Re Bingham Cemetery

Southwell & Nottingham Consistory Court: Ockelton Ch, 3 May 2024 [2024] ECC S&N 1

Exhumation – family grave – reinterment by permission if not by right – memorials

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The petitioner sought the exhumation of her late husband's remains from the consecrated portion of a municipal cemetery for reinterment in a churchyard, on the basis that it was hard for her to visit the cemetery and tend the grave. The cemetery authoriry had given its permission, but the incumbent of the church had not, on the basis that it represented a violation of the permanence of Christian burial. Without that permission, and in the absence of a legal right to be interred in the churchyard, the proposed reinterment would not be possible.

The petitioner had mentioned, in passing, a 'family plot' in the churchyard. The creation or use of a family grave is one of the factors which can be taken into account by the court when considering a petition for exhumation: *Re Blagdon Cemetery* [2002] Fam 299. It transpired that there was a grave in the churchyard containing the remains of the petitioner's father and brother, and where she wished her own remains to be interred when her time came. While there were no other factors militating in favour of the grant of a faculty, the court determined that this was an appropriate case for a faculty.

Two issues remained. First, the proposal still lacked the incumbent's consent; the incumbent was invited to reconsider her earlier view in the light of the present judgment, but consent remained a matter for her alone (as it would when, in time, it came to the interment of the petitioner's remains). In the absence of a right of interment or the incumbent's consent, the faculty would be of no effect.

Secondly, the petitioner had sought permission to transfer the existing memorial to the family grave, or else to leave it in the cemetery. It was not appropriate to have two memorials on one grave, or to leave it in the cemetery once the remains of the commemorated person had been exhumed. It may be that the stone could be adapted for re-use. The court noted that the memorial already on the family grave did not comply with the Churchyard Regulations, and the need for a new memorial arising from the interment of the exhumed remains and the future interment of the petitioner's remains provided an opportunity for regularising the position. The removal of the old memorial before any exhumation was therefore made a condition

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of the faculty; any replacement would, no doubt, make provision for additional names and would be considered according to the Churchyard Regulations in force for the time being.

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Re St Anne, Ings

Carlisle Consistory Court: Fryer-Spedding Ch, 8 May 2024 [2024] ECC Car 2

Solar panels – planning permission refused – faculty granted – conditions

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The petitioners sought a faculty for the installation of solar panels on the roof of this 18th century Grade 2*-listed church, with associated hardware being installed in the tower. Not all amenity societies supported the proposal, and planning permission had been refused. Nevertheless, the DAC unanimously recommended the proposals. In considering the petition, the court observed in passing that it would have been preferable for the statement of significance to have been prepared by an architect rather than by one of the petitioners.

The court set out in detail the surrounding area of the church and the views of the church that it afforded, and other physical aspects of the church. It also set out in detail the reasons given for the refusal of planning permission; and noted that while in most cases such a refusal would make a faculty redundant, in this case the petitioners intended to appeal against that refusal.

In considering the *Duffield* questions, the court found that the proposals would cause moderate harm to the significance of the building as an outstanding and rare example of a rural Georgian church. The harm was justified both by the immediate financial savings that would accrue and more broadly by bringing the church close to carbon neutrality; and the court also considered the missional priority given by the church to its net zero principles and the ultimate reversibility of the proposals. A faculty would issue, subject to conditions of the grant of planning consent; proposals for the layout of the panels to be in sympathy with the rhythm of the building's architectural features; and the limitation of the permission to 26 years to reflect the expected lifespan of the panels.

Post script: the petitioners' appeal against the refusal of planning permission was unsuccessful.

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