

In the matter of the churchyard of St Oswald, Methley with Mickletown

And in the matter of an application for the reservation of a grave space for (1) Brenda Roden and (2) Anthony Roden

Judgment

1. By a petition dated 7 September 2015, Brenda Roden (née Hare) seeks a faculty for the reservation of a double grave space in the churchyard of St Oswald, Methley with Mickletown for herself and her husband, Anthony Roden.
2. Mrs Roden signed the petition and indicated in writing her consent to the matter being determined in the basis of the information contained in and attached to the Petition. That information is somewhat limited. It records that she is 79 years of age, and her husband 72, and that they live in Castleford. Both her parents are buried in the churchyard, her father having been interred in 1982 and her mother in 1990. Her sister and younger brother are also buried there. She states, quite understandably, 'I would like when the time comes for all of us to be together'.
3. The supplementary information in the petition, provided by the team vicar, the Reverend Sarah Hancox, states that there is space in the churchyard to fulfil the needs of the parish for 3-4 years and that the PCC is currently exploring options for an extension or for the re-use of part. In fact with available spaces said to number approximately 10-12 and with the annual number of burials reported as 5-6, it may be that Ms Hancox's estimate is optimistic and that churchyard could be full within two years.
4. Attached to the petition is an extract from the minutes of a PCC meeting held on 9 November 2015. The salient part records:
'PCC are unable to support this petition. The churchyard is very full and applicants [are] neither resident in Methley nor on the electoral roll for St Oswald's parish.'
All PCC members supported this decision save for one in respect of whom an abstention was noted.

The Law

5. The law in this area has been the subject of consideration in two recent cases which I decided in the Consistory Court of the Diocese of Chichester: *Re All Saints Heathfield* (3 December 2013), and *Re St Nicolas, Pevensey* (28 March 2012)

6. The following principles, which I formulated and applied in both those cases, were derived from the decision of Newsom QC Ch in *Re West Pennard Churchyard* (1991] 4 All ER 125:
- i. At common law, every parishioner has a right of burial in the churchyard of the parish unless it is closed by due legal process;
 - ii. The common law right extends also to all persons dying in the parish, whether or not they are parishioners;
 - iii. By statute a similar right is enjoyed by all persons whose names are on the electoral roll of the parish: see Church of England (Miscellaneous Provisions) Measure 1976, s 6(1);
 - iv. The incumbent has power at common law to prescribe in what position in the churchyard any burial is to take place: but that is the extent of his power in respect of cases where the deceased had a legal right of burial;
 - v. As freeholder of the churchyard, the incumbent is also entitled to grant consent to the burial in the churchyard of the remains of a person who has no legal right of burial; in doing so he is to that extent ousting those who have existing prospective rights. In deciding whether to give consent in such a case, he is therefore required by statute to 'have regard to any general guidance given by the parochial church council of the parish with respect to the matter': see s 6(2) of the 1976 Measure;
 - vi. These common law and statutory rights crystallise only when the person in question dies.

7. In a key section of his judgment in *Re West Pennard Churchyard*, Newsom Ch says this:

If a person with a legal right of burial wishes in his lifetime to assure his personal representatives of a right to bury his remains in a particular place in the churchyard, he must apply to this court for a faculty to reserve that grave space. Whether such a faculty shall be granted rests wholly in the judicial discretion of the court. If there is plenty of room in the churchyard it is freely granted to a petitioner who has a legal right of burial. What such a faculty does is to protect the petitioner against the hazard of losing his legal right in his lifetime (eg by ceasing to live in the parish), and to require whoever is the incumbent when the petitioner dies to allow his remains to be buried in the position in the churchyard defined in the faculty. To this extent, therefore, the faculty deprives the incumbent of his right to prescribe the position where a burial is to take place; and it deprives the parishioners generally of the space becoming available if the petitioner moves away. [126j-127b]

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.

8. Approving and applying this passage, Briden Ch, sitting in the Consistory Court of the Diocese of Bath and Wells in *Re Churchyard of Wick, St Lawrence* (4 November 2013), stated:

Thus in deciding whether or not to grant a faculty [to reserve a grave space] 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.

Discussion

9. It will be apparent from the foregoing summary of the legal position that a faculty cannot be granted in this instance. Neither Mrs Roden nor her husband have a legal right of burial in the churchyard. I infer from the PCC resolution that the team vicar has refused her consent for the reservation of a grave space. In the absence of the minister's consent, for the reasons given above, the petition must be dismissed.

10. In any event, even if the minister and the PCC were favourably disposed to the reservation of a grave space the court is constrained from granting it in the prevailing circumstances where there are so few grave spaces remaining. As I observed in *Re St Nicolas, Pevensey* at paragraph 17:

Where, as here, pressure of space is acute, it would be wrong for any Consistory Court to grant the reservation of a grave space such as to prejudice future burials. Those with a legal right of burial must therefore be interred in the order in which they die until such time as the churchyard is full.

11. I appreciate that this judgment will come as a disappointment to Mrs Roden and her husband, but unfortunately the law permits no other outcome. It may be of some comfort, however, to note it will be possible for their cremated remains to be interred in the grave of one of Mrs Roden's parents or siblings. Further the PCC is investigating the provision of further grave spaces which may lead to a similar petition in the future being differently determined.

12. In the circumstances, this petition is dismissed.

The Worshipful Mark Hill QC
Chancellor

29 January 2016