

**IN THE CONSISTORY COURT AT LINCOLN**

In the matter of the parish church of St John, Washborough and

In the matter of Mr and Mrs Whitworth, deceased

Judgment

1. On 26 November 2020 Mrs Audrey Whitworth died and the family plan for her interment to take place on 17 December 2020. The plot in which she and her family believed she would be buried is what was thought to be a double depth grave in which her late husband John Whitworth was interred on 13 April 2006.
2. A test dig took place on 3 December and regrettably it became clear that this was another double depth grave in this churchyard where the first grave had been dug to an inadequate depth. Thus, the coffin for Mrs Whitworth would not have enough earth above it if it was interred in the existing grave.
3. The family have expressed the wish for the grave to be dug to a proper depth so that their parents can be laid to rest together in the double depth grave as had always been planned.
4. On 8 December 2020 the undertakers have applied for a faculty to exhume the remains of Mr Whitworth so that the grave can be dug to a proper depth enabling his remains to be reinterred before Mrs Whitworth's coffin is then laid to rest in the same grave on 17<sup>th</sup> December.

5. This is not the first time that such a problem has arisen in this churchyard. The undertaker responsible for the interment of Mr Whitworth has adopted a very responsible approach to the matter and is paying all the costs associated with this faculty and the proposed exhumation.

### Discussion

6. In considering this Petition it is important that the Petitioners understand, as I am sure they do, the law that I must apply. It is founded upon a Christian understanding of what burial of the body, or the cremated remains, signify. 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 Whitworth was laid to rest in 2006, and that 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 are:

- (i) medical reasons.

The Court made it clear that the only medical reasons which could assist a petitioner in these circumstances would be those which showed quite clearly that a serious psychiatric or psychological problem had arisen caused by the location of the grave to whom the petitioner had a special attachment. The Court made it quite clear mere decline in health and mobility due to advancing years could not be a reason which would displace the presumption of permanence.

There are no such reasons present in this case.

(ii) lapse of time.

The Court held that the passage of a substantial period of time before an application for exhumation was made could not be determinative of the application in itself. However, it would be a factor in assessing the genuineness of the Petitioners' case.

In this case the family and the undertaker have acted with speed once the problem was known on 3 December following the test dig.

(iii) mistake.

Where there has been a simple error in administration, such as burial in the wrong grave, the Court held that faculties for exhumations could readily be granted.

In this case there has been a mistake made on the part, it would appear, of the gravedigger in either failing to dig to a sufficient depth or failing to tell anyone that only a single depth grave could be dug. It is not necessary for me to consider that matter further because the undertakers are covering all costs associated with this faculty and the costs of any exhumation. They accept that a mistake was clearly made.

In Blagdon the Court held that consideration of the effect of precedent by the grant of the application is properly made because of the desirability of securing equality of treatment, so far as circumstances permit between Petitioners. I take this issue into account.

(iv) family grave

The Court held that the use of family graves is to be encouraged because they both express family unity and they are environmentally friendly in demonstrating an economical use of the land for burials. It is clear that Mr and Mrs Whitworth wanted to be buried together.

Determination

10. I am satisfied that the wholly exceptional circumstances which have arisen in this case justify an exhumation of Mr Whitworth's remains to allow his grave to be dug to a double depth. A faculty for exhumation is required for this because Mr Whitworth's coffin and remains will be lifted from the ground: if the coffin could be kept beneath the surface of the ground while work was done around it, then a faculty for exhumation may not have been required. I make no finding upon this issue which has not been argued before me. However, it is clear that this is not proposed and there is no reason why his coffin cannot be lifted from the grave for this excavation work to be carried out: an exhumation is permitted.
11. I have noted the concerns and explanations made by the Rector in his helpful note and take these into account.
12. In reaching this decision I have taken into account that a mistake has been made by professionals concerned with the 2006 interment, and the wishes of Mr and Mrs Whitworth to be buried together in a family grave at double depth.
13. The faculty I grant is for the exhumation of Mr Whitworth's remains to enable the grave to be dug to a double depth

14. The logistics of this exhumation must be carefully planned. My order is that:
- (i) the exhumation of Mr Whitworth's remains and the digging of the grave to a double depth grave, and the reinterment of Mr Whitworth's remains should all be achieved in a single day. If this is not possible then I require a full explanation why not and I will give further directions before any work commences.
  - (ii) all exhumation/s must be screened and carried out in such a way as not to cause distress to anyone visiting the churchyard to visit graves.
  - (iii) the local environmental health department should be notified of the work
15. I understand that all costs of and consequent to this Faculty are to be paid for by the undertakers. In those circumstances I do not require them to be made parties to the Petition.
16. I am very sorry that the Whitworth family have had to deal with these unfortunate circumstances, and I hope that once this has been resolved they will be able to put these matters behind them so that they can both remember and celebrate their parents' lives together.

The Revd HH Judge Mark Bishop

Chancellor of the Diocese of Lincoln

11 December 2020