

Neutral Citation No: [2023] Ecc StA 4

In the Consistory Court of the Diocese of St Albans

Petition 1501

**re Fulling Mill Lane Cemetery, Welwyn**

**Introduction**

1. This is a petition for the exhumation of ashes from a consecrated plot in the garden of remembrance in Fulling Mill Lane Cemetery, Welwyn. The apparent intention is that they be re-interred in a new, full-size plot in the same cemetery, which would subsequently become a family grave.

**Family background**

2. Emma Havord died in a car accident in 1988, at the tragically young age of 20. The petitioners are Philip and Kay Havord, Emma's parents. They have another daughter, Melanie, who has a son, Ben. I hope no offence is taken if I refer to each of them in this judgment by their first names.

**The Petition**

3. By this petition, Philip and Kay seek – with the support of Melanie and Ben – the exhumation of Emma's ashes from the garden of remembrance. The intention is that they be interred in a full-size plot in the same cemetery.
4. They accept that there was no mistake in the original location of the interment. Philip explains that with advancing years, both he and his wife have significant mobility issues, making it increasingly difficult to care for Emma's grave without treading on other, neighbouring graves or having to use neighbouring headstones to help them rise from a kneeling position. Having seen a photograph of Emma's grave, I can see that they go to great

trouble to keep it as an immaculate memorial to her. They tell me that a larger grave would (perhaps counterintuitively) be easier for them to care for; by way of explanation, they provide a photograph of a grave marked with a headstone, kerbs and chippings, which is what they would wish for.

5. They also tell me that it is their sincere wish that when their time comes, they be reunited with their daughter in what would become a family grave. I am not told whether it is their desire or intention to be buried or cremated. I infer that it would also be, in due time, the resting place of Melanie and Ben, both of whom join in the expression of desire for a family grave. I am not told that any such plot in the cemetery has yet been identified or purchased.
6. I should also add that I have no information concerning the way in which Emma's ashes were interred, or whether any vessel in which they were contained could be expected to be in a sufficiently intact condition to make exhumation a practical possibility.

### **The law**

7. I know that the petitioners have been given a copy of the Court of Arches decision in *re Blagdon Cemetery* [2002] Fam 299. That decision is binding on me. It explains that there is a general presumption that Christian burial is permanent, and the necessary faculty for exhumation from consecrated ground will only be given in circumstances sufficiently compelling as to properly justify making an exception to that permanence.

### ***Lapse of time***

8. While lapse of time can militate against the grant of such a faculty, the court in *re Blagdon Cemetery* said that it is not determinative; and I readily understand that it is only with the petitioners' advancing years and failing

health that the desire for an exhumation has crystallised. This is a credible explanation for the apparent delay in seeking exhumation.

### ***Health***

9. The court in *re Blagdon Cemetery* countenanced the possibility that there could be medical reasons which might satisfy a court that an exception to the general principle of permanence should be made. But it was careful to say that those reasons would have to be “very powerful indeed”, giving the example of serious psychiatric or psychological problems arising from the location of the grave of the deceased.
10. In the case before the court in *re Blagdon Cemetery*, the facts bore some similarities to this case. The petitioners’ son had died in an industrial accident at the age of 21, more than 20 years earlier. Exhumation, with proposed reinterment near where the petitioners now lived in retirement, was sought on the grounds that advancing years and declining health made it difficult for the petitioners to travel to visit their son’s grave. The Court of Arches agreed with the consistory court, saying:

*In so far as Briden Ch. treated the petition of Mr and Mrs Whittle as one seeking exhumation of Steven simply in order to visit his grave more easily, we cannot fault his conclusion that this was not a sufficient reason for exhumation.*

11. The court went on to observe:

*If advancing years and deteriorating health, and change of place of residence due to this, were to be accepted as a reason for permitting exhumation then it would encourage applications on this basis.*

It then considered the possibility that if this were permitted and encouraged, remains might be subject to multiple exhumations and moves for the convenience of the bereaved, and added:

*Such a practice would make unacceptable inroads into the principle of permanence of Christian burial and needs to be firmly resisted.*

12. In the present case, the petitioners have not moved away from the site of the grave. Philip and Kay's difficulties are not with visiting the grave, so much as looking after it. I wonder whether it might be possible for them to find someone who might, under their direction, maintain the grave for them. Whether or not that turned out to be the case, I am driven to conclude that in this respect at least, the case for the exhumation of Emma's ashes is less strong than that of the petitioners in *re Blagdon Cemetery*, which was held not to constitute sufficient reason for an exhumation.

### ***Family graves***

13. The court in *re Blagdon Cemetery* went on to recognise that family graves both express family unity and represent an economical use of land for burials; and it considered that the creation of a family grave might constitute sufficient reason to permit exhumation. (In both *Blagdon* and the present case, the exhumed remains of the child of the petitioners would be the first interment in the new, family grave.) However, the court affirmed:

*... it should not be assumed that whenever the possibility of a family grave is raised a petition for a faculty for exhumation will automatically be granted. ... Where special circumstances are relied upon in respect of a child who has predeceased his or her parents, it will be insufficient if there is simply a possibility of establishing a family grave. As in this case there would have to be clear evidence as to the existence of the legal right to such a grave if no family member was already buried in it.*

14. I do not have any evidence of an existing legal right to a grave which could become a family grave. This alone is a compelling reason not to grant the faculty as sought.

15. However (and I accept that I have no evidence of this), I imagine that what is likely to happen is that Philip and Kay will, even if this petition is refused, purchase a plot in this cemetery big enough to comprise a family grave for their own, and Melanie's and Ben's, interments. What then?
16. If Emma were not, in the end, interred in that family grave, I am mindful of the possibility, as identified by Wood Ch. in *re Allerton Cemetery* [2022] ECC Liv 1, that this might raise unwarranted questions as to why Emma was not interred with other members of her family.
17. Equally, I am mindful of the fact that were I to refuse to grant a faculty now, a different judge in this court, faced in the future with another petition for a faculty to exhume Emma's ashes for their reinterment in a family grave once one had been established, could readily be persuaded that such a faculty could properly be granted. (Humphreys Ch. in *re St George, Kidderminster* [2022] ECC Wor 10 has recently set out starkly the divergence of approaches across different dioceses; and I have found no relevant recent decisions in the diocese of St Albans to which I should pay particular regard, the court only having alluded very briefly to the creation of a family grave in *re Chorleywood Road Cemetery* [2023] ECC StA 2.) The end result would be the same; the only difference would be that Philip and Kay would have been deprived of the comfort of knowing that they would, in the end, be interred with the remains of their daughter.

### **Determination**

18. I am not satisfied that the circumstances of the present case justify the grant of a faculty for the immediate exhumation of Emma's ashes. To do so on either of the grounds discussed above, or taking them in combination, would be to pay insufficient regard to the presumption of permanence.
19. However, were there evidence of an existing right to burial in a family grave, such that the family grave were not "simply a possibility" (in the words of

*Blagdon*) but already in some sense a reality, then my conclusion would have been different. The sudden and tragic loss, to this small and close family unit, of their daughter makes the desirability of the expression of family unity through a family grave particularly compelling; and her exclusion from a family grave would therefore be particularly incongruous. I am satisfied that in making this decision I would not be setting a precedent.

20. My decision, therefore, is: while I do not grant a faculty for the immediate exhumation of Emma's ashes, I do grant a faculty for their exhumation at the time of the first burial of one of the family members identified in this judgment in a grave intended to be a family grave; for their reinterment in that family grave. This will allow the family the reassurance that Emma's ashes will, in due time, join their mortal remains in the family grave.
21. This faculty is, necessarily, without limit of time; but it is subject to the conditions that:
  - (a) before the exhumation, an undertakers do confirm in writing to the Registry that in his or her professional opinion, the remains and any container are likely to be sufficiently intact that their integrity can withstand their exhumation; or if not, that the interred ashes are likely to be sufficiently distinguishable from the surrounding earth that they can be confidently and completely exhumed;
  - (b) the exhumation be conducted under the direction of the incumbent or other minister, discreetly, at an appropriate time and in a seemly manner; and
  - (c) the exhumed remains be reinterred, in a new container if appropriate, in the family grave as soon as practicable thereafter.
22. I am aware that it might be open to me to grant a faculty conditional merely upon the securing a legal right to a grave to be used as a family grave,

rather than upon the first use of such a family grave. I do not do so, for the following reasons:

- (a) I have, in reaching my decision, made assumptions about Philip and Kay's future actions. But for those assumptions, I would have dismissed the petition outright, rather than granting a faculty subject to conditions. It seems to me that imposing a condition which is perhaps one degree stricter than merely securing the legal right to a grave to be used as a family grave is an appropriate response to the fact that the petitioners have not yet taken steps to bring about a family grave by securing such a legal right.
- (b) There is a possibility that, in the particular circumstances of this case, to grant a faculty on such a condition would be seen as tantamount to allowing exhumation merely for the convenience of the petitioners. This would be an unjustified dilution of the requirement for exceptional circumstances before exhumation may be permitted.
- (c) Such a decision may also be seen as setting a precedent, encouraging petitions for faculties in more liminal cases.

David Willink Dep. Ch.

29 June 2023