



COMMENT

An exceptional burial in a closed churchyard: *St Mary and St Eanswythe, Folkestone*

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On 6 December 2023, seven-year-old William Brown was struck and killed by a hit-and-run driver when he was retrieving his football from the road outside his home. A Year 3 pupil at St Eanswythe's Church of England Primary School in Folkestone, he had walked through the grounds of St Mary and St Eanswythe's Church every day on his way to school and had attended services there. His parents wanted to bury him in the churchyard, but although the Vicar was willing to conduct the burial, the churchyard had been closed by Order in Council in 1857 under the provisions of the Burial Act 1855, with only one exception being made for a burial in 1898. Because the churchyard had been closed, under section 1 of that Act his burial would require an Order of the Privy Council.¹

William's mother, Laura, was told that it would take two meetings of the Privy Council to approve an application to bury him in the churchyard and that the Council was not due to meet until February 2024, so she decided to make a personal plea to the King for the decision to be speeded up. On Christmas morning, she drove to Sandringham and handed in a letter to the King's security team in which she explained the situation and asked His Majesty whether there was any way in which the case could be resolved earlier. She hoped that a decision to permit the burial would allow William's schoolfriends to visit his grave on their way to and from school, telling the *Daily Telegraph*,

¹ Burial Act 1855, s 1 provides that '1. Orders in Council under the recited Acts may be varied by like orders.

It shall be lawful for Her Majesty, by and with the advice of her Privy Council, from time to time to postpone the time appointed by any Order in Council for the discontinuance of burials, or otherwise to vary any Order in Council made under any of the said recited Acts or this Act (whether the time thereby appointed for the discontinuance of burials thereunder or other operation of such order shall or shall not have arrived) as to Her Majesty, with such advice as aforesaid, may seem fit'.

'He spent a lot of time playing in there, collecting conkers and picking wild garlic for our dinner. He loved that place'.²

His Majesty agreed to her request. A spokesman for the King was reported as saying: 'His Majesty was exceptionally moved by the family's circumstances and pleased to be able to assist'.³ A spokesman for the Privy Council added: 'We are pleased that His Majesty the King, *on the advice of his Privy Council*, has granted permission in order to support the family in these tragic circumstances. The Brown family and the local community in Folkestone are in our thoughts at this difficult time'.⁴

In a subsequent statement, the Member of Parliament for Folkestone and Hythe, Damian Collins, commented as follows:

I would like to thank Reverend John Walker, the Vicar of St Mary and St Eanswythe's church, and the Archdeacon of Ashford, Darren Miller, for their tireless work on behalf of the Brown family. As a result, a location for burial has been found, and the permission of the Church of England was granted. On 29 December, His Majesty King Charles gave his approval for the Order in Council to be granted, and I would also like to thank my parliamentary colleague Penny Mordaunt, who as Lord President of the Council helped to ensure that this part of the process ran as quickly and smoothly as possible.⁵

The funeral service and burial duly took place on 13 January 2024.⁶

Unbelievably tragic though the story is, it raises an interesting point of constitutional and ecclesiastical law. Section 3 of the Burial Act 1853 (Burial not to take place after Order in Council for discontinuance) provides as follows:

It shall not be lawful, after the time mentioned in any such Order in Council for the discontinuance of burials, to bury the dead in any church, chapel, churchyard, or burial place, or elsewhere, within the parts to which such Order extends, or in the burial grounds or places of burial (as the case may be) in which burials have by any such Order been ordered to be discontinued, except as in this Act or in such Order excepted; and every person who shall, after such time as aforesaid, bury any body, or in anywise act or assist in the burial of any body contrary to this enactment, shall be guilty of a misdemeanour.

² H Furness, 'King grants grieving mother's wish to bury seven-year-old son in closed graveyard' (*Daily Telegraph*, 29 December 2023).

³ *Ibid.*

⁴ *Ibid.*: emphasis added.

⁵ D Collins, 'The tragic death of William Brown', 30 December 2023, <<https://damiancollins.com/the-tragic-death-of-william-brown/>>.

⁶ S Odeen-Isbister, 'Boy, 7, buried in favourite churchyard after King Charles gave permission' (*Metro*, 13 January 2024), < <https://metro.co.uk/2024/01/13/boy-7-buried-favourite-churchyard-king-gave-permission-20109400/>>.

In *Re St Oswald, Filey Closed Churchyard*, the churchyard had been closed by an Order in Council on 10 December 2014. Nevertheless, a burial took place in October 2018 without the knowledge of the incumbent during his absence from the parish. When the circumstances were reported to Chancellor Collier KC via the Registrar,

I indicated that it should be made clear to all concerned that this was a serious matter, that this burial was not only unlawful *but appeared to amount to the commission of a criminal offence contrary to s.3 of the Burial Act 1853...*⁷

In *Re All Saints, Pontefract*, unidentified human remains unearthed at a nearby archaeological excavation had been buried in the churchyard in 2015 despite the fact that the churchyard had been closed to further burials as long ago as 1875. The incumbent, who had been collated in 2019, sought a confirmatory faculty for the burial some seven years after it had taken place. The confirmatory faculty was granted on 28 October 2022,⁸ but only after the making of an Order in Council dated 12 October 2022 permitting, *ex post facto*, the burial of the remains:

His Majesty, in the exercise of His powers under section 1 of the Burial Act 1855, by and with the advice of His Privy Council, is pleased to order as follows:-

Notwithstanding anything in the Order in Council made under the Burial Act 1853 on 20th March 1857, directing the discontinuance of burials in All Saints Churchyard, Pontefract, West Yorkshire (referred to in the 1857 Order as “the old parish churchyard”), the burial may be allowed of the unknown human remains from the 1340s to 1390s exhumed from the former St Richard’s Dominican Friary in the then disused site of Pontefract General Infirmary, within the burial ground of All Saints Churchyard, Pontefract, West Yorkshire.

In the present case, while according to Damian Collins His Majesty approved an Order on 29 December, there was no meeting of the Privy Council on that date. Had the Council met, the meeting would have appeared in the Court Circular and the relevant papers would have been published on the Privy Council Office website. The decision was subsequently confirmed at a meeting of Council on 21 February, *after* the burial had taken place:

His Majesty, in the exercise of His powers under section 1 of the Burial Act 1855, by and with the advice of His Privy Council, is pleased to order as follows:-

Notwithstanding anything in the Orders in Council made under the Burial Acts 1853 and 1855 on 8th February 1855 and varied on 28th February

⁷ *Re St Oswald, Filey Closed Churchyard* [2019] ECC Yor 8 at para 7; emphasis added.

⁸ *Re All Saints Pontefract* [2022] ECC Lee 6 at para 29.

1855 directing the discontinuance of burials in the Churchyard of St Mary & St Eanswythe, Folkestone, Kent, an exception be added that the burial may be allowed of the late Master William Brown within the Churchyard.⁹

So on what authority was the burial permitted? One can only assume that unless there was an exceptional online meeting of the Council between 26 and 30 December for which there is no published minute, the decision to allow the burial was taken by His Majesty and the Lord President of the Council personally out of compassion for William's family, with the intention that it be confirmed by an Order *ex post facto* – a course for which the facts in *Re All Saints, Pontefract* provided a helpful if unusual precedent.

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⁹ Privy Council, 'Orders Approved and Business Transacted at the Privy Council, held by The King at Buckingham Palace on 21st February 2024', 92 <<https://privycouncil.independent.gov.uk/wp-content/uploads/2024/02/2024-02-21-List-of-Business.pdf>>.

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