

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

BLITHFIELD: ST. LEONARD

PETITION OF ALAN BOSTON

JUDGMENT

- 1) Alan Boston petitions for a faculty to reserve a gravespace for himself and his wife in the churchyard of St. Leonard's at Blithfield. Mr. and Mrs. Boston are parishioners and so they are entitled to be buried in the churchyard but in the absence of a faculty they are not entitled to be buried in a particular position. The plot which they seek to reserve is that immediately adjacent to the grave of their daughter, Karen, who sadly died of cancer in October 2013. For the reasons set out below I am compelled to reject the Petition.
- 2) The Priest in Charge, the Revd Simon Davis, has objected to the petition and is supported by the Parochial Church Council in that objection. Mr. Davis has become a Party Opponent as have the churchwardens, Geoffrey Cooper and Anthony Vernon.
- 3) I concluded that it would be expedient to determine this matter on the basis of written representations. All the parties agreed. I have considered the helpful and moderate representations from Mr. & Mrs. Boston and from the Parties Opponent. I note that Mr. Davis and the Parochial Church Council have ensured that no interment has been made into the plot in question pending the outcome of this Petition.
- 4) The Parties Opponent explain that the Parochial Church Council and successive incumbents have had a long-standing policy of resisting the reservation of gravespaces and of operating a "first come first served" approach. The graves are in series of rows and each interment is made at the next point in the row currently being used. This policy has been in place since at least 1970 or thereabouts when an extension to the churchyard was acquired. The Parties Opponent say that space is limited and that to allow the reservation of gravespaces would run the risk of prejudicing those who wish to be buried in the future. When the extension was acquired it was believed that there would be

sufficient space for a further 100 years but it is now feared that the area will become full (subject to re-use of the ground) in about 20 years. It is said that the current approach ensures fairness to all. Moreover, the policy is said to have been accepted by others. Thus there are those whose departed relations are buried in the churchyard and who wished to reserve a plot alongside them but who accepted the good sense of the policy and who are reconciled to being buried in the same churchyard as family members but not alongside them. The churchwardens point out that both of them are in that position. Both of them have parents buried in the churchyard and both would have preferred to reserve plots alongside their parents but have complied with the policy.

- 5) In a dignified and restrained but powerful written submission Mr. and Mrs. Boston explain that they understand the reasoning behind the policy but contend that the particular circumstances of their case and the loss of Karen justify an exception. They explain that Karen was their only child. Understandably they feel her early death keenly. This loss is compounded by the fact that she, her husband, and son lived together with Mr. & Mrs. Boston. Sadly there were marital difficulties between Karen and her husband which mean that the Bostons' grandson is now living elsewhere. They feel the loss not just of their daughter but also of their grandson. In her fatal illness Karen expressed a wish to be buried in St. Leonard's churchyard and also for her parents to be buried alongside her in due course. In making this petition Mr. & Mrs. Boston are honouring not just their family feeling but seeking to give effect to Karen's wishes.

The Principles to be applied.

- 6) Whether it is or is not desirable to allow gravespaces to be reserved is a matter on which differing views can be held legitimately.
- 7) Those in favour of allowing reservation would say that it gives proper and appropriate assurance and comfort in particular to those with departed relatives in a particular churchyard. It can be seen as part of a process of making proper provision for one's end. Moreover, that assurance and comfort can be legitimate reinforcement of a person's connexion with and commitment to the particular church and to the wider Church. The practice of gravespaces for family members being reserved alongside each other or close to the existing graves of other

family members gives expression to legitimate family feeling. It will also be said that the potential prejudice to others can be prevented by ensuring that reservation is not permitted where there is a real risk that it will prevent parishioners who die before those benefiting from the reservation from being buried in the churchyard.

- 8) Those who resist such reservations say that they detract from the principle of equality as between the departed. It is said that even if care is exercised there remains a risk that the rights of parishioners will be prejudiced. That risk will materialise if before the death of those to be buried in the reserved plot other space in the churchyard is used up. In such circumstances there will be persons who cannot be buried in a churchyard even though space remains in the churchyard in question because that space has already been reserved. In addition it can be said that the presence of unoccupied but reserved plots amongst other plots detracts from the appearance of the churchyard and so impairs its function of providing a fitting setting for the church in question and a fitting resting place for the departed.
- 9) The Court has a discretion whether to allow or to refuse a petition for reservation of a gravespace. In most cases that discretion will be exercised in favour of reservation particularly where the faculty is sought by those who have a right of burial in the churchyard. This is on the proviso that it can properly be said that there is no substantial risk to the rights of other parishioners. The reported cases do, however, show that different chancellors have taken different views as to quite how readily such faculties will be granted. Thus there is a difference of emphasis to be seen between the language of Newsom Ch in *Re West Pennard Churchyard* [1992] 1 WLR 32 and of Lomas Ch in *Re St Mary, Dodleston, Churchyard* [1996] 1 WLR 451.
- 10) There is a significant difference where a Parochial Church Council has adopted a policy of resisting the reservation of gravespaces. Such was the position in the case of *Re Dilhorne Churchyard* (2001) 6 Ecc L J 77, 16 CCCC No 2. That was a decision of this Court made by Coates Dep Ch (as he then was) in February 1997. The full text of the judgment makes it clear that the significant issue in that case was whether the Parochial Church Council's policy of opposing reservation

had been adopted *ad hominem* for the purposes of the particular case and with a view of thwarting the desires of the particular petitioner. That was the contention which was made on the petitioner's behalf by counsel at the oral hearing and which was rejected by Coates Dep Ch. My learned predecessor then went on to emphasise that the Parochial Church Council of any given parish is likely to be well-placed to know the needs and desires of the parishioners and the circumstances of the churchyard (and by implication markedly better-placed than the Chancellor to know such matters). The petition was refused in that case.

- 11) That was the context in which Coates Dep Ch said "*this court cannot 'freely' ignore the exercise of their [the members of the Parochial Church Council's] discretion whether it be exercised on matters of policy or in individual circumstances unless such a discretion was exercised, for example, mala fides or could not in the circumstance as a whole be reasonably supported.*" The discretion to which reference was being made appears to have been the discretion of an incumbent to determine the place of burial within a churchyard though it seems to have been regarded as also encompassing the power of Church Council to adopt a policy of opposing reservations.
- 12) The approach in the *Dilhorne* case is to be contrasted with that in the *West Pennard* case where the views of the Parochial Church Council were overridden in large part because the purported policy of that Council was based on a misunderstanding of the legal position.
- 13) I need not engage in the academic debate as to the binding effect of earlier decisions of the same consistory court. This is because I am satisfied that the approach laid down by Coates Dep Ch is correct. Of course care needs to be taken to be clear as to what was being decided and consideration of the relevant approach in this and other cases will lead to refinement of that approach and of its formulation.
- 14) I have concluded that what Coates Dep Ch was saying was that account was to be taken of a policy on reservation adopted by a Parochial Church Council provided that it was not adopted in bad faith (in the sense of being purely to thwart a particular reservation) and provided that it was capable of being justified

on reasonable grounds. Coates Dep Ch did not in terms address the question of the weight to be given to such a policy. That was not surprising in the factual circumstances of that case. In that case it had been accepted that a policy could be adopted by the Parochial Church Council provided that it had not been adopted as a way of thwarting the individual petitioner (as was said to have been the case).

- 15) In the light of that assessment I turn to consider the weight to be given to a Parochial Church Council policy of resisting reservations. I have already explained that 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. I must emphasise that in this case Mr. & Mrs. Boston are not seeking to get special treatment out of any sense of arrogance or queue-jumping. They see the sense of the general policy but seek an exception because of their particular loss and because of the wishes of their late daughter.

Conclusion.

17) The position here is that there is a long-standing policy which is reasonable; which takes account of the particular local circumstances; and which has been accepted and followed by others who would otherwise have preferred to reserve particular plots. The circumstances in which Mr. & Mrs. Boston find themselves are painful and sad. However, I have to conclude that they are not exceptional such as to justify a departure from the policy applied consistently by the Parochial Church Council. The death of a daughter before her parents is painful but in the context of a churchyard is not exceptional. I am conscious that Karen wished her parents to be buried alongside her and the circumstances in which that desire was expressed carry particular weight with Mr. & Mrs. Boston. However, it is not sufficiently different from the desire which many will have had to be buried alongside their loved ones for it to be regarded as exceptional. Mr. & Mrs. Boston have acted with dignity in their tragic loss but to grant their petition would be to create the risk of real injustice to others who in circumstances of loss have themselves accepted the existing policy. Accordingly, the Petition must be dismissed.

STEPHEN EYRE
CHANCELLOR
16th October 2014