

In the matter of St Mary and St Radegund, Postling
Petition for reservation of a grave space

Introduction

1. By a petition dated 5th August 2020, the petitioner, the Rev'd Peter John Harnden SSC, petitions for faculty for the reservation of a grave space in the churchyard at St Mary and St Radegund, Postling. The PCC of Postling church is opposed to the granting of this faculty. This is not because of any concerns particular to Mr Harnden's circumstances, but because of its opposition to the reservation of grave spaces in principle. Pursuant to public notices, a number of objections, as well as a letter of support, were received.
2. On 15th October 2021, Mr Harnden informed the Registry that he had reflected on whether to persist with his petition in light of the PCC's opposition and the objections received, and had decided to do so. Similar petitions that had been lodged by his sister and brother-in-law have, however, been withdrawn. This judgment concerns Mr Harnden's petition only.

Relevant facts

3. Mr Harnden does not have a legal entitlement to burial in this churchyard. Instead, he justifies his position as follows:
 - (i) He was born in 1963 and lived in the Postling parish until 1992. He continued to work in the parish until September 1996, when he moved to West Yorkshire to begin his residential training for ordination.
 - (ii) His family's home was in Postling from 1952 until 1996.
 - (iii) Both of his parents are buried in Postling churchyard.
 - (iv) So too are his paternal grandparents.

- (v) The organ in Postling church was given by Mr Harnden's family in memory of his grandmother, who was for many years a regular attendee of the church and also a member of Postling PCC, having served as both PCC Secretary and Treasurer at various times.
 - (vi) For several years in the later 1980s or early 1990s, Mr Harnden undertook the cutting of those areas of the Postling churchyard that were only cut and maintained on an annual basis, and also assisted with the maintenance of the areas that were cut more regularly.
 - (vii) Mr Harnden was a Postling Parish Councillor between 1991 and 1995.
4. There is no challenge to any of the above points in the materials before me. I add that Mr Harnden's love for this church and churchyard is abundantly clear, for example from his very thoughtful letters of 11th April 2021 and 15th October 2021.
 5. Both the incumbent, the Rev'd Jane Weeks, and the self-supporting minister who assists Postling church, the Rev'd Stephen Dougal (whose views have been relayed by Ms Weeks), have indicated that they support this petition. Following the display of public notices, Anthony and Vassa Challess, who are longstanding residents of Postling, also wrote to the Registry to support Mr Harnden's petition.
 6. According to the data supplied by the Churchwarden for Postling Church, Dr Peter Le Feuvre: (i) the population of the parish is approximately 206 persons; (ii) there are 20-30 available grave spaces; (iii) there has been an average of one burial in the churchyard each year in recent years.
 7. As indicated above, the PCC is opposed in principle to the reservation of grave spaces. Its preference is for decisions about burials to be made at or around the time of death instead. This is based on a concern for the fair and pastorally sensitive stewarding of the limited space available for burials. Its position can be summarised as follows.

8. On 24th January 2012, the PCC made a decision to not allow any reservations of grave spaces. The PCC considers this decision to be its *de facto* policy.
9. This decision followed consideration of a “discussion paper” setting out five options, namely (1) no reservations, but a ‘first-come-first-served’ policy open to anyone, (2) no reservations, but a ‘first-come-first-served’ policy open only to those meeting specified conditions, (3) approving applications for reservations, (4) adopting no rules, but simply considering each case on its merits at the time of death, or (5) continuing the then *status quo*, whereby the PCC remained neutral and anyone could ‘purchase’ a grave space.
10. The minute of the meeting of 24th January 2012 records that the PCC agreed to “reject items 1, 3, 4 and 5” of this discussion paper, and to review item 2 at its next meeting “after further consideration”, with the position in the interim being not to approve any reservations (at least as regards plots for the burial of ashes). It does not appear that there was any further consideration of this issue until after Mr Harnden’s petition was submitted, over eight years later.
11. On 29th October 2020 (a few months after Mr Harnden’s petition was submitted), the PCC considered the issue of grave space reservations again. The PCC considered that its decision of 24th January 2012 set out a clear and transparent policy. It also reaffirmed the position it had adopted in 2012. The minute of its meeting of 29th October 2020 records that the PCC formally disapproved Mr Harnden’s petition (as well as those of his sister and brother-in-law, which have since been withdrawn) and endorsed an approach whereby decisions on proposed burials would be made by the vicar and churchwardens following an individual’s death. As it happens, at that same meeting, the PCC unanimously agreed to support another petition brought by Mr Harnden for the installation of a memorial to his parents in Postling churchyard.
12. In its document of 2nd December 2020, summarising its position, the PCC confirms that it “would be minded to support requests made by the families of individuals recently deceased who have strong past or present connections to the village and who wish to be buried in the churchyard”. The PCC maintains, however, that such decisions should be made at or around the time of death, and it continues to oppose the reservation of grave spaces.

13. In response to public notices, emails of objection were received from Sarah Montgomery, Peter Le Feuvre, Frank and Christine Hobbs, Denise Sigwart, Derek Wood, David Sudworth, Gillian Dixon and Jane Reynolds. All support the position of the PCC. Ms Sigwart adds that upset might be caused if a burial could not be permitted due to lack of space in circumstances where grave spaces have been allocated to others. Mr Sudworth adds that if a grave space reservation is allowed in this case, many others may be prompted to seek reservations too, which would soon lead to there being no more room for the burial of those who have not reserved spaces. I confirm that I have considered all of these objections.
14. None of the objectors opted to become a party opponent. I am satisfied that this matter can be determined on the papers before me. I now do so, by application of the facts I have summarised above, to the applicable legal principles.

Legal principles

15. This Court clearly has the power to grant faculty for the reservation of a grave space, whether the petitioner is a parishioner or not: see for example *Re St Thomas a Becket and St Thomas the Apostle, Heptonstall* [2021] ECC Lee 2.
16. As summarised 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 is likely to have a better understanding of local needs and wishes than the court will have but the court is not bound 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.”

17. I also take into account the following summary from *Re St Leonard, Blithfield* (Lichfield 2014), applied more recently in *Re St James, Brownhills* [2020] ECC Lic 3:

“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 gravespaces 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...”

Decision

18. I am satisfied that the PCC did have a sufficiently clear policy in place from January 2012 onwards. True it is, as Mr Harnden has argued, that the records indicate that the position in January 2012 was not entirely settled: see for example the intention to make a final decision “after further consideration” that did not then happen until October 2020. But in my view, the “further consideration” envisaged was directed towards options *other* than approving grave space reservations. It is sufficiently clear that, in January 2012, the PCC took a general position against approving grave space reservations.

19. I am also satisfied that this has been its consistent position since that time. Mr Harnden indicates that he understands there may have been an occasion in the interim in which the PCC has endorsed a grave space reservation, but I am unable to determine that point on the papers before me, and I do not need to do so.
20. In all the circumstances, I am satisfied that the PCC has had a sufficiently consistent position since January 2012. I am also satisfied that neither this position, nor its opposition to this petition, is tainted by any personal animus or any other illegitimate considerations. Moreover, I agree with the observation in *Re St James, Brownhills*, set out above, that it is not inherently unreasonable for a PCC to adopt a policy position of this kind.
21. I therefore give significant weight to the PCC's position, not only in that it is a sufficiently longstanding stance (in place since January 2012), but also in that it has been recently revisited (in October 2020) and affirmed. I give significant weight too to the objections that have been submitted, as summarised above, which endorse the PCC's position. I also acknowledge that Mr Harnden does not have a legal right to burial in this churchyard.
22. 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 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.
23. I am satisfied that Mr Harnden's case is sufficiently exceptional to justify granting him the faculty he seeks. This is because (i) Mr Harnden has two generations of forebears (including his own parents) buried in Postling churchyard, near whom he wishes to be buried, (ii) his family's connection with Postling spans nearly half of the twentieth century, (iii) Mr Harnden is not only self-evidently a committed Christian, but one who served both Postling village and Postling church, and (iv) both the incumbent and the SSM support the petition. It seems to me that those who will be able to mount a comparable justification for the reservation of a grave space will be few and far between.

24. I do not suggest that any or all of factors (i) to (iv) are part of a checklist or a legal test. Assessing the key features of this petition in the round, however, I am satisfied that the exceptionality threshold is met, and that faculty should be granted.
25. I make clear that none of this calls the PCC's policy of not approving such petitions into question. It is entitled to maintain such a policy, and to take the same position in any future petitions as it has done in this one. Petitioners who seek faculty from this Court notwithstanding the PCC's position would need to do what Mr Harnden has done, i.e. put forward a sufficiently persuasive case for why they meet the exceptionality threshold. Each case would need to be assessed on its merits, including by reference to the number of grave spaces that remain at the time the petition is submitted. I am satisfied, however, that the floodgates concern identified by some of the objectors (see for example Mr Sudworth's point, as summarised at paragraph 13 above) is entirely reasonable, but insufficiently weighty to tip the balance in this case. The granting of faculty to Mr Harnden is not a signal that anyone else who seeks a grave space reservation would automatically get one.

Conclusion

26. For those reasons, I am satisfied that – on the facts of this case, and by reference to Mr Harnden's particular connections to Postling church as summarised above – faculty should be granted for the reservation of a grave space for Mr Harnden. A plot number has yet to be allocated, but that can no doubt be resolved between Mr Harnden, the incumbent and the PCC.
27. Costs to be paid by the petitioner.

ROBIN HOPKINS Commissary General

21st December 2021