

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWARK

IN THE MATTER OF CAMBERWELL OLD CEMETERY

AND IN THE MATTER OF CAMBERWELL NEW CEMETERY

AND IN THE MATTER OF PETITIONS BY REBECCA TOWERS, AVRIL KIRBY AND JOHN WADE

## JUDGMENT

### I

1. This matter concerns two petitions made by officers of the London Borough of Southwark. Those officers are: Rebecca Towers (Head of Parks and Leisure), Avril Kirby (Cemeteries and Crematorium Manager) and John Wade (Principal Service Development Manager). By the first petition, permission by faculty is sought for works at Camberwell Old Cemetery and by the second petition, for works at Camberwell New Cemetery.
2. As regards the first petition, the area concerned (“Area Z”) is about 2 acres (0.8 ha) in the north western corner of the cemetery, adjacent to Underhill Road. This was land used for public burials until the 1950s. In 2003 an area in excess of 0.5 acres (0.2 ha) was subject to unauthorised tipping which has produced a large stockpile of waste material, some of it contaminated. At its deepest point the pile is about 5m (15 feet) deep. Because of the contamination, the area is now fenced off (and has been since 2008). After 2003 it became overgrown with self-seeded vegetation and became covered in scrub and saplings; this vegetation has now largely been cleared in circumstances described below. About two thirds of the land is consecrated.
3. The proposals involve addressing the contamination of the stockpile, reducing its size and regrading it. The resultant terraced landform, accessed by new paths, will be used for new burials. The burials beneath the stockpile will not be disturbed. Space will be created for about 700 new burials.
4. As regards the second petition, the area concerned (“Area D”) is about 0.5 acres in size in the western part of the Cemetery, lying to the north west of the summit of One Tree Hill<sup>1</sup>. It is a grassed area surrounded by trees on three sides and within the main body of which two burials have taken place. The reason why it has not before been generally used for burials is probably explained by the fact of the slope of the ground. It is proposed to provide a new access path to the area to facilitate new burials, about 145 new plots being provided.
5. Planning permission in respect of the works in the Old Cemetery was granted by Southwark LBC on 16 October 2015; planning permission in respect of the works in the New Cemetery was granted by Southwark LBC on the same day.

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<sup>1</sup> One Tree Hill is an area of some historic interest – and a very fine viewpoint - which lies outside the Cemetery.

6. By Notification of Advice dated 23 September 2015, the DAC recommended each of the proposals in respect of the Old Cemetery for approval by the Court; by Notification of Advice dated 20 October 2015, the DAC recommended the proposals in respect of the New Cemetery for approval by the Court. I should note that the DAC generally is used to considering the environmental and other effects of proposals - albeit it is more often called upon to consider matters relating to churchyards rather than cemeteries. More particularly, one of its members has expertise in respect of matters relating to landscape.
7. Publication of the petition in respect of the proposals concerning the Old Cemetery was given by notices which were displayed at all the entrances to the Cemetery between 25 September 2015 and 23 October 2015; in respect of the proposals concerning the New Cemetery by notices displayed at all the entrances to that Cemetery between 29 October 2015 and 25 November 2015.
8. 660 people submitted "hard copy" written objections<sup>2</sup>. Of these, in respect of 20 it was not possible to ascertain contact details. Thus the Registrar sent letters in accordance with rule 10.3 of the Faculty Jurisdiction Rules to 640 people asking them whether they wished to become parties opponent. Delivery of his letter was not effected in six cases and 15 people withdrew their objections. Of the remaining 619, nine people asked that I take their objection into account but did not wish to become parties opponent. Three people completed a Form 5<sup>3</sup> and thus became parties opponent. These were Blanche Cameron on behalf of Save Southwark Woods, Tom Snow and Val Robins. Save Southwark Woods is evidently a group of people who oppose the proposals of Southwark LBC. The remaining 607 did not reply. Many of the letters were in standard form and there were also a large number of pre-printed post cards. There were also individually composed letters, some from those whose relatives are buried in the cemeteries.
9. 318 people objected by e mail. The Registrar sent them by e mail letters in accordance with rule 10.3. It does not seem that any of these raised any new matter in respect of the proposals. Of the 318, six people did not wish to become parties opponent but asked that I take their objection into account and I have done this. There were three e mails in support of the proposals which I have also considered.
10. On 16 May 2016, I held a directions hearing. The Petitioners were represented by Mark Ruffell of counsel and Ms Cameron was represented by Charles Streeten of counsel. Mr Snow represented himself. Ms Robins did not appear and was not represented. At the hearing I made directions which made provision for a hearing at which I would have heard evidence, including expert evidence, on behalf of both the Petitioners and Parties Opponent.
11. However in the event, Ms Cameron, Mr Snow and Ms Robins all decided to withdraw as parties opponent and by Directions dated 17 June 2016 I permitted their withdrawal<sup>4</sup>. Ms Cameron and Mr Snow asked in terms I should take their written representations into account

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<sup>2</sup> I.e. objections that were not submitted electronically by e mail.

<sup>3</sup> I.e. a completed form using appropriate wording provided by the Faculty Jurisdiction Rules 2015.

<sup>4</sup> The Petitioners did not seek any costs against the parties opponent and I made no such order.



in reaching my decision and of course I have done so. Ms Robins did not specifically request that I take her objection into account but I have also taken her objection into account.

12. Accordingly there are 619 written representations which I have taken into account in reaching my decision. I have also taken the 318 e mails into account.
13. On behalf of the Petitioners, Ms Towers submitted a written statement to me. I was also supplied with written statements made by
  - Paul Harrison BSc MA DipLA CMLI who is an expert in landscape design and whose company designed the proposals;
  - Gary Meadowcoft Dip Arb (RFS), M Arbor A who is Tree Services Manager for Southwark BC; and
  - Timothy Wilson B Eng (Hons) who told me about drainage issues; and
  - Tony Wileman BSc MCIEEM who told me about ecological issues.

## II

14. Although Ms Cameron decided to withdraw as a party opponent and thus was not in a position to require there to be a hearing<sup>5</sup>, she nonetheless submitted that it was not appropriate that I should reach a decision in respect of the petitions without holding a hearing.
15. In some cases it may be appropriate to hold a hearing, even though there is no party opponent who would require this to happen. However if all the objectors are content for the matter to be determined on the basis of written representations, one would normally expect that it would be possible so to determine it. Further if there were to be a hearing it would cause the Petitioners to incur significant additional costs which would, of course, be borne by the public purse.
16. I concluded that it would be appropriate for me to determine the matter on the basis of written representations. This was on the basis that the Petitioners would be in a position to address in writing any detailed questions that I might have; it would have been possible for me at any stage before the final determination of the matter to have decided that it was not appropriate that it should be decided on the basis of written representations<sup>6</sup>. In the event, the Petitioners addressed satisfactorily a number of questions which I raised and it has not been necessary for there to be a hearing.

## III

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<sup>5</sup> See rule 14.1 of the Faculty Jurisdiction Rules 2015.

<sup>6</sup> See rule 14.3 of the Faculty Jurisdiction Rules 2015.

17. Under the Faculty Jurisdiction Rules 2015 a faculty is not required for the felling of a tree *the diameter of any stem of which does not exceed 75 millimetres (measured over the bark at height of 1.5m above ground level)*<sup>7</sup>.
18. By a letter dated 22 December 2015, Ms Towers sought my advice as to whether it would be possible to clear the scrub from Area Z without a faculty on the basis that any tree that was removed was less than 150mm in girth and 1.5m in height. I replied on 11 January 2016, referring Ms Towers to the provisions of the Faculty Jurisdiction Rules. In the light of this guidance, Southwark LBC began works to clear the scrub from Area Z.
19. On 27 January 2016, Ms Cameron submitted what was, in effect, an application for an injunction, setting out her belief that Southwark LBC were illegally felling trees. However the jurisdiction of the Consistory Court in respect of a consecrated burial ground or cemetery is limited. In *In re Welford Road Cemetery*<sup>8</sup>, the Court of Arches made it clear that there was no power to make a restoration order under section 13 (5) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 in respect of a burial ground or cemetery (as distinct from a churchyard) and that *we do not consider that section 13(5), which confers on the chancellor an enforcement power in relation to churches and churchyards similar to that available to local planning authorities in respect of listed buildings, is applicable to the consecrated part of a cemetery*<sup>9</sup>. If there is no substantive power to order the restoration of works in respect of a cemetery, it is apparent that there can be no power to issue an injunction to prevent any such works in the first place. Against this background, I declined to take any action upon Ms Cameron's application and, in the event, the scrub was largely cleared from Area Z. I have however no reason to think that this work did require consent by faculty.

#### IV

20. In the earliest days of the Church in England and continuing into modern times, the dead were buried in a churchyard adjacent to the parish church. Historically individual graves would not have been permanently marked. This facilitated, over time, the re-use of the same ground. In the eighteenth century the process began whereby graves were permanently marked. This created the often very characterful churchyards which surround many of our parish churches but it did also mean that very often churchyards had to be expanded if parishioners were to continue to be buried there. In many urban areas by the nineteenth century, the situation had become impossible and, for health reasons, many urban churchyards were closed. The demand for burial space was in these circumstances met by the provision of large new cemeteries which were created on the edges of the urban area. Comparatively rural then, in most cases they have now been incorporated in the urban area. The first of the new cemeteries were run by private companies, and some still are; but later, local authorities provided new cemeteries and, in some cases, took over the running of existing ones. Although the new cemeteries were no longer next to churches, most people still wanted Christian burial, and according to the rites of the Church of England. This meant that the most of the land in these

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<sup>7</sup> See Schedule 1, Table 1, A8.

<sup>8</sup> [2007] Fam 15.

<sup>9</sup> See paragraph 58.



cemeteries was consecrated according to the rites of the Church of England<sup>10</sup>. The effect of such consecration is that these areas became subject to the faculty jurisdiction of the Consistory Court. More particularly, this meant that human remains received protection against exhumation, the position in law as applied by the Consistory Court being that permission for exhumation was only exceptionally allowed. This was the case whatever the contractual position as regards the burial.

21. The only reason why the supply of burial space did not run out long ago is because of the popularity of cremation. However, for a variety of reasons, cremation is not universally popular. Some people still want their remains to be buried. However there is now a shortage of burial space both generally in England and more particularly in Greater London and the London Borough of Southwark within Greater London.
22. Against this background, many local authorities with responsibility for cemeteries have been looking at ways of addressing the demand for burial space. Extending existing cemeteries or creating new ones is likely to be difficult. Accordingly, such authorities have been examining carefully space within existing cemeteries. The possibility exists in many cases of “lifting and deepening” existing graves, so that an area within a cemetery may be re-used. It will be seen that this practice has some similarity to the way that churchyards used to be used. In principle it seems to me that there is no objection to this, although there need to be appropriate safeguards for the families of those who might be concerned about re-use in this way of a relative’s grave. However, I should emphasise that the proposals before me are not for “lifting and deepening” and I shall consider such proposals if and when they come before me.
23. Even without the lifting and deepening of graves the possibility exists in some cemeteries to create new grave space. It is with two such proposals that I am concerned in the present case.

## V

24. There is in some cases an overlap between the faculty jurisdiction and “planning control”, that is, the jurisdiction exercised by local planning authorities by reference to the fact that certain development needs planning permission. The proposals in the present case needed planning permission and, in each case, planning permission has been granted in respect of them. The question thus arises as to the relevance of such planning permission to the consideration by the Consistory Court as to the grant of a faculty. This was a matter considered by the Consistory Court of the Diocese of Oxford in *In re St Mary’s Churchyard, White Waltham (No 2)*<sup>11</sup>. Bursell QC Ch approached the matter in this way:

*... in my view any court should recognise a proper comity between courts and tribunals of different jurisdictions. That being so, and having considered the various authorities set out above, I have reached the decision that the consistory court is entitled to accept the reasoned decisions of a planning authority, or of a planning inspector, unless they are demonstrated to be wrong by cogent evidence. If the matter has been properly aired before such an authority*

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<sup>10</sup> Those parts which were unconsecrated were utilised by those who had an objection to being buried in such ground.

<sup>11</sup> [2010] Fam 146.

*or inspector the consistory court is entitled in my view to accept the planning decision as a reasoned starting point from which to begin its own deliberations. In such circumstances it is insufficient for an objector merely to voice dissatisfaction with a decision: any objection must itself be reasoned and supported by proper evidence. Precisely what evidence may be required to displace the assumption in favour of the reasoned planning decision will depend upon the particular facts of the case. Thus the case may have been put differently before the planning authorities or a particular aspect may have been overlooked<sup>12</sup>.*

## VI

25. There are many cemeteries which are owned by private companies or by local authorities which contain consecrated ground subject to the faculty jurisdiction. The Consistory Courts have held that it would not be appropriate to exercise their jurisdiction over such land in quite the same way as they do over churches and churchyards.

26. In *Newsom on the Faculty Jurisdiction of the Church of England*<sup>13</sup>, the learned author<sup>14</sup> wrote

*Finally, there are many cases of consecrated areas in municipal cemeteries. These areas are sometimes, though not always, away from any church and the only powers enforced by the consistory courts in respect of such cases are those which are directed to protecting the remains of the dead, which are in such consecrated ground under the protection of those courts. Accordingly, they do not in practice seek to control what tombstones can be erected in such places as they do in the case of ordinary churchyards. In fact the municipal control of the introduction of tombstones is often a good deal more stringent than that imposed in ordinary churchyards by the consistory courts. It is the municipal authority which pays for the maintenance and upkeep of the cemetery and within wide limits it is entitled to make what arrangements it pleases.*

27. In *In re West Norwood Cemetery*<sup>15</sup>, a case in the Consistory Court of this Diocese, these words were endorsed by my predecessor RML Gray QC, where he said

*... [the jurisdiction of the Consistory Court] will be exercised sparingly with regard to municipal cemeteries, and will be exercised only in the clearest cases where the jurisdiction has been invoked to control, in the interests of justice, or of the decent and respectful treatment of the dead, works being carried out which threaten either of those objects. One of the ways in which respect is shown to the dead by the bereaved is by ensuring their decent and undisturbed interment, and, particularly in those cases where the bereaved or a wider public have been moved to do so, to protect the monuments which have been erected to recall*

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<sup>12</sup> See paragraph 23.

<sup>13</sup> 2<sup>nd</sup> edition (1993).

<sup>14</sup> George Newsom QC was Chancellor of the Dioceses of London and St Albans.

<sup>15</sup> [1994] Fam 210.



*to future generations the achievements of those interred during their earthly life, and as a legitimate way of proclaiming and perpetuating those achievements to future generations*<sup>16</sup>.

## VII

28. I have referred at paragraph 20 above to the increased demand for burial space in urban areas which arose in the nineteenth century. It was to address this demand that in 1856 the Camberwell Cemetery Board opened what is now Camberwell Old Cemetery. In all it is now 30 acres in extent, the majority of that land being consecrated. By the beginning of the twentieth century, it was evident that the space in the Old Cemetery was running out and in 1927 the Metropolitan Borough of Camberwell (as the successor to the Camberwell Cemetery Board) bought 68 acres of land, part of which<sup>17</sup> was used to create Camberwell New Cemetery. The majority of the land forming the New Cemetery is consecrated.
29. Within each cemetery, there are areas of public burials. These were areas which were subject to burial but where no exclusive right was purchased by the by the families of the deceased, nor a right to erect any memorial. These areas received multiple burials (sometimes up to 18 burials in a single grave have been recorded). The Cemetery Manager did allow small memorial tablets to be placed in these areas. In both Area Z and Area D there are a small number of such grave markers. Those who placed them there have no entitlement to keep them in place.
30. There are 48 war graves within Area Z, although only 20 are within the area that is consecrated. It is proposed that 25 of the 48 would be marked by new headstones at appropriate places in the proposed terraces. There would be practical difficulties in marking in this way the remaining 23 graves. I think that of the remaining 23 there are some where the relevant name does not appear on the war memorial within the Cemetery; it is proposed that such names should be entered on that war memorial. Even if a headstone is not practicable, there may be other ways of marking at least some of the remaining 23 graves and the Commonwealth War Graves Commission will work with Southwark LBC in the detailed design process to achieve this.

## VIII

31. There is in practical terms no remaining burial space in Camberwell Old Cemetery and now very little remaining burial space in Camberwell New Cemetery.
32. Although cremation is the most popular method of dealing with the remains of those who have died, there is a continuing demand for burial space from those living in the London Borough of Southwark. Accordingly, the Borough Council has carefully examined the options for providing additional burial space. The proposals before me form part of its strategy for addressing the need for additional burial space.

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<sup>16</sup> See p224C. Certain dicta in *In re West Norwood Cemetery* were overruled by the Court of Arches in *In re Welford Road Cemetery* [2007] Fam 15 but the effect of that judgment was further to restrict the jurisdiction of the Consistory Court over municipal cemeteries.

<sup>17</sup> Some was used to provide public open space.

## IX

33. The years following the Second World War saw increasing concern about the environment and, more recently, concerns about the effect of increased carbon emissions. This has led to the adoption by the Church of England of policies designed to ensure the protection of the environment and ensure that the development which it sponsors is sustainable, as well as a campaign called *Shrinking the Footprint* to reduce its carbon emissions. The environmental policy of the Diocese of Southwark is called *Taking Care of God's Creation* (2012).
34. It seems to me that in each generation the Church is called to re-examine how the eternal truths which it believes are applied to its contemporary circumstances. Nonetheless the truths **are** eternal and the need to *safeguard the integrity of creation and sustain and renew the life of the earth*<sup>18</sup> is not new. Thus *Taking Care of God's Creation* begins by reminding the reader of the opening of Psalm 24: *The earth is Lord's and all that is in it*. A good and early example of sustainable development is the re-use of burial space within a churchyard referred to at paragraph 20 above.
35. There is widespread agreement about the need to protect the environment, that agreement obviously going beyond the Church of England. I think that most issues in this area arise not in respect of the principles applicable but as to how those principles are to be applied to particular circumstances.

## X

36. From the representations that I have received it is possible to identify essentially three categories of objection to the proposals:
- (i) environmental, and in particular concern about the loss of trees
  - (ii) concern about flooding; and
  - (iii) concern that the proposals do not display respect for the dead. A particular concern has been expressed about the treatment of war graves in respect of Area Z.
37. From the point of view of the Church, the appropriate use of a consecrated burial ground is as burial ground – that is what it was consecrated for. From the point of view of the owner of such a burial ground (if such owner is not an ecclesiastical body), the only use that such owner will be able to make of the land, given its consecrated status, is as a burial ground. This all points to the Consistory Court facilitating such use, all other things being equal.
38. However it would not be appropriate to permit a faculty which did not respect the remains of the dead.
39. The proposals do not involve the physical disturbance of any grave or the exhumation of human remains from any grave. Accordingly there is no objection to the proposals on this basis.

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<sup>18</sup> The fifth *Mark of Mission* agreed by the Anglican Consultative Council in 1990.



40. There are four specific matters concerning the appropriate respect due to the dead which I need to consider.
41. The first three matters relate to the works proposed in respect of Area Z.
42. First, evidently it was not appropriate nor respectful of the dead for an area of the Cemetery which had been used for burials to be the subject of tipping. However the question that now arises is whether, the resulting pile of spoil having been appropriately landscaped, there is any objection to using it for further burials, those burials being at a higher level than those that have already taken place and thus overlying the existing burials.
43. From the point of view of the Petitioners what is proposed is a pragmatic way of dealing with the mound of material that also brings about a benefit in terms of creating additional burial space. I see nothing objectionable in this. Those objecting might prefer that the land be remediated and left as a "wild area" or, conceivably, as an area of managed woodland. I do not think that either course, if adopted by Southwark LBC, would be intrinsically objectionable but it would do nothing to suggest that this land has been the subject of the burial of human remains. I do not think that either course could be viewed as more respectful of the human remains buried in the land. Some might prefer that the pile of spoil be removed altogether but I think that there must be considerable doubt if that would happen if a faculty for the works presently proposed were refused. Looking at the proposals from the point of view of sustainability, it can be said that it is best now to seek to take advantage of a feature of the land to promote sustainable development, albeit that that feature should not have come into being in the first place.
44. Second, along a path within the area there are a small number of tablet memorials, marking public graves. These will be collected and stored. This seems appropriate; it is only recently that this area has been cleared of brambles, so the memorials cannot have been the subject of recent visits. If any relative did want a grave marker to be incorporated within the scheme, this would be possible.
45. Third, I was surprised to discover that there are as many as 48 unmarked war graves in Area Z. It occurred to me that this may have been the result of a deliberate choice on the part of the deceased (expressed before his death) or on the part of his relatives. I asked about this and the position seems to be that no-one knows. It is the obligation of the CWGC under its Charter to mark all war graves and it is its policy to mark war graves with a headstone wherever possible. To guard against the possibility of this being done in circumstances where it would not represent the wish of the deceased or his relatives, the CWGC do not erect a headstone without first attempting to inform next of kin by way of notices and via the Commission's website. It occurred to me that in the present case it might be better for all 48 graves to remain unmarked both as reflecting the position at the time of burial and also as of now not seeking to make distinctions between the remains of those buried in the same area. Such an approach however would not reflect the policy of the CWGC and I do not think it would be appropriate for me here to seek the application of a different approach to the one that generally applies, even were I minded to do so. (This also avoids the possibility - which would plainly be undesirable - of a different approach being taken in respect of the war graves that are in consecrated ground and those which are not). It seems to me that what is the important thing is that the CWGC are working with Southwark LBC to achieve a solution which both

perceive to be satisfactory. CWGC do not object to the proposals and evidently see them as an opportunity appropriately to provide additional commemoration of the war dead. I think that the proposals before me are respectful of those who died in the World Wars and who are buried in Camberwell Old Cemetery.

46. The fourth matter relates to the works proposed in respect of Area D.
47. These involve the creation of a footpath over land which has been used for burials. I do not think that there is anything objectionable in this. It must be the case that in many churchyards the paths that exist are over land which has been used for burials, probably many times over. Normally in a cemetery the burials will have all taken place around a network of paths established at the outset of the use so that the situation will be different to that obtaining in a churchyard but I do not think that this fact is a reason for refusing a proposal of the kind here proposed. There are some memorial tablets in this area but it will be possible for them to be moved if required.
48. I turn to consider the environmental aspect of the proposals concerned.
49. The objectors focus on loss of trees. One can see that the loss of any significant tree is potentially unfortunate and that it may carry with it unfortunate consequences, in particular loss of habitat and of a contributor to air quality. But unless one is to say that no significant tree is to be felled in any circumstances, it must always be possible to justify the felling of a significant tree or trees by reference to the benefit otherwise flowing from a proposal, particularly in the context of replacement planting. Moreover the extent of any felling both in terms of numbers and in terms of quality must also be borne in mind.
50. As regards Area Z, this contains three trees which are subject to tree preservation orders (two oaks<sup>19</sup> and a large ash). None of these are proposed to be felled. 18 significant trees will be felled. None of these are Class A. The trees to be felled comprise 4 category B trees<sup>20</sup>, 13 category C trees and one is category U<sup>21</sup>. 60 new trees would be planted.

51. Ms Cameron described the proposals as follows:

*Hundreds of trees are to be felled, including silver birch, hazel, ash, a wild pear, and a wide range of other native broadleaf woodland trees, secondary woodland growth, as well as at least 18 more mature trees over 30 -50 years old planned to be felled by Southwark LBC.*

52. As I understand it, Ms Cameron is describing the area of scrub that has now been cleared by Southwark LBC and 18 trees described above. In this context it can be said by the Petitioners that the trees or saplings with which she is principally concerned have now been felled. However putting this matter on one side for a moment, it does seem to me that, on the face of

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<sup>19</sup> There is a third oak also subject to a TPO which is just outside the area to the north. There are no proposals to fell this tree.

<sup>20</sup> 1 hybrid poplar, two ash and 1 sycamore.

<sup>21</sup> Sycamores and maples but including also a hawthorn and a willow. Category B represents trees of moderate quality; category C, trees of low quality; category U, trees which cannot realistically be retained as living trees for longer than 10 years.



it, Ms Cameron either attaches too much intrinsic significance to the trees with which she is concerned or considers the loss of those trees as a matter of greater significance than it apparently has; she also does not seem to give credit for the new planting. It is hard to identify significant environmental harm flowing from the proposals. It is also important to note that the land will be managed so as not to diminish its ecological interest. As Mr Harrison explains, leaving the land to be further colonised by densely-growing sycamores would lead to a diminution of its ecological interest. Mr Wileman considers that it is highly likely that the proposals will lead to a net bio-diversity gain over time. This is appropriate for a Site of Nature Conservation Interest (Grade 1). In terms of carbon footprint the proposals would seem to be neutral, or better, the loss of trees being compensated for by new planting.

53. As regards Area D, no tree subject to a tree preservation order will be affected. There will be the loss of only one significant tree<sup>22</sup> and of 24 young trees, some of which are in poor condition. 25 new trees would be planted. It is hard to see this as involving significant harm. The land would be managed to enhance its nature conservation interest, so that bird and bat boxes would be provided in the trees. This is appropriate for a Site of Nature Conservation Interest (Grade 2).
54. Looking at the matter more broadly, I can see that the value of a cemetery within a community very often is enhanced by the fact that it provides open space and is an attractive area of trees and plants. Usually there is no conflict between use of land as a cemetery and these wider “green space” and ecological benefits. In the present case there is, to a degree, such a conflict. The objectors would like Area Z in particular to be managed as an ecological area and would give a lesser priority to the need to provide more burial space. The judgment however of the owner – Southwark LBC as burial authority – is a different one and it seems to me that there is nothing intrinsically unreasonable about such a judgment. Southwark LBC, in its capacity as planning authority, has identified no reason why planning permission is not appropriately granted. Against this background, it seems to me that the proper basis for stopping what Southwark LBC as landowner reasonably proposes does not exist. If there were clear and compelling environmental objections to the proposals then, given the particular importance which the Church attaches to the environment, it would not be appropriate to permit them. As it is, Southwark LBC as planning authority with its particular expertise in this area is content. The DAC has considered the proposals and has recommended them to me. No expert evidence has been supplied to me by any of those who are objecting. For my part, I have not identified any sufficient reason for rejecting the judgments of the planning authority or the DAC.
55. I turn to consider the issue as regards flooding. I am not an expert on flooding. Planning permission has been granted in respect of the proposals. I have received no expert submission from any objector in respect of any risk of flooding which the proposals will create. I have before me a statement by Timothy Wilson, a qualified Drainage Engineer, who considers that the proposals will not increase the risk of flooding. The basis for rejecting the proposals on the basis that they present a risk of flooding does not exist. It may be that there is further design work to be done on the drainage scheme or schemes before the works are begun.

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<sup>22</sup> A poplar.

However there is no reason to think that that work will not be done to ensure the success of the proposals.

56. Accordingly I direct that faculties shall issue in respect of each petition. There will be liberty to apply so that if the Petitioners want my guidance on the detailed implementation of the proposals they will be able to seek it.

## XI

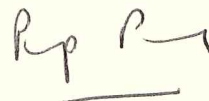
57. As is usual, the Petitioners will pay the court costs of the petition, including a correspondence fee. The costs will be higher than usual because the Registrar had to deal with such a large volume of objections.

## XII

58. This case has attracted a considerable amount of publicity and in these days of electronic communications when it is easy for a person to send an e mail in respect of any matter of concern to all those whom he or she considers may have some influence on the outcome, I am aware that that many such e mails have been sent. Against this background, I would be grateful if the Registrar would send a copy of this judgment to the Office of the Archbishop of Canterbury, the Diocesan Bishop and the Area Bishops, the Archdeacons, Ms Harriet Harman MP and Cllr Peter John, the Leader of Southwark Council.

## XIII

59. I hope that, with greater knowledge of what is proposed and the background to it, some of those who have objected may change their minds. I expect that some will still disagree, as they are entitled to do. Nonetheless I hope that these objectors will recognise the considerable care that has gone into the design of the two schemes before me, both from the landscape point of view and more generally.
60. At the heart of the Christian faith is a belief in the resurrection of the dead. There is powerful symbolism involved in committing human remains into the earth. In the words of the Prayer Book what is involved is *earth to earth, ashes to ashes, dust to dust*; these words coming immediately before the assurance that this is *in sure and certain hope of the resurrection to eternal life through our Lord Jesus Christ*. The proposals will help to ensure that in the future those living in Southwark who wish to be buried in consecrated ground will continue to be able to do so. It is appropriate that, if possible, the faculty jurisdiction should facilitate this. I am confident that, despite the controversy, these proposals will be seen in time to have been both sensible and well thought out and to have improved both Cemeteries.



PHILIP PETCHEY  
Chancellor

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