

HIGHGATE CEMETERY.

David Jones
Andrew Jones
Anthony Jones
6 Mill Street
CRAVEN ARMS
SY7 8EN

Dr Ian Dungavell
Chief Executive

ian@highgatecemetery.org

24 April 2020

Dear David, Andrew and Anthony

Highgate Cemetery Bill - Session 2019-20

I am writing to you in my capacity as the Chief Executive of the Friends of Highgate Cemetery Trust (the **Trust**), to respond to your Petition against the Highgate Cemetery Bill.

I want to make clear that we at the Trust have the utmost sympathy for you and we take our role as custodians of the cemetery very seriously. We respect the need to maintain the cemetery as a place of peace and contemplation where families can commemorate their loved ones.

In our role as custodians, we also want to ensure that people in the local community have somewhere they can lay their loved ones to rest, and also ensure that the environment is conserved and preserved. The best way to ensure this is for the cemetery to continue as a working cemetery and not just a tourist attraction, and this in turn requires the powers under the Bill to allow for a sustainable grave renewal.

You raised two main points in your petition:

Clause 4(7) should be extended so that direct and collateral descendants can prevent extinguishment of rights of burial;

Clauses 4(5) and 5(5) should be extended to require the Trust to place notices on its website and at the grave concerned.

Ability of descendants to prevent extinguishment

In your Petition, you have asked us to give collateral and direct descendants the same ability that the owners of burial rights have to prevent the extinguishment of those rights. After careful consideration, and on balance, we do not consider it appropriate to extend clause 4(7)(a) to relatives on the basis that the Bill, like other cemetery bills, distinguishes between changes to rights under clause 4, and disturbance of remains under clause 5. We do recognise the particular concern of relatives in relation to the remains themselves – and this is recognised by clause 5(8) – but relatives do not necessarily have that standing in relation to the *right of burial*, which is a form of property right. For this reason, we consider that it is appropriate for the objection rights in clause 4 to be limited to the owners of the right of burial that is being affected.

In relation to your concerns about identifying future owners, we consider ownership of the right of burial is an inheritable asset and follows the same rules as for other types of property, and so you may make provision for its transfer to your descendants, who would then be able to prevent the extinguishment of the rights, in accordance with clause 4. If the burial rights are not dealt with specifically in a will, the grave will pass down through the executors. In situations where the line is impossible to follow (for example, defunct firms of solicitors as executors), then the ownership can be transferred by statutory declaration to the first living generation. We assist with such ownership changes often and we are more than happy to assist you in this regard.

We would also draw your attention to clause 4(7)(b) which provides that if “any other person” (i.e., somebody other than the owner) objects, then we cannot extinguish the burial right without the Secretary of State’s consent. This would cover any descendants, and provides appropriate protection in those circumstances. Where a person can show their link to the family that owned the burial rights concerned, we would expect the Secretary of State to give weight to that relationship when deciding whether the rights should be extinguished.

Further, in the Trust’s view, there would be onerous and disproportionate obligations on us to carry out the necessary genealogical research to verify whether particular persons were in fact collateral descendants. This would be disproportionate particularly because the burial rights are only permitted to be extinguished 75 years after the last burial or grant, unless it is a grave in respect of which no right of burial which exists at that time has been acquired by or granted to, or is otherwise vested in, any individual (or body other than a local authority or the burial authority).

In striking this balance, the Trust has looked carefully at other cemetery bills. The provisions of the Highgate Cemetery Bill do reflect the precedent of those other bills (see section 3(7) of the New Southgate Cemetery Act 2017, and section 9 of the Greater London Council (General Powers) Act 1976), and there is no particular reason why Highgate Cemetery should be treated differently from other cemeteries in London in this regard.

Notice online

We confirm that the Trust does intend to publish notices on its website as part of our effort to ensure appropriate notice is provided. This reflects our commitment and desire to ensure appropriate publicity is provided in respect of the powers sought.

We would very much welcome an opportunity to discuss the above with you further and look forward to hearing from you in due course.

Yours sincerely

A handwritten signature in black ink, appearing to read "Ian D. G. Allen". The signature is written in a cursive, flowing style with a large initial 'I' and a long, sweeping underline.

**David Jones
6 Mill Street
Aston on Clun
Craven Arms
Shropshire SY7 8EN**

May 18th 2020

Dr. Ian Dungavell
Chief Executive
Friends of Highgate Cemetery Trust

Dear Dr. Dungavell,

Highgate Cemetery Bill

Thank you for your letter dated April 24th and the Trust's expressions of sympathy.

I have passed copies of your letter to my brothers and we have discussed it between us – at a suitable distance of course!

We understand the Trust's objectives behind the Highgate Cemetery Bill and in particular your desire to see Highgate continue as a working cemetery. We hope you will succeed. We do however believe that the matters referred to in our petition are unfair to descendants, both collateral and direct, and we have little doubt that your objectives can be attained if those matters are fairly addressed.

Turning to the content of your letter you state that the position of descendants is reasonably protected because:

- a) it is possible for direct descendants to take ownership of the right of burial via inheritance and that the Trust can assist in that process where the line of inheritance is not clear;
- b) the right to disturb human remains can be deferred for 25 years as long as a relative of the deceased gives notice of their interest;
- c) the burial right cannot be extinguished, if someone other than the owner objects, without the Secretary of State's consent;
- d) it would be disproportionate to put the Trust in position of having to verify whether those claiming collateral descent truly had that status, and;
- e) your draft bill reflects the precedent created by other cemetery bills (you reference two previous bills presented in 2017 and 1976) and there is no reason why Highgate Cemetery should be treated differently.

Your letter, in its penultimate paragraph, states your intention to publish notices on your website “as part of our effort to ensure appropriate notice is provided” and that it “reflects our commitment and desire to ensure appropriate publicity is provided”.

Our response to the above (using the same paragraph lettering, other than a new (f)) is as follows:

- a) clause 4 of the bill not only permits the Trust to extinguish the right of burial but also means the Trust will have the right to remove a memorial (clause 4(4)) and disturb human remains (clause 5.1(a)). Memorials under your bill are treated differently to the human remains, but, however impersonal they seem, for the family concerned they may be just as important as the remains themselves. (There is no memorial on the grave space purchased by our grandfather, but we have other relatives interred in Highgate – one in an adjoining grave space – where memorials are in place.) Clause 4.7(a) only protects the registered owner of a right of burial. This is an important point for collateral descendants who will have no way to prevent the removal of a memorial other than via a decision of the Secretary of State. Also, even for those who are direct descendants the making of a Statutory Declaration to transfer ownership may not be straightforward where there are multiple direct descendants of the original owner;
- b) a 25 year deferral for disturbing human remains is quite short. We do not think that those who purchased grave spaces in the period prior to 1920 thought that their loved ones were going to be disturbed in 2020 and beyond. Collateral descendants will only be able to defer the disturbance for 25 years whereas a direct descendant may be able to prevent disturbance all together if the burial right is transferred. A nephew or niece in their 50s could still see disturbance taking place in their 70s. This is one of the reasons why we believe collateral descendants need more rights given to them in your bill, and also why direct descendants who are unable to complete a Statutory Declaration need similar protection;
- c) the Secretary of State (and in reality his officials) may be asked to give their consent to extinguishing burial rights, and also therefore removing memorials and disturbing remains. It is implicit that these are circumstances where the cemetery wants to extinguish rights of burial (and can thus remove memorials and disturb remains) and that is opposed by relatives or those who have an interest. Without a process that is detailed in the bill, which gives rights of presentation of evidence and argument to those who protest, we are concerned that the Secretary of State will not have the facts laid impartially before them before they decide;
- d) we do not believe it would be disproportionate to give collateral descendants protection if the drafting of the bill is fairly amended. It can be made the responsibility of collateral descendants to state their relationship with the deceased – if need be under oath - and to provide reasonable evidence. Giving collateral descendants the means to prevent the removal of memorials or disturbance of remains does not mean that they have to be given rights of burial. If the bill is appropriately amended it would eliminate the need for exhaustive genealogical research. Given the age of the cemetery most genealogical records which descendants might refer to are available online and thus the confirmation process by the Trust is NOT disproportionate to something that is likely to be emotionally important;

- e) with regards to the precedent point, if this reasoning were to be accepted, it would mean that my brothers and I would have needed to petition against the two earlier pieces of legislation – in 1976 and 2017. But of course we would have been unable to do that, even if we had been aware of the need, because we would not have had grounds to do so. We would not have been “directly and specially affected” – the language used in the petition form and the key requirement for a petition to be accepted. The arguments put forward in this letter show material reasons why the Highgate bill needs to differ from previous legislation;
- f) publishing notices on the Trust’s own website is consistent with the words that appear on the section of your website that discusses the new bill *“We would do our best to contact the owner. We would write to them at the address recorded in our register and we would place notices in the press, on the web, at the cemetery entrance, and on the grave itself”*. But, we believe that anyone reading that language would have assumed a broader approach to the internet was intended. If the Trustees had meant to limit this to just the Trust’s website you would have said exactly that.

We appreciate that you will be disappointed that we do not accept the arguments that the Trust have put forward. We assure you that we are not objecting for the sake of it but because we believe that the points raised will be important to those who know they have relatives interred at Highgate. If you are able to make the changes suggested there will still be a considerable number of forgotten grave spaces that the Trust will be able to re-use.

Our thanks to you and the other Trustees for the work you are doing to preserve and maintain this important place.

Yours sincerely

David Jones

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interment details

authority Highgate Cemetery

grave reference /32390

Sort By:

Deceased name ▼

Go

Results per page:

Go

10 ▼

name/

[Merrett, Olive Louise](#)

[Merrett, Thomas David](#)

[Merrett, Samuel Fenton](#)

date/

17 May 1920

20 July 1897

29 May 1897

date of death

Unrecorded

Unrecorded

Unrecorded

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interment details

authority Highgate Cemetery

grave reference /29936

Sort By:

Deceased name ▼

Go

Results per page:

Go

10 ▼

name/	date/	date of death
Simmons, Elizabeth	09 July 1934	Unrecorded
Simmons, Gladys Lilian	14 June 1934	Unrecorded
Simmonds, Thomas	01 May 1907	Unrecorded
Simmons, Mary	21 April 1903	Unrecorded
Simmons, Robert	23 November 1892	Unrecorded
Simmons, Thomas Kynaston	22 April 1892	Unrecorded