

**IN THE CONSISTORY COURT OF THE DIOCESE OF DURHAM  
IN THE MATTER OF GRANGETOWN CEMETERY**

**JUDGMENT**

1. Sunderland City Council owns and operates a cemetery, known as Grangetown Cemetery. Positioned within the grounds of Grangetown Cemetery are two lodges, constructed in the Gothic style. They are referred to as North Lodge, and South Lodge, and are set on either side of the main entrance to the cemetery, fronting onto the highway. The buildings that form the lodges are not on consecrated land. For approximately 150 years they have been used as private residences, and in the case of South Lodge as an office in more recent times.
2. The Council is looking to dispose of both lodges by way of long leases or sale of the freeholds. It hopes that by doing so it will help to preserve the future of these historic buildings, both of which are listed Grade II. North Lodge is currently occupied as a residence on a short term tenancy by a Council employee, who has lived there for over 15 years. The immediate curtilage of North Lodge is marked off from the rest of the cemetery by hedging and has been tended by the employee and used as a private garden. South Lodge is currently used by the Council as a cemetery office, and planning permission has been granted for a change of use of the lodge back to residential; it too has a garden curtilage which is marked off from the rest of the cemetery by hedging.
3. The Council wishes to include these garden areas within the titles of the respective lodges when disposing of them by granting long leases or selling the freehold. It has undertaken research into the history of the lodges and the surrounding garden areas. It has become clear that although the lodges themselves are not on consecrated land, the garden area for each lodge has been consecrated, and was used for burials over 100 years ago. No graves are marked by memorials, but the Council's burial records indicate 18 adults and 10 children are interred within the garden site of North Lodge, and 31 adults and 12 babies are interred within the garden site of South Lodge.
4. An officer of the Council, Louise Whitaker, who is a Valuation Surveyor in the Council's Property Services department, has presented a petition on behalf of the Council seeking a faculty to allow the consecrated areas of the lodge gardens to be leased or sold off as part of the titles of the respective lodges.
5. The petition was duly advertised, and there were no objections. The DAC considered the petition and issued a Notification of Advice recommending the proposals for approval by the Court.
6. On 20<sup>th</sup> February I directed that the petitioner should file written submissions with supporting evidence and authorities dealing in particular with the issue of whether consecrated land can lawfully be used for secular purposes and whether a legal estate in consecrated land can be alienated or created without statutory authority. The petitioner

duly submitted written representations dated 7<sup>th</sup> March 2018, and consented in writing to the matter being dealt with under rule 14.1 upon the basis of written representations instead of by a hearing.

### **The effect of consecration**

7. The effect of consecration was explained by the Court of Arches in *In Re Blagdon Cemetery* [2002] Fam 299 at p303A:

*“Land becomes consecrated when the bishop of a diocese signs a document, called a sentence, by which he separates and sets apart an area of land and dedicates the land to the service of Almighty God. The effect of this sentence where the land is to be used for the interment of the remains of the dead, whether the land consists of churchyard around a church or an identified area of land in a cemetery, is to set apart the land as being held for sacred uses and to bring it within the jurisdiction of the consistory court.”*

8. In *In Re West Norwood Cemetery* [1994] Fam 210 at p223E, Gray QC Ch noted that:

*“The effect of consecration is to subject the land consecrated to the Ordinary, who thenceforth has jurisdiction to see that in the consecrated ground the laws of the church are observed, and in particular to see that in consecrated places of burial all conditions which the laws of the church require in relation to the bodies or persons buried there are observed. This jurisdiction is not confined to occasions when it is necessary to remove a body, but extends to all such acts as are necessary in the interests of justice or of the decent and respectful treatment of the dead and is not affected by other statutory provisions which may require further licences from other authorities.”*

9. The Consistory Court’s jurisdiction over consecrated areas in municipal cemeteries therefore exists to protect the remains of the dead interred therein. The court nonetheless needs to acknowledge, as recognised by Gray QC Ch (*ibid.*) at p224B, that the jurisdiction is exercised sparingly with regard to municipal cemeteries and will be exercised only in the clearest cases in the interests of justice or where the decent and respectful treatment of the dead is threatened. As the Court of Arches pointed out in *In Re Blagdon* (*ibid.*) at p303G, it can generally be assumed that local authorities carry out their legal responsibilities for the care and maintenance of their cemeteries.
10. A consequence of consecration is that land or buildings that have been consecrated cannot normally be alienated from their sacred uses – it is not possible to alienate consecrated land or buildings completely from sacred uses and to appropriate them permanently to secular uses without the authority of an Act of Parliament or a Measure (see Halsbury’s Laws vol 34 para 840).

### **The petitioner’s submissions**

11. The petitioner’s written submissions in support of the petition contend that: *“Under the provisions of the Pastoral Measure 1983 it is possible to authorise the alienation of the*

*whole or part of any burial ground vested in the incumbent of a benefice not annexed to or belonging to the Church. The land in question is not annexed to any church grounds and stands separately in land owned by the Council of the City of Sunderland*". The Pastoral Measure 1983 has been repealed and replaced by the Mission and Pastoral Measure 2011, but even so, there is a misconception here, and the proposition does not advance the petitioner's case. If the land is owned by the City of Sunderland, which it is, then it cannot be vested in an incumbent, and there can be no alienation under the 2011 Measure.

12. The petitioner further submits that this would be an appropriate case for a faculty to issue so that the consecrated areas immediately around each respective lodge can be used by the occupiers as private gardens. The petitioner relies on the following facts:
  - (a) The two parcels of land in question lie outside the main area of the cemetery and are clearly marked by hedging;
  - (b) Both parcels have in the past been used as gardens by occupiers of the lodges, and in the case of the North Lodge, it is still used as a private garden;
  - (c) There are no marked graves, and no remains have been interred for at least 100 years.
13. The petitioner also submits that allowing the curtilages of the lodges to be used as gardens would regularise what has been the historic de facto position.

### **Conclusion**

14. I am unimpressed by the submission that a faculty should be granted simply so that the previous unauthorised use can be regularised. If the historic unauthorised use was inconsistent with the decent and respectful treatment of the interred remains then no faculty would be issued to permit such use to continue.
15. Although the court cannot authorise the alienation of consecrated land, it is clear from past cases that it can in suitable circumstances authorise use of consecrated land for secular purposes that are consonant with modern requirements (see Halsbury's Laws vol 34 at para 839). Any such use must be consistent with the decent and respectful treatment of the remains of those deceased persons who have been interred.
16. There is authority in *St Clement, Eastcheap with St Martin Orgar* [1964] P 20 to support the proposition that consecrated land may be used as a private garden, and that such use is consistent with the decent and respectful treatment of the dead. In that case, a faculty was issued granting a licence for a disused churchyard and burial ground to be converted into a private garden. The faculty was granted upon condition that access to the garden should be shared with the Rector and churchwardens, and such parishioners as may be authorised by the Rector subject to the consent of the petitioner which was not to be unreasonably withheld. Sunderland City Council has indicated it would be content to accept a similar condition, so that the local incumbent and parishioners would be granted access to the private gardens of the lodges. That is an unnecessary concession for the council to make – the land in question has been owned and occupied by the Council and its employees for

over 100 years, so the local incumbent and parishioners are not about to be deprived of any benefits relating to the use and enjoyment of the gardens.

17. Although a faculty cannot be issued to permit the alienation of consecrated cemetery land from its sacred uses, a faculty will nonetheless be issued in this case granting permission for the land immediately surrounding each lodge to be used as a private residential garden for the lodge in question. The faculty is subject to the following conditions:
- (i) Detailed plans are to be submitted to the court for approval showing the precise area and extent of the land to be used as the garden for North Lodge, and likewise in respect of the garden for South Lodge.
  - (ii) Ownership of both gardens is to remain vested in Sunderland City Council.
  - (iii) The use of each garden is to be subject to the terms of a written licence to be entered into between Sunderland City Council and the occupier for the time being of the lodge in question, stipulating that the land in question is to be used only as a private garden, and is to be kept neat and tidy by the occupier; each draft licence must be submitted to the court for prior approval.
  - (iv) No structures of any sort may be erected in either garden without prior application by petition to the Court for approval.
18. These conditions are onerous, but are necessary to ensure the consecrated areas are suitable for their continuing use as places of rest for the interred remains.
19. The usual rule as to costs will apply – the petitioner is to pay the relevant court costs of, and arising out of, the petition.

Adrian Iles  
Chancellor  
4<sup>th</sup> April 2018