

Neutral Citation Number: [2025] ECC Chd 1

IN THE CONSISTORY COURT OF THE DIOCESE OF CHELMSFORD

IN THE MATTER OF BENTLEY COMMON, ST. PAUL: PETITION NO. 3608

JUDGMENT

1. This is a petition for a Faculty seeking permission for the exhumation and reinterment of the cremated remains of the late Jonathan Neil Smith. I will refer to him as “Jonathan” to distinguish him from other Smith family members. The petitioner is Mrs. Diane Smith, Jonathan’s mother. Jonathan’s cremated remains are presently interred in the churchyard of St. Paul, Bentley Common. The proposed reinterment is in another churchyard in the Diocese of Chelmsford, that of the Priory Church of St. Laurence, Blackmore.

The circumstances of the petition

2. Jonathan sadly committed suicide on 10 January 2013. His body was cremated, and the remains were interred in the Bentley Common churchyard, in a grave that contains the remains of other members of Mrs. Smith’s family – her mother and her uncle, with her grandparents being buried in the adjoining plot. There are two headstones over the two plots: one identifies the names of the four persons whose remains are buried in the two plots, and the other has the details of Jonathan and of his older brother Anthony. Anthony died shortly after his birth and was buried without his parents’ consent in an unmarked grave at Brentwood. This is a family that has had more than its fair share of tragedy.
3. Although members of Mrs. Smith’s family are buried at Bentley Common, she explains that she and her husband, Jonathan’s father, came to live in Blackmore in 1971. They lived there together until her husband died and Mrs. Smith remains there. Jonathan’s home was Blackmore. He grew up in Blackmore and was involved with the church and local community as a child.
4. One might ask, therefore, how it was that Jonathan’s remains came to be interred at Bentley Common. Clearly the existence of the family grave played a part. However, the position appears to have been more complex than that. Mrs. Smith states that the church at Blackmore was experiencing difficulties at the time of Jonathan’s death and was essentially dysfunctional; that the then incumbent would not make himself available to conduct the funeral and that another priest had to be engaged; and that she did not feel able to make inquiries of the incumbent with regard to interment at Blackmore at the time. Whilst none of the other material before me corroborates that account, neither does any of it suggest that it is untrue. Mrs. Smith also cites the shock of Jonathan’s suicide – she says that she and her

family “*did not know which way to turn*” and “*were... not thinking properly*”. She says that the priest who conducted the funeral stepped in to assist with finding a place to inter Jonathan’s remains and that “*to save a fuss we made it Bentley no other reason*”.

5. Jonathan apparently expressed no wishes with regard to the resting place of his remains. As Mrs. Smith puts it, “*suicide does not give you that chance*”.
6. Jonathan’s father, Mr. William Smith, died recently and is buried in the churchyard at Blackmore. Mrs. Smith wishes her son’s ashes to be reinterred in his father’s grave.
7. Mrs. Smith’s primary reasons for seeking the reinterment are the circumstances of the original interment (which, as I have noted above, were unusual and unfortunate) and the desire to place his remains in the same grave as those of his father. She also points to the fact that Blackmore was Jonathan’s home, and to the fact that three of his close friends are now buried in Blackmore churchyard having died young. Finally, she asserts that the churchyard at Bentley Common is not properly maintained. As at many churches, the PCC at Bentley Common has adopted a policy of allowing the grass to grow and wild flowers to flourish around the graves. It is clear from her comments that Mrs. Smith does not agree with this policy.
8. I have received letters in support of the petition from Jonathan’s surviving family members – his brother, Andrew Smith, and his sister, Tracy Stiling. The petition is supported (or at least not opposed) by the incumbent, Rev. Julie Hardy, and the PCC at Bentley Common, and by the incumbent at Blackmore, Rev. Canon Samantha Brazier-Gibbs. The PCC at Bentley Common have raised a question in relation to headstones, which I address separately below.
9. Because the proposed reinterment is into another churchyard, it is into consecrated ground, and no question arises as to any need to obtain a Home Office licence.
10. A Public Notice was displayed from 27 October 2024 to 24 November 2024 and no objections were received.

The principles to be applied

11. As is well known and as I have noted in previous judgments, the principles to be applied to a petition for an exhumation, whether following Christian burial or the interment of cremated remains in consecrated ground, are set out in the judgment of the Court of the Arches in Re Blagdon Cemetery [2002] Fam 299. The starting point is a presumption *against* exhumation, and “*a faculty for exhumation will only be exceptionally granted*” (see

Re Blagdon at [33]). It is for a petitioner to satisfy the Court that there are special circumstances in his/her case which justify the making of an exception from the norm that Christian burial is final, as the judgment states at [35].

12. Whether a case is an exceptional one is for the Chancellor to determine on the facts of that case and on the balance of probabilities, and is ultimately a matter for the Chancellor's discretion (Re Blagdon, [35], [41]).
13. Factors which might be sufficient to justify, or militate in favour of, an exhumation may include (but are not limited to) the following:
 - (i) Medical reasons, but only if these are very powerful: difficulties in visiting a grave by reason of poor health or advancing years are not sufficient.
 - (ii) Where the deceased has died suddenly and unnaturally, having left no indication as to his own wishes as to burial, and where he has no link with the community in which he is buried. This may go towards justifying exhumation, as it did in Blagdon itself.
 - (iii) Where there has been a mistake in relation to the burial – for example, the deceased has been buried in the wrong grave, or where the deceased's family has not been properly advised as to the significance of burial in consecrated ground.
 - (iv) Where the application is to rebury the deceased in a family grave.
 - (v) Support from close relatives.
14. In contrast, matters which are not usually sufficiently exceptional reasons to justify exhumation include a change of mind by the deceased's relatives as regards the place of burial; difficulties in visiting a grave, bearing in mind that many people move house over the course of a lifetime; medical reasons that fall short of the exceptional; and local support for exhumation from those who are not close relatives. Lapse of time since the burial or interment may be a factor militating against exhumation, but will not necessarily be decisive.

Application of the *Blagdon* principles in the present case

15. Having considered the materials before me with care, I have come to the conclusion that this is one of those exceptional cases in which exhumation can be justified. My conclusion is based on the following matters:

- (i) Jonathan, like the deceased in Blagdon, died suddenly and unnaturally, leaving no indication as to his wishes in relation to the final resting place of his remains.
 - (ii) Blackmore was Jonathan's home.
 - (iii) Jonathan's father is now buried at Blackmore, and the effect of interring Jonathan's remains at Blackmore will be to create a family grave, for which Mrs. Smith will care while she lives. Jonathan's remains are, of course, presently interred with other, more remote family members. But the bringing together of his remains with those of his father and, in due course, his mother, will create a grave for that immediate and close family. It will also enable the deceased Anthony to be commemorated together with his brother and his father (I return to this below).
 - (iv) Whilst it cannot be said that there was a mistake in the decision to inter Jonathan's remains at Bentley Common, in the sense in which that term is used in Blagdon, from the material before me it appears that the decision was made in circumstances that were far from ideal. As I have noted above, Mrs. Smith's evidence, albeit uncorroborated, is that, whether rightly or wrongly, she and her husband felt that they could not seek interment of Jonathan's remains at Blackmore. I consider that this is a matter which I am entitled to take into account when exercising my discretion, and I do so.
16. I should make clear that I have *not* taken into account Mrs. Smith's complaints as to the manner in which the Bentley Common PCC choose to maintain the churchyard. There is a strong case to be made for encouraging biodiversity in churchyards and this can include allowing grass around graves to grow long and wildflowers to flourish. Indeed, the Church of England has published guidance (ChurchCare Resources – Churchyard Wildlife) encouraging churches to "welcome nature" in their churchyards. I do not consider that a disagreement with a "wilding" policy for a churchyard constitutes good reason for an exhumation.
17. Rather, my decision is based on the matters that I have identified above.

The memorials

18. That leaves only the question of what is to be done in relation to memorials for the two (or, strictly, three) graves.

19. As to the graves at Bentley Common: Rev. Julie Hardy indicated in her letter to the Court that, in agreeing to the proposed Faculty, the PCC "*understand that Jonathan's headstone would need to be removed should the exhumation go ahead. Their only proviso was that Mrs. Smith resolve the issue of the current headstones which do not display the correct names of those who are buried underneath*". The churchwarden at Bentley Common, Mr. Mark Skerry, has since clarified that that statement was not strictly accurate. As I have noted above, there are in fact two graves, and presently two headstones; but one headstone records the names of Jonathan and his brother, and the other the names of the four family members buried in the two graves. Thus the headstones as they stand do not tally entirely with the remains of those who lie beneath them. Mr. Skerry indicates that the PCC's preference is "*that both graves be marked with headstones, with the appropriate names, of those buried below*". He says that Mrs. Smith believes that the single stone that will remain should suffice "*but concedes that it could be moved to the right over the centre of the 'double grave'*".
20. I see entirely the desirability of marking accurately the identity of those whose remains lie in the two graves. But I have sympathy with Mrs. Smith's view that the single stone, which correctly identifies the four deceased whose remains lie in the two graves, should suffice. Requiring two new headstones to be produced would be costly and wasteful. The obvious solution seems to me to be to require the single remaining stone to be moved so that it is over the centre of the two grave plots. That can be done at the same time as the exhumation and the removal of the headstone that presently commemorates Jonathan and Anthony.
21. In relation to the grave at Blackmore: it is obviously right that each of Jonathan, Anthony and William Smith be commemorated appropriately in a single memorial. I do not know whether there is sufficient space on the headstone which will be moved from Bentley Common for William Smith's name and, in due course, Mrs. Smith's. If there is, that is one way forward. The alternative would be to have a new memorial for all three deceased family members. (No further Faculty would be required for any proposed memorial so long as it complies with the Churchyard Regulations.) This is a matter which can, no doubt, be the subject of discussion between Mrs. Smith and the incumbent at Blackmore in due course.

My determination and directions

22. In these circumstances, I am content to grant the Faculty that is sought and to order the exhumation of Jonathan's cremated remains from the churchyard at St. Paul's, Bentley Common and their reinterment in the grave of William Smith in the churchyard of the Priory Church of St. Laurence, Blackmore. I do so on the following conditions:
 - (i) That the removal be effected with due care and attention to decency, early in the morning and the grave screened from the view of the public.

- (ii) That, following that exhumation, the remains in their casket be re-interred forthwith in the grave of William Smith in the churchyard of the Priory Church of St. Laurence, Blackmore in a safe, private and decent manner.
- (iii) That, at or around the same time as the exhumation, the headstone commemorating Jonathan Smith and Anthony Smith be removed, and the remaining headstone commemorating those buried in the grave from which the exhumation takes place and the adjoining grave be re-sited so that is over the centre of the two grave plots.
- (iv) That an appropriate memorial be placed over the grave of William Smith to commemorate him and his sons, whether that be by the use of and addition to the headstone that is removed from the churchyard at Blackmore or by a new memorial.

Philippa Hopkins K.C.
Chancellor
6 March 2025