

**Neutral Citation Number: [2023] ECC Swk 3**

**IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWARK  
IN THE MATTER OF STREATHAM CEMETERY  
AND IN THE MATTER OF A PETITION BY JACQUELINE LANDY**

**JUDGMENT**

**Introduction**

1. This is a petition by Jacqueline Landy who is Bereavement Services Manager of the London Borough of Lambeth. By it, she seeks authorisation for the re-use of two areas of what are called “common graves” in Streatham Cemetery. The two areas are known as Section 5 and Section V, respectively and they are both consecrated.

**The facts**

2. Streatham Cemetery is located in Garratt Lane, Tooting SW17. It was opened in 1893 and is now owned and managed by the London Borough of Lambeth (even though it lies within the area of the London Borough of Wandsworth). It is of some conservation interest (both from the historical and landscape points of view) as set out in a Conservation Statement.
3. As might be expected of a cemetery opened more than a hundred years ago and serving a populous area of London, there is now very little room for any further burials. However, there is a strong continuing demand for land to be used for burials. Lambeth LBC now seek to re-use land within the existing cemetery for burials. This is possible by a process of lift and deepen. Thus the existing remains are exhumed from their current positions before being re-buried at a greater depth. This enables the areas of the cemetery that are subject to this process to be used once again for burials. It is a process which in its essence is one which is familiar and hallowed by time. The churchyards around mediaeval churches have been used for burials over and over again. The process does not happen in the same way now. This is because gravestone and other grave markers became more permanent in the nineteenth century. The existence of gravestones at ground level inhibited and generally continues to inhibit the re-use of the space beneath.
4. Within the cemetery there are two area of consecrated ground which, although they have been used for burials are generally free of any monuments. This is because they are areas of common graves. In these areas was simply burial that was paid for but no further rights were acquired consequent upon burial. These areas of common graves are thus grassed. The burials in Section V took place between 1922 and 1935 and those in Section 5 between 1928 and 1936. Because it was possible to inter at triple depth and without leaving space for memorialisation it means that a comparatively small area was used for the reception of a large number of burials. In Section V there are about 8,731 burials; in Section 5, about 5,003 burials.
5. Although the areas are generally free of memorials, there are about ten small tablet-style memorials visible in the grass. It is not clear how these came about. It seems most likely that the cemetery authorities at the time “turned a blind eye” to this; there are certainly no records and there is no-one now working at the cemetery who is able to assist.

6. At the end of 2020, Lambeth LBC displayed notices in the Cemetery of its intention to re-use these areas. It invited relatives of those who were buried in these areas to contact Bereavement Services at Lambeth LBC. No-one was in contact.
7. More recently and in connection with this petition, notices have been posted in the vicinity of Section 5 and Section V, at the entrances to the Cemetery; and on the websites of Lambeth LBC and of the Diocese. These have not led to anyone objecting.
8. The proposal will result in the provision of about 571 new burial spaces; 202 in Section V and 369 in Section 5.
9. The DAC has recommended the proposals for approval.

### **Consideration**

10. In accordance with historic practice, to facilitate the economical use of land and to address the continuing shortage of grave space it seems to me that the proposals before me are in principle both acceptable and commendable. They reflect Diocesan Guidance in respect of churchyards, which is as follows:

*Except where burial rights are granted subject to a particular period of years, there should be an expectation that grave spaces will in due course be reused. This is necessary to economise on land use at a time when grave space is a diminishing resource. This is an increasingly urgent problem which all those responsible for churchyards have to face. Sensitive solutions have to be devised and implemented.*

*Reuse of graves within a period of less than 75 years is likely to cause distress and offence to the living, as well as appearing disrespectful to the dead. But Incumbents should promote and publicise policies for the reuse of graves as soon as 75 years have elapsed after the most recent burial therein, not least so that those presently arranging a burial are informed of what is likely to happen in the future.*

11. I think that 75 years is generally an appropriate period after which the re-use of graves may take place. This period, identified in the Guidance, is also recognised in statute as an appropriate period after which re-use may be permitted.<sup>1</sup>
12. It seems to me unlikely that there are any relatives of those who are interred in these graves who now visit the cemetery. If there were any, I would expect them to have been in touch with Lambeth LBC following the publicity that there has been for the proposals.<sup>2</sup> A more likely scenario is that someone researching their family history discovers that a relative was buried in a common grave and, in the light of this, might visit for the first time. They might discover that the place of the grave either has been re-used or might be re-used in the future. It is possible that they might feel that the re-use of their relative's grave was not appropriate.

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<sup>1</sup> See e.g. section 9 of the Greater London Council (General Powers) Act 1976 and section 74 of the London Local Authorities Act 2007. These Acts are not applicable to the circumstances that I am considering.

<sup>2</sup> One person was in touch but, in the event the grave with which they were concerned was unaffected. It is of course possible that there are some who visit who have chosen not to make representations.

13. It seems to me that a view has to be taken about this. If and when such a scenario arises, the person or family concerned will have the opportunity to read this judgment. The reason why I am granting a faculty will be clear. I hope that they would feel that the concern they might understandably feel is mitigated by the fact that the re-use of the grave space has been permitted for the public benefit.
14. I do not think that there is any legal objection to what is proposed. In re Blagdon Cemetery emphasises the permanence of Christian burial and the requirement for there to be exceptional circumstances to permit reburial. I do not consider that the Blagdon principles have direct application in the present circumstances. What is being considered is not exhumation from one place to another but exhumation and re-interment within a short space of time within the same grave. What is involved involves disturbance of human remains and that certainly should not happen without good cause; but it does not seem to me that this is what was being addressed in Blagdon. Of course, it is possible to characterise the circumstances of the present case as exceptional, because they are ones in which an exception is appropriately made (for reasons given), but this imparts into the Blagdon test a degree of circularity which I do not think that it was intended to have. Nonetheless it is appropriate that I should make it clear that it is only the public benefit arising that overrides the norm of permanence which does apply in this case.
15. The practical issue arises as to what to do with the small number of grave markers that exist. I do not think that it is appropriate that they should be preserved in situ which in practice would limit the area available for re-use and would look odd. Accordingly, I consider that, after this lapse of time, it is appropriate to permit their removal. It seems to me that the appropriate course is that they should be respectfully buried in some convenient place within the Cemetery. If they were moved elsewhere (I think spaces might be found) they would not any longer be marking burial spaces; and they would be likely to be neglected into the future. If the requirement for burial gives rise to practical difficulties, Ms Landy should apply to the Court for further directions.
16. It occurs to me that for the future the re-use of the areas might be by way of unmarked graves, as it has been in the past. This would facilitate re-use (albeit some considerable time in the future). However, the reason why the graves were originally unmarked was because the relatives of those buried could not afford a marked grave. In my experience it is generally true that those who after the death of a relative seek burial of his or her remains also desire the remains to be marked by a memorial of some kind; this obviously provides a focus for a visit. Lambeth LBC propose that it should be possible for the new graves to be marked in the usual way and it seems to me that this is reasonable,
17. As demonstrated in the Conservation Statement, the proposals will not have an adverse effect on the appearance of the Cemetery. The effect on the trees in the two areas has been considered in an Arboricultural Impact Assessment and I shall require the trees of value to be preserved and appropriately protected.
18. It is necessary that the works to facilitate the re-use of these two areas be sensitively carried out. Lambeth LBC have prepared a comprehensive document entitled Principles, Policies and Procedures for the Reuse of Graves which addresses the practicalities and I shall require the works to be carried out as explained in this document. Insofar as is possible works will be carried out during times when the cemetery is closed. The document makes it clear that Lambeth LBC are well aware of the need for sensitivity and the need to keep

the operations as unobtrusive as possible. The imposition of a condition cannot of itself guarantee this; I have however every confidence that Lambeth LBC will manage the arrangements with the appropriate care and sensitivity.

19. Accordingly, I direct that a faculty should issue. The works are to be carried out in accordance with Principles, Policies and Procedures for the Reuse of Graves and the trees are to be protected in accordance with the Arboricultural Impact Assessment and root protection areas taken into account when carrying out works in the vicinity of the trees.

**PHILIP PETCHEY**

**Chancellor**

**23 May 2023**