

IN THE CONSISTORY COURT OF THE DIOCESE OF COVENTRY

LADBROKE: ALL SAINTS

RE: THE CREMATED REMAINS OF MARGERY GRIFFIN AND GEORGE GRIFFIN

JUDGMENT

- 1) Caskets containing the cremated remains of Margery Griffin and of George Griffin were interred in the same plot in the churchyard of All Saints, Ladbroke in August 1971 and July 2003 respectively. The plot was marked by an upright memorial stone. Jacqueline West is a churchwarden of All Saints. She petitions with the support of the incumbent and the Parochial Church Council and with the consent of Mr. and Mrs. Griffins' daughter for a faculty to allow the exhumation and reinterment of the remains together with repositioning of the memorial. I have already directed that the faculty should issue and this judgment sets out my reasons.
- 2) In 2004 a single storey extension was built at All Saints. This contains toilet facilities and storage rooms. The extension is close to the plot containing the remains of Mr. & Mrs. Griffin. Indeed the plot is within inches of the wall of the extension. The extension is a single storey and its roof slopes up to the relatively low roof of the north aisle. Until the events I am about to describe the memorial stone operated as a stepping stone enabling access to the extension roof and from there to the other roofs. Sadly the stone has twice been used for that purpose by thieves. In 2008 thieves stood on it and stole the roof of the extension. In 2015 the stone enabled thieves to access the north aisle roof and that roof was stolen with damage being caused to the extension roof.
- 3) The memorial stone fell from its base after the second theft. The incumbent, churchwardens, and the Parochial Church Council do not wish to see the stone restored to its original upright position. They fear that further thefts and damage could occur if this is done. Instead they seek to exhume the cremated remains and reinter them with the memorial repositioned above them at a point in the

churchyard away from the church building and alongside a memorial of a similar age and design. I have already said that Mrs. Janet Budd, the daughter of Mr. & Mrs. Griffin, consents to this course.

- 4) The Petitioner also says that in the long term the Parochial Church Council wishes to create a path running alongside the church and such a path would cross the current plot. Further in its current location the plot is on occasion used as a base for ladders and the like when maintenance work is performed on the extension.
- 5) I can say immediately that it is clear that the memorial stone cannot be restored to its original upright position on the current plot. I accept that its presence facilitated the thefts in 2008 and 2015. If it were to remain as an upright stone immediately alongside the extension it would continue to provide a convenient stepping stone on to the roof of the extension and there would be a serious risk that it would facilitate further thefts.
- 6) I have considered the potential argument that the fact that the memorial stone cannot remain in its upright position does not necessitate the exhumation of the remains currently underneath it. It would be possible for the memorial to be laid flat. It would also be possible for the memorial to be repositioned but for the caskets containing the cremated remains to stay where they are. In such circumstances the memorial could have an additional inscription making it clear that the remains of the persons being commemorated are elsewhere in the churchyard. Such approaches would be possible but in my judgment they would be unsatisfactory solutions. The memorial was designed and intended to stand upright. Similarly it would be artificial and undesirable to separate the memorial from the remains of the persons being commemorated. I will turn to consider whether exhumation is permissible in these circumstances. I do so on the footing that there are these other potential ways of addressing the problem but that these other courses are not ideal. If exhumation is not appropriate then one or other of those courses could be seen as the least bad solution.

The Relevant Legal Approach.

- 7) In my judgment the approach to be taken depends on the proper characterisation of this case.
- 8) The starting point in considering any exhumation application is the decision of the Court of Arches in *Re Blagdon Cemetery* [2002] Fam 299. The Court there explained the strength of the presumption in favour of the permanence of Christian burial and the need for exceptional circumstances if exhumation is to be permitted. However, in *Re St Nicholas, Sevenoaks* [2005] 1 WLR 1011 the Court of Arches explained that “public benefit” can be a circumstance justifying exhumation. As the Court explained, at [15], this is not inconsistent with the *Blagdon* approach. Whether the exhumation is for a private purpose or for public benefit in each case there must be a sound factual basis which provides a convincing reason justifying the proposed exhumation.
- 9) In an appropriate case the extension of or alteration to a church building can be a public benefit such as to justify the exhumation of remains interred in the church or churchyard. On occasion this has justified the exhumation of a number of remains. In *Re St Nicholas, Sevenoaks* the Court of Arches considered the approach which had been adopted in a number of previous cases where exhumation had been justified by works of extension or alteration. Thus at [14] the Court referred to an unreported decision of Goodman Ch. Reference was also made to the decisions in *Re St Anne’s, Kew* [1977] Fam 12 and *Re St Thomas, Lymington* [1980] Fam 89. In all those cases exhumation had been allowed in order to facilitate works of extension or alteration to church buildings or works of construction in a churchyard. Those decisions all preceded that in *Re Blagdon Cemetery* but in *Re St Nicholas, Sevenoaks* the Court of Arches referred to them with approval and did not suggest that the *Blagdon* decision required that there be any different approach to such cases in the future. A post-*Blagdon* example of this approach in practice can be seen in the decision of Waller Ch sitting in the Portsmouth Consistory Court in *Re St Mary the Virgin, South Hayling* (2015) 17 Ecc L J 129.
- 10) It is my assessment that the approach to be taken in alleged “public benefit” cases is that the consequence of the disturbance and potential exhumation of

human remains is a factor to be taken into account in deciding whether proposed works can be permitted. However, if the benefits are sufficiently clear and strong then the building of an extension or the making of alterations can be a convincing and sufficient reason for the exhumation of remains.

The Application of that Approach to the instant Case.

- 11) The proposed exhumation is to be seen as one for public benefit rather than for private purposes.
- 12) The extension which was built in 2004 contains toilets and storage facilities. Those facilities were clearly regarded as being of benefit to the church. Indeed, matters go further than that. All Saints is a Grade I listed church. Although the extension is comparatively modest it has a noticeable effect on the church. I have no doubt that in order to grant the faculty for those works my predecessor, Gage Ch, must have been satisfied that substantial benefit would derive from the building of the extension.
- 13) The risk of the theft of lead from church roofs was not as severe in 2004 as it later became. Certainly the gravity of the risk was not at the forefront of the minds of those responsible for church buildings. In those circumstances the risk to the church posed by the juxtaposition of the upright memorial stone and the low roof of the extension would not have been appreciated. I anticipate that if the risk had been appreciated at that time then the petition seeking approval for the building of the extension would have been likely to have sought at that stage permission for the exhumation and repositioning which is now sought. Given the conclusion which I have reached as to the assessment which Gage Ch must have made as to the benefits of the extension it is likely that such permission would have been given at that stage.
- 14) I have to assess the petition in the light of the current circumstances. The conclusion I have reached that permission would have been likely to have been given in 2004 if the difficulty arising from the position of the memorial had been foreseen is not conclusive. However, it is a relevant consideration.

15) My assessment in the current circumstances is that there is a real need to reduce the risk of lead theft and of damage to the roofs of the church. That need justifies the movement or the laying down of the memorial. If exhumation is appropriate then it will be possible to place the memorial upright in a suitable location with the remains of Mr. & Mrs. Griffin reinterred under the memorial. I am satisfied that the proposed exhumation is to be seen as in the public benefit category of case. The exhumation can be seen as a delayed consequence of the building of the extension. This is wholly different from those cases where exhumation is sought for private purposes. This is a case where the proper purposes of the Parochial Church Council and the need to protect the church building from theft justify the movement of these remains and of the associated memorial to another part of this churchyard.

STEPHEN EYRE
HIS HONOUR JUDGE EYRE QC
CHANCELLOR

23rd May 2016