

IN THE CONSISTORY COURT OF THE DIOCESE OF COVENTRY

In the matter of Gaydon Parish Cemetery

Petition to exhume and re-inter the buried remains

of Leslie James Welch

JUDGMENT

1. I am asked to make decision on the petition of John Davies, Chairman of Gaydon Parish Council, to permit the exhumation of the buried remains of Leslie James Welch and their re-interment elsewhere in the Cemetery.
2. Leslie James Welch sadly died on 12th July 2020 and was interred on 30th July in plot 187 in the cemetery. This is the plot adjacent to the grave of Ronald Charles Richards, whose mortal remains were interred in 2016. Unfortunately, through what I assume was an error in record keeping in Gaydon Parish Council's official documentation, no-one noticed until 3rd August 2020 that Plot 187 was a reserved plot and should not have been used. In 2016 the family of Ronald Charles Richards had paid for a Grant of Exclusive Right to Burial in

plot 187 in favour of Olive Elizabeth Richards, the relict of Mr Richards. (I am informed this burial plot reservation appears as Grant Number 48 in the Gaydon Parish Council records).

3. The application brought on behalf of Gaydon Parish Council (I anticipate at the expense of the Parish Council as well) is that the remains of Mr Welch be exhumed and re-interred in an alternative place within the Cemetery, so that plot 187 remains available to Mrs O. E. Richards.

4. Almost as soon as the erroneous use of a reserved grave space was discovered Mr Welch's family were informed. The Parish Council have obtained consent for the disinterment from Mr Welch's family (two of his three children and his three Sisters - the third child has also subsequently been located and has signed her consent) and from the Incumbent of the Parish within which the Cemetery is located (Revd Nicki Chatterton of the Parish of Gaydon with Chadshunt).

5. I have not seen any confirmation from the funeral directors/undertakers who will be engaged to carry out the exhumation and re-interment. However, I assume that the exhumation can be professionally completed in a discreet and safe manner given the relatively short passage of time since interment.

Principles that apply

6. The principles to be applied to an exhumation of a body following a Christian burial are well known and were set out by the Court of Arches in the case of *In Re Blagdon Cemetery [2002] Fam 299*.

7. The presumption is that burial of human remains in consecrated ground is permanent. The Right Reverend Christopher Hill (then Bishop of Stafford) in *The Theology of Christian Burial* (as quoted in paragraph 23 of the judgment) explained this permanency,:

‘The funeral itself articulates very clearly that its purpose is to remember before God the departed; to give thanks for [his/her] life; to commend [him/her] to God the merciful redeemer and judge; to commit [his/her] body to burial/cremation and finally to comfort one another.’

He went on to explain more generally that :

‘The permanent burial of the physical body/the burial of cremated remains should be seen as a symbol of our entrusting the person to God for resurrection. We are commending the person to God, saying farewell to them (for their “journey”), entrusting them in peace for their ultimate destination, with us, the heavenly Jerusalem. This commending, entrusting, resting in peace does not sit easily with “portable remains”, which suggests the opposite: reclaiming, possession, and restlessness; a holding on to the ‘symbol’ of a human life rather than a giving back to God’.

8. In *Blagdon* the Court of Arches explained the legal view of permanency thus :
- “The general concept of permanence is reflected in the fact that it is a criminal offence to disturb a dead body without lawful permission. Moreover, the fact that there is no ownership of a dead body according to English law, and the absence of any legal right in English law or under the European Convention of Human Rights to exhume a body or cremated remains, reflects a culture in which the norm is that the remains of a dead person should not be disturbed once they have undergone the initial act of interment.”*
9. The above comments do not mean that exhumation cannot occur, but in *Blagdon* the Court expressed that there has to be some **exceptional** circumstance before the norm of permanent burial is set aside. The Court gave

some guidance as to what could constitute exceptional circumstances. These factors include medical reasons supported by necessary psychiatric evidence (which do not apply here), or a mistake in the administration of the burial so that an important error in location is made. That last consideration is, of course, at the crux of the matter here. There has been an wholly regrettable failure by those charged with administering the Gaydon Parish Cemetery leading to this almost inevitable application, supported quite generously by the family of Mr Welch.

Determination

10. I am quite satisfied that this is a situation where the presumption of the permanence of the burial may be displaced by the circumstances of what has occurred. There has been a ‘mistake’ in that the interment of Mr Welch was within a grave space that should not have been used. I am also grateful to see that the mistake was noticed quite promptly and those representing the Gaydon Parish Council have acted promptly and appropriately to address the error.

11. A faculty shall be granted to exhume the remains of Mr Leslie James Welch from plot 187 and to permit his re-interment in a suitable alternative grave (and I trust that the relatives of Mr Welch have been given the option to select that alternative plot).

Conditions will apply to the faculty :

- i. The Petitioner shall ensure that the funeral director/undertakers engaged to conduct this exhumation and re-interment do so discreetly and reverently at a suitable time and with screens, so that no anxiety or distress is caused to visitors to cemetery or to passers-by;

ii. The Petitioner shall ensure the local environmental health department is notified of the time and date of the exhumation and re-interment;

iii. The re-interment is to follow on immediately after that exhumation.

12. I am concerned to understand how this error occurred as no formal evidence of how the mistake arose has been presented. However, from the information I have received it appears that the mistake was made by those administering the Cemetery on behalf of the Gaydon Parish Council. I therefore direct that Gaydon Parish Council bear the costs for this faculty and for the exhumation and re-interment.

Glyn Ross Samuel
Chancellor
3rd February 2021.