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ORAL EVIDENCE

Taken before the

UNOPPOSED BILL COMMITTEE

on the

HIGHGATE CEMETERY BILL [*LORDS*]

Monday 28 June 2021

Before:

The Chairman of Ways and Means (Dame Eleanor Laing) (Chair)

Caroline Ansell MP

Jack Brereton MP

Alex Sobel MP

NICHOLAS EVANS, of BDB Pitmans LLP, appeared as Parliamentary Agent.

DR IAN DUNGAVELL, Chief Executive, Friends of Highgate Cemetery Trust, appeared as Promoter.

HOWARD (MARTIN) ADENEY, Chair, Friends of Highgate Cemetery Trust, was in attendance.

KLARA BANASZAK and **ZSOFIA KISS**, representing Speaker's Counsel, were in attendance.



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Ordered at 2.30 pm: that the Counsel and Parties be called in.

1. **CHAIR:** Good afternoon, ladies and gentlemen. I am Eleanor Laing, Chairman of Ways and Means. I am pleased to be chairing today's Unopposed Bill Committee. My colleagues this afternoon are Jack Brereton, Caroline Ansell and Alex Sobel. Thank you very much for participating this afternoon.
2. We will begin with a presentation from Mr Evans before moving on to questions from the Committee. We will then deliberate in private to decide whether the Bill should proceed. If the Committee is not satisfied with the assurances given, it may adjourn to another day.
3. Mr Evans, may I invite you to introduce your colleagues and then to address the Committee?
4. **NICHOLAS EVANS:** Thank you, Dame Eleanor. My name is Nick Evans, parliamentary Agent of BDB Pitmans. We are the Agents for the Highgate Cemetery Bill. I am joined this afternoon by Martin Adeney, who is the chair of the Friends of Highgate Cemetery Trust, and Dr Ian Dungavell, who is the chief executive of the Trust. The Trust is the Promoter of the Bill.
5. If I may, I will start by summarising briefly the history of the cemetery and the background to the Bill, because it is a little bit complex, unfortunately. Then I will move on to the need for the Bill and summarise the provisions that are in it. In short, the Bill does three main things. The first two of those things are to help secure the future of the cemetery as a working burial ground. They are, first, to provide the Friends of Highgate Cemetery Trust, as the burial authority, with the power to reclaim the rights of burial in grave spaces that are no longer being used, and, secondly, to allow them to reuse graves where there is space to do that. I will explain that in a bit more detail.
6. The third thing that the Bill does—in this respect, it is slightly different from a couple of other private Bills that have been before Parliament over the last few years—is tidy up some of the Victorian and pre-Victorian legislation that established Highgate Cemetery, consequential on the dissolution a little while ago of the London Cemetery Company, which was the statutory company that was set up to run the cemetery. Those are the three main things that the Bill does.
7. As I mentioned, 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 benefit 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...to be used as a public burial ground; to secure the repair, restoration and preservation of the Cemetery, its monuments and buildings and other artefacts and their setting for the public benefit.” Everything that the Trust does must be done for those objects, including the exercise of the powers under the Bill, if it goes ahead. The Trust is the owner and operator of Highgate Cemetery, and it



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has been since the 1980s.

8. We say that Highgate Cemetery is a site of national importance and unique cultural heritage. It was one of the “magnificent seven” cemeteries originally created in the mid-19th century in response to the pressure on burial space in churchyards. It is now a grade I registered landscape and one of the best-known cemeteries in the world. But although it is a much-loved place of historical interest and received over 100,000 visitors a year in pre-covid times, it is also a working cemetery. In the view of the Friends, its status as a working cemetery is crucial to its status as a place of interest, and the Bill is intended to ensure its status as a working cemetery.
9. The cemetery was laid out in 1839, and in the Bill, we refer to an Act of 1836. You will see that the long title is very long, so I shan’t repeat it; it was before short titles had been invented.
10. **CHAIR:** It’s all right. We have it in front of us.
11. **NICHOLAS EVANS:** In short, that Act of 1836 created the London Cemetery Company and gave it powers to lay out cemeteries in Highgate, Stepney and Nunhead. As far as we can tell, the powers were never used in Stepney, but there are cemeteries in Highgate and in Nunhead. That Act was amended in 1843 and in 1911, and the cemetery was doing very well. It started out first on what is known as the west cemetery, and if it helps to look at pictures in this respect, on page 15 of the conservation plan that the cemetery has had produced—sorry. Well, you have a picture.
12. **CHAIR:** I have it in a different format. Let me find page 15. Yes, please go ahead.
13. **NICHOLAS EVANS:** The point I was seeking to make is that the London Cemetery Company originally had powers over what is seen there as the west cemetery—that is the original cemetery. It is the more prestigious of the two; it has been described as a picturesque landscape. The cemetery was doing sufficiently well that it was able to buy the land that is now the east cemetery in 1860 and lay that out, and that is in quite a different style. Both of those two cemeteries—now operated together as Highgate Cemetery—did very well for the rest of the 19th century and early 20th century, but from that point onwards, the fortunes began to change. People had less of a desire for elaborate funerals: they wanted less ostentatious memorials to family members. The cemetery’s income fell away; it passed into, essentially, a long-term decline, with a large number of graves abandoned as families moved away and maintenance reduced.
14. In 1960, the London Cemetery Company was taken over by the United Cemetery Company, which took both Highgate Cemetery and Nunhead at the same time. That cemetery company struggled on for another 15 years or so, but their funds ran out, and in 1976, a Greater London Council (General Powers) Act was passed. That gave Camden Borough Council the power to acquire the cemetery and take over its maintenance, but for whatever reason they did not choose to exercise those powers, and those powers have now expired. At the same time, Nunhead Cemetery was



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transferred to the London Borough of Southwark.

15. In 1975, the Trust was formed, with the aims that I previously mentioned, and it began work on clearing the undergrowth and repairing some of the memorials that had become damaged. The London Cemetery Company was liquidated in 1978, and in 1981, the cemetery was transferred to a company owned by the Friends of Highgate Cemetery Trust. It is now vested in them. Because the London Cemetery Company was a statutory company that purported to be dissolved in the 1970s, one of the things that this Bill would do is tidy that up from a statutory perspective and repeal the old Acts that relate to the London Cemetery Company, because it does not exist anymore, and transfer its liabilities and rights directly over to the Friends.
16. In terms of the need for the Bill, over the last 40 years, the Trust have worked to make the cemetery one of the finest grounds, but 180 years after it opened, Highgate Cemetery is running out of burial space. There are about 53,000 graves in the cemetery, and about 170,000 people have been buried there.
17. **CHAIR:** So, 170,000 people, and 53,000 graves?
18. **NICHOLAS EVANS:** Yes, that is correct, and it is quite usual for a family to buy a parcel. Now, the Trust estimate that there are 75 grave spaces remaining. In pre-covid times, they were selling roughly 17 grave spaces a year, so the maths means that they will shortly be out of space. The Bill will give the Trust powers to create more burial space by reclaiming burial rights that have been bought but not used, and by reusing graves that have space for extra bodies. That is in clauses 4 and 5 of the Bill. Clause 4 would allow the Trust to extinguish existing rights to burial and reclaim graves that have not been used for 75 years. That allows them to be sold for new burials. The Trust believes there are 398 purchased but unused graves. Clause 5 would permit the Trust to disturb human remains within the graves. That enables the removal of existing remains from the grave. The grave can then be excavated deeper, because technology has moved on since the mid-19th century. The original remains can be reinterred, and there is more space available for further interments.
19. These powers have been obtained before by municipal burial authorities in London and also by the private New Southgate Cemetery. Successive Governments have looked at doing this and making statutory burial space reuse powers more widely available, but have decided not to because there was not a need across the country as a whole. However, in London and specifically in Highgate Cemetery, there is such a need. In particular, the assessments that Dr Dungavell has carried out confirm that the east cemetery will run out of space in about two years, and the west cemetery in about 12 years. Some of the material that you have been presented with shows how those assessments have been carried out. If it is helpful, Dr Dungavell could talk to those.
20. A question you might be asking yourself is, "Why don't the Trust simply sell the remaining spaces, allow the final burials to take place, and then turn the cemetery from a place of commemoration to a place of recreation, like a park?" In the Trust's view, that would not be



appropriate. Not only do they have the specific objective, as a charity, of permitting the cemetery to be used as a burial ground, but they consider that the cemetery holds significant value to the local community, and providing a place of burial is the best way to preserve its special character and prevent its decline. Across the UK there are many examples of closed cemeteries that have lost their main function of operating as a public burial ground, and they do tend to suffer a gradual decline in significance and thus in visitors. They can provide a valuable green space, but in essence they do not have as many of the benefits as a public park, which is set up for that purpose, and they have more of the costs because there are all the memorials that continue to need to be maintained. So we consider that in order to preserve the cemetery's special character to enable future generations to value it as a spiritual landscape, it should be able to continue to operate as a burial ground.

21. The Trust therefore decided to seek the powers in the Bill. They consulted widely before promoting the Bill. Again, in the conservation plan from page 88 onwards, there is a questionnaire that was put forward to members of the public. You can see little numbers in red next to the various options that people were given. Those numbers, I believe, are the percentages of the responses, and there is further detail in Appendix C to this conservation plan, which shows the various materials that were available to the public during the consultation. In short, 76% of respondents thought it was important for Highgate Cemetery to remain open for burials; 69% felt it would be acceptable to reuse abandoned graves after a certain period; 64% felt that existing remains could be buried deeper to create space on top; and 63% felt that spaces within existing vaults and graves could be used to fill them up.
22. The Trust has also consulted with the Church of England, the Ministry of Justice, Historic England and the London Borough of Camden. As a result, the Trust gave a number of undertakings in the House of Lords about how they would exercise the powers under this Bill, if it were passed. I can mention those undertakings as we reach the relevant provisions of the Bill.
23. I propose to move on to summarising those provisions now, but would the Committee like to ask any questions about anything I have said so far? Or should I move on to the nuts and bolts of what the Bill does?
24. **CHAIR:** It might be as well for us to stop you there for a moment, if we may, so that you can take us through the issue of the reuse of graves. I notice that in the consultation process people have asked about this. Clause 5 deals with the power to move human remains for the purposes of conserving the cemetery. If you remove human remains, where do they then go? Is it proposed that they go back into a grave but somebody else is put on top? If it is question of reuse, would the original gravestone and the memorial to someone in the 19th century remain and then somebody else goes in on top with another stone? I am guessing that there might well be precedent for this, because, after all, people have been buried in graveyards for 3,000 years. There must be precedent for this, but I am not sure what it is. Can I take you down that line?



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25. **NICHOLAS EVANS:** Absolutely. Can I describe what the Bill requires the Trust to do, when it exercises these powers, and then ask Dr Dungavell to describe how it would be done in practice?
26. Under clause 5(4), if any remains are disturbed, then they must be reinterred either in the original grave or in another grave in the cemetery. So, they do have to go back. The primary intention behind this is that where a grave has been dug out, remains were placed in it and a funeral took place, but, using modern techniques, the grave could have been dug deeper the first time—the process is known, perhaps unfortunately, as lift and deepen, in which case the originally buried remains are removed, the grave is buried to a deeper depth, the original remains are placed back in at that deeper depth and there is more space above.
27. It so happens that because of the passage of time, we all need less space as time goes on, because of the natural processes after we have been in the ground for 100 years, than we did when we were originally placed in the ground, through decomposition and so on.
28. **CHAIR:** Do coffins decompose too?
29. **DR DUNGAVELL:** It depends on the ground, but yes, they do. They will often compact as well, with the pressure of earth on top of them. Any coffin fragments and human remains would be collected together and collectively reinterred deeper in the grave, so everything stays together as it was, but at a lower level, ideally in the same grave.
30. **CHAIR:** Thank you. I must admit that this is a matter that has never previously crossed my mind. It shows the fascination of the work we do that we come on to such things. That is pretty important—you gave the statistics earlier. Most graves will have a family in them, and I suppose you can have four or five layers of coffins, so that becomes a much smaller mass for us, but the remains start to—
31. **DR DUNGAVELL:** There is a precedent for this in the operation of English churchyards through the centuries, in that for most of the period people did not actually own graves; they were buried communally in the churchyard. A rotational management programme allowed the remains to decompose and settle in the grave, then the sexton would ensure that a suitable period passed before there were future interments in that area. In the medieval period, you might have heard of charnel houses, where they would remove the bones and keep them outside the burial ground. We are not proposing to go back to that.
32. The precedent for dealing with gravestones, for example, we have seen with the City of London Cemetery on the outskirts of London. There they have done some clever things, such as turning headstones around and inscribing the name of the new burial on the reverse of the existing headstone, so that that burial pays for the restoration of the monument. But we have loads of graves at Highgate Cemetery where there is just no monument at all, so we have proposed starting with the graves where there is not a monument and where, ideally, there is space on top.
33. You mentioned Victorian families, and the idea was, when people bought the graves, that they were providing space for the family, but actually



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Victorian families were quite mobile and it is not unusual that the space in that grave was not used in its entirety.

34. A lot of graves, we hope, through the natural settling of the remains and the fact that they were not fully used to start with, will not require the removal of human remains at all. In some cases, they will, to use the cemetery optimally, but our intention is to do it with as light a touch as possible, because we also have the responsibility to preserve the heritage, and that is quite an important thing for us.
35. **CHAIR:** And you have not had to do any of this as yet at all.
36. **DR DUNGAVELL:** We could not. We do have historical family graves that are reopened for the burial of further generations of the family, so the mechanical processes we are familiar with, but we have not had the powers to cancel any rights of burial or to do it with unrelated people, except in the case of common graves, which were not owned by anyone in particular. In a common grave, you were just buried with unrelated people. So, in some areas, we have created private graves on top of common graves, and people have been quite happy with that, understanding the pressure on burial space. Yes, we do tell them that there are people buried beneath them and, generally, they have been accepting of that.
37. **CHAIR:** Thank you. Jack, do you want to ask a question?
38. **JACK BRERETON:** I just want to ask a bit further about this issue of disturbing human remains. Clause 5(3) states: "No human remains may be disturbed under this section if they have been interred for a period of less than 75 years." I was wondering why the 75 years, because the consultation results on page 88 or 89 were that 55% of people suggested that they would prefer 100 years and only 16% suggested that they would see 75 years as a respectable time lapse before an abandoned grave could be used for new burials by a different family. Why 75 years, and not 100 years?
39. **NICHOLAS EVANS:** We have chosen 75 years for a number of reasons. First, it matches the period set out in clause 4, which is how long we have to wait before a right can be extinguished, so there is the benefit of marrying the two. We have also based it on the London Local Authorities Act 2007 and the New Southgate Cemetery Act 2017, both of which went for a 75-year period. This is also precedented in legislation related to town and country planning. For instance, there are notice provisions where planning permission is given in relation to land that has been used previously for grave space.
40. We started out with a 75-year period based on those other precedents. We carried out the consultation and saw that there was some opinion in favour of a longer period, so we looked at what the financial consequences would be. We did a sensitivity test, essentially, as to what 100 years would be like. That took away roughly 25% of the grave space that would be available for reuse—or at least, we would have to wait for it for a further generation. Essentially, that made quite a significant impact on the graves that would be available. It may help here if we look at a



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couple of the plans that Dr Dungavell produced, where we were trying to identify where the graves are that might be reused. In tab 4(IV), you should have some plans.

41. **CHAIR:** What sort of thing are we looking for? Actual plans or pictures?
42. **NICHOLAS EVANS:** Actual plans. I am not sure which is best to illustrate the point. These plans are essentially the record that the Trust has of the graves. It is quite hard to read the numbers, but you can quickly see that the numbers are not sequential. They were essentially numbered as they were sold. We do not have a nice, comprehensive record starting with grave 1 over here and grave 53,000 over there; we have to find each one of them individually.
43. We briefly mentioned the photographs. You can see how much the foliage has taken over, and the greenery; the trees have been growing for nearly 200 years. The grass certainly grows everywhere—think back to how much it rained in May. It is not immediately apparent, looking from one end of the row, how many graves are used and how many are not. You have to go and look at each one individually, and you have to see where the trees are and whether the roots have grown through everything. Dr Dungavell has done this. Would you like to describe that?
44. **DR DUNGAVELL:** Probably a good one to start with, to understand the complexities, is the third one along—square 125. This gives you a good idea of how Victorians thought the cemeteries would work. You will be looking in vain for paths because the Victorians were quite happy to walk over graves to find the graves of their relatives. This is something that modern people are very unwilling to do. I had a look at a section here, trying to find graves that might be available, but actually most fail because they are inaccessible, so the Bill will probably not affect large areas of the cemetery that are carpeted with graves. That is the starting point—probably the majority of the cemetery will not be usable in any significant way.
45. We then looked for graves that are more easily accessible. If you go back to that first one and look at the old Marx grave path, you will see that, in that part of the cemetery, there are some paths. They are very narrow paths, but they would give access to graves that would be accessible for mourners to visit.
46. The other thing is that the cemetery is in a conservation area, and conservation area designation provides protection for all pre-1925 tombstones, so none of those can be removed or disposed of without planning consent from the local authority and, in the case of consecrated ground, any programme of monument restoration would require a faculty from the chancellor. So there is considerable protection for monuments.
47. What I am left with, looking at the least disruptive and most possible approach to selecting graves, is the need to find graves where there is no memorial or the memorial is very extensively damaged already through the processes of time. On this diagram, I have coloured green all the graves that have or appear to have no memorial and the last burial was more than 75 years ago, so there would be no heritage impact from



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- reusing the graves and the last burial was a significant period of time in the past.
48. **NICHOLAS EVANS:** I think green is 100 years on that one. Is green 100 years—
49. **DR DUNGAVELL:** Oh sorry, green is 100 years on this one
50. **NICHOLAS EVANS:** Whereas yellow is—
51. **DR DUNGAVELL:** Yellow is the 25 years between 75 and 100.
52. You can see already that this reduces the scope of grave reuse at Highgate Cemetery quite significantly. The positioning of graves is interesting as well. Although, as I have mentioned, we do reopen graves to allow later burials, exhuming remains is more complicated, because you need to take them out of the grave, dig more deeply and then re-inter them. In a very narrow grave, that is more complicated, more exacting and more time consuming. It is very beneficial if there are two graves next to each other. So although Nicholas mentioned the numbers of graves in the cemetery being significant, the adjacency of graves is also significant. If two graves together are available, that is considerably easier to work with than two separate graves.
53. **CHAIR:** Does that make it a valuable plot, able to be sold?
54. **DR DUNGAVELL:** It makes it easier to work with, although we would probably still sell them according to the Victorian sizes, so there would be two plots next to each other, which would be more desirable for family members who wanted to be buried next to each other. So it is about catering for local demand.
55. **CHAIR:** That is most interesting. Thank you very much. I am aware that we have dwelt rather a lot on that part of the subject and that I interrupted you with those questions, Mr Evans, when you still had rather more to tell us, so let us go back. I think we all have a better understanding of what you are trying to do and why it has to be done. Would you care to finish your presentation?
56. **NICHOLAS EVANS:** Thank you, Chair. That has essentially covered what clause 5 of the Bill does. The reason why we need that is that section 25 of the Burial Act 1857 makes it an offence to remove remains without either a licence from the Secretary of State or, if they are in consecrated ground, a faculty from the Church of England. The licensing process works on a case-by-case basis; it is not as usable for the wider proposals that we have here, so the intention is that where a grave has been untouched for more than 75 years and there are no rights in it, the burial authority could remove the remains without seeking the licence from the Ministry of Justice. If the land is consecrated, it would still be necessary to get a faculty, so the Church's protections are not changed in that respect. That is modelled on the London Local Authorities Act and the New Southgate Cemetery Act. You asked about precedents for this, and those are the precedents that we used.
57. This clause has been amended quite significantly in the House of Lords. First, they have expanded the notice provisions, to widen the types of



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notices that must be given. Secondly, under subsections (10) and (11), if the former owner of a burial space or a relative of one of the people who is buried in there objects to the removal of the remains, the burial authority may not remove the remains for a period of 25 years. It was not clear whether that is a one-off 25 years or whether it is renewable, so in the House of Lords it was amended to make it clear that that is renewable, so for as long as the family members object, the burial authority cannot remove the remains. Perhaps I could go back to the start of the provisions of the Bill, as we have on clause 5.

58. **CAROLINE ANSELL:** On that point, what policy intentions would sit behind any differing opinion from different former spouses, supposing there could be one to cover all eventualities? How might you reconcile that challenge?
59. **NICHOLAS EVANS:** At the moment, the Bill defines who a relative is. The definition of a relative includes the current spouse or civil partners. An objection by the current spouse—we are in circumstances where the person was buried 75 years earlier, so it is probably not going to apply that often—
60. **CAROLINE ANSELL:** But it may?
61. **NICHOLAS EVANS:** It might, yes. In those circumstances, where someone who was buried 75 years earlier had not just a current but a former spouse, I imagine that we would take—
62. **CHAIR:** I think we accept that that would be fairly unusual, given the average life expectancy 75 years ago.
63. **NICHOLAS EVANS:** Yes. What we have committed to is, first, that the definition of “relative” includes any lineal descendants and also brothers, sisters, aunts, uncles, nephews, nieces, and so on, of the deceased person and of their spouse or civil partner, so all of those people would be caught. If any of them or their lineal descendants were to object, it would not be a question of weighing up the different wishes. If people were to object, it is off for 25 years.
64. **CAROLINE ANSELL:** So there is no legal force on it then?
65. **NICHOLAS EVANS:** Correct.
66. **CHAIR:** So any objection counts as an objection. Thank you.
67. **NICHOLAS EVANS:** Where there is a wider group of people who just happen to be interested, as a number of quite well-known people buried in Highgate Cemetery have non-relatives who are interested in what happens to them, generally, for those who are historically important, their graves tend to be listed in any event, so we would not be touching them.
68. **CHAIR:** We will come on to listed graves.
69. **NICHOLAS EVANS:** We have committed, and the Trust gave an undertaking in the House of Lords, essentially to produce a policy setting out how it would take account of the interests of relatives and of those who are interested in particular graves, and how it would take account of their interests when exercising its powers under clauses 4 and 5. We have



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committed to publishing that in the circumstances where there are many of those people around.

70. **CHAIR:** Thank you. We will allow you, if you would care to, to conclude your presentation.
71. **NICHOLAS EVANS:** Thank you. Clause 1 simply states the name of the Bill and the normal commencement provisions. Clause 2 deals with interpretation. I have described the definitions of “relative” and “spouse”, but unless anyone wants to ask about any of the others, I will move on. Clause 3 replaces the power that the London Cemetery Company had to operate this cemetery. Because we are repealing and abolishing the legislation that authorised that company to run this cemetery, we are making sure that there is no doubt that the Trust can continue to operate this cemetery.
72. **CHAIR:** And that company is, in any case, in liquidation.
73. **NICHOLAS EVANS:** Yes, to the extent that it could have been liquidated. Its statutory status has never been repealed. On the one hand, Companies Act processes have been followed and it has been liquidated, but there is a law that says it exists, so we are tidying that up to make the law match reality, which is a nice goal sometimes.
74. Clause 4 is the other main provision of the Bill. It is the power to extinguish burial rights that have been purchased but cannot be used. Normally, burial authorities will give an exclusive right to burial for a time-limited period—75 years or 100 years is the practice—but in the past they were given in perpetuity. What has happened is that there is a person who owns the only right to be buried in a particular grave space. That person and their descendants cannot be traced, because of the passage of time—they have moved away. As Dr Dungavell said, Victorian families did move around. We can’t trace them, and we can’t use the graves without their permission. To deal with that—as I said, there are, we think, 398 unused but purchased graves—we have included a provision that replicates one that is available to other burial authorities in London. We have to give six months’ published notice—the House of Lords widened the publication requirements—setting out the details of the grave that we proposed to cancel the rights in. If there is no objection, we can do so.
75. To make sure the owner is properly protected, if they appear in the six months and object to it, that is an absolute veto. If anybody else objects to it, we need the Secretary of State’s permission and consent in order to cancel the burial rights. If an owner appears after the event—after we have cancelled the rights—under subsection (9)(b), even if they contact us after the rights have been extinguished, we can agree to revive them. If the owner says, “Actually, yes, thank you. I have spotted this. I would now like to use these rights,” our preference would be that they can continue to do so. This clause, in the same way as the precedents, provides compensation. If somebody finds out later than the event, they don’t have their rights confiscated, as it were; they get repaid for them.
76. We have mentioned clause 5. Clause 6 touches on the points in relation to



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listed buildings and listed graves. We recognise that there is a need to balance grave reclamation with preserving the graves that have historical or other significant interest. The first point I would emphasise is that this Bill doesn't touch any of the existing protections under planning law or heritage legislation. Dr Dungavell mentioned the protection for pre-1925 tombstones, and that continues to apply. If we need planning permission to do something, the Bill does not affect that. If we need listed building consent, the Bill does not affect that either.

77. Clause 6 goes further. It is a provision that doesn't appear in any of the other London local legislation on cemeteries. It is special, because Highgate recognises that we have these particular historic memorials. It includes provision for the burial authority to create a list of designated protected graves. These are graves that are not listed but we think will probably become listed. In consultation with the local authority and Historic England, the burial authority will produce a list of protected graves, and then we would be unable to exercise the powers in the Bill in relation to them without the permission of Historic England or Camden.
78. Again, this is one of the areas where we have given undertakings in the accordanceHouse of Lords that the Friends of Highgate Cemetery Trust would work collaboratively with Camden and Historic England to make sure they can exercise their powers properly under the Bill. We have undertaken to act in accordance with this conservation plan, so people see what is there. These are our proposals, and if we get the powers under the Bill, we are not just going to chuck this away and do whatever we like. We have committed to act in accordance with this.
80. There is also a document that, you will be pleased to know, we have not included in the pack, called the "technical guidance on the reuse and reclamation of graves in London local authority cemeteries". It does not apply to us because we are not a local authority, but we have committed to comply with all the relevant parts of it that relate to the reuse and reclamation as if we were a local authority. All the things it proposes to do in terms of environmental surveys and so on we will do as well.
81. **CHAIR:** Caroline, did you have a question?
82. **CAROLINE ANSELL:** You mentioned that you want to create a register of protected graves. My question relates to clause 4, on the power to extinguish. It is clear how notice is given to all the various interested parties. Should there be no objection, or should the Secretary of State deem that it is an appropriate way forward, how is that decision recorded and promulgated? Is there a reason that that provision is not made in the clause?
83. **NICHOLAS EVANS:** The clause deals with the obligations that would be on us when we seek the powers to extinguish the rights. You are quite right that they deal with the notice obligations beforehand rather than after it has happened. After it has happened, we will still be under our obligations to comply with the protocol that we would be putting forward, setting out how we are taking account of the interests of the relatives. We would be likely to exercise them and confirm that the process has been gone through—you are correct that it does not appear in the Bill as it is



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currently framed.

84. **CAROLINE ANSELL:** Is there any reason why it does not? Is it still being conceived at this point? Are there plans for how that will be done?
85. **NICHOLAS EVANS:** How it would work in practice is something that we would work up if the Bill goes through. I don't know if Dr Dungavell wants to say anything about what we intend to include in the protocol about how the powers would be operated. In this case, having asked for permission to extinguish the burial right, and having gone through the six months with no objections to it—or if the Secretary of State allows us to do so—the next step would be to look at using clause 5, which is the power to disturb remains if there were any remains in there. There would be a further notice at that point.
86. The other information that we would have under clause 7 is our register of each of the burials, which would be publicly available. So again, if any of the graves became available, we would update that to make that clear. If it would be helpful to the Committee, we would propose to make it clear in the protocol how we will take account of everybody's interests, to make it clear that once we have gone through this process, a notice would be published that the process had been followed.
87. **CHAIR:** Jack, you wanted to ask a question.
88. **JACK BRERETON:** Thank you, Chair. I have a few questions about the points you just made about clause 4(5), particularly regarding the publication of notices on the website. You put in there that you hope to do that, but would it not be possible, given there is already a website maintained, to amend clause 4(5)(b)(i) to reflect the assumption that there will be a website in place? It is important that those notices are provided online as well.
89. **NICHOLAS EVANS:** Yes, what we attempted to do in clause 4(5)(b)(i) and (ii) was to anticipate the point that we are replacing legislation that is 180 years old and thinking, "Well, maybe this legislation will also last for 180 years", and we are not sure what a website might look like then, and we are not even trying to guess.
90. So we said, "If there is such as a website, we'll stick it on our website. If there is something else, which we cannot envisage yet, we will absolutely publish it electronically somehow". And that is what clause 4(5)(b)(ii) is meant to cover. There was a little bit of haggling there with their lordships.
91. What we can absolutely do, though, is to make it clear in the policy that you mentioned that, yes, while we have a website, it will very definitely be on the website.
92. **JACK BRERETON:** Thank you. Also, with regard to clause 4(4), you have talked a little bit about the circumstances under which you expect to exercise that power. However, particularly in the circumstance where we have the renewal or replacement of a memorial, would that be intended to count as an exercise of the right for the purposes of clause 4(1)?
93. **NICHOLAS EVANS:** I am not sure that I followed the question. Sorry.



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94. **JACK BRERETON:** If there was a circumstance where someone was to replace or renew a memorial, would that replacement or renewal of a memorial be intended to count as an exercise of the right for the purposes of clause 4(1)?
95. **NICHOLAS EVANS:** It would depend. If the burial right had been extinguished and the memorial was being replaced or altered, then yes. But it's possible that the memorial may be removed through agreement with the owner, for repair or improvement, without extinguishing the burial rights; the burial rights might continue to exist. So in those cases, it wouldn't be an exercise of the power in clause 4(1).
96. What we are trying to do with clause 4(4) is to say that if we do exercise the power to extinguish burial rights, we may also remove the memorials, but it does not automatically follow the other way round.
97. **JACK BRERETON:** I think that what we are trying to get at here is the fact that if a relative replaces or renews that memorial, clearly they are stipulating that that is still an active burial that they are respecting, visiting, or whatever. Does that reflect on consideration if it was to come to pass to remove that memorial or to reuse that grave that there are actually relatives continuing to exercise their rights with that grave?
98. **DR DUNGAVELL:** The rules of the cemetery require that only registered owners of the right of burial can erect a memorial on that grave. So in that case, there would already be a register, in which the interests are protected; there is not a separation of those two categories of people.
99. **CHAIR:** While we are on this subject of the erection of memorials, let us consider the power of disposal of memorials. Now, it is very interesting to see the way in which the Bill exercises imagination about how matters might be recorded in 100 years' time. When we look at that, it is amazing to think that they could not have imagined that we would press buttons and things would come up on a screen by means of electricity. So goodness knows what there will be in 100 years' time.
100. We have seen stories in the press about gravestones being used for ordinary purposes, just carted away and used, which is rather chilling. Can you give us an assurance about how the restrictions would be enforced in practice when dealing with the power of disposal of memorials? You said earlier that pre-1925 memorials are protected, but what about ones in the last 100 years?
101. **NICHOLAS EVANS:** I am not sure whether Dr Dungavell wants to talk about what would be likely to happen in practice. It depends very much on the state of the memorial, doesn't it?
102. **DR DUNGAVELL:** Yes, it depends very much on the state of the memorial. The cemetery's other objective is the preservation of the public interest in the cemetery and the conservation of its monuments for the public benefit, so it is hard to envisage that there would be a great removal of monuments that contribute to the historic interest of the cemetery. But you can easily have fragmentary memorials that have been damaged. The question then is quite interesting as to what you actually do with those. The Bill says they might be put to another use or disposed



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of. I think that would depend on what the memorial looked like. I have read previously that destruction has been insisted upon because people did not like the idea of the name on a memorial being visible when it is put to another use. We have probably all seen paving stones in cemeteries that are precisely that, or walls constructed out of it. Also, a fragmentary memorial could be buried deeper in the grave, perhaps with some of the remains, so there is a neat little time capsule of whatever survived of the coffin, and the physical remains of the memorial itself could be there. Or it might be that that, too, is impossible, so it has been left quite open as to exactly what might happen.

103. **CHAIR:** On steps to prevent memorials from being removed, presumably it will not be normal for any piece of stone to actually be taken out with the cemetery.
104. **NICHOLAS EVANS:** No, that is correct. As Dr Dungavell said, one of the objects of the Trust as a charity, so it affects all the powers that it has, including under the Bill, is to secure and repair, restore and preserve the cemetery's monuments for the public benefit, so that will influence everything that they do. There is another thing that we have to do specifically in the Bill. Under clause 7(4), where the power to remove a memorial is exercised, we have to keep a record of the memorial and any inscription on it. Under paragraphs (b) and (c), which were made as amendments in the House of Lords Committee, we have to say what we are doing with it, and it is possible that there may be a garden of memorials. If that is the case, we have to say where they have been put, but if we put them somewhere else we have to say that, too, so we would be publicly answerable for what it is that has been chosen to do.
105. **CHAIR:** Thank you; that is very helpful. We still have not allowed you to finish your presentation. We keep interrupting, so please tell us a little more.
106. **NICHOLAS EVANS:** I had just finished speaking to clause 7, so that brings me to clause 8. We were on clause 6 previously. Clause 8 has a byelaw-making power to essentially put the Trust in the same position as a municipal cemetery, and it replicates the historic powers that the London Cemetery Company had. It had powers under the 1836 Act to make rules, which are basically byelaws as we currently understand them. They would be subject to the same confirmation process as a local authority byelaw.
107. Finally, clause 9 gets rid of the old legislation relating to the London Cemetery Company insofar as it relates to Highgate Cemetery, and that is repealed. Subsection (2) repeals a couple of provisions, sections 118 and 119 of the 1836 Act, slightly later. They are the equivalent to the byelaw provisions. The old byelaws disappear once new byelaws are in effect. Subsections (3) and (4) essentially have the effect of making sure that any of the liabilities that might still exist with the old statutory company apply to the Trust, so if we get the powers, we get the liabilities too. That concludes my summary of the provisions of the Bill.
108. **CHAIR:** Thank you very much. You have been very patient in taking our questions while you were explaining that. That has clarified a great many



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issues for us. Alex, I think you possibly have a few more questions.

109. **ALEX SOBEL:** Yes, I have one question on clause 5 and one on clause 8. Clause 5(12) states that there will be use of “the consistory court of the diocese in which the land is situated”. My understanding is that there is only one consistory court—of the Bishop of London—so why does the Bill not state that it is the consistory court of the Bishop of London, rather than “of where the land is situated”? It is only situated in one diocese.
110. **NICHOLAS EVANS:** That is currently how the Church of England organises itself, but it may change how it organises itself in the future, so that provision is in case it does. It seems unlikely—Highgate is pretty squarely in London—but it may decide to divide its dioceses up differently.
111. **ALEX SOBEL:** Clause 8(4) states: “In any proceedings for such an offence it shall be a defence for the person charged to prove...that the person had a reasonable excuse for the action or failure to act.” Can you give some examples of where a person would have “a reasonable excuse for the action or failure to act”, so that we can understand better how that would work in practice?
112. **NICHOLAS EVANS:** Perhaps it would be helpful if I give examples of the types of thing we have in mind as the sort of byelaws we might make. There is a statutory instrument known as the Local Authorities’ Cemeteries Order 1977, which deals with municipal cemeteries. Article 18 of that order creates various offences in cemeteries. In particular, it prohibits people from: wilfully creating a disturbance; committing a nuisance; interfering with any burial; interfering with any grave or vault, tombstone or memorial without authorisation; and playing games and sports in the cemetery. It may be that a person who is perhaps doing something that means that they are interfering with a memorial without authorisation may reasonably believe that they had authorisation to do that because of some confusion about who that authorisation was given by. I am loth to give too many examples of when people might get away with offences—
113. **ALEX SOBEL:** No, because it will be on the record.
114. **NICHOLAS EVANS:** Exactly. In that situation, which I imagine will never occur, that is the sort of thing—where they believed they were doing something that was approved, but it turned out that it was not. It would then be more difficult for us, if we had given them reason to believe that, to seek to prosecute them.
115. **ALEX SOBEL:** I have no further questions.
116. **CHAIR:** May I take you to one final thought? You are very carefully working out just what to do with memorials. The removal of statues, or the non-appearance of statues and so on, has become quite a public issue. We note that one of the important things in the Bill is that some graves and memorials should be designated. If they are once designated, is there a power to de-designate them?
117. **NICHOLAS EVANS:** We would say yes, there is. The power in clause 6(3) is exercisable “from time to time”. We would say that we can change the



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list of designated graves using that. There may be circumstances in which we might do that. If a grave were to become listed, there would be no purpose in it also being protected under our separate power because it would have the protection of being listed, so we may seek to use that power to tidy up the separate—

118. **CHAIR:** So there is no opportunity for those who disagree with the teaching of Karl Marx to remove him?
119. **NICHOLAS EVANS:** Obviously, we do not have any plans to remove Karl Marx's grave.
120. **DR DUNGAVELL:** It is a grade I registered memorial, I am afraid, so you would need planning consent.
121. **CHAIR:** I am not suggesting that that would be a reasonable or fair thing to do. On the contrary, it is very important that people follow his teachings in order to understand how wrong he was. But that is a completely different matter. This is not about fashions and I appreciate that. What you are doing is that you have some designated graves and memorials for a very good purpose, and that will continue in perpetuity.
122. **NICHOLAS EVANS:** Yes, that is quite right. The purpose of clause 6 is to make sure that if something is not listed yet, we make sure that it is protected in the Bill. An example that we may give is the DEAD gravestone. I am not sure if we have a picture of it—
123. **DR DUNGAVELL:** I am not sure that we do.
124. **NICHOLAS EVANS:** That is a shame. There are some more modern gravestones and memorials of architectural and artistic interest. They do not yet qualify for listing. It is anticipated that they probably will do. To reassure the Committee, we would propose to make sure that they are protected. On page 40 of the conservation plan, in the top left at figure 37, there is a picture of the grave of the artist Patrick Caulfield, which is very striking.
125. **CHAIR:** That is very witty. How interesting. Did he design it himself?
126. **DR DUNGAVELL:** Yes.
127. **NICHOLAS EVANS:** While it does not qualify for listing at this point, it is certainly the sort of thing that we would be looking to protect. If it were listed, then we would probably remove it from our designation because we would already be required to get Camden's approval, in consultation with Historic England, in any event.
128. **Chair:** Of course. It is fascinating to hear your answers to our questions. We thank you for your patience in explaining to us the purposes and the surrounding circumstances of the Bill. Clearly, you have all gone to a considerable amount of trouble to look forward and consider how you are taking this historic and nationally important project forward. I hope that we can help you in that this afternoon. Does anyone have any further questions? No.
129. In that case, for the moment, thank you, gentlemen. If you wouldn't mind leaving us for a short while, we will briefly deliberate. We will ask you to



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come back in shortly. If you care to leave your papers here, that is fine. Thank you very much.

The Committee deliberated in private at 3.39 pm.

The Committee resumed at 3.47 pm.

130. **CHAIR:** Thank you all very much. We have had an opportunity to discuss the evidence that we have heard and the questions that we have asked. I thank you most sincerely for your time this afternoon. You have illustrated to us in a most interesting way the project before you. I think we all appreciate its importance.
131. My colleagues and I have considered carefully. Certain details, particularly relating to clauses 6 and 8, might require further minor amendments. But we would be satisfied if you would accept our condition that you work with Speaker's Counsel to draft new amendments to satisfy those specific points that we have discussed, which the representatives of Speaker's Counsel will take to Mr Greenberg, so we can through them in some detail.
132. If you would be happy to work with Speaker's Counsel to draft the new amendments and to satisfy the points that we have made, then as Chair I will be happy to sign these off without further recourse to the Committee, which I hope would be swift and more efficient, and we would not have to come back again. Do you confirm that you are content to do that? If you need a moment to discuss it, we are happy with that.
133. **NICHOLAS EVANS:** I see nodding on my right, so yes.
134. **CHAIR:** Excellent. Let us all confirm, then, that the way forward is that you will be in touch with Speaker's Counsel; that matters will be ironed out on those further details; that I will then approve the amendments that Speaker's Counsel brings forward to me; and that the Committee is content with that way of going forward. Given that the Committee is content with what it has heard and is happy for the Bill to proceed to its next stage, incorporating the forthcoming amendments, we can conclude today's proceedings once Dr Dungavell has proved the preamble.
135. **NICHOLAS EVANS:** Just to confirm, those are amendments to clauses 6 and 8.
136. **CHAIR:** I have identified specifically clauses 6 and 8, but there may be others once I go through this in detail with Speaker's Counsel. We are not talking about anything major. If there was anything major, I would adjourn the Committee and ask you to come back again. I reserve the right to look at other clauses as well, but it seems to me that clauses 6 and 8 are the ones that most need to be dealt with.



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DR IAN DUNGAVELL, Sworn previously

Examined by Nicholas Evans

137. **NICHOLAS EVANS:** Are you Ian Robert Dungavell?
138. **DR DUNGAVELL:** I am.
139. **NICHOLAS EVANS:** Are you the chief executive of the Friends of Highgate Cemetery Trust?
140. **DR DUNGAVELL:** I am.
141. **NICHOLAS EVANS:** Do you hold responsibility for promotion of the Bill on behalf of the Friends of Highgate Cemetery Trust, who are its promoters?
142. **DR DUNGAVELL:** I do.
143. **NICHOLAS EVANS:** Have you read the preamble to the Bill?
144. **DR DUNGAVELL:** I have.
145. **NICHOLAS EVANS:** Is it true?
146. **DR DUNGAVELL:** It is.
147. **CHAIR:** Thank you all for your attendance today and for answering our questions so that we now have a fuller picture of what is involved with the Bill. We are all quite fascinated by it, and we might have to arrange a Committee outing to Highgate Cemetery. We will watch the Bill's progress with interest, and we wish you well in the task ahead of you, which we all appreciate your doing on behalf of the nation. Thank you.

The Committee adjourned at 3.52 pm.