

NEUTRAL CITATION: [2023] ECC StA 2

IN THE CONSISTORY COURT OF THE DIOCESE OF ST ALBANS

Date: 9 MARCH 2023

In the matter of: CHORLEYWOOD ROAD CEMETERY

JUDGMENT

1. I have before me a petition for the exhumation of the remains of baby J¹ brought by his mother, supported by her two daughters. I have the full name of the deceased and the petitioner, but due to the sensitivities of this case I will use ciphers in this Judgment. Carefully prepared and thoughtful evidence has been presented, including relevant medical evidence. Two principal reasons are advanced for requesting the exhumation: (i) that, by reason of its unsuitability, a mistake was made in the location of the burial when it took place in 1987; and (ii) that the location of the grave site is causing serious health issues for Mrs X. She seeks to relocate her son's remains to Woodcock Hill cemetery and there to have them buried in a plot together with those of his father, who died in 2020.
2. I have considered this matter carefully and have reached the conclusion, on an exceptional basis, to grant a faculty by reason of the compelling circumstances evidenced in this case.

Legal framework

3. There is a legal presumption that once remains have been laid to rest they will remain in situ, undisturbed. It is the responsibility of the church to ensure that they remain in place and the presumption requires compelling reasons for it to be set aside. The

¹ Petition dated 20 February 2023

principles set out by the Court of Arches in *Re Blagdon Cemetery*² are to be applied in cases such as this, where there is a request to remove the remains to a different location.

4. The Court in *Re Blagdon* affirmed the principle that there is a presumption against exhumation and that only exceptional cases would warrant the grant of a faculty. The court made observations of wider application, as follows:

- (i) Medical reasons relied upon by a petitioner would have to be very powerful indeed to create an exception to the norm of permanence, for example, serious psychiatric or psychological problems where medical evidence demonstrates a link between that medical condition and the question of the location of the grave;
- (ii) The lapse of time will not in itself be determinative of the petition. The existence of a credible explanation for the delay is relevant;
- (iii) A mistake as to the location of a grave can be a ground for the granting of a faculty for an exhumation;
- (iv) A change of mind as to the location of the grave should not be a ground for granting a faculty for an exhumation;
- (v) The views of close relatives of the deceased are very significant;
- (vi) The support of the wider community, including the incumbent, the PCC and parishioners will normally be irrelevant;
- (vii) It was appropriate for a chancellor to have regard to the effect of setting a precedent when determining such petitions;
- (viii) Family graves are to be encouraged as an expression of family unity and as an economical use of land for burials.

5. I have had regard to these principles and to the paper presented to the Court in *Re Blagdon* by Bishop Christopher Hill on the Theology of Burial, in which he said:

“The permanent burial of the physical body/the burial of 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, the heavenly Jerusalem. This

² [2002] Fam 299

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 a human life rather than a giving back to God."

Discussion and application to facts

6. The grave site in this case is out of the ordinary because of the inadequacy of its location. It is inaccessible and lacking in dignity, being tucked into a very small area almost hidden underneath a hedge. Its position within the cemetery - bordering a very busy, noisy section of the A404 and nearby to a former chapel converted into a private home which features a children's play area and personal, not always seemly, artefacts on display on the outer walls - means that peaceful contemplation, uninterrupted prayer and remembrance is grossly intruded upon. The uncontroverted evidence before me is that Mrs X received no guidance or advice to view the plot at the time her son's remains were buried in 1987, when she very sadly experienced a stillbirth. She and her husband were grieving deeply and were understandably in shock at the time of the arrangements for her son's burial and acquiesced without querying or considering in any detail the proposed location within the cemetery.
7. Given the unusual and unsatisfactory features of the plot's location it was, I find, a mistake by omission on the part of those liaising with the family at the time not to have made those known to the family, at least by ensuring that the site was first viewed by them. This in turn resulted in a mistake by Mrs X and her family in their acquiescence to the burial without knowing or understanding the unsuitability of the site.
8. These errors are sufficiently compelling to justify the exhumation in this case. However in case I am wrong in my evaluation of that, I should set out that I have also received clear medical evidence demonstrating that location of the grave in this case is directly linked to a serious deterioration in the health of the petitioner.
9. Whilst Mrs X has endured chronic disappointment and concern since the burial as a result of the mistake (as I have found, above) that was made in its location, there has been an acute and serious deterioration in her health since the traumatic death of her husband from COVID in 2020. His death brought to the fore the issue of executing his final wish to be interred alongside their son's remains and the unsuitability of the site.

While I do not set out the details in this judgment as they are private, I am satisfied by the unequivocal medical evidence that the particular location of the grave, with the deficiencies I have identified above, is a significant contributor to serious and debilitating health issues for Mrs X. I am also satisfied that the requested change of location will help to alleviate symptoms. I consider that the evidence I have been provided with satisfies the “very powerful” standard identified in *Re Blagdon* for medical reasons to justify the exhumation and relocation in this case.

10. I am satisfied that the factors above, as well as being compelling grounds upon which the petition may be granted, also provide an explanation for the lapse of time in this case³ (i.e. that although the many problems with the site had been endured by Mrs X over time, the matters leading to this petition have been brought to a head acutely following the relatively recent death of her husband, the renewed issues which that raised about the location of the grave and the subsequent careful consideration that has been given by the family to finding a way forward).
11. I have had regard to the views and consent of close family members, including baby J’s two sisters, and the fact that the relocation of the baby’s remains to Woodcock Hill cemetery will enable his father’s remains to be buried in the same, more suitable, location, thus creating a family plot, which is to be encouraged.
12. As to the effect of setting a precedent when determining this petition, I am satisfied that my decision turns on its own facts and does not give rise to the danger of creating unhelpful precedents encouraging applications for reasons which may be less compelling than those I have evaluated in this case. This conclusion flows from the unique circumstances of the problematic positioning of this grave, the mistake flowing from that, together with the particular circumstances I have had regard to in the medical evidence.

Conclusion

13. In all of the circumstances I am satisfied that the reasons I have identified in this case are compelling and satisfy the *Re Blagdon* test of exceptionality. In reaching this

³ I have also had regard to the evidence of the specialist in exhumation services as to the likely condition of the coffin and the steps to be taken to ensure the exhumation of the entire contents of the grave.

conclusion I have cautioned myself against importing or introducing a concept of the remains of a deceased person being generally portable.

14. I therefore grant a faculty⁴ for the exhumation of baby J's remains in this case and I do so, waiving the requirement for public notice, on condition (i) that the exhumation and reinterment be conducted discreetly and reverently at a suitable time and with screens; and (ii) that the remains are re-interred as soon as reasonably practicable in the plot in Woodcock Hill cemetery, details of which appear in the petition.

Lyndsey de Mestre KC
Chancellor of the Diocese of St Albans
9 March 2023

⁴ Time for completion: 6 months.