

MINUTES OF ORAL EVIDENCE

taken before the

OPPOSED BILL COMMITTEE

on the

HIGHGATE CEMETERY BILL

Thursday 4 March 2021 (Afternoon)

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

IN PUBLIC SESSION

(At 1.45 p.m.)

18. THE CHAIR: Good afternoon, everybody, with apologies for keeping you waiting but a number of things have been happening and members of the Committee, I know, are very grateful to Mr Evans and his team and to counsel to the Committee, Mr Diamond, for all the work they've been doing to try and put us in a position, we hope, not necessarily certainly, to resolve these proceedings this afternoon. It may be that the members of the Committee will need to have another private session but let us see how we go.

19. Mr Evans, thank you very much. We've received a copy of the proposed amendments and the undertakings that you have prepared. Some members of the Committee haven't had as much time as others to consider them so forgive us if we go through them in a little detail. Can we start please with the amendments?

20. Clause 4, that is dealing with my point about the alternative or equivalent electronic publication. I'm very happy with the proposed wording. I don't think any other member of the Committee has any doubts either so unless anybody has any comments, or unless Mr Evans you wanted to say something about that, I think we can accept that proposed amendment.

21. MR EVANS: No further comments from me, My Lady, if you're happy with that amendment.

22. THE CHAIR: Thank you. We then have at paragraph 2 of your proposed amendments – sorry, they don't always refer to it. Is it clause 2, page 4, line 22, 'Notice under subsection (5)(aa)'?

23. MR EVANS: Yes, My Lady, that's in clause 4.

24. THE CHAIR: Clause 4, thank you.

25. MR EVANS: And this would be the requirement that the obligation to put a notice on the website – sorry, that was the previous one – that the notice that goes on the website, that must contain the names and subsection (6B) requires all of the other notices to say, one, where you find the website notice; and, two, confirm that the website notice has got the names.

26. THE CHAIR: And when you say names, because we're here dealing with burial rights and right to ownership of the memorial, at the moment we're not talking about human remains where the identity of the person is concerned; that comes in the next clause. Is that right?

27. MR EVANS: That's correct, My Lady, and so when we get to it, amendment 4 is slightly different in that respect.

28. THE CHAIR: Thank you. Anybody have any comments on the proposed amendment to the notification where burial rights are concerned? No? Thank you. So we can, I think, accept those proposals. Now, as far as clause 5, at paragraph 3 you've got the same reference to the electronic communication, so that's in exactly the same terms, yes?

29. MR EVANS: Correct.

30. THE CHAIR: Then you have at page 5, line 46, now here we're dealing with clause 5(6A) and this was the point made by members of the Committee about identifying, where known, the person whose remains were going to be disturbed. I've got one point, Mr Evans, and I think it probably crept in because you and Mr Diamond were trying to do it all so quickly. I think if you look at (6A), at the moment it reads, 'A notice under subsection (5)(aa) must contain the name where known of the registered owner of the right of burial memorial and the name of any person whose remains are proposed to be disturbed'.

31. Sorry to be pernickety but I think you'd there be taking on a duty to put the name of the person whose name –

32. MR EVANS: Even if we didn't know what it was, yes.

33. THE CHAIR: So I think if you move 'where known', if you go 'must contain, where known, the name of the registered owner of the right of burial or memorial and the name of any person'

34. MR EVANS: My Lady, yes, that makes sense to us.

35. THE CHAIR: Well, I think otherwise you're taking on an impossible duty.

36. MR EVANS: Yes.

37. THE CHAIR: Right so then we have – that's identification of the remains and, again, the same thing about a notice including details. Do any members of the Committee have any comments about those proposed amendments? Sorry, I am asking members of the Committee. If at any stage Mrs Swift or Mr Jones wish to put their hand up, please just indicate. You won't have seen these amendments yet because we've only just seen them, so please do indicate if you have anything you wish to contribute.

38. So we then go to our paragraph 5, notice of objection. This is the attempt to deal with the multiple 25-year point. So you've attempted to put on the face of the Bill what you accepted was always the intention of the trust which was, once a 75-year period had elapsed, if a relative objected to the proposal to disturb the remains, a further 25-year period must lapse. What you've here done in the Bill is put on to the face of the Bill the proposal that 'and if after those 25 years the burial authority still wishes to disturb the remains, they have to serve another notice, thereby triggering the right of the relative to object, thereby triggering another 25 years'.

39. So, in other words, the 25 years can keep going on and on as long as there's a specified person who objects. Is that correct?

40. MR EVANS: That's correct, My Lady.

41. THE CHAIR: Right. Well, I appreciate that these words, I always thought they were going to be difficult but, as far as I can see them, they seem to me to fit the bill. I don't know if anybody has any comments about them. No? I don't have Mr Jones' picture on my screen but I'm sure someone will tell me if he's indicating to the contrary.

42. Right, we then have clause 7 and here, I know, Lord Aberdare spotted what we think is a missing aspect. Lord Aberdare, do you want to comment on clause 7? We have the 'within the cemetery' point but there's a point we think is missing.

43. LORD ABERDARE: Yes, thank you, Chair. My understanding was that we were going to take account of whatever form of disposal had taken place. I mean, this arose because instead of having just the options of destroy or preserve, I suppose, we've now

got the option of ‘dispose of’ and my understanding is that we were going to allow for not just situations where the memorial was kept within the cemetery but other disposals which might include removal by a registered owner or, of course, destruction might be one or it might have been sold to a third party or it might have been given to a memorial park. I mean, there are all sorts of disposals that could have happened and my understanding was that at least there would be that amount of information so that people would know a little bit more about what had happened to it than merely that it had either been kept within the cemetery at some specified place or something else.

44. MR EVANS: I understand, My Lord. Clearly, we’ve got our wires crossed at this point.

45. THE CHAIR: Don’t worry, Mr Evans. I think there were two points: one was we mentioned whether it was preserved within the cemetery but there was also this other point and I think it’s easily resolved, if you and your clients are happy, which is you have a clause 7, what should be subsection (4)(c) and words to this effect. I’m not suggesting these would be the exact words but, ‘If the burial authority disposes of the memorial, details of such disposal’.

46. MR EVANS: Yes.

47. THE CHAIR: Something to that effect?

48. MR EVANS: Or ‘how it has otherwise been disposed of’.

49. THE CHAIR: Yes.

50. LORD TREFGARNE: I have to agree with you and Lord Aberdare on this. The people concerned must know what has happened to the memorial if they want to do so.

51. THE CHAIR: Indeed. So, Mr Evans, do you need to take instructions from Mr Adeney and Dr Dungavell or are you content that you can –

52. MR EVANS: My Lady, I understand, and Dr Dungavell is nodding which I would take as my instructions.

53. THE CHAIR: There’s Mr Adeney.

54. MR EVANS: The principle of that amendment is agreed so we would just need to finalise the wording but the principle is agreed.

55. THE CHAIR: Well, Mr Evans, this is where we may take you up on your offer that the Chair can have a certain discretion. Having brushed it off earlier today, the Committee is content that I can, with you and counsel to the Committee, agree a final form of wording on that additional subsection.

56. MR EVANS: Thank you, My Lady.

57. THE CHAIR: Does anybody have anything they want to raise? Anything further on the amendments that we've just been through?

58. LORD TREFGARNE: Just one point, Chair, if I may.

59. THE CHAIR: Yes, Lord Trefgarne, of course.

60. LORD TREFGARNE: I'm slightly concerned that we're accepting what are no doubt genuine assurances from the promoters but without actual sight of the wording which we hope will be appropriate. Are we leaving the approval of that wording to you?

61. THE CHAIR: I thought that's what the Committee – on this last point?

62. LORD TREFGARNE: Well, generally, but on this last point included.

63. THE CHAIR: Well no, generally, we have all the wording that will go through. The only wording to be added would be how you express the details of the disposal of the memorial. So all the other wording should be before you.

64. LORD TREFGARNE: Right, very well.

65. THE CHAIR: Is that all right?

66. LORD TREFGARNE: If you're happy, I'm happy.

67. THE CHAIR: Right. Well, thank you for that. So, Mr Evans, if you can, as soon as possible, come up with a form of wording, I'm very happy to send it round to my fellow members of the Committee to ensure that they're happy with it too. So we can,

of course, make sure that that particular matter doesn't hold things up because, as you say, the principle of what Lord Aberdare described is entirely accepted and both Dr Dungavell and Mr Adeney have nodded their heads in agreement.

68. MR EVANS: That's right, My Lady.

69. THE CHAIR: In fact, Mr Adeney went so far as to put his thumbs up. Right, unless there's anything further on the amendments, Lord Trefgarne, can I just check? I appreciate you didn't have as long as some of us had to read through the other amendments. Do you have any other comments you wish to make?

70. LORD TREFGARNE: No, I've nothing more to say.

71. THE CHAIR: Thank you very much. Right, the undertakings and protocols – so I need to get this up on my iPad now. Sorry, I've got to get another email because of course it was in a different email, wasn't it? Right, so these are undertakings, Mr Evans, if you will confirm to the members of the Committee that the Highgate trustees will give to Parliament as to how they will conduct themselves in the future, yes?

72. MR EVANS: That's correct, My Lady.

73. THE CHAIR: Right. You've already mentioned using reasonable endeavours to work with Camden and Historic England.

74. MR EVANS: Yes, My Lady, undertakings 1 and 2 are undertakings that I gave on day 1 of our proceedings.

75. THE CHAIR: And number 2 was the Highgate Cemetery conservation plan as modified, if it is, in the future, the technical guidance on the re-use of graves.

76. Right, and what you've added at 3, 'Prior to the first exercise of the powers under clauses 4 and 5 of the Bill, the trust will produce a protocol relating to the exercise of those powers which must accord with the document set out in paragraph 2(1)(1) and 2(1)(2) so, in other words, accord with the Highgate Cemetery conservation plan and technical guidance on re-using graves and make provision for how the trust will take account of the interests of relatives, including collateral descendants' – like the Jones family in relation to one of the graves – 'and other people with connections to any

persons whose remains are buried within a grave space that would be affected by the exercise of those powers’.

77. So you have there extended from the collateral descendant point to those who may have some other connection with the grave and I, for one, am grateful for that, Mr Evans.

78. MR EVANS: That’s right, My Lady. We had in mind that there would be people with close connections who aren’t caught by any definition of descendants, whether because of a non-traditional family arrangement or otherwise.

79. THE CHAIR: Or a lifelong friend.

80. MR EVANS: Exactly.

81. THE CHAIR: I don’t know if any member of the Committee wants to say anything more about that particular part of the undertaking.

82. LORD TREFGARNE: I haven’t seen that, Chair. I don’t know where that is.

83. THE CHAIR: That came this morning, Lord Trefgarne.

84. LORD TREFGARNE: Right.

85. THE CHAIR: If I now check when it came, I’m afraid I’ll close it down again. I don’t know if Mr Chris Clarke is online and can remind Lord Trefgarne when that document was sent through this morning.

86. LORD TREFGARNE: This is the revised paper of amendments.

87. THE CHAIR: It’s proposed undertakings. So this morning we had proposed amendments without clause 5 and the proposed undertakings; there were two documents. And then just before we restarted, we had just the one document, which was the proposed amendments including clause 5.

88. LORD ABERDARE: Chair, it came at 12.16 this morning, I think.

89. THE CHAIR: Thank you, Lord Aberdare.

90. LORD TREFGARNE: Well I haven't seen it, I'm sorry to say.

91. THE CHAIR: Right.

92. LORD TREFGARNE: I apologise for being so inefficient in all of this, but I have not seen the last amendment, whatever it is.

93. CLERK: It was 12.16 but I'll re-send now, Lord Trefgarne, so it's at the top of your inbox.

94. LORD TREFGARNE: Well I can't look at my inbox without disconnecting you, so I won't do that.

95. THE CHAIR: Mr Evans, can you explain how you approached the protocol? It was in response to comments that members of the Committee had made during the course of the hearings yesterday and the day before; is that right?

96. MR EVANS: Yes, My Lady, and also some suggestions that were helpfully made by Mr Jones. And, in particular, the intention here is that, as we had previously described in Dr Dungavell's paper in tab 2, he had set out that there would be such a protocol. And in response to the points raised by the Committee and by Mr Jones, this undertaking 3 makes it clear that a protocol will be produced and it must comply with the conservation plan and the technical guidance. It must include provision explaining how the trust will take account of the interests of relatives and that wider category that we just described. It must also ensure, as Mr Jones requested, that if under clause 4(7), there is an objection to the extinguishment of burial rights and that is referred to the Secretary of State, that the trust makes sure that the objector knows about it. And, in addition, it must also make sure that the protocol itself is provided on request to any person who participates by objecting either to the extinguishment under clause 4(7) or to a disturbance under clause 5(8). That again was a helpful suggestion made by Mr Jones.

97. THE CHAIR: Mr Evans, I know that Baroness Whitaker has a comment about the protocol being made available.

98. BARONESS WHITAKER: Thank you. On your last point, Mr Evans, the protocol is to be made available on request. I don't see why you shouldn't send them in any case to any person who objects; that's not likely to break the bank, I think. It seems

to me it will be an ordinary courtesy. Would that be feasible?

99. MR EVANS: My Lady, it would be feasible; we just wanted to make sure that we had absolutely captured the specific request made by Mr Jones.

100. BARONESS WHITAKER: Well I think it would be preferable to send them, even if they haven't been requested. I take it, by the way, that you will send the full copy of the undertakings to both petitioners, because what we have is excerpts from them. And it seems to me that it would be appropriate for them to see the lists as they have expressed these very deeply felt concerns.

101. MR EVANS: My Lady, we certainly would, and the recent practice of the House has been to make sure that where a promoter gives undertakings in a Bill Committee, such as this, that those undertakings are also published on the website's pages in relation to the Bill so that they can be found by anybody who takes an interest at a later stage.

102. BARONESS WHITAKER: I take it both petitioners have access to the website then. Is that the case? Are they on the internet?

103. THE CHAIR: Mrs Swift nodded.

104. BARONESS WHITAKER: You can access the website.

105. THE CHAIR: Thank you.

106. BARONESS WHITAKER: And Mr Jones, I think, does have access to the internet. Mr Jones? Well I'm assuming so.

107. MR EVANS: Certainly in their cases, My Lady, we would send copies of the undertakings directly to them.

108. BARONESS WHITAKER: I'm grateful; thank you very much.

109. THE CHAIR: Lord Trefgarne?

110. LORD TREFGARNE: I apologise for being so hostile in all of this but I seem to be being asked to approve things that I haven't seen. Well I'm always, of course, willing to take your advice on these matters, but there is a limit to all of that. And I'm coming to the view that we're going to need another private meeting of this Committee

to agree some of this.

111. THE CHAIR: Right, what we can do then –

112. LORD TREFGARNE: That's not for me to decide, of course.

113. THE CHAIR: No, of course you shouldn't agree to things that you haven't seen. What I suggest, Mr Evans, in relation to the point made by Baroness Whitaker, if you could delete from the proposed protocol 3.1.3, 'The protocol is to be made available to any person who objects', delete the words, 'on request'. Are you happy to do that?

114. MR EVANS: Yes, My Lady; yes.

115. THE CHAIR: I think it makes sense anyway, if you think someone's objecting, they ought to know what the procedure is, oughtn't they?

116. MR EVANS: Indeed.

117. THE CHAIR: Right, well in which case, given the point validly made by Lord Trefgarne, it seems to me that it would be a good idea now for us to – unless any other member of the Committee has any other comments at this stage – to break off, go into private session, so that Lord Trefgarne can open up the documents and see them properly. We can discuss in private session and hopefully we can return later this afternoon to proceed from there. Does that meet with everybody's approval?

118. MR EVANS: My Lady, sorry, there was one further undertaking that – it's just over the page there – but it was just to say that we would provide Mrs Swift and Mr Jones specifically with a copy of any protocol that is made under that paragraph. So I wanted to make sure that was on the record as well.

119. THE CHAIR: Sorry; yes, I do have that. Thank you very much. We're now going to go into private session, so unless anybody has anything to say, keep the Zoom link open. And unless it causes huge inconvenience, if people could just stay there because I don't know what the timing's going to be, and rather than set a time – or would it be better if I set a time?

120. BARONESS GARDEN: I'm afraid I have to leave to go into Parliament at about 4.30, so it would be quite difficult to be available.

121. THE CHAIR: What if I said we'll come back at quarter to three? Does that seem long enough?

122. LORD ABERDARE: Sounds fine.

123. LORD TREFGARNE: I think so.

124. THE CHAIR: Right. So we'll see you at quarter to three. Thank you very much.

Sitting suspended.

On resuming –

125. THE CHAIR: Good afternoon again, everybody. We should say, we've just been informed that Mr Jones is not online – he's having problems with his internet – but he has given his consent that we should proceed at this stage without him. Obviously, if any matters had arisen that required any answers from him, we would have immediately stopped the proceedings, but they don't.

126. Mr Evans, the members of the Committee and I have had a chance to discuss the amendments proposed and the protocol and, with two exceptions, as far as the amendments are concerned, and the deleting of the two words on the protocol that we mentioned earlier, the Committee is content that the Bill should proceed. As far as the words on the undertakings, that was just deleting the words 'on request', as you remember.

127. MR EVANS: My Lady, yes.

128. THE CHAIR: So the protocol would be served on objectors, whether or not they request. As far as the two amendments are concerned, you agreed with me that the words 'where known' should be moved in clause 5 to indicate it applies to the individual whose remains are being moved as well as the owner of the burial rights and memorial rights. As far as clause 7 is concerned, when the trust or the burial authority has otherwise disposed of a memorial, I understand – or we understand – you'd sent a proposed amendment through to Mr Diamond. Unfortunately, that doesn't quite meet what we're after. What we're after is, if other means of disposal are used, that the burial authority sets out in a statement the details of the disposal. In other words, 'It was

destroyed’, ‘It was sold’, and if so, to whom. In other words, we believe the words ‘the details of the disposal’ would meet the bill because you’ll obviously have to put those kind of details in. Do you understand?

129. MR EVANS: Yes, My Lady, I think we do.

130. THE CHAIR: And the members of the Committee are content that we should use the power whereby the finalising of those words should be left to me, with the advice of Mr Diamond, and obviously in conjunction with you.

131. MR EVANS: Thank you, My Lady.

132. THE CHAIR: So I think that takes us to proving the preamble stage.

133. MR EVANS: Yes, My Lady. In that case, and thank you, I call Dr Dungavell to prove the preamble. Dr Dungavell, I think you’re still under oath.

134. THE CHAIR: I will confirm. I haven’t discharged him from his oath, so he is.

135. MR EVANS: There we go; thank you, My Lady. Are you Ian Robert Dungavell?

136. DR DUNGAVELL: I am.

137. MR EVANS: Are you the chief executive of the Friends of Highgate Cemetery Trust?

138. DR DUNGAVELL: I am.

139. MR EVANS: Do you hold responsibility for the promotion of the Bill on behalf of the Friends of Highgate Cemetery Trust who are promoting the Bill?

140. DR DUNGAVELL: I do.

141. MR EVANS: Have you read the preamble, as amended, to the Bill?

142. DR DUNGAVELL: I have.

143. MR EVANS: Is it true?

144. DR DUNGAVELL: It is true.

145. MR EVANS: Thank you very much. Thank you, My Lady.

146. THE CHAIR: Unless there's anything else, Mr Evans, I think that completes the proceedings.

147. MR EVANS: Thank you very much My Lady. May I express on behalf of the promoters our appreciation for the work that you and the Committee have assiduously put into this Bill?

148. THE CHAIR: Well I know we're all very grateful to everybody involved, especially those of you who were working long hours, late last night, early hours of this morning, trying to get us into a state where we could proceed with the Bill. So we're very grateful to everybody. Obviously, we're particularly grateful to Mrs Swift and the Jones family for bringing important matters to our consideration, and we hope we've sufficiently allayed their concerns by the proposals that we've made that you have accepted.

149. So with that, thank you all very much, and I will close these proceedings.