

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

ALL SAINTS: WEST BROMWICH

RE: THE CREMATED REMAINS OF DEREK ARTHUR SMITH

JUDGMENT

- 1) On 25th November 2017 a casket containing the cremated remains of the late Rev Derek Smith was interred in the churchyard of All Saints, West Bromwich.
- 2) A sewer runs through the churchyard and Mr. Smith's remains were interred close to the line of that sewer. At the time of the interment the proximity of the sewer was not known. Rev Jane Dicker, then as now the incumbent of All Saints, was aware that there was a sewer running through the churchyard but did not think that its route took it near the location chosen for this interment.
- 3) That misunderstanding has now been remedied because repair and replacement works need to be undertaken to the sewer. The line of the sewer has been established and it has been discovered to run close to the site of the grave. The necessary works will involve excavation and will require heavy earth-moving machinery to operate near the grave potentially removing the existing sewer pipes and relaying new pipes. There is concern that the machinery and/or the excavation works will cause damage to the memorial over Mr. Smith's grave and that there is potential for accidental disturbance of the remains in the course of the excavation works.
- 4) In those circumstances Hilary Smith, Derek Smith's widow, petitions for a faculty authorising the exhumation of the remains and their reinterment at a different location within the same churchyard approximately 30' from the current grave.
- 5) The Petition is supported by Rev Jane Dicker and the Parochial Church Council and Miss. Dicker has helpfully given a detailed explanation of the circumstances.
- 6) The approach which I am to take in considering this Petition was laid down by the Court of Arches in *Re Blagdon Cemetery* [2002] Fam 299. I have a

discretion but the starting point in exercising that discretion is the presumption of the permanence of Christian burial. That presumption 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. Exhumation is to be exceptional and the Consistory Court must determine whether there are special circumstances justifying the taking of that exceptional course in the particular case (the burden of establishing the existence of such circumstances being on the petitioner in the case in question).

- 7) The location of this grave was not suitable at the time of the interment. This was because its proximity to the sewer meant that there was a risk that at some future time the memorial would be at risk of damage and the remains at risk of disturbance when works had to be performed on the sewer. That risk has now eventuated. In *Re Christ Church, Alsager* [1998] 3 WLR 1394 the Chancery Court of York identified a mistake as to locality by an incumbent as a matter which “may be persuasive” in support of allowing exhumation. The Court of Arches in *Re Blagdon Cemetery* explained that exceptional circumstances were needed before exhumation could be authorised. In so doing it departed from the approach set out in *Re Christ Church, Alsager* of requiring a “good and proper for exhumation that reason being likely to be regarded as acceptable by right thinking members of the Church at large?”. Nonetheless, at [36 iii], the Court of Arches did agree with the Chancery Court saying that “a mistake as to the location of a grave can be a ground upon which a faculty for exhumation may be granted”.
- 8) It would be possible to engage in a sterile academic analysis as to the nature of the mistake which was made in this case and whether it was a mistake as to the location of the grave. That would not be appropriate. The Court of Arches was giving examples of matters which might amount to exceptional circumstances justifying exhumation and not saying that there was a closed set of cases in which exhumation was justifiable. The position here is that Derek’s Smith’s remains are in a location which is unsuitable. That location is unsuitable because there is a significant risk of the remains being disturbed accidentally in the

course necessary works. The risk of such disturbance is incompatible with the safe and seemly preservation of the remains which is one of the purposes of Christian burial. The remains came to be in that location because of a misunderstanding at the time of interment. At that time the location was thought to be suitable because of the misunderstanding about the route of the sewer. Knowledge of the true route of the sewer has revealed that the remains are in an unsuitable location.

- 9) I am satisfied that the circumstances here are exceptional and that exhumation is potentially permissible. I am also satisfied that the proposed course of reinterment in the same churchyard is appropriate. Accordingly, I direct that the faculty sought be granted.

STEPHEN EYRE
HIS HONOUR JUDGE EYRE QC
CHANCELLOR
20th January 2019