

OBJECTION BY THE FRIENDS OF CALDERSTONE CEMETERY TO A PROPOSED ORDER UNDER SECTION 92 OF THE CARE OF CHURCHES AND ECCLESIASTICAL JURISDICTION MEASURE 2018

This is the objection of the Friends of Calderstones Cemetery to an application dated 2nd April 2019 by the Archdeacon of Blackburn to the Bishop of Blackburn for an order under section 92 of the Care of Churches and Ecclesiastical Jurisdiction Measure 2018 for the de-consecration of land within Calderstones Cemetery. The Friends of Calderstones Cemetery are an informal group, co-ordinated by Melrose Diack, which was established after the Cemetery was sold in October 2000 to a private buyer by the Secretary of State for Health. Many of the members are relatives of those whose remains are interred in the Cemetery.

Consecration is intended to be for ever: permanently to set aside a piece of land to the service of God. In the case of a burial ground, it is intended that for all time into the future it should be a burial ground, and respected and protected as such.

This was the intention in 1916. A burial ground was needed because inevitably some of the patients in the military hospital died. Looking into the future, the Bishop would have realised that an asylum or mental hospital also would require a burial ground. And so it proved.

Thus the remains of 33 servicemen who were killed in the First World War are interred in the easternmost portion of the land which was consecrated¹. The land was then used by the asylum or mental hospital, starting from the east and working westward. The remains of some 960 patients were interred in this way, the last in 1977. All these graves were marked by headstones.

An exception to the interment of the remains of those who died being interred in the easternmost part of the cemetery was in respect of the "Booth Hall babies". In the summer of 1939, facing the expectation of an imminent War with Germany, a decision was taken to evacuate the whole of the Booth Hall Children's Hospital in Manchester to what was perceived to be the safety of Calderstones Hospital, 30 miles away, in the country. The transfer took place on the 1 September 1939. It must have been a huge logistical challenge to move in a single day not only 217 sick babies and young children, but also the medical and nursing staff with all their equipment. Any children, who were fit enough, were discharged home from Booth Hall prior to the evacuation, so the patients' who would have arrived in Whalley that day, would have been the very sick or those, who for whatever reason, could not return home. (To accommodate this massive influx of children and their staff, some Calderstones patients were transferred to Brockhall Hospital, whilst others were accommodated in additional spaces created within the existing wards within Calderstones.) A short time after their arrival, some of these already sick children began to succumb to the illnesses and problems which had initially brought them to Booth Hall. The first death of one of these "Booth Hall babies" took place on the 9 September 1939 and a further 15 would die in the following five weeks, with 2 more in the next two months. A total of 18 Booth Hall babies and children were to die whilst at Calderstones. Of these, 5 were to return to their families in the Manchester area for burial.

The remaining 13, who for whatever reason remained, were each buried in a small cluster of graves, in the most prominent position at the front of the Hospital's own graveyard. An adult evacuee from Manchester, named Anthony Irving was buried alongside the children².

They were buried close together, in a prominent position just to the east of the mortuary chapels, their graves marked with headstones³.

¹ There are additionally nine graves of servicemen who died in the Second World War.

² His relationship with the children is currently unknown but his life and death were evidently part of this sad story.

As stated above, burials of those who died at the hospital continued until 1977. There was then a change of policy and, instead of being buried, the remains of those who died at the Hospital were cremated and their ashes interred in a Garden of Remembrance. This was a grassed area marked by a kerb. There is a complete record of 211 people whose remains are there interred, the last being in 1989. It does seem as though there were further interments of ashes after 1989, although the precise location of these further interments is currently unknown⁴.

All the interments from 1916 until 1989 were on the basis that they were into consecrated ground and were protected as such.

Although Calderstones Hospital continues to exist, in 2000 a large portion of the site was sold for development. At the same time, the Cemetery was also sold. This was to a private individual and without any obligation upon him to maintain the Cemetery.

It does not require the wisdom of hindsight to see that this was not an appropriate course of action. From it has flowed the difficulties that have since arisen⁵.

What needs to be stressed at this point is that as at 2000 there was in existence a well-maintained cemetery, with the interments in it marked by headstones. As a physical entity, the status quo was entirely satisfactory. However, the fact that (after the sale) no-one was obliged to maintain the Cemetery was entirely unsatisfactory.

What perhaps might have been expected, is neglect. In fact what has transpired is worse than this. Apart from the failure to maintain the buildings and to cut the grass, the headstones have been cleared and a track made over the (now unmarked) Garden of Remembrance.

The background to this is the attempt by the owners⁶ of the land to develop a crematorium on the site⁷. As regards the current owners, the Archdeacon tells us that it appears that they purchased the land without appreciating that it was consecrated and subject to the faculty jurisdiction⁸. One would have expected a company that was in the business of developing crematoria to have made inquiries about this before acquiring the site. However this may be, the land is consecrated and subject to the faculty jurisdiction and it is not suggested by the Archdeacon that there is any hardship arising to the developer that is relevant to his application under and the application by the Bishop of the statutory test under section 92.

The failure of the sale in 2000 to provide for the on-going maintenance of the Cemetery means that there is a problem to be addressed.

The Archdeacon's approach to that problem is to take the proposal for the crematorium as the starting point. He sees this as a way of ensuring the restoration of the Cemetery and its maintenance into the future. Thus he considers facilitating the crematorium proposal as appropriate, provided that his overriding concern that the human remains in the cemetery are respected and protected for the future⁹. To this end he required a (modest) amendment to the plans. He regards the respect accorded to the remains in this arrangement as being appropriate. The alternative is not spelled out, but he observes

³ Somewhat sadly, they are segregated by denomination: a Church of England group of 8 on one side of the central path and a Roman Catholic group of 5 on the other.

⁴ This is a particular matter of concern to the Friends as is further explained below.

⁵ The sale of three cemeteries by Westminster City Council in 1987 had given rise to well publicised difficulties. In fairness to the Department of Health, it does appear that it hoped that the land would be acquired in due course by Ribble Valley District Council. It did not however secure this outcome.

⁶ There has been a succession of owners.

⁷ The first planning permission was granted in 2009.

⁸ Note that he does not say that they did. It would have been easy to ask.

⁹ As pointed out below, he in practice views the whole site as redundant, subject to the parts that have been subject to interments.

that without a crematorium the land would then have little value and its owner little incentive to maintain it.

It will be seen that this is an argument from expediency and, as will be shown, sits lightly to the statutory test. However before coming to that, it is appropriate to engage with the Archdeacon's argument on its own terms.

What the revised plans for the crematorium do is to try to accommodate as undeveloped land the five areas of consecrated land in which interments have taken place¹⁰. It may be accepted that the development thus avoids any physical interference with the graves. What it does **not** do is respect their setting. Rather than do so, it **deprives** them of the setting that they derive from being part of a larger cemetery. That deprivation of that setting deprives them of meaning as graves; they simply become grassed areas within a crematorium site.

More particularly, what is marked on the Archdeacon's plan as Additional Remembrance Area becomes a grassed area which is surrounded on three sides by the hard standing (access road and car parking). The place where 5 of the Booth Hall babies are buried becomes a thin grassed strip of land between the chapel and a hedge which will separate it from the car park.

These are intrinsically not satisfactory arrangements. The ancillary development associated with the crematorium (access roads and car parking) is quite simply too tight to the consecrated areas; with the result that they do not read and cannot be read as areas in which burials have taken place. If (which is not part of the proposal) the headstones for the Booth Hall babies were re-introduced and some sort of memorial provided to recall the interment of ashes in the Garden of Remembrance, those memorials would not still not have sufficient room to "breathe" (that is, their setting would be inadequate). At this end of the cemetery, there is a clear preponderance hard standing (used for access and car parking) over the areas remaining consecrated. (The Friends have a specific concern that the consecrated area will end up being parked on. This is partly because their doubts of the ability of the Bishop to stop this happening in the future (see "Conditions and future management" below) but it also relates to the question as to the detail of how the areas that remain consecrated are to be separated from the car parking and access roads. This could be done by fencing and hedging but while such treatment would protect these areas from parking it would not otherwise be a fitting or appropriate landscape treatment.

A similar point applies to the two easterly portions of the cemetery (where are the 960 burials). They will no longer read as part a larger cemetery but as part of an undeveloped part of a crematorium site. The satisfactory landscaping of these two portions of the cemetery as a discrete area appears to require the balancing of the northern portion with the southern (ie treating as part of that discrete area land to the west of the northern area (which the Archdeacon proposes should be deconsecrated)). This in turn would require the crematorium building to be shifted west; but there is not of course room to do this¹¹.

Further one notes the single grave that is preserved as consecrated land in land otherwise proposed to be deconsecrated in the area immediately south of the crematorium. It will be physically protected, but no-one will know that it is there.

At the moment the five areas where interments have taken place have coherence and meaning because they are all within one larger cemetery area. If the development proposals go ahead they will be four discrete areas which will not read as part of a Cemetery area but (as stated above) simply exist as

¹⁰ Six areas taking account (as one should) of the isolated single grave: the areas where the Booth babies are buried (2), the Garden of Remembrance, the isolated grave, the two areas at the eastern end of the Cemetery. It is of course difficult to describe the single grave as an "area".

¹¹ Another indication of the tightness of the site is that the development proposed does not contain a garden area where the ashes of those whose remains are cremated may be interred.

areas of grass which happen to have had interments in them. It might by appropriate landscaping be possible to combine the two Booth Hall areas and the Garden of Remembrance into a single area which, appropriately memorialised, could have sufficient "critical mass" to read as an appropriate area dedicated to the interment of the dead. The Friends have not seen any such proposal which would enable them to assess it; and any such proposal would not address the unsatisfactory treatment of the two areas at the eastern end of the site. But at least it would be engaging with their concerns; as it is, the areas where there are interments are evidently treated as impediments to development which have to be **accommodated** within but which are not **integrated** into a design which respects their independent integrity¹².

These are strong objections to what is proposed and, it is submitted, overriding ones.

What may however still be argued by the Archdeacon is that it is better to have the crematorium development which will ensure restoration of the site and its maintenance into the future than a continuation of the current unsatisfactory *status quo*.

In this regard, the Archdeacon has evidently not engaged with the alternatives.

First of all, it is not credible that there are not arrangements which could be designed by the developers which would better respect the setting of the existing graves.

Second, the Developers have not apparently said anything about what in town and country planning cases is described as the "fall-back" position, namely what would happen if the permission does not issue. The Friends would suggest that their immediate response would be to come back with an amended proposal. However let it be postulated that there is no alternative arrangement and the effect of refusing to deconsecrate is that the crematorium proposal cannot proceed. What then?

The Archdeacon assumes that the site would then have little market value, would yield no income and (impliedly) would not be maintained.

Although whatever might be said about the fall-back position by the developer would need to be treated with circumspection, not least because it might not be the landowner into the future, it would at least be appropriate to ask the developer what it says about this.

The obvious alternative is what was considered to be the way forward in 2000, namely that the Cemetery would continue to be used as a Cemetery for the burial of those whose remains are not cremated. There is increasing interest in green burial and the Cemetery is in an attractive location. Obviously this outcome would not come about if the financial returns from use of the land as a crematorium are greater but it might do so if permission were refused. This is the appropriate place to identify an important down side to permitting a crematorium to facilitate the restoration of the cemetery, namely the emission of greenhouse gases (as well as mercury). Rather than facilitating such development, the Church should be discouraging it. The following appears of the Church of England website:

We believe that responding to climate change is an essential part of our responsibility to safeguard God's creation. Our environmental campaign exists to enable the whole church to address - in faith, practice and mission - the issue of climate change.

"Reducing the causes of climate change is essential to the life of faith. It is a way to love our neighbour and to steward the gift of creation": Justin Welby, Archbishop of Canterbury.

¹² The orientation of the site is west-east. (As the Archdeacon notes the view from the lych gate to the memorial cross is an important one). The orientation of the crematorium building is north-south and thus does not respect "the grain" of the existing site. This makes it evidently more difficult to accommodate the consecrated areas within a crematorium site and retain their significance.

Experience suggests that everyone is in favour of measures to reduce the causes of climate change until it comes to a practical measure that might assist. The fact that benefit might flow in terms of beneficial funding is not an adequate justification for facilitating a project which is not green¹³.

However this may be, the Friends recognise that the owners of the land may not be interested in developing the land as a green burial site and without a Crematorium. What then?

The existence of the Friends demonstrates that the community cares very much about the future of the Cemetery. Absent the crematorium proposal, one may guess that the owners of the land would have been looking for community involvement to assist them. In this context, one can look to the precedent of York.

As its website explains, York Cemetery was opened in 1837 and went into voluntary liquidation in 1966. The liquidation took thirteen years during which time all that could be disposed of for profit was sold. Sadly, nobody was interested in running the site and it devolved to the Crown. All rights of burial and access to the site were lost. Over the liquidation period, the Cemetery became a derelict wilderness and its buildings decayed, the collapse of the roof of the Grade II* listed neo-classical chapel in August 1984 being the final act in the drama. This was the point at which a group of concerned York citizens decided that steps had to be taken to retrieve the situation and formed The Friends of York Cemetery and then York Cemetery Trust.

The challenge in York was evidently much greater than in the present case but of course it could also call upon that City for support. The point of the example is to demonstrate that this sort of arrangement can work.

Nearer to home is the Brockhall Cemetery. This is another hospital cemetery which, as it happens, was sold by the Department of Health at the same time that Calderstones Cemetery was sold. It was purchased by a private individual. He erected a memorial to the patients there interred and his successor in title maintains it¹⁴. This is an entirely satisfactory arrangement and the relatives of those there buried are able to visit. If, for whatever reason the private owner ceased to maintain the land, one would expect the community to wish to take over.

If since 2000 the land had not been subject to neglect and positive damage, its continued maintenance by a community trust would be realistic. The neglect and damage that has occurred since 2000 would evidently present a greater challenge. However it should not be discounted on the account. It will be appreciated that at this stage the Friends can only indicate alternative options in broad terms¹⁵.

¹³ There is the further issue that the building of a crematorium is not permitted in this location by virtue of the terms of the Cremation Act 1902. The significance of this is addressed further below.

¹⁴ The original purchaser is buried there as well as members of his family.

¹⁵ Note that it is the Friend's case that it is for the Archdeacon to demonstrate that these alternative options are not runners; not for the Friends to demonstrate that they are. The landowner might say (although it has not hitherto said so) that if it cannot develop a Crematorium it would not facilitate the future of the site in an appropriate way. Such a dog-in-the-manger attitude (which has not been advanced by the developer) would not commend itself to the Bishop.

Looking at the matter more broadly, the Friends are saying that land such as the Cemetery here can properly function into the future as land where burials have taken place and is appropriately so preserved together with associated open space which provides an appropriate setting and context for those burials. Viewing the site as a whole, as is appropriate, a purpose is served by it remaining subject to the legal effects of consecration.

The statutory test

Given that consecration is intended to be for ever one might expect that the test for de-consecration should be one of overriding necessity. In fact under section 92 the approach is to consider the utility of the continuance of consecration; the test is whether

No purpose will be served by [the land] remaining subject to the legal effects of consecration.

It is still however important to bear in mind that land should not lightly be deconsecrated and that the test is a high one, namely that **no** purpose will be served by the land remaining subject to the legal effects of consecration. If those objecting to de-consecration can put forward some reasonable purpose for the land remaining consecrated into the future, then the land should not be deconsecrated. It is nothing to the point that those purposes are ones which do not commend themselves to the landowner.

The Friends of course say that there is a reasonable purpose which consecration serves. Note however that it is for the Archdeacon to show that there is no such reasonable purpose; not for the Friends to show that **is** a reasonable purpose. This is important in the Bishop's consideration of reasonable alternative proposals for the land: it is for the Archdeacon to show that they are not reasonable purposes and not for the Friends to show that they are.

There is a further point. Seeking to construing the section one sees that the Archdeacon may apply to remove the legal effects of consecration from *land* (section 92 (1)). However, the Bishop may direct that *part* of the land should not be subject to those legal effects. Read strictly one might suppose that the Archdeacon cannot apply for de-consecration of part; however this does not produce a sensible outcome considered against the Bishop's power in respect of part. Accordingly it appears that the Archdeacon can apply for the de-registration of part of the land.

One can understand how this might work in a simple case. Imagine a burial ground which was consecrated, like the present, with a particular need in mind. It is used for a period and then that particular need disappears. It is possible to identify part of the land which has not been used for interments and which is not required into the future; and the severance of which does not affect the setting of the land that **has** been subject to interments. In these circumstances one can see that section 92 might apply. The Archdeacon would be able to identify a discrete area to which the legal effects of consecration should not apply.

The Archdeacon in the present case has in effect turned this procedure on its head. He has not looked at the site as a whole and sought to identify what land, if any, within that site as a whole is redundant. Rather he has in effect started by viewing the whole site as redundant, subject to those parts which have been subject to interments which are his overriding concern. He has thus looked at the matter too narrowly. It is not appropriate to view part of a burial ground as redundant just because it has not physically been used for burials. The example of Brockhall Cemetery is an example of this which has within it areas that are not subject to interments but functions perfectly well, viewed as a whole, as a burial ground.

Outstanding concern about location of interments

The Archdeacon correctly records that the Friends remain concerned that the area wherein interment of ashes has taken place is not limited to the Garden of Remembrance as plotted using the dual frequency test¹⁶. The immediately available records indicate 211 burials of urns but the survey indicates that some 223 **may** have been located. The Archdeacon gives no reason why this might have been the case but the on-going research by the Friends suggests an answer. A burial book recently located in the Lancashire Record Office indicates that there were some 62 further burials or interments after 1989; the precise locations of which were not however recorded. It is not clear where the remains of those there recorded were interred or buried. 12 of course may have been identified by DF survey; but that would still leave 50 unaccounted for¹⁷.

Peter Iles did not have this additional information before him when he informed the Archdeacon that the risk of there being further interments which had not been identified was small.

The Archdeacon's response has been to provide a larger buffer area around the Garden of Remembrance. The Friends consider that the correct response was to ask for a DF survey of a bigger area in order to identify the "missing" 50 interments. The survey should certainly include the area south of that which has currently been surveyed¹⁸

The Friends remain concerned about the location of three further interments and at least one burial which took place after 2000.

No order for de-consecration should be made before there is greater clarity as the location of the missing interments.

Conditions and future management of the site; Cremation Act 1902

There are further issues arising in respect of the conditions that the Archdeacon proposes should be imposed on the proposed order for de-consecration and as to the future management of the site; and in respect of the Cremation Act 1902. The Bishop need only engage with these issues if he were otherwise minded to make an order for de-consecration.

Conditions and future management of the site

Section 92 provides that an order may impose conditions and these are accurately summarised in paragraph 5 of the Archdeacon's application. The rather elaborate provisions for enforcement make it

¹⁶ See paragraph 19 of the Archdeacon's application.

¹⁷ It is possible that some or even all these interments may have taken place elsewhere. However, it seems to the Friends that at least some took place in the Cemetery

¹⁸ It would be appropriate for the surveyors to have direct contact with representatives of the Friends during the survey process, to avoid misunderstandings.

clear that a requirement must be negative rather than positive if it is to be enforceable against successors in title.

Thus the requirement that the Garden of Remembrance be marked and maintained into the future (proposed condition 1) will not be enforceable because it is a positive obligation; similarly, proposed condition 3 will not be enforceable into the future and also because it does not concern the preservation or disposal of human remains etc (section 92 (3) (a)) or the maintenance of orderly behaviour (section 92 (3) (b)). Condition 5 is not enforceable (it is not covered by section 92 (3) (b)).

Evidently all the matters which the Archdeacon proposes should be regulated by condition are matters of concern to him, and the Bishop will wish to understand his position (both whether he agrees with the submission that these conditions are unenforceable and also what he thinks should happen if they are).

The Friends are particularly concerned about the Cemetery being open into the future. (At the moment, of course, it is not open). It would not be straightforward to secure this by way of a separate legal agreement which would be binding against successors in title (setting aside the practical difficulties of enforcement) but if the Bishop were to make an order for de-consecration the Friends would like to see something put in place which better secures the future opening of the Cemetery than proposed condition 3.

As set out above, the Friends are also concerned that the consecrated areas could, in the future, be used for car parking.

More generally, the Bishop will readily understand that the Friends are hugely concerned as to the future management of the site. The basis for that concern is firmly based on the facts of what has happened hitherto; not on speculation as to what **might** happen¹⁹. Nor is that concern removed by an appreciation that much of the damage to the Cemetery was done by a predecessor in title to the present owner. Further, although they may well appreciate that the Friends are opposed to much of what they wish to do, nonetheless it would have been possible for them to seek to engage the Friends in dialogue. So far from doing this, they have not responded to polite requests from the Friends. What the Bishop wants to happen in the future should be “nailed down” in a legally binding document and not left to chance or the good will of the landowner: if it is left open, there can be no certainty that it will happen.

Cremation Act 1902

Section 5 of the Cremation Act 1902 provides as follows:

No crematorium shall be constructed nearer to any dwelling-house than two hundred yards, except with the consent, in writing of the owner, lessee and occupier of such house, nor within fifty yards of any public highway, nor in the consecrated part of the burial ground of any burial authority.

The proposed crematorium is nearer to a number of dwelling-houses than 200 yards, and the consent of their owners has not been obtained.

In response to this, the developers have said that as the relevant individuals had moved into their houses after the original grant of planning application, section 5 had no application. This appears to be a misunderstanding of the position and the Friends have written to the Home Office seeking clarification.

¹⁹ The desecration of John Newton's grave and the Friends have still had no explanation from the developer or the Archdeacon for the discovery of what appears to be pieces of broken urns in the hard standing.

The way the planning authority have dealt with this matter is to say that the fact that consent is needed under a code does not preclude planning permission being granted; if consent is needed under section 5, the planning permission cannot be implemented unless and until that consent is obtained. The position of the Bishop is rather different. Potentially de-consecration could happen and the crematorium proposal, not proceed by virtue of section 5. In the circumstances the basis on which de-consecration had been authorised would be falsified. It may be possible to address this concern by virtue of a condition precedent (although this is not clear). However this may be, what this concern demonstrates is that the application to de-consecrate is in practice premature. The Archdeacon makes a case for the order based on the provision of the crematorium against the background that as matters stand the Crematorium proposal cannot go ahead. De-consecration (if otherwise appropriate) could be deferred until this is sorted out.

Procedure

Section 92 does not make any provision as to the procedure to be adopted by a Bishop in making a determination under the section. It was probably envisaged (no doubt correctly) that most cases would be uncontroversial.

The present case evidently is controversial and the Bishop must decide the matter by reference to a procedure that is fair to all the parties (including, as the Friends recognise, the Archdeacon and the developer).

In the first instance, this means that copies of the representations made to the Bishop by interested parties must be made available to the other interested parties. In particular, if the developer has made representations, they must be made available to the Friends; just as the Friends' representations must be made available to the developer (if it becomes an interested party). Further fairness requires that the interested parties have the opportunity to comment on each other's representations.

The Archdeacon must also have the opportunity to comment upon the representations.

Accordingly it is suggested that copies of the initial round of representations having been supplied to the interested parties and the Archdeacon, each should have 28 days to comment.

It being the Archdeacon's application, he would have the final word (or the opportunity for a final word); it is suggested that he should have 28 days to do this (with, of course, a copy of any such final comments being supplied to the parties).

The Friends would still like the opportunity to address the Bishop before he makes his decision. The Friends have been particularly concerned that although there should be no doubt that they are stakeholders, thus far their role has not been adequately recognised in the process. Thus despite the Archdeacon's acknowledgment that he had not solved the *riddle* of the location of the Garden of Remembrance, he proceeded to make the original order (19 April 2018) hoping, in effect, that it would "all come out in the wash". And so, in practice it did, but only after the Friends had invested considerable time and effort in making representations in respect of a proposed order that was then promptly withdrawn. Again the Friends made representations in respect of the recent application for amendment of the planning permission, only to discover that that application had been amended at the instigation of the Archdeacon and that the Archdeacon had sent an e mail to the planning authority supporting the (amended) application without copying that letter to the Friends. We have complained about this to the planning authority but if the Archdeacon had copied us in we would have known what was going on. The Friends have the impression of the Archdeacon pursuing what he has worked out to be a solution and not actually engaging with them. Because they have been so poorly impressed by the process thus far, they wanted to speak to the Bishop personally in order to impress him with

their concerns²⁰. It will be seen that a meeting after the decision, whatever it is, will not address the matters that are central to the Friends' concerns. The Friends do understand the quasi-judicial nature of the Bishop's decision but oral representations are after all both usual and helpful in comparable proceedings such as planning inquiries and there is no reason why fairness to all parties cannot be ensured.

What the Bishop decides as to process from this stage onward should be communicated to the parties.

In due course, the Bishop should give reasons for his decision, engaging with the arguments that he has received.

Conclusion

If nothing else the Bishop will appreciate the sensitivity of this matter and the concerns that the Friends and its friends have. All cemeteries are sensitive but this one is particularly so because it contains the remains of those – more than 1100 – of those with learning difficulties. Those responsible may have thought that it was doing the best thing for the patients concerned but it looks now very much as though they were just shut away and forgotten. In its original objection, the Friends drew attention to how the stories of those buried in the Cemetery are invariably sad ones. Sarah McArdle was admitted in 1926 at the age of 10 with encephalitis of the brain and, aged 32, died in 1948. Those who died and are buried in the Cemetery are still remembered by relatives. Sarah's niece lives in Australia but visits the cemetery on her regular trips to England. Her story is typical of many.

These are not irrational concerns. Respect for the remains of dead, recognised and encouraged by the Church, is deep rooted in people. Section 92 must be read in this light so that the need for land to remain consecrated is interpreted appropriately and not from a narrowly utilitarian perspective. The Church consecrated this land in the first place and burials took place thereafter on that basis. The proposal for de-consecration and the proposals on which it is based do not adequately reflect the reasonable and justifiable concerns of the Friends set out in this objection.

The order proposed by the Archdeacon should not be made.

Summary

- (1) The proposed treatment of the six areas proposed to remain consecrated within the site deprives them of meaning and significance;
- (2) The Archdeacon has not shown that the facilitation of a crematorium is necessary to fund the restoration and future maintenance of the site;
- (3) The Church should be encouraging a green solution;
- (4) The Archdeacon has not demonstrated that no purpose is served by the land remaining subject to the legal effects of consecration giving section 92 an appropriate meaning;
- (5) The order should not be made until there is greater clarity as to the location of about 62 burials or interments which took place after 1989;
- (6) The proposed condition requiring the cemetery to be kept open is not within the powers of section 92 and, if an order were to be made, this requirement should be secured by alternative means;
- (7) The proposed order is premature pending resolution of the issue as to section 5 of the Cremation Act 1902;

²⁰ The Friends appreciate that the Diocese has limited powers directly to enforce the faculty jurisdiction over consecrated land which is not within its ownership. But it is not persuaded that when concerns were raised with the Diocese over the way the cemetery has been treated, it has responded appropriately. It has not however seen the correspondence which the Diocese has had with the owners.

- (8) The Friends have set out a procedure which they say represents a way that is fair to all the parties for the determination of this matter. The Bishop should decide what procedure he will adopt for its determination and inform the parties of it.

26 April 2019