



Faculty — Churchyard — Exhumation of cremated remains — Exhumation requested by the Team Vicar due to pastoral problems caused by the close proximity of an earlier grave — Whether exceptional circumstances established for granting a faculty for the exhumation and reinterment in the same churchyard — Faculty granted

Petition No: 11063

IN THE CONSISTORY COURT
OF THE DIOCESE OF OXFORD

Date: Sunday 15 September 2024

Before:

THE WORSHIPFUL DAVID HODGE KC,
CHANCELLOR

In the matter of:

St Mary the Virgin, Beech Hill

THE PETITION OF:

The Reverend David Little
(Team Vicar of the Loddon Reach Benefice)

This is an unopposed exhumation petition determined on the papers and without a hearing

There were no objections to the application

The following cases are referred to in the Judgment:

Re Blagdon Cemetery [2002] Fam. 299

Re St Mary, Catcliffe [2024] ECC She 6

JUDGMENT

1. This is an unopposed petition, verified by a signed statement of truth dated 28 August 2024, by the Reverend David Little, the Team Vicar of the Loddon Reach Benefice (which includes the Grade II listed church of St Mary the Virgin, Beech Hill), to disinter the cremated remains of the late Isabel Gwendoline D’Arcy (**‘Isabel’**) from the churchyard and to re-inter them elsewhere in the same churchyard.

2. Isabel died on 8 May 2024, and her cremated remains were interred in a solid oak casket in a double depth grave in the churchyard of St Mary the Virgin, Beech Hill on 3 July 2024. Isabel was both well-known, and very popular, in the village, and many people turned out for her funeral, which was conducted by the petitioner.

3. Unfortunately, Isabel’s grave has been sited directly below the joint grave of the late Ernest & Ann Lowthian (**‘Ernest and Ann’**). According to the petition, this is causing pastoral problems in the village of Beech Hill. The closeness of the two graves makes it impossible to fit a standard-size ledger stone over the top of each buried casket. This has led to great distress for both the families concerned, who are mourning the recent loss of their loved ones. The Lowthian family lost both their parents within weeks of each other; and, after a double funeral held in the church, their ashes were interred together, in solid oak caskets, in a double-depth grave on 26 February 2024. This was a big funeral for all in the village as Ernest and Ann were well-loved, and had lived there for the past 40 years.

4. The closeness of the graves was brought to the attention of the benefice on 6 July 2024 by Mr Thomas Lowthian, the son of the late Ernest and Ann. He rang and spoke with the Team Rector, the Reverend Nigel Beer, in a very distressed state upon discovering that the photographs of his parents, which had been laid above their grave, had been moved from their original location. As it was the petitioner who had had the pastoral responsibility for both funerals, it was he who followed this up, by speaking to Mr Lowthian the following day. Mr Lowthian sent the petitioner photographs that he had taken of the site of the grave, one on the actual day of the funeral.

5. Soon afterwards, the petitioner met with Mr Anthony D’Arcy at the graveside to explain the situation to him. Up to that point, Mr D’Arcy had been unaware that the graves of Ernest and Ann were so close to his late wife’s grave. He had reported to the Benefice office, some time earlier in the week, that the flowers on his late wife’s grave had been removed, which he had found very distressing. Mr D’Arcy was very understanding of the problem, and he asked if his late wife’s casket could be relocated to a more suitable spot within the churchyard. Normally, the benefice would have suggested the next plot along, but due to problems with tree roots in that

area (which had been noted when Isabel's grave was dug), the Benefice have identified a different area in the churchyard.

6. The petitioner has considered the judgment of the Court of Arches in *Re Blagdon Cemetery* [2002] Fam. 299, and has carefully considered the legal and theological principles set out therein. He has noted the references (at paragraph 23) to the paper on the '*Theology of Burial*' (in September 2001) written by the Right Reverend Christopher Hill, then the Bishop of Stafford, wherein he had drawn attention to the fact that:

"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."

The petitioner comments:

"This final matter of comforting one another is an important element in the grieving process that the bishop draws our attention to. But in this case the 'comforting' is severely hindered by the practical closeness of the interred caskets. Whilst this status quo continues it makes it more difficult for the bereaved to understand and appreciate the 'giving back to God' [also cited] when the practical problems are obviously in the forefront of their minds. A move I believe would help all the families concerned who fully understand that final resting places are important and certainly do not embrace 'portable remains' as they are looking for something final and permanent and in line with the other graves in the churchyard.

We realise that these are exceptional circumstances, but do earnestly believe in the pastoral and theological correctness to seek this exhumation and re-interment in our churchyard. We also realise that we are seeking to do this before much time passes as per the reference in the Blagdon judgment [at paragraph 36 (ii)]."

7. This application has the support of the Reverend Nigel Beer, the Team Rector and Incumbent of the Loddon Reach Benefice (in the Archdeaconry of Berkshire). The court has also received written consents, dated 19 August 2024, to the disinterment and reinterment of the late Mrs D'Arcy's remains on behalf of the D'Arcy and the Lowthian families. Since I am satisfied that any surviving near relatives of the late Mrs D'Arcy consent to the proposed faculty being granted, I dispense with the giving of public notice. Since I am satisfied that this is a clear case, I have not thought it necessary to call for any written representations.

8. The *Blagdon* decision establishes that the interment of human or cremated remains in consecrated ground is intended to be permanent; and that requests for exhumation are only granted exceptionally. I am satisfied, however, that there are special factors in the present case which make it an exception to the norm of permanence. A relevant mistake as to the location of a grave is one of the recognised cases in which it may be appropriate for an exception to be granted: see *Blagdon* at paragraph 36 (iii). Here, there would appear to have been a mistake as to the proximity of Isabel's grave to the adjoining grave containing the recently cremated remains of Ernest and Ann, and, consequently, of the practicality of installing two separate ledger stones to commemorate all three deceased in their two separate burial plots.

9. Furthermore, as Chancellor Singleton KC recently observed in *Re St Mary, Catcliffe* [2024] ECC She 6, at paragraph 6 (albeit in the different context of a dispute over the wording to be inscribed upon a proposed memorial):

“Churchyards and the memorials installed in them should be a place where all those bereaved can come to visit and remember those whom they have lost at the place where their remains have been interred. They should also be an oasis of peace, suitable for time spent in quiet reflection and contemplation, for all visitors, whether bereaved or not.”

On the evidence, the proximity of these two separate burials is a source of distress to the recently bereaved relatives of Ernest and Ann, and of Isabel. I am satisfied that pastoral considerations, identified by those responsible for the administration and care of a churchyard (as here), are capable of constituting special factors which may justify making an exception to the norm of permanence.

10. The petitioner undertakes in the petition that the disinterment, and subsequent reinterment, of Isabel’s recently cremated remains will be conducted with due reverence and decency. Since this is a petition by the Team Vicar of the Benefice, with the support of the Team Rector and Incumbent, I do not consider it necessary to make the grant of the faculty subject to any conditions. The petitioner can be trusted to implement the faculty in accordance with all appropriate decorum, and with due regard to the legal niceties, including the recording of the exhumation, and the reinterment, in the register of burials. The re-interment is to be carried out immediately after the exhumation, and within three months of the date of the faculty. The petitioner is to inform the Registrar upon completion of the re-interment.

11. The petitioner must pay the costs of this application; but, in the usual way, I charge no fee for this written judgment.

David R. Hodge

The Worshipful Chancellor Hodge KC

The Sixteenth Sunday after Trinity

15 September 2024