

IN THE CONSISTORY COURT AT LINCOLN

In the matter of the exhumation of the remains of Mostyn Purnell Cooper
deceased

And in the matter of St Peter's Churchyard, Aubourn

Judgment

1. The Petitioners, who are the widow and children of the deceased Mostyn Purnell Cooper, seek a Faculty for the exhumation and reinterment elsewhere in the churchyard of the ashes of Mr Cooper. The cremated remains were interred on 24 July 2020. The problem that has arisen is that the area where cremated remains are interred has become heavily waterlogged over a lengthy period making it difficult to attend this grave. It is slippery and dangerous underfoot. Efforts have been made to improve the situation with limiting access and putting bark chippings down, but this has not helped. The position is particularly difficult for Mrs Cooper who wishes to bring flowers and spend time close by.
2. The proposal is that the interred remains within a biodegradable cardboard container will be exhumed and reinterred in an identified location in the churchyard at a higher elevation.
3. I have noted the practical concerns of the undertaker and his warning of a strong possibility that it will not be possible to achieve an exhumation in the circumstances, but he does not rule it out.

4. The Rural Dean and the lay chair of the PCC and the churchwarden are all in agreement with the application and have identified a spot at a higher elevation where these remains can be reinterred together with all future cremated remains interments. It will be necessary for the PCC to apply for a Faculty to create a new cremated remains area.
5. All family members agree with this application.

Discussion

6. The principles by which an exhumation from consecrated ground is permitted are well known and set out in the case of In Re Blagdon Cemetery 2002 Fam p299.
7. The presumption is that burial of human remains in consecrated ground is permanent. This presumption arises from the Christian theology of burial which was set out at para 23 of the judgement in Blagdon in the quotation from The Bishop of Stafford's paper on the 'Theology of Burial'. He wrote

“The funeral itself articulates very clearly that its purpose is to remember before God the departed; to give thanks for their life; to commend them to God the merciful redeemer and judge; to commit their body to burial/cremation and finally to comfort one another.”

He went on to explain:

“The permanent burial of the physical body/the burial of the cremated remains should be seen as a symbol of our entrusting the person to God for resurrection. We are commending the person to God, saying farewell to them (for their 'journey'), entrusting them in peace for their ultimate destination, with us,

to the heavenly Jerusalem. The commending, entrusting, resting in peace does not sit easily with 'portable remains' which suggests the opposite: reclaiming, possession, and restlessness; a holding onto the 'symbol' of human life rather than a giving back to God".

8. The principle of permanence can only be departed from if there are special circumstances which justify an exception to the principle that Mr Cooper was laid to rest in 2020 and his remains should not now be disturbed.
9. The Court of the Arches in Blagdon identified various factors which may support a submission that special circumstances have arisen which permit the remains to be exhumed. These factors include (i) medical reasons (ii) mistake (iii) reinterment in a family grave.
10. This is a case in which it was plainly a mistake to have cremated remains interred in a place that was to become so waterlogged so soon after the interment when immediate family members are likely to want to visit, and who are now prevented from visiting. I am sure that it is the intention of Mr Cooper's immediate family, including his widow, that they would wish to be interred in proximity to the new proposed location where Mr Cooper's ashes are interred. In those circumstances the principles surrounding family graves expressing family unity adds weight to this application.
11. It is always exceptional to grant an exhumation, however I am satisfied that exceptional reasons do exist in this case for an exhumation to be permitted.
12. It will be necessary for the PCC to apply for a separate faculty to establish a cremated remains area, but if this area has been

identified, I am satisfied that cremated remains of Mr Cooper can be interred in the identified spot as soon as possible after the exhumation has been achieved pursuant to this Faculty. The Petition for a cremated remains Faculty can be considered in due course and if granted will no doubt authorise other interments in that area.

13. The exhumation must be carried out discreetly with appropriate screening so as not to alarm those visiting the churchyard and at a time when there will be minimal risk of visitors being aware of the exhumation. Notice must be given to the environmental health department of the relevant District Council. The reinterment should take place on the same day.
14. Although this is a pastoral rather than a legal issue, I do not require the families of those with cremated remains in the same area to be contacted and informed about this matter. If they seek exhumation and reinterment, I will consider the applications on their individual merits.
15. In the circumstances I waive my fee.

The Revd HH Judge Mark Bishop
Chancellor
6th April 2024