

**IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD**

**RE: STILE COP CEMETERY**

**RE: THE CREMATED REMAINS OF HAROLD LESLIE CRUTCHLEY**

**JUDGMENT**

- 1) In 1996 a casket containing the cremated remains of the late Harold Crutchley was interred in the consecrated portion of Stile Cop Cemetery. Mr. Crutchley's widow died in March 2017 and her remains were cremated.
- 2) Mr. Paul Crutchley is the son of the late Mr. and Mrs. Harold Crutchley. He petitions seeking a faculty for the exhumation of Harold Crutchley's remains and for their interment together with those of Mrs. Crutchley in a different plot in the Stile Cop Cemetery.
- 3) The Petitioner sets out a number of respects in which he regards the current location in the cemetery as unsuitable. It is on the main thoroughfare through the cemetery and close to the entrance to the cemetery. This means that when he or other family members go to the grave they are seen by all those passing through the cemetery to other graves. Mr. Crutchley wishes to have his parents' remains placed at a location in the cemetery which is more private and less busy than the current location. There is no sitting place conveniently close to the grave and so no opportunity to sit and reflect in close proximity to the grave. Moreover, the grave is next to a gully cover and Mr. Crutchley has to stand on this when he cleans the memorial on the grave.
- 4) The grave is marked by a small memorial on the ground. Mr. Crutchley wishes to have a larger memorial in the form of a headstone commemorating both his mother and father. My understanding is that the current memorial is in line with the requirements imposed on memorials generally in the cemetery.
- 5) Mrs. Crutchley's remains have not yet been interred. There is no suggestion in the papers before me that it would not be possible to inter those remains in the

plot already containing those of her late husband. Indeed, the impression given is that this will be possible. I will proceed on that basis.

- 6) I concluded that it would be expedient to determine this matter on the basis of written representations and Mr. Crutchley consented to that course. His representations are set out in the petition, a covering letter, and a supplemental e-mail exchange with the Registry.
- 7) Stile Cop Cemetery is operated by Cannock Chase District Council and the Bereavement Services Manager of that Council has confirmed its consent to the proposed exhumation. I have been provided with copies of correspondence between the Petitioner and the Council. In this the Council explain that it is not possible for choices to be made as to which plot in the cemetery is to be used for interments but that interment is to be made into the next plot available. I will assume that this policy was in force in 1996 so that the plot into which Mr. Harold Crutchley's remains were interred was the one which was the next available at the time of the interment.
- 8) The undertakers whom Mr. Crutchley proposes using for the exhumation and reinterment have been consulted about the likely condition of the casket containing Mr. Harold Crutchley's remains. They have said that given the passage of time and the uncertainty as to the precise ground conditions they are unable to predict the likely state of the casket.

### **The Applicable Principles.**

- 9) 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.
- 10) 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.
- 11) It must always be exceptional for exhumation to be allowed 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). Whether there are special circumstances in this sense will depend on the facts of the case in question seen in the round. The assessment must be made in the light of the presumption that Christian burial is permanent. It is clear from *Blagdon* that some matters are not capable without more of being special circumstances (such as a change of mind on the part of family members or a desire to have the remains in a more convenient location for visits to the graveside). There are other matters which are potentially capable of amounting to special circumstances (such as the creation of a family grave) but whether those matters justify exhumation will depend on the facts of the case being considered.

- 12) Deterioration in the physical surroundings of the grave can be a circumstance justifying exhumation (see my decision in *St Nicholas, Radford Coventry Consistory Court 2011*). However, that will only be so in very rare cases. As I explained in *St Nicholas, Radford* some degree of change in the location is likely to happen in respect of most burial places and so change of itself will not be exceptional. Thus the mere facts that a particular churchyard had become less tidy or less well- maintained or in some other way less attractive than it had been formerly or that the character of the neighbourhood surrounding the churchyard has changed would not, without more, be capable of being a special circumstance justifying exhumation. What would be necessary would be a radical change in the nature of the location such that it can properly be said that the location is no longer a fitting or appropriate place for the interment of the remains in question.

### **Analysis of the Position Here.**

- 13) I have no doubt that Mr. Paul Crutchley is genuinely striving to achieve an appropriate resting place for his parents' remains. I am also satisfied that he genuinely regards the current plot as unsuitable. However, I have to conclude that the circumstances here are not exceptional such as to justify exhumation. There has been no deterioration in the condition of the cemetery and certainly no deterioration such that it can be said that the location of Harold Crutchley's grave is no longer a fitting resting place for his remains. What has happened is that Mr.

Crutchley's remains were interred in the plot which was the next available plot at the time of their interment in 1996. The position of that plot next to the main thoroughfare means that Mr. Paul Crutchley has come to the conclusion that the plot has disadvantages which do not attach to some of the other plots in the cemetery. That perception may very well be correct and I have already said that I accept that Mr. Crutchley's unhappiness about the current plot is genuine. It is not, however, an exceptional circumstance for these purposes. The current state of affairs results from the Council's policy of interring remains in the next available plot. That is a reasonable and legitimate policy in the management of the cemetery. It is readily understandable that the administration of the cemetery would be markedly more complicated and difficult if interments were to take place at points chosen by the families of those being interred rather than in the order that plots become available. If the petition were to be granted the Court would be bringing about a state of affairs in which the Council would have either to leave the current plot empty or to require someone else's remains to be placed in the plot which Mr. Crutchley describes as having serious disadvantages. Each of those outcomes would be unsatisfactory.

- 14) Mr. Crutchley's desire for a larger memorial to replace the current standard memorial does not amount to an exceptional circumstance warranting exhumation. It is appropriate for the Council to impose a standard form of memorial marking the plots where cremated remains have been interred. Moreover, there is nothing in the papers before me to suggest that a larger memorial would be permitted at a different location in this cemetery.
- 15) The position in short is that despite the Petitioner's genuine unhappiness and concern in relation to the current plot there is nothing here amounting to an exceptional circumstance of the kind needed to justify exhumation. It follows that the petition must be refused.
- 16) I should add that even if the circumstances here had been exceptional such as to be potentially capable of justifying exhumation I would have had considerable reservations as to whether that was an appropriate course given the undertakers' comments about the potential condition of the casket containing Mr. Harold Crutchley's remains. It may very well be that it would not have been possible to

effect the exhumation in a seemly manner and that would, of itself, have been a ground for refusal of the application.

STEPHEN EYRE  
HIS HONOUR JUDGE EYRE QC  
CHANCELLOR  
15<sup>th</sup> April 2018