

the court could be confident that the removal would end the family conflict or lead to agreement on a replacement then that would be a good reason. Sadly, that was not the case. The petition would be dismissed. [DW]

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Re Holy Trinity, Pleshey

Chelmsford Consistory Court: Hopkins Ch, 13 May 2022

[2022] ECC Chd 1

Burials – new graveyard space

The petition in respect of this Grade II*-listed rural church was to allow the use of three additional areas within the churchyard for burials. For several hundred years residents of the parish have been buried in the churchyard, and the PCC was keen to keep the churchyard open for burials as an outward sign of the church's presence in the community.

Whilst the petitioners did not believe that any of the areas in question had been previously used for burials, and there were no surviving written records suggesting such previous use, the petitioners commissioned a geophysical survey of the three areas which identified 'anomalies' potentially indicating the presence of sub-surface structures. The surveyors could not confidently say whether or not these were indicative of previous burials.

The court applied the principles expressed by the Court of Arches in *re All Saints, Biddenden* [2020] EACC 1, that it is prudent to seek a faculty for the re-use of land which has been or may have been used for burials in the past, given the potential consequences of exhuming human remains without a Faculty under section 25 of the Burial Act 1857.

Applying *Biddenden*, the court found that, on any view of the evidence, there were likely to have been no recent burials, suggesting the affected areas were appropriate for burial use. The court also took account of the fact that no other land was available, and that the alternative to allowing the petition would be to close the churchyard for burials altogether. Thirdly, the petition had been sufficiently publicised, which would have allowed any objections to be raised.

Accordingly, a faculty would be granted, subject to conditions of notifying the Parish Council, given the wider community impact of the petition; monitoring the use of the areas by the PCC; and first making use of the areas carrying the least risk of encountering previous burials. [Jack Stuart]

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