

IN THE CONSISTORY COURT FOR THE DIOCESE OF PORTSMOUTH

In re All Saints Church, Freshwater

JUDGMENT

1. This judgment concerns an application made, by five separate petitions, brought by the parish of All Saints Church, Freshwater, for permission to exhume remains from five graves in the churchyard and re-inter them in another location within the churchyard.
2. The churchyard extends to over 4 acres and is maintained as a wildlife friendly environment. There is a badgers' sett close to one of the boundaries of the churchyard, where a number of graves are situated. The sett has been maintained under licence and with the support of appropriate professional advice and until recently it has not affected the integrity of the graves.
3. During October 2019 heavy and persistent rain caused the partial collapse of the sett. The graves have been undermined and it is not possible to effect repairs to restore them to their original condition.
4. Five graves have been affected:
 - Plot 1737 James Michael McCleary, who died in childhood on 16 July 1982
 - Plot 1737A Chafik Houfah, who died on 2 January 1988 (age not recorded)
 - Plot 1737B Elizabeth Rice, who died as a new-born child on 22 May 1989
 - Plot 1737C Gordon William Rice, who died aged 49 years on 25 November 2008 (ashes)
 - Plot 1737D Perry Dennis Rice, who died aged 47 years on 4 March 2009 (ashes)
5. The parish proposes in each case to exhume the remains and re-inter them in new plots (no. 1772A-E respectively) in an area of the churchyard which is not affected by the badger sett or otherwise liable to collapse. The work is to be undertaken by a reputable local undertaker, who is familiar with the churchyard and understands the sensitive nature of the project, and overseen by a suitably qualified ecology protection group.
6. The badgers' sett is protected under the Protection of Badgers Act 1992 and any action which may interfere with or disturb the sett may only be undertaken under licence. The ecology group overseeing the work has confirmed that any interference with or damage to the sett is unlikely and that, since they will oversee the exhumations, no licence is required.
7. In each case the consent of the family of the deceased has been provided. I appreciate that this episode is likely to have been extremely distressing for them

all and I wish to commend them for responding so promptly and positively to the situation.

8. The PCC has approved the exhumations and re-interment and there are no objections to the proposal.
9. The remedial work needs to be undertaken as a matter of urgency, as the expert advice is that any work which may affect the sett should be carried out by the end of November.
10. The relevant principles applicable to exhumation of human remains after burial were considered in depth by the Court of Arches in *Re Blagdon Cemetery* [2002] Fam 299. There is a presumption that Christian burial is permanent and that presumption can generally only be displaced in exceptional circumstances.
11. I have no hesitation in concluding that the circumstances here justify and require the exhumation and re-interment of the deceased's remains in each case. I am satisfied that it is neither practicable nor appropriate to attempt to restore the graves in their current location and that in each case exhumation and re-interment are necessary if the deceaseds' resting place and memorial are to be restored to their proper condition and dignity.
12. The parish are committed to ensuring that the exhumations and re-interment are undertaken with due reverence and care, in the presence of a priest and I would suggest that the families concerned should be offered the opportunity to be present if they wish.
13. Accordingly I direct that faculty shall be issued in each case for exhumation and re-interment as proposed.

Philip Waller

Chancellor

29 November 2019