

# Petition

House of Lords

Session 2022-23

**Bishop's Stortford Cemetery Bill**

Do not include any images or graphics in your petition. There will be an opportunity to present these later if you give evidence to the committee.

Your bill petition does not need to be signed.

Expand the size of the text boxes as you need.

## 1. Petitioner information

In the box below, give the name and address of each individual, business or organisation(s) submitting the petition.

1. Peter Charles Careless, Conifer House, 18, Angmering Lane, East Preston, West Sussex. BN16 2TA.
2. Leonard Antony Careless, 59, Heol Lewis, Cardiff, Wales. CF14 6QB.
3. Alan Alfred Careless, 10 Hart Road, Harlow, Essex. CM17 OHL.
4. Malcolm Charles Careless, Cales Farmhouse, Broadlands Drive, Malvern, Worcestershire. WR14 1PW.
5. Dorothy Mary Cawrey, 19, Leycroft Way, Harpenden, Hertfordshire. AL5 1JW.
6. Mary Taylor, 72, Heath Row, Bishop's Stortford, Hertfordshire. CN23 5DF.
7. Elizabeth Jane Starkey. Virginia Cottage, Kennylands Road, Sonning Common, Berkshire RG4 9JP.
8. Keith Unwin, Piggotts, Bardfield End Green, Thaxted, Essex. CM6 3PZ.

In the box below, give a description of the petitioners. For example, "we are the owners/tenants of the addresses above"; "my company has offices at the address above"; "our organisation represents the interests of..."; "we are the parish council of...".

We are: -

The Great Grandchildren and lineal descendants of William Careless and Sarah Careless,

The Grandchildren of William Joseph Careless and Alice Maud Careless,

The Great Nephews and Nieces of Charles Careless, and

The Nephews and Nieces of Robert Careless

all of whom are buried in a compound grave in the un-consecrated section of the Old Cemetery of Bishop's Stortford under Burial Grants purchased in 1901/1902 .

We are also the Great Nephews and Great Nieces of Mary Careless, Sarah Careless and Joseph Careless who are all buried as infants in the grave adjoining their parents.

In addition, we are the Great Grandchildren and lineal descendants of Alfred John Markwell and his wife Ellen Markwell who are also buried in a compound grave in the Old Cemetery along with their daughter in law Florence Markwell and their grandson Phillip Markwell.

Petitioners Alan Alfred Careless, Malcolm Charles Careless and Dorothy Mary Cawrey are also the Sons and Daughter of Alfred William Careless and Elfreda Careless interred in the New Cemetery of Bishop's Stortford which is adjacent to the Old Cemetery in Newtown Road in a grave purchased in perpetuity in 1966

## 2. Objections to the Bill

In the box below, write your objections to the Bill and why your property or other interests are directly and specially affected. Please number each paragraph.

Only objections outlined in this petition can be presented when giving evidence to the Committee. You will not be entitled to be heard on new matters.

1. A Bill (hereinafter referred to as "the Bill") has been introduced and is now pending in your honourable House intituled The Bishop's Stortford Cemetery Bill 2022 that has been promoted by the East Herts District Council pursuant to Section 239 of the Local Government Act 1972 on the basis that it is expedient to do so. The petitioners would challenge that it is expedient and that it has been misapplied having regard to all the circumstances of this matter.
2. The preamble to the Bill recites that it is "A Bill to confer powers upon the Bishop's Stortford Town Council to extinguish rights of burial and disturb human remains in the Bishop's Stortford New Cemetery and the Old Cemetery for the purpose of increasing space for interments and connected purposes"
3. The Bill if enacted, inter alia, unilaterally extinguishes all easements of exclusive rights of burial purchased by earlier residents of Bishop's Stortford including the family of the Petitioners.
4. Accordingly, we are all directly and specially affected by the Bill now promoted by the East Herts District Council and our rights and interests are injuriously affected by the Bill to which your Petitioners object for the reasons amongst others, hereinafter appearing. Our objections may be summarised as follows;
5. The promoter of this Bill seeks to extinguish existing exclusive rights of burial, whether in perpetuity or for a given period of time and whether in the consecrated or un-consecrated section of both cemeteries (now together called "the Cemetery").
6. If this Bill passes into law, the Burial authority will be permitted to re-use and sell for commercial gain, all and every grave space irrespective of any Diocesan Faculty previously obtained whether they be graves in perpetuity, time limited graves or common graves in either the consecrated or un-consecrated section of the Cemetery. This would include those that would otherwise have needed the licence of the Secretary of State, presently the Minister of Justice, as they fall within the un-consecrated section of the Cemetery and therefore outside the

blanket Faculty of the Diocese. This Bill would therefore deprive the Secretary of State of this function and the scrutiny and the safeguards that the Minister would normally apply. All the Petitioners family are buried in the un-consecrated section of either cemetery and presently enjoy the level of protection the role the Secretary of States' function allows.

7. The Petitioners therefore object to this Preamble and Pray that the Bill will be rejected in total and put the Promoters to proof of the necessity they claim is for the benefit for the residents of Bishop's Stortford.
8. To support this contention, the Petitioners draw the attention of the Committee to Section 25 of the Burial Act 1857 which remains the primary piece of legislation that the Promoters are suggesting is waived to facilitate their proposals. Under this Section, the general position is that buried human remains may not be disturbed without specific authority and makes it an offence to remove human remains without the licence of the Secretary of State or, in relation to ground consecrated according to the rites of the Church of England, a Faculty granted by the Diocese.
9. To support their submission, the Promoters are erroneously calling in aid, the New Southgate Cemetery Act 2017 and also the Highgate Cemetery Act 2022. Those Acts relate to the amendments to existing Private Acts of Parliament that authorised the formation of those Companies before modern company legislation which enabled those cemeteries to be constructed. Those companies have no memorandum or articles which they can alter by a meeting of shareholders and have to rely upon the goodwill of this house to amend their existing private act in order to further their business plan and commercial activities the terms of which those members of the public seeking their services are willing to accept.
10. These private Acts have no value as a precedent for the Committee to rely on and have no application nationwide as a Public General Act of which the Burial Act 1857 is one. These Acts relate to London cemeteries only, formed in Victorian times by entrepreneurs accountable to their shareholders to siphon off what was perceived to be a crisis in burials in churches and churchyards which neither the Church of England nor the Government at the time were addressing. There are no municipal cemeteries nationwide which are seeking these powers as no further private acts were sought after the creation of municipal cemeteries.
11. The Promoters also refer to the City of London (Various Powers) Act of 1969 and the Greater London (General Powers) Act 1976 as being precedents in support of their proposal but it is submitted that Acts of Parliament applicable to London were intended by the legislature only for the metropolis and not for the rest of the Country.
12. The Petitioners draw the Committee's attention to the various reports by Dr Julie Bagg, the principal advisor to the Secretary of State, which detail the reception and implementation of the adoptive powers contained in those Acts.
13. The last time the Government of the day reviewed the suggestion that existing graves should be re-used was in 2000 and as the Members Briefing Paper number 04060 of the 6<sup>th</sup> June 2017 shows, no further action was taken nor were any further reviews proposed to be taken.
14. At the time of the last consultation, the then Secretary of State, the Home Secretary, the Rt Hon Paul Boateng, said " that he has no problem giving his licence to excavate an old cemetery for archaeological or scientific reasons or for that matter using an old cemetery for other purposes but a new piece of Primary Legislation would be needed if we decide that disturbing old graves is the right way to tackle shortages of grave space." At that time 70% of the population elected to be cremated. Since that consultation. The rate of cremation has risen

to 81% last year. H.M. Government decided to keep the matter under review until 2017 when it was decided that a continuing review was not necessary. This was the view of both political parties at the time. The Government has restated its opinion in an answer to a written question raised in the Commons during 2022.

15. Yet notwithstanding this, and reading the evidence in the Bishop's Stortford Town Councils' initial Bishop's Stortford Cemetery and Consultation Document, they admit they have obtained a blanket Faculty from the diocese to re-use 3100 common graves but now allege that only 156 will be useable without seeking the additional powers set out in the Bill to disturb the graves in perpetuity or time limited in both consecrated and un-consecrated sections of the Cemetery on a time frame to suit themselves.
16. The promotion of this Bill is by a public authority on behalf of a Town Council which assumed, by virtue of Section 214 of the Local Government Act 1972, the functions of a Burial Board created as a result of the Burial Act of 1853 which included all the criteria for the formation of extra mural burial grounds adopting the perceived safeguards for the proper ventilation of cemeteries.
17. The Public General Acts are supported by subsidiary legislation, such as the Local Cemeteries Order 1977, which already gives permission to re-use graves that have been purchased and have remained un-occupied for 75 years. In addition, the Town Council already owns a separate site in Little Hallingbury and also some allotment land which could be reallocated. No evidence has been forthcoming to show that land not originally intended for interment has been assessed for use as is the case in some London Authorities. Instead, the Promoters claim that there is no land available.
18. This is erroneous as Bishop's Stortford is a small town of 40,000 population hemmed in on all sides by more or less open land. It is not a metropolis where Governments of the day delegated the provision for the disposal of the dead to the private sector. Alternative means of disposal, crematoria, have increased in Hertfordshire and the neighbouring Essex areas.
19. No evidence has been put forward as to the effect this would have on the cultural heritage that currently exists and how it needs to be identified as demonstrated by the Governments own press releases.
20. No evidence has been put forward of consideration of any future acquisition, compulsory or otherwise, of land by way of provision in the Town or Area Plans other than to seek a cash contribution to facilitate re-use of graves from developers pursuant to Section 106 of the Town and Country Planning Act 1990.
21. The alleged objective is to be able to provide a convenient urban based intra mural cemetery for the benefit of its residents, even incomers into the town which flies against the current strategy of extra mural cemeteries that has continued for the past one hundred and ninety years.
22. The memorandum by the Home Office and the Department of the Environment, Transport and Regions, (CEM 49) gives a clearer more structured description of the result of the 2000 consultation and the contributors thereto. It illustrates the reluctance on the part of District Councils to make proper planning provision and the failure to consider the heritage value of graves to the community and the reluctance to spend money on available sites.
23. The last analysis by the office of National Statistics shows that the provision for cemeteries barely registered as it formed less than 0.1% of Council operations , so small that the ONS was unable to express an opinion that it represented good value for money.

24. The Petitioners therefor submit that it is not the place of one small Hertfordshire town to try and bypass the proper function of Parliament, whose existing policy of no action is quite clear, by circumventing proper national discussion on the subject which would include more robust policies, regulations, planning policies, finance, compulsory purchase and heritage considerations simply to satisfy unregulated commercial aspirations to plug holes in Council Budgets.
25. No estimate has been put forward as to the likely demand for burial space where cremation is the preferred form of disposal by 81% of the population. The faiths that still require burial represent an insignificant part of the town population. There is no reason to doubt that the virgin land bank presently available for the next decade coupled with other land presently owned with other areas reclaimed will be sufficient to avoid plundering graves previously purchased
26. According to the Royal Society of Chartered Surveyors, there are 1180 municipal cemeteries in England. If the Committee authorise this Bill, it will not mean that the facility being sought will become available to every Public Authority. It may however encourage others to seek the same facility to shore up the cost of running a cemetery or to avoid the expense of maintaining a closed one as a public open space.
27. The Committee will note from the explanatory memorandum that they have not been referred to any other Municipal Authority having those powers or seeking them. The Petitioners submit that the Promoters are in derogation of their existing statutory powers of planning and compulsory purchase, have failed to hold a local enquiry for a perceived shortfall that may never happen. The Town Council, being a Parish Council, does not have these powers and is dependent on the Promoter to acquire land.
28. Our Great Grandfather and Great Grandmother are buried with all five of their children. His foresight offers a sense of continuity to all those that follow. It was not a decision he took lightly. He purchased the grave spaces in perpetuity when the cost was the equivalent of three weeks wages. In doing so, it was the only way that the regulations permitted more than one burial in a grave and to avoid the distribution of the family amongst common graves at a time before cremation was legal.
29. The Proposer makes no secret that by re-using the graves, they will be able to sell them and create an income stream which would avoid falling back on the rates if there are only 25 interments per year. Yet public crematoria have been dismissed on the basis of cost and staffing even though all crematoria make a profit and public crematoria subsidise burials and cemeteries. So, the true intention is to create an income stream out of what is already there.
30. It is incumbent upon the Petitioner to assist the Committee in commenting upon a number of deficiencies in the draft Bill before them.
  - A) In the interpretation clause, it is suggested "relative" should have been further defined as including either lineal or collateral descendants. In the Petitioners case, Sarah Careless, Mary Careless and Joseph Careless, being infants will not have any descendants and similarly for Charles Careless, Robert Careless and Phillip Markwell, all of whom died of full age without issue. It is felt this should have been drafted as wide as possible to include not only all lineal descendants but also collateral descendants who would not otherwise qualify.
  - B) Clause 3(7) and Clause 8 allows a Burial Authority to avoid compensation by reviving an extinguished right of burial if compensation assessment by arbitration fails. This would not prevent the burial authority repeating the extinguishment process at a more favourable time.

- C) The Petitioners have already pointed out that they have no right to object to the extinguishment of the right of burial until the Burial Authority decides to serve notice by which time the Petitioners will no longer exist as the last interment was less than 75 years ago.
- D) Clause 4(4) and Clause 8(c) suggests that the excavation process, if handled mechanically, will result in whatever remains are left being re-interred in 'an approximate location'. Any disinterment should be the subject of ministerial regulation and should also take into account the laws and opinion of the Church of England.
- E) Clause 5(3) should impose an obligation on the Burial Authority to agree conditions with the Diocese which would be compatible with regulations to be promulgated by the Secretary of State for the proper re-use of any grave space having regard to the sensibilities of those religions who do not subscribe to the Anglican Creed.
- F) The Bill is silent on the preservation of heritage graves.
- G) Clause 9 is drafted using as a precedent another Private Act of Parliament, the Swavesey Bye-laws Act 1984, promoted by the South Cambridgeshire District Council to authorise them to recover expenditure on Bye-ways from a limited group of people. The Parish Council had been responsible but the arrangement would have evaporated two years later under the 1972 Local Government Act. It became expedient to promote the Act so that the District Council could stand in place of the Parish Council to continue with this special levy created by commissioners. The secondary purpose was to authorise the reimbursement of 16% of costs. This does not represent a precedent for this matter as no finance is being authorised here. The secondary purpose cannot therefore be severed as a precedent for you today and accordingly fails

### 3. What do you want to be done in response?

In the box below, tell us what you think should be done in response to your objections. You do not have to complete this box if you do not want to.

You can include this information in your response to section 2 'Objections to the Bill' if you prefer. Please number each paragraph.

1. The Petitioners therefore humbly pray that the Bill may not be allowed to pass into law as it now stands or at all.
2. If however, the Committee feel that this proposal should go forward, then the Petitioners request that consideration be made to allow the Petitioners, or any other family in a similar situation, the option to give notice of objection, before the exercise of the powers that may be conferred on the Burial Authority to extinguish the rights of burial in perpetuity in a specific grave space or compound or those known to be closely connected thereto, by any relative of the original purchaser. Such notice could be given to the equivalent to a proper officer for the time being of the Burial Authority or its successor thereto and such right of burial would not be extinguished under the Act, nor any memorial removed.
3. In this way, it gives the right to issue a permanent 'do not disturb notice' for a specific grave which the Burial Authority could otherwise avoid by deferring to give notice for a substantial number of years to the detriment of the petitioners who would no longer exist.
4. A simple sub clause could be added; 'Any objection to the extinguishment of a right to burial in perpetuity or time limited grave, or in any grave closely connected thereto within six months from the commencement of this act by a relative whether lineal or collateral, such right of burial shall not be extinguished under this act nor any human remains disturbed or any memorial removed'
5. That the Committee support the Petition against the Preamble and against such clauses and provisions of the Bill as affects the property, rights and interests of your Petitioners and in support of such other clauses and provisions as may be necessary or expedient for their protection, or that such other relief may be given to your Petitioners in the premises as your Lordships shall deem meet.

## Next steps

Once you have completed your petition template, save it and either submit it via the petition portal: <https://committees.parliament.uk/work/1322/petitioning-against-the-monken-hadley-common-bill/> or email it to [hprivatebills@parliament.uk](mailto:hprivatebills@parliament.uk) or post to the Private Bill Office, House of Lords, London, SW1A 0PW.

## Petitioner's details

**Organisation/group name (if relevant)**

**First name(s)**

**Last name**

**Address line 1**

**Address line 2**



**Post code**

BN16 2TA

**Country**

United Kingdom

**Email**

**Phone**

**Who should be contacted about this petition?**

Individual above

Another contact (for example, Roll A Agent or other representative)

If another contact, complete the 'main contact's details' section.

## Main contact's details

**First name(s)**

**Last name**

**Address line 1**

**Address line 2**

**Post Code**

**Country**

**Email**

Phone

## Terms and conditions

### **Personal information**

A copy of this petition and information provided in the online form will be:

- kept in the Private Bill Office and as a record in the Parliamentary Archives.
- sent to the Bill's Promoter after the petition has been received by the Private Bill Office.

We will publish your petition on UK Parliament's website. This will include your name and address.

The personal information you have provided may be kept in a database by both Private Bill Offices.

### **Communications**

Private Bill Office staff may call or email any of the people named in the petition to verify the information provided.

Communications may be stored in databases to keep track of information you have given or received. This information may be shared between the Private Bill Offices.

### **Consent and confirmation**

The information you have provided in the petition and online form is accurate.

If you have completed the form on behalf of an individual, a group of individuals, an organisation, or a group of organisations, you have been authorised to do so.

**Check this box if you agree to the terms and conditions**