

IN THE CONSISTORY COURT OF
THE DIOCESE OF BATH AND WELLS

Re: The Churchyard of Wick St. Lawrence

JUDGMENT

1. Introduction

By his petition dated June 27th 2013 Mr. Julian Wheeler seeks to reserve a double depth grave space in the churchyard of Wick St. Lawrence for the exclusive use of his two sons and two daughters. The proposed space is adjacent to another vacant double depth space marked as number 142 in the parish records and informally allocated to the Petitioner and his wife, Mrs. Pandora-May Wheeler. That space in turn is situated next to the grave (numbered 141) of the Petitioner's father, who died on February 14th 2012.

The petition was not accompanied by the usual supportive resolution of the Parochial Church Council, which in fact opposes the intended reservation. The position adopted by the Parochial Church Council was explained in the letter of May 13th 2013 written on its behalf by the Reverend Anne Farmer, team vicar in the Worle Team Ministry which now encompasses the parish of Wick St. Lawrence. The letter explained,

“... that it would not be possible to consider further reservations.

We wanted to avoid setting a precedent of allowing a reservation

for someone residing outside the parish, and this coupled with proposals to preserve as much space as possible as we investigate the possibility of a future extension to the church.”

In considering whether or not to grant a faculty for reservation of a grave space, proper account has to be taken of the views expressed by the Parochial Church Council. So as to avoid the expense of a hearing in open court, I therefore invited the Petitioner and the Council to set out in writing their reasons for or against the reservation being sought, so that I might hand down a judgment informed by these written representations. This course having been adopted by consent, there are now before me detailed letters dated August 8th and September 19th 2013 from the Petitioner, with a letter of September 14th 2013 setting out the case for the Parochial Church Council. In addition six individual parishioners saw fit to communicate their views, supportive of the Parochial Church Council, to the Diocesan Registry. For reasons which will become apparent, it is the attitude of the minister and Parochial Church Council, rather than the opinions of particular parishioners, which carries weight in this type of application.

2. Events Preceding the Petition

It is necessary to outline some of the background to the present petition. Members of the Wheeler family reside in Kewstoke, which in the past formed a united benefice with Wick St. Lawrence. The churchyard at Kewstoke is no longer available for interments. In 1989 the then incumbent of the united benefice, the Reverend Bryan Strange, was approached by the Petitioner’s mother Mrs. Mildred Wheeler with a request to “note in the

Burial Book” the wish of herself and her husband to be buried in a designated space in the churchyard of Wick St. Lawrence, with the adjoining space to be kept for the Petitioner and his wife. So much appears in a short letter from Mrs. Mildred Wheeler dated July 28th 1989, with the consent of the incumbent endorsed upon it. A few days beforehand, on July 25th, the incumbent had reported to the Parochial Church Council the receipt of an anonymous gift of £100 which was allocated to the Church Urban Fund. The gift emanated from the Wheeler family, and is believed to have been made in conjunction with the request for the grave spaces. No other relevant written record survives, and no note was made in the burial register or on the churchyard plan.

If the parties to this transaction intended to create a legally binding right to the two spaces, the attempt was a complete failure. In order to secure a reservation effective both against successive ministers and third parties (such as the interloper in re St. Luke’s, Holbeach Hurn [1991] 1 WLR 16) it is necessary to obtain a faculty. Moreover, if a churchyard is closed by Order in Council pursuant to the Burial Act 1853, the closure order normally contains an exception in favour of the use of spaces already reserved by faculty. Thus the security afforded by a faculty is of importance; neglect to obtain the desired reservation by this means has the potential for disappointment and inconvenience.

By the date of the death of the Petitioner’s father in 2012 the union of the benefices of Wick St. Lawrence and Kewstoke had been severed, with Wick St. Lawrence being absorbed into the Worle team ministry. The

Reverend Bryan Strange was no longer a minister there. It was to the credit of the Parochial Church Council that a decision was made to honour the legally invalid arrangement in favour of the Wheeler family, by permitting the burial of the Petitioner's father as well as allocating plot 142 as

“Proposed grave for Julian and Pandora-May Wheeler (double depth)”

As it now stands, the allocation of plot 142 is informal and might at any time be revoked by the Parochial Church Council.

3. The Relevant Law

The law and practice in relation to the reservation of grave spaces was comprehensively explained by my predecessor, Chancellor Newsom Q.C., in re West Pennard Churchyard [1992] 1 WLR 33. His judgment drew a distinction between reservations in favour of persons having a legal right of burial in a churchyard and those lacking such a right but nonetheless being desirous of securing a resting place for their remains. In the former case a faculty may be granted in the discretion of the Court, the Parochial Church Council having no more than the right to oppose an application for a faculty. Where, however the petitioner has no right of burial in the churchyard (not being a parishioner, nor dying in the parish, nor having his or her name entered on the church electoral roll) different considerations apply. Section 6(2) of the Church of England (Miscellaneous Provisions) Measure 1976 empowers the minister of a parish, having regard to any general guidance given by the parochial church council, to permit the interment in the churchyard of a person having no right of burial. Where a person without a

right of burial applies for a space to be reserved by faculty, as Chancellor Newsom Q.C. explained at page 33 of the report,

“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.
But, as I understand it, no interment of a person not having a legal right of burial can take place at all, and no faculty for such a burial ought to be granted, unless the incumbent has signified his concurrence. In such a case he appears to me to have a veto.”

Thus in deciding whether or not to grant a faculty 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 Section 6(2) of the Church of England (Miscellaneous Provisions) Measure 1976, since the provision of a space reserved by faculty would override the minister’s power to give or withhold consent to the eventual burial.

Section 6(3) of the 1976 Measure defines the person to be treated as the minister for the purposes of Section 6(2). It does not expressly deal with team ministries; but insofar as Section 20(2) of the Pastoral Measure 1983

(now substantially re-enacted as Section 34(2) of the Mission and Pastoral Measure 2011) provides for the team rector to be,

“a corporation sole and as such hold the property of the benefice”

it is from the team rector that consent must be forthcoming. The default provision in Section 6(3), requiring the rural dean to give consent, is not activated where a team ministry is in operation.

4. The Application of the Law to the Present Case

The Petitioner is not a parishioner, neither is his name entered on the church electoral roll. His wife and children are similarly situated. They do not have any subsisting right of burial at Wick St. Lawrence. The team rector has not given consent to the burial of the Petitioner's children in the churchyard. On that ground alone the present application is bound to fail. Looking beyond the narrow issue of the necessary consent, the underlying guidance given by the Parochial Church Council and evidenced by the letters of May 13th (already quoted) and September 14th 2013 is persuasive. The policy of giving priority to those having a right of burial in the churchyard to the exclusion of others is in the circumstances reasonable. The Parochial Church Council is entitled to have regard to the anticipated demands upon burial space arising from an increase in the population of the parish. Equally the need to preserve an area free of burial on the north side of the church, in order to facilitate the building of an extension, is justified. As re St. Michael and All Angels, Tettenhall Regis [1996] Fam 44 clearly illustrates, development is liable to be blocked by the presence of recent

graves within the footprint of a proposed church extension. The minister, having proper regard to the stated policy of the Parochial Church Council, would be constrained to refuse consent under Section 6(2) of the 1976 Measure.

5. Conclusion

It is impossible to read the Petitioner's written representations without considerable sympathy. He rightly points to the 'close, Christian' character of the family and the desire of its members to remain together, although the means whereby his four children could all be accommodated in one double depth space has yet to be devised. It is also correct that the family is collectively disadvantaged by the lack of burial facilities at Kewstoke coupled with successive pastoral schemes which have affected rights of burial in the parishes concerned (see paragraph 13 of Schedule 3 to the Mission and Pastoral Measure 2011). Unfortunately for the Petitioner, the law is against him and I am bound to reject his application for reservation of the grave space for the benefit of his children.

Consideration of the present petition does, however afford the opportunity to perfect the reservation of plot 142 which currently lacks legal validity. It is possible to regularise the position because the moral claim by the Petitioner and his wife to this plot has been acknowledged by the Parochial Church Council and entered in the parish records. The Petitioner will, therefore have leave to amend his petition to include an application for the reservation of a double depth grave space at plot 142 in favour of himself and Mrs. Pandora-May Wheeler, and I decree a faculty to that effect. Save in

this respect the petition is dismissed and the Petitioner shall pay the Court fees to be assessed by me if not agreed.

Timothy Briden

Chancellor

4 November 2013