

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

ST JOHN THE BAPTIST: ASHLEY

ON THE PETITION OF KATIE LEWIS

JUDGMENT

- 1) Miss. Katie Lewis petitions for a faculty reserving a gravespace in the churchyard of St John the Baptist in Ashley for herself and her partner.
- 2) Miss. Lewis seeks to reserve the plot next to that in which her father was buried in January 2019. Her paternal grandmother and her father's step-father are both also buried in this churchyard. Miss. Lewis is not resident in the parish but she does not live far away and has strong connexions with the church and the locality and is hoping in the fullness of time to move into the parish or at least into the local area.
- 3) Miss. Lewis explains that for the last ten years of his life her father had been unwell and that she had acted as his carer. The close bond which she had with her father is one reason why Miss. Lewis seeks to reserve a space in this churchyard. In addition Miss. Lewis explains that she is seeking to make provisions at this stage for her funeral and burial because she has seen (through the contrast between the arrangements set out in advance by her father and the absence of such advance arrangements in the case of her grandmother) the assistance which such advance provision can give to those having to organise the funeral and interment of a relative.
- 4) It follows that Miss. Lewis has a close connexion to this church; sound reasons for wanting to make provision now for her interment; and a good reason for seeking to reserve the space in question. Moreover, her petition is supported by the incumbent and the Parochial Church Council.
- 5) However, difficulties arise from the fact that there are only approximately 50 spaces left in the churchyard. The population of the local village is about 900 and

the number of burials in the last 5 years has been at average rate of 7 per annum. It follows that the churchyard is likely to be full within about 7 years. It is also to be noted that Miss. Lewis is aged only 31 and her partner is aged 32.

- 6) I am informed that the Parochial Church Council is giving consideration to what should be done when the space currently available in the churchyard is used up. However, there is no indication that it has been able to identify a solution whether by obtaining additional land or by reusing parts of the churchyard.

The Procedural History.

- 7) I concluded that it was expedient to determine the matter on the basis of written representations. Miss. Lewis consented to that course and provided short further representations in which she made the point that her father and grandfather had both died comparatively young, dying at the ages of 58 and 56 respectively.

The Applicable Principles.

- 8) Where there is ample space in a churchyard and consent from the incumbent and in the absence of a policy by the Parochial Church Council of opposing the reservation of gravespaces a faculty will readily be granted for a reservation. However, where space is limited or where there is such a policy then a faculty will not normally be granted and justification for taking the exceptional course of allowing a reservation in such circumstances will have to be shown.
- 9) The reason why a reservation will not normally be authorised when space is limited is because of the risk that such a reservation would prejudice the right of those parishioners who would otherwise be entitled to be buried in the churchyard.
- 10) Thus as Hill Ch explained in *Re St Nicholas, Pevensey* [2012] PTSR 1207, (Chichester 2012) at [18] and [20]:

“18. ... 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....”

“20. When space in a churchyard is limited, individuals with a legal right of burial must be interred in the order in which they die until such time as the churchyard is full. ...”

11) Similarly in *Re St Margaret, Drayton* (Norwich 2015) Arlow Ch set out the principle thus:

“ ... where there is a real risk that a faculty for the reservation of a gravespace would prejudice the rights of others with a legal right of burial that faculty should only be granted in exceptional circumstances.”

12) Arlow Ch applied that principle again in *Re All Saints, Ashwicken* [2016] Ecc Nor 4 where a reservation was granted but was limited to last for 12 years that being the period of time at the expiry of which the available space in the churchyard was likely to have been used up.

13) I set out my understanding of the way in which those principles are to be applied in particular cases in the following terms in *Re St Benedict Biscop, Womborne* [2019] Ecc Lic 2 at [14]

“ The approach to be taken to reserving a gravespace in a churchyard is in part a matter of fact and degree. Any reservation has the potential for prejudicing the rights of others to be buried in the churchyard in question. The court will, however, look at the practicalities of the number of remaining spaces in a churchyard and the likely level of usage with a view to considering the degree of risk that a reservation would preclude the burial in the churchyard of someone who would otherwise be entitled to be buried there before the interment of the person in whose favour a reservation is made. The greater the risk that the grant of a reservation would mean that a parishioner was prevented from being buried in the churchyard because the reserved plot was being kept vacant and unoccupied awaiting the later death of the person with the benefit of a reservation then the less appropriate it will be to grant a reservation.... Accordingly, regard is to be had to the available space and the degree of risk that the reservation will prevent a person entitled to be interred ... from being buried there when there would otherwise be sufficient space.”

Analysis.

14) Miss. Lewis is only aged 31 (and her partner is only 32) and at the current rate of usage the churchyard will be full within 7 years. Unless circumstances change it is almost inevitable that to grant the faculty sought will prevent a parishioner with a right of burial in the churchyard from exercising that right. The reasons put forward by Miss. Lewis for seeking to reserve a gravespace and, indeed, to reserve the particular space in question are cogent and genuinely-felt but they do not amount to the exceptional grounds which would be needed to justify the grant of a faculty in these circumstances.

15) It follows that in the current circumstances the faculty sought must be refused. In the event that arrangements are in due course made to provide extra space in this churchyard whether by the acquisition of further land or by way of reuse of parts of the churchyard or otherwise then it will be open to Miss. Lewis to make a fresh application. Any such application will be considered on its merits but against the principle that a reservation will not be permitted where there is a substantial risk of prejudicing the rights of parishioners.

STEPHEN EYRE

HIS HONOUR JUDGE EYRE QC

CHANCELLOR

6th January 2020