**DIOCESE OF NORWICH**

**RE-USING BURIAL SPACE IN OPEN CHURCHYARDS**

**GUIDANCE – NOVEMBER 2020**

1. The exhumation of the mortal remains of a deceased person (whether bodily remains or ashes in a container) is not ordinarily permitted by the Consistory Court if those remains are buried in consecrated ground under the jurisdiction of the court, such as in a churchyard. Anyone wishing to exhume a deceased person’s remains may need a licence from the Home Office and **will** require a Faculty. This will only be granted in exceptional circumstances and guidance on what may constitute such circumstances can be obtained from the Diocesan Registrar.
2. However, there is an assumption, and indeed a presumption, that burial ground will have to be re-used over time as it has been throughout history. By its very nature and with an inexorable rise in population numbers, available space for burial is constantly reducing. In many areas this problem is becoming urgent.
3. The alternative of closure is often not possible and, in any event, often passes the problem to the local authority in the first instance and society as a whole in the end. Sensitive and well thought out proposals can both maintain the churchyard as an open churchyard and address the problem of space.
4. Nevertheless, it is important that care is taken to avoid unnecessary distress to families and descendants of those buried in the churchyard or interfere with the legal rights of those whose loved ones are buried in churchyards.
5. **Grave Reservations.** Where someone has reserved a grave space then it acts in a similar way to lease in civil law. The person reserving may use it for the burial of the person for whom it was reserved for the period of the reservation as stated in the Faculty. Memorials and management of any grave will be governed by the Churchyard Regulations 2016 for this diocese just as in the case of burials in non-reserved plots.
6. **Seventy-Five Years.** There should be no re-use of any burial space for a period of at least 75 years after the deceased’s remains occupying it were interred.
7. **Future Proposals.** It would be sensible for incumbents to plan ahead so that those making burial decisions now are aware that such re-use is likely to occur after 75 years.
8. **The Nature of Re-Use.** Generally speaking, re-use should involve the burying of existing remains at a depth that will permit further burial of other remains.
9. **Procedure.** 
   1. It is much better to introduce a scheme for the re-ordering of a part of the churchyard for this purpose than to make piecemeal applications and a **single** faculty can generally be granted for the proposal as a whole provided each burial space and memorial that will be affected is clearly identified in the accompanying documentation.
   2. No reburial may take place of any remains in a plot that has been granted a faculty of reservation unless and until the period of reservation specified has expired.
   3. In the case of remains buried in a reserved plot where the reservation has expired or where no reservation was granted, a potential opportunity to re-use the space for additional burial exists. It may be that descendants of the deceased have expectations of their own burial in the same plot (at double depth) or nearby. No such right exists if a reservation has not been granted, but there may be pastoral considerations which the incumbent would wish to consider.
   4. Any scheme is likely to stand a greater chance of acceptance if the parish knows what is being considered, why it is proposed and is also given a proper opportunity to be consulted, to ask questions and give its views. Re-use of burial space is a sensitive issue and may cause concern. However, an appreciation that the proposal is designed to keep the churchyard open and able to receive present and future burials will help people consider the matter in a balanced way. The faculty system allows for objections to be made and taken into account or for one or more people to oppose the application before any faculty is granted.
   5. The plots concerned must be identified and careful thought must be given to health and safety considerations. In the period of time that will have elapsed (at least 75 years) there is likely to have been deterioration of the coffin or casket and possible contamination from the remains. There are also obviously important considerations relating to the potential disinterring of recognisable human remains.
   6. The re-burial is likely to be at a deeper level to permit further the burial or be in an adjoining plot. This will require identification of whether the ground below is suitable for use and techniques such as ground breaking radar should be considered.
   7. The next issue is the question of the removal or replacement of existing memorial stones. The proposal must cover this aspect as memorials must not be removed without faculty, which includes a memorial stone being laid flat, and so these arrangements must also form part of the application.
   8. The interference with remains, including exhumation, requires that all reasonable efforts are made to contact families or descendants of those buried there and the application will have to include the steps that have been taken and the results. Those affected have a right to object.
   9. Memorial stones will have once had an owner and ownership generally passes to that person’s estate and potentially their beneficiaries on the death of the owner. This is a second reason why contact must be made with living descendants where reasonably possible.
   10. Proposals must include therefore the procedure planned for dealing with the memorials of those being reburied. The court is likely to be mindful that memorials mark the death of someone and are part of the history and character of the churchyard. They are seen not just by family and descendants but by others who visit the churchyard including those conducting research.
   11. The proposals should include how the reburials will be recorded, including photographic and written records of memorials before and after the re-ordering, so that visitors to the church will be able to see how any changes were made.
10. **How to put forward a proposal.** 
    1. Whilst it is a matter for the petitioners, it would be sensible to begin by putting forward a general structure for the proposals considering the matters under 9 a to k above. In the case of a proposal for re-use of burial space, the court will wish to receive the advice and recommendation of the Diocesan Advisory Committee (“DAC”) because of the multiplicity of issues that may arise. In particular, the court can be assisted by advice and recommendations about the proposed part of the churchyard proposed for reburial, investigation of the ground beneath the burial area, health and safety considerations in disturbing burial spaces after a significant period of time, the placement of coffins, caskets and remains that are being moved, the fate of memorials dedicated to those previously buried in a space to be re-used and the recording of what is done.
    2. Applications for faculties to re-use burial spaces in a particular area of a churchyard should begin by consultation with the DAC, which contains members with great knowledge, experience and expertise in a number of the likely matters likely to arise with any such proposal and when the application for a faculty is finally complete it will be examined by the DAC in order to assist the court with the key question of whether the faculty should be granted, and, if so, whether any conditions should be imposed. The faculty application will require public notice and allows, as previously stated, for objections to be taken into account or for anyone with sufficient interest formally to oppose the petition.

**Etherington, Ch.**

**November 9, 2020.**