

Neutral Citation Number: [2021] ECC Gui 1

**IN THE CONSISTORY COURT OF  
THE DIOCESE OF GUILDFORD**

Date: 7 September 2021

**IN THE PARISH OF ASHTEAD  
THE CHURCH OF ST GILES**

**In the matter of a petition for a faculty** for the exhumation and reinterment of Brian Cooper.

**JUDGMENT**

1. Brian James Newman Cooper died at the age of 68 years in 1998 and was cremated according to his wishes. His ashes were laid to rest in the graveyard of St Giles' Church, Ashtead close to where other family members were buried. This was in the south part of the churchyard between the church and the St. Giles' Dell centre.
2. In March 2020 Brian's wife, Joan died. She was the mother of Graham Kenston-Cooper and Neil Cooper, the petitioners. It was her wish to be buried rather than cremated. Burial plots were at north end of the same churchyard, and this put them in a difficult position because it meant that their parents would be at either end of St Giles' churchyard rather than at rest together (which I assume would have been possible if she had requested cremation). They followed her wishes and buried her at the north end of the churchyard.
3. They later found that Mrs Cooper had left a handwritten codicil to her will dated 9th January 2007. This said "this is to confirm that I wish to be buried in St. Giles' churchyard when I die and not cremated. If possible, it would be good if Brian's ashes could be taken up and put with me".
4. The petitioners naturally wish to abide by the wishes of their mother and applied for a petition for a faculty to exhume their father's ashes and reinter them with their mother's grave in the north part of St Giles' churchyard.
5. I have a letter from Rev. Richard Jones the rector of St Giles' and St George's in support of the petition. The PCC of St Giles' and St George's Ashtead considered this on 23rd March

2021 and were also sympathetic, giving its approval but requesting “minimal disruption to the surrounding plots”. The approval was subject to disturbing the maximum of the existing stone monument laid on the plot or the size of his casket or urn of ashes if applicable. There is plainly a risk of this exhumation disturbing other plots.

6. The essential reason for the petition is so that Mr and Mrs Cooper can now be laid to rest together even though Mr. Cooper requested a cremation and Mrs Cooper requested burial. I can understand the obvious pastoral reasons for the two sons to see their mother and father together rather than in different parts of the churchyard.
7. I must follow the guidance laid down by the Court of Arches in *Re Blagdon Cemetery* [2002] Fam 299. I have a discretion but the starting point in exercising that discretion is the presumption of the permanence and finality of Christian burial. That presumption flows from the theological understanding that burial (or the interment of cremated remains) is to be seen as the act of committing the mortal remains of the departed into the hands of God as represented by His Holy Church.
8. For that reason it must only be in exceptional circumstances that exhumation is to be allowed. Petitioners must show a Consistory Court that there are special circumstances justifying the taking of that exceptional course in the particular case. It is not permissible for the Court to order exhumation just because it would be desirable or convenient.
9. In *Re Blagdon Cemetery* at paragraph 36 (iii) the Court said “a change of mind as to the place of burial on the part of relatives or others responsible in the first place for the interment should not be treated as an acceptable ground for authorising exhumation.” It is not clear whether over the years since 1998 Mrs Cooper changed her mind about being cremated (and thus interred with her husband and near other family members) or whether it was always her wish to be buried (and therefore laid to rest in a burial plot in another part of the churchyard).
10. It is plainly desirable for family members to be buried together where possible for reasons of family unity and also to make best use of limited space in a churchyard. *Blagdon Cemetery* noted that “since double and triple graves in which the remains of members of the same family could be buried together were to be encouraged, the bringing together of family members' remains in a single grave can provide special reasons for permitting exhumation despite the lapse of a long period of time since burial.” However there can be a difference between an exhumation in order to transfer remains to an established family grave and a petition for transfer to the grave of a single family member, as in this case (see *Re St. Laurence Alvechurch* [2016] ECC Wor 3).
11. I note that exhumation was refused in *Re Dawley Holy Trinity* [2013] Stephen Eyre Ch. (Lichfield) for remains to be moved from a family grave to another part of the same churchyard to be buried in a double plot also intended for a spouse.
12. In this case Mr Cooper was laid to rest near his grandparents and there is now a wish for him to be laid to rest near to his late wife. He would be resting close to family members in either case.

13. I do not think that there are the exceptional circumstances required in this case. In 1998 Mr Cooper could have been cremated and interred in a burial plot which could have been also reserved for his widow. I think the choice not to do that in 1998 must be given some respect and any later change of mind does not give me grounds for exhumation. Mr Cooper is already buried close to family members and so the family grave consideration does not give rise to exceptional circumstances. Mrs Cooper's codicil plainly recognised the difficulty involved in moving his remains and appears to understand and respect the permanence of Christian burial. I am also concerned by the PCC's comment about the need for 'minimal disturbance' of adjoining remains. The risk that the remains of other people could be disturbed to any extent by this process is one that I must also take into account and that weighs against the granting of this faculty.
  
14. I have taken into account the wishes of the Coopers' sons to fulfil their mother's wishes and I know that this decision will be a real disappointment to them, but of course the wishes of the family do not on their own give me grounds to grant this petition. Mr Cooper was committed to God in accordance with his wishes in an appropriate location and there are not exceptional circumstances for his rest to be disturbed.

ANDREW BURNS QC  
DEPUTY CHANCELLOR