

IN THE CONSISTORY COURT OF THE DIOCESE OF CARLISLE

RE BRIAN SEDDON DECEASED

JUDGMENT

Delivered on 16 March 2022

A. Introduction

1. The late Brian Seddon (“the Deceased”) died on 9 May 2015. He was survived by his wife, Anne Seddon, who is the petitioner in this matter and by his three children, Gary Seddon, Mark Seddon and Lynne Elrick.
2. Mrs. Seddon seeks a faculty authorising the exhumation of the Deceased’s ashes from an unnumbered plot in the churchyard of St. Peter’s Church, Ireleth. Her case is that it is inconvenient and unsafe for her to visit her late husband’s grave.
3. The churchyard in which the Deceased’s grave is situated is in the Parish of Dalton-in-Furness and Ireleth-with-Askham. Mrs. Seddon’s wish is to move the Deceased’s ashes to Plot 31 in Section A of the same churchyard. Both the plots are consecrated ground.

B. The Facts

4. In her petition Mrs. Seddon states that:

“The reason I need to move Brian’s remains is because of the dangerous situation I find myself in every time I visit his grave to tend the plot I have to kneel and my legs are under the scaffolding poles and I have to hold onto the poles to get up and down. I am the one who has to go the farthest into the scaffolding tunnel. The tin sheets rattle in the wind and I am almost completely enclosed. There is always a threat of injury or even death if it collapses on me or anyone else who visits.”

5. Mrs. Seddon explains that at the time when the Deceased’s ashes were buried she had been given a choice of plots, and chose the one closest to his parents’ graves. She now regrets

that choice and observes that the scaffolding she mentions now separates the Deceased's grave from his parents'.

6. Mrs. Seddon's case therefore focuses on the difficulties presented by the scaffolding around both the Deceased's grave and the approach to it.
7. Mrs. Seddon supports her petition by reference to an article in the local newspaper, "*The Mail*", dated 29 November 2021. It refers to serious, and apparently long-running, problems with the roof at St. Peter's Church, and states "*The 186-year-old church was near to collapse after the roof coping stones slipped out of place last week*". Fortunately, the same article reports that the parish was able quickly to secure the position so that the building was kept "*waterproof and safe*".
8. Mrs. Seddon's petition is supported by her three children. She also produces a letter dated 28 November 2021 from the Funeral Director who was responsible for interring the Deceased's ashes. He confirms that the casket used was made of solid oak and ought, in his view, to "*last for a good number of years*". He also observes that at the time of burial the ground was "*in good order and was free draining*".
9. The petition is also unanimously supported by the Parochial Church Council.

Mrs. Seddon's Further Evidence

10. Mrs. Seddon has assisted me by answering certain written questions I put to her. She describes, by reference to photographs, the "*extremely difficult situation I have to endure every time I visit*". She is concerned that the route to the Deceased's grave has become quite muddy, and she is worried she may slip and break a bone. She confirms that there is only one route leading to the Deceased's grave: being that running under the scaffolding.
11. The photographs I have seen show scaffolding around the corner of the church. They also show the route under that scaffolding that leads to the Deceased's grave, which is situated at or near that corner. There is a horizontal run of scaffolding poles at approximately knee height. Those poles are to the left of the route Mrs. Seddon takes as she approaches her husband's grave.
12. There are other scaffolding poles to the right. They are vertical, and close to the wall of the church.
13. Above the route to the grave is a horizontal run of what looks like wooden scaffolding planks, at a little over head height.

14. The overall effect of the scaffolding is to constrict the width of the path leading to the grave. Repeated walking over the same narrow path doubtless causes it to become muddy in wet weather. Mrs. Seddon is obliged to walk over the same, narrow, route on each visit, and the corrugated sheet metal surround to the scaffolding means that the ground is not exposed to the drying effects of the wind.

Evidence from the PCC

15. I have also had a response to certain questions I put to the PCC, namely:
- (a) Who erected the scaffolding in question, when and why?
 - (b) When is it presently anticipated that the scaffolding will be removed?
 - (c) Does the PCC consider it is currently safe for Mrs. Seddon to visit her late husband's grave and, if not, what measures are to be taken so as to make it safe for her and others to do so? and
 - (d) Whether it would be possible to rearrange the scaffolding in order to facilitate Mrs. Seddon (and perhaps others) visiting graves and if not, why not?
16. The (undated, unsigned) response from the PCC reads:
- (a) *"The scaffolding was erected in November 2019 by Cumbria Design Scaffolding after advice from the architect, when the coping stones at that corner of the church roof were showing signs of movement. These had been kept an eye on for many years and at that point had moved significantly. The architect advised to secure the Roof and therefore the church scaffolding was erected to provide support."*
 - (b) *"For the safety of the building and others the scaffolding can only be removed when the work is done. The work can only be done when funds are available. At the moment St Peter's is paying off a loan for other building works and because of the pandemic fundraising has been very limited. After payment of the initial fee for erecting the scaffolding which covered the first year, the cost of the scaffolding is £82 per week plus VAT so we don't want it up there for longer than it needs to be. At present the charge for scaffolding is being billed but not paid (on agreement with the scaffolding company)."*
 - (c) *"When the scaffolding was erected we wrote to all the parties affected by the scaffolding explaining what was happening. We had instructed the scaffolding company to make safe access to the cremated remain plots that were covered by the scaffolding. At the present moment because the scaffolding is slightly enclosed the ground is very muddy but when it is dry Mrs Seddon will be able to visit the grave."*

(d) *“This is not possible because the graves in that area are directly under the place where the coping stones are moving.”*

17. I am sorry that the PCC was not able to give a direct answer to my third question: as to Mrs. Seddon’s safety in visiting her late husband’s grave. Nonetheless, from the fact that the PCC does not identify any immediate measures it proposes in order to make it safe for her to visit, I approach the matter on the basis that the PCC’s written response amounts, in effect, to its assurance that it considers it was safe (albeit inconvenient) for Mrs. Seddon to come and go under the scaffolding at the date of that written response. Had the position been otherwise I would have expected the PCC candidly to say so.
18. I also note that the PCC describes how it acted on the advice of its retained architect in erecting the scaffolding. In other words, it took, and acted on, appropriate professional advice. It seems clear that the purpose of the scaffolding was as an expedient to ensure the continued integrity of the church building and the safety of visitors to the church and churchyard. I infer from this that the architect’s professional advice was that the scaffolding now on site was appropriate for both of those purposes.
19. Furthermore, Mrs. Seddon describes meeting the local Archdeacon at the Deceased’s grave in December 2021, so that he could see for himself the difficulties that she was facing.
20. I draw a further inference from this, to the effect that if the Archdeacon had any substantial reason to be concerned over Mrs. Seddon’s safety because of the condition of the scaffolding or the church building then he would promptly have taken action one way or another to remedy the situation. I am not told that he took or directed any such action.

Procedural History

21. Mrs. Seddon has confirmed that she is happy for her petition to be dealt with on the basis of her written representations and without a hearing. I consider that this is an appropriate course of action in this case, having regard to the overriding objective, and proceed accordingly under the procedure set out in Part 14 of The Faculty Jurisdiction Rules 2015 (as amended).

B. Law

22. The relevant legal principles are set out the judgment of the Court of Arches in *Re Blagdon Cemetery* [2002] 3 WLR 603. From that decision it is clear that the starting point in every

case where exhumation is sought is (paragraph [33]) “...the straightforward principle that a faculty for exhumation will only be exceptionally granted.”

23. The reason for this is that “*The disturbance of remains which have been placed at rest in consecrated land has only been allowed as an exception to the general presumption of permanence arising from the initial act of interment*” (paragraph [20]). The presumption of permanence of Christian burial 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 (paragraph [21]).
24. While the Court of Arches identified various categories of exception it stated [33] that “*Whether the facts in a particular case warrant a finding that the case is to be treated as an exception is for the chancellor to determine on the balance of probabilities*”.
25. This is essentially a matter of discretion, and it is always (paragraph [35]) “...for the petitioner to satisfy the consistory court that there are special circumstances in his/her case which justify the making of an exception from the norm that Christian burial, that is burial of a body or cremated remains in a consecrated churchyard or consecrated part of a local authority cemetery, is final.”

C. Determination

26. For these reasons, the determination of Mrs. Seddon’s application engages the presumption against exhumation and the principle that a faculty for that purpose ought only to be granted in exceptional circumstances. It is for her to make a case that there are special circumstances that, on the balance of probabilities, justify an exception from the norm.
27. In my judgment there are three factors that must be specifically considered in this case, being (a) the difficulties presently encountered by Mrs. Seddon in visiting her late husband’s grave; (b) whether it is safe for her to do so; and (c) the length of time for which it is currently anticipated those matters will continue to present Mrs. Seddon with problems.
28. As to the first, Mrs. Seddon’s case is, essentially, that she finds it inconvenient and difficult to visit her late husband’s grave because of the scaffolding around it.
29. In *Re Blagdon Cemetery* at paragraph 36, the Court of Arches indicated that the difficulty of a petitioner in visiting a grave because of his or her state of health, making the journey more challenging, would not be sufficient to warrant exhumation.

30. That is not quite Mrs. Seddon's case, however. The difficulty for her in visiting her husband's grave is occasioned by the scaffolding around it, rather than any physical impairment of hers. She is constrained to use a muddy path, along a route with scaffolding either side, that makes it difficult for her to come and go and to tend the grave.
31. As to the safety of Mrs. Seddon visiting the grave, it does seem to me that if she could show that it was unsafe for her to come and go from her husband's grave then that would potentially be a very significant matter going to the exercise of my discretion. Equally, however, I would add that if that were the case then it would also be necessary to consider if the process of exhumation could itself be safely carried out.
32. As it is, my conclusion, on the balance of probabilities, is that Mrs. Seddon has not demonstrated that it is unsafe, as opposed to inconvenient and difficult, for her presently to visit the grave. She has put forward no evidence persuading me that the scaffolding or church building is unsafe.
33. On the contrary, and as I have explained, it seems to me that there are reasonably good grounds to expect that both the church building and the scaffolding around it are in a safe condition (see paragraphs 17 to 20, above). The scaffolding was put up as a measure to keep the church building from deteriorating further and to ensure safety. It was erected by specialist scaffolding contractors acting on the expert advice of an architect engaged by the PCC. There is no evidence persuading me on the balance of probabilities that the advice or work in question was incompetent, or that the scaffolding company has left the site in an unsafe state.
34. The third factor I have taken particularly into account is the length of time for which it is presently anticipated that the scaffolding will remain in position.
35. The PCC have not been able to give a precise answer to my question of it in that regard. That is because funds are not currently in place to carry out the necessary repair works.
36. What is clear, however, is that the PCC does not intend the scaffolding to stay permanently in place. The intention is to remove it once repairs have been done and when it is no longer necessary.
37. I should add that I note from the online faculty system that a petition (reference 2022-069707) has recently been presented by the Vicar and Church Warden of the parish. It is at an early stage, and the details are not entirely clear to me, but concerns a proposal to do works to the roof at the church.

38. In these circumstances I do not find that there are exceptional circumstances that warrant exhumation. While I sympathise with Mrs. Seddon for the problems she presently encounters in visiting her late husband's grave, I cannot conclude on the evidence I have seen that it is unsafe for her to do so, or that her difficulties are likely to be long lasting. The evidence I have read indicates that the scaffolding is only intended to be a temporary expedient until the church roof is made safe.
39. It therefore follows that in my judgment, and in the exercise of my discretion, I do not grant the faculty sought.
40. In accordance with the practice of this court Mrs. Seddon, as Petitioner, must pay the costs for the determination of this Petition.

D. Further Directions

41. I direct that a copy of this Judgment should be sent to the PCC and that this paragraph and paragraphs 17 to 21, above, are specifically drawn to its attention. I expect that the PCC will wish to ensure, by promptly (a) taking appropriate professional advice and (b) obtaining the express assurances of Cumbria Design Scaffolding, that it is currently safe (and will, until the scaffolding is removed, remain safe) for Mrs. Seddon to come and go from her late husband's grave. I would also expect the PCC to share the substance of that advice and those assurances with Mrs. Seddon as soon as possible after they are received.

JAMES FRYER-SPEDDING

Deputy Chancellor of the Diocese of Carlisle