

HOUSE OF LORDS

SESSION 2019–2021

HIGHGATE CEMETERY BILL [HL]

OPPOSED BILL COMMITTEE, HOUSE OF LORDS

PROMOTER'S BUNDLE



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HOUSE OF LORDS

SESSION 2019–2021

HIGHGATE CEMETERY BILL [HL]

GUIDE TO THE PROMOTERS' BUNDLE IN THE OPPOSED BILL COMMITTEE, HOUSE OF LORDS

Introduction

- 1 The Friends of the Highgate Cemetery Trust, as promoters of the Highgate Cemetery Bill, have produced this bundle of documents in advance of the Opposed Bill Committee to which the Bill and the petitions against it have been referred. The bundle contains several documents that provide background to:
 - the overall purpose of and need for the Bill;
 - the promoters' response to and selected correspondence with the petitioners against the Bill;
 - the existing legislation that applies to Highgate Cemetery and other cemeteries;
 - the history of the ownership of the cemetery; and
 - the amendments proposed in the "Filled-Up Bill before the Committee.

The overall purpose of and need for the Bill

- 2 The primary purpose of the Bill is to authorise the Trust, as burial authority for Highgate Cemetery, to extinguish rights of burial in grave spaces, and to disturb and reinter human remains in graves in order to increase the space for further interments in those graves. As a secondary purpose, the Bill will also repeal the old legislation under which the cemetery was first laid out by the London Cemetery Company (which is now dissolved), and confirm the Trust's powers to operate and manage the cemetery following those repeals.
 - Because the Trust is a charity, it was required to obtain the consent of the Charity Commission before incurring expenditure in the preparation and promotion of this Bill. **Tab 1** contains a letter sent to the Commission requesting this consent, which summarises the overall purpose of the Bill.

- **Tab 2** contains a Grave Reclamation and Re-use Assessment which was prepared by the Trust in 2018, and sets out the need for the powers to reclaim and re-use graves.
- **Tab 3** contains larger versions of the photographs in the Assessment. These show how the Trust has sought to make the most use of its existing space, and some of the areas where it has examined the potential for re-use.
- **Tab 4** updates the figures for grave sales and capacity, and the financial information, contained in the 2018 Assessment, bringing them up to 2021.
- **Tab 5** contains a brochure which was prepared by the Trust to inform the public of the promotion and purpose of the Bill;
- In February 2019, the Trust commissioned a conservation plan for the cemetery. Among other things, this plan sets out proposals for the continuing use of the cemetery, and relevant extracts are contained at **Tab 6**. They include details of the consultation that was carried out, and also of the ecological surveys that were undertaken. The full plan may be found at: https://highgatecemetery.org/uploads/1746-170_Highgate_Cemetery_Conservation_Plan_20-02-2019_low_FINAL.pdf
- **Tab 7** contains a number of plans showing sections of the cemetery. They indicate the areas where the Trust has assessed grave spaces for potential reclamation and re-use, and uses colour coding to identify spaces that are suitable.

The promoters' response to and selected correspondence with petitioners

- 3 Two petitions against the Bill are before the Committee: those of Paula Swift, and David Jones.
- **Tab 8** contains a document setting out the Trust's response to the points made by the petitioners.
 - **Tab 9** contains selected correspondence between the Trust and Mrs Swift.
 - **Tab 10** contains selected correspondence between the Trust and Mr Jones.

Existing and precedent legislation

- 4 The cemetery was laid out and is currently operated under local Acts obtained by the London Cemetery Company between 1836 and 1911. Those Acts, together with Acts conferring reclamation and re-use powers on other burial authorities are contained in **Tab 11** as follows:
- **Tab 11(a):** The London Cemetery Company Act 1836 – incorporated the London Cemetery Company and gave it powers to lay out and operate the cemetery, as

well as further cemeteries in Stepney (not exercised) and Nunhead (now owned by the London Borough of Southwark).

- **Tab 11(b):** The London Cemetery Company Act 1843 – updated the London Cemetery Company’s powers
- **Tab 11(c):** Section 25 of the Burial Act 1857 – contains the existing restriction on the disturbance of human remains
- **Tab 11(d):** The London Cemetery Company Act 1911 – updated the London Cemetery Company’s powers
- **Tab 11(e):** Part 2 of the City of London (Various Powers) Act 1969 – gives the Corporation of London a power to extinguish burial rights similar to those contained in clause 4 of the Bill;
- **Tab 11(f):** The Greater London Council (General Powers) Act 1975 – sections 21 and 26 gave the London Borough of Southwark similar powers. Part IV authorised the Borough to acquire the Nunhead Cemetery, and provided for the 1836 Act to cease to have effect at that cemetery.
- **Tab 11(g):** The Greater London Council (General Powers) Act 1976 – section 9 gave other London local authorities the ability to extinguish burial rights. Part V gave the London Borough of Camden power to purchase and take over the operation of the cemetery, which was never exercised and has now expired.
- **Tab 11(h):** Section 74 of the London Local Authorities Act 2007 – gave London local authorities power to disturb human remains, similar to those contained in clause 5 of the Bill.
- **Tab 11(i):** The New Southgate Cemetery Act 2017 – gave this privately owned cemetery in North London powers equivalent to those under the 1976 and 2007 Acts.

History of the ownership of the cemetery

5 The London Cemetery Company went through several changes of name, before being liquidated in 1978. Prior to this period, ownership of the cemetery was transferred to various companies and is now vested in the Trust.

- **Tab 12** contains a summary of the history prepared by the Parliamentary Agents for the Trust, together with the relevant transfers and London Gazette notices.

Amendments proposed in the filled-up bill

6 The Bill before the Committee is a “filled-up bill” containing the amendments that the Promoters propose should be made to the Bill.

- **Tab 13** contains a summary of the proposed amendments.

BDB Pitmans LLP
Parliamentary Agents for
the Friends of Highgate Cemetery Trust
12 February 2021

HOUSE OF LORDS

SESSION 2019–2021

HIGHGATE CEMETERY BILL [HL]

OPPOSED BILL COMMITTEE, HOUSE OF LORDS

PROMOTER'S BUNDLE

CONTENTS

TAB	DOCUMENTS
1	A letter to the Charity Commission requesting consent for the Friends of Highgate Cemetery Trust to promote the Highgate Cemetery Bill dated 21 December 2018
2	A Grave Reclamation and Reuse Assessment dated December 2018
3	Photos from Grave Reclamation and Reuse Assessment A. Mound B. Cuttings Road C. Meadow Path D. Mound from Mound Road E. Main Road East Cemetery with cremation plots F. Cundney Corner G. Main Road East Cemetery H. Baby Natica Path I. Old Marx Grave Path J. Square 125 Area
4	Updated Figures relating to the Grave Reclamation and Reuse Assessment dated December 2018
5	A brochure prepared by the Friends of Highgate Cemetery Trust to inform the public of the promotion and purpose of the Highgate Cemetery Bill

TAB	DOCUMENTS
6	Relevant Extracts of the Highgate Cemetery Conservation Plan dated 20 February 2019
7	Grave Renewal Plans
8	A response document summarising correspondence between the petitioners and the Friends of Highgate Cemetery Trust (draft)
9	Selected correspondence between Petitioner (Swift) and the Friends of Highgate Cemetery Trust
10	Selected correspondence between Petitioner (Jones family) and the Friends of Highgate Cemetery Trust
11	Relevant Legislation A. London Cemetery Company Act 1836 B. London Cemetery Company Act 1843 C. Section 25 of the Burial Act 1857 D. London Cemetery Company Act 1911 E. Part 2 of The City of London (Various Powers) Act 1969 F. The Greater London Council (General Powers) Act 1975 G. The Greater London Council (General Powers) Act 1976 H. Section 74 of the London Local Authorities Act 2007 I. New Southgate Cemetery Act 2017
12	Summary of ownership of Highgate Cemetery
13	Note explaining proposed amendments to Highgate Cemetery Bill

Charity Commission

Your Ref

Our Ref

MLA/NJE/167473.0001

Date

21 December 2018

Submitted Online

Dear Sirs

Friends of Highgate Cemetery Trust (Charity No. 1058392) - Request for consent under section 74 of the Charities Act 2011

We act for the Friends of Highgate Cemetery Trust (the **Trust**). The Trust is responsible for the management and operation of Highgate Cemetery, Swain's Lane, Highgate, London N6 6PJ (the **Cemetery**).

Pursuant to section 74 of the Charities Act 2011 (the **2011 Act**), we are, on behalf of the Trust, requesting from the Charity Commission consent to defray expenditure to be incurred in preparing and promoting a Bill in Parliament.

We set out below the relevant background, the proposals for a Bill, the legislative context of the proposal, and the grounds on which the Charity Commission's consent to the promotion of a Bill is requested.

Background

The London Cemetery Company Act 1836 (the **1836 Act**) established the London Cemetery Company (**LCC**) and authorised LCC to establish and operate the Cemetery. The 1836 Act was amended by the London Cemetery Company Act 1843 (the **1843 Act**) and the London Cemetery Company Act 1911 (the **1911 Act**). The 1843 Act and the 1911 Act both made provision relating to annual general meetings and the share capital of the LCC.

The LCC originally operated the Cemetery. In 1960, we understand that the ownership of the Cemetery was registered in the name of United Cemeteries Limited (**UCL**). The conveyance document suggests that UCL was a subsidiary of LCC as they shared the same registered office address at Nunhead Cemetery.

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The LCC changed its registered name first to Raybar Holdings Limited and then to Raybourne Group Limited (**RGL**). RGL went into voluntary liquidation on 6 November 1974. In 1981, the ownership of the Cemetery was transferred to Pinemarth Limited (**PML**), a shelf company incorporated by the Trust.

PML was dissolved in August 1994, transferring its interest in the land to Highgate Cemetery Trust (**HCT**). The Trust is the sole trustee of HCT; and they are linked charities for the purposes of section 12 of the 2011 Act. The Trust operates and manages the Cemetery and has done so since at least 1994. The Trust is the registered owner of the Cemetery as the trustee of the HCT. We attach the official copy of the register of titles for the Cemetery (Title Nos NGL31267 and NGL38349) (**Enclosures 1 and 2**).

Proposal for a private bill

The Trust wishes to promote a Bill to authorise the Trust to extinguish burial rights and re-use existing burial spaces for the purpose of increasing the space for new interment and burial (the **Main Purpose**). In addition, the Bill would update legislation relating to the Cemetery that is now obsolete, and in so doing confirm and update the Trust's functions in relation to the operation of the Cemetery (the **Ancillary Purpose**).

In relation to the Main Purpose, the Board of the Trust consider that promoting a Bill which allows for the re-use of existing burial space would promote the sustainability of the Cemetery. It would free up burial space for use by local residents thereby relieving pressure on the Cemetery. This would be in line with the Trust's objects as set out further below. We note that the preliminary estimates suggest that the Cemetery will run out of burial space in 4 years in the East side of the Cemetery and just under 10 years in West side of the Cemetery. Similar powers have been obtained by way of Private Bills by municipal and privately-run cemeteries in London in recent years, as described below.

The Trust has carried out an assessment of the viability of the Main Purpose and this is set out in more detail further below and in the grave renewal paper (the **Paper**) (**Enclosure 3**), attached for your information. The Paper has been considered by the Trustees against the Trust's charitable purposes and a copy of the relevant minutes of the Trustees is appended to this letter (**Enclosure 4**).

In relation to the Ancillary Purpose, we note in recent Private Bill promotions that promoters have been encouraged to update any obsolete and/or historic Acts relating to their undertakings. Accordingly, promotion of a Bill for the Main Purpose also provides an opportunity to update as necessary the functions now exercised by the Trust, and repeal any provisions of the 1836 Act, 1843 Act and 1911 Act that are obsolete. The Board of the Trust consider this would be in line with the Trust's objects (as set out further below) and necessary to ensure the proper functioning of the Cemetery.

Legislative background to the proposed Bill

The Main Purpose

The objects of the Trust itself include causing the Cemetery "*to be operated as a public burial ground*". As mentioned above, the Cemetery will run out of burial spaces in the coming years. The Trust must therefore find a way of re-using burial spaces to ensure the Trust's objects can be furthered.

Under section 25 of the Burial Act 1854, it is unlawful to disturb a body or any human remains which have been interred in a place of burial. This restriction makes it difficult to re-use burial spaces where

existing remains are interred. Moreover, in many cases exclusive rights of burial exist which it is difficult to extinguish without the statutory right to do so.

The Burial Act 1854 does allow for approvals to be obtained by way of a licence or a faculty (if the grave is consecrated). The former would be impractical as it would require each individual grave space to have a separate application made and would, therefore, not allow for extensive re-use of burial spaces.

The vast majority of the Cemetery is consecrated and so a faculty is to be sought to authorise the disturbance of human remains. That said, this latter route is not a complete solution as it would not provide the Trust with the necessary powers to extinguish burial rights: a faculty cannot override statutory or private rights (as per *Re West Norwood Cemetery (No.1)* [1994] 3 W.L.R. 820 and *Re St. Mary's, Banbury* [1987] 3 W.L.R. 717).

We note that other cemeteries do not have to deal with this restriction as a result of both private and public legislation. For example, the London Local Authorities Act 2007 (the **2007 Act**) provides local authorities in London, in their capacity as burial authorities for cemeteries, with the power to extinguish burial rights and then to disturb human remains allowing them to re-use burial spaces. The New Southgate Cemetery Act 2017 (the **2017 Act**), a Private Act of Parliament, similarly provides New Southgate Cemetery and Crematorium Limited with the power to extinguish burial rights and then to disturb human remains.

We note that both the 2007 Act and the 2017 Act provide safeguards to ensure that historically important memorials and those grave spaces still in use and frequented by descendants (and who objected to re-use) were protected from re-use. In addition, neither of these Acts removed any environmental or heritage controls that would apply outside of the Act.

The Trust, subject to obtaining consent pursuant to section 74 of the 2011 Act, would seek to replicate these powers (and the associated safeguards) in order to ensure the Cemetery can be used in line with the objects of the Trust. This would give them powers no different from cemeteries in the same borough operated by the local council and, indeed, no different from New Southgate Cemetery.

The Board has considered alternatives, the cost of the burial re-use measures, the potential impact of excavations on visitors and the appropriate protections for memorial of historical importance in line with its objects. These considerations are set out in the above mentioned minutes and the Paper. As the interference with visitors will be minimal; protections will be inserted into the Bill to ensure the Cemetery remains a place of historical importance and beauty; and the Bill would be a cost effective way of ensuring sustainability for burial spaces and raising revenue to preserve and repair the Cemetery, the Trust considers that it is in the best interest of the charity in furtherance of its objects to promote such a Bill.

Ancillary Purpose

As mentioned above, during the course of Parliamentary proceedings on recent Private Bills, it has been made clear that historic and obsolete statutory enactments should be updated where appropriate. By ensuring that the functions relating to the operation of the Cemetery are updated, it will be clear that the Trust is acting in accordance with the aforementioned Acts establishing and regulating the LCC.

In this context, we note that the 1836 Act, 1843 Act, and the 1911 Act conferred functions on the LCC. In particular, section 44 of the 1836 Act contains a restriction on the LCC not to “*sell or dispose of any Land which shall have been consecrated or set apart or used for the Burial of the Dead.*” The proposed Bill would ensure that no question can be raised about the Trust's ability to dispose of land in accordance with the Main Purpose. In this regard, as noted above, ownership of the Cemetery vests in the Trust as recorded in the Land Registry.

Section 74 of the 2011 Act

Section 74(1) of the 2011 Act states as follows:

No expenditure incurred in preparing or promoting a Bill in Parliament is to be defrayed without the consent of the court or the Commission out of any money applicable for the purposes of a charity.

We understand that the purpose of this provision is to avoid a charity expending funds where the Charity Commission is capable of confirming or providing for certain matters (e.g. by way of a scheme). We would, of course, welcome a scheme (we assume a Parliamentary scheme in this case) which would deal with the Main Purpose as set out above and would welcome your views on this.

That said, if the Charity Commission takes the view that making a scheme which entails the disapplication of the prohibitions and relevant criminal offence in the Burial Act 1854 and the updating of statutory functions in relation to the operation of the Cemetery, is outside its scope then we would request consent under section 74 to promote legislation to this effect.

The purpose this letter is, therefore, to provide the Charity Commission with:

- i. an outline of the proposals to make an assessment of whether the Main Purpose and Ancillary Purpose can be achieved by way of a scheme to made by the Charity Commission (with Parliamentary review as appropriate); and
- ii. if the Charity Commission considers such a scheme is not appropriate, enough relevant information to consent to request made under section 74.

Conclusion

For the avoidance of doubt, this request is made by the Trust and not HCT. We should note that the Trust reserves the right to make an application to the court for approval under section 74 of the 2011 Act.

We would welcome the opportunity to discuss these proposals with you and would be happy to meet with you or provide further information if this would be helpful.



We look forward to hearing from you.

Yours faithfully

A handwritten signature in black ink that reads 'BDB Pitmans' in a cursive, flowing script.

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FRIENDS OF HIGHGATE CEMETERY TRUST

CONFIDENTIAL

Grave renewal at Highgate Cemetery

by Ian Dungavell

December 2018

Contents

1. Executive Summary.....	6
2. Charitable objects of the Friends of Highgate Cemetery Trust	7
3. Grants of rights of burial	7
4. Diminishing full burial capacity	8
4.1. East Cemetery: The Mound.....	9
4.2. West Cemetery: Cuttings Road.....	10
4.3. Other locations	10
4.4. When will Highgate Cemetery run out of space for full burials?	11
5. Graves for cremated remains.....	12
6. Income from grave sales	12
7. Income to maintain and enhance Highgate Cemetery	13
8. Consecrated and unconsecrated ground	15
8.1. Consecrated ground.....	15
8.2. Unconsecrated ground.....	15
9. Ways of creating more space for full size graves	15
9.1. Mounding.....	16
9.2. Closing or narrowing roads or paths: ‘cramming’	16
9.3. Colonising open areas around graves	17
10. Options.....	18
10.1. Continue as now	18
10.2. Alternative ownership	18
10.3. Act of Parliament.....	19
11. Grave renewal.....	20
11.1. Extinguish rights of burial	20
11.2. Grave reclamation.....	21
11.3. Grave reuse	21
11.4. Memorials.....	22
11.5. Church of England policy on reuse of graves	22
12. Grave renewal in other cemeteries	23
13. Some practicalities and costs of grave renewal.....	23
13.1. Reclamation: avoiding the need to disturb remains.....	23
13.2. Reuse: adding capacity by re-burying remains.....	24
13.3. Hand dig or machine dig.....	24
13.4. Pre-formed burial chambers.....	24

FRIENDS OF HIGHGATE CEMETERY TRUST
GRAVE RENEWAL

13.5.	Area transformation	25
14.	Potential number of graves available: preliminary samples	25
14.1.	Front rows of part of the Main Road and Bay Tree Path	26
14.2.	Front row of the 'Baby Natica Path' in squares 144-146.....	27
14.3.	'Old Marx grave path area' squares 111 and 112	28
14.4.	An area in square 125	29
15.	Renewed graves	30
16.	Impact of grave renewal on cemetery operations.....	30
17.	Conclusion	31
Appendix 1.	Grave types	32
Appendix 2.	Reclamation.....	33
Appendix 3.	Renewal sample, Main Road.....	34
Appendix 4.	Renewal sample, 'Baby Natica Path'	36
Appendix 5.	Renewal sample, Old Marx grave area	39
Appendix 6.	Renewal sample, an area in square 125	43

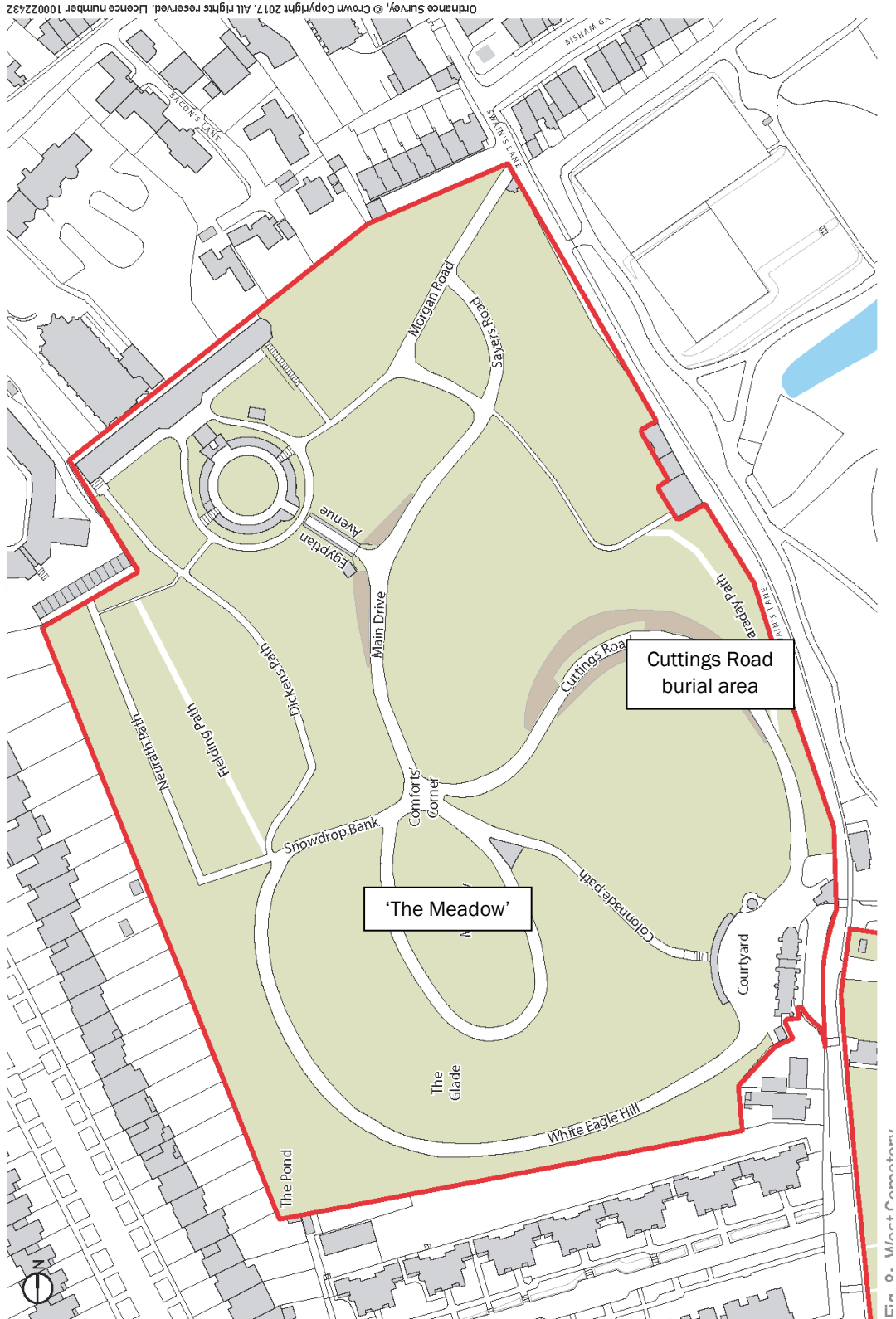


Figure 1 Highgate Cemetery West

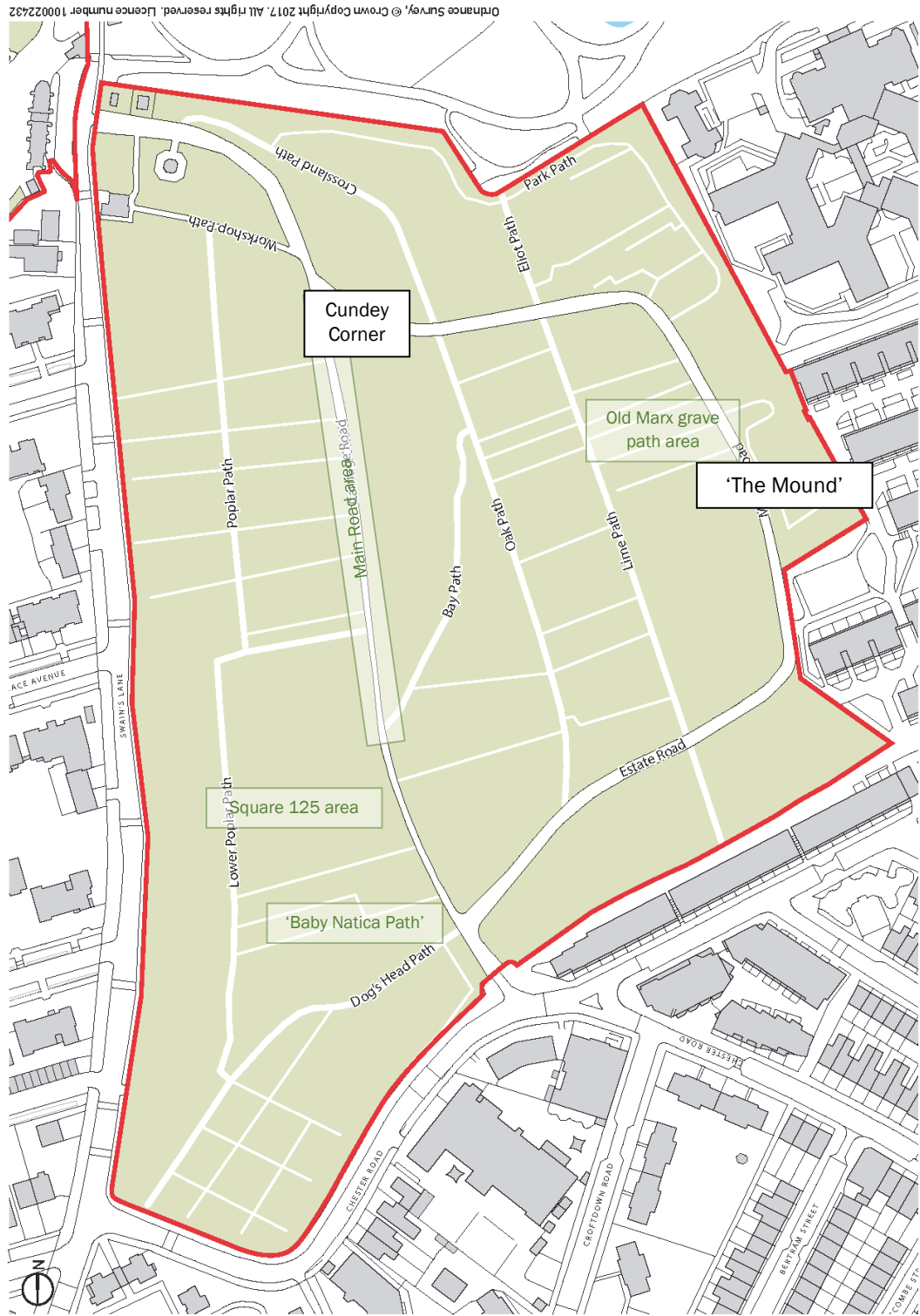


Figure 2 Highgate Cemetery East, showing sampled areas in green

1. Executive Summary

Highgate Cemetery is running out of space for full burials. One of FOHCT'S charitable objects is 'to permit the Cemetery (or such part thereof as may be available for the purpose) to be used as a public burial ground'. When no further space is available this role will be lost, and the ability of FOHCT to fulfil its other objects will be compromised by the resultant loss of income.

Efforts have been made in the past to create more burial space, such as using a new layer of earth placed over existing graves, closing or narrowing roads or paths and then burying on them, as well as colonising the open areas of ground around larger memorials. But these are no longer practicable without damaging the Cemetery's grade-1 registered landscape.

Some other cemeteries have powers, subject to safeguards, to extinguish rights of burial, to remove tombstones and to bury either in available space on top, or to lower existing remains in a grave to create such space. This report calls those activities 'grave renewal'.

The FOHCT's charitable object to 'secure the repair, restoration and preservation of the Cemetery', as well as the fact that conservation area designation protects all pre-1925 memorials, means that grave renewal could only be undertaken in piecemeal fashion, ideally using graves where memorials either do not exist or are beyond preservation.

Several small areas of Highgate Cemetery East have been sampled to understand the potential for sensitive grave renewal. The investigations suggest this would be a way to allow FOHCT to continue operating Highgate Cemetery as a public burial ground while at the same time generating the substantial funds needed to repair, preserve and maintain it.

To try to continue cramming burials in or simply to stop burials altogether would compromise FOHCT's ability to achieve its other charitable objectives. Handing the Cemetery over to another charity or local authority seems equally unlikely to result in a successful outcome.

To undertake a programme of grave renewal, FOHCT would need powers similar to other cemeteries, in particular the powers to extinguish rights of burial in graves and to deal with tombstones on top of them. These could only be obtained through a new private Act of Parliament, and to promote such a Bill, the consent of the Charity Commission must first be obtained.

This report recommends that an approach be made to the Charity Commission for approval to proceed to obtain a new Act of Parliament to enable a programme of grave renewal.

2. Charitable objects of the Friends of Highgate Cemetery Trust

The Friends of Highgate Cemetery Trust ('FOHCT') has three charitable objects:

- '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 (or such part thereof as may be available for the purpose) 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'.

These aims are linked as providing a place of burial is not only a crucial function of an active cemetery but is also connected to ensuring FOHCT is able to promote the Cemetery's position as a place of historic interest and beauty; and to raise revenue to enable the repair, restoration and preservation of the Cemetery. Across the UK there are many examples of closed cemeteries, namely those that have lost their primary function, suffering a gradual decline in significance and thus in turn in visitors. Mourners give way to casual visitors, and commemoration becomes a matter of historical interest alone. Grave owners, a natural police force, melt away. As a landscape of memory degrades into a park with stones, visitor numbers decline and vandalism increases. 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 due to the monuments. In some cases the disconnection of the cemetery from the community has resulted in a neglected, vandalised landscape.

Other cemeteries which have closed for new burials can become overgrown and the original landscape quality can be mostly lost. Its role as a commemorative landscape is now shared with leisure activities such as jogging and dog walking. Other cemeteries add 'Park' to their name to signify a similar transition. Looking further back, there is often scant trace of memorials in the once densely-packed churchyards which were closed by the 1852 Burial Act; they have instead become parks and many visitors do not realise they are walking or sunbathing on top of the remains of thousands of earlier Londoners. St Pancras Gardens and St Martin's Gardens in Camden are just two local examples.

Highgate Cemetery ('the Cemetery') is fortunate as at present burials continue to take place. FOHCT attaches particular importance to its charitable objective of permitting the Cemetery to be used as a public burial ground. Only a small proportion of the 53,000 graves are visited regularly. Without continuing its role as a place of burial, Highgate Cemetery could easily become just a historical curiosity, and consequently fall into disrepair, contrary to the objects of FOHCT.

It does not have to be like this. Through a gradual process of renewal, Highgate Cemetery could continue to provide a place of burial, while safeguarding its significance as well as its historic and architectural importance.

3. Grants of rights of burial

Private graves

The London Cemetery Company Act 1836 allowed the newly formed eponymous company to grant rights of burial either in perpetuity or for a limited period. The purchaser and subsequent owners could, by virtue of owning the rights, control who was buried in the grave. These are called private graves. There is no record of the durations of the rights of burial other than in those few

copies of Highgate Cemetery deeds that have survived. These granted rights of burial in perpetuity rather than only for a limited period and so it is assumed that most if not all grants were perpetual.

Since the demise of the London Cemetery Company in the 1970s, burial grants have generally been for fifty or seventy-five years. None of these will become available in the next decade.

Under the London Cemetery Company Act 1836, owners would forfeit their grants if they failed to comply with the rules, orders and regulations of the London Cemetery Company. But it was prohibited from disturbing any burials which had been made in such graves. No such power is available to FOHCT and there appear to be no circumstances under which FOHCT could cancel historic rights of burial, save under a new Act of Parliament.

Common graves

Sometimes people were buried in graves where ownership of the right of burial remained with the London Cemetery Company. This meant that it was the company which decided who could be buried in them. These are referred to as 'common graves'. They were cheaper as only an interment fee had to be paid. These graves are not to be confused with 'pauper' burials, namely those carried out at the public expense.

4. Diminishing full burial capacity

For a number of years it has been said that Highgate Cemetery has only a few years of burial space remaining. It is trite but true to state that the more graves are sold, the fewer remain available for sale, so the capacity of the Cemetery to accommodate further full burials is decreasing. Over the past five years, FOHCT has sold an average of 13.8 full-size graves per year in the East Cemetery and 4.6 in the West Cemetery, a total of 18.4 graves per year (See Table 1).

Table 1 Full-size graves sold, 2013-2018

Full-size graves sold			
Year	East	West	Total
2017-18	10	6	16
2016-17	15	5	20
2015-16	15	2	17
2014-15	14	2	16
2013-14	15	8	23
Total	69	23	92
Average	13.8	4.6	18.4

Unlike newer cemeteries with a more formal layout, grave locations at Highgate Cemetery have typically been decided upon at the time of sale. There has been no inventory of plots for sale which was then counted down. There are however two main areas where new full-size graves are sold: in the East Cemetery, on the Mound; and in the West Cemetery, on Cuttings Road (see Figure 1 and Figure 2).

4.1. East Cemetery: The Mound



Figure 3 The Mound, East Cemetery

The Mound was created out of building waste imported as landfill to raise the ground level over an area of common graves. New graves are arranged in parallel lines in lawn cemetery style, with a concrete strip foundation for headstones (Figure 3). In theory it should be possible to give an exact count of graves remaining to be sold. In practice however, the spacing of graves is not always consistent. This is because the made-up ground is of poor quality and can contain large chunks of concrete or brick. Digging a precise 6'6" by 2'6" grave is difficult, and so graves are always dug larger than their theoretical size. As made-up ground, graves cannot be placed too close to each other or there is a risk of collapse during the excavation. For these reasons the count of the number of graves remaining in the Mound is necessarily provisional.

In March 2016, the Cemetery's Sexton estimated that there were 83 graves remaining on the Mound; since then, 27 have been sold, leaving 56. If sales continue as they have done, this space will be exhausted in about four years' time (See Table 2)

Table 2 Estimate of space remaining

	East	West	Total
March 2016	83		
Years remaining	6.0		
August 2018	56	45	101
Years remaining	4.1	9.8	5.5

4.2. West Cemetery: Cuttings Road



Figure 4 Cuttings Road, east side area for new burials

Most of the graves on the west side of Cuttings Road have been sold. Some are earth graves; and others were pre-formed with concrete grave liners to avoid the risk of the sides collapsing during excavation. The stretch of approximately 45 metres on the east side has yet to be developed (see Figure 4). This is because there has not been such interest in it, perhaps because the expanse looks bleak compared to the smaller areas opposite, framed within historic graves.

If this stretch of ground were laid out with a single run of pre-formed concrete burial chambers, allowing one metre per chamber, it could provide up to 45 new graves. There could be other ways of providing burial space. If above ground community mausolea were to be provided, about three individual niches could be accommodated per metre. But an architectural solution would have to be devised which would avoid this being an eyesore, especially as this site is also adjacent to the Grade II-listed Cuttings Catacombs. Such niches tend to be more popular with southern European communities but as yet there has not been any material demand for them.

If graves were sold on the east side of the Cuttings Road at the same rate as they have until now on the west side, then that supply should last almost ten years (see Table 2).

4.3. Other locations

Virgin ground: There may be virgin ground for new graves tucked away elsewhere in the Cemetery but, until there is an accurate map, it would be very time-consuming to locate. Areas on the Cemetery's existing plans where no graves are recorded are often marked 'no space' or turn out to be occupied by trees or shrubs; see, for example, 'No spaces' inscribed at the east end of the Old Marx Grave path in Appendix 5. In any event, FOHCT staff are familiar enough with the landscape to know that such areas are small and rare, sometimes to be found at the overlap of the map squares. For example, the plan of 'Baby Natica path' in Appendix 4 shows an apparent gap of about 7 feet on the south side at the junction of squares 145 and 146, but no corresponding gap on the north side. Even if, following a search, this space turns out not to have been used for burial, it might be better put to uses such as planting trees or shrubs rather than cramming in yet more memorials, or the Cemetery risks losing its garden character. Small areas are also needed to facilitate re-openings of nearby graves: there has to be somewhere to keep the memorial temporarily in the year while the ground settles.



Figure 5 The path around the Meadow has been narrowed to create more full burial space.

On top of common graves: It might be possible to accommodate further private graves in some areas in the remaining depth on top of common graves (which did not have memorials). This has been done in the past around the Meadow, for example (see Figure 5), by narrowing a wide path. While easy to do, it was damaging in conservation terms to the significance of the Cemetery. Other smaller areas have been developed, such as the Glade, but this is suitable only for cremation burials.

Other common graves tend to have been located in less accessible or less desirable areas of the Cemetery or beneath narrower paths, areas where memorials could not easily be fitted in. So new graves on top of them would further clog access routes or be difficult to access without walking over other graves. Or the limited space might require them to be oriented differently from the surrounding graves, again damaging to the layout of the Cemetery. While Highgate Cemetery will seek to use areas on top of common graves where appropriate, this will not in itself solve the acute problem of the shortage of burial space and so is not a viable or sustainable way forward.

4.4. When will Highgate Cemetery run out of space for full burials?

It is likely that as supply diminishes, demand will also drop because the less attractive locations and the more expensive graves will be slower to sell. Not many buyers will be interested in or able to afford a £70,000+ brick vault on a main path in the East Cemetery, for example, so those may remain in stock for some considerable time.

The balance between West and East may also shift. This is due to the fact that more of the expensive West Cemetery graves are available. As they are so expensive, FOHCT does not know whether buyers who would have purchased a less costly East Cemetery grave had one been available will go elsewhere, or whether they will be prepared or able to pay the higher cost of a West Cemetery grave.

The current price for grave on the Mound in the East Cemetery is about £18,000. This is the most popular full-size grave, and at current rates, these will be exhausted in about four years' time. FOHCT needs to find more graves at this price point if Highgate Cemetery is to continue to fulfil its charitable objective of permitting the Cemetery to be used as a public burial ground.

5. Graves for cremated remains

A set of cremated remains can be accommodated in one foot square of ground, so there is potentially a huge number of small gaps around the Cemetery which could be pressed into service for the burial of cremated remains. However, the scale of a Victorian cemetery is that of full-size graves. Great care must therefore be taken in the placement of small graves for cremated remains to ensure that they do not detract from the qualities for which the Cemetery is famous.

Accommodating cremated remains is very important to FOHCT, particularly now that over 75% of disposals in the UK are by way of cremation. There may be a variety of ways in which FOHCT can do this without detracting from the cemetery landscape and perhaps more affordably for the families.

However, FOHCT's most pressing need is to find ways to provide space for full burials. As more than three-quarters of burial income currently comes from the sale of full-size graves, the exhaustion of this resource will have profound implications for FOHCT (see Figure 6). For that reason this report focuses on full burials. Solving some of the issues involved in providing space for more full-size graves would potentially also enable FOHCT to provide more options for cremated remains.

6. Income from grave sales

'Grave sales' means sales of the 'exclusive right of burial in a grave', not the land itself.

Table 3 Grave prices from 17 May 2017

East Cemetery		Type
1' x 2' cremated remains	£3,445	
2' x 2' cremated remains	£6,870	
2' x 3' infant plot	£10,300	
6'6 x 2'6 woodland for 1	£13,295	'Inland'
6'6 x 2'6 Mound for 2 or 3	£18,125	'Standard'
7' x 3' casket Mound for 2	£23,425	'Standard'
6'6 x 2'6 prime location for 2	£31,405	'Prestige'
4' x 9' prime location for 2	£70,060	'Prestige'
West Cemetery		
1' x 2' cremated remains	£5,160	
2' x 2' cremated remains	£10,360	
2' x 3' infant plot	£14,880	
Cuttings path lined grave for 2	£42,930	'Prestige'

Graves at Highgate Cemetery cost rather more than at local authority cemeteries. Price is used to try to limit demand so that the finite resource of grave space is not exhausted too quickly. Prices have been determined in the light of experience. Purchasers are made aware that the grave sales revenue contributes to the ongoing maintenance of the Cemetery as there are no ongoing charges.

Although FOHCT sells a greater number of cremation-size plots than full-size graves, revenue from the latter is much more important in terms of providing the income needed to maintain and preserve the Cemetery properly and responsibly (see Figure 6). In the year 2016-17, total grave sales amounted to £536,492. 85% of this, £456,830, was generated by sales of full burial plots. Over the seven years from 2010-17, full-size graves accounted for 78% of FOHCT's grave sales income but represented only 41% of the number sold. While FOHCT recognises the need to continue to provide different burial options, it is for this reason that this report focuses on full-size graves.

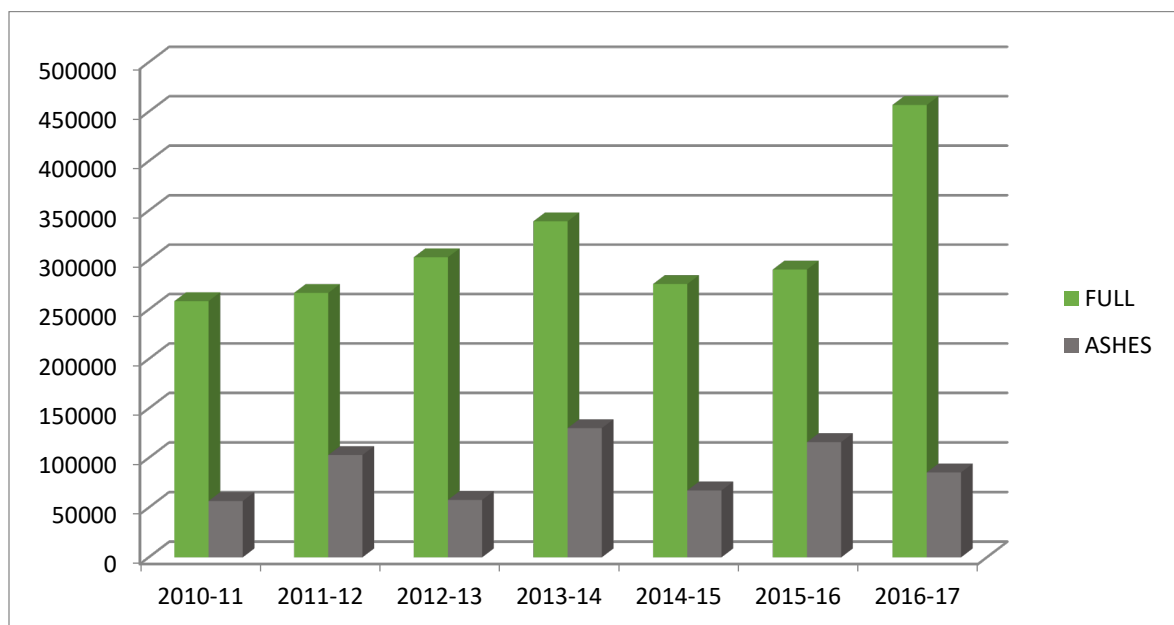


Figure 6 Income received from ashes or full burials, 2010-17

7. Income to maintain and enhance Highgate Cemetery

FOHCT's charitable objective 'to permit the Cemetery to be used as a public burial ground' recognises the importance of burial activity in itself as part of the significance of the place. To stop burying people here would be detrimental. Furthermore, burials also provide an important income stream to help fund FOHCT's other charitable objectives of conserving the Cemetery and promoting the public benefit.

Significant conservation works will be required in the near future. A comprehensive conservation plan has been commissioned and is in final draft stage pending comments from Historic England and the London Borough of Camden. It recommends a move away from the previous light touch management of the site to a more interventionist approach which will have substantial resource implications. Works will include: removal of secondary woodland and introduction of new structural and ornamental planting; opening up views within and from the Cemetery; repairing or reconstructing roads, paths and drainage to improve access; repairing and restoring buildings

FRIENDS OF HIGHGATE CEMETERY TRUST GRAVE RENEWAL

and monuments; improving visitor facilities and creating a wider range of opportunities for visitors to experience the Cemetery.

FOHCT would expect to fund some of the major capital works through fundraising including sources such as the Heritage Lottery Fund, but ongoing operational costs will have to be funded from FOHCT'S own resources. In addition to ordinary day to day repairs, periodically larger programmes of repair will be required to all the main structures. FOHCT should maintain reserves to enable it to carry out such works as these are less attractive to external funders than one-off capital projects.

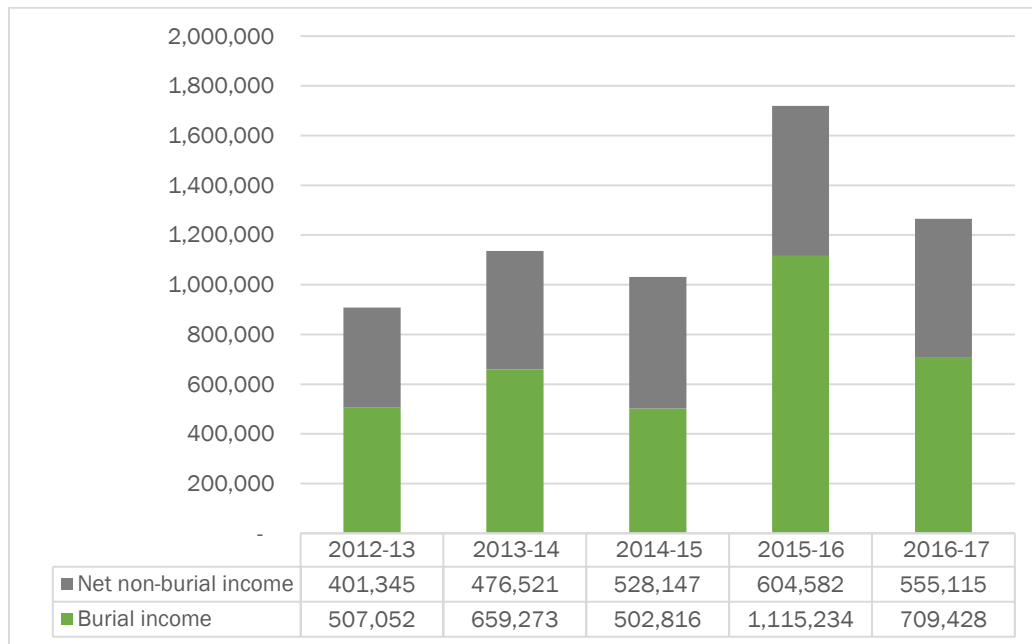


Figure 7 Burial income as a proportion of total net income, excluding investments

Assuming income from burials ceases, FOHCT's income would mainly be generated from tours, publications and subscriptions (see Figure 7). But as FOHCT's cost base is largely fixed, it would not change significantly if no burials were carried out. FOHCT would still need a Registrar to deal with changes of ownership and a Sexton to manage re-openings and monument safety checks. In 2016-17, net other income (that is, excluding burial sales, burial fees and memorial sales) was £555,115; and ongoing costs (excluding burial staff and the cost of memorials) were £791,903. FOHCT would therefore need to generate additional income of at least £240,000 each year just to break-even at current levels of expenditure.

Replacing some 50% of its on-going income would present significant challenges, not least because there are physical limits on the number of visitors who could access the site, and any price increases might reduce demand. Preliminary estimates of other income sources – such as a café – indicate that these would not add substantially to net income. FOHCT's runs the risk of not having enough revenue to fund its preservations activities in line with its objects. This, in turn, is likely to lead to disrepair for the reasons mentioned in sections 2 and 10.1 which further reduces demand.

8. Consecrated and unconsecrated ground

It is important to be aware that the Cemetery operates under two different legal systems, depending on whether or not the ground is consecrated.

The greater part of each cemetery at Highgate is consecrated. They therefore come under the jurisdiction of the Church of England through the Diocese of London, and certain activities would require a Church permission called a 'faculty'.

There is no clear plan of the Cemetery showing precisely the boundaries of consecrated and unconsecrated sections, but a note was made of the status of individual graves in the grave register when graves were sold. Plotting the status of these in the West Cemetery shows that the 'consecration border' was not a straight line.

8.1. Consecrated ground

The Diocese of London has apparently been content to leave the Highgate Cemetery to manage itself provided that it does nothing to interfere with the respectful treatment of the dead or their memorials. In some other cemeteries where works have been undertaken without faculties, the relevant diocese has stepped in and taken action in the ecclesiastical courts. Most notably, perhaps, this resulted in the Scheme of Management for West Norwood Cemetery (<https://www.lambeth.gov.uk/west-norwood-cemetery-database/west-norwood-cemetery-historical-and-legal-background>).

Any major works such as memorial clearance or exhumation would require a faculty. In any case, it would be prudent to consult the Church of England about any changes or developments on consecrated ground.

8.2. Unconsecrated ground

An exhumation from unconsecrated ground requires a licence from the Ministry of Justice for each set of remains. Individual applications would take a considerable amount of time to deal with and FOHCT understands that an Act of Parliament would still be needed to extinguish the rights of burial in individual graves.

9. Ways of creating more space for full size graves

When cemeteries are running short of space, there are a number of ways of seeking to create more. The following three approaches have all been tried at Highgate Cemetery. The problem however is that all these solutions tend to have a negative impact on the design of the landscape. They are therefore generally best avoided, particularly for a cemetery which is on the Historic England Register of Parks and Gardens at Grade 1.

9.1. Mounding



Figure 8 The Mound, East Cemetery. View from Mound Road.

A new layer of earth is placed over existing graves, and burials are made in the depth so created. This is typically done over common graves on unconsecrated ground as there were no rights of burial to extinguish and no memorials, and no need for a faculty (consent from the Church of England). Although the Mound in the East Cemetery (Figure 8) was very controversial at the time of its creation, it has provided a valuable source of revenue since 2005 when the first grave was sold for £6,000. However, it cannot be said to contribute positively to the landscape. If another mound were to be created, it would require a relatively large area of contiguous common graves on unconsecrated ground. No such area now exists at Highgate Cemetery.

9.2. Closing or narrowing roads or paths: ‘cramming’

‘Cramming’ refers to the practice of digging new graves between existing graves, on roads or pathways, or in areas currently used for flower beds, in order to utilise all available space. There has been a long tradition of this happening at Highgate Cemetery, and the architects of the East Cemetery foresaw this eventuality as a means of increasing the profitability of the land.

As well as being impractical by making some areas impossible to access, cramming is however now generally disparaged for its effect on the design of cemeteries. The Select Committee on Environment, Transport and Regional Affairs report on *Cemeteries* (2001) lamented that: ‘A lack of available space for burial is resulting in the practice of ‘cramming’, threatening the essential character of many meticulously designed Victorian and Edwardian cemeteries.’ Historic England says: ‘The pressure upon cemetery managers to utilise for burial every available green space within existing cemeteries presents the greatest immediate threat to cemetery landscapes.’ (*Paradise Preserved: An introduction to the assessment, evaluation, conservation and management of historic cemeteries*, 2007).



Figure 9 The Main Road in the East Cemetery has been narrowed and cremation burials made in the verges.

In the past Highgate Cemetery has narrowed principal roads to accommodate more burials, such as that around the 'Meadow' in the West Cemetery (Figure 5). This has provided an attractive burial area for many, including Alexander Litvinenko, Lucian Freud and George Michael and generated much income. In the East Cemetery, the main road has been narrowed and new cremation burials sited in the verge so created (Figure 9). As a Grade 1 registered landscape, these are not solutions one would wish to repeat, so it would be irresponsible to attempt to quantify the number of other graves which might be created by inflicting further damage on the landscape of the Cemetery.

9.3. Colonising open areas around graves



Figure 10 Cundey Corner. Cremation burials inserted in the setting of a full size grave.

'Cramming' can also refer to infilling with new graves areas of lawn which were intended to provide the setting for larger memorials or mausolea. Examples where this has been done at Highgate Cemetery are the Dalziel Mausoleum and the Cundey family grave in the East Cemetery (Figure 10). Cluttering the settings of larger memorials in this way is detrimental to their design

interest and, although very useful financially, would be at odds with FOHCT's charitable purpose to 'preserve it as a place of historic and other interest and beauty'.

10. Options

10.1. Continue as now

There are twin pressures to produce more burial space: the requirement of local people for burial within the Cemetery, and FOHCT's need for funds to meet its other charitable objectives. If FOHCT is to continue operating the Cemetery as it does now, it will need to cram in burials by narrowing or taking over paths entirely, or by removing additional trees and shrubs. This would reduce the accessibility of graves and would also be damaging to the landscape design for which the Cemetery has been registered Grade 1 on the Historic England list. Less accessible graves would also be less desirable for buyers and more difficult to bury in.

Should it become impossible to continue with further full burials, this would result in the abandonment of one of FOHCT's objects, namely operating a public burial ground. The loss of spiritual connection to the present generation through ceasing burials would place the site at greater risk in the future, as can be seen by the fate of some older burial grounds. In addition, as most memorials deteriorate with time, the historic interest and the landscape character of the Cemetery would likewise slowly diminish.

The decline in burial income would also result in pressure to find alternative income streams. Although an increase in visitor income would be feasible in the short and medium term, increased numbers of visitors would likely disrupt the delicate balance which has evolved at Highgate Cemetery between the needs of mourners and others wishing to see the Cemetery. And increased prices would limit the ability of some to experience the heritage. In the longer term, as now familiar names gradually recede into history, there would be less of interest for visitors to see. It is already apparent that the great names of the nineteenth century are for many visitors less interesting than those of more recent passing.

10.2. Alternative ownership

As a last resort, if FOHCT felt unable to continue to operate Highgate Cemetery according to its charitable objects, it could seek an alternative owner.

Ownership by another charity

Under its Memorandum of Association, should FOHCT be wound up or dissolved, any remaining property 'shall be given or transferred to some other charity or charities having objects similar to the Objects which prohibits the distribution of its or their income and property'. This seems an unlikely solution because any such charity would find itself in the same position as FOHCT, needing to maintain the significance of the Cemetery while generating income to maintain it.

Transfer to local authority control

With the exception of Kensal Green Cemetery, none of the other so-called 'Magnificent Seven' cemeteries remains in its original ownership. They are now owned by their local authorities. About 45 years ago this outcome was contemplated for Highgate Cemetery as a solution to the difficulties faced by its private owner in the 1970s. Under the *Greater London Council (General Powers) Act 1976*, Camden Council had the power to compulsorily purchase Highgate Cemetery, but this lapsed on 31 December 1979. The Act envisaged the closing of the West cemetery and

its laying out as an open space and the Council would have had extensive powers to remove tombstones or to cover them with soil. It is fortunate that this did not happen.

While public funding has its attractions, it is difficult to imagine in today's economic climate that there would be any enthusiasm within Camden Council to take on of the responsibility for Highgate Cemetery. Indeed, even though most visitors come from outside the borough, a local authority might encounter more resistance than does a charity to the practice of charging for admission. And a local authority would find it much more difficult to run a volunteering programme as these are typically delivered by friends groups, themselves registered charities. It would also be expected to bring burial charges down to a borough average, creating even more financial pressures on the operation of the Cemetery. Highgate Cemetery is a rarity for the further reason that cemeteries without a crematorium are rarely economically viable in the long term without subsidy. It seems most unlikely that local authority ownership could be a viable option.

10.3. Act of Parliament

Burial at Highgate Cemetery could become a sustainable activity if grave renewal were permitted. An Act of Parliament would be required to enable the cancellation of burial rights which had been granted in perpetuity, but these are powers which other cemetery authorities already enjoy. The recent *New Southgate Cemetery Act 2017* has shown that there is broad acceptance of the needs of cemeteries to adopt sustainable burial practices. Protecting the rights of existing owners is of paramount importance and FOHCT recognises that the safeguards contained in other cemetery legislation would also be required for Highgate Cemetery.

Grave renewal would enable FOHCT to continue to function across all of its charitable purposes and, while doing so, maintain the financial health of FOHCT. It would seek to balance the conservation and continued use of the Cemetery to sustain and enhance its significance in the long term. A balance between burial and tourist operations would be achievable and the diversity of income streams maintained. Meaningful connections with the community would be continued and ongoing burial use would avoid the Cemetery becoming a mere historical curiosity.

Unlike other cemeteries, Highgate Cemetery depends for a substantial part of its income on visitors, so great care would have to be taken to implement renewal in a way which safeguards historic design interest and character. In addition to the safeguards of conservation area designation, this means that grave renewal could only be undertaken in a piecemeal way rather than area by area: it would be an evolutionary rather than revolutionary change. FOHCT would ensure that the significance of the site and its memorials is not diminished and so Historic England and the London Borough of Camden would be closely involved.

If the supply of new graves increased, it could be that prices of graves would not need to increase at the same rate as in the recent past. If so, the public benefit of burial at Highgate Cemetery would be available to a greater number of people.

Although some people will no doubt object in principle to the idea of grave renewal, a public survey conducted in 2017 by FOHCT (as part of the process of developing a conservation plan) showed broad 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 re-use 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, filling them up.

If it was decided to seek an Act of Parliament, FOHCT could also use the opportunity to ask Parliament to update any provisions of the 1836 Act that are now redundant or otherwise no longer reflect the modern requirements of managing Highgate Cemetery.

11. Grave renewal

It may be possible to create more space for burials without detriment to the cemetery landscape by using graves which have already been sold. It is helpful to make the distinction between *reuse*, where human remains need be disturbed to make room for further burials, and *reclamation*, which uses already available space. For either to occur in relation to private graves, the grant of the right of burial would first need to be cancelled. For convenience, this document uses the term *renewal* to mean bringing the grave back into use whether by reuse or reclamation.

The legal context under which renewal could happen would depend on whether it was a private or common grave, and whether the grave was located on consecrated or unconsecrated ground.

The potential for renewal depends upon the capacity of each grave, and whether human remains would need to be disturbed. Graves might be divided into three categories:

- Empty graves: sold but never occupied, and so unlikely to have a memorial
- Partly-used graves: unoccupied space remains on top of existing burials
- Full graves: existing burials would need to be moved to create more space.

The feasibility of grave renewal would also depend on factors such as:

- the presence of a memorial
- the date of any such memorial and its condition
- the size of the grave and the proximity of surrounding graves and memorials
- the ease of access for digging and for visitors.

11.1. Extinguish rights of burial

As grants of the exclusive right of burial at Highgate Cemetery were made in perpetuity, the use of graves which have already been sold would require the such rights to be extinguished.

Safeguards would have to be provided to ensure that the owners' interests were respected.

Safeguards set out in the New Southgate Cemetery Act 2017 comprise:

- select only graves where at least 75 years have elapsed since last burial, or, if no burial, since the time of purchase
- write to last registered owner by registered post
- place notice in local newspapers
- place notice at cemetery entrances
- notify Historic England and, where appropriate, the Commonwealth War Graves Commission.

11.2. Grave reclamation

Reclamation is the use of available space on top of existing burials, if any, *without disturbing human remains*. It would be necessary to extinguish the right of burial in a private grave. In addition, a faculty would be likely to be required when using available space in a private grave on consecrated ground if the grave had previously been used for burial.

At the 2018 AGM of FOHCT, there was a brief discussion about the number of empty graves available at the Cemetery. These are graves which have been sold but never used. In practical terms they are no different from partially-occupied graves with room on top as the first step before they could become available for use would be to extinguish existing burial rights, for which an Act of Parliament is required. Empty graves are, however, less likely to have a memorial and less likely therefore to encounter objections. They are therefore promising candidates for renewal depending on their location.

In January 2018 there were 398 unused graves at Highgate Cemetery which had been sold or last changed owners over 100 years ago: 162 in consecrated ground and 39 on unconsecrated ground in the East Cemetery; and 181 in consecrated ground and 16 on unconsecrated ground in the West Cemetery. Like all other candidates for renewal, each such grave would have to be considered on a case-by-case basis.

11.3. Grave reuse

Having extinguished the right of burial in a private grave on consecrated ground, the reuse of the grave may be allowed under faculty. An Act of Parliament could also give FOHCT the power to disturb human remains in unconsecrated areas, including in common graves, but without the need for a faculty.

The most efficient way to introduce grave reuse is on an area-by-area basis, clearing old graves to make way for a new field of modern burials. Whereas this may make sense in a cemetery where adjacent graves were used sequentially and so are all of a similar period, it would be very difficult to implement in a cemetery with a mixed age profile and historic landscape such as Highgate Cemetery.

Far more successful in conservation terms is the grave-by-grave reuse such as that at Père Lachaise cemetery in Paris. There the new graves are dotted amongst the old so that the historic character of the cemetery is retained. Graves are sold at Père Lachaise on leases. If owners fail to renew them on expiry, the remains are removed and interred in a central ossuary, the memorial is ground up and the grave then becomes available for a new owner. The overriding advantage of grave-by-grave reuse is that, although more difficult and more costly to carry out, there is far less loss of character.

Reuse can take place on a grave-by-grave basis by re-burying any remains lower in each grave to create more space on top. This is known as 'lifting and deepening'. An advantage of this approach is that remains are not removed from their historic locations.

A row of graves could also be reused by re-burying remains from a number of graves in a single new grave, and using the cleared space for new burials. This might be possible on a small scale at Highgate Cemetery if there were a number of adjacent graves where the memorials were missing or extensively damaged, but the conservation area protection afforded to pre-1925 memorials would limit its use.

Finally, it is worth noting that most purchasers of new graves created on top of common graves at Highgate Cemetery have not been concerned about the earlier remains which lie beneath.

11.4. Memorials

Not all graves at the Highgate Cemetery have memorials. Some never did, others have been lost, and others may have been so damaged over time that they are not worth saving. Memorials remain the property of the owner of the right of burial. A memorial on a grave which is to be reclaimed or reused could be reversed and re-inscribed, relocated or removed altogether.

Pre-1925 memorials are protected by conservation area legislation, meaning that planning permission would be required for these actions. The rebuttable presumption at Highgate Cemetery would be that all memorials on renewed graves would remain in place and be conserved. They are an important part of what visitors come to see.

Any Act of Parliament obtained should give FOHCT powers to deal with memorials. Under the New Southgate Cemetery Act 2017 an owner has six months to claim a memorial before the burial authority can use its powers to put the memorial to such use as appears appropriate or to destroy it. To reduce the impact of any programme of renewal at Highgate Cemetery, priority would be given to graves with extensively-damaged memorials or where the memorial was missing altogether.

A 'Memorial Retention Protocol' would need to be written to establish an agreement between FOHCT, the local authority and Historic England about the balance between retaining pre-1925 memorials, some of which may be extensively damaged, and facilitating the continuing use of the Cemetery for burial. The protocol would provide a basis for assessing the viability of repair and retention of damaged memorials. Some memorials may have been broken into so many pieces that repair is not viable; others which were incomplete or of low significance may in some circumstances be judged to be removable. A headstone with inscriptions lost because of delamination of stone might be removed, but in a sensitive location a conservation protocol may mandate its replacement with one of the same size and shape and of a suitable stone. A headstone in reasonable condition with inscriptions might be turned around and new inscriptions made on its reverse, as has happened at the City of London Cemetery. Proper records would have to be made and kept.

Highgate Cemetery has rules intended to reduce the impact of new memorials on the historic landscape, including prohibitions on white marble, highly polished stones and gilded lettering. Guidance would however need to be developed as to how to memorialise a new burial in a renewed grave where an existing memorial is retained.

11.5. Church of England policy on reuse of graves

Highgate Cemetery is within the area of the Diocese of London. FOHCT has not yet approached the Diocese of London for its views on grave reuse. However, the following statement from the Diocese of Southwark website (<http://southwark.anglican.org/about-us/what/caring-for-our-churches/guidance/reuse>) may give some indication of the Church of England's policy:

"Save where burial rights are granted subject to a particular period of years, there should be an expectation that grave spaces will in due course be reused, and this is necessary to economise on land-use at a time when gravespace is a diminishing resource. This is an increasingly urgent problem which all those responsible for churchyards have to face. Sensitive solutions have to be devised and implemented.

"Reuse of graves within a period of less than 75 years is likely to cause distress and offence to the living, as well as appearing disrespectful to the dead. But incumbents should promote and publicise policies for the reuse of graves as soon as 75 years have elapsed after the most recent

burial therein, not least so that those presently arranging a burial are informed of what is likely to happen in the future.

“Rather than planning for reuse on a grave-by-grave basis, there is merit in seeking to bring larger areas into reuse as part of a coherent plan.

“Removal of existing memorials (including laying them flat) requires a faculty from the Chancellor, and consultation with any surviving relatives who can be traced will always be appropriate. Memorials remain the private property of those who initially paid for their erection, and therefore any faculty granted will contain provision for safeguarding (by some form of relocation) of the memorials. Where authorisation is sought to reuse part of a churchyard, the removal of a number of memorials can properly form the subject of a single petition for faculty.”

In summary, it is worth noting that:

- reuse is not only accepted but encouraged by the Church of England
- the potential to cause distress should be recognised and avoided
- memorials should be safeguarded and retained.

12. Grave renewal in other cemeteries

Other cemeteries already have powers to cancel rights of burial and to reclaim and reuse graves. Any programme of reuse on consecrated ground would also require a faculty.

City of London (Various Powers) Act 1969 gives the City of London Cemetery the power to extinguish the right of burial in graves in which it has not been exercised for 75 years or more from the date of the latest burial in the grave space or, if there has been no burial in the grave space, from the date of the grant of the right of burial in the grave space, and remove memorials in and on those graves

Greater London Council (General Powers) Act 1976 gives burial authorities the power to extinguish rights of interment in cemeteries including the power to remove any tombstone.

Local Authorities' Cemeteries Order 1977 (No. 204) gives burial authorities the power to reclaim graves which have not been used for 75 years from the date of grant and to remove the tombstone.

London Local Authorities Act 2007 gives burial authorities the power to disturb human remains to increase space for interments.

New Southgate Cemetery Act 2017 gave powers to extinguish rights of burials in grave spaces and to disturb and reinter human remains in order to create space for further interments.

13. Some practicalities and costs of grave renewal

13.1. Reclamation: avoiding the need to disturb remains

The minimum depth of a burial depends on ground conditions; it must be deeper in clay where the ground is more likely to crack as it dries out, and can be shallower in soil where it is less likely to be exposed. The ground is significantly different in the two parts of Highgate Cemetery: in the East it is mainly London clay, while in the West it is sandy soil.

At least 3 feet from the top of the coffin is allowed in the East Cemetery and 2 feet from the top in the West Cemetery. This means the last burial depth should be 5 feet in the East Cemetery and 4 feet in the West. (See Table 4. A visual representation is given in Appendix 2.)

Table 4 The number of new burials which may be accommodated in a grave without disturbing the last burial

Last burial depth	East Cemetery	West Cemetery
>= 10ft	2	3
9ft	2	2
8ft	1	2
7ft	1	1
6ft	0	1
5ft	0	0

This is however an estimate based on entries in the Highgate Cemetery registers and all capacities must be verified individually before sale. Typically this is done by the Sexton using a rod, but the only way to be absolutely certain is to excavate the grave. Remains may be found at depths different from those recorded in the registers because the depths were recorded incorrectly, or because ground movement has shifted the grave positions, particularly in the East Cemetery.

13.2. Reuse: adding capacity by re-burying remains

Where there is little or no remaining capacity in a grave, to bring the grave back into use it would be necessary to remove the existing remains, dig the grave lower, and re-bury the existing remains at greater depth. This would then allow up to two burials in each reused grave.

Although FOHCT's consultation indicated a high level of support for grave reuse (64%), it would be preferable to avoid disturbing remains wherever possible. FOHCT's priority would therefore be to use available space on top of existing burials wherever possible.

13.3. Hand dig or machine dig

New graves are normally dug to a depth of 8 feet. For reasons of health and safety, normally this is done using a mechanical digger. However, many historic burial locations are inaccessible and graves would need to be reopened by hand. This is difficult in excessively cold or wet weather, and graves may be best dug before they are sold and a preformed burial chamber installed, or lined and back-filled.

Highgate Cemetery charges a digging fee for every burial. Although a hand dig may take two staff members up to a day to complete, the cost would be more than covered by FOHCT's standard digging fee of £1850.

13.4. Pre-formed burial chambers

New graves are usually dug just before they are used. Unlike new graves, renewed graves would need a certain amount of work before they could be added to the stock available for sale. Sometimes, particularly in clay, ground movement can move remains upwards or sideways from their original locations creating issues for future interments. Uncertainties about the viability of individual graves would need to be resolved and any reburials to facilitate reuse done first as there is no time to set about extensive preparations before a funeral.

Having re-opened a grave to ascertain its viability, if possible a pre-formed burial chamber would be installed as it would leave the grave ready for immediate occupation. However, chambers are made in standard sizes which may not fit the more constrained areas of the Cemetery. The smallest size of a fully enclosed, double depth, pre-cast concrete burial vault (2400mm (l) x 1000mm (w) x 1500mm (d)) costs £875 + VAT; installation costs depend on the number installed at one time.

In most areas at Highgate Cemetery, graves are probably too close together to accommodate a pre-cast burial chamber, so the excavation would be lined in board before being backfilled. The cost of materials would be insignificant.

13.5. Area transformation

Grave renewal would need to be accompanied by area improvements to ensure that the locations were attractive to new purchasers. This would involve maintenance activities which Highgate Cemetery would normally wish to do anyway, but grave sales would help prioritise the work. Before graves are sold:

- nearby graves would be tidied up, with accumulated spoil and leaf mould removed, gravel weeded and refreshed, and ivy removed;
- poorly-formed trees nearby would be removed and new planting introduced; and
- muddy paths would be scraped back and the surface consolidated.

The cost of these preparations would depend on the amount of work required in each area, but would likely be relatively modest. The main cost would perhaps be the removal of trees which were poorly-formed or in inappropriate locations, and planting new ones, but this would be work required by FOHCT's conservation plan in any event. It would therefore be a case of prioritisation rather than new investment.

14. Potential number of graves available: preliminary samples

Some preliminary samples have been undertaken to understand the potential for grave renewal in the East Cemetery. These are set out in Appendices 3-6. It is impossible at this stage to give a precise number of graves which might be available across the entire Cemetery as graves in many areas are covered by vegetation. It is also time-consuming to link the map and grave and burial register data using FOHCT's manual systems. Notwithstanding this, the preliminary samples summarised below indicate that grave renewal is a viable option which would allow the Cemetery to operate sustainably in furtherance of its charitable purposes. In addition, a new digital map which is now being created will help Cemetery staff to understand the renewal potential of different areas.

Four different areas were chosen, all, with the exception of the 'Old Marx grave path area', on consecrated ground in the East Cemetery (see Figure 2). The surveys identified graves with potential for renewal (without existing memorials) which at present prices might generate over £3 million. The current prices of graves at Highgate Cemetery reflect their scant supply. But if FOHCT were able to increase the number of graves available as set out here, FOHCT should be able to keep the cost of graves down.

14.1. Front rows of part of the Main Road and Bay Tree Path



Figure 11 Main Road, East Cemetery.

An inspection was carried out from Cundey Corner down the main road, and then up Bay Tree Path, looking for graves without memorials (see Figure 11 and Appendix 3). A number of 9'x4' graves were identified which would generate a lot of income but be slow to sell. There are a number of extensively damaged memorials on Bay Tree Path which might be subject to removal under a Memorial Retention Protocol and thus enable grave renewal, but these were not included in the results. There were 24 graves with a sale value of £1.4m identified, all of which would be available immediately if a threshold of 75 years from the last exercise of the right of burial was adopted; 17 of these would be available if it was 100 years. However, the cost of the larger graves means that they are unlikely to sell quickly.

Total potentially available: 24 graves which could raise up to £1,359,375 for FOHCT to contribute to its charitable purposes

14.2. Front row of the 'Baby Natica Path' in squares 144-146



Figure 12 'Baby Natica Path', East Cemetery.

'Baby Natica Path' is a wide gravel path running east-west towards the bottom of the East Cemetery which has not been infilled with later burials (see Figure 12 and Appendix 4). Graves identified for renewal included some with extensively damaged memorials, but there may be more available depending on the Memorial Retention Protocol. It is possible that digging might reveal ledger stones hidden under spoil which had been assumed not to exist.

Total potentially available: 16 graves which could raise up to £290,000 for FOHCT to contribute to its charitable purposes

14.3. 'Old Marx grave path area' squares 111 and 112



Figure 13 'Old Marx grave path', East Cemetery.

The narrow east-west path giving access to Marx's original grave site and the path immediately north were surveyed (see Figure 13 and Appendix 5). Graves in this area appear to be in blocks of three rows with a narrow footpath between blocks.

The central row of each block is 'landlocked', that is, accessible only by walking over other graves. This would rule out including it in a grave renewal scheme. The front rows on either side of the narrow paths could however be considered for renewal. They would be accessible by the narrow footpath. This is unconsecrated ground.

Total potentially available on Old Marx grave path: 29 graves which could raise up to £525,625 for FOHCT to contribute to its charitable purposes

Total potentially available on the path immediately to the north of the Old Marx grave path: 22 graves which could raise up to £398,750 for FOHCT to contribute to its charitable purposes

14.4. An area in square 125



Figure 14 An area in square 125, East Cemetery.

Two small areas of very densely packed graves in square 125 were surveyed, an investigation made possible only by recent ivy removal (see Figure 14 and Appendix 6). In this area of the Cemetery, access paths have been infilled leaving many graves landlocked. They are standard-sized 6'6" x 2'6" graves but most have virtually no space between them. It would be exceptionally difficult and in some cases perhaps impossible to reopen some of these graves for burial given the proximity of adjacent memorials. In addition, access for visitors is very restricted and the ground may be very muddy in winter, meaning that these could be difficult to sell.

However, a more comprehensive programme of grave renewal could enable this area to be brought back into use. If the memorials on the infill rows of graves (in this area mostly dating from after 1925, but in other areas before that date) were to be removed, graves in the older rows could be renewed where appropriate as they would be more easily accessed for reopening and visiting. Other graves in the area could be repaired and inappropriate trees removed within the confines of FOHCT's conservation plan. This would enhance the significance of the Cemetery by improving its condition and continuing burial use.

Each grave would have to be investigated individually, but the memorials on infill rows are mostly post-1925 and generally kerb sets. As such they contribute less to the significance of the Cemetery and a decision would need to be made as to whether in principle the restoration of the area and the renewal of a number of graves would justify their removal.

Of 36 graves identified (assuming successful cancellation of grants), 35 would be available now under a 75-year threshold, or 33 under a 100-year threshold. 21 could accommodate two further burials on top without the need to disturb existing remains.

However, it should not be assumed that cancellation of rights of burial in the infill rows would be completely successful as some are likely to contain more recent burials. These may include war graves, which are inviolable. The age profile of infill rows has not been investigated.

It could take a couple of decades to exploit square 125, and infill memorial removal may never be completely achievable. Nevertheless, even partial removal would enhance this area. It is important however, when planning any programme of grave renewal, to consider whether to

safeguard the potential for reopening historic paths by deciding not to select graves on them for reclamation or re-use.

Total potentially available: 36 graves which could raise up to £652,500 for FOHCT to contribute to its charitable purposes

15. Renewed graves

It is important that any purchasers of renewed graves are fully aware of what they are buying and any constraints which may be in place. In the past, the Cemetery has encountered little resistance from buyers of new private graves located on top of common graves. It is envisioned, therefore, that provided FOHCT is open and transparent with prospective purchasers, there would likewise be little resistance.

It might be sensible to produce for each renewed grave a set of 'estate agent's particulars', describing the characteristics of the grave and any restrictions. For example, if the grave were in a sensitive area and had a damaged pre-1925 headstone, FOHCT's conservation policy could insist on a new stone being of similar materials, height and profile so that the character of the cemetery is maintained.

Renewed graves should also keep their historic grave numbers. This will ensure that knowledge of grave locations is not lost, and enable visitors to find the locations of all interments, even if the memorial on top no longer records the names of the original burials. It is a requirement of Highgate Cemetery that all memorials are inscribed with the grave number.

16. Impact of grave renewal on cemetery operations

Renewal on a grave-by-grave basis, though more expensive, would have much less impact on the historic environment and on other cemetery operations at Highgate than the area-based renewal practised by other cemeteries such as New Southgate. While continuing to provide for new burials, Highgate Cemetery must also continue to accommodate visits by existing grave owners and cemetery tourists.

A rolling programme of grave renewal would have minimal negative impact on other visitors to the cemetery. The disruption would be no more than caused by routine burial activity: graves are normally opened outside visiting hours as much as possible, and heavy earth moving equipment would rarely be required.

As space will always be limited at Highgate Cemetery, it is expected that grave renewal would result in a small increase in the number of burials rather than a wholesale transformation in the scale of FOHCT's activities. Renewal would mean that the supply does not dry up entirely and that FOHCT could continue to strike a balance between its charitable purposes of providing a public burial ground, securing the preservation of the cemetery and promoting the public benefit. Works to renew graves could be concentrated in discrete areas providing for anticipated sales over the next few years. Purchasers could be given the choice of renewed graves in a variety of locations at different price points. Improvements such as path repair, tree removal and repairs to other graves in the area could happen at the same time.

Grave renewal would bring substantial positive benefits, not the least in allowing that Highgate Cemetery to continue its original function as a place of burial, thus maintaining its significance for the reasons explained in sections 2 and 10.1. Visitors naturally tend to be more respectful of an

active burial ground than one which appears to be occupied exclusively by long-distant Victorians, and grave owners act as a valuable informal police force.

Grave renewal would also be an important source of income for FOHCT, which presently derives about half its funds from grave sales. Were this to stop, the balance would have to be made up from other sources and inevitably greater focus would be on cemetery tourism, with the prospect of needing to increase entry fees to cover the Cemetery's costs, venue hire and shop sales.

17. Conclusion

A sensitive programme of grave renewal would enable FOHCT to continue operating across all its charitable objects and, indeed, could well enhance the condition of Highgate Cemetery. To do this would require no greater legal powers than are currently enjoyed by other cemeteries in London and which were recently acquired by New Southgate Cemetery.

The Church of England has demonstrated a positive attitude towards the re-use of graves, provided it is approached sensitively, and FOHCT's public survey showed broad acceptance of the idea.

However, the special situation of Highgate Cemetery, within a conservation area and itself a grade 1- registered landscape, and operated by a charity, means a cautious, piecemeal approach would have to be adopted. The study of some areas of Highgate Cemetery East show that grave renewal could be successful in generating income without harming the special character of the site.

As grave renewal could only be introduced with the authority of a new private Act of Parliament, this report recommends that an approach is made to the Charity Commission to promote such a Bill.

Appendix 1. Grave types

Graves may be divided into five main types:

- **Prestige: Front row graves on main roads**

Likely to be larger than the standard 6'6"x2'6" grave, and may be a brick vault. Easy access for vehicles and visitors; roads are often tarmac. A visually prominent location where the design of a new memorial needs to be in keeping with those nearby.

- **Classic: Front row graves on side paths**

More likely to be a standard 6'6"x2'6" grave; faces onto a path wide enough to accommodate the digger but otherwise no vehicular traffic. Generally gravel path accessible in all weathers. Visually prominent; neighbouring graves generally with headstones and possibly kerb sets.

- **Standard: Graves facing directly on to side tracks, or on the Mound**

Typically 6'6"x2'6" size. On the Mound, limited to lawn cemetery style, height restriction on headstone. Machine dig. Elsewhere: Foot traffic only; usually hand dig. Track access often only 12 to 18 inches wide and may be muddy or waterlogged in wet weather. Graves are typically very tightly packed with minimal space between.

- **Inland: Accessible only by walking over other graves**

Typically 6'6" by 2'6" with no space between, but may be larger in second rows facing main roads. Graves are very tightly packed, and memorials may be leaning at all angles; ground uneven. Foot traffic only by walking over existing memorials and may be muddy or waterlogged in wet weather. Hand dig; high possibility that adjacent burials may intrude into grave space.

- **Private catacombs and mausolea**

Many private catacombs and mausolea are only partially occupied. The main run of catacombs flank the Egyptian Avenue and the Lebanon Circle, there is also the 'Cuttings Catacombs' spanning consecrated and unconsecrated ground, and then there are mausolea dotted around the Cemetery, predominantly in the West.

A new coffin could be easily accommodated on an existing shelf, but selling spaces individually would convert a private catacomb into a public one. There is already the Terrace Catacombs for that. A potentially more appealing way to deal with remaining space in a catacomb would be to sell it to a new single owner and to rearrange the existing coffins to facilitate new interments. This might mean moving coffins from a middle shelf to a bottom one, or from one side of a catacomb to the other, and screening off occupied niches, perhaps with a stone facing.

The difficulty comes with memorialisation on the exterior of the structure. The removal of existing inscriptions would not be permitted. New inscriptions would need to be considered on a case-by-case basis as listed building consent may be required.

In England the market for those wishing to be buried above ground is limited, let alone those who would be happy purchasing a shared space with very limited scope for external inscriptions.

Appendix 2. Reclamation

See Section 13.1 for a discussion of burial depths.

The green boxes show new coffin burials which may be accommodated in the space remaining above earlier burials in a grave, the depths as recorded in the cemetery registers.

Depth in feet	RECLAMATION using space on top without disturbing remains					
0.5	EAST CEMETERY (mostly in clay)					
1.5	clay	clay	clay	clay	clay	
2						
2.5						
3						
3.5						
4						
4.5				1881		
5						
5.5			3305			coffin (6ft)
6						
6.5		2307			coffin (7ft)	
7						
7.5	>		coffin (8ft)			
8						
8.5		coffin (9ft)				
9						
9.5	coffin (10ft)					
10						
0.5	WEST CEMETERY (mostly in soil)					
1.5	soil	soil	soil	soil	soil	soil
2						
2.5						
3						
3.5					<	
4						
4.5				1736		coffin (5ft)
5						
5.5			3126			coffin (6ft)
6						
6.5		3700			coffin (7ft)	
7						
7.5	2669		coffin (8ft)			
8						
8.5		coffin (9ft)				
9						
9.5	coffin (10ft)					
10						

Appendix 3. Renewal sample, Main Road

Appendix 4. Renewal sample, ‘Baby Natica Path’

Appendix 5. Renewal sample, Old Marx grave area

Appendix 6. Renewal sample, an area in square 125

















