

[2024] Ecc Yor 1

IN THE CONSISTORY COURT OF THE DIOCESE OF YORK

IN THE MATTER OF THE CHURCHYARD AT ST PETER'S, HILTON

and

**IN THE MATTER OF THE PETITIONS OF DAVID THOMAS GRAY AND
MAUREEN MARY GRAY**

JUDGMENT

1. By petitions both dated 12 May 2024 (the “Petitions”), the petitioners, David and Maureen Gray (the “Petitioners” or “Mr and Mrs Gray”), each seek the reservation of a grave space in the churchyard at St Peter’s church, Hilton. I have considered the petitions together as the Petitioners are a couple and they raise precisely the same issues.
2. Mrs Gray is 81 years old and Mr Gray is 80, and they are residents of the parish of Hilton. The petitions read almost identically, simply citing the fact that the Petitioners have been resident in the parish of Hilton for over 46 years and that they very much hoped they could be buried in the churchyard. No further information has been supplied to me as to their reasons for requesting reservations, their attendance at or other connections with the church, despite my directions on 28 May 2024 that the Petitioners be given further time to provide an explanation detailing the exceptional reasons why the petition should be granted in this case.
3. The Petitioners’ requests are not supported by the PCC¹. There are no party opponents in this matter.
4. The churchyard is built on sloping land, and I have been given uncontroverted evidence by the PCC that the effect of this is that plots must be dug in sequence from the bottom of the bank. There are currently only 26 grave available spaces in the churchyard meaning that there is, it is estimated based on current rate of use, a further 15 years’ worth of space available.
5. However, the PCC has what it has described as a “longstanding” policy not to support applications for grave space reservations. I have not been supplied with the original minutes detailing the decision to adopt the policy, but I have been provided with a recent minute dated 25 April 2024 which confirms the existence of the policy, explains the basis for it and records the unanimous application of the policy which led it to decline to support to the Petitions at a meeting held on 12 November 2023.

¹ By directions issued by this court on 28 May 2024 the PCC’s submission of minutes detailing its policy opposing the reservation of grave spaces and recording the outcome of a meeting at which the PCC voted unanimously to reject the Petitioners’ applications has been deemed, for the purposes of these proceedings, equivalent to a written notice of objection.

Procedural history

6. The Petitioners have been provided with all materials and have been given opportunities to respond to those and to put before the court their reasons for advancing the Petitions. No further reasons or written submissions have been supplied by the Petitioners beyond the brief sentences contained in their Petitions (summarised above).
7. In the course of my directions I set out that, having regard to the overriding objective in Part 1 of the Faculty Jurisdiction Rules 2015 (as amended) (the “FJR”) and given the scale and likely scope of the dispute, I considered it expedient and proportionate to determine this matter on the basis of written representations. The PCC and the Petitioners were invited to submit their views on such a course and the PCC has indicated its agreement whilst the Petitioners have remained silent. In these circumstances the written determination of this matter is appropriate.
8. The Petitioners have also been provided with a costs booklet and, it should be noted, have been informed from the outset of the PCC’s policy and its vote against supporting their Petitions.

Discussion

Legal position

9. I have had regard to the judgment of Ch. Hodge KC in *Re St Mary, Thame*² which contains a comprehensive review of decisions relating to grave reservations by other Chancellors, including cases where PCCs had adopted policies of not supporting grave reservations. Although not bound by the decision of the learned Chancellor in that case or decisions made in the cases from other Dioceses cited in his judgment, such decisions of consistory courts in earlier cases do, as Ch. Hodge KC observes, provide potentially helpful indications as to how the circumstances of other similar cases have been viewed.
10. A clearly expressed thread running through those cases where PCCs had adopted policies of not supporting grave reservations is that the Consistory Court will generally support a policy of non-reservation unless such a policy reveals bad faith or is unreasonable (see *Re Dilhorne Churchyard*³; *Re St Mary, Doddestone Churchyard*⁴ and *Re St Mary, Doddington*⁵ amongst others). The chief rationale for this approach is as expressed by Chancellor Aglionby in *Re St Nicholas, Baddesley Ensor*⁶: “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.”

² [2022] ECC Oxf 2

³ [2001] 6 ECC LJ 77

⁴ [1996] 1 WLR 451

⁵ [2020] ECC Ely 2

⁶ [1983] Fam 1

11. Such a policy will not necessarily be determinative of the outcome of a faculty application in all cases. In *Re St Mary & St Radegund, Postling*⁷ the Commissary General of the Diocese of Canterbury observed that an exceptionality threshold existed, whereby it was open to the Court to decide that the position was sufficiently exceptional to justify granting a faculty notwithstanding the significant weight to be given to the PCC's position. In that case (and similarly in some other cases cited by Ch. Hodge KC in *St Mary, Thame*) it was held that the exceptionality threshold had been met on the grounds of the degree of family connection to the church and churchyard, coupled with the petitioner's particular service to the village and the church.

Evaluation of the St Peter's PCC policy

12. In the case of St Peter's, the PCC's adoption of its policy is of long standing. The PCC's summary of the rationale for the adoption of the policy contains the following key points:

12.1. a first come first served basis operates, whereby the next grave plot is allocated as someone dies.

12.2. The policy has long been accepted as fair and followed by the majority without quibble;

12.3. The PCC depends on local support to keep the church operational;

12.4. If reservations were to be allowed then the very limited number of remaining grave spaces would rapidly be used up by applicants for reservations and the PCC feels that it would be unable to adjudicate fairly between new applications in the event of a surge of applications.

13. There is a reflection of the case law position in this rationale, in that it expressly recognises that importance of equality of treatment, and of avoiding the unfairness that would arise for those who have accepted and followed the policy if others sought and were granted permission on a non-exceptional basis.

14. Having considered the PCC's reasons for introducing the policy I conclude that they are satisfactorily articulated, understandable and objectively reasonable. The evidence of the PCC's application of its policy since its introduction indicates that it is being applied consistently. The decision to introduce the policy is justified, having been motivated by limited space and the peculiarities of the sloping site which make it particularly difficult to manage anything other than burials in consecutive spaces and in order, and it is based on reasonable considerations of fairness to the community. There is nothing to suggest bias, bad faith or unfairness.

15. I would add that it is important that the approach of the PCC should not be doctrinaire. A fair policy remains capable of exception in exceptional circumstances.

16. It may be said that there is a counterpoint to this assessment arising from the fact that the churchyard retains 15 years' worth of available grave spaces. In comparison with some

⁷ [2021] ECC Can 1

other churchyards where such policies are sometimes legitimately introduced in light of limitations due to lack of space, this may be argued to be relatively ample. However it does not seem to me that this is a factor of any particular weight given that there is an essential fairness in adopting a policy which places all parishioners on a level playing field at time when there is sufficient space, rather than imposing such a policy later in the day when it is likely that some, but not all, will have secured their grave reservations by getting in early.

17. In these circumstances I consider that the policy is legitimate and that the starting point is that this Court should afford significant weight to the PCC's policy of non-reservation in the determination of this petition, allowing only exceptional circumstances to justify departure from it. The need to show exceptional circumstances arises both as a consequence of the respect which the Court should afford the autonomy of a PCC in determining its views by proper, thoughtful and democratic process and as a matter of fairness to those who may have wished to, but have not, sought reservations because of their acceptance of the PCC's policy.

Evaluation of exceptionality

18. I turn next to the question of 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 policy. For the reasons which follow I conclude that they are not.
19. The Petitioners were invited to provide this Court with any information to support their Petitions, in particular the reasons why they believe their case to be exceptional justifying departure from the PCC policy. Correspondence from the Registry enclosed case law illustrating the scope of legal issues the Consistory Court must consider when evaluating requests for grave space reservations and clearly spelled out for the Petitioners the need to "...provide in writing any reasons why you consider that an exceptional course should be taken in this case granting a reservation despite the PCC's policy of opposing reservations".
20. The Petitioners did not provide any response to this direction. Accordingly, I have before me only the reasons that were provided in the Petition documents themselves. These reveal nothing other than the general desire of a couple who have lived locally for a long time to be buried in their local churchyard. This is readily understandable but, with greatest of respect to Mr and Mrs Gray, merely articulates what is an extremely common wish. There is absolutely nothing exceptional in it. Many other residents of the parish will feel a connection to the village and the church based on long residency and would wish for the same peace of mind and continued family connection that no doubt underlies the Petitioners' requests, but have accepted the policy in the interests of fairness to all.
21. Mr and Mrs Gray were also, I find, informed of St Peter's policy of not permitting grave space reservations and petitioned in full knowledge of that.

22. Demonstrating exceptional circumstances requires a petitioner to show that their case is “*markedly out of the ordinary*”⁸. Mr and Mrs Gray have not pointed to any factors which mark their position out as exceptional. In these circumstances their petitions must be refused.

Conclusion

23. For the reasons I have given I refuse to grant either faculty for a grave space reservation.

24. The Petitioners shall pay the court fees and costs of time spent on this Petition.

Lyndsey de Mestre KC
Chancellor of the Diocese of York

4 July 2024

⁸ Per Chancellor Eyre in *Re St James, Brownhills* [2020] ECC Lic 3.