

MINUTES OF ORAL EVIDENCE

taken before the

OPPOSED BILL COMMITTEE

On the

HIGHGATE CEMETERY BILL

Tuesday 2 March 2021 (Morning)

In Committee Room 4a

PRESENT:

Baroness Hallett (Chair)
Lord Aberdare
Baroness Garden of Frognal
Lord Trefgarne
Baroness Whitaker

IN ATTENDANCE

Nicholas Evans, Parliamentary Agent

WITNESSES:

Dr Ian Dungavell, Chief Executive, Friends of Highgate Cemetery Trust
Martin Adeney, Chair, Friends of Highgate Cemetery Trust
David Jones, Petitioner
Paula Swift, Petitioner

PUBLIC SESSION

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(At 11.04 a.m.)

1. THE CHAIR: Good morning, everyone, and welcome to the first session of the hearing by the Opposed Bill Committee into the Highgate Cemetery Bill, and thank you, to those of you who have been waiting, for your patience. Our proceedings will be broadcast on the web and a full transcript taken. As far as possible, our proceedings will be analogous to a court hearing but, as a remote hearing has been forced upon us by circumstances, we'll do our best to ensure things run smoothly. Please indicate if you have any problems and please do not forget to mute yourself when not speaking. The plan is for us to sit today from now until about 1.00, then from about 2.00 till 3.30, and then 3.45 to 5.00. When we take a break during the day, please do not disconnect your Zoom link. Leave it running until we return. That's breaks during the day.

2. Having explained the procedure, may I ask my fellow members of the Committee if they would declare any matters of interest? Lord Aberdare, I think you have an interest to declare.

3. LORD ABERDARE: Thank you, Chair, yes. I only discovered as a result of being on this Committee that, apparently, an ancestor of mine, John Singleton Copley, is buried in Highgate Cemetery.

4. THE CHAIR: Thank you. And Baroness Whitaker, I think you have an interest to declare.

5. BARONESS WHITAKER: Yes, thank you, Chair. Just to say that I used to live in what was then the Hampstead and Highgate Constituency.

6. THE CHAIR: Thank you very much. I'll in a moment be handing over to Mr Nicholas Evans, who I think is presenting the case for the promoter. Overall, the scope of the hearing will be that the promoters will put forward their overall case for the Bill and call the two witnesses that we have heard sworn. The Petitioners, Ms Swift and Mr Jones, representing the Jones family, can cross-examine if they wish or suggest questions that the Committee may wish to put. Mr Jones will put the case against clause 4.7. The promoters can reply. Ms Swift will put the case against clause 5.3 and the promoters can respond. And then the Committee will turn to the unopposed clauses and amendments. So with those notes, I would ask Mr Evans to present the promoter's case

for the Bill.

Submissions by Mr Nick Evans

7. MR EVANS: Thank you, My Lady, and good morning. Can everybody hear me clearly?

8. THE CHAIR: Yes, thank you.

9. MR EVANS: Thank you. My name is Nick Evans of BDBP Pitmans. I am the parliamentary agent for the Friends of Highgate Cemetery Trust. They are the promoters of the Highgate Cemetery Bill. I'll be calling two witnesses who we've just seen sworn in, Dr Ian Dungavell, who is the Chief Executive of the Trust, and Martin Adeney, who is the Chair of the Trust.

10. Can I start by checking that the Committee and petitioners each do have a hard copy of the bundle of papers and the filled-up Bill that we submitted on 12 February? Good, I'm glad. That bundle has now been supplemented following some further discussions with the counsel to the Committee, who helpfully suggested some further amendments beyond those contained in that filled-up Bill, and so we produced a second paper of amendments. I believe that was emailed around either last evening or this morning. I hope that's correct. And the House of Lords publishing team has also kindly produced, late last night, a tracked changes version of the filled-up Bill. And I don't know whether any of these will have found their way to Mr Jones or Ms Swift, but that tracked changes version of the Bill is now on the parliamentary website for this Committee, so you should be able to locate it there.

11. THE CHAIR: Mr Jones is nodding. Ms Swift, can I check whether you have had the tracked changes copy of the Bill?

12. MS SWIFT: Yes, I have; thank you.

13. THE CHAIR: Thank you very much.

14. MR EVANS: I should note that the counsel to the Committee has identified a few further typographical corrections that could be made to that second paper of amendments, but, because none of those affects any of the opposed provisions of the

Bill, we would propose to circulate a further paper dealing with those amendments after we have finished with the opposed provisions of the Bill. I hope that's acceptable in the circumstances. Thank you.

15. Before I call Dr Dungavell to give evidence, perhaps it would help if I set out the background to the Bill and who the promoters are, why we say the Bill as a whole is needed. I would then propose to give an outline of the case for the two opposed clauses of the Bill. That's clause 4, which contains a power to extinguish rights of burial and clause 5, which contains a power to disturb human remains. Strictly speaking, as Lady Hallett mentioned, only one sub-section of each clause is opposed, but it probably makes more sense if I describe the whole of each clause rather than just those opposed provisions. I would then call Dr Dungavell, who can explain why those powers are needed in more detail. Mr Adeney's evidence relates more to the unopposed provisions of the Bill and, of course, I'm in the Committee's hands as to whether you would prefer to hear him at the outset or to wait until we reach the unopposed sections before asking him to give evidence.

16. THE CHAIR: If you could explain a little more, Mr Evans. Would Mr Jones or Ms Swift have any interest in what Mr Adeney would have to say?

17. MR EVANS: Mr Adeney's evidence isn't related to the provisions of the Bill that they have opposed; it's related to who the Trust are, how they came to be the owners and the operators of the cemetery. And as their petitions don't touch on those points, it would be outside the scope of their right to cross-examine in any event.

18. THE CHAIR: Even if they wouldn't be cross-examining, they may be quite interested in the background, so I suggest you call your witnesses together.

19. MR EVANS: Very well. Thank you, My Lady. After our witnesses have given their evidence, they would be available for cross-examination by the petitioners in relation to points that they'd raised that are relevant to the petitions and, of course, available for questions the Committee might have.

20. And so, turning to the case for the Bill, as I mentioned before, the Bill is being promoted by the Friends of Highgate Cemetery Trust. The Trust is a charity and its objects are: to promote the public benefits in relation to Highgate Cemetery by any

means appropriate and likely to preserve it as a place of historic and other interest and beauty; to permit the cemetery, or such part of it as may be available for the purpose, to be used as a public burial ground; and to secure the repair, restoration and preservation of the cemetery, its monuments and buildings and other artefacts, and their setting for the public benefits. And everything that the Trust does must be done for those objects. That includes its operation of the cemetery and, if the Bill is passed, it includes the powers that it would have under the Bill.

21. The Trust is the owner and operator of Highgate Cemetery and has been since the 1980s. Highgate Cemetery itself is, in the words of the Attorney General's report to this Committee, 'A site of national importance and unique cultural heritage'. It's one of the Magnificent Seven cemeteries created in the second quarter of the 19th century in response to the growing population and the pressure on burial space in churchyards, and it is now a Grade 1 registered landscape and, we would say, one of the best-known cemeteries in the world.

22. However, while the cemetery is a much-loved place of historic interest and beauty, attracting over 100,000 visitors a year in pre-pandemic times, it is more than that; it is a working cemetery and its status as a working cemetery is crucial to its status as a place of interest. Mr Adeney will give some more detail on this but, in outline terms, the cemetery was laid out in 1839 by the London Cemetery Company, and it used powers granted by the Act of 1836, which was included in your bundles, and that bears the very descriptive name, 'An Act for establishing Cemeteries for the Interment of the Dead, Northward, Southward, and Eastward of the Metropolis, by a Company to be called "The London Cemetery Company"'. And that was at tab 11A in the bundle, so I don't propose to go into that in detail, unless you wish me to, but the 1836 Act made provision for the company and gave it powers to lay out cemeteries in Highgate, in Nunhead and in Stepney.

23. As far as we can tell, the London Cemetery Company never elected to lay out a cemetery in Stepney, but cemeteries were established in Highgate and in Nunhead. Further Acts were passed in 1843 and 1911, making further provision about the corporate operation of the London Cemetery Company. And after this point, its history and its interests in the cemetery became rather complex. At first, the cemetery was extremely successfully; it was well situated, beautifully laid out on the site known now

as the West Cemetery, and was very popular, and the London Cemetery Company was able to acquire the adjoining site across Swain's Lane. I don't know whether you've had the opportunity to look through the bundle, but there is a paper produced by Dr Dungavell, which is at tab 2, and pages 9 and 10 of the bundle do show the layout of the cemetery; it's situated on two sides of the road across from each other in Highgate, completely surrounded by the built-up area. The adjoining site was acquired and opened in 1860 and is now known as the East Cemetery.

24. The company's business went well for the rest of the 19th century but, by the start of the 20th, its fortunes had begun to change, and whilst some families continued to purchase rights of burial into the 1930s, the cemetery was then passing into a long-term decline, with less expensive, more common graves becoming the main options. Increasingly, greater numbers of graves were abandoned as families died out or moved away, and maintenance reduced. In 1956, the cemetery sold off its stonemason's yard and its superintendent's house to try to raise money. ~~T~~his didn't work. In 1960, the London Cemetery Company was absorbed into the larger United Cemetery Company, which acquired both Highgate Cemetery and Nunhead Cemetery. And we have included, in tab 12 of the bundle, a summary of what's happened with the corporate history of the London Cemetery Company from that point until it was liquidated in 1978.

25. The United Cemetery Company also struggled to keep the cemetery afloat for approximately the next 15 years but, as funds ran out, the gates were closed and the cemetery fell into disrepair and disuse. As a result, the Greater London Council (General Powers) Act 1976) – we include this at tab 11G – this made provision for the London Borough of Camden to compulsorily acquire the cemetery and take on responsibility for its operation and maintenance. Apparently, however, having acquired those powers, the implementation of them was too expensive for the borough; Camden never exercised ~~these powers~~ and it has now expired. However, around the same time, Nunhead Cemetery was transferred to the London Borough of Southwark under the Greater London Council (General Powers) Act 1975, which is also in the bundle at 11F.

26. In 1975, the Trust was formed with the aim of promoting the conservation of the cemetery, its monuments and buildings for the benefit of the public as an environmental amenity. Work began to clear through the overgrown landscape and repair some of the

memorials which had been damaged by vandals during the cemetery's decline. In 1981, United Cemeteries transferred the cemetery to a company established by the Friends of Highgate Cemetery Trust and it is now vested in the Trust as Trustees for the Highgate Cemetery Charity, which is a linked charity to the Trust. Again, tab 12 sets out those transactions.

27. Given this history, in addition to the primary purpose of ensuring the sustainability of the cemetery, the Bill also includes provisions that will repeal the redundant legislation that created the London Cemetery Company and confirm the Trust's powers to operate the cemetery after those repeals. And a similar process took place under the 1975 Act, which transferred the Nunhead Cemetery to Southwark, and ceased to apply the 1836, 1843 and 1911 Acts to that cemetery, and we propose to take the same approach in relation to Highgate.

28. Over the last 40 years, the Trust has worked hard and made the cemetery one of the finest in the land, and Mr Adeney and Dr Dungavell will say more about their work. However, now, 180 years after it opened, Highgate Cemetery is running out of burial space. There are approximately 53,000 graves in the cemetery and around 170,000 people have been buried there since Elizabeth Jackson in 1839, but now the Trust estimates that there are about 75 grave spaces remaining. As annual grave spaces have averaged 17 sales per year prior to the pandemic, it can readily be seen that space will soon run out. This Bill will give the Trust the powers to create more burial space by reclaiming burial rights that have been bought but have not been used, and by reusing graves that have space for additional burials. And, more specifically, clause 4 would allow the Trust to extinguish existing rights of burial and to reclaim graves that have not been used for 75 years, enabling those graves to be sold for new burials. And clause 5 would permit the Trust to disturb remains and this thereby enables the removal of remains in a grave, the excavation of a grave to a deeper depth, the re-interment of those original remains, and creating additional space in the cemetery above the original interment.

29. Successive governments have considered making these powers more widely available but decided not to because there was not a need across the country as a whole. However, in London there is a need. This issue has been particularly grappled with by municipal burial authorities in London and by the private New Southgate Cemetery,

which are under the same pressures as Highgate. And in response to the lack of burial space that they had, the London Local Authorities Act 2007 and the New Southgate Cemetery Act 2017⁵ gave those bodies the powers to reuse burial space, and we have followed the precedents of those powers quite closely in drafting the Highgate Cemetery Bill.

30. The Trust says that, in the case of Highgate, there is also such a need. Dr Dungavell carried out the assessments that's contained at tab 2, and I'll ask him more about that shortly. His assessments confirm that the East Cemetery will cease to have burial capacity in about two and a bit years, and burial capacity in the West will run out in approximately 12 years. The nature of the graves in each cemetery is slightly different and so they sell at a different rate. Dr Dungavell will also explain the efforts that have been made to create new space within the confines of the cemetery and without the use of additional powers, and why these are not an effective long-term solution.

31. Now your question might well be, 'Well, so what? Why does the Trust not simply sell the remaining spaces and allow the final burials to take place and leave the cemetery to change slowly from a place of commemoration to a place of public recreation?' In the Trust's view, this would not be appropriate. Not only does the Trust have the specific object of permitting the cemetery to be used as a burial ground, but the cemetery holds significant value to the local community and providing a place of burial is the best way to preserve the cemetery's special character and prevent its decline. With their loved ones continuing to be buried there, future generations would value the cemetery as a spiritual landscape, different in character from open spaces or a site dedicated solely as a visitor attraction. And we would point to examples across the UK; many examples of closed cemeteries which have lost their primary function of operating as a public burial ground. These suffer a gradual decline in significance and in turn in visitors.

32. While closed cemeteries can provide a valuable green space, they have fewer of the benefits of public parks and a much higher cost of maintenance because of the monuments. The Bill, we say, is therefore required to enable the Trust to continue to further its charitable objects by retaining the cemetery as a place for public burial. Indeed, as I previously mentioned, the cemetery has already fallen into disrepair once in

the 1970s when it was not used as a working cemetery, and having rescued the cemetery then, the Trust has no desire to see it back in that state again. We would also say that Highgate Cemetery has a particular need for these powers to enable burial space reuse, given its historical significance, and the substantial non-burial costs that it faces. This is because, if income from burial ceases, the Trust's income would mainly be generated from tours, publications and subscriptions, and it would still have to maintain its place as a place for people to visit with the costs that those entail, but with around a 50% drop in revenues.

33. The ability to provide this additional burial space is, therefore, connected with the Trust's objects of ensuring that the cemetery remains a site of historical interest and beauty. Tables have been produced that set out the current revenues and how these would be affected by the loss of the ability to sell graves. Those are contained in Dr Dungavell's assessment in tab 2, but they have also been brought up to date in tab 4. The assessment was carried out in 2018. We've added the last couple of years, both in relation to the grave spaces that have been sold – that's on page 59 – and in relation to the income and how that relates to the overall income of the cemetery – and that's on page 60.

34. And so the Trust decided to seek the powers set out in the Bill. It has consulted widely on its proposals relating to the Bill and it would emphasise these proposals have community support. 76% of respondents felt it was important for Highgate Cemetery to remain open for burials and 69% felt that it would be acceptable to reuse abandoned graves after a certain period of time. 64% felt that existing remains could be buried deeper in the old grave to create space on top, and 63% felt that spaces within existing vaults and graves could be used. And if you turn to tab 6 of the bundle, on pages 85 to 89 – and my apologies, in this particular case the extracts from the conservation plan we have there also have numbers in about that range, so it's a little bit more confusing, the bundle numbering and the document numbering – but pages 85 to 89 have more details of the consultation that was carried out, and I will ask Dr Dungavell about that shortly.

35. The Trust has also consulted with the Church of England, the Ministry of Justice, Historic England and the London Borough of Camden, with whom it has good relations. None of these have raised any particular issues with the Bill and we have agreed with the Ministry of Justice some undertakings about how the Trust will exercise the powers

of the Bill if it is passed, and I will give these undertakings on behalf of the Trust when we reach the relevant clauses.

36. If I may now turn to clauses 4 and 5, or rather the opposed clauses. Clause ~~4(7)~~ – clause 4, as I mentioned before, provides for the extinguishment of burial rights. Clause ~~4(7)~~ provides for what happens when somebody objects to a proposed extinguishment, and Mr Jones has petitioned in relation to the status of relatives in this process. Clause 5 provides for the disturbance of remains under the Bill. Clause ~~5(3)~~ provides that this may not happen if they have been interred for less than 75 years, and Ms Swift petitions against this period. So dealing with clauses 4 and 5, clause 4 sets out the power to extinguish burial rights, which we say is needed to deal with burial rights that have been purchased but cannot be used. When a grave is purchased, the buyer generally acquires what's known as an exclusive right of burial for the grave space. While it is now common practice for burial authorities – and this includes the Trust – to grant a time-limited exclusive right of burial, so for a period of 75 or 100 years after which the rights revert to the burial authority and any remaining grave space may be used for further burials, in the past there have been grants of exclusive burial rights in perpetuity. So there is, in effect, a restriction on using those graves without the owner's permission, and that restriction applies forever.

37. Given the significant passage of time, in some cases it's now no longer possible to identify or locate the people who own those existing exclusive rights, and so it's not possible to cancel those by agreement. However, the rights still exist and so nobody else can be buried in those spaces without breaching those rights. Clause 4 would provide a statutory basis for the extinguishment of those burial rights and this is needed because the owners cannot otherwise be contacted. This replicates a power that is available to burial authorities in London under the New Southgate Cemetery Act and also the Greater London Council (General Powers) Act 1976, with slightly different versions in force in the City and in Southwark.

38. The Bill would require the Trust to give six months' notice of its proposals and, if the registered owner objects, that's it; the rights cannot be extinguished. So if the owner is still interested in using the grave space, their rights are fully protected and cannot be removed against their wishes. By way of an additional protection that applies in Highgate, clause ~~4(9)~~(b) provides that even if the registered owner contacts the Trust

six months after the rights are extinguished, the Trust and the owner can agree to revive the rights and proceed as if the extinguishment had not happened. If anybody other than the owner objects then the rights cannot be extinguished unless the Secretary of State consents to it. This means that the onus would be on the Trust to prove to the satisfaction of the Secretary of State why the right should be cancelled in the face of the objection. Clause 4 also makes provision for compensation for extinguished rights.

39. As you'll see from the filled-up Bill, a few amendments have been proposed to clause 4. Some of these were put forward to address concerns raised by petitioners and we propose to extend the notice obligations under clause 4 to require notices to be placed on the Trust's website as well as at a location in the vicinity of the grave concerned, because there was a concern that if you just publish a notice at the entrance to a grave – at the entrance to the cemetery – a person going to visit a particular grave might not notice that. But if you publish the notice near the grave itself they're more likely to do so. We have also proposed amendments to clause ~~4~~(8) to make it clear the Trust is not required to destroy redundant memorials and an amendment to clause ~~4~~(5)(c) to deal with the rare situations where the owner of the right of burial, and the owner of any memorial, are different, and make sure that both owners are notified.

40. Mr Jones has petitioned against clause ~~4~~(7) on behalf of himself and his brothers. They have an interest in two graves in the cemetery and, while we have sadly been unable to go on a site visit, Dr Dungavell has been to inspect those graves, and I will ask him to describe them for you shortly. The petitioner's view is that clause ~~4~~(7) should be amended so that the objection of direct or collateral descendants of the registered owner should have the same status as the owner's own objection. It should result in a veto to the proposals for extinguishment. In tab 8 of the bundle, we've set out a summary of the Trust's arguments against that petition but, in summary, we consider that it is inappropriate. This Bill, like other cemetery Bills, treats the ability to object to proposals under clause 4 and clause 5 differently because the nature of those proposals is different.

41. Under clause 4, a right of burial is proposed to be extinguished. This right is akin to a property right and so it's appropriate that it's the registered owner who can effectively veto the use of the power, but the Trust does not agree that it is appropriate for a third party to have the same power as the owner themselves. The third party does

not have the rights under the grant of burial or any of the obligations and so it's not appropriate that they should have the ability to interfere in the contractual relationship between the Trust and the owner. Notwithstanding this, clause 4 does allow another person to object, and in those circumstances the burial authority is barred from extinguishing the right unless the Secretary of State's approval is granted. We say this can be distinguished from clause 5 because the disturbance of human remains is not a right which is akin to property. The Bill recognises that the relatives of the deceased will have a proper interest in the respectful treatment of their remains and so the Bill takes the approach of barring the use of powers for 25 years where a relative objects. However, the fact that relatives have the ability to object under clause 5 does not mean that they should have the same status in relation to the property rights, which is a matter that lies between the Trust as grantor and the registered owner as grantee. And this same distinction has been drawn in the other recent cemetery Bills that contain these powers and there is no particular reason why Highgate Cemetery should be treated differently.

42. Turning to clause 5 of the Bill, this provides the Trust with the power to disturb human remains and thereby enables the reuse of burial space. It is needed because section 25 of the Burial Act 1857 otherwise makes it an offence to remove buried human remains without a licence from the Secretary State or, in relation to ground that's been consecrated in accordance with the rights-rites of the Church of England, a faculty from the church. My Lady, you may recall hearing a case on the proper scope of the Secretary of State's power under section 25 about 10 years ago. However, while the licensing process works on a case-by-case basis, it's not designed to deal with the need to reuse graves on a wider scale to enable sufficient and ongoing burial capacity.

43. Clause 5 addresses this by giving the Trust a power to disturb remains without the need for a licence in certain circumstances. And clause 5 of this Bill is based on section 74 of the London Local Authorities Act and section 4 of the New Southgate Cemetery Act, which are in your bundles at tab 11H and tab 11I. It would give the Trust the same powers to reuse graves in Highgate that New Southgate Cemetery and London local authorities have in their own cemeteries. And the circumstances in which this power could be used are these: where exclusive burial rights no longer exist in a grave – and that's whether because the rights have been extinguished under the Bill, where they

have been granted but have expired, or where no rights ever existed, i.e., it was a common grave – the Trust may disturb those remains in order to make space for more interments. And, as I’ve previously described, the remains should be carefully removed, the grave space would be deepened and the remains replaced, and that makes more space available for new burials above. It’s a process colloquially known as, ‘lift and deepen’.

44. Under clause 5~~(3)~~, this power may only be exercised if the remains have been interred for at least 75 years. This is the same period as applies under clause 4, and is the same period that applies under the London Local Authorities Act and the New Southgate Act. The Trust recognises the need to balance grave reclamation with sensitivity towards those of existing rights or relatives of those buried in the cemetery. And so clause 5 provides that, where the registered owner of the grave or a memorial that’s affected, or a relative of the person whose remains are proposed to be disturbed objects, then the burial authority may not exercise its powers under the section for a period of 25 years. And then it has to come and ask again.

45. Like clause 4, clause 5 is proposed to be amended. We propose the same amendments to the notice provisions and we’ve also proposed a change to clause 5~~(1)~~, which ties the purpose of the exercise more closely to the Trust’s charitable objects; that’s the purpose of changing the wording, ‘improving’ to ‘conserving’. We have also proposed changes to the definition of a public or common grave to more clearly differentiate those graves which are, in lay terms, understood to be graves where no rights have ever existed, from graves where exclusive rights were sold, but those rights have since expired. Both types of graves would be subject to reuse under the Bill.

46. Following discussion with the Ministry of Justice, the Trust has agreed to go further in seeking to make sure that those who are interested in a grave are made aware when its disturbance is proposed. And so, on behalf of the Trust, we would give the following formal undertaking and we propose to record each of these in a letter at the close of the Committee’s proceedings if you decide that the Bill should proceed. And this undertaking on behalf of the Trust is that the notices published on the website under clause 5 will include the names of the individuals whose remains are proposed to be disturbed, where those names are available, in addition to the details that are required by clause 5~~(6)~~ of the Bill.

47. ~~And~~ clause 5-(3) – so sub-section (3) - of this clause is opposed by Ms Swift. She considers that 75 years is too short a period before remains may be disturbed, and tab 8 sets out the Trust's response, and Dr Dungavell will talk about the practical difficulty of a longer period. But in summary, the Trust has carefully considered an appropriate time period for these powers and decided that a 75-year period strikes the appropriate balance because 75 years after the last burial provides time for two or three further generations to pay their respects. And Parliament has previously endorsed the principle that 75 years is an appropriate balance and there is no particular reason why Highgate is different in this regard from other cemeteries in London. In this context, we would also note that it is possible to transfer the ownership of a burial right, and the Trust considers this ownership is an inheritable asset, and so provision may be made in a will to transfer to descendants, or anyone else nominated, and those transferees would be able to prevent the extinguishment of the rights in accordance with clause 4, which would prevent the powers under clause 5 from applying.

48. It may also be helpful to mention here a few other protections that do apply to clause 5, although they're not strictly opposed. And the Trust does recognise the need to balance grave reclamation with the preservation of graves that have historic, architectural or other significance. And here I would emphasise the Bill does not remove any protections under the existing planning or heritage legislation. So if any development within the meaning of the Town and Country Planning Act was proposed, it would still need planning permission. If any works were required to a listed building, they would still need listed building consents. New listed buildings could be designated and many of the memorials within the cemetery are listed. And the Planning (Listed Buildings and Conservation Areas) Act 1990, Direction 2015, provides that works affecting pre-1925 tombstones within a conservation area also require planning permission. So each of those controls would remain in place.

49. In addition to this, clause 6 of the Bill, which I will deal with here because it's closely related to clauses 4 and 5, makes provision for protected graves – a special category of protected graves. And these are graves which do not have the benefit of those existing protections but, under clause 6, the Trust, in consultation with or at the request of Historic England and Camden, could designate particular graves as protected graves, in which case it would not be able to exercise the powers of the Bill without the

consent of those bodies. And that goes beyond the precedent legislation and reflects the particular status of Highgate Cemetery and its historic interest.

50. The Trust has also agreed with the Ministry of Justice that it will exercise its powers under clause 4 and 5, if the Bill is granted, in such a way as to conserve and enhance the various features of interest in the cemetery. And so, on behalf of the Trust, we would give the following formal undertakings. The Trust will use its reasonable endeavours to work collaboratively with the London Borough of Camden and Historic England so they can effectively exercise their functions under the Bill, and, when exercising the powers conferred by clauses 4 and 5 of the Bill, the Trust will act in accordance with the Highgate Cemetery Conservation Plan, and a draft of that plan is provided for you at tab 6.

51. And, to the extent that it is relevant, there's existing guidance called, 'The Technical Guidance on the Re-use and Reclamation of Graves in London Local Authority Cemeteries', dated October 2013. That isn't always directly relevant to non-municipal cemeteries such as Highgate but, where it is relevant, the Trust will act in accordance with it, to the extent that this is consistent with the proper exercise of the powers under clause 4 and 5 and the Trust's charitable objects of securing the repair, restoration and preservation of the cemetery, its monuments and buildings and other artefacts of a setting for the public benefit, and it will do this in order to conserve and enhance Highgate Cemetery's biodiversity and geological features of special interest as a metropolitan site of importance for nature conservation, and its listed features of special architectural and historic interest, and its status as a site listed as Grade 1 within the Register of Parks and Gardens of Special Historic Interest.

52. That concludes my opening of the case for the Bill. And now, with your permission, I would call Dr Dungavell to give evidence. Ian, you may need to unmute.

Evidence of Dr Ian Dungavell

53. DR DUNGAVELL: Right.

54. MR EVANS: Good morning, Dr Dungavell. First of all, could you tell the Committee who you are and what your role is?

55. DR DUNGAVELL: I'm Ian Dungavell and I'm Chief Executive of the Friends of Highgate Cemetery Trust, which is the charity which runs Highgate Cemetery.

56. MR EVANS: And we've already covered this in detail, and I'll ask Mr Adeney shortly about who the friends are and their involvement in the cemetery, but could you tell us some more about the cemetery itself? Describe how it's laid out, how many burials in total, and so on.

57. DR DUNGAVELL: Well you referred us to tab 2, pages 9 and 10, where we have plans of the cemetery, and the first part to be laid out was the West Cemetery – which is shown on page 9 – 17 acres on the slope of Highgate Hill and the first burial was in 1839. It was beautifully laid out with serpentine paths and architectural features; you can see some of those in the plan on page 9. And it was promoted –

58. MR EVANS: Sorry, Dr Dungavell, can I just make sure that everybody has the relevant parts?

59. DR DUNGAVELL: Yes. And also I got slightly confused; the numbering of the document is as long as the numbering of the bundle. So the bundle numbers are the big black numbers in the bottom right-hand corners of each page. So they're the ones to look out for; sometimes it gets a bit confusing, as you noted before. And the interesting thing was it was also advertised from the start as a visitor attraction, and cemeteries were widely visited in the 19th century and our first guidebook was published for visitors as early as 1845.

60. So then, on page 10, you'll see a plan of the East Cemetery, which was an extension; it followed on with another 19 acres on the other side of Swain's Lane, a little bit further down the hill. And it took its first burial in 1860, so it's only 21 years later than the West Cemetery. For a while, it was called the 'new ground' to distinguish it from the, 'old ground', but really there wasn't much time between the two. But one big difference between the two was, by that stage, it's commercial success as a cemetery was known and the company decided to spend much less money on landscape, design and architectural features. So really that plan, I think, gives you a hint that the layout is more, say, functional and utilitarian than the picturesque garden cemetery layout we see of the West Cemetery.

61. But, administratively, there's only one cemetery. It is Highgate Cemetery, which has two parts, although a road runs through them. But we treat them in slightly different ways. The older side – the west side – has always been the more prestigious of the two; I think, partly because the landscape setting was more beautiful and with fewer graves left on the west side, the prices have been higher on that side. So tab 4, page 59, been looking at the – have you found that? It's updated figures relating to grave reclamation and reuse assessment. And so, on that table 1, which has just been updated for the last couple of years, looking at the split in terms of sales between graves on the east side of the cemetery and graves on the west side of the cemetery, there's roughly three and a half times more graves sold on the east cemetery as in the west cemetery.

62. So the role of the charity in looking after it is the ongoing care of the site. Not only I would say preventing it from harm – that is not only stopping it degrading – but also it should be making sure it's passed on to the future in a good form. So that's the conservation aspect of the objects of the cemetery. The second role has been keeping the cemetery in use as a public burial ground as much as possible, so that includes having funerals and selling memorials. And the third of the charitable objects is much more broadly drawn; it's called, 'Promoting the public benefit'. And that is opening it to the public, producing publications, offering tours and talks, volunteering opportunities. And, as Mr Evans said before, in the last full year before COVID, we welcomed just over 100,000 visitors, but that has dropped substantially since.

63. MR EVANS: And roughly how much does it cost to carry out these functions? Where does the cemetery get its income to pay for this?

64. DR DUNGAVELL: If you look at my report in tab 2, page 19, I was looking at the sources of income, so that's a page with a graph on it. So the figures won't have changed substantially since then. There's some graphs of burial income and non-burial income. But if you said we're going to stop operating as a cemetery and took out the costs of running the burial operations, so the costs of stock of memorials and the cost of the gravedigger, it still costs about £800,000 a year to run the cemetery, while the income – if you take the grave sales out, the burial fees, the memorial sales – broadly the non-burial income would be about £560,000. So there would have been a deficit of about £240,000 if we had to do without our burial income. And our non-burial income derives chiefly from visitors; there's admission charges to visit the cemetery and

charges for guided tours. And we also make smaller amounts of money through book sales and merchandise sales, through filming and through donations to the charity. So we're not getting any money from central or local government.

65. So I've updated some figures of income from burial sales in tab 4, which is back where we were before with updated figures. This time on page 60, this is updated figure 7, burial income as a proportion of total net income. You'll see how it's fluctuated over the years because we're dealing with relatively small numbers of graves, and there's sometimes a larger plot or some unusual thing which is sold, but you'll see it's roughly between 40% and 60% of the income of the Trust, and interesting, for the last two years, those are the extremes. We had a particularly good year, September 2018 to August 2019, almost £750,000 of non-burial income. And the following year, which incorporated about five months, six months of COVID, that non-burial income plummeted to £427,000. So if you look at the non-burial income column, say from 2013, you'll see there's been a steady increase in non-burial income as we've tried to cope with the reducing numbers of graves available for sale within the cemetery.

66. MR EVANS: Thank you. And I mentioned earlier, and it's on the previous page there – page 59 – that you have the updated figures for how many graves are left. And these are for full-size graves. Could you describe what a full-size grave is in this context? How does it differ from other graves?

67. DR DUNGAVELL: So a full-size grave at Highgate Cemetery is typically six and a half feet long by two and a half feet wide. So it's capable of taking a full coffin burial. Some historic graves were larger than that, nine by four, and this size is still typically smaller than you would get at a modern local authority cemetery. And when we were doing the count of these figures, we were looking at graves available in identified locations; that is where there's an area of the cemetery where we knew we've got a certain number of graves there set aside for burials. So we'll come to it in a minute, but The Mound in the East Cemetery, and Cuttings Road in the West Cemetery. But I should say that cemetery capacity is notoriously elastic and cemetery managers have specialised in cramming in graves where they can, but often at quite a cost to the landscape. So building of paths is a difficult thing. So these are, I would say, graves in sensible locations that you might reasonably wish to put a grave, rather than utilising every single square foot of the cemetery.

68. MR EVANS: Thank you. Obviously, that's not a large number of graves that remain. Why are grave spaces running out?

69. DR DUNGAVELL: Well the founding Act – the London Cemetery Company Act 1836 – allowed the London Cemetery Company to sell graves either in perpetuity or for a limited duration. Unfortunately, due to the tortuous history of the London Cemetery Company, we don't have copies of those original deeds which were issued, so we don't have a record of what the original grants were. But where they've survived in personal collections, we've seen copies of them, they've all been perpetuity grants. So I have to assume that, unless there's documentation to the contrary, that all the grants issued by the London Cemetery Company were perpetuity grants. In other words, they didn't expire. The assumption really, then, was that cemeteries would remain connected, or families would remain connected to the cemetery, to their graves down through the generations but, inevitably, that didn't always happen. There were many graves where the last ~~donor~~ owner was recorded in the 19th century, not even in the 20th century.

70. Sometimes people were so far in advance of need that there's 398 graves at Highgate Cemetery which were sold or last changed owners over 100 years ago, which have no burials in them at all. So they're empty graves which have been forgotten about. So at page 26 in tab 2, I've just given you a breakdown of that 398 unused graves. I imagine people would be less concerned about unused graves that haven't been a change of ownership for 100 years. So there's a split between consecrated and un-consecrated ground. But because they've been unused, there may be a tree growing on them or there may be other graves which have comprehensively hemmed them in. So the fact of merely being unused doesn't mean that they can now be used very successfully.

Also, a couple that I looked at that have now no bodies in them, where we have an empty grave, some of those do have memorials on them, so they would also not easily be used. So it seems, when you first think of it, that an empty grave would be a great candidate for use but, actually, a) there aren't that many of them, b) they could be in funny locations and also sometimes they have memorials on them.

71. MR EVANS: And the position is at the moment they could not be used because of the existing burial rights?

72. MR DUNGAVELL: That's absolutely right. So they're still owned by someone but that name is recorded in the 19th century, but we don't have the power to use that.

73. MR EVANS: And once the grave spaces do run out – and we'll turn shortly to how you might be able to create more space without the powers in the Bill, but if you cannot do that, what would be the consequences of losing the income?

74. MR DUNGAVELL: Well, I think there would be financial consequences and non-financial consequences. So I looked at this in my report in tab 2 at page 19 where, underneath the graph, there's a paragraph which is assuming income from burials ceases. That would mean roughly half the income would disappear and increasing pressure to find alternative income streams. That most likely would be the other one, which is visitor admission fees and selling them things. I think we'd be really uneasy about that because too many more visitors might disrupt the feeling of tranquillity, which is so important to the cemetery, and also would disrupt the grave owners visiting their existing graves at the cemetery.

75. But also there's an important part of historic interest, which is about renewing names. So if the only names that people recognise are from the 19th century, there's fewer familiar names from the more recent past for visitors to come to see. So even that visitor income would be likely to decline as there was less of a connection with the present generations and the people who were buried in the cemetery. So the problem would be that, as our cost base is largely fixed, there wouldn't be any great savings through not running burials. We might not need a grave digger, but our grave digger does a number of things at the cemetery as well. We'd still need a registrar to handle changes of ownership and research requests, and any burials that were in reopened graves. So there's not much to be saved by doing that. In 2018, the loss of burial income would have meant finding almost a quarter of a million pounds to break even. And that's before you start looking at improving the cemetery, such as our conservation plan recommended that we do – so dealing with trees and restoring memorials. That's just treading water.

76. MR EVANS: And those were – sorry to interrupt. Carry on.

77. MR DUNGAVELL: I was just going to say there's also some other non-financial question I think that's important to think about because of the significances as a living,

working, cemetery is really important. You touched on that earlier in your introduction and I also, I think, began the introduction to this document on page 12 by, first of all, setting out the charitable objects of the cemetery. Then on page 12 I explained how those charitable objects are all linked together. So preserving a cemetery as a place of interest is also reinforced by the addition of new burials.

78. So partly I'd say that's because continuity of function is a particularly important aspect of historic significance. So to use a completely different example altogether, there's great sorrow felt whenever, say, a church closes and is converted to secular uses, because continuity of religious worship in a church is really important. I'd say continuity of burial in the cemetery is really important as part of its historical significance.

79. Then you also end up with a cemetery which is disconnected from the community around it by those ties of love and affection that bond us together, and so the character of people's relationship with the cemetery also changes. It has more casual visitors, that is people who are just coming to look rather than feel connected with it. And I particularly value our grave owners as a sort of almost informal police force. People who are seen tending graves bring people to a stop and think, 'Actually, I'm on special ground here. I should behave more decently than I might do in a public park.' If it came to be thought of as a spooky Victorian relic with no connection to the present generation, I think that would be a great loss.

80. Also the other loss would be missing that sense of continuity in dealing with death itself, which is something we share with the generations that have gone before us. And to stop that burial activity in the cemetery would seem then to distance these Victorians and more recent people from the present generations. So inevitably, I'd say some memorials will be lost due to decay and damage as time passes, so the interest of the cemetery would diminish over time even if you did your best to look after it. I think that's actually a real danger.

81. The example you mentioned earlier was the Greater London Council (General Powers) Act of 1976, which gave the London Borough of Camden the power to compulsory purchase Highgate Cemetery. It's interesting to look at that. It's mainly concerned with the powers they might have in the west cemetery, which is the older,

more beautiful landscape of the two. It's not so concerned with the east cemetery, which, at that stage, still had many, many more recent burials than the west. So they were able to level areas, they were able to remove gravestones and all sorts of destruction which we would find incredibly regrettable today. I think that was in that Bill because it was felt then those bonds with the living community had been lost. So the preservation there wasn't on the basis of historic interest. It was on the basis of most recent burials. So if you stop having burials in the cemetery, I think you also do place it at risk from the other changes which will occur once it's not fulfilling that useful function.

82. MR EVANS: Thank you. Now, in tab 3 of the bundle we've set out a number of large photographs but haven't given a great deal of background to what they are. I suppose the Committee might have been scratching their heads as to why we were giving them these photographs to look at. I wonder if you could talk us through these, Dr Dungavell? Broadly speaking, these are some of the other options that have been tried to create more burial space. Is that right?

83. MR DUNGAVELL: That's right. So these are things we've done at Highgate. I must say they're not exceptional things that lots of other cemeteries haven't done when confronted by this problem. So if you turn to tab 3d, there's only one page for each of these tabs, so that's easiest way to find it, tab 3d. You'll see a picture of what is glamorously called The Mound, at Highgate Cemetery. It's a very literal description of what it is. It's really a mound of soil which has been piled up 15 to 20 feet high on top of a large area of common graves in the east cemetery. The idea is here, you pile up new soil on top of old graves and then you can bury people in the newly available depth of ground that's created. So what you can't see in that picture is the side of that bank is planted, there's a wildflower meadow. So in the summer it looks beautiful but otherwise I don't think anyone would argue that this is an enhancement to the historic landscape, even [if](#) it has been a functional addition of graves to the cemetery.

84. So what does that look like on the surface? If you just go back a couple of tabs to tab 3a, sorry, that's in landscape. You'll just need to rotate your bundle. What you'll see there is what could be mistaken, I'd say, for any local authority cemetery with an area of lawn graves set out in neat rows with the housing estate behind. This was a really important way for the Trust, I think back from the 90s, to generate income.

Approximately 215 new graves were provided through this mounding. There's only 43 of those left now.

85. So some of the problems with this: it's unpopular with the neighbours. You'll see the housing estate next door was designed at the same time as the London Borough of Camden had the option to buy the cemetery. And it was intended there would be a considerably closer relationship between the two. One of the streets in this development was even going to be called Marx Gate to emphasise the link between the housing estate and the cemetery. It had views over and into the cemetery. So when the cemetery then mounded up this development, the kids could clamber over the fence and the people on the estate were really up close to the burials which were going on. So you can see a large hedge there, which has since been installed to deal with that problem, which really annoyed them.

86. So this is a development that I'd say is really regrettable in conservation terms and an example of that tension which we have between our two charitable objects in providing a space of burial and conserving the cemetery. The other thing is, this required an area of common graves, ~~go~~ graves which were not subject to the private burial [ritesrights](#), on un-consecrated ground large enough to accommodate a mound. There's no single other area you could do this in the cemetery. This was a once and only thing, so we can't do a mound again.

87. MR EVANS: Sorry, could you turn to tab 3b and explain what this shows, please?

88. MR DUNGAVELL: So tab 3b, the next one along, is an area that we call the Cuttings Road. This is in the west cemetery and this is the opposite of what the Trust did with the mound. So instead of piling earth up, here a sloping bank on each side of the road was removed to create a new burial area. So you see that tarmac road running through. There's a sort of Victorian monument about halfway up on the left-hand side and if you see a sloping diagonal line on the base of that, that's the slope of the ground that was removed on that side to create those spaces for the new graves. You can see three new headstones in a row there. They're dotted up that side, which is the west side of the road. The big sweep of lawn also was a steeply sloping bank. That has been cut back into to provide that big length of new burial space.

89. So that hasn't sold particularly well. It wasn't as attractive as the nicely cut up series of pockets on the other side of the road. About 45 new graves could be accommodated in that space, depending on how they were laid out. If you wanted to make it look a bit more attractive you might sacrifice a few of those graves to do it.

90. The problem with this is that this is a grade one registered landscape and this development is really detrimental to the cemetery in that, when this was designed, you can see in the 19th century images of the cemetery, this felt like you're walking through a chasm, through a gorge. The idea of the romantic landscape was that it would have an effect on your emotions as you wandered around. So some areas would be broader and open and sunlit; other areas would feel like they were coming in on you and squeezing in on you. It was a very theatrical sort of landscape.

91. What this development has done is domesticated that landscape and really made it look just a lot more comfortable, less exciting. It almost looks as if it's landed from somewhere else. It doesn't really feel part of Highgate. So in conservation terms, again, I'd say it's much to be regretted and there's potentially another location where you could do these sorts of things in the cemetery, but I think that would be an absolute terrible thing to do in a grade one registered landscape. So there's this tension between our roles as custodians and conservators of the cemetery landscape and the desire to create space for new burials.

92. MR EVANS: Thank you. And what does tab 3c show?

93. MR DUNGAVELL: So, turning to tab 3c, this is another area in the west cemetery. It's an area we call The Meadow. This is another common method of creating space within cemeteries. Everyone's doing it. It's not just Highgate. The idea is you narrow paths and you buried new graves on what should be a circulation route. Now, in this case, this is the heart of the west cemetery, the older cemetery. This is one of the most prestigious burial locations you could have. It had a very wide road. It's wide enough to have a horse and carriage driving around.

94. You'll see that behind the bracken there, there's a series of quite imposing Victorian monuments because if you had a front row grave on one of these impressive roads then the cemetery wanted you to put up a monument rather than a headstone. They wanted to show off that this was a place for prosperous individuals to be buried.

You see just on the right-hand of that image as well, just the tail end of some of those more substantial graves with monuments as opposed to headstones.

95. If you want to get an idea of the width of that path as it should be, it's really you see the bench there, it's from the back of the bench across in front of the big grey sarcophagus there to the front row of those graves. You can see that there really was quite a substantial road. Now we have a gravel path there, which is probably three or four feet wide.

96. So this created approximately 50 new graves, private graves. Some of them had been put on top of common graves, which the cemetery company had put here earlier but since you couldn't have monuments on a common grave, that wasn't a problem in terms of circulation. The problems I've outlined show that this sort of development is detrimental to the landscape of the cemetery because it's difficult for people to appreciate the hierarchy of different spaces within the cemetery. But also, as the cemetery manager now – I may sound like a precious historian – as the cemetery manager now, it just clogs things up. So unfortunately, a large obelisk memorial at the end of this space was blown down in a storm a couple of years ago. There's no way that I can get a crane in there to reinstate that obelisk in the location. It's also very difficult to get a crane in for tree management purposes. So these things do make it more difficult to manage the cemetery if that's what you do but there's a long history of this path in-fill at Highgate, which goes back at least to the 1920s. So the commercial company before us was also creating space by clogging the cemetery up.

97. MR EVANS: Thank you. And broadly speaking, having used these powers, or having carried out these exercises once, what scope is there for carrying out the same exercise again in the same locations?

98. MR DUNGAVELL: There's not, because now the graves have been sold for new burials, that space is now gone. The landscape has been destroyed, if you like. So it's very difficult to imagine how you can undo these developments to recuperate the historic design of the cemetery. A more sustainable solution is really needed, which is a bit more of a cyclical use of burial spaces rather than a once-in-an-eternity idea.

99. MR EVANS: So could I ask you how that more cyclical, more sustainable approach might work? What examples have other cemeteries used with powers similar

to those that Highgate is seeking here?

100. MR DUNGAVELL: Well other cemeteries in London have the power to cancel rights of burial and to reclaim and reuse graves. So I've used the term in my document at tab 2, 'renewal' to cover both those activities, but I think it's important to note the distinction between them. The first is neither of those activities, neither reuse or reclamation, can be done unless you have the power to extinguish the private burial rights on those graves. You can't do them in a grave that is already owned. So once you've managed to extinguish the rights of burial, then the two activities are slightly different. So on tab 2, page 38, I've got a diagram to help you understand what is meant.

101. So just to talk you through this diagram, we've got different colours. So the grey is the soil. There's a little green strip at the very top which is the ground level. And we're looking at the depth in which the last burial in a grave has taken place. I've done different diagrams for the east cemetery and the west cemetery. That's because the ground conditions are different, so the burials in the east cemetery must be lower than the burials in the west cemetery. That's really the difference between clay and soil. So as clay dries out, fissures open up which can go deep into the ground. As soil dries, it tends to settle, so that means you can have a slightly shallower depth of burial in soil than you can in clay. That's the reason why the east and the west cemetery are slightly different. It's interesting the geology coincides with the Swain's Lane boundary between the two cemeteries, pretty much.

102. So reclamation means using space on top of the existing burials in the graves. So the depth of the last burial in the grave, I've shown that in the lighter pink boxes. The Victorians went down a long way. I haven't bothered going down even further than 10 feet but we have graves where the first burial might be 10, 15 and even 20 feet down. I hate to think how they did that. What I was looking at in these plans was how many burials you could fit on top of a last burial, bearing in mind that normally we would want to sell graves for two burials nowadays, rather than for six or whatever they were happy to do in the 19th century. Due to the safety of excavation, we don't want to dig below eight feet, really, in a grave. So where that's possible you'll see, for example the top diagram, the east cemetery, the second column there where the pink coffin is at nine foot. You'll see it's possible to put two new burials – those are the green boxes – on top

of that existing burial with 6 inches of space between them and still be three feet below the surface of the ground. That's the white line going across. So if I was looking to reclaim a grave for two new spaces, I'd be looking for burials where the last burial was at nine foot or lower.

103. That's also slightly theoretical as it assumes that the coffins are intact and have not collapsed over the years. In many cases, you would find that it may be a slightly higher burial has sunk over the years and still there might be room for two burials on top. So every grave needs to be investigated separately. The other possibility of course is sometimes the opposite happens. It could be the ground conditions have preserved things rather well and coffins have moved up in the ground rather than moving down. So every grave needs to be looked at separately. So reuse, the distinction is that you would need to disturb the remains that are already in the grave to make space for new burials.

104. MR EVANS: Sorry, just to clarify, so these figures you have shown on page 38, they are the spaces that would be accommodated simply by reclaiming the grave rights but without any need to disturb?

105. MR DUNGAVELL: That's right. And again, these are theoretical things based on the registers. So there's quite a number of instances in the cemetery, so 2,307 for example, graves in the east cemetery the last burial was at nine feet or deeper. Of course, it doesn't deal with the other questions of monuments and location and accessibility, all the things that are practical questions. It's just a theoretical number but that's where that comes from.

106. MR EVANS: Sorry, and then you were about to describe what would happen if you were reusing.

107. MR DUNGAVELL: Reusing graves, there's a couple of ways people have done it before. You referred to the colloquial description of 'lifting and deepening' before. That certainly would – I think that's the best way to do it because how that works is the remains are taken out of the grave and the soil is lowered to a sufficient depth to accommodate two burials on top. Anything that was removed from the grave is put in a new container and placed at the bottom of that grave and then the new burials go on top. So there's a historical continuity between who was there before and who joins them in

the grave.

108. I think that's very neat, particularly when our plan for reuse is to maintain the historic burial pattern. So if you come along in 200 years' time and say, 'My great, great, great grandmother was buried in this grave; where is she now?' We should still be able to point to that grave and say, 'There she is now. The Jones's are on top of that but the original burials are in that location.'

109. The other way that has been done and used to be done more commonly in consecrated ground was lifting and shifting. Sorry for the colloquial description. That's a cemetery colloquialism, which is where the remains might be, say, removed from a number of graves and interred in a new grave at the end of a row. So it gives you a row of graves that are all together and the historic remains are buried in the vicinity perhaps of that grave but not the same one. I think that's a much less desirable way of proceeding, although there may occasionally be a requirement where you might need to do that, but the preferable way is that lifting and deepening.

110. I should also say that, wherever possible, you wouldn't want to have to do this at all, and when you did do it you would be doing it with the utmost respect for this, bearing in mind the sensitivity of the issue. There's guidance around that that's produced by the Institute of Cemetery and Crematorium Management and also is included in the technical advice that you referred to earlier, that LEDNET Guidance talks about how to respectfully handle that lifting and deepening or lifting and shifting process.

111. MR EVANS: Thank you. And if the Trust had the ability to reclaim graves by cancelling existing rights and to reuse graves, how many would become available? What steps have you taken to analyse that?

112. MR DUNGAVELL: That's a great question. It sounds like it should be really straightforward for me to answer. You know, my database should be able to tell me something like that, but in fact it's nowhere near as straightforward to answer as you would expect. We're in the process of transferring our records from a manual ledger system on paper to a computerised system, which should help. But the grave numbers were allocated sequentially throughout the cemetery. They don't bear any relation to the location of the grave within the cemetery, but each grave does have a square

number, which tells us on which of the 168 pages of our map book we could find it. Although, there could be more than a thousand graves on that one page. So locating individual graves on the map is really quite a time-consuming activity.

113. And I'd say the numbers are not particularly useful in themselves. The page we're just looking at, page 38 in my diagram of reclamation, those numbers, I think, total up to almost 9,500 graves, which could be used without the need to disturb remains. But none of the database queries can tell me where exactly the grave is in the cemetery, whether it's accessible or not. Part of the problem is the Victorians were quite happy to walk on other memorials and graves for the conduct of funerals. They didn't demand a passageway. They'd be happy to have a board over for a funeral. Everything was hand dug and so a lot of these Victorian graves may not be useful for modern families.

114. MR EVANS: So what steps have you taken to analyse how many graves might be available?

115. MR DUNGAVELL: So what we did is actually start from the other end of things. Rather than a global position, which couldn't be established without considerable intervention in the cemetery, was look for a few sample areas to see, 'Well, if you were looking to renew graves in this area, what would it look like?' So, I've given you an example on tab 3i, which is a photograph. It's one of these big fold-out ones. There's only one on tab 3i. This is in the east cemetery. It gives you a wonderful idea of what the cemetery looked like when I started out here. You see to the left and the right of that main path how overgrown the cemetery is with ivy and bramble, so how difficult it has been to access the graves to inspect what's there.

116. The area I looked at most closely is this one, because it's got a path going through it. So if we were looking at the grave spaces here you wouldn't have to clamber over other graves to get to them. Even though that path is narrow, it's sufficient for access for a cemetery. And so either side of these paths, I looked at two parallel ones at this location. I found a total of about 200 graves and I think I put a plan in the bundle, in tab 7. So it's the first document, the first page in tab 7.

117. MR EVANS: That's page 123.

118. MR DUNGAVELL: That's it. And this is a plan of the area that we're looking at.

So we're looking at two bits of our map book from squares 111 and 112. And you can see how densely packed the graves are in there. The areas that were accessible for me to have a look at are the areas I've bounded in an orange line, so two rows. You'll see I've marked in red the old Marx grave. This is where Karl Marx was before he and his family were exhumed in 1954 and put in the place of the new memorial. That's now an empty grave but it does have a monument on it. It is still privately owned and I'd say its historic significance is such that, despite it being empty, it's not a grave that you would be looking to resell to a new owner.

119. So the important thing is these are accessible. They're in a relatively easy spot to get to in the east cemetery. You see I've got two blocks of graves within the orange. There's a central row between them. That's a row of what you might call land-locked graves. There's no way into them without walking over existing graves, which, as I said before, the Victorians were happy with but we tend not to be. So I think they would be of limited use for modern burials.

120. MR EVANS: That's the road that's in between the two sections that you've outlined in orange?

121. MR DUNGAVELL: That's right. Yes. That's it. And this pattern is repeated up and down this part of the cemetery. You'll have two rows flanking a path and then you'll have another row, which is pretty inaccessible. So the grey ones, or the unshaded ones, have memorials. So where I've highlighted in green or orange, and in one case pink, these graves don't have memorials, or some of them – I think about 16 of them – have extensively decayed memorials. And there's a bit of a debate to have – I highlighted this in my report – about when a memorial is in such a poor state that you might consider that it wouldn't prevent the renewal of a grave. So there wouldn't be a loss of that historic or aesthetic or landscape significance for a memorial.

122. So the shaded graves give you a good idea that, out of these 200 graves in the sample area, there's 53 that don't have any memorial at all. So there's no loss or destruction that needs to happen to enable the renewal of these graves. That single red one I mentioned which is in the lower block of the two towards the right-hand side, that actually does – it doesn't have a memorial but the last burial in there is less than 75 years ago. So that wouldn't be able to be used were the Bill to be successful.

123. Then the other ones, the green ones, are where the last burial was 100 years or more ago and the orange ones are the ones where the last burial is between 75 and 100 years ago. So if the threshold for cancellation of burial rights was 75 years after the last burial then this would be potentially available. If it were to be extended to 100 years then these graves would not be available.

124. The other interesting thing is the depth of the last burial in these 53 graves. These are the ones without memorials. 37 of those 53 could take an additional two burials or more without the need to disturb remains and 14 of those could take one additional burial without the need to disturb remains. As we implement this policy, it's nowhere near the case that in every single grave that is renewed that any disturbance of remains would be required, but sometimes that would be to make optimal use of the space. And of course this is just the starting point, because this doesn't take into account the people who will have objected or the owners that will come forward and say, 'You can't do this now that I've seen the notification of this programme on your website.'

125. MR EVANS: And this page that you've got at tab 7, it illustrates two pages from your plans, is that right? Pages 111 and 112 are marked on the top.

126. MR DUNGAVELL: That's right.

127. MR EVANS: Roughly how many pages are there in your records across the cemetery as a whole?

128. MR DUNGAVELL: There's 168. So they're not uniform in terms of the density of burials. Some have just a few and some have many more than this on it.

129. MR EVANS: But if all of the graves that you've identified here as being suitable were available, or at least a good proportion of them, on this plan alone, roughly how many more years of grave sales would that give you?

130. MR DUNGAVELL: I think this is probably four and a half, five years.

131. MR EVANS: At the current rates of selling?

132. MR DUNGAVELL: At the current rates, yeah. You'd have to use this – we're not talking about a California gold rush of new grave availability. There's a very long-

term process to consider here, which is for this to be spaced out so that over the next 75 years there's a supply of these graves which comes available as we work throughout the cemetery identifying new locations.

133. I think what you'd also need to do is do some area improvements, so you're looking at path improvements, drainage improvements, providing litter bins for grave owners to put wraps in, taps to water things with, dealing with any unsafe trees or badly formed trees in the area, perhaps planting some shrubs to create a slightly screened burial environment. So there's lots of things that would go alongside this selection of an area to make it an attractive place to bury your loved ones.

134. MR EVANS: With that in mind – and I previously in my opening described the restrictions that would remain in place – if the Trust was to get their – if the Bill were to pass and the Trust to have the powers to reclaim and reuse graves, what approach would you take to those powers? How would you plan to exercise them?

135. MR DUNGAVELL: Do you mean in terms of the process that we would go through?

136. MR EVANS: Yes, in terms of identifying areas for reclamation.

137. MR DUNGAVELL: So I think what you would need to do is first of all we'd follow the policies in the conservation plan, which we've got in tab 6, which gave us some initial steer on how to do this. So tab 6, page 95 talks about – sorry, it's page 95. This is where it can be confusing. It's page 131 of the conservation plan but page 95 of the bundle, so the numbers in the bottom right-hand corner. We are always referring back to the conservation plan for guidance. And that states that graves should not be reused on an ad hoc basis but according to an overall strategy.

138. So what we work on at the moment is drawing a Highgate Cemetery grave renewal handbook, which will set out how the powers would be used in the event that the Bill is successful, taking into account the various other policies in the conservation plan and also that guidance you mentioned before, the technical guidance on the reuse and reclamation of graves that was produced by the London Environment Directors Network. That's the local authority body back in 2013, so we've referred to it as the LEDNET Guidance. The LEDNET Guidance also says that you should have a strategic

rather than ad hoc approach to grave renewal.

139. But the LEDNET Guidance envisages something slightly different than I think would work in Highgate. It's intended to be relevant to a local authority context where the cemetery is just a cemetery and not perhaps at Highgate, where a cemetery wherefore 50% of the income comes from visitors. So the LEDNET Guidance envisages that an area would be cleared to create a new burial area. It talks about finding an area with an age profile that would enable comprehensive reuse. Because it has to be formulated in the practicalities of a local authority cemetery, it thinks that too much working around the younger graves on a selective basis might be difficult.

140. But at Highgate we've got, first of all, that protection in place to protect pre-1925 monuments. So they would require planning consent to do anything with them, but also we're here for heritage in general. Removing large numbers of monuments in an area would not be possible for us. That would make comprehensive reuse impractical and undesirable. The problem we also have is that we added graves dotted around the cemetery. There wasn't, say, two paths which were buried in 1911 and another two in 1912, and another two in 1913 that could really give you a clear age profile of an area. We have mixed stage areas where you'll have second, third and later burials over a period of time. So we have to do it on a grave-by-grave basis but within an area such as those ones I've outlined on that whole Marx grave plan we were looking at.

141. MR EVANS: So, if we were to turn to the Marx grave path again on page 123 on tab 7, perhaps you could describe how you would go through that process in relation to the potential grave spaces you identified there.

142. MR DUNGAVELL: So the point is as well, we'd be working within the 19th century grave size – these six foot six by two foot six graves. So rather than the larger graves, which are now more common, with the intention, the necessary intention of keeping this historic plot layout within the cemetery. So I'd be looking at these graves one-by-one to assess their potential for reuse. First of all, the process was to look for graves without memorials because memorials may be protected. They're also important for the heritage of the area. The area itself has to be accessible for modern families. It also needs to take into account any habitat or ecological considerations, which might have been thrown up in the conservation plan. So is there a rare plant or a rare spider or

something like that that lives in this area that we need to be particularly careful about? I'd need to ensure as well that the memorial wasn't listed, or that the grave wasn't listed. That's unlikely in the case of graves without memorials but it could be adjacent to a listed memorial, and that it wasn't a Commonwealth war grave. I'd also need to understand right from the start whether it's in an area of consecrated ground or unconsecrated ground, because different procedures apply – different jurisdictions apply to those two areas. Then to go through the plan of these ones I've shaded, looking whether the grants or the last burial was less than 75 years ago – those would be ruled out in that case – and to investigate the last burial depth. So there's two things to do there: one to check the historic registers but also to do some preliminary physical checks with our sexton to get an idea of how accurate records were.

143. So once the graves had been identified as candidates for renewal, then the notification procedures in the Bill would kick in. So there would be letters to the last registered owner of the graves – the newspaper notices, the site notices; you mentioned before the notice on the website – and then wait for responses to come in. Any objections, of course, would immediately boot out those graves from consideration in that renewal batch. And so that would result in a whittling down of – these shaded ones represent the maximum number of graves in that area that might be possible.

144. While that was all happening, I think we could be working on landscape works to improve drainage, improve paths, perhaps tidy up or repair any adjoining monuments which needed to be looked at, so there was an overall feeling of improvement targeted at that area.

145. Then once the consultation period had expired, then you could look at any necessary preparatory works that needed to be done to the individual graves. That would depend on local burial conditions and the depth of the last burial. So is that when you would need to lift and deepen any remains? Do you need to reinforce the grave with shuttering or stabilising rings to make sure that when you come for the funeral everything will work smoothly? You'd really want to make sure that that grave was suitable for reuse and that there were no surprises at the funeral.

146. Then the next stage would be offering that renewed grave for sale to a new owner. Of course, we would make clear that it was a grave with a history, so that people knew

that there were previous burials underneath. Where we have done that in the past by selling new private graves on top of common graves, people haven't been concerned about that at all. Then see how that goes. I think the benefit of taking it slowly, as I've outlined, is you would review each of these renewal areas for lessons learned to see what worked and what didn't work and ways you might improve that in the future.

147. MR EVANS: Thank you. And you've mentioned the conversation plan on a number of occasions. That sets out wider proposals for the cemetery including the Bill. It was consulted on at the time. Could you describe the consultation there has been on the Bill proposals please?

148. MR DUNGAVELL: Yes. I think I've got some examples of that in the bundle at tab 6, where the conservation plan tells you how it was consulted on, which is quite useful. Tab 6, page 85, and this is really to show the idea of grave renewal at Highgate Cemetery isn't something that has just landed without previous discussion. One of the things we did was have an exhibition onsite in relation to the proposals in the conservation plan, which did consider renewal as an activity. Those are in the same tab 6 at page 116 and page 117.

149. I'm sorry, the orientation of these looks really eccentric in the bundle because they're reproduced from the conservation plan, which has them the other way round. But the two I am interested in are page 116 and 117 when the page called Highgate's Cemetery at 116 sets out the problem with running out of space and shows you how we had done some things like the mound, for example, to solve that problem. Some of the other things that we've done like cramming, for example, where we were burying on paths. That's at 116. Then at 117, which is headed 'But how can it continue?', this is where we raise the question of how you accommodate more people in the cemetery. The first one is forgotten graves, which is this idea of abandoned graves which are no longer required by the family and some of the things that other cemeteries have done to deal with the lack of space. So we were quite upfront about that.

150. We also asked the visitors – I should say this exhibition was online as well as at the cemetery. People were invited to complete a survey form with their responses, or their thoughts, which we've included a summary of the responses at page 88, just a few pages earlier. The survey results at question 7, under burials on page 88, showed that

there was strong support for Highgate Cemetery remaining open for burials. So, 69% of people thought that was a good idea.

151. Then question 12 looks at re-burial deeper in the same grave. There's a few suggestions that we put to people. It's interesting; of the numbers of the percentages of respondents who would find these various activities acceptable, it's interesting that the highest number there is 64 for burying existing remains even deeper in the old grave and creating space on top and 63 for spaces within existing vaults or graves were used filling them up. So that seemed to attract general support amongst those options.

152. MR EVANS: And just to be clear, we find those on page 88 of the bundle, which is also 88 of that document. It's on the boxes on the right-hand side, in landscape orientation, under question 12. Is that right? The reference is at 63 and 64.

153. MR DUNGAVELL: That's right

154. MR EVANS: The second and third boxes. And as well as the formal consultation exercise, what other steps has the Trust taken to publicise its proposals?

155. MR DUNGAVELL: So that was the initial one to talk about the ideas in the conservation plan that sort of floated this as something that might be proceeded with. So following that, at tab 5 we've included a booklet which we produced to talk about grave renewal in particular. It's called 'Keeping Highgate Cemetery Alive', deliberately, obviously, because the idea of a dead cemetery is something that people think 'Oh, what's that?' A live cemetery is a cemetery where you're still burying people. It has relevance to the present generations.

156. So this, again, a booklet which was available at the cemetery, it was sent to all members of The Friends of Highgate Cemetery Trust and it was on our website. There's been two years of coverage of our grave renewal ideas already, both in national and local media that helped draw the attention of a much wider audience to these ideas. There's a list, actually, on the renewal page of our website of some of the coverage that we've had. Just for example, it includes local papers like *The Camden New Journal* and the *Ham&High* have covered this. *The Times*, *The Telegraph*, *The Sunday Telegraph*, *The Observer*, BBC London news, even Vanessa Feltz's breakfast show I was on to talk about grave renewal. Outside of London radio as well, such as Three Counties Radio

which covers Bedfordshire, Hertfordshire and Buckinghamshire. So there's been quite a lot of interest in grave renewal at Highgate Cemetery.

157. And we also invited comments on the website about these ideas. It hasn't attracted a huge number of comments; about 30 people sent in their views. More common was that they said, 'I've got a relative at Highgate Cemetery. Here's my details. I want to hear more about this as things progress and if there's any interest in using my relatives' graves for grave renewal.' So that doesn't impose any obligation. They don't need to be the registered owner or anything like that. They're just people who are interested to know what might happen as a result of this grave renewal discussion.

158. We also had, to engage more local people, an open evening at Highgate Cemetery in September 2019 to explain the ideas to a more local audience of opinion formers, I guess, so local MPs, councillors, representatives from local community organisations and faith groups. So we explained to them. We had – then the next stage following that was to hold an extraordinary general meeting of the Friends of Highgate Cemetery Trust so that they could approve the Highgate Cemetery Bill. That was done just before Covid, back in February 2020. It was quite a good attendance. Lots of people could vote by proxy as well, 267 votes for approving with the Highgate Cemetery Bill; 11 votes against. So it shows that there was general support for the proposals.

159. I think people do understand the problem. They understand that it's also a very sensitive question that, as best we can, we're treating it sensitively and with due regard for its importance.

160. MR EVANS: And has there been any specific consultation with the faith groups that use the cemetery?

161. MR DUNGAVELL: Yes, as part of that information evening in September 2019 we invited the URC minister, the local catholic priest, the rabbi from Highgate synagogue and of course we're in dialogue with the Church of England and I'm attending the next parish council meeting later this month to talk to them more about how that would affect them. But apart from the general Christian denominations, there's no particular areas associated with a particular faith group. So, for example, we do have a number of Jewish burials but there's no particular concentration, for example,

that I think people would be especially affected by. That's slightly different from the case in some other cemeteries where there are specific defined areas for particular faith groups.

162. MR EVANS: Thank you, Dr Dungavell. I had a couple of questions left about the two petitions against the Bill. I'm mindful of the time. I don't think these would take long, so if the committee is content should I just finish the examination in chief, as we're close to 1.00 p.m.?

163. THE CHAIR: How long do you think, Mr Evans, to finish it?

164. MR EVANS: Just a couple of minutes, my lady.

165. THE CHAIR: Yeah, okay. Please carry on.

166. MR EVANS: Thank you. So, Dr Dungavell, as I mentioned earlier, we've been unable, obviously, to have a site visit but you've been to see the graves that Ms Swift and Mr Jones are interested in. I wonder if you could please describe those for the committee?

167. MR DUNGAVELL: So, turning to Ms Swift's grave, she has a six foot six by four foot grave in the east cemetery. The grave faces onto a path, so it's accessible, as you would want nowadays, and has a very attractive headstone of slate. Slate weathers very nicely. I expect that this headstone will be quite long lasting. It will certainly last 75 years. It's about three foot tall with a rounded top. The inscription is elegantly hand cut, rather than machine cut, so it's a very nice quality in terms of the lettering. It's a very nice design. There's a sort of weeping willow tree which frames the inscription.

168. So it's very much a one-off, I'd say, artistic piece rather than a standard catalogue item. The inscription is also particularly interesting because it refers to Mr Swift and it places him almost at the top of a family tree which includes his roles as father, grandfather and father-in-law. So it's almost a warning to anyone who might succeed me that this is not the sort of grave you might consider if you're looking for something that is detached from a family. There's a lot of descendants there who are going to be interested in this person.

169. MR EVANS: And the Joneses?

170. MR DUNGAVELL: So the Joneses have two graves. The Simmons grave, which was purchased in 1892 is a six and a half foot by two foot 10, and it has a nice, white marble headstone that's slightly grimy with the years, but otherwise it's a good condition, apart from the loss of a couple of lead letters. A slightly baroque style, which is contemporary with its time and some nice decorative carving on it. There's a bible, a couple of doves, a cross, heavenly light. It comes well within the protection for pre-1925 memorials, as well as within the Trust conservation agenda. So it makes a positive contribution to the cemetery. It's in good condition. The grave holds six burials already. It's inaccessible from a pathway, and so I wouldn't have it as a prime candidate for renewal.

171. The other grave is the Merritt grave. The Merritt grave is immediately behind the Simmons grave. There is no memorial on that grave, which ordinarily would make it of interest to a renewal programme, especially as the last burial was at 11 feet, but the big problem is the grave is land-locked, so there's no easy access to it. The path that might have been used to access it has been filled in with later burials, one of which had a burial added to it in 2010. So it's a considerable period of time before anything might happen there at all. So it's not one that – despite having no memorial and space on top, it's not one that would come in early consideration in any grave renewal programme.

172. MR EVANS: Thank you. And you've mentioned briefly when we were looking at the Marx path which graves would be available within 75 years and which within 100 years, and the impact that longer period would have, which is Ms Swift's petition's main point. Turning to Mr Jones's petition, what would be the issue for the cemetery if descendants were able to automatically veto the extinguishment of burial rights?

173. MR DUNGAVELL: I think that would be quite a new thing. It would be complex for us to handle as there could be a much greater number of people potentially involved. If there were multiple people, how would I decide who to listen to? Could a descendant veto a cancellation even if the owner was okay with it? I don't know. At the moment we have a system to transfer down ownerships of graves and you can have multiple owners registered together. So it would be – this is more ready to handle that case where there's a number of people who might be involved. The ideal is really to maintain the connection between the cemetery and living people by having living registered owners rather than graves where the last registered owner died a long time

ago.

174. MR EVANS: So if a relative expressed an interest in a grave and you were unable to trace the owner, and you wished to have that link, what would the Trust propose to do? What could the Trust do?

175. MR DUNGAVELL: So the first thing to do, if it was possible through probate, through that established process, to trace that down and pass that through the estate, that would be the preferred method to do that, so it's easy to deal with. If we had the Bill and you were able to cancel those historic burial rights then I'm really keen to match up living generations with past generations and it would be great to enable living relatives to take ownership of a historic grave.

176. MR EVANS: Thank you. I have no further questions for Dr Dungavell, my lady.

177. THE CHAIR: Thank you very much, Mr Evans. Right, we'll break off now. I had thought I'd ask members of the committee if they want to ask some questions but I think that Mr Jones and Ms Swift have been waiting so patiently. I think maybe I'll turn to Mr Jones for clause 4 opposition questions after lunch, and then Ms Swift, who wants to ask any questions in relation to clause 5. Then I think I'll go back to members of the committee for any questions they have. So, if everybody's content, we'll break off now and we shall resume at 2.05. Please do not cut your Zoom link. Keep your Zoom link going.

178. MR EVANS: Don't press 'leave'.

179. THE CHAIR: Don't press 'leave', exactly; don't. Thank you very much.

180. MR EVANS: Thank you, my lady.