

Re Holy Trinity, Hurst Green

Judgment

1. By a petition dated 15 May 2003, the Reverend Robert Dixon, incumbent of Holy Trinity Hurst Green, together with the churchwardens, Rita Wenham and Marjorie Legge, seek a faculty 'to reduce and grass over the surrounding area of land for the combined grave sites of the late Mrs J Potter and Mrs J Standen to an area not exceeding four feet by three feet'. Public Notice was displayed at the church for 28 days from 17 April to 15 May 2003 during which time no representations were received at the Registry. Subsequent to that date a letter was received from Ms Julie Drury questioning whether such Notice had been properly displayed and, in any event, asking for an extension of time within which to make representations. Without making findings as to whether or not there had been adequate notice, I ordered an extension of time within which representations could be made. I considered this to be the fair and just thing to do.
2. Following the extended period of Public Notice some 177 objections were received at the Registry, either individually or in groups. After the statutory process under rule 16(3) of the *Faculty Jurisdiction Rules 2000*, only one interested person delivered to the Registrar formal written particulars of objection in Form No 4 and elected to become a party to the proceedings. He was Mr Edward Dennis Potter. The others either withdrew their objection, informed the Registrar that they wished their letter to be taken into account by me in reaching a decision, or declined to reply. In addition, 9 letters or e-mails were received which supported the petition. I have read all the correspondence with considerable care and have taken into account the individual points made and the depth of local feeling.
3. Mr Potter indicated that he was agreeable to this petition being determined by written representations in accordance with rule 26 of the *Rules*. I considered it expedient so to do and made directions accordingly. Both the petitioners and Mr Potter requested additional time within which to submit their written evidence and the Registrar acceded to such requests, exercising a discretion which I had delegated to him. The combined effect of these extensions of time meant that the papers were returned to me later than expected when I was no longer in a position to deal with them immediately as is my practice.
4. There is a long and troubled background to this case. A climate of mistrust exists between the Petitioners and Mr Potter. It was largely for that reason that I delayed determining this petition until the New Year, to allow passions to abate and to avoid producing a controversial judgment in the immediate run-up to Christmas. I

have read and considered the following statements:

- Letter from Mrs Marjorie Legge and Mrs Rita Wenham dated 19 August 2003;
 - Letter from The Reverend Robert Dixon, Mrs Legge, and Mrs Wengam dated 21 August 2003 together with supporting documentation;
 - Statement of Edward Dennis Potter dated 5 October 2003 together with supporting documentation;
 - Letter from Mrs Julie Drury dated 4 October 2003 together with supporting documentation;
 - Statement of Sarah Maynard dated 5 October 2003 together with supporting documentation;
 - Statement of Hayley Bennett dated 2 October 2003 together with supporting documentation;
 - Letter of Mr Dixon in reply to the foregoing four statements, dated 2 November 2003, together with supporting documentation;
5. On reading the papers, I considered revisiting my consent to a determination of this matter on written representations. There are many disputes of fact. Indeed a less pleasant exchange of statements is hard to imagine. I have found the contents of the statements highly distressing and not at all in accordance with what one expects in an ecclesiastical court. However, I have concluded that it is possible to determine this petition without descending into a detailed evaluation of the allegations and cross-allegations.
6. The petition seeks a faculty 'to reduce and grass over the area surrounding the combined grave sites of the late Mrs J Potter and Mrs J Standen to an area not exceeding four feet by three feet'. The plot which is the centre of the controversy lies at the foot of a Norwegian spruce tree erected in memory of Dr McMichael, a local doctor. In November 1989, the cremated remains of Mrs J Potter were interred in the plot. The interment was carried out by the Reverend Eric Alsop, a retired priest living in the parish. A memorial was erected but there is no evidence that the incumbent's consent was sought or obtained for its introduction. Minutes of a PCC meeting of 7 February 1990 record disquiet at the introduction of plants in and around the plot and the use of stone edgings extending beyond the allotted space. These did not comply with the Chancellor's General Directions (1981) nor with the practice of the parish. The minutes also record that Dorothy Waterhouse, of a local firm of undertakers, had the matter in hand.
7. Minutes of a further PCC meeting on 30 May 1990 record that the kerbs and plants had still not been removed and that fresh plants had been put there. The minute continues, 'It was agreed that another letter be sent to Mr Potter regarding this and asking if he would meet the vicar and churchwardens at the site'. In a letter dated 14 July 2003, Mr Norris, who was a churchwarden at the time, confirms that thirteen years earlier he first spoke to Mr Potter about the amount of ground he was taking up around the site. Mr Potter states he does not remember this.

8. Next in time is a minute of a PCC meeting on 19 September 1990 which records that the stones around the place of interment had been removed and that the flowers would be taken up when they had finished blooming.
9. The problem, however, did not go away and by 1996, it was again the subject of discussions at the PCC. By this time the incumbent was the Reverend Simon Gurd who had succeeded the Reverend Fred Butler. The minutes of a PCC meeting held on 8 July 1996 record that 'the Potter grave, whilst looking colourful, contravenes the rules for burial of ashes. There had been no response to the vicar's letter to Mr Potter asking him to contact the vicar'. Mr Potter says that he does not remember receiving any letter at this time but points to his illiteracy. He accepts that it is possible but that he may have forgotten about it.
10. At about the same time, a second memorial, commemorating the late Mrs J Standen who was Mr Potter's mother-in-law, was placed in the flower bed. It now seems to be accepted that Mrs Standen's ashes were not interred in Hurst Green but in a crematorium in Tunbridge Wells. Permission was neither sought nor granted for the erection of this headstone, which, in any event, does not comply with Chancellor's General Directions (1981). It is a large cube. Mr Potter says that his family discussed the matter with Mr Alsop who said they could do so.
11. The next significant event occurred in the summer of 2002. The Reverend Robert Dixon, who by then had become incumbent, wrote to Mr Potter on 20 August 2002 asking him to remove the plants and to return the area to its natural grassy state. There then followed one or more meetings between Mr Dixon and Mr Potter, the existence and content of which is a matter of contention. By letter dated 2 October 2002, Mr Dixon communicated to Mr Potter a decision of the PCC requesting that Mr Potter reduce the overall size of the area of floral tribute to measure no more than 4' by 2'. A subsequent letter, dated 16 January 2003, made a similar request consequent to a decision of the PCC the previous Tuesday, although the maximum size was expressed to be 4' by 3'. The letter sought compliance by 28 February 2003.
12. In his Grounds for Objection dated 14 August 2003, Mr Potter sets out the reasons why he considers that a faculty should not be granted. He states that he created the flowerbed in 1989 and cultivated it continuously thereafter and that it would be a source of much grief and emotional distress were it now to be grassed over. He says that he was given authority by the Reverend Eric Alsop to create the flowerbed and speaks of a legitimate expectation that he be allowed to continue to cultivate the area. He states that no further interments are possible in the small area by dint of the presence of a tree whose roots would be disturbed and alleges that Mr Dixon has stated in terms that none is contemplated. He contends that the flowerbed affords protection for the tree and obviates the need for weeding and grass cutting. He asserts that the garden he has created is a popular and well-liked feature of the churchyard and that hundreds of people have expressed support for

retaining it at its present size.

13. Mr Potter elaborates upon these reasons in a very full statement drafted on his instructions. He states that he, together with his wife and children, moved to Hurst Green from Ticehurst in 1977. He speaks of enjoying a good relationship with the Reverend Eric Alsop, whom he wrongly believed to have been the vicar. Mr Potter's wife died on 13 November 1989. Dorothy Waterhouse, a local undertaker, made the funeral arrangements and Mr Alsop officiated. Mr Potter wished that his wife's ashes be interred near a particular tree which, he alleges, was surrounded by brambles at the time. He and his son-in-law, Kevin Drury, cleared the brambles as Mr Drury confirms in an undated letter at page 117 of Mr Potter's bundle DP/1. The interment duly took place on 17 November 1989 following a service at Hastings crematorium. By reference to contemporary photographs, Mr Potter asserts that there was bare earth where the brambles had been cleared and that Mr Alsop gave him permission to put bedding plants in. He says he also planted bulbs.
14. There is a dispute as to what Mr Alsop may or may not have said or done and whether he had authority (or apparent authority) to act as he did. A letter dated 24 March 2003 written by Mr Alsop's wife makes plain that he does not wish to be involved in the present dispute. He is 91 years of age and in frail health. As will become apparent, I do not consider that anything turns upon what he may or may not have said. Mr Potter accepts that he introduced kerb stones around the edge of the plot and does not point to any permission for so doing. He says he took them away when someone told him he could not have them. He does not now recall who that was but thinks it could have been Miss Waterhouse.
15. Mr Potter says that he did the flowerbed every Sunday afternoon, save for the odd week which he missed through illness. He used bedding plants, the odd pot chrysanthemum and cut flowers. As to events described in the PCC minutes of 1990, he denies that he received any correspondence from the incumbent, the churchwardens or the undertaker. He refers to a letter dated 23 September 2003 from Miss Waterhouse, which suggests that she neither wrote nor spoke to Mr Potter but this does not sit easily with his own surmise and recollection.
16. Mr Potter says that the flowerbed has always been approximately 9' x 5', it has never been grassed over and that it was reduced to 7' x 3' following a compromise suggested by the Chairman of the parish council and adopted by the archdeacon. He refers to photographs taken in October 2002. The soundtrack on the videotape referred to in Mr Potter's statement, which I understand to be the voice of Mr John Power, refers to the plot as measuring 4' x 6'. The photographs taken in the Spring of 1990 reveal an expanse of daffodils which serve to enlarge the cultivated area by three or four times that contained within the kerbs which are visible. However, Mr Potter states at paragraph 12 of his statement, 'I understand that objections are now being taken to there being bulbs growing outside the plot and, although I think they make the churchyard pretty, they can be removed if the PCC don't like

them'.

17. Against this background, I am required to adjudicate upon the petition. I start with some basic principles of ecclesiastical law which, as is well known, forms part of English law. First, the freehold of the parish church and its churchyard vests in the incumbent. Since the land is consecrated it falls within the jurisdiction of the chancellor in the exercise of the faculty jurisdiction. Tombstones and monuments vest in the persons who erected them (during their lifetimes), and thereafter in the heir-at-law of the person in whose memory they were erected: see *Faculty Jurisdiction Measure 1964*, s 3(4). The responsibility for maintaining the church building and the churchyard falls upon the PCC to the extent that it has funds at its disposal to do so: see *Northwaite v Bennett* (1834) 2 Cr & M 316.
18. The principle of adverse possession, whereby a prescriptive title can be acquired as against a legal owner, may apply to consecrated land. I need not decide the matter. However, even if they do, under the provisions of paragraph 10 of Schedule 1 to the *Limitation Act 1980*, it is stated:

‘... section 15(1) of this Act shall apply to the bringing of an action to recover land by the Crown or by any spiritual or eleemosynary corporation sole with the substitution for the reference to twelve years of a reference to thirty years.’

Thus, an incumbent, being a spiritual corporation sole, has a period of thirty years within which to bring an action for the recovery of land.
19. It therefore follows that even if Mr Potter's acts of cultivation were sufficient to amount to dispossession of the plot as against the legal owner (which I doubt) such acts have not been over sufficiently long a period to give rise to possessory title. Thus the incumbent continues to have full title subject to the supervisory jurisdiction of this court. There is no authorisation for the cultivated plot, nor (probably) the headstone that marks the interment of the ashes of Mrs Joan Potter, nor the memorial naming Mrs J Standen whose remains are buried elsewhere. In the absence of such legal authority the strict rigour of the law requires their removal.
20. These legal findings could suffice to be dispositive of the petition. However the strict rigour of the law must be tempered by equity. I accept that the headstone in memory of Mrs Joan Potter was erected in good faith in the spot where her ashes had been interred. It conforms with the Chancellor's General Directions (1981) which were then current and, had permission been sought prospectively, I am in no doubt that it would have been granted under the delegated power vested in the incumbent. It has been in place for thirteen years and no order is sought for its removal. I propose, therefore, out of charity to Mr Potter and in the exercise of the inherent jurisdiction of this court, to permit it to remain.
21. The memorial block naming Mrs J Standen falls into a different category. There is no nexus between it and the place where her remains now lie. It does not conform

with the Chancellor's General Directions and I am confident that had permission been sought for its introduction, it would have been refused. However, it too has been in place for some years and no order is sought for its removal. Whilst, again out of charity for Mr Potter, I am not prepared to order its removal, I cannot condone by a retrospective faculty the method by which it was introduced. Instead I expressly make no order in this regard. If the order of this court is otherwise complied with, then the existing status quo will prevail but I reserve the right to revisit the matter hereafter should it become necessary.

22. Finally, I come to what is the most contentious item in these proceedings, namely the cultivated plot. The strict rigour of the law requires its removal. The incumbent and the PCC together have the legal right and duty to determine issues concerning the management of the churchyard. They are of one mind. In the absence of irrationality their decision cannot be challenged. I was minded to order the complete removal of the cultivated plot and its return to turf. Such a disposal is within my power. However, I note that the petitioners seek a lesser order, namely the reduction of the size of the plot to an area not exceeding 4' by 3'. I regard this as an appropriate - and indeed generous - gesture on the part of the incumbent and PCC. I take into account the following reasons:
- i. Mr Alsop, whether wittingly or otherwise, may have encouraged Mr Potter in his cultivation of the plot, although I make no express finding in this regard;
 - ii. the plot may have been cultivated, with or without interruption, for some thirteen years. Again I do not make any express finding;
 - iii. there is considerable local support for a plot;
 - iv. the relatives of Dr McMichael, in whose memory a tree was planted, next to which Mrs Potter's ashes were interred, are happy for a plot to remain;
 - v. both Mr Graham Browne, Chairman of the parish council and the Venerable Nicholas Reade, Archdeacon of Lewes and Hastings (each of whom have become embroiled in *bona fide* attempts to mediate the dispute) have commended to all concerned the continuance of a plot, albeit of a smaller size.
23. I also take into account the fact that, as already recorded in this judgment, Mr Potter has evinced a preparedness for the PCC to remove the bulbs which he planted. This single step will serve to reduce the *de facto* area of cultivation to a considerable degree. I also note the following written on Mr Potter's behalf in a letter of 12 September 2002. He refers to the request to return the grave to a 'grassy, natural state' and speaks of how 'we have painstakingly rekindled the plot, brought the area alive, given birth to a beautiful place, a place that sums up everything my wife and family love'. He continues:
- 'Although we know we can't bring her back, her grave is the focal point for the whole family to remember her, a memorial to not only herself, but what she lived for and the love and laughter she gave to us. I really don't know how it would ever be the same if the flowers were taken away. The place would not feel the same, have the same resonance - it would feel like

something was missing - the memories would not flow so much, they would not seem so strong.'

24. I am wholly sympathetic to Mr Potter. The bereaved take solace in different things. The tangible, whether it be flowers or other special objects, help us to remember happier times and to grieve. The passage of time often provides little solace. However as Mr Potter himself makes clear, it is the existence of the cultivated plot and not its size which matters most to him. Because I recognise his desire for such a focal point, I am not prepared to order the removal of the flowers and the return of the plot to its natural grassy state. Again, out of charity to Mr Potter, I am prepared to authorise the retention of a cultivated bed of a size not exceeding 4' x 3'. I hope that Mr Potter will appreciate the generosity of this gesture which I express to be 'until further order' so that it may be reviewed were events to change in the future.

25. I cannot conclude this judgment without commenting that few come out of it with any credit. The allegations and counter-allegations contained in the papers make sad reading. Had the authors cared less for standing on their dignity and more for living together in community, much of the rancour and recrimination could have been avoided. I have been profoundly depressed by the whole affair and by having to read the copious correspondence which this tragic issue has generated. The descent into cheap point-scoring is highly suggestive of a dysfunctional community. Sending out children - some younger than fifteen - with a petition is no way to honour the memory of one's widow. I am not prepared to dignify the allegations which have been made on all sides with repetition in this judgment, nor will I descend into the arena to make findings of fact. The costs of these proceedings will inevitably fall on the parish. I invite all those concerned in this dispute, and all who have the misfortune to read this judgment, to pray for the people of Hurst Green and their life together.

Ubi caritas et amour, Deus ibi est.

Where charity and love abide, there is God.

The Worshipful Mark Hill
Chancellor

5 February 2004

ORDER

- (1) that a retrospective faculty be granted authorising the introduction of a memorial headstone for Mrs Joan Potter;
- (2) that, for so long as paragraph (4) of this order is otherwise complied with, the memorial in honour of Mrs J Standen be permitted to remain;
- (3) that the incumbent and PCC be at liberty to remove all plants, bulbs and shrubs from the area contiguous to the foregoing headstones and to grass over the same;
- (4) that such liberty is not to be exercised for so long as the plot be limited to an area not exceeding 3' x 4';
- (5) that Mr Potter be allowed until 1 April 2004 voluntarily to reduce the size of the plot to the aforesaid dimensions;
- (6) that in the event that Mr Potter fails or refuses to reduce the size of the plot by the date specified, the incumbent and PCC may cause the same to be so reduced;
- (7) that any adjudication on the dimensions of the plot shall be a matter for the Archdeacon of Lewes and Hastings or, during any vacancy, the acting Archdeacon;
- (8) liberty to apply to the chancellor in the event of any dispute as to the implementation of this order;
- (9) that the costs of and occasioned by this petition be borne by the petitioners.