

Neutral Citation Number: [2023] ECC New 1

IN THE CONSISTORY COURT OF THE DIOCESE OF NEWCASTLE

In the Matter of an Application to exhume the cremated remains of Frederick COULEY and Ellen COULEY from the Consecrated section of Heaton Cemetery; and

In the Matter of a Petition by Terry Couley

JUDGMENT

1. This petition, issued by Mr Terry Couley on 6 November 2022, seeks a faculty granting permission to move the cremated remains of his parents, the late Frederick Couley and Ellen Couley, from the consecrated section of Heaton Cemetery (IN-361). He seeks to reinter them nearby in another plot within the consecrated section (Lawn E-330) of the same cemetery.
2. I have the written consent of Mr Terry Couley's siblings, Mr David Couley and Mrs Alison Marshall, the other surviving immediate relatives of the late Mr and Mrs Couley.
3. I also have written confirmation of the agreement of Mr Mark Lamb, Newcastle City Council's Bereavement Services manager, to the course of action proposed, this being the local authority with responsibility for what is a municipal cemetery to the immediate east of the city of Newcastle upon Tyne.

The facts

4. Frederick Couley died on 31 January 2020. In the immediate aftermath of his death, on 6 February 2020, Mr Terry Couley negotiated with the Council exclusive rights of burial for a cremated remains plot that could accommodate the interment of two sets of ashes. Ellen Couley died later that year on 28 October and, pursuant to the family's intentions, both parents' remains having been cremated, an interment took place on 22 December 2020. Subsequently a granite memorial was erected.
5. The petition, which is accompanied by a series of photographs, contends that the site of the plot, which is adjacent to a tree, has been so affected by faeces from the use of the tree by roosting birds of a variety of species that it has become unsightly and unhygienic to the point that it is potentially hazardous to the health of those visiting it as well as difficult to maintain to ensure it remains in a dignified and respectful condition.
6. Mr Terry Couley says:

“After seeking advice from reputable sources, we found that because of the amount of faeces being deposited both cleaning and maintenance of stone, flowers and pots is hazardous due to parasites and spores being in and around the grave.

I personally have no immune system because of anti-inflammatory medication (rheumatoid arthritis) use to hold my condition [sic] and can only view the grave from afar. We no longer allow the grandchildren to place flowers on the grave for fear that they touch the contamination by putting hands and knees on the grave and they are at a loss why they can't leave trinkets on the grave themselves”

7. Mr Lamb has provided more of the background in his letter of 28 October 2022. When the plot was first sought, Mr Terry Couley met with a member of staff to choose the location from a small range that were available, some of which were not close to any trees. His department had again been approached earlier in 2022 by the Couley family to express their concerns as to the impact of bird excrement on their parents' memorial, subsequently seeking permission to exhume. He confirms the presence of the tree and roosting within it, making the point that this is a matter over which his department has no control and noting that the birds choose to roost from year to year. However, noting the position, he has been able to assist the family to identify another plot (Lawn E-330) which is not so affected and he gives his consent to exhumation.

The law

8. The law is well established and definitively set out in the judgment of the Court of Arches *In re Blagdon Cemetery* [2002] Fam 299. The presumption of permanence is explained, arising, as it does, from the Christian theology of burial which emphasises, by reference to the Bishop of Stafford's *Theology of Burial*, that the permanent burial of the physical body is to be seen as a symbol of the entrusting the person to God for resurrection, a concept that does not sit easily with the concept of “portable remains”. Hence the reluctance of the Consistory Court to grant faculties for exhumation is well supported by Christian theology.
9. Nevertheless, recognising that it was essentially a matter of discretion, the Court indicated the necessity of the petitioner satisfying the Consistory Court that there are special circumstances justifying the making of an exception from the norm that Christian burial is final. In so stating the Court went on to identify various factors which may indeed support such a petition. None of those appear to be particularly pertinent to the facts here although I note that medical reasons on the part of the petitioner (typically increasing infirmity preventing visiting) were rejected unless they were very powerful indeed. The example mentioned is a serious psychiatric or psychological problem, demonstrated by medical evidence that linked the medical condition to the location of the grave of a person with whom there was a special attachment

10. Whilst lapse of time is always a relevant factor it is not determinative.

Discussion

11. The facts giving rise to this petition are not in dispute. The photographs I have seen confirm the complaint it raises. It is not clear whether the problem of roosting was apparent when Mr Terry Couley selected the plot on a walk round but, given it was early February and the busiest time of year for roosting generally is March to July, it seems to the court that it can properly infer that the problem was not apparent. Indeed, it is doubtful he would have selected the plot had it been.
12. However, the problem appears to have materialised quite quickly. It is not clear when the memorial was erected but, again, the court can infer that it was some time after interment, and it was earlier in 2022 that the family was expressing its concerns to the Council.
13. There is no medical evidence to confirm the specific risk to Mr Terry Couley but it is not necessary to dispose of this petition by reference to that, not least as the court doubts it would meet the threshold of exceptionality on that ground alone.
14. The facts here, therefore, do not readily fit into the categories specifically identified in *Blagdon*. However, it is clear that the categories of circumstances are not limited by that decision and the question for the court is whether there are circumstances which are indeed sufficiently special to make an exception to the norm of permanence.
15. My approach is this. The petitioner represents a family that has created a dignified and respectful memorial to much loved parents and grandparents. It is a memorial which the children of the deceased have sought to maintain to a good standard, something much to be encouraged. Also of relevance is the fact that the next generation has been brought up to pay respect to their grandparents by visiting their grave at regular intervals and leaving flowers. Unfortunately, the problem complained of has denied them the opportunity of maintaining the grave in a dignified and respectful state despite their best endeavours. It has thereby caused them distress and created a situation over which they can never have any reasonable control as Mr Lamb, effectively, acknowledges. They have not delayed in taking action. They have negotiated with a sympathetic Council which raises no objection to the facts they allege or course of action they propose. In all the circumstances, notwithstanding the fact that the complaint arises from a natural phenomenon, it seems to me that the facts do indeed disclose circumstances that warrant the court finding that an exception to the norm of permanence has been made out such that it should grant the relief sought.
16. Arrangements have already been discussed with the Council for the practicalities associated with the exhumation. Accordingly the faculty is granted on the

following condition, namely that any terms imposed by the Environmental Health Department of Newcastle City Council are complied with.

His Honour Judge Simon Wood
Chancellor
27 January 2023