

**Neutral Citation Number: [2018] ECC Bir 1**

**IN THE CONSISTORY COURT OF THE DIOCESE OF BIRMINGHAM**

**IN THE MATTER OF THE PETITION OF DAVID GRIFFITHS**

**IN RESPECT OF THE REMAINS OF THE LATE HOWARD CHARLES GRIFFITHS**

**THE PETITION BEING DATED THE 27 OCTOBER 2017**

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1. I have to deal with a Petition for exhumation by David Griffiths in respect of the remains of the late Howard Charles Griffiths who died on the 17 April 1990 and was buried in the church of St Mary and St Margaret's Parish Church in the Diocese of Birmingham.
2. The Griffiths family have a long established relationship with their Parish church with both the Petitioner and his brother having been in the choir. It was natural therefore that when his father died, he was buried in the churchyard at St Mary and St Margaret's.
3. The Petition for a Faculty comes about in unusual circumstances. When the Petitioner's mother was alive she would visit her husband's grave on a regular basis. Unfortunately, as is common with many graveyards which are closed, the graveyard has become overgrown. At the time of the burial of the deceased it seems that there was some form of gas installation at the back of the plot where the deceased was interred. Over time that site seems to have been extended and the complaint of the Petitioner is that the gas governor site became noisy and fumes were given off at times. This caused a great deal of distress to the deceased's widow who, I am told, would leave the graveyard in tears. I am told that had she known how the graveyard and its surrounds would deteriorate she would not have buried her husband there and she felt that she had let him down. Sadly Mrs Griffiths died in August 2017 and she expressed a wish that her cremated remains be interred at Woodland Cemetery (as opposed to with the remains of her late husband). She had expressed a wish that her late husband could be buried with her when she died. I am told and everything that I have learnt during the currency of my investigation supports this, that they were a devoted couple who were happily married for 42

years and the basis of the Petition is that the Petitioner feels that it is the correct thing to do to reunite them in death as they were in life.

4. I should apologise to the Petitioner for the delay in dealing with this matter but I have found this a difficult case. On the one hand I am deeply sympathetic to the rationale of the Petitioner in seeking to carry out his mother's wishes but on the other hand I am bound by the authorities which deal with the question of exhumation.
5. The leading case in terms of exhumation is **Re: Blagdon Cemetery [2002] FAM 299** which confirms the Church of England's "long established presumption against exhumation and in favour of the permanence of Christian burial in consecrated ground". There are a number of exceptions set out in the cases which have been decided since **Re: Blagdon** but these normally relate to mistakes of the burial authorities, when Petitions have invariably succeeded. However one of the matters that I am bound to have in mind, following the authorities, is any delay in seeking the exhumation once the burial had taken place. In this case of course I have to consider a period of 27 years.
6. I also have to bear in mind that having asked for further information as to why the delay occurred, the Petitioner explained to me that "we did not know that it was possible to exhume remains, it was only whilst discussing my mother's funeral with the Undertakers that we became aware that such a procedure was possible".
7. I hope that the Petitioner will not be offended if I explain that whereas exhumations can be permitted even after a long period if there was a mistake of fact (e.g. the remains were buried in the wrong grave), mistakes of law are treated differently. The fact that somebody did not realise that an exhumation could have been applied for is something that I have to treat in a different way from the situation if I was to find that there was a mistake as to fact. In this case there was a mistake as to the legal entitlement to apply for an exhumation and thus a mistake as to the law. That would not in the absence of other exceptional circumstances entitle the Petition to succeed.
8. The deterioration in the surrounding area of the grave can in certain circumstances be held to be exceptional circumstances thus entitling me to depart from the normal rule against the exhumation of buried remains. In the case of **Re: St Agatha Woldingham**, a decision in the Southwark Consistory Court in 2015 it was held that where part of the churchyard was frequently waterlogged, making regular visits impossible, a deterioration of a churchyard in such an extreme case might form the

basis for a successful Petition. However the judgment makes it clear that in those circumstances the Petition was made promptly once a proper assessment had been made of the situation. Sadly the lapse of time between the gas installation being extended of some 22 years, as I am informed by Mr Griffiths, means that this was not a Petition that was made promptly, once the churchyard had deteriorated, and thus the Petitioner is not able to avail himself of that exception. The authorities also make it plain that the fact that the churchyard has become overgrown is not to be treated as an exceptional circumstance, either. I say this because I am told that the late Mrs Griffiths did bring the state of the graveyard to the attention of the church sometime after her husband's death. She was told that by that stage the graveyard had been closed and it was the responsibility of the local authority. It appears that she did contact the local authority but, to quote the Petitioner, "did not appear to get any joy, hence her distress".

9. Sadly therefore I have to refuse the Petition. I do so on the basis that an application for exhumation could have been made earlier and that the delay, which was occasioned by a mistake as to the law of exhumation, does not permit me to find that there are exceptional circumstances justifying the exhumation of the late Howard Charles Griffiths.
10. I appreciate that this will be a source of distress to the Petitioner who is trying to carry out his mother's wishes. I hope he is able to draw some comfort from the fact that he has done his best to ensure that his late mother's wishes were carried out but by the time he sought the Faculty, the law prevents me from acceding to her wishes.

**Dated this 12 day of March 2018**

**Mark Powell QC, Chancellor of the Diocese**