



***Faculty** – Application by a private company to carry out works on consecrated land (forming part of a former private cemetery) ancillary to the construction of a crematorium in accordance with an extant planning permission – Works including the renovation of two existing chapels and a lychgate; the upgrading of the main central access road; the provision of car parking and landscaped areas; and the supply of utilities and drainage – Faculty opposed by several neighbouring residents and two former residents of the parish and by the Friends organisation for the cemetery – Whether former residents having the necessary standing to oppose the faculty application – Case management directions going forward – Whether the trial of a preliminary issue should be ordered – Cremation Act 1902, s . 5*

Application Ref: 2024-102725

IN THE CONSISTORY COURT OF
THE DIOCESE OF BLACKBURN

Wednesday, 22 October 2025

Before:

THE WORSHIPFUL DAVID HODGE KC,
CHANCELLOR

In the matter of:

CALDERSTONES CEMETERY

THE PETITION OF:

REMEMBRANCE PARKS CONSTRUCTION LIMITED

PRELIMINARY JUDGMENT

The following cases are referred to in the judgment:

McLoughlin v Grovers [2001] EWCA Civ 1743, [2002] QB 1312
Re St James, Southlake [2025] ECC Oxf 1
Re St Nicholas, Leicester [2023] ECC Lei 1, (2023) 25 Ecc LJ 399
Re St Paul, North Shore, Blackpool [2024] ECC Bla 6, (2025) 27 Ecc LJ 286
Spitalfields Open Space Limited v The Governing Body of Christ Church Primary School [2019] EACC 1, (2019) 21 Ecc LJ 261
Tilling v Whiteman [1980] AC 1
Walton v The Scottish Ministers [2012] UKSC 44, [2013] PTSR 51
Wathen-Fayed v Secretary of State for Housing, Communities & Local Government [2025] UKSC 32, [2025] 1 WLR 3693

Introduction

1. The petitioner, Remembrance Parks Construction Limited (**RPC**), is the registered freehold proprietor of land shown edged with red on the plan of Title No LA885518 and described as Ribble Valley Remembrance Park, Mitton Road, Whalley, Clitheroe. RPC's land lies within the parish of St Mary, Whalley, in the Archdeaconry of Blackburn and the County of Lancaster. The land lies a little under 1 ½ miles distant from the church building and forms part of a larger, three-acre, plot of land that was subject to a Sentence of Consecration executed on 30 June 1916 by the suffragan Bishop of Burnley, acting as commissary for the Bishop of Manchester (in whose diocese the land then fell, before the creation of the Diocese of Blackburn). This document set aside and consecrated a one-acre plot of land (to the south-east) which was to form a burial ground for soldiers dying in the Queen Mary Military Hospital, and a larger, two-acre plot (to the north-west) as a burial ground for "*lunatics dying in*" Whalley County Lunatic Asylum, and for officers and servants belonging to the asylum. RPC's land falls entirely within the larger, two-acre plot. What had been the Whalley Asylum passed through various changes of name and functions until it became Calderstones Hospital. This later closed, and the site was redeveloped. The burial ground was sold by the Regional Health Authority to a private developer in October 2000. There is therefore, at present, no prospect of any future interments of human remains in RPC's land. According to entry No 2 of the proprietorship register, RPC purchased the land on 7 October 2019 for £200,000.

2. By a decision letter, dated 23 May 2024, the Bishop of Blackburn acceded to an application by the Archdeacon of Blackburn to direct, pursuant to s. 92 (2) of the Ecclesiastical

Jurisdiction and Care of Churches Measure 2018, that a designated part of the land owned by RPC should no longer be subject to the legal effects of consecration. The object of that application was to facilitate the construction of a crematorium on that part of RPC's land. The application proceeded on the basis that there were no human remains resting within that part of the land (as opposed to other parts of the burial ground, which remain subject to the sentence of consecration). Notwithstanding the speculations of various objectors, the Bishop was satisfied that the totality of the evidence, both scientific and documentary, pointed to there being no human remains in the de-consecrated part of RPC's land. Even if there were, a condition was imposed requiring their reverent reburial within that part of the burial ground that was to remain consecrated. Having regard to all the material that had been placed before him, the Bishop concluded that the part of the land that was to be de-consecrated had not been used for burials in the past; and, since the closure of Calderstones Hospital, it would not be used for any burials in the future. It was distinct and severable from the remainder of the burial ground, which would continue to be subject to the legal effects of consecration. The graves of anyone buried there would remain untouched and undisturbed.

3. The Bishop's order removing the legal effects of consecration was not to come into effect until RPC had executed a legally binding covenant giving effect to their representations and assurances that:

- (1) the deconsecrated area of land would be used for the erection and operation of a crematorium, and for no other purpose, and was to be operated in an orderly manner, mindful of the consecrated character of the neighbouring land;
- (2) landscaping and other works of restoration would be carried out in that part of the burial ground which would remain consecrated, subject to obtaining such consent as might be required;
- (3) that part of the burial ground which would remain consecrated was to be open to visitors each day;
- (4) a communal memorial was to be erected commemorating those whose headstones were wrongly removed in or about 2000;
- (5) an electronic Book of Remembrance would be provided in one of the two side chapels; and
- (6) appropriate signage and interpretative information boards, explaining the history of the site, would be erected in accordance with plans approved by the archdeacon.

4. A deed containing these covenants was duly executed on 5 December 2024. It contains a further covenant that any remains that are found by the covenantor in the de-consecrated area of land must be reported to the Ministry of Justice immediately upon discovery, with a request that they be lawfully relocated into the consecrated part of the covenantor's land, with all processes and requirements of the Secretary of State being followed.

The petition

5. By an online faculty petition, dated 10 April 2025, RPC now applies to the court for a faculty authorising the carrying out of ancillary works relating to the construction of the crematorium in accordance with planning permission granted by Ribble Valley Council (under planning application ref: 3/2019/0004). The proposed works include: the renovation of two existing chapels and a lychgate (including protection for bats); the upgrading of the main central

access road (for which the archdeacon's approval has already been given); the provision of car parking and landscaped areas; and the supply of utilities and drainage. The petition emphasises that the work includes essential works of renovation to the two chapels, which have deteriorated severely over the years, and need to be renovated properly to bring them back into use, and to protect them from any further dilapidation.

6. The petition includes the following statement:

Planning Permission for a crematorium was first granted in 2009 and has been amended on a number of occasions since, the last of these were in 2018 and 2019, when the car park was adjusted to ensure account was taken of the Garden of Remembrance and Booth Hall baby graves, adjustments were made to landscaping plans.

In December 2024, covenants were agreed between Remembrance Parks Construction Ltd and the Church of England and an area of land containing no burials was deconsecrated by Bishop Philip North of the Diocese of Blackburn. The covenants require the area of deconsecrated land to be used for a crematorium and will ensure the heritage of those buried in the cemetery is respected by the provision of a memorial, an electronic book of remembrance and interpretive signage. This can only be achieved if ancillary parking and associated works to the chapels and lychgate are carried out. These works are the subject of this faculty petition.

Allegations continue to be made by certain parties that should RPC be allowed to proceed with the provision of a crematorium then burials will be disturbed. Extensive research has been carried out on hospital statutory/non-statutory records and a ground penetrating radar survey has been undertaken, proving there are no burials in the areas to be developed. In addition, construction plans have already been prepared and submitted with this petition, showing how burial areas will be protected.

Recent allegations about 20 catholic burials in the cemetery have proved to be inaccurate, with statutory cremation records from Accrington Crematorium disproving the allegations. There is evidence of one burial in 2003, however, the location of this is disputed. In any case, it is clear the burial has taken place outside of the area to be developed and so will not be disturbed. There is no evidence at all of any other burials within the cemetery that RPC is not already aware of.

RPC wish to re-affirm that this petition request for the car parking, chapels and associated works, is an essential element in the construction of a crematorium. It is in full compliance with planning approval given prior to the decision to deconsecrate an area of the cemetery last year and we hope it will be looked upon favourably by the Church to allow RPC to provide a much-needed service and protect the long term heritage of the cemetery.

7. On 9 April 2025 the Diocesan Advisory Committee (the **DAC**) issued its notification of advice. This recommends the proposals for approval by the court, without any provisos or conditions. Before doing so, the DAC had consulted the Commonwealth War Graves Commission (the **CWGC**). They had responded, indicating that the CWGC's Whalley (Queen Mary's Hospital) Military Cemetery has 42 war graves, and is accessed through Calderstones Cemetery. As there are no war graves in Calderstones Cemetery, where the proposed works will be taking place, the CWGC did not wish to make any representations about the faculty application. However, should the faculty be granted, the CWGC asked that access for their staff,

contractors, and visitors to the military cemetery should continue during the works (as previously arranged with the owner, RPC). They also asked that any construction works should cease around any Remembrance events, such as Remembrance Sunday, to ensure that visitors to the military cemetery are not disturbed by any construction works. I note that the DAC minutes of their 9 April 2025 meeting record that consideration of the application had been deferred from their previous meeting pending more information about the proposed use of the restored chapels and the drainage plans. The DAC noted that the drainage plans indicate that there are no toilets or foul water drains included in the development of the chapels. One chapel is planned to be the holding place for the electronic Book of Remembrance, and to offer tea and coffee-making facilities for those visiting. The other chapel would serve as a holding place for the deceased before moving them into the main crematorium. A certificate of lawful development had also been received. It was on this basis that the DAC recommended the application to the court for approval.

The Cremation Act 1902

8. Since it features in many of the objections to this petition, it is convenient, at this point in this judgment, to say something about the statutory restriction on the siting of crematoria contained within the Cremation Act 1902 (the **1902 Act**). The Supreme Court recently considered the true interpretation of the 1902 Act, and, in particular, the provisions governing where a crematorium might be sited, in *Wathen-Fayed v Secretary of State for Housing, Communities & Local Government* [2025] UKSC 32, [2025] 1 WLR 3693. Section 2 of the 1902 Act defines the expression ‘crematorium’ as ‘*any building fitted with appliances for the purpose of burning human remains, and shall include everything incidental or ancillary thereto*’. Section 5 provides that:

No crematorium shall be constructed nearer to any dwelling house than two hundred yards, except with the consent, in writing, of the owner, lessee, and occupier of such house, nor within fifty yards of any public highway, nor in the consecrated part of the burial ground of any burial authority.

9. The essential issue on the appeal was the point from which these radius distances were to be measured. This in turn depended upon what was meant by a ‘crematorium’ for the purpose of s. 5. In a judgment delivered by Lord Hamblen JSC, the court unanimously held that in s. 5 of the 1902 Act ‘crematorium’ means a ‘*building fitted with appliances for the purpose of burning human remains*’ (i.e. the crematorium building itself) so that the distances specified in s. 5 were to be measured from the building which houses the crematorium. It does not include any open area in which ashes might be stored, such as a memorial garden.

The objections

10. The usual public notice of the petition was duly displayed between 11 April and 11 May 2025 on notice boards inside and outside the parish church, as well as on the gates outside the site of the former Calderstones Cemetery. I also directed that special notice of the petition should be given to the Friends of Calderstones and Brockhall Cemeteries (the **Friends**) pursuant to rule 9.1 of the Faculty Jurisdiction Rules 2025, as amended (the **FJR**). The Friends describe themselves as a body who seek to preserve and honour the memory of those who are buried in the former cemetery, and to achieve its restoration. In total, the Registry received eight letters of objection in response to these notices, although one of these was later withdrawn. One of the objections was received from the Friends. Another was received from two married couples (Perry and Gail Bonney, and Kevin and Leanne Sharpe), who live in close proximity to RPC’s

land at 1 and 2 The Cottages, Mitton Road, Whalley. The remaining five objectors are all individuals.

11. In very broad terms, the objections can be summarised as follows:

(1) *The Friends*

(a) They object to the faculty on the basis of the statutory prohibition in s. 5 of the 1902 Act. They say that there are five dwelling-houses within 200 yards of the proposed crematorium and, so far as the Friends are aware, no consent in writing has been obtained from any of them. The Friends note that since 2000, when the Department of Health sold the cemetery without obtaining any guarantees for its future maintenance, it has been subject to neglect, vandalism, and work by the owners without the benefit of a faculty (including the clearance of the headstones). This ought never to have happened; and it is particularly distressing because it suggests that those who are buried there – the patients of a mental hospital – are less important than those more fortunate than themselves. The Friends wish to stress how deeply they care about a situation which has arisen which they consider to be scandalous; but they recognise that the diocese has limited powers directly to address the resulting situation. Their disagreement with the diocese is simple. The diocese considers that the way forward to achieve the restoration and future maintenance of the land is to support the construction of a crematorium upon it. The Friends wish to see the land restored as a cemetery. That is a solution which would respect the consecrated status of the land. However, the appropriate use of the land is not the immediate issue; the immediate issue is that what is proposed for the consecrated land is inappropriate. What RPC propose is to turn the cemetery into a crematorium (with its associated ancillary development). This is to come about by utilising consecrated ground for that associated ancillary development. This consists principally of car parking and access roads. The Friends says that this is not an appropriate use of consecrated land: land which is permanently set apart for sacred purposes. It is most particularly not appropriate given that the area in question incorporates burials and interments. The principal, or primary, use of the land for consecrated purposes – in this case as a cemetery, or burial ground - must not be overlooked. As proposed, the principal or primary use of the consecrated land would be as ancillary secular development to a secular use: this is not an appropriate use of consecrated land. Thus, the substantive objection of the Friends – that the land should not be developed as a crematorium and ancillary development, and should be retained as a cemetery – is said to receive the support of church law. The Friend's submission relates to the consecrated status of the land as a cemetery, and does not depend on whether there have been any burials or interments in the land. But the Friends say that there have been burials and interments there. The inadequacy of the treatment of those burials and interments provides an additional reason for refusing any faculty.

(b) In summary, therefore, the Friends' objection is both an '*in principle*' one, based upon a submission as to the appropriate use of consecrated land, and also, and additionally, about the way that those whose remains are buried or interred there are proposed to be dealt with. What is proposed is inconsistent with the consecrated status of the land, and is therefore not appropriate development. Moreover, against the background of the consecrated status of the land, what is proposed adversely and significantly affects the setting, and the context, of known places of burial and interment; and may adversely affect the setting and the context of places of burial and interment which it is not possible to be certain about. Overall a cemetery which, as consecrated ground, was solemnly set aside forever for sacred purposes is proposed to be made over for secular development, namely a crematorium. A faculty should not issue for this. If contrary to

these submissions, the court were to grant a faculty, it should only be on the basis (secured by an undertaking) that no development should take place before the relevant consents have been obtained under s. 5 of the 1902 Act.

(2) *Mrs and Mrs Sharpe, and Mrs and Mrs Bonney*

They object to the faculty on the grounds that the proposed crematorium is too close to residential properties, including their own, which they say are within 200 yards of the proposed building. None of them have been approached for their consent under s. 5 of the 1902 Act; and they do not give their consent to the building of the crematorium going ahead. They also support concerns raised by others, including the Friends, regarding building over potential graves, and the consecrated status of the land.

(3) *Mrs Pamela Haralambos*

Mrs Haralambos lives within the parish of Whalley, about half a mile from the proposed crematorium. She objects on the basis of s. 5 of the 1902 Act, the consecrated status of the land, the existence of human remains on site, the effect on wildlife and the natural environment, the fact that trees have been felled, and all the gravestones removed and have disappeared from the site, the strength of local feeling, and the historical value of the site. Mrs Haralambos is concerned that the developers' work will not be monitored, and that this *"sacred site will fall foul of commercialism and profit and after that has been done it will be too late to make repair of a serious travesty of justice"*.

(4) *Mrs Jean Lord*

Mrs Lord lives within the parish of Whalley, about a mile away from the proposed crematorium. She is also an historian, a genealogist, and a friend of the cemetery. She complains about the past neglect of existing structures on the site, and past activities such as the felling of trees, and the upgrading of the main, central access way. She is concerned about the inadequacy of car parking provision, the disruption that will be caused during the works, and the fumes from the crematorium. Mrs Lord is also concerned about the effect of the proposed works on unrecorded burials within the site; and she refers to the prohibition in s. 5 of the 1902 Act.

(5) *Mrs Donna Parkinson*

Mrs Parkinson lives within the parish of Whalley, about half a mile from the proposed crematorium. She objects to the faculty on the basis of the consecrated status of the land, the disturbance of human and cremated remains, s. 5 of the 1902 Act, and the lack of adequate parking provision.

(6) *Mr Melrose Diack MBE*

Mr Diack used to live in Mitton Road, in the parish of Whalley, but he now lives outside the parish, near Poulton-le-Fylde, some 34 miles away from the proposed crematorium. He was a founder member of the Friends. He objects to the use of consecrated ground for secular purposes, such as access and car parking. He wants those buried there to be left in peace. He objects to past works to the site, including the use of heavy industrial machinery such as diggers and bulldozers in December 2017, *"to churn up the consecrated and sacred ground"*, which he says have interfered with past burials and amount to *"utter sacrilege"* and *"desecration to a hallowed place"*. He wants this sacred ground put back as it was *"and made a place of due prayer, peace and sanctuary"*.

(7) *Miss Kathleen Bowen*

Miss Bowen lives outside the parish of Whalley, at Great Harwood, some 5 ½ miles to the south of the proposed crematorium. She now worships in that parish. She was brought up in the Whalley area, spent much of her life there, and used to work at Calderstones Hospital (including cutting the grass in the cemetery). Her late husband was the unit gardens manager. She objects to the faculty because families and others are entitled to expect that consecration takes effect in perpetuity; the land should not be used for commercial purposes; and it is sacrilege and a desecration to disturb human and cremated remains, which should be allowed to remain at peace in their final resting place .

12. On or about 12 May 2025 the Registry wrote to all the remaining objectors, enclosing particulars of objection, under FJR 10.3, in Form 5. All of the objectors, apart from Mrs Parkinson, responded by completing Form 5, thereby becoming parties opponent to the petition. The Registry have reported that the forms completed by Mr Diack MBE, Miss Bowen and Mrs Haralambos were received by the petitioner, and (with the exception of Mr Diack MBE) at the Registry, up to three days outside the 21 days period prescribed by FJR 10.3. I am satisfied that this slight delay has caused no prejudice to the petitioner. Unfortunately, none of the parties opponent set out their objections in full on their Form 5s, simply referring to the objections they had already submitted to the Registry; but none of these went to the petitioner. The petitioner objects that the Forms 5 refer to, and incorporate, the terms of the letters of objection previously sent to the Registry; and that these were only supplied to the petitioner at a later date. It says that this has resulted in delay in formulating its response to the objections, and has thereby increased its own costs, and any fees, costs and expenses which it may be liable to pay to the Registry, or to the court, in having to deal separately with two discrete sets of documents, and at different times. To the extent that this constitutes a technical breach of FJR 10.3(1)(a), I am satisfied that it is one which can be dealt with, in due course, by an award of costs (if that is appropriate). I therefore retrospectively grant any necessary extensions of time to those who served their Forms 5 late, and to all those who served incomplete particulars on the petitioner, pursuant to the court's power to extend time for compliance with the requirements of the rules under FJR 18.1(2)(a). I also decline, pursuant to FJR 20.2(1), to rule the Forms 5 void for any non-compliance with FJR 10.3(1)(a).

13. Although Mrs Parkinson has not chosen to become a party opponent, I will, of course, take her objections into account when I reach my substantive decision on this faculty petition. In any event, her objections are mirrored in those raised by other objectors who have elected to become parties opponent.

The progress of the petition

14. On 12 June 2025 the Registry wrote to the petitioner, and to the parties opponent, inviting them to consider what future directions might be appropriate for the proper consideration of this petition. The Registry's letter directed them to FJR 11.2. In particular, the parties were invited to consider the issues on which the court might require evidence, the nature of the evidence required to determine those issues, and how any evidence should be presented to the court (whether solely by way of written witness statements, or with witnesses attending to be cross-examined on their written statements). The letter also directed the petitioner to respond to the various objections that had been received at the Registry. This the petitioner has duly done.

15. On 28 August 2025 the Registry wrote to the parties recording my directions that:

- (1) each of the parties opponent should receive copies of all the objections (including that of Mrs Parkinson) and the petitioner's responses; and
- (2) the parties should seek to identify the issues on which the court might require evidence, and the nature of the evidence required to determine them, and comment on how that evidence should be presented (whether solely by way of written representations, or with witnesses attending to be cross-examined on their witness statements).

16. The Registry also invited Mr Diack MBE and Miss Bowen to address the issue of whether, residing outside the parish of Whalley, they had sufficient standing to oppose the petition, so that I might rule on this as a preliminary issue. For this purpose, the Registry furnished each of them with a copy of FJR 10.1(1).

17. Mrs Haralambos has responded indicating, first, that she is content to leave matters to the Friends; and, later, that she would prefer the court to read her representations, and has nothing to add to them. Mrs Lord has also responded indicating that she, too, is happy for the Chancellor to read her objections, and for these to be addressed as part of the Friend's case.

18. Mr and Mrs Sharpe replied on 18 September 2025. They had been considering their position, and their primary concern is that neither they, nor any of their neighbours, have given any permission in accordance with s. 5 of the 1902 Act. As the Friends have included this issue in their submissions, it seemed to serve no purpose for them to reiterate this objection themselves, separately to the Friends' submissions. Mr and Mrs Sharpe therefore confirmed that they would not be acting separately, as their objections were already well represented. The Registry have not heard anything from Mr and Mrs Bonney since emailing them on 28 August 2025. Indeed, the Registry have received no separate correspondence from Mr and Mrs Bonney throughout this matter; they have always corresponded jointly with Mr and Mrs Sharpe.

19. The petitioner, the Friends, Mr Diack MBE, and Miss Bowen have all responded to the Registry's requests for further representations. Having worked through all the voluminous material, both in support of, and in opposition to, this petition, I have concluded that the best way forward, in furtherance of the overriding objective of the FJR, is for me to deliver a written preliminary judgment on the standing of Mr Diack MBE and Miss Bowen, and setting out directions for the case management and future conduct of the petition. Should anyone object to my resulting case management directions, these can be addressed at a directions hearing, to take place remotely. I therefore address the further responses of the petitioner, the Friends, Mr Diack MBE and Miss Bowen in the following sections of this judgment.

Standing

20. Part 10 of the FJR deals with objections to a faculty petition. By FJR 10.2(1), an '*interested person*' may object to the grant of a faculty in respect of all or some of the works or other proposals to which a petition relates in accordance with FJR 10.2. '*Interested person*', in relation to a faculty petition, is defined in FJR 10.1(1) as meaning:

- (a) any person who is resident in the ecclesiastical parish concerned;
- (b) any person whose name is entered on the church electoral roll of the ecclesiastical parish concerned, but who does not reside there;

- (c) the parochial church council;
- (d) the archdeacon;
- (e) the local planning authority;
- (f) any national amenity society;
- (g) any other body designated by the chancellor for the purpose of the petition; and
- (h) any other person or body appearing to the chancellor to have a sufficient interest in the subject matter of the petition.

BY FJR 10.1(3), if any question arises as to whether a person is an interested party, it falls to be determined by the chancellor.

21. Mr and Mrs Sharpe, Mr and Mrs Bonney, Mrs Haralambos, and Mrs Lord are all resident within the parish of Whalley (as is Mrs Parkinson). They therefore fall within FJR 10.1(1)(a). I am satisfied that the Friends also have a sufficient interest in the subject-matter of this petition since they exist to seek to preserve and honour the memory of those who are buried in the former cemetery, and to achieve its restoration. In this connection, I bear in mind the following observations of the Arches Court of Canterbury in *Spitalfields Open Space Limited v The Governing Body of Christ Church Primary School* [2019] EACC 1, (2019) 21 Ecc LJ 261 (at paragraph 48), when holding that a company incorporated to pursue the interests of a campaigning group had sufficient interest to oppose the grant of a confirmatory faculty for the erection of a nursery in a disused burial ground, in breach of the then statutory prohibition in s. 3 of the Disused Burial Grounds Act 1884:

In our view it is right in the faculty jurisdiction to treat each case where sufficiency of interest arises on its own merits, and as a question primarily of fact and degree. In that way vexatious busy-bodies with insubstantial interests can be guarded against ... On the other hand, given that the secular courts have adopted an increasingly liberal approach to standing in recent years, we see no reason to insist on some form of proprietary interest, nor need consistory courts be instinctively hostile to public interest groups, including those recently incorporated.

I also note that RPC has raised no challenge to the Friends' standing to oppose this faculty petition.

22. However, neither Mr Diack MBE nor Miss Bowen fall within any of sub-paragraphs (a) to (g) of FJR 10.1(1). It therefore falls to me to determine whether either of them has a '*sufficient interest in the subject matter of the petition*' to enable them formally to object to the grant of a faculty pursuant to this petition under FJR 10.2.

23. In a preliminary judgment in *Re St Nicholas, Leicester* [2023] ECC Lei 1, (2023) 25 Ecc LJ 399, Deputy Chancellor Rees KC (in the consistory court of the diocese of Leicester) had to give directions as to which of nine people who had objected to a petition had a sufficient interest in its subject-matter. The petition involved the introduction of a new altar frontal, the design of which took the form of a Progress Pride image with a white cross upon it. Because of its very different subject-matter, the actual decision in that case is of no assistance in the instant case. But the judgment is of relevance for its discussion of the concept of '*sufficient interest*'. In the course of his judgment, the Deputy Chancellor noted (at paragraph 9) that '*sufficient interest*' is not

defined in the FJR, but a similar test is applied in the Administrative Court in relation to applications for judicial review. He observed that guidance on how this test of standing should be applied was to be found in the decision of the Supreme Court in *Walton v The Scottish Ministers* [2012] UKSC 44, [2013] PTSR 51. Although this was a Scottish case, the Supreme Court had previously held that the relevant test under Scottish law of being ‘*directly affected*’ was in substance the same as the English test of ‘*sufficient interest*’. At paragraph 92 of his leading judgment in *Walton*, Lord Reed stated:

... a distinction must be drawn between the mere busybody and the person affected by or having a reasonable concern in the matter to which the application relates. The words ‘directly affected’, upon which the Extra Division focused, were intended to enable the court to draw that distinction. A busybody is someone who interferes in something with which he has no legitimate concern. The circumstances which justify the conclusion that a person is affected by the matter to which an application relates, or has a reasonable concern in it, or is on the other hand interfering in a matter with which he has no legitimate concern, will plainly differ from one case to another, depending upon the particular context and the grounds of the application. As Lord Hope made plain in the final sentence, there are circumstances in which a personal interest need not be shown.

24. The Deputy Chancellor also quoted from paragraph 94 of the same judgment:

In many contexts it will be necessary for a person to demonstrate some particular interest in order to demonstrate that he is not a mere busybody. Not every member of the public can complain of every potential breach of duty by a public body. But there may also be cases in which any individual, simply as a citizen, will have sufficient interest to bring a public authority’s violation of the law to the attention of the court, without having to demonstrate any greater impact upon himself than upon other members of the public. The rule of law would not be maintained if, because everyone was equally affected by an unlawful act, no-one was able to bring proceedings to challenge it.

25. In other words, the test of ‘*sufficient interest*’ distinguishes between a ‘*mere busybody*’, who interferes in something which does not affect them, or about which they have no legitimate concern, and an individual who is affected by, or has a reasonable concern in, the matters to which the petition relates.

26. At paragraph 15, the Deputy Chancellor also stated that in determining whether a person has a ‘*sufficient interest*’, he was also entitled to consider whether there were other, better placed challengers. Since those objectors who were held to have a ‘*sufficient interest*’ together covered all the main points that had been raised in the objections received by the Registry, the Deputy Chancellor concluded that the other objectors did not have a sufficient interest for the purposes of FJR 10.2.

27. In response to the Registry’s query, Mr Diack MBE considers that he has sufficient standing under FJR 10.1(1)(h). He lived near to the cemetery, in Mitton Road, Whalley, for some 30 odd years; and he has been interested in the cemetery ever since. He says that he was also “*the first founder of the Friends of Calderstones Cemetery rounding up local neighbours and a few retired Calderstones staff who also lived in the village as it was clear very early on that matters were going to go wrong once [the cemetery had been] sold off*”. He has been involved with the Friends as they have evolved; but he has had to take more of a back seat, due to serious bad health, over the last few years. He is content for me to deal with this matter on the papers.

28. Whatever the position in the past, Mr Diack now lives near Poulton-le-Fylde, some 34 miles, and almost an hour's drive, away from the cemetery. Viewed objectively, he is no longer affected by, and has no legitimate concern in, whatever happens to the cemetery. Moreover, the Friends are better placed to object to, and to oppose, this petition. I therefore determine that Mr Diack MBE is not an *'interested person'* for the purposes of FJR 10.1 and 10.2, and is not entitled to object to, or oppose, the grant of a faculty in respect of all or any of the works or other proposals to which this petition relates. I direct that he is to cease to be a party opponent.

29. Miss Bowen also resides outside the parish of Whalley. She says that she is now on the parish register of St Mary's church, Grimehills, Darwen. She lives much closer to the cemetery than Mr Diack MBE, some 5 ½ miles, and under 15 minutes' drive, away. Miss Bowen states that she was brought up in the area of Whalley, and she has spent a lot of her life there. She is a retired member of the staff of Calderstones Hospital, and she used to work in the cemetery, cutting the grass. She says she knows where all the head-stones were in the cemetery. She objects to the petition on the basis that the cemetery is consecrated ground, and she would wish it to stay that way. She does not wish the patients' bodies to be built upon, as she is sure will happen if a faculty is granted.

30. As in the case of Mr Diack MBE, whatever the position may have been in the past, Miss Bowen now lives outside the parish, albeit only some 5 ½ miles, and under 15 minutes' drive, from the cemetery. She also worships in a church outside the parish. Viewed objectively, she is no longer affected by, and has no legitimate concern in, whatever happens to the cemetery. Moreover, the Friends are better placed to object to, and to oppose, this petition. I therefore determine that Miss Bowen is not an *'interested person'* for the purposes of FJR 10.1 and 10.2, and is not entitled to object to, or oppose, the grant of a faculty in respect of all or any of the works or other proposals to which this petition relates. I direct that she is to cease to be a party opponent.

31. Both Mr Diack MBE and Miss Bowen should take comfort from the fact that their objections to the petition will not go unheard because they will be advanced by the Friends.

32. So far as Mr and Mrs Sharpe, Mr and Mrs Bonney, Mrs Haralambos, and Mrs Lord are concerned, none of them would appear to wish to take, or to be taking, any further active role as parties opponent to this petition. I direct that the Registry is to write to them, indicating that, unless any of them communicate with the Registry, within 14 days after receiving the communication from the Registry, objecting to this course, they will each cease to be treated as a party opponent to the petition; and their objections will fall to be considered as part of the objections raised by the Friends.

Case management directions

33. Where a petition is disputed, as in this case, it will normally proceed to a full hearing unless the parties agree, or, after considering the views of the parties, the chancellor considers, that, having regard to the overriding objective, it is expedient to determine the proceedings on the basis of written representations. However, FJR 1.4(1) provides that the court *'must further the overriding objective by actively managing cases'*. Rule 1.4(2) goes on to provide that active case management includes *'identifying the issues at an early stage'*, and *'deciding promptly which issues (if any) need full investigation and a hearing in court and accordingly disposing of others summarily or on consideration of written representations'*. I therefore have a duty to identify the issues, and to consider which of them need full investigation, or whether any of them should be dealt with summarily. The court's

general powers of case management also include (at FJR 18.1(2)(l)) the power to exclude an issue from consideration, and (at 18.1(2)(o)) the power to *'take any other step or make any other order for the purpose of managing the case and furthering the overriding objective'*. By FJR 1.2, the court must seek to give effect to the overriding objective whenever it exercises any power given to it by the FJR. The overriding objective is defined at FJR 1.1(1) as being *'to enable the court to deal with cases justly'*. FJR1.1(2) states that this includes, so far as practicable, ensuring that the parties are on an equal footing, saving expense, dealing with the case in ways which are proportionate to the importance of the case and the complexity of the issues, and ensuring that it is dealt with expeditiously and fairly.

34. In its response, RPC feel strongly that it is essential for factual, documented evidence to be submitted on all the issues that are to be taken forward. They are hopeful that the court will exclude from consideration any issues that do not relate directly to the faculty petition, or which concern legislation that falls outside the chancellor's jurisdiction. Such issues include planning matters, since these have already been determined by the local planning authority; and legislation, such as the 1902 Act, since action can be taken independently under the Act itself; and, in addition, objections based upon the 1902 Act do not apply to the land which is the subject of the faculty petition, but rather to the site of the construction of the crematorium building.

35. RPC submits that there are only two issues that the court needs to address. The first is the allegation that any burials will be disturbed by the proposed works. RPC consider that it has already demonstrated, by research, ground radar survey, and sample excavations, that there are no human remains in the area where the car park will be constructed. Given the weight of the evidence already submitted, RPC consider that it is unreasonable for the Friends to continue to pursue this point. RPC consider that it is reasonable for the Friends, and the other objectors, either to withdraw their objections in respect of these allegations, or, if they wish to persist in their claims, they must produce robust evidence to support their assertions. Any earlier witness statements currently being relied upon by any of the objectors should be discounted given what is said to be their contradictory, and hearsay, nature. Fresh witness statements should be provided specifically for this faculty application; and, unless supported by robust documentary evidence, witnesses must be available for cross-examination. RPC emphasise that it is essential that witnesses make it clear to what extent their statements rely on their personal memories from many years ago, or from hearsay passed on to them by others. It believes that there is a lack of any factual basis to the information contained within the current witness statements. Should the objectors persist in their objections, despite the weight of RPC's evidence, then clearly the provision of new witness statements, and a hearing at which to cross-examine witnesses, are likely to incur additional costs. RPC believe this to be unnecessary, given the factual, documented evidence which it has already supplied. It would invite the chancellor to consider how such costs should rightly be allocated, should this element of the evidence proceed to a court hearing. RPC have threatened an application for costs against the objectors, on the grounds of unreasonable conduct, if they persist in this allegation, and it is found to be without any merit.

36. The second live issue identified by RPC is the secular use of consecrated ground. The Friends do not agree with RPC's assertion that secular use may be permitted when the purpose of consecration can no longer apply. They have suggested that the matter of the secular use of consecrated ground should be a preliminary matter which will be determinative of the issue; and that the Chancellor should determine this issue based on paper submissions. RPC has no objection to this course.

37. The Friends' submissions on the disposal of this petition appear to have been settled by their counsel, Mr Philip Petchey. They begin by addressing s. 5 of the 1902 Act. They point out that in their original objections, the Friends had raised the question of the prohibition on the construction of the crematorium arising by virtue of s. 5 of the 1902 Act. If that prohibition, prevents the crematorium from being built, it would be a waste of time for the court to hear and determine RPC's petition. In its response to this issue, the petitioner had taken two points. The first is that the Law Commission is consulting upon whether the law should be changed by the repeal of s. 5. The Friends submit that, unless and until the section is repealed, the correct approach is to proceed on the basis that the section is in force (which is, of course, the fact). The second is to imply that the section is unenforceable, on the basis that the residents who live within 200 yards of the proposed crematorium moved into their properties only after planning permission had already been granted. The Friends say that this is irrelevant, on the basis that a statutory prohibition is precisely that. Against this background, the Friends had addressed the argument that the court should not hear and determine this petition for so long as the prohibition was in place. However, the Friends had recognised that the owners of the site might want to establish whether the crematorium could go ahead before potentially seeking to buy out the owners of the relevant houses, or otherwise obtain their written consent under s. 5. The petitioner has since responded that it is not seeking to buy any neighbouring property. If this is the case, the Friends say that it would be a waste of time for the court to hear and determine this petition. The petitioner would be unable to implement any faculty that might issue. In these circumstances, to require the Friends, the residents of the relevant dwelling-houses, and others, to engage in the faculty process, spending time, and incurring costs, is not reasonable. The appropriate order should be for any further consideration of the petition to be deferred. Absent any change in the law, or consent being obtained, in due course it would be appropriate for the petition to be dismissed.

38. Moving on from the provisions of s. 5 of the 1902 Act, the petitioner says that despite the land which is the subject of this petition remaining subject to the legal effects of consecration, it may, nonetheless be appropriately developed for uses ancillary to the proposed crematorium. The position of the Friends is that the land the subject of the petition is consecrated i.e. it is permanently set aside for sacred purposes. Its permanent, and exclusive, use for purposes ancillary to the use of adjoining land for a secular use is not consistent with its use as consecrated land. Such an interpretation is said to be consistent with the application of the Disused Burial Grounds Act 1884, which prohibits the construction on any consecrated disused burial ground of any building other than a church extension. In practical terms, the Friends consider that, in the absence of the crematorium proposal, the owner of the cemetery would look to re-use the land as a cemetery; but this consideration is not central to the point of law arising from the consecrated status of the land, namely that it cannot properly be devoted, as proposed, to entirely secular use. The Friends say that the petitioner's arguments to the contrary do not address this point. The petitioner's submission that the land can no longer be used for its original purpose, if correct, is an argument that it should no longer be subject to the effects of consecration. It seems unlikely that there were ever any legal rights to burial; but this, again, seems to be a matter going to an argument as to whether it should continue to be subject to the effects of consecration. The Friends' point is that the land remains subject to the legal effects of consecration. The petitioner says that the proposed use is not disrespectful to the character of the place. The Friends do not accept this; but the test is not whether the use is or is not disrespectful, but whether it is consistent with the consecrated status of the land. The petitioner

says that there is sufficient justification to respond to a secular need. The Friends' point is that the land is consecrated, and devoted to sacred, and not to secular, use. The Friends suggest that a preliminary issue should be identified as to whether the ancillary works for which the petition seeks permission are capable of being works which are consistent with the consecrated status of the land. The Friends note that the petitioner would appear to be content with such a course. Such a preliminary issue could be determined on the basis of written submissions.

39. Even if, in principle, the current proposals might be permitted, the Friends further say that they are not an appropriate use of the consecrated land. They maintain that there have been burials and interments in the consecrated land. The inadequacy of the treatment of those burials and interments is a further reason for refusing any faculty. Although there is no complete certainty about the location of all these burials, the Friends say that the ancillary development for which permission is sought does not appropriately respect the existing burials. This is a submission that can be made by reference to documentary material, and would not, on the face of it, require the calling of oral evidence. There is said to be strong documentary evidence that there was a northern Garden of Remembrance. The view of the Friends is that such ground radar surveys and further investigations as have taken place have not shown that no such garden exists. This is potentially a matter of dispute, about which the petitioner may wish to call evidence. The Friends will seek either to agree such evidence, or to identify any areas of disagreement. The cemetery's records are neither complete nor straightforward; and over the years the Friends have sought better to understand the detail of what has happened. The objection raises two detailed matters (relating to the place of burial of the mother of Nikki Needham, and as to the cremated remains of certain Roman Catholics). It may be that these matters can be addressed satisfactorily without the need to call any evidence. The Friends also refer to references by the petitioner to the upgrading of the main central access road, which is said to have received the archdeacon's approval under list B.

40. I deal first with the objection under s. 5 of the 1902 Act. I agree with the Friends that the court must proceed on the basis of the present law, as recently authoritatively expounded by the Supreme Court, and not as it may become at some uncertain time in the future. I also agree with the Friends that the fact that neighbouring residents may have come to their homes after planning permission for the crematorium had already been granted is no defence to the invocation of the statutory prohibition (although it may conceivably be of some relevance to the nature of any relief) because a statutory prohibition is precisely that. However attractive though it may be to effectively shelve any determination of this faculty application until after this objection has been satisfactorily addressed by the petitioner, I do not consider that I should take this course, for the following reasons. First, as RPC has pointed out, the objections based upon s. 5 of the 1902 Act do not apply to the land which is the subject of the present faculty petition, but rather to the land on which it is proposed to construct the crematorium building. Secondly, action under s. 5 of the 1902 Act can be taken independently of the outcome of the present faculty application. In two recent judgments I have had occasion to consider the differing jurisdictions, and functions, of the consistory, and the civil, courts. In *Re St Paul, North Shore, Blackpool* [2024] ECC Bla 6, (2025) 27 Ecc LJ 286 (in this diocese), I had to consider objections to a faculty petition founded upon assertions of potential nuisance. Granting a faculty, I made it clear that deciding upon questions of nuisance was a matter for the civil courts, rather than the consistory court. At paragraph 14 of my judgment, I explained that:

It is no part of the function of the consistory court to adjudicate upon complaints of nuisance to adjoining land; that is a matter for the civil courts. Nor does the grant of a faculty authorising particular works operate to render them immune from challenge in the civil courts, in accordance with the general law governing the tort of nuisance. Just as the grant of planning permission cannot render works immune from challenge under the civil law of nuisance, neither can the grant of a faculty by the consistory court. The grant of a faculty merely renders the carrying out of the works thereby authorised immune from challenge under ecclesiastical law, or (in the case of a listed building) from challenge for want of secular listed building consent. It does not operate to derogate from any rights enjoyed by the church's neighbours under the general law of nuisance.

41. I repeated, and endorsed, these observations at paragraph 19 of my judgment in *Re St James, Southlake* [2025] ECC Oxf 1 (in the consistory court of the diocese of Oxford). In that case, I held that similar considerations apply to assertions of the threatened breach of a relevant restrictive covenant. As with the tort of nuisance, I held that the enforcement of restrictive covenants is a matter for the ordinary civil courts. In this connection, I note that the local planning authority approached the application for planning permission for the construction of the crematorium on the basis that the provisions of the 1902 Act were not a material planning consideration. Rather, they added an informative to their original decision notice which made it clear that:

This permission does not include any, consent, approval or licence necessary for the proposed development under the building regulation or any other statutory enactment and the development should not be commenced until all consents are obtained.

42. I also agree with RPC that planning matters relevant to the siting of the crematorium building, and its effect upon the local environment, should not be re-visited on this faculty application since these have already been determined by the local planning authority. This faculty application is not the occasion to relitigate the grant of the extant planning permission; nor matters considered by the Bishop when he made his decision to de-consecrate part of the site of the former cemetery. Nor do I consider that I should embark upon any investigation into any of the works that have already been carried out at the cemetery, including the upgrading of the main central access road, in the course of determining the present faculty application. What is done is done; and there is no application before the court for any restoration order or similar relief.

43. That effectively leaves two issues for determination by the court on this faculty application. The first is whether the proposed use of the land, the subject of the present faculty application, for purposes ancillary to the use of the adjoining, de-consecrated, land for secular use as a crematorium is consistent with its continuing status as consecrated land. The second is whether any burials of human or cremated remains will be disturbed during, or as a consequence of, the proposed works, such that the court should refuse to grant the faculty, as asked by the petitioner. The Friends invite the court to determine the first of these issues as a preliminary issue, and on the basis of written representations. RPC has no objection to this proposal.

44. Civil courts are always hesitant about ordering the trial of any preliminary issue. Appeal courts have frequently protested against the decision of a lower court to allow a preliminary point of law to be taken on hypothetical facts, the correctness of which remains to be tried. This course frequently adds to the difficulties of appeal courts, and tends to increase the cost, and the

time, of legal proceedings. It is a practice that should be confined to cases where the facts are complicated, and the legal issue short and easily decided. Cases outside this guiding principle should at least be exceptional: see the observations of Lord Wilberforce in *Tilling v Whiteman* [1980] AC 1 at pages 17-18. Agreeing, Lord Scarman observed (at page 25) that:

Preliminary points of law are too often treacherous short cuts. Their price can be, as here, delay, anxiety, and expense.

45. Helpful assistance is to be found in the commentary at paragraph 3.1.10 of the current (2025) edition of Volume 1 of *Civil Procedure*, which seems to me to be of equal application in the consistory courts. This cites the case of *McLoughlin v Grovers* [2001] EWCA Civ 1743, [2002] QB 1312, where (at paragraph 66), David Steele J gave the following guidance: (1) only issues which are decisive, or potentially decisive, should be identified; (2) the questions should usually be questions of law; (3) they should be decided on the basis of a schedule of agreed or assumed facts; (4) they should be triable without significant delay, making full allowance for the implications of any possible appeal; and (5) any order should be made by the court following a case management conference.

46. On the Friends' case, the proposed use of the land, the subject of the present faculty application, for purposes ancillary to the use of the adjoining, de-consecrated land for secular use as a crematorium is inconsistent with its continuing status as consecrated land; and whether or not any human or cremated remains lie under that land, any faculty should be refused on that ground alone. If that is correct, it will be decisive of the outcome of the present faculty application. It is said to raise an issue of law. If decided in favour of the Friends' contention, it will avoid any need for the court to consider any disputed evidence of interments within the affected land. It can be determined on the basis of written representations. As such, it should be capable of determination without any significant delay, and certainly far more quickly than a trial on disputed evidence. Against that background, I would be prepared to direct the trial of a preliminary issue, provided the petitioner and the Friends, as the only active parties opponent, are able to agree a schedule of agreed, and assumed, facts for the purposes of the trial of the preliminary issue. This would, I think, have to include the assumption (if not a fact) that no human or cremated remains lie under the land that is the subject of this faculty application. I propose to allow the petitioner and the Friends 28 days to attempt to agree such a schedule. If they can do so, I would be prepared to order the trial of a preliminary issue, as formulated above (subject to such modifications as those parties may propose), on written representations. Any further case management directions can await the result of the discussions between those parties.

Conclusions

47. For the reasons set out above, I determine, and direct, as follows:

(1) Neither Mr Diack MBE nor Miss Bowen is an '*interested person*' for the purposes of FJR 10.1 and 10.2. Neither of them is entitled to object to, or oppose, the grant of a faculty in respect of all, or any, of the works or other proposals to which this petition relates. Each of them is to cease to be a party opponent.

(2) The Registry is to write to each of Mr and Mrs Sharpe, Mr and Mrs Bonney, Mrs Haralambos, and Mrs Lord indicating that, unless any of them communicate with the Registry within 14 days of receipt of the communication from the Registry, objecting to this course, they

will each cease to be treated as a party opponent to the petition; and their objections will fall to be considered as part of the objections raised by the Friends.

(3) Subject to the petitioner and the Friends agreeing a schedule of agreed and assumed facts, there is to be the trial of a preliminary issue, on written representations, as to whether (a) the proposed use of the land, the subject of the present faculty application, for purposes ancillary to the use of the adjoining, de-consecrated land for secular use as a crematorium is inconsistent with its continuing status as consecrated land; and (b) whether or not any human or cremated remains lie under that land, any faculty should be refused on that ground alone.

(4) Within 28 days, the petitioner and the Friends are to attempt to agree any reformulation of the preliminary issue, and a schedule of agreed and assumed facts for the purposes of the trial of such issue; and communicate this to the Registry.

(5) Any further case management directions are to be subject to the discussions between those parties.

(6) Permission to the petitioner and the Friends to apply for further directions, and generally.

(7) The costs of and incidental to this judgment are to form part of the costs in the petition.

I record that I have spent 18 hours in reading for, and composing, this judgment.

48. I direct that a copy of this judgment is to be provided to the petitioners and to all of the objectors who have filed particulars of objection in Form 5. Finally I wish to make it clear that, in making these directions I am not, at this stage, expressing any view whatsoever on the merits of this faculty application, or on either of the two live issues that I have identified as falling for determination by the court.

David R. Hodge

The Worshipful Chancellor Hodge KC

Wednesday 22 October 2025