



Press Summary

30 July 2025

Wathen-Fayed (Appellant) v Secretary of State for Housing, Communities and Local Government (Respondent) and Horizon Cremation Limited and another (Interested Parties)

[2025] UKSC 32

On appeal from [2024] EWCA Civ 507

Justices: Lord Reed (President), Lord Hamblen, Lord Leggatt, Lord Stephens and Lady Simler

Background to the Appeal

This appeal concerns the interpretation of the Cremation Act 1902 (the “Act”) and in particular the provisions of the Act which govern where a crematorium may be sited.

Section 2 of the Act provides:

“The expression ‘crematorium’ shall mean any building fitted with appliances for the purpose of burning human remains, and shall include everything incidental or ancillary thereto.”

Section 5 provides:

“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 essential issue on this appeal is the point from which these radius distances are to be measured, which in turn depends upon what is meant by a “crematorium” for the purpose of section 5 [1-4].

The factual background is that the first interested party made an application to Tandridge District Council for planning permission for the site of a proposed crematorium off Oxted Road in Surrey. The council refused the application, which was subsequently allowed following an appeal to the Secretary of State. The appellant, Mrs Wathen-Fayed, brought these proceedings under section 288 of the Town and Country Planning Act 1990 in order to quash the grant of planning permission, on the basis that the location for the site contravened

section 5 because the radius distances were required to be measured from an area that included a proposed memorial garden in which ashes might be stored [6-9].

Both the judge and the Court of Appeal rejected the appellant's case. The judge held that a "crematorium" comprises any building, structure or open area which is used for the purpose of burning human remains. The Court of Appeal held that it comprises the crematory and all other buildings or structures on site in which functions incidental or ancillary to the cremation process are carried out. Both held that it did not include an open area in which ashes might be stored, such as the memorial garden [43-48].

Judgment

The Court unanimously dismisses the appeal. Lord Hamblen gives the judgment of the Court with which the other Justices agree. The Court holds that in section 5 of the Act "crematorium" means a "building fitted with appliances for the purpose of burning human remains" (i.e. the crematory building) so that the distances specified in section 5 of the Act are to be measured from the building which houses the crematory [79; 101].

Reasons for the Judgment

The judgment addresses various principles of statutory interpretation of potential relevance, including the presumption that a word has the same meaning throughout a statute; the presumption against absurdity; the relevance of subordinate legislation; the status of statutory guidance and the relevance of settled practice.

The core definition of "crematorium" in section 2 is "a building fitted with appliances for the purpose of burning human remains". That core definition is extended by the additional wording in section 2: "everything incidental or ancillary thereto" ("the extended wording") [68]. These are wide words which on the face of it apply to all parts of a crematorium site since they are all there to support and/or are connected with the purpose of burning of human remains. That extended wording makes good sense in relation to section 4 of the Act, the purpose of which is to confer on burial authorities wide powers in relation to the provision and maintenance of crematoria, equivalent to those which they had in relation to burial grounds and cemeteries. It, however, makes little or no sense in the context of the restrictive purposes of section 5 [74].

If the extended wording is given its naturally wide meaning, it would include access roads. This, however, results in an absurdity and renders the Act unworkable. It would mean that a burial authority would never be able to connect its proposed crematorium site to a highway because any access road has to be 50 yards from the public highway. The consequence would be that a crematorium could only be built in cemeteries or burial grounds which already had the necessary access roads. That would completely undermine the Act's purpose of facilitating the establishment of crematoria. The presumption against absurdity applies [75-78].

Further, that wide meaning would mean that the distance restrictions apply to all uses of the site. It is, however, impossible to see what rationale there could be for applying such restrictions to uses such as landscaping, an ornamental garden, a chapel, a waiting area, a ceremony hall, an access road, car park or service yard. [78].

The solution to the difficulty and indeed absurdity of applying the extended wording to section 5 is to hold that, for the purposes of that section, only the core definition applies. This is supported by other provisions in section 5 [79].

First, the word "constructed" is consistent with something which is constructed, such as a building, rather than merely land use [80].

Secondly, section 5 provides that no crematorium may be constructed “in the consecrated part of the burial ground of any burial authority”. This restriction is understandable in relation to the crematory building, but not for other buildings or land use [81].

It is also supported by the statutory context, since there are other provisions of the Act in which the word crematorium can only apply to a building such as section 9 relating to the charging of fees. Further, under regulation 16 of the 1903 Regulations, which at the time of the Act was to have the same effect as if enacted in the Act, land reserved for the burial of ashes is treated as not being part of the crematorium but rather as land “adjoining it”, which is consistent with a crematorium being a building, and inconsistent with it including related land use [82-83].

It is further supported by the purpose of section 5, which was primarily the protection of public health. This is consistent with the focus of the section being the place where the burning of human remains takes place i.e. the crematory building, but inconsistent with its focus being other buildings on the site or land use on the site [89-90].

Further, an interpretation which measures the radius from the crematory building offers certainty. It enables the distance to be measured by reference to a fixed point on a single, permanent structure. By contrast, the appellant’s interpretation involves measuring distance from areas of land dependent upon their use. This is not only far more difficult to apply, but it also makes everything dependent on a variable – land use from time to time [100].

For all these reasons, “crematorium” in section 5 of the Act should be held to mean “a building fitted with appliances for the purposes of burning human remains”. It follows that the radius distances are to be measured from the building which houses the crematory [101].

The appeal must accordingly be dismissed.

References in square brackets are to paragraphs in the judgment.

NOTE:

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)