

**DIOCESE OF SHEFFIELD
In the Consistory Court**

Her Honour Judge Sarah Singleton QC
Chancellor

**IN THE MATTER OF
ST CUTHBERT'S FISHLAKE AND THE PETITION OF IVY BRENDA WAITE FOR THE
RESERVATION OF A GRAVE SPACE**

Judgment

1. By her petition of 3rd of July 2021 Mrs Ivy Brenda Waite seeks a faculty for the reservation of a grave space in the churchyard at Saint Cuthbert's Church Fishlake. Mrs Waite lives in Bury St Edmunds but has a longstanding connection with the parish of Saint Cuthbert's church. She was baptised, confirmed and married at the church. Numbers of her relatives are buried in the churchyard including her parents, grandparents and great grandparents. Mrs Waite is 84 years of age. I can well understand and sympathise with the anxiety Mrs Waite and her family may well feel about this application. I consider it appropriate to deal with this matter on the documents before me.
2. The parish is without an incumbent at present and the response to the Petition has been provided by the PCC by letter dated 7th May 2021 written by the churchwarden Ms Brownbridge. The PCC oppose the application and have gone to some trouble to respond to it.
3. They have ascertained that there was no plan for the new part of the churchyard (consecrated in the 1980s) which is where any reserved space would be located. They have now drawn such a plan. They have answered the questions asked by the Registry in appropriate detail and provided a copy of their policy for burials in the churchyard which is dated February 2021 and set for review in February 2026.
4. Ms Brownbridge's letter confirms that there are only 26 burial spaces remaining in the churchyard. The population of the parish is approximately 682 and it is generally an elderly population. In the ten year period between 2010 and 2019 (inclusive) there were 20 burials and 16 burials of cremated remains in the churchyard. There were more deaths than would have been expected in 2020 but also a larger proportion of burial of cremated remains than hitherto. The PCC have sensibly determined not to undertake any further re-burials in existing grave spaces because they cannot

be sure that there are no unmarked burials in possible spaces during the last 50 years. The PCC estimate that there are 10 years of burial spaces remaining at very best.

5. Despite her strong connection with the parish Mrs Waite is not within that class of people with a right to be buried in the churchyard: she is not resident in the parish and she is not on the electoral roll of the parish and it is not anticipated in the present circumstances that she will die in the parish. The question of whether she could be buried in the churchyard rests upon the discretion of the incumbent in this case exercised by the PCC whilst the church is without an incumbent. That discretion could be overruled by a faculty authorised reservation. The PCC at St Cuthbert's do not operate any system of informal reservations. Ms Brownbridge explains in her letter that Mrs Waite's case would be likely to be treated favourably in accordance with the policy in the event of her death whilst spaces were still available in the churchyard. The policy clarifies that having a parent buried in the churchyard and having a strong connection with the church would be considered good reasons for allowing a burial of someone without a right to be buried there.
6. Ms Brownbridge's letter explains the anxiety of the PCC, if this faculty or others like it were granted, that a situation might well arise when those in the parish with a right to be buried would be precluded from being so despite the existence of a vacant burial space or spaces by reason of the faculty reservation of a space for those without such a right. She requests that I take into account "the sensitivities of our small local population" and anticipates that such a situation would cause local anger.
7. I have considered the applicable law as set out in the decisions of *Re West Pennard Churchyard* [1992] 1 WLR 32 and *Re St Margaret's Drayton* [unreported] March 2015 decided by the Norwich Consistory Court.
8. Although I would, in general, wish to permit an application of this nature to succeed to reduce understandable worry on the part of the Petitioner and her family I do not consider that I can exercise the wide discretion I have in this case in favour of allowing this petition. My reasons are as follows:
 - a. The remaining burial spaces in this churchyard are few and likely to be exhausted in a relatively short space of time.
 - b. The Petitioner is not in that class of person with a right to burial in the churchyard and any reservation for her would reduce the diminishing resource for those who have such a right.
 - c. The PCC have in place a transparent and fair policy for the rationing of the diminishing resource and it would be wrong to override such a policy with a faculty authorised reservation based upon sympathy for the anxiety of an applicant in these circumstances.

That is despite the strength of her connections with the parish and the church. Any such decision would cause a justified perception of unfairness.

- d. I can be confident, as can the Petitioner, that the facts that support her strong connection with this church and churchyard would be properly considered by the decision makers under the existing policy in the event of her death.

9. In all the circumstances I must dismiss this Petition.

HHJ Sarah Singleton QC

Chancellor

3rd September 2021