

MINUTES OF ORAL EVIDENCE

taken before the

OPPOSED BILL COMMITTEE

on the

BISHOP'S STORTFORD CEMETERY BILL

Friday 7 July 2023 (Morning)

In Committee Room 2

PRESENT:

Lord Etherton KC (Chair)

Lord Reay

Viscount Stansgate

Baroness Thornhill

Baroness Willis of Summertown CBE

IN ATTENDANCE:

Mustafa Latif-Aramesh, Parliamentary Agent

Che Kieron Diamond, Committee Counsel

Peter Careless, on behalf of the Petitioners

WITNESSES:

Victoria Wilders, East Hertfordshire District Council

James Parker, Bishop's Stortford Town Council

PRESENT:

Sophie Careless-Shore

Leonard Careless

IN PUBLIC SESSION

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(At 10.30 a.m.)

622. THE CHAIR: Mr Latif-Aramesh, we were in the course of listening to your submissions in detail on the provisions in the Bill, with a particular emphasis on amendments that might be required by the petitioners. We got, I think, to the stage of Clause 4, and we identified that you might want to go away and think a bit more about providing protection in the case of somebody who was buried in a common grave and therefore did not fall within Clause 3. Have you been able to think about that a bit more?

Submissions by Mr Latif-Aramesh

623. MR LATIF-ARAMESH: Good morning, my Lord, and thank you for the time to give that particular issue some thought, and thank you to Mr Diamond, who corresponded with us very late last night on this very issue. We are grateful.

624. If I may, my Lord, in thinking about this issue, we have formulated a position which we hope will convince you that an amendment is not required. We have five submissions to make on this point. The first is that the nature of the interest and the interference is different in the cases of Clauses 3 and 4. Clause 3 is a proprietary interest. Clause 4 is an interest which relatives have a particular interest in, given the sensitivity of knowing what happens to their loved ones' remains.

625. The other key difference is the question of reversibility. Under Clause 3, once a right of burial is extinguished and all the processes have been duly followed, it is not reversible. It ceases to exist. Under Clause 4, which applies to human remains, those are reinterred in another grave. They are not extinguished, destroyed. They continue to be there. Under Clause 87 of the Bill, a record would have to be kept of where those removed or disinterred remains are, allowing others to continue others to continue to pay their respects, so the question of reversibility is a key distinction between the clauses.

626. The second submission I would like to make is unintended consequences, particularly, I think, Lord Etherton, your suggestion of, "Why does Clause 4 simply not replicate what is in Clause 3?" There is a particular concern that we feel is pressing against an amendment which would have that effect. If any person could object, which would trigger a requirement for Secretary of State consent, we would be concerned

about competitor cemeteries or even nefarious crematoriums. I am being theoretical here, but, if any person could object, then a competitor crematorium could seek to impede the use of the powers under the Bill. Even if the Secretary of State then granted consent, there would be a lag, and we think that frustrates the purposes of the Bill.

627. The third submission we would like to make is about ministerial capacity. I should note at this point I think you have all been provided the letter from the Ministry of Justice, which I referenced yesterday. It is clear that they have not raised a concern about the appeal provision in the context of Clause 3. In the time available, we have obviously not been able to consult them on whether they would be happy with taking on an additional appeal function in the context of Clause 4. To that end, we are not clear whether the Ministry has the desire, capacity or resources to deal with an additional layer of appeals, which may be required.

628. My fourth submission is about precedent. We are mindful, Lord Etherton, as you mentioned, there is a slight evolution in precedents as they go on. Nonetheless, the circumstances of primarily the London local authority cemeteries, New Southgate and Highgate, are not materially different, and if we were to go down an approach when any person could object or suggest that the disturbance of human remains is something of a public interest, I think that would go beyond an evolution. It would be effectively a revolution in the understanding of the nature of disturbing human remains.

629. On this point, I also just wanted to reiterate some comments I made yesterday about other pieces of secondary legislation which authorised the disturbance of human remains. These are not just burial authorities or local authorities. They are private developers who are given these powers. So, again, there is the M42 junction 6 development consent order. The Sizewell C nuclear power station development consent order authorises the likes of EDF to disturb human remains in the course of carrying out their infrastructure projects. Importantly, there is no mechanism for relatives to object in those circumstances. Under the Bill, there is, and so, again, we would find it peculiar if this particular cemetery, operated by a parish council in its capacity as a burial authority, would have greater restrictions imposed on it than those circumstances, particularly where there seems to be no substantial difference in the circumstances.

630. Finally, I am mindful, Lord Etherton, you raised the example of Mozart yesterday. As a point of interest, from late-night digging on the internet, it does appear his remains had been moved in the past, in line with the practice in Vienna in the 19th century, but also, this concept is not alien to the UK. Karl Marx's grave, for example, was moved within the confines of Highgate Cemetery. The reason I am raising that point is not just for your amusement or historical interest. It is to emphasise the point about the difference in nature between disturbing human remains where they are still respectfully treated and can still be commemorated as a reason for why there is a distinction between Clauses 3 and 4.

631. I should note that we have prepared an amendment, which we have discussed with Mr Diamond. However, there are two things that we would ask. The first is that we would ask that you give consideration to the submissions I have just made as a reason for not proposing any further amendments.

632. The second point that I would just like to put on the record, and I am sure Mr Careless will confirm this in due course, is that we have had further discussions with Mr Careless, who is prepared to withdraw his request for the definition of "relatives" to be amended on the basis of the settlement that I referenced yesterday, which the town council and the district council are prepared to provide.

633. In those circumstances, where the specific request has been removed and we have set out a justification and the precedented approach, we would ask that no amendment be made, but, if you were still minded, we have discussed an amendment with Mr Diamond on that basis.

634. THE CHAIR: Well, where is the provision in the Bill which repeals Section 25 or disapplies Section 25 of the Burial Act?

635. MR LATIF-ARAMESH: It is Clause 4(9), which reads, 'The provisions of Section 25 do not apply to a removal carried out in accordance with the provisions of this section'.

636. THE CHAIR: If we go back to basics, but for that provision in an Act, a private Act—and there aren't many of these private Acts currently. You have identified some, but not many.

637. MR LATIF-ARAMESH: My Lord, just on that point, the secondary legislation I have listed also has the same disapplication and, if you gave me a moment, I am sure I could come up with more than a dozen examples.

638. THE CHAIR: I am making the point that the Government has not repealed Section 25 of the Burial Act. It remains the overarching statutory provision dealing with human remains, and so what we are doing here and elsewhere where we see a similar type of provision is we are dealing with the cutting down of what would otherwise be required by the 1857 Act. That would require, in all cases, whether private or otherwise—you have got special provisions in relation to an ecclesiastical faculty, but certainly, non-consecrated land would require the Secretary of State to give consent. Otherwise, an offence would be committed, and we must assume that local authorities will abide by the law.

639. So what we are having to judge here—it is not just Mr Careless’s case. There is a wider issue here, which is about the extent to which it is appropriate to cut down what would otherwise be a protection that anyone could invoke, subject to any other statutory instruments or particular schemes.

640. So I think simply to say, ‘Well, you do not need any protection, as it happens, in the case of a common grave, where there are remains there’, is not a very attractive proposition because you are going from one extreme to another. You are going from one where, in every case, somebody could say, ‘Well, you have not got the permission of the Secretary of State’, to one where you are saying, ‘There is no need to get any permission from anybody, save where there are specific statutory instruments or particular schemes for this’.

641. So I think that is the issue. We will go into private session now you have your submission and deal with your point that there should be no change at all to what you have currently got here. I have to say, from my perspective, if you are right, then what should have happened is the Government should have repealed the 1857 Act.

642. MR LATIF-ARAMESH: My Lord, thank you for that indication. I think there is a few things just to say briefly in response. The first is that the Government has accepted in the past, both in primary and in secondary legislation, that the protection which is offered by the 1857 Act can be removed where you demonstrate a need for it, and the

need here is burial space capacity. And, on that basis, the body that is being given responsibility to exercise these powers is a burial authority, a public authority acting in accordance with general public law principles.

643. I would just say two further remarks. If the intention of this Bill is to change the status quo in relation to a particular location—that is its fundamental purpose—Section 25 must be modified. I think your question is, “But what are the protections?” and the protections that we are making clear are that Clause 4 is dealing with not the extinguishment or incineration of human remains. They will continue to be capable of being commemorated and reinterred in the cemetery. That is what makes it different from everything else. The protection is there because the remains must be dealt with respectfully.

644. THE CHAIR: I would not describe that as necessarily a “protection”. That is the scenario in which you say no protection is needed.

645. BARONESS WILLIS OF SUMMERTOWN: Could I just ask a question? In my understanding, the difference is that you are making a distinction between private and public graves which is not made in this Act.

646. THE CHAIR: The 1857 Act, yes.

647. MR LATIF-ARAMESH: My only comment there is that there is a form of protection for relatives to object.

648. BARONESS WILLIS OF SUMMERTOWN: Sorry, to public graves.

649. MR LATIF-ARAMESH: Yes. Even in common graves, if a relative objects to the disturbance of human remains for the purposes of Clause 4, the powers would be disappplied. What I would just say is that, if you are still minded to make an amendment, we would request that it deals with the specific circumstances which you have highlighted, which Mr Careless is in with the three infants, which is collateral descendants. We would be very concerned about an extension to any other person or involving the Secretary of State, having not a chance to confirm that they are content to take on that function or they have the resources.

650. THE CHAIR: Why do not you show us what your alternative is?

651. MR LATIF-ARAMESH: It is the alternative I mentioned I corresponded with Mr Diamond about last night.

652. THE CHAIR: Do you have something written out?

653. MR LATIF-ARAMESH: I think Mr Diamond is just passing you something. No. We do have something to share.

654. THE CHAIR: Perhaps we could look at that, because we will not be coming in and out and going in and out all the time.

655. MR LATIF-ARAMESH: Yes.

656. MR PARKER: May I make a comment? I just want to be clear that, as I understand it—and Mr Latif-Aramesh will confirm it—the proposed text, as it currently is, does include protections for certain relatives even in the circumstance that they are buried in common graves.

657. The discussion I thought we had yesterday, and I think we had yesterday, was whether that definition should somehow be expanded, and I think the question that we are perhaps now discussing is whether it should be expanded not at all so it still protects some relatives, or it should be expanded somewhat to perhaps a greater class of relatives or to the general public. Is that the issue?

658. THE CHAIR: Yes, that is exactly the issue.

659. MR PARKER: I think what we are submitting, what Mr Latif-Aramesh has just set out, is our argument why we think there is a case that it should not be expanded at all, but it does still provide protection for a class of relatives, even in the case of a common grave. And then the amendment we have prepared, which you have just asked to be presented before you, does expand that definition of relatives, so it is that middle case.

660. THE CHAIR: Great. I think we understand that.

661. MR PARKER: Okay, I thought you might. I was fairly confident you might.

662. THE CHAIR: Very wise to check.

663. MR PARKER: I wanted to be very clear what our position was.

664. THE CHAIR: Yes. We have the three options: do nothing; expand “relative” for this purpose; or go for the full whack and say that anybody can object to the Secretary of State.

665. MR LATIF-ARAMESH: That is correct. And, for the purposes of the transcript, the amendment would be to add a new subparagraph in the definition of “relatives” which read, “Any lineal ancestor or lineal descendent of a person mentioned in paragraphs (a) to (c)”, so that would then cover all the people that you can see in (a) to (c), so the person’s spouse, the person’s civil partner, brother, sister, aunt, uncle or spouse. What it would mean is a deletion of ‘lineal ancestor’ and ‘lineal descendant’ from (c) because it would then be passed down to (d).

666. Effectively, the short of it is the lineal descendants of the people mentioned in the definition.

667. THE CHAIR: Yes. Do you have something written for us that we can all look at?

668. MR LATIF-ARAMESH: I can provide that to you. I have a copy.

669. THE CHAIR: You have only got one, have you?

670. MR LATIF-ARAMESH: I only have one, I am afraid.

671. THE CHAIR: Can we copy that?

672. VISCOUNT STANSFORD: This would be put in at Clause 2.

673. MR LATIF-ARAMESH: This would be put in the definition of “relatives” in clause –

674. THE CHAIR: I want to make sure I have got your argument on why we should do nothing.

675. MR LATIF-ARAMESH: Yes.

676. THE CHAIR: I know you have spelled them out, but, if I can just put it in my own language, you say there is already what you described as a “protection”, which is

different from Clause 3, because the scheme of this Bill provides that any human remains disinterred will be reburied on the site, so it is not as though they are going to be disposed of and destroyed. They will be there, and you will be able to find them because they will be notified.

677. The second thing you say is that there are in fact many other cases where, not necessarily in relation to cemeteries, the people who object to removal of remains are quite limited, certainly as limited as they are in the Bill, and maybe more so.

678. The next point that you make is that, if we were going for the Secretary of State solution, we cannot be certain that the Ministry of Justice would agree to this or would be in favour of it because of the onus that it would place on the Secretary of State and the department, the Ministry of Justice, in terms of resources to deal with it. I would assume they'd have quite a flow of potential objections.

679. And then, of course, you point out precedents, where you say, "Well, it is limited as here, and nobody has gone further than here at the moment", and you say, "This is more than just evolution. This is a step-change". And then you make a point which I have to say I have not fully grasped, which is about competition. I am not sure that I fully grasped that point.

680. MR LATIF-ARAMESH: Thank you, my Lord. That point is specifically about the third scenario you set out, where it is expanded to any other person. In those circumstances, if a bad faith competitor, a crematorium or other cemetery operator wanted to frustrate the purpose of the Bill, they could constantly object and then create a mechanism by which human remains could not be disturbed.

681. THE CHAIR: I suppose everything is possible. It seems fairly unlikely, but who knows?

682. MR LATIF-ARAMESH: The reason we are concerned is that there would be no protection for the burial authority in those circumstances to prevent a crematorium or a cemetery that is five or 10 miles away from issuing an objection and forcing us either to stop for 25 years or to have to go to the Secretary of State.

683. THE CHAIR: Anyway, now you have explained that, are you happy that I have

grasped the main elements of your points?

684. MR LATIF-ARAMESH: Thank you, my Lord.

685. THE CHAIR: I think we had better go into private session and make a decision about this now so we can move on. Before I do, does Mr Careless want to comment on this? Mr Careless, you understand the way the debate has moved. We have moved, in a sense, away from your particular case to the generality of people who have a similar type of situation because you are not the only person, undoubtedly, who's going to be affected by this. If we did not leave it exactly, as it is but we adopted one of the other two possibilities—that is, expanding the definition of “relative” for this purpose, or we go for the full-on requirement to get Secretary of State licence for any removal—then it would cover not just your case, but all cases for the future for people in a similar position. Do you want to say anything about that?

686. MR CARELESS: I considered what you said last night before I had the opportunity of listening to the arguments this morning. I felt that, being a lawyer myself, the thrust of the Bill could be distorted, if you wish, by an amendment which was proposed last night to be considered. On that basis, I suggested this morning to my friend here that we revert back to simple protection for my family, which I understand the promoter and the town council are prepared to do, leaving the Bill in its original form.

687. I am very grateful to you for considering my infant great aunts and uncles and, as you say, there could be other people in a similar situation, but the overall effect of a common grave is that they do not have a right of burial, and that has to be considered as well. On top of that, there is a distinction between the rights of the church, the diocese, over the consecrated section, where the consent of the licence of the Secretary of State is not required. So you have these other facets going on as well, and I think it is very difficult to identify a range of relatives.

688. I can see the point. I take your point. You said to me the other day, “You’ve got it in your petition to enlarge the range”. I understand that, but, as I said to you yesterday, collateral relatives on my family’s side could end up with a half-sister who had 11 children and 30 grandchildren. They would have to find those people, which would be quite difficult. I am all in favour of expanding the definition of “relatives”, but I think

you will find it very difficult to enlarge it so much that it will cause administrative problems for the municipality. I can see that, and I am not sitting here saying, “I want that”.

689. I have to take a practical decision and a practical approach. The practical approach that they have given me today is that they will protect my family because this will be a rolling scenario. If they start reburying people in this area, they are saying that it will last 100 years, if not more. All my family will be an unmovable grave in the midst of all this going on about them. That is all I can say to you, if it is any help to you.

690. THE CHAIR: Very well. Thank you very much. Does anybody want to ask any questions before we go into private session? There is a Division in the House. We will have to suspend the sitting.

Sitting suspended.

On resuming –

691. THE CHAIR: We are extremely grateful to all who have spoken on this particular issue. We note that Mr Careless would be content to have a private arrangement, which would deal with the infant relatives who are in a separate grave, pursuant to an offer made by the local authority. If he had that, he would be content with the current form of the Bill.

692. We have heard all the arguments ably presented on behalf of the promoter, but our view is that our job and our duty is to make sure that the Bill is appropriate not just for a one-off case where the petitioner is here, but for others in the future because these things are intended to last for a very long time and it is our view that it is highly likely there will be similar situations in the future.

693. For all the reasons that were advanced on behalf of the promoter, we would not take the view that, in every case where there is an objection, the consent of the Secretary of State should be obtained, but we believe that it would be right in all the circumstances for the definition of “relative” to be expanded in the way that is been indicated on the form which has been handed in to us as a middle course.

694. MR LATIF-ARAMESH: Thank you, my Lord.

695. THE CHAIR: That is where we are on that one.

696. MR LATIF-ARAMESH: Thank you. Would you like me to continue through the other clauses?

697. THE CHAIR: Yes, please. Thank you.

698. MR LATIF-ARAMESH: Just on Clause 4, there were two other points that Mr Careless has raised in connection with this clause. The first is in relation to Clause 4(4), which uses the term “any”, and Mr Careless, in his supplementary evidence, takes issue with the use of the word “any”, and we just wanted to put on the record that that is simply drafting—that that is there because it is the plural form of an indefinite article. It is not intended to imply any disrespect.

699. THE CHAIR: This is 4(4).

700. MR LATIF-ARAMESH: 4(4).

701. THE CHAIR: Yes.

702. MR LATIF-ARAMESH: The word “any” at the very beginning.

703. THE CHAIR: Yes, thank you.

704. MR LATIF-ARAMESH: Mr Careless also, in his petition, raises that any disinterment should be the subject of ministerial regulation, and he further states in his position, “It should be carried out in accordance with conditions that are imposed by the diocese in respect of consecrated graves”. Our view is that the Bill already caters for this scenario. The conditions attached to a faculty are unaffected by the Bill and there is a provision which specifically requires following the direction of the Secretary of State.

705. I would also just note that the undertakings that we made pursuant to Standing Order 130 in yesterday’s proceedings also specifically relate to how the powers will be exercised, so we think appropriate controls are in place in relation to the exercise of those powers.

706. I will move on to Clause 5 unless there are any comments on those two points.

707. THE CHAIR: Thank you.

708. MR LATIF-ARAMESH: Clause 5 is the clause that provides further protections in respect of the exercise of the powers. Mr Careless's petition in respect of Clause 5(3) sets out that it should impose an obligation to agree conditions with the diocese. That is effectively the point that I have just discussed. It already ensures that any faculty can be subject to conditions, but also, the general jurisdiction of the diocese is unaffected by the Bill.

709. VISCOUNT STANSGATE: Can I just ask one question about Clause 5 before we leave it? That is, where there is a Commonwealth war grave, that is designated by the Commonwealth War Graves Commission and communicated to the local authority as a burial authority. The initiative rests with the Commonwealth War Graves Commission to tell you that that is such a grave.

710. MR LATIF-ARAMESH: It is in fact a public listing. So you can go on to website and find all the details of all the listings. The process for understanding that, I think, is known, but it is a public listing. It is not something that is just communicated to the burial authority.

711. VISCOUNT STANSGATE: Okay, thanks.

712. MR LATIF-ARAMESH: Unless there were any other comments on Clause 5, Clause 6, which is the procedural notice provision, Mr Careless raises the ability to give prior notification. We think that would fundamentally frustrate the purposes of the Bill. The ability to veto at the start of any grant of burial rights or interment effectively preventing the exercise of the powers for time immemorial would prevent that long-term sustainable supply of burial spaces. We have incorporated protections in the form of providing notice, giving the burial rights' owner the ability to veto it and all the protections I set out in full yesterday, which I will not reiterate, but we do not think that is appropriate and would ask you not to make that amendment.

713. I did also just want to pause on Clause 6(2)(b), which is the insertion that we have made at the request of the Ministry of Justice. I think I briefly explained the basis for this yesterday, but it is effectively to future-proof electronic notices. Mr Careless's supplementary evidence says, in relation to Clause 6(2), "It allows notices to be given in a piecemeal fashion and it avoids areas where there may be groundswells of objection until some future point".

714. The ability to provide notices in phases is there by design. In circumstances where the burial authority wanted to focus, for example, on areas which were much more suitable or untended or unvisited, it would be right to say, “We are going to serve notice for these, but not the entirety of the cemetery”, if that is what the burial authority chose to do.

715. BARONESS THORNHILL: Presumably, you would do the work in stages, anyway. You would be starting –

716. MR LATIF-ARAMESH: I think the process for how the powers will be exercised is not yet determined, and it would depend on, if the Bill was enacted, considering its final form and then looking at how we would go about implementing it, but the undertakings that we gave yesterday should provide some assurance on ensuring that it is carried out in a way that meets best practice.

717. There were no other comments that we could identify in Mr Careless’s submission on Clause 6. So if there were no questions on that, I will move to clauses 7 through to –

718. THE CHAIR: Thank you.

719. MR LATIF-ARAMESH: Mr Careless’s petitions and supplementary evidence do not raise any comments that we could see in relation to clause 7 or Clause 8, but, in brief, clause 7 deals with the procedure for dealing with removed memorials, and that includes setting a policy which will set out how memorials are to be dealt with where they are removed pursuant to Clauses 3 or 4.

720. Clause 8 is the requirement to keep records, which includes a record of how the powers are exercised, so that, in future, if remains are moved from one area to another in the cemetery, there will be a clear record for those who wish to see that.

721. Clause 9 relates to authorising the parish council to contribute to the costs associated with this Bill. It extends to any contributions made prior to the date of the Act, and, just to briefly reiterate a point we made yesterday, the reliance on the Swavesey Byways Act is not to draw a parallel with the circumstances of that case. It is simply to draw attention to the specific legislative drafting that we have adopted. The petition that you have seen before you make the case that the reliance on the 1984 Act is

unsuitable, but we are really not trying to draw a parallel. We are just trying to make sure that the parish council can contribute to the costs, as they are the burial authority and the primary beneficiary of the powers of the Bill. That is the whole purpose of that provision.

722. Mr Careless's supplementary evidence notes, "The Localism Act never envisaged that such payments were authorised". The Localism Act is only referenced to make clear that the authorisation is without prejudice to it. It is not making a positive statement about what the Localism Act does or does not do. It is just saying it is without limitation to the powers that are contained therein.

723. So, on that basis, I do not have any other submissions to make, but, if you have any questions about Clauses 6 through to 9, I am happy to take them.

724. VISCOUNT STANSGATE: We touched on this yesterday in respect of memorials but, under Clause 7(1), at some point a council will have a proper paper before it and a decision will be taken about what to do with the memorials, which may or may not end up lining the side of the cemetery, but that will be the subject of a proper internal council process.

725. MR LATIF-ARAMESH: Absolutely.

726. VISCOUNT STANSGATE: On Clause 8 and the records, in keeping partly with what the Ministry of Justice themselves indicated, these will be digitally available. There will not just be a paper copy in some office but will be something that can be more easily, in the modern age in which we live, searchable.

727. MR LATIF-ARAMESH: If I could just have a moment to confer on that point, I just need to check how the current records are kept.

728. My Lord, the current records are digital. They are not publicly accessible, but, where requests for information are made, they are dealt with under existing Freedom of Information Act requests and the like. The records that are caught by Clause 8—you will notice the very final paragraph (5), requires them to be available for consultation by any person.

729. VISCOUNT STANSGATE: You are not suggesting that people would have to use

an FOI request.

730. MR LATIF-ARAMESH: No. Not at all. I am saying that the existing provisions on information are applied. There is a concern, for example, about the owner of a registered burial right. We would have their address, but we would not publish that on the internet because of restrictions on sensitive data. I am just making it clear so that you are not left with the impression that you will be able to go on to website and find someone's personal details, but they are digital. They are accessible. The records under Clause 8 will specifically be accessible.

731. VISCOUNT STANSGATE: Okay.

732. LORD REAY: On Clause 6(2), in terms of a notice in a newspaper, is the intention to publish in a local newspaper or a national? I presume local, but what is the intention?

733. MR LATIF-ARAMESH: The intention would be to publish in a local newspaper primarily because the use of the cemetery is primarily local. That is part of the reason we are here seeking these powers: to provide burial space for locals. The wording, it should be noted, is flexible, so that in circumstances in the future, if it was considered appropriate to use a national paper for whatever reason, that is what would happen, but the current intention is to use local newspapers.

734. THE CHAIR: Anybody else? No, all right. Mr Careless, would you like to respond on the amendments? Before you do that, Mr Latif-Aramesh, you have not asked us for permission to make the three sets of amendments that you filed with the Clerk.

735. MR LATIF-ARAMESH: Yes. I sought to reference some of the amendments as I went through my remarks for Clauses 1 through to 6. We would ask your permission. You had asked for our submissions on the provisions of the Bill and the amendments to be read into the transcript, but we are asking for your permission for the amendments that are in the three papers of amendments that have been put before you. A revised, filled-up Bill has also been provided to you, I understand.

736. THE CHAIR: With tracked changes.

737. MR LATIF-ARAMESH: Yes.

738. THE CHAIR: Yes.

739. MR LATIF-ARAMESH: I think that, with the exception of the amendment we have discussed on the electronic notice and the amendment that has been made to Clause 7(1), they are all non-substantive drafting changes that do not alter the effect of the Bill.

740. THE CHAIR: No. Thank you very much. Mr Careless, would you like to now address any issue on the specific provisions in the Bill, in particular those which you say are not adequate?

Submissions by Mr Careless

741. MR CARELESS: From my point of view, a lot of the comments I have are practical. The Bill itself follows standard parliamentary drafting, which gives six months' notice. The problem I have, of course, being away from the locality, is the notice coming to my attention. If, as in the case of my family, they always visit the graves at Christmas, as you saw from the photographs, six months' notice given in February would not come to the attention of whoever was visiting the grave at that time.

742. The standard procedure is they put a notice on the gate. They put a notice on the grave. They would insert a notice in the local paper, which in itself is becoming more and more difficult because, of the newspapers circulating in Bishop's Stortford, there is only one paper edition. The others are digital. The *Herts and Essex Observer* is now digital. The *Harlow Flyer*—I cannot remember the full name of it—is digital. It is difficult to find a paper edition these days, and, of course, this is going to get more and more. So the answer they are putting forward is that it will go on their website. That means, in practical terms, that I have to be looking at their website every few weeks to make sure that a notice has not been put there.

743. This is why, when I put forward the amendment, which was that I would want, from the moment the Bill becomes law, to be able to put forward within six months a notice saying, "I object to anything that is happening on this particular grave". It is not going to destroy the concept they have. As I said, this is going to be a rolling environment. Just one particular grave with a "do not disturb" notice on it is not going to make a big difference to the grand scheme of things.

744. Also, from the way the Bill is drafted, I have no power at all to interfere with this until the local authority gives notice. The local authority is an organisation that does not die, but I do, and I will. If they feel that they want my relatives in the unconsecrated section—it is a very desirable place because there are a few trees and it is not heavily filled—but they know that I would most probably leap into action and file a notice of objection, all they have to do most probably is wait more than a few years, at my time of life, and that objection will disappear. It will evaporate.

745. The idea that you cannot disturb a grave for 75 years is understandable. A lot of the London cemeteries have tried to reduce it down to 50 years to make it more practical and economic, but 75 years seems to be the median line which most cemeteries have adopted. Even though the 1977 statutory instrument suggests anything up to 100 years, Bishop's Stortford Town Council has in fact reduced it down to 50 years plus an extra 25 years if you are prepared to pay for it, so you can get to 75 years with the council if you are prepared to put your hand in your pocket. Then, if you object, they will add another 25 years on top.

746. In practical terms, this does not help me, and this is why I put in my petition the suggestion that, once the Act comes into force, even though the council may not have issued a notice I give a notice to say, "I do not want this disturbed".

747. THE CHAIR: In perpetuity.

748. MR CARELESS: It would have that effect, my Lord, but nothing is in perpetuity, I do not think. It would enable them to go for—as the Lords discussed, as reported in Hansard, in the 1977 one, you can go back for a statutory instrument without having to effectively alter general legislation.

749. THE CHAIR: Your proposed solution is a pre-notice.

750. MR CARELESS: A pre-notice whilst I am still here.

751. THE CHAIR: To last your lifetime?

752. MR CARELESS: I would not say during my lifetime, just until it is amended by further order.

753. THE CHAIR: In perpetuity, in other words. Amended by further order of whom?

754. MR CARELESS: I think you would go to the Ministry of Justice for a further order on that one—to the Secretary of State for Justice. I think he has taken over the function of doing these statutory instruments from the Home Office.

755. THE CHAIR: Right, okay. There is that one. Any other points?

756. MR CARELESS: The point which I think is, if you do not agree—I take your point that, once the grave space is extinguished, it is extinguished, but if you cannot agree compensation, then it gets reactivated again.

757. THE CHAIR: It is not quite like that. I think the reactivation is an option that is open to the burial authority if they want to do so. If you cannot agree, it goes to arbitration, and the arbitrator will decide. There are very limited rights to appeal an arbitration in this country—you are a solicitor—as you know. That is a form of adjudication.

758. MR CARELESS: I accept that is what they would suggest, but in practical terms I have not been able to establish any adjudication at all. I think one of the original suggestions was that it would be determined by a chartered surveyor, and the next suggestion was going to be, “Go to arbitration”. I do not think there is any track record of compensation along these levels for this particular concept.

759. THE CHAIR: No. Well, certainly, that is a provision that is to be found in other schemes and legislation. There is arbitration in default of agreement on the amount of compensation, and the amount of compensation is the current value—I think this is right—of the right of burial. That is what it is, and I suppose surveyors can arrive and are capable of anything.

760. MR CARELESS: I think they would find that very difficult to do, because the only examples you have, of course, are schemes like the Highgate scheme, where they are selling those spaces now for £22,000 plus. Where would they make the comparison, because this would be a private seller?

761. THE CHAIR: What would you put in its place?

762. MR CARELESS: I would not want the local authority to backtrack and be able to reinstate facility and not deal with it and then, after the problem has gone away, they can reissue the notice and have a problem-free situation.

763. THE CHAIR: I am not sure I follow that. So you agree there should be some compensation paid.

764. MR CARELESS: As far as I am concerned, I think compensation is the least thing to worry about here. The principle this committee has decided upon is that human remains can be disturbed, and burial places may be reused. I do not think that compensation is of primary importance here.

765. THE CHAIR: Okay, thank you.

766. MR CARELESS: I do not think I have anything else I can help you with, my Lord.

767. THE CHAIR: Very well. Do you want to respond to any of those points?

768. MR LATIF-ARAMESH: Yes, please, my Lord. The notices—this is Clause 6(2)—are to be provided are based on precedent. They are: to publish in a newspaper; to publish a notice on the website or some other form of electronic notice; to display the notice in a conspicuous place at the cemetery and as reasonably practical near the grave; to provide a further notice to the registered owner; and to provide a further notice to the registered owner of a right that has expired or of a person who owns the memorial, and to the Commonwealth War Graves Commission as well as Historic England.

769. This is a fairly comprehensive list of noticing requirements. We do not think it is appropriate for the town council to have greater obligations placed on it than any of the predecessors.

770. I should also just note that there are no notice requirements in connection with some of the secondary legislation we referenced earlier. The attempt is not to be able to exercise the powers under the cover of darkness. This is a proportionate list of notice requirements. It is heavily precedent, and we would request that we do not depart from that practice. The administrative burdens that are involved in the existing notice requirements are already significant, and any further notice requirements would be

frustrating the purpose of the Bill.

771. BARONESS THORNHILL: Can I just clarify something? You said that in the scenario that Mr Careless pointed out he would have to check the website every whatever, and if you have personal details you contact them personally at the address that you know.

772. MR LATIF-ARAMESH: That is registered in the records, yes.

773. BARONESS THORNHILL: So that scenario for you would not happen, because presumably they know where you live. I assumed from my experience that that was standard practice.

774. MR LATIF-ARAMESH: Yes.

775. BARONESS THORNHILL: If you have an actual contact, you get in touch with them.

776. MR LATIF-ARAMESH: The records are not static. It is not, “Once the burial right is sold, that is the address that we are going to be sending notices to”. If someone contacts the burial authority with updated records, that is the address that will be used, so we really would not suggest moving beyond what is already in Clause 6(2).

777. On the question of the pre-notice, again, that would fundamentally frustrate the purposes of the Bill and the principle that you have already endorsed. The pre-notice acting in perpetuity would effectively mean that grave spaces cannot be used sustainably. We acknowledge that there is a requirement not to reuse burial spaces at least in the first 75 years from the last burial. That is intended to be a protection, because two to three generations should have the opportunity to pay their respects. Having a pre-notice in perpetuity—again, an eventuality might be that 50% of people would exercise that, and then we have prevented the sustainable supply of burial spaces over the long term.

778. The provisions that are in there, especially with the amendment that you have indicated that you are minded to make on collateral descendants, provide appropriate protection for people who have an interest to prevent the exercise of the powers. At this point in time, saying, “No, never”, would completely undermine the purpose of the Bill.

779. On the subject of arbitration, my Lord, I think you noted that it is not the case that, failing an agreement in relation to the extinguishment of a burial right, it can then be revived. It is an option, and it is in there deliberately as a protection to give a second bite of the cherry so that, in circumstances someone raises a concern at that point, the burial authority could say, “Let’s reverse the whole thing”. It is not intended to say, “The value here is too much. We do not want to pay that, and on that basis, we’ll revive the right”. It is more that, if someone comes forward and wishes to prevent the exercise of the powers, or as though the powers had never been exercised, we are in a position to do that.

780. On the question of whether an arbitrator is able to determine the value of a burial space, this has been done in the past, and it is possible to ask surveyors to value the heritable burial right, and so we do not see an issue with that. And, as you noted, my Lord, again, this is heavily precedented. We are not doing something novel here, and on that basis, we would not suggest any amendment is made in respect of the revival of any rights either.

781. I think those are all my submissions on the points that have been made. Thank you.

782. THE CHAIR: Right, thank you both very much. We’ll now go into private session to deal with this aspect.

Sitting suspended

On resuming –

783. THE CHAIR: I would like to thank everybody who has spoken, in particular Mr Latif-Aramesh, Mr Parker and Mr Careless, for helping us to review the Bill. The end result is we have now completed Committee and Report.

784. I should say that, on the particular amendments that were debated, there are none that need to be the subject of any change in the Bill. So we have now completed Committee, and we will report to the House for Third Reading.

785. The Bill will be reported with the three sets of amendments: the amendment to Clause 2; the definition of “relative”; and with the Ministry of Justice’s proposed

amendment to Clause 6. We have the promoter's undertakings, and we suggest that you might wish to consider publishing those on the local authority's website.

786. There is one error that is been identified by the counsel for the committee in what I call the tracked change version, but maybe that is not the technical way of describing that; perhaps it is the filled-up Bill, and I will ask him to indicate for the record what that is.

787. MR DIAMOND: Thank you. In Clause 4(6), looking at the filled-up Bill, in (c), the words from "the burial authority" to "remains", so that is, "The burial authority may not, subject to subsection (7), disturb or authority the disturbance of those remains", those words currently embedded in (c) should instead be full-out words at the end of 4(6). So a formatting error appears to have crept in to the filled-up Bill. It is not there in the Bill as introduced, but it has crept in and it needs to be corrected.

788. MR LATIF-ARAMESH: I am grateful, Mr Diamond. As you mentioned, the Bill as introduced does not contain that formatting error, but we are happy to mark up the Committee Bill, which we will hand over at the end of these proceedings to make that point very clear.

789. THE CHAIR: Mr Latif-Aramesh, have I referred to all the relevant amendments?

790. MR LATIF-ARAMESH: You have, my Lord. Those are the amendments contained in the three papers of amendments, which include the Ministry of Justice's request in relation to Clause 6 as well as the substantive change to Clause 7, and the only other amendment is the change to the definition of "relatives".

791. THE CHAIR: Very good. Well, then, the next stage, as I have said, is that this will now go for Third Reading in the Chamber, and this will be of a formal nature. We cannot tell you at the moment what the date for that will be.

792. Now, I understand, we have to approve the preamble.

793. MR LATIF-ARAMESH: Yes. I think we just need to swear in Ms Victoria Wilders first, and then we can move to that stage.

Evidence of Ms Victoria Wilders

794. MR LATIF-ARAMESH: Are you Victoria Patricia Wilders?

795. MS WILDERS: I am.

796. MR LATIF-ARAMESH: Are you the legal services manager and the deputy monitoring officer for East Hertfordshire District Council?

797. MS WILDERS: I am.

798. MR LATIF-ARAMESH: Do you hold responsibility for the promotion of the Bill on behalf of East Hertfordshire District Council, who is promoting this Bill?

799. MS WILDERS: I do.

800. MR LATIF-ARAMESH: Have you read the preamble?

801. MS WILDERS: I have.

802. MR LATIF-ARAMESH: Is it true?

803. MS WILDERS: It is.

804. THE CHAIR: Very good. Thank you very much. That concludes the proceedings, and I am grateful to all of you for your time and attention. Thank you.

805. MR LATIF-ARAMESH: On behalf of the district council and the town council, we are very grateful. Thank you for your time.

806. MR CARELESS: From me, as well, thank you very much indeed.