

Neutral Citation No. [2019] ECC SEI 1

IN THE CONSISTORY COURT

DIOCESE OF ST. EDMUNDSBURY & IPSWICH

In the matter of

STOKE BY CLARE CEMETERY

-and-

In the matter of

**A PROPOSED EXHUMATION OF THE MORTAL REMAINS OF
PETER JAMES FOWLER**

-and-

In the Matter of

THE PETITION OF MRS VALERIE CYNTHIA FOWLER

Judgment of the Chancellor

January 16, 2019

**REVISED JUDGMENT
to correct a citation error and a minor typographical one**

1. I am asked to decide a Petition by Mrs Valerie Cynthia Fowler dated August 4, 2018. Other family members have signed as petitioners but have not declared themselves as such on the Petition form itself. However, this makes no difference to the Petition and, of course, and, I will take them to be supporting the Petition. I am satisfied that I

can decide this application on the papers and that an oral hearing would add nothing. The Petitioner consents to this course.

2. The Petition is to remove the mortal remains of Mrs Fowler's husband, Peter James Fowler, from Stoke by Clare Cemetery to Haverhill Cemetery. Mr Fowler's cremated remains were placed in a casket and laid to rest in 2001. The application is supported by Mr Fowler's children.
3. Stoke by Clare Cemetery is consecrated ground. Christian burial in consecrated ground under the jurisdiction of this court is presumed to be permanent and it is only in exceptional circumstances that exhumation of a person's mortal remains is permitted: see the appellate decision of the Court of Arches in *In Re Blagdon Cemetery* [2002] Fam 299.
4. In 2016, Mrs Fowler, who is now 78, moved to Haverhill to be nearer to her family. She is in good health but finds the journey to Stoke by Clare difficult because of cuts to transport services. She says the cemetery is well maintained but there are limited paths and the ground is uneven and can be slippery in wet weather. She does not say whether family members could take her to Stoke by Clare cemetery by car. She worries that as time goes by she may not be able to get to the cemetery and says that it would be easier if her husband's remains were to be moved to Haverhill. I have no doubt that it would be.
5. Her daughter, Mrs McGlue, writes in support and repeats what her mother says and adds a concern that her mother feels the grave itself is not now maintained as well as it was in the past. She does not explain why Mr Fowler's children could not assist with the maintenance of the grave, particularly if their mother is anxious about it. She also says that her mother reserved a double plot to be buried by her husband but is now worried about this too, because the graveyard is isolated. Identical letters are signed by Mrs McGlue's brother, Mr Christopher Fowler, and by her sister, Mrs Alison Anderson.
6. The Petition is supported unanimously by the Parochial Church Council and the Rector although the issue of why the circumstances are said to be exceptional in this case is not addressed.
7. West Suffolk Council would accept the mortal remains of Mr Fowler in the casket to be reburied but cannot say whether the ground in which they would be interred would be consecrated, from which I infer that the cemetery has both consecrated and unconsecrated sections.

8. First of all, I wish to make very clear that I understand and respect the sensitivity of the feelings involved in an application like this. I am sure it was not made lightly. This sort of application is never easy to decide. Not only are there the anxieties and hopes of a family about an extremely sensitive and emotional question but also the fact that the court has to bear in mind that what is requested by one family cannot be denied to another if the facts are similar.
9. The starting point is that Christian burial in the Anglican church is deemed to be permanent. So, any exhumation has to be justified as being an exception to that presumption. Examples of where exhumation has been permitted have been where the original place of burial was a genuine mistake or misunderstanding, where the application to exhume is very shortly after burial and for a good reason, where it is wished to reunite the deceased with other family members in a family vault and, in very rare cases, where the effect of the present burial site is to cause psychological distress to an extent that it has become intolerable – this will normally require specialist medical evidence. There are also other extremely rare examples pertaining to historical or medical research which plainly do not apply here.
10. In this application there are, I am afraid, none of those considerations. Mrs Fowler is finding with advancing age and relocation to Haverhill that she cannot visit or tend her late husband's grave as well as she once did. I am afraid this is true of many of us as we grow older and relocation is a fact of life for many people – some to a much greater distance than Mrs Fowler. Sadly, it cannot provide an exception such as the law requires me to find before permitting an exhumation.
11. Fortunately, Mrs Fowler is in good health and long may that last. I am sure her family can provide her both with reassurance and help to overcome the anxieties she has presently. Her husband's mortal remains have been undisturbed following burial in consecrated ground for a very long time now and they must stay so. Her own burial arrangements will ultimately be a matter for her and her family, but I hope personally that she will not let the fear of isolation prevent her from being buried with her husband. After all, she saw nothing wrong with his place of burial until she moved. However, that has to be her decision.
12. I am unable to grant her Petition. The law is clear. I entirely understand what she says and what the family has written on her behalf, but it does not come near to upsetting the presumption which we all expect to be followed when we die and are buried in

consecrated ground: namely, that our burial will be permanent and our mortal remains, cremated or not, will lie undisturbed.

Etherington, Ch.

Revised 19.02.19