of the sending out of those notices.

23. I will finish this judgment by commending those who were concerned at the hearing for the balanced way in which they presented their evidence and arguments. The difficulty which has arisen in this church

over the reservation of grave spaces has happily not caused those concerned to develop any bitter feelings towards each other and I was impressed with the very happy atmosphere prevailing in this church. This I am sure results to a very large extent from the leadership of Mr. John Littlewood. I trust that the directions which I have now given in relation to the churchyard and the matter of reservation of grave spaces will assist in the ongoing ministry of this parish, where it is obvious to me that a great deal of valuable work is being done.

DATED...9th January 1991

Thomas A. Gwington

Chancellor of the Diocese
of Peterborough