

Neutral Citation Number: [2024] ECC Wor 2

IN THE CONSISTORY COURT OF THE DIOCESE OF WORCESTER

CASE NUMBER [Private Petition 23/01]

RE: [LOCATION] CEMETERY

IN THE MATTER OF AN APPLICATION FOR THE EXHUMATION AND RE-INTERMENT OF THE MORTAL REMAINS OF [AB] AND [CD]

**JUDGMENT
DELIVERED ON 31 JANUARY 2024**

Background facts

1. AB and his son CD died suddenly on 23 January 1977. AB was 38 and CD was only 11 years old at the time of their deaths. I am not told how they died, although reference is made to an 'accident'.
2. I am told their bodies were cremated and the cremated remains were interred in Section [number] grave number [second number] in [Location] Cemetery on [date]. The original undertakers were [Name] Funeral Directors instructed by Mr EF (father and grandfather respectively of AB and CD) and GH (brother-in-law and uncle respectively). Records have not been retained, but it is understood to be likely that the cremated remains were placed in wooden caskets with brass or plastic name plates prior to burial. It is not clear what condition the caskets will be in, and hence whether the remains can still be identified after the passage of so much time since burial.
3. The application for exhumation and re-interment is made by IJ, the widow of AB and mother of CD, with the support of her two daughters KL and MN. (who are also AB's daughters and CD's sisters) The other surviving family members including AB's sister also support the application.
4. The plan is to remove the remains from [Location] Cemetery and re-inter them at [Private Burial Ground], a privately owned burial site in [County].
5. The petition is supported by OP of [Location] Council Bereavement Services. [Location] Council have indicated that they consent to the petition and will undertake the exhumation if permitted. The family will organise the re-interment with the support of [local ordained minister].

The law

6. The law which I am obliged to apply in considering this petition is set out in the leading case of *Re Blagdon Cemetery* [2002] Fam 299, Court of Arches. This established the following principles:
- a. Burial within a Churchyard, or other land consecrated under the rites of the Church of England, should be regarded as permanent – a *final* resting place. This is because it is symbolic of entrusting that person to God for resurrection. The Court of Arches quoted with approval the following theological formulation prepared by the Right Reverend Christopher Hill, then Bishop of Stafford, *“We are commending the person to God, saying farewell to them (for their “journey”), entrusting them in peace for their ultimate destination, with us, the heavenly Jerusalem. This commending, entrusting, resting in peace does not sit easily with “portable remains”, which suggests the opposite: reclaiming, possession, and restlessness; a holding on to the ‘symbol’ of a human life rather than a giving back to God.”*¹
 - b. Departure from that approach will only be permitted in exceptional circumstances. That is, the petitioner for an exhumation must satisfy the Consistory Court that there are special circumstances in his/her case which justify the making of an exception from the norm that Christian burial (that is, burial of a body or cremated remains in a consecrated churchyard or consecrated part of a local authority cemetery) is final.²
 - c. Medical reasons causing difficulty for a bereaved relative to visit the grave would not be sufficient save for, perhaps in the most extreme cases.³
 - d. Lapse of time may be relevant, particularly where there is a long delay with no credible explanation for it.⁴
 - e. Mistake as to the location of a grave can be a ground upon which an exhumation may readily be granted, as that amounts to the correction of an administrative error, rather than an exception to the presumption of permanence. A mistake may also occur due to lack of knowledge that the burial is taking place in consecrated ground, and for those without Christian beliefs it may be said that a fundamental mistake had been made in agreeing to a burial in consecrated ground. But a change of mind as to the place of burial on the part of relatives or

¹ *Re Blagdon Cemetery*, para 23.

² *Re Blagdon Cemetery*, para 35.

³ *Re Blagdon Cemetery*, para 36 (i).

⁴ *Re Blagdon Cemetery*, para 36 (ii).

others responsible should not be treated as an acceptable ground for authorising exhumation.⁵

- f. The support of close relatives is a relevant factor, but not the support of other people.⁶ I should add that in my view the support of close relatives for a petition that does not otherwise come within the exceptionality test would not thereby bring the case within the test, but if one or more close relatives object this would be a powerful argument against an exhumation that might otherwise have met the test.
 - g. There should be regard to precedent, so that cases on similar facts are decided in similar ways, because of the desirability of securing equality of treatment, so far as circumstances permit it, as between petitioners.⁷
 - h. Burial in a family grave is to be encouraged because such graves express family unity and are environmentally friendly in demonstrating an economical use of land for burials.⁸ However, it should not be assumed that whenever the possibility of a family grave is raised a petition for a faculty for exhumation will automatically be granted. As in this case it is to be expected that a husband and wife will make provision in advance by way of acquisition of a double grave space if they wish to be buried together.⁹
 - i. There is no particular difficulty, if the petition is otherwise justified within the exceptionality test, that a proposed transfer is proposed to be from consecrated to unconsecrated land that is part of a local authority cemetery. Local authorities can be presumed to properly undertake their legal responsibilities for the care and maintenance of their cemeteries, such that earlier authorities refusing removal from consecrated ground to unconsecrated ground do not apply in those circumstances.
7. As has been pointed out in subsequent cases, it was not intended that this guidance is exhaustive – each case must be treated on the facts of its specific circumstances to consider whether the principal test of exceptionality is met.

Application of the law to the present case

8. Applying the tests set out in *Re Blagdon Cemetery* to the facts of this case the following can be determined.

⁵ *Re Blagdon Cemetery*, para 36 (iii).

⁶ *Re Blagdon Cemetery*, para 36 (iv).

⁷ *Re Blagdon Cemetery*, para 36 (v).

⁸ *Re Blagdon Cemetery*, para 36 (vi).

⁹ *Re Blagdon Cemetery*, para 40.

- a. There are relevant medical conditions and I shall consider below whether they are sufficiently 'extreme' to fit the test.
- b. There is a significant lapse of time, as the remains of AB and CD were buried in [year], some [40-50] years ago.
- c. There is no evidence of any administrative mistake. It is not suggested that those arranging the interment were unaware that the relevant part of [Location] Cemetery was consecrated under the rites of the Church of England.
- d. The petition has the support of all close relatives.
- e. Precedent is also considered further below.
- f. Here there is a clear intention (if a faculty is granted) to create a new family grave, to which the remains of the petitioner will be added in due course.

Family Graves

9. It must be said that it is not particularly easy to find a clear path through the reported decisions of Chancellors who endeavour to balance the doctrine of the permanence of Christian burial with the understandable desires of petitioners in their various circumstances. Considering only 'family grave' authorities from the past two years the following apparently conflicting decisions have been made.
10. In *Re St George New Mills* [2021] ECC Der 2, *Re Tixhall Road Cemetery Stafford* [2021] ECC Lic 3, *Re St Giles Ashted* [2021] ECC Gui 1 and *Re Burnley Cemetery* [2021] ECC Bla 2 the respective Chancellors determined that the desire to remove cremated remains to rebury in a family grave did not amount to special circumstances to warrant an exception to the rule of permanence.
11. However, in *Re Peel Cemetery* [2021] EC Sodor 2, *Re Lambeth Cemetery Tooting* [2021] ECC Swk 3, *Re St. Saviour's Cemetery Hungerford* [2021] ECC Oxf 3 and in *Re St. Peter & St. Paul Barnby Dun* [2021] ECC She 2 relocation to a family grave was considered sufficient reason for exhumation.
12. *Re Blagdon Cemetery* emphasises the importance of precedent in promoting consistency of approach where possible. Perhaps the most important authorities for me to consider, therefore, in applying the test set out in that case are those taken by my predecessors in the Diocese of Worcester, so that there is consistency of approach for those living within the Diocese.
13. In *Re Fairfield, St Mark* (31st August 2012) the then Deputy Chancellor of this diocese, Robert Fookes, analysed the broad sweep of decisions relating to 'family grave' cases at that time and noted the apparent inconsistency of approach but concluded that 'exhumation and re-interment in a grave or graves containing more than one existing family member is capable of constituting an exceptional or special reason outweighing the presumption in favour of permanence of burial. Whether it does so, depends upon the strength of the justification being put forward and upon the credibility of the

reasons for any delay in seeking exhumation.¹⁰ On the facts of that case the proposed exhumation was for re-interment into a grave currently containing only one family member, although it was also intended to inter the remains of another, who had died recently and whose ashes had not yet been buried. He also found that there was a mistake in law that would give additional reason if required.

14. That decision was considered by my immediate predecessor Chancellor Charles Mynors in his case of *Re Astwood Cemetery* (14 April 2014). Whilst acknowledging his Deputy's decision as correct as it relates to exhumation for the purpose of reburial 'in a grave or graves containing *more than one* existing family member' he went on to identify 'situations which do not of themselves justify exhumation'. These are:

- that there has been a change of mind on the part of the relatives of the deceased who were responsible for the initial interment, or
- that some or all of those relatives are no longer able conveniently to visit the grave, either because of advancing years or deteriorating health, and a resulting change of residence, or for any other reason; or
- that a surviving spouse or other close relative has subsequently been buried elsewhere.

15. This approach was explained with the following reasoning:

54. Those factors, which are commonly argued, arise in many cases, and do not in themselves indicate that a faculty should be refused; but they are not sufficiently "exceptional" to justify setting aside the normal presumption against exhumation.¹⁹ In particular, in many cases petitioners rely on a chain of circumstances which, when analysed, in truth amount to no more than a realisation that they now wish they had made a different decision at the time of the initial interment. That will not on its own be sufficient; although the court will consider carefully the factual position in each case to see whether they are sufficiently unusual to justify the issue of a faculty.

55. Nor is it relevant to show that a surviving spouse or other close relative has subsequently been buried elsewhere, or wishes to be buried (in the future) in the same place as the deceased – but that a further burial at the same location as that which has already taken place is either for some reason now impossible or else considered to be undesirable.²⁰

56. It is sometimes argued that the refusal of a faculty for the exhumation of a spouse or parent will lead to great distress on the part of a surviving relative (often a widow or

¹⁰ *Fairfield, St Mark* para 82-83

widower). However, this will only rarely justify the grant of a faculty in the absence of any other exceptional reason.²¹

16. I must confess that I struggle to understand the principle behind the difference in approach between a 'family grave' containing the remains of only one other person and that containing the remains of 'more than one' family member. The desirability of expressing family unity and economic use of space for burials applies in both cases. And it is noted that in *Blagdon Cemetery* itself the deceased's remains were transferred to a plot in which the remains of no other person had yet been buried, although it was intended that his parents would be buried there in due course.

17. On balance I have concluded that where it is proposed to relocate remains to create a family grave that will ultimately bring together the remains of more family members than were together prior to the exhumation this can be permitted. This approach fits within the *Blagdon Cemetery* test as interpreted by my predecessors in the Diocese of Worcester and a faculty can be granted if, in my discretion, I consider there are strong enough reasons for it.

Medical conditions

18. As indicated above, I am striving for consistency within the Diocese of Worcester in interpretation of the leading case of *Re Blagdon Cemetery*.

19. Therefore, I accept the approach of my immediate predecessor who determined that the following matters do not, of themselves, provide a sufficient basis for exhumation:

- that there has been a change of mind on the part of the relatives of the deceased who were responsible for the initial interment, or
- that some or all of those relatives are no longer able conveniently to visit the grave, either because of advancing years or deteriorating health, and a resulting change of residence, or for any other reason; or
- that a surviving spouse or other close relative has subsequently been buried elsewhere.

20. However, the present case seems rather more than a change of mind or simply the lack of convenient visiting (although the latter is clearly referred to in the supporting material helpfully supplied by family members).

21. The sudden death of husband (father) and young son (brother) has clearly had a devastating effect on this family, both emotionally and in terms of the mental health of family members, which continues to be very keenly felt [40-50] years on from the tragic events.

22. I have received the personal testimonies from the family members, which reveal an ongoing rawness of feelings of unresolved grief and loss despite the significant passage of time since the deaths. Evidence from MN's psychotherapist supports the application and confirms in her view that creating the new grave is 'profoundly important' to her healing from the 'ongoing life-long effect on her mental and physical health' of the early loss of her father and brother. Similarly, JJ's General Practitioner and that of KL also support this application, with the latter stating that the exhumation and re-interment in [County] would be 'significantly beneficial to her mental well-being'.
23. In my judgment the well evidenced and profound medical and pastoral needs of the petitioner and her daughters which require the exhumation and re-interment to take place, are sufficient to override the presumption of permanence in the circumstances of this sad case.

Practical considerations

24. The length of time in which the remains have been buried may make this permission irrelevant if the exhumation cannot be practically achieved. I therefore give initial permission for [Location] Council to test whether the remains can be successfully exhumed and only for the full permission to be effective if the Council can confirm that they will be able to identify the remains in question and exhume them successfully.
25. In considering this petition I raised concerns as to the permanence of the proposed location for re-interment, this being a private burial ground where the right to burial is contractual and time limited. The petitioner has confirmed, and I am reassured to some degree, that restrictions placed under the planning permission granted for the establishment of [Private Burial Ground] as a burial ground are sufficient to ensure a degree of permanence. If the family are content that this location is suitable and sufficiently long-term, and I had no concerns as to suitability other than permanence, then I am content for the relocation proposed to take place as proposed, with the intention that the mortal remains of the petitioner will also be added in the future.

ORDER

26. I accordingly direct that a faculty be issued permitting the exhumation of the cremated remains of [AB] and [CD] from [Location] Cemetery subject to the following conditions:
- a. The exhumation shall take place reverently and discretely at the direction of [Location] Council;
 - b. The Council shall first make an exploration of the grave to ensure that the remains can be identified and fully removed and only if so, shall they proceed to exhume them;

- c. The ground from which the remains are removed shall be made good at the discretion of the Council;
- d. The remains shall be reburied at [Private Burial Ground address] as soon as practicable thereafter.
- e. This judgment is not to be published in its current form, in view the sensitivity of information contained in it, but only in its redacted form which I shall supply to the registry.

JACQUELINE HUMPREYS
Chancellor of the Diocese of Worcester
31.1.24