MINUTES OF ORAL EVIDENCE

taken before the

OPPOSED BILL COMMITTEE

on the

BISHOP'S STORTFORD CEMETERY BILL

Thursday 6 July 2023 (Afternoon)

In Committee Room 2

PRESENT:

Lord Etherton (Chair)
Lord Reay
Viscount Stansgate
Baroness Thornhill
Baroness Willis of Summertown

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IN ATTENDANCE:

Mustafa Latif-Aramesh, Agent for the Bill
Che Diamond, Assistant Counsel to the Chairman of Committees
Chris Salmon Percival, Clerk of Private Bills in the House of Lords

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WITNESSES:

Victoria Wilders, East Hertfordshire District Council
James Parker, Bishop's Stortford Town Council
Peter Careless, Petitioner

IN PUBLIC SESSION

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(At 2.10 p.m.)

322. THE CHAIR: Mr Latif-Aramesh, if you would like to start your reply now.

Response by Mr Latif-Aramesh

323. MR LATIF-ARAMESH: Thank you, my Lord. We would like to take the opportunity to thank Mr Careless again for his submissions which we have carefully considered as he had helpfully provided them in his petition and then his supplementary evidence. We are, of course, acutely aware of the sensitivity of this issue and given the substance we are dealing with, we have the utmost sympathy for the losses that Mr Careless and his family have endured.

324. We consider that Mr Careless has raised a number of substantive points which we wish to respond to, bearing in mind, my Lord, your direction, before we broke for lunch, that his supplementary evidence would, effectively, be read into the transcript.

325. THE CHAIR: Yes.

326. MR LATIF-ARAMESH: Where Mr Careless has raised a new point in his submissions today, we will highlight that for the purposes of our submissions.

327. Before I turn to each of the five key areas that he has raised, I also wanted to make a distinction between the public interest and the private interest arguments that are presented. We take no issue with Mr Careless seeking to protect his private interests and that is precisely why the Bill includes protections which would allow him, and others directly affected, to prevent the exercise of the powers.

328. What we do take issue with is the public interest arguments that have been presented. The promoters are confident that the Bill is both necessary and acutely required for the benefit of the local inhabitants. The public interest is mindful of the private interests, including of those of Mr Careless, but the two should not be conflated.

329. On first issue of the five that I mentioned is the issue of cremation, and Mr Careless, in his supplementary evidence, refers to increasing demand for cremations. In short, whilst it is accepted that a majority in national polls indicate they wish to be cremated, this does not avoid the need for a minimum and sustainable absolute number. We think that this a conflation between percentages of people who wish to cremated and

buried versus the absolute number, and the absolute number will continue to be necessary to fulfil in demand terms.

330. It is not the case that because most people are cremated there is no demand for burial space and that is what gives rise to the necessity for this Bill. The absolute number must be seen in the context of population growth and gives rise to a significant ongoing demand for burials. It is difficult to predict with any accuracy the future demand for burial as the annual figures fluctuate.

331. The average number of new graves laid out in the cemetery is approximately 25 as we heard earlier today. As of 2022, a very limited number of graves could be accommodated in the virgin ground and, as our evidence has made clear, burial capacity in the cemetery will cease within a generation. The forecast that we have carried out suggests it is likely to be approximately 12 years.

332. We have also discussed the second point, the adequacy of the faculty. We have considered this quite comprehensively in our initial remarks so I will not repeat what we have said. Needless to say, the ability to use that faculty for the purposes of increasing burial capacity is extremely limited because of tree protection zones, because of the limitation on exclusive rights of burial, which a faculty cannot override.

333. I should also just pause on the point of the faculty, which is to say it relates to the question of alternatives, which is the third matter which I will turn to very shortly but at present, because the powers of reuse can effectively be used under the terms of that faculty, there is an ability to use the consecrated parts of the cemetery but not the unconsecrated parts.

334. That is actually not how the Bill would necessarily be implemented, because some of the areas that are unconsecrated may be more suitable, may be older, may have less interest in them than the parts that are consecrated, so again the faculty is pushing the town council in the direction of having to reuse parts of the cemetery under the terms of that faculty.

335. I would also just note that what is being suggested here—and we will come onto the question of precedence—is common practice by the Church. The Diocese of St Albans itself says that, where 75 years has elapsed since interment, there is commonly a

policy in churchyards of burial reuse. This may become more commonplace as the shortage of burial space becomes more acute. Families should therefore be aware that a reservation does not prevent such future uses. Other dioceses are similarly categorical on this question. The local diocese, for example, says, "Reuse of graves, as soon as 75 years has elapsed after the most recent burial, should be promoted and publicised". This is common Church practice and again, I will return to the question of Highgate and New Southgate Cemetery shortly.

336. THE CHAIR: So you have just been dealing with number one.

337. MR LATIF-ARAMESH: Number one was the cremation. Number two was the adequacy of the faculty.

338. THE CHAIR: I see, thank you.

339. MR LATIF-ARAMESH: And number three, which I am turning to now, is the question of alternatives.

340. THE CHAIR: Yes, thank you.

341. MR LATIF-ARAMESH: You heard that there are seven acres of land that are suitable for burial space reuse. These are two of the three sites that we dealt with in some detail. They are not suitable.

342. In the case of the first site, and I will ask Mr Parker about this, we have set out that the access arrangements are not suitable, that it adjoins a local sewerage works. In addition to that, the site is outside the boundary of both the county and the parish council. It is not close to any public transport, so could the site be used for the purposes of burial at great inconvenience, and again, sterilising the proposed use for that land? So that is five of the seven acres.

343. Five of the seven acres is an entirely unsuitable site. So the number of 5,700, which I will return to very shortly, is simply not correct.

344. On the second site that was mentioned, so the two acres of seven, this is the site that we mentioned has been purchased using Section 106 agreement funds for the purposes of providing an allotment. It would be difficult to apply for an amendment to

the terms of that Section 106 agreement, given the funds were specifically provided by a third party developer to be used for the purposes of allotment, to be used for some other purpose, so that is the remaining two of the seven. We do not recognise the possibility of seven acres being open for use in burial space terms.

345. We would also just reemphasise the point that using any of these sites, or any other further sites that have not yet been forthcoming, would sterilise it from other uses. The Bill allows the town council to continue operating a burial ground without sterilising other uses. That is a much more, in our view, sustainable way of ensuring that land is not constantly bought up, sterilised and prevented from further development.

346. We have looked at the question of the alternatives presented and we do not think they are suitable. As I mentioned, the town council twice went out looking for sites. If a suitable site had come forward, we would not be here today.

347. On that point, I will just hand over to Mr Parker to specifically comment on a comment that was made about a quiet place of tranquillity at the back of the existing cemetery.

348. MR PARKER: Yes, I think Mr Careless referred to this quiet place of tranquillity at the back of the cemetery, which is indeed advertised in our cemetery brochure. It is quite narrow. It has trees adjacent to it and we have assessed the possibility of putting burials in there and it is simply not practical.

349. A grave space occupies approximately three metres by 1.4 metres by the time you have taken account of the walls that you need between adjacent graves because you cannot put coffins right next to one another otherwise when you dig the next grave, the wall falls in, so you have to leave spaces between the coffins and there simply is not the space there.

350. I would also take issue with the idea that a cemetery without some quiet space for contemplation would fulfil the requirements in terms of honouring loved ones and contemplating and remembering loved ones, but that space in particular has been assessed for burials, and was left as a quiet space for contemplation for the express reason that it is not suitable for burials. It is only, anyway, a very small space so does not provide any sustainable supply.

351. MR LATIF-ARAMESH: Thank you, Mr Parker. I think I also—just in the context of my third point around the consideration of alternatives—Mr Careless raised the prospect of using paths and footpaths in the existing cemetery.

352. THE CHAIR: Yes, and I think did read somewhere—I could not put my finger on it either—that in Highgate they did do that and they got an extra row of graves in where previously there was pathway.

353. MR LATIF-ARAMESH: I should note that I was involved in the Highgate Cemetery proceedings and I will touch on this a bit more when we get to the fifth topic of precedence, but on the issue of utilising footpaths in this cemetery, there are approximately 1,920 linear metres of footpath in the old and new cemetery. Footpaths are typically three metres wide or less, equating to an area that is approximately 5,749 square metres.

354. The reason I am going into the details of the numbers is that that works out at approximately 10.5% of the existing cemetery site.

355. THE CHAIR: Equates to 10%, do you say?

356. MR LATIF-ARAMESH: 10% of the cemetery site, so we do not recognise the figure of 21% that was mentioned in Mr Careless's supplementary evidence. But whether it is 10% or 21%, we would note that when a cemetery is designed, best practice is to allow 25% to 30% for internal access tracks. That is for practical reasons, for grave digging; it is to allow people to access graves and memorials to ensure they can get to where they want to go to.

357. THE CHAIR: Where does that statistic come from?

358. MR LATIF-ARAMESH: That comes from the Cemetery Development Services, an organisation that is involved in laying out of cemeteries.

359. THE CHAIR: Do they have a booklet or anything about this? How did you get that information?

360. MR PARKER: I will respond to that. Just to clarify, it is 25% for access tracks and other non-burial uses. So you take the gross area of the cemetery, subtract 25% and that

gives you roughly speaking the amount of grave space you have. They do not publish a booklet but we have been in contact with them on several occasions in the context of various things to do with the development of the cemetery and that is a number they frequently quote.

361. As Mr Latif-Aramesh has pointed out, in our case with the number we recognise the access tracks are 10%. Do you want to carry on, on access tracks?

362. MR LATIF-ARAMESH: Yes. The redesignation of footpaths and roadways was one of the options considered by the council during its lengthy deliberations on how to solve the problem of lack of grave space but it is not practical and it will only yield a handful, for the reasons that Mr Parker and I have just set out.

363. In particular, a network of footpaths and roadways is necessary to allow access, as I mentioned, for preparing and maintaining graves, and for mourners and relatives to honour their deceased relatives. Without a network, it would be necessary to drive hearses and heavy machinery for an extensive distance over graves, which would be dangerous, disrespectful and impractical.

364. As I have mentioned, the best practice on this is—we think we have pushed this to a limit and to any extent we could go any further, it would not provide a sustainable long-term supply of burial spaces.

365. MR PARKER: Just to emphasise, as Mr Latif-Aramesh has mentioned the footpaths to be three metres wide or less, they are actually three metres wide in the new cemetery, 2.4 metres wide in the old cemetery. The other restriction you have on the use of footpaths for graves is assuming you wish to preserve the order of the cemetery, i.e. graves being pointing east/west, which is the Christian tradition, and as I have said, this is mostly a Christian cemetery, and do not want to have graves, if you will, in random directions, then obviously you have to align the graves with the paths.

366. If they are only 2.4 metres wide and a grave is three metres long, it does not fit. So the number of graves that you can get by reusing paths, even if you could do so, is substantially less than the gross calculation based on areas would suggest.

367. The other thing that is worth mentioning is that, as we have stressed, cemeteries

are there for people to honour and remember their loved ones after they have been buried as well as for the actual burial. Thus, people need to gain access to graves. Many people honouring their loved ones are themselves advanced in years and perhaps not the most mobile. If you start removing paths, particularly in areas such as the old cemetery where you have large memorials and curb stones around graves, you make it much more difficult for those people to gain access to the graves.

368. Yes, you could, perhaps practically, gain a very small handful of graves by doing that, by blocking them up at the ends of rows, although if you look at the map of the new cemetery and the old cemetery, you will find that has already been done; they already, in most cases, stop before the ends.

369. Finally, many of the paths in both the old and new cemeteries are used as walkways. They are routes between points in the town. They are connecting bits of the town very pleasantly. People enjoy this to the extent that when we were required to close the cemetery during the Covid pandemic, which we were in one of the lockdowns, we received complaints and our MP received complaints from people who were upset that they could no longer pass through.

370. For very practical reasons, we do not consider reusing the paths would yield anything more than a handful of graves, so it is not a sustainable solution, and it would also remove yet another facility from the residents of the town.

371. VISCOUNT STANSGATE: Can I just ask whether it is the current practice for cars to drive along these pathways in the course of a burial, not to mention the equipment needed to dig?

372. MR PARKER: Yes, absolutely. Those pathways are for people, for hearses and for diggers, and for other maintenance equipment as we maintain the cemetery, so they are vehicular paths as well as footpaths

373. LORD REAY: Could you please let us know what are the nearest other churches or burial grounds in the area and what might their capacity be for new burials?

374. MR PARKER: The nearest municipal cemetery is in Sawbridgeworth, which is about five/six miles away. That does have capacity. However—and this remains an

important point—many people who wish to be buried, the relatives of people who wish to be buried or, indeed, the people who wish to be buried through their will, wish to be buried where they live. That is a really important point. Bishop's Stortford is a distinct settlement from Sawbridgeworth and many people wish to be buried where they live.

375. You are right; Sawbridgeworth does have capacity, yes, as does Harlow which is probably the next nearest cemetery of any size. That is in a different county as well as being in a different town, but, again, does not provide the local service that our customers typically want.

376. THE CHAIR: Thank you.

377. MR LATIF-ARAMESH: Just to end on the issue of alternatives and specifically paths, as we have tried to make clear, we have really tried to carefully balance, not just private interests and the public interest in meeting burial space capacity issues, but there are these other considerations that you can see coming up to the surface around public rights of way and, if we followed some of the suggestions, we would be left in the same position of having to choose between providing pleasant public rights of way and access points, reducing the convenience and necessity for vehicles accessing grave spaces for maintaining and preparing graves, and reducing the amount of space they have to do that. All of this hangs in the balance, and we really do think we have reached the right balance in what we have presented, which I think takes us to the question of precedence.

378. Mr Careless sought to make a distinction between –

379. THE CHAIR: Although it is not part of the seven acres, which are the two sites you mentioned, reference was made, I think, by Mr Careless putting in issue about the floodplain. Do you want to say anything about that? He seemed to think that the plot of land he was talking about in that context was outside the floodplain.

380. MR LATIF-ARAMESH: If you just give me one moment. That is the Thorley Street site, I believe, that Mr Careless was referring to. This is the site that was specifically purchased using a third-party developer's funds for an allotment.

381. THE CHAIR: I see; that is the allotment site.

382. MR LATIF-ARAMESH: Yes.

383. THE CHAIR: Thank you.

384. MR LATIF-ARAMESH: I will turn to the point relating to precedence unless there are any questions. Thank you.

385. Mr Careless sought to make a distinction between the cemetery, which is the subject of this Bill, New Southgate, Highgate and other London local authority cemeteries.

386. On the London Local Authorities Act 2007, the New Southgate Cemetery Act 2017 and the Highgate Cemetery Act 2022, we want to be very clear and categorical here. The justification for those provisions was burial capacity. It did not turn on the status of the promoters, it did not turn on the location, it turned on the need. That need, as we have expressed, exists in this case here.

387. Like this Bill, those Acts were needed because the cemeteries needed more grave space and legislation was required, first, to extinguish exclusive rights of burial and, secondly, to authorise the disturbance of human remains, which would otherwise have been a criminal offence.

388. Whether or not an entity is a body corporate or alternatively a local authority, the same disapplication of the Burial Act 1857, as Mr Careless rightly corrected me on, was given in all of those cases. It would be a very peculiar position if a private corporation were able to seek the deviation from the public law, i.e. a deviation from the Burial Act, but a local authority running a cemetery which is going to run out of capacity could not obtain the same powers.

389. On the substantive issue of seeking these powers for a cemetery outside of London, it is not the location, but, as I said, the need. Although the Ministry of Justice has not yet found a national need for grave renewal powers, Parliament has accepted that, if the need exists in a number of specific locations, then it can proceed.

390. Given the scale of development, it is unsurprising that the first few local Acts have come forward in London but this does not affect the question of whether the need exists elsewhere. As we have made clear, this need has arisen in this location.

391. We would note that Mr Careless's supplementary evidence specifically quotes the

Minister's most recent position on this question, and I quote from it: "Decisions on local burial space are for local authorities as they are best placed to understand what is required for their local area. Government would not consider intervening at scale unless evidence suggested burial space became a national issue. In the event of a specific request for intervention from a local authority the Ministry of Housing, Communities and Local Government would work with the Ministry of Justice, which is responsible for burial law, to support the local authority as appropriate". What is happening here falls squarely within that ministry.

392. THE CHAIR: When was this statement made?

393. MR LATIF-ARAMESH: In September 2021. It is in Mr Careless's supplementary evidence.

394. VISCOUNT STANSGATE: Was it made in the House?

395. MR LATIF-ARAMESH: I believe it was in response to a Written Ministerial Statement.

396. THE CHAIR: This is a statement by who? The Secretary of State?

397. MR LATIF-ARAMESH: It was a junior Minister.

398. THE CHAIR: The Justice Minister. Okay.

399. MR LATIF-ARAMESH: I want to be clear that what is happening here is precisely that: a local authority, which understands what is going on in its area, is following what it considers to be required. In addition, as I mentioned in my opening remarks, we have worked very closely with the Ministry of Justice. I note that Mr Careless said that, when applying for licences, the Ministry of Justice never considers reburial as a relevant ground.

400. In our pre-deposit correspondence, we had detailed discussions with the Ministry of Justice specifically about the appeal provision, so the circumstances we have spoken about at length today where any other person objects, and the proposals can only proceed if the Secretary of State consents.

401. We asked them to give an indication of what factors they would consider at that

stage. Now, I apologise that that was not put into your bundles because the point that was raised, which is the Ministry of Justice never considered reburials, was not put in the petition or supplementary evidence; otherwise, we would have provided it to you for a clear affirmation from the Ministry of Justice that it would consider the wider need for burial reuse when considering an appeal. It would also consider the status of the person who made the objection. So all of this is to show you that the Ministry of Justice has actively been involved in these discussions.

402. THE CHAIR: You do not have any material, written exchanges, that you can give us.

403. MR LATIF-ARAMESH: We have a letter that confirms exactly what I have just set out which we would be more than happy to provide.

404. THE CHAIR: I think it would be helpful to have something in writing expressing the MoJ's view, either generally or about this particular proposal.

405. MR LATIF-ARAMESH: Yes.

406. THE CHAIR: Can you do that?

407. MR LATIF-ARAMESH: As soon as we can, we can provide you with that letter, which is specifically, to be clear, the appeals provision, and it confirms that the purpose of reburial—sorry, the function of reburial would be considered in determining an appeal, but it also refers to considering other matters.

408. THE CHAIR: Does one of your number currently have any such documentation?

409. MR LATIF-ARAMESH: We have it electronically.

410. THE CHAIR: Somebody can copy it for us.

411. MR LATIF-ARAMESH: Yes. We can do that, if you just give me one moment. It looks like it is being addressed.

412. THE CHAIR: Thank you.

413. MR LATIF-ARAMESH: I wanted to be clear that in the supplementary evidence you will see references to, 'We are not going to proceed on a national level. There is no

national need'. The Ministerial Statement makes clear that the ministry will work with us on this, and we have found that it has worked with in practice.

414. It did not report against the London Local Authorities Bill as it was then, or the New Southgate Cemetery Bill, or the Highgate Cemetery Bill. It is open to any Government to object to a private Bill following committee proceedings; they elected not to do so. From our perspective, we think we are compliant. We have demonstrated the need, which justifies the exception from the general law.

415. For completeness, although there are many primary and secondary pieces of legislation that authorise the removal of human remains, such as infrastructure projects—the high speed rail Act, for example—they all disapply the Burial Act because they may come across human remains. Again, I think that goes to our point that it would be quite peculiar for Sizewell C nuclear power station to be able to move and disturb human remains but not a local authority which is seeking to increase burial capacity in its local area for its local inhabitants.

416. VISCOUNT STANSGATE: Can I raise a question here which has not been touched on in the presentation so far? You had experience of the Highgate Bill so perhaps you have some greater knowledge. Where does the number 75 years come from? Has there ever been any discussion, to your knowledge, about extending it, making it 100 years? If it was 100 years, for example, have you ever calculated what difference it would make to the forecast needs of Bishop's Stortford and the extent to which this Bill would fulfil your requirements, even though the figure of 75 was replaced by 100?

417. MR LATIF-ARAMESH: Thank you for the question, my Lord. On your very first question of where it comes from, the starting point is that the Local Authorities' Cemeteries Order 1977 that I mentioned earlier refers to the period of 75 years where a space is not being used. So that is probably the starting point.

418. THE CHAIR: Which date was that?

419. MR LATIF-ARAMESH: Local Authorities' Cemeteries Order 1977.

420. THE CHAIR: The City of London (Various Powers) Act 1969, which is in your

bundle, also refers to 75 years.

421. MR LATIF-ARAMESH: It does, and I think it is important to say that the 75 years is likely to be from a predecessor to the Local Authorities' Cemeteries Order, which covered the same ground. Since then, it has been used in the 2007 Act that I referenced, the 2017 Act, and the 2022 Act.

422. On the specific question of whether it been considered that it should be extended, that was a question before the Opposed Bill Committee on the Highgate Cemetery Bill. They decided not to extend it. One of the petitioners had requested an extension to 100 or 125 years. It was rejected.

423. So 75 years effectively allows two or three generations to pay their respects. In addition to additional protections that allow for vetoes, objections, to be raised, it was considered to be an appropriate amount. In this case, we also consider it to be an appropriate amount of time.

424. I would just note that the Church of England's churchyard guidebook suggests 50 years, so again, during the course of the Highgate Cemetery proceedings, we had detailed discussions, as you would expect, with the diocese, which was questioning the period, whether it should be reduced, whether it should be increased, and it agreed that the 75-year period was effectively a good balance.

425. The extracts I read from the Diocese of St Albans as well as the Diocese of Southwark also referred to 75 years.

426. VISCOUNT STANSGATE: In your case, the old cemetery obviously goes back quite a long time and I would understand if you had never done any calculations as to the effect of increasing the period of time from 75 to 100. Would it make any tremendous difference to your wish in this Bill to reuse the graves necessary to make you sustainable in the years ahead?

427. MR LATIF-ARAMESH: I am not sure that we have done the calculations on moving from 75 years to 100 years. What I would say is that, even if there was no immediate impact, over the long term, as new graves came up for renewal, it would start to chip away at the ability of providing a sustainable—

428. THE CHAIR: This specific point about increasing the period has not been raised, or have I missed something?

429. MR LATIF-ARAMESH: I think it is mentioned in Mr Careless's original petition.

430. THE CHAIR: Is it? He wants to raise it up to 100.

431. VISCOUNT STANSGATE: I do not remember it, sorry.

432. THE CHAIR: I do not recall seeing that.

433. MR CARELESS: I do not think I mentioned it in my petition.

434. BARONESS WILLIS OF SUMMERTOWN: We just asked the question.

435. THE CHAIR: Yes, but we are confined to what the petition says. Shall we move on?

436. MR LATIF-ARAMESH: I am happy to, my Lord. We are still on the question of precedent, which I will cover only briefly, because Mr Careless has not raised it today but it is mentioned in his supplementary evidence. The question relates to the Swavesey Bye-ways Act, and we have referred to it in our Explanatory Memorandum.

437. The short answer is that the Explanatory Memorandum is a tool that has two functions. One is to provide in fairly simply terms what the Bill is intended to do, and the second is for the purposes of the draftsperson to understand on what precedent it is based. That provision is based on drafting that is included in Swavesey Bye-ways Act, but we are drawing no parallel with why it was included in that Act; it is merely a drafting point. We have set out why that power is needed elsewhere. We think we will probably return to that if we are allowed to proceed, because it is a detailed question that does not involve the preamble, but I thought I would just mention it for completeness now.

438. On expediency, we think that we have set out clearly why the process is required. Just for completeness, on the discussion about councillors from the town council also being councillors of the district council, Section 239 of the Local Government Act 1972 sets out the process for what a local authority has to complete before it deposits a Bill. In the vote, a vast majority of councillors supported it, including those outside of the

parish. Nobody voted against the first resolution and I believe—I will confirm this—that only one councillor voted at the second resolution point. To the suggestion that something inappropriate is going on, I just wanted to make sure that that had been addressed.

439. Finally—I am just flagging this at this point—we propose to make some undertakings for the purposes of Standing Order 130 in order to take a step back on why we are doing this.

440. THE CHAIR: Are you dealing with general principle now or are you dealing with Mr Careless, just out of interest.

441. MR LATIF-ARAMESH: I am dealing with Mr Careless's submissions that are included specifically in his supplementary evidence around the protections that should be provided by the Bill.

442. THE CHAIR: Thank you.

443. MR LATIF-ARAMESH: One of the specific matters that has been raised is appropriate spacing. We wanted to specifically comment on this; I know Mr Careless did not make the comments verbally, but it is very clearly a comment that he has made and which we have had careful regard to in his supplementary evidence.

444. The space between plots is currently determined by the need for the walls to have adequate stability when an adjacent plot is dug and for there to be sufficient space for the purposes of access, so you cannot put them incredibly close together because it might start to interfere in the stability but also the access arrangements for the particular plot.

445. This results—and again forgive me for the specifics, on the millimetres—a maximum grave size of 1,950 millimetres by 760 millimetres within a plot which is 2,700 millimetres by 1,400 millimetres. Defra has recently consulted on a series of proposals which would require plot sizes to be increased. Should that be endorsed and put in place by Defra, the amount of space that is left in the cemetery would be even more acute. All the calculations that we are giving you today do not account for this change that Defra is currently consulting on.

446. THE CHAIR: Why is this with Defra's remit?

447. MR LATIF-ARAMESH: I believe it is within Defra's remit because it relates to soil stability.

448. MR PARKER: I think it is density of graves, actually. So the Environment Agency, through Defra, is concerned essentially about soil pollution because of the leachates from decomposing bodies. I am not sure whether it is the actual decomposition or whether it is the chemicals that are used when bodies are prepared for burial, but they are concerned, therefore, about grave density and have therefore considered whether grave density should be forcibly reduced below that which it currently is, but I should stress at the moment our grave density is determined by soil conditions, effectively, and the minimum space we need between burials to ensure that the walls do not fall in when you dig the adjacent grave.

449. MR LATIF-ARAMESH: It is the issues that Mr Careless has raised around spacing which form the basis of why we are proposing to provide these undertakings, so that you can have some surety on exactly how the powers of Bill would be exercised should you permit the Bill to proceed.

450. There is no suggestion, by the way, that any of the other statutory requirements that are in place relating to appropriate spacing, whether they are in local authority cemeteries or other environmental permits that may be required, would be disregarded. This is intended purely to provide additional assurance on how the powers would be exercised should you allow the Bill to proceed.

451. So for the purposes of Standing Order 130, 'In connection with the powers to extinguish burial rights and disturb human remains, the promoter undertakes to procure: 1) Prior to the first exercise of the powers to publish a reuse protocol following consultation with the diocese and the Ministry of Justice. This protocol must be substantially based on the City of London cemetery grave reuse protocol and it must identify best practice measures in the reuse of burial spaces that will be adhered to, and identify spacing requirements between reused graves, subject to any modifications which may be endorsed by Defra. In addition, where relevant, in exercising those powers, will follow and implement the technical guidance on the reclamation of graves in local authority cemeteries dated October 2013, or any replacement or modification of

that guidance'.

452. That guidance was committed to in the same form of undertaking on both New Southgate and Highgate Cemetery. It is effectively a best practice tool on how to implement the powers, ensure appropriate spacing. It also contains commentary around ensuring religious sensitivity in implementing the powers appropriately.

453. We are providing that because we have had very careful regard to what Mr Careless has said around spacing and ensuring that the powers are not exercised in an arbitrary or inappropriate manner.

454. I would just note that, for the purposes of Standing Order 130, when an undertaking is given, any difference arising after the discharge of the Committee between the parties to the arrangement, or to the persons concerned in the undertaking, shall be determined by the senior Deputy Speaker. This provides a mechanism for holding the promoter to their word.

455. In light of these additional assurances, the promoters invite you to find that the Bill may proceed without prejudice to further modifications which may be requested or details on the clauses which I understand we are not dealing with. Again, just to reiterate, we are really trying to balance all the countervailing considerations here. We have considered alternatives; we have looked at ways of using what is within the town council's power. We have sought faculties where we can, and we have sought to provide as many protections as possible and precedented in the Bill.

456. Thank you for your consideration.

457. THE CHAIR: What do you say about waiting for the Law Commission to report?

458. MR LATIF-ARAMESH: I think the issue with waiting for the Law Commission report—and as you would expect, this is something that I specifically, in our exchanges with the Ministry of Justice, asked about—as you alluded to, the terms of reference for that Law Commission report are not yet finalised. Law Commission reports will then take some time to put together. They will have recommendations and then the Government will take a view on those recommendations. So there is no certainty whatsoever and given the need to plan ahead, given the need that we have talked about

in terms of burial capacity, we think that the Bill should proceed.

459. On this point, I would just emphasise again, the Ministry of Justice has given us no indication that it intends to report against this Bill.

460. THE CHAIR: Thank you very much indeed for your submissions on that. Any Members of the Committee want to ask questions?

461. BARONESS WILLIS OF SUMMERTOWN: Just one thing for clarification: you think that you have 10 years' worth of spaces left with current situation. Is that correct?

462. MR PARKER: It is a little bit more; it is probably 13. The year 2036 is our best estimate. I am afraid these are estimates because there are a whole load of unknowns, not just the number of graves that we are asked to dig, but also unknowns to do with the actual reuse, but yes, 2036 is where we think we will run out.

463. BARONESS WILLIS OF SUMMERTOWN: If Defra were to introduce this increased size.

464. MR PARKER: Well, okay, so that would be 35% less so that probably takes us to 2030, 2031, I guess, or something like that. Sorry, I have not done the exact calculations. But I think Mr Latif-Aramesh has made a really important point: we need to plan because we have a very limited amount of what I call virgin space, space that has not been reused. We need to determine how we are going to use that between now and when we run out of space altogether. At the moment we are just using it.

465. It may well be—I think it will be—that if your Lordships and the other place pass this Bill, we would work out a more structured way of dealing with the existing space. And equally, if, for whatever reason, this fails, we obviously need to decide what we are going to do.

466. So we cannot wait until 2036 or 2030. These things take a long time. This particular enterprise we commenced in 2015; it is now 2023. This sort of planning does not happen in any short period of time because, rightly so, there are lots of considerations to be made.

467. BARONESS WILLIS OF SUMMERTOWN: If I might ask just one more

question, I am still slightly confused. What would happen to the headstones if this Bill were to pass?

468. MR PARKER: Do you want to answer that?

469. MR LATIF-ARAMESH: I can start by what the Bill actually says would happen. Within six months of a notice or the removal of a memorial, so that is just removal of the existing grave space, the owner could come forward and reclaim it.

470. We have left that open because we understand that people may want to protect the memorials even if they may not necessarily raise an objection to the right of burial or the disturbance of human remains, so within six months, it is there for someone to claim. In the event that someone does not claim it—and I am assuming, by the way, that none of the heritage protections which are unaffected by the Bill are engaged, but after that, I will invite Mr Parker to set out what would happen.

471. MR PARKER: First thing to say is that many of the graves that would be reused in the first instance do not have headstones. As we said early on, one of the challenges that we have in deploying the faculty is that we have a fairly large number of unmarked private graves.

472. There are several options as to what to do to with headstones and we have not made a determination which combination of options will be taken. One option which some cemeteries have done is simply turn it round and engrave on the other side so you preserve the old headstone but put the new details on the other side. That obviously is something which is practical only, first of all, if the headstone is in an adequate condition, and secondly the family of new interree consent to that.

473. Another option which is very common in churchyards is to remove the headstones to another place in the cemetery. So you will frequently see churchyards lined with headstones that have been removed to another place in the cemetery.

474. It would in the end be for the council to determine, but if I were still chief executive officer, I think I would be recommending that that is what is done with those headstones, where the inscriptions are still legible. Where the inscriptions are no longer legible, which is obviously the case with many of them, perhaps one concludes that they

have relatively little historical value unless they are of particular architectural significance.

475. I think, in short, there is no single answer to that question, but I can assure you that the town council would want to be respectful, because it appreciates that it has a heritage asset and part of the charm, particularly of the old cemetery—but I am sure in time of the new cemetery, the other half of the cemetery—is its heritage stones, which is the principle reason why it is currently a requirement, and will presumably remain a requirement, that in the areas where we are currently reusing graves within the old cemetery under the faculty, the gravestones are required to be of a similar colour and of a similar style, not the same stone because modern stone is much more robust than the stone that was used in former times, but of a similar colour to preserve the appearance of the cemetery.

476. That was a decision made with the advice that the heritage officer from the district council and advice which has been followed.

477. BARONESS WILLIS OF SUMMERTOWN: In the actual wording of the Bill, one of the options is to destroy, I believe, I saw.

478. MR LATIF-ARAMESH: The word “destroy” is used because of its usage in the earlier enactments. I should note in this specific context, to provide some comfort—and I am conscious of not getting into the detail because of the stage we are at, but Clause 7(2) specifically requires the production of a policy on how memorials will be removed that will be publicly available, and the options that have been set out by Mr Parker would then be set out in that document and would provide some comfort, so that if you were a memorial owner you would not be surprised with what would happen; it would be in accordance with that policy.

479. MR PARKER: May I just add that memorials in this context go beyond headstones? As I am sure you are aware, quite often there is curbing, and sometimes there is a stone on top of the grave and sometimes other adornments. I would expect that the memorial policy may deal differently with those different elements of the grave because of the information or not that they contain, and obviously there is some practicality associated with that.

480. VISCOUNT STANSGATE: It would not be unfair to suggest that maybe a relative minority of the headstones might be destroyed, but that the others might be lined up around the side of the existing cemetery in some form.

481. MR PARKER: I think that is a very likely scenario, yes. There are sometimes headstones—well, they were not even headstones—sometimes they were tiny little memorials which have nothing legible on them and have decayed quite considerably. If no one claimed those—I mean, we might not even, in some cases, be able to identify the name of the interrees. If no one claimed those, then it may well be that an appropriate policy would be to dispose of them. If they are headstones that are of a good size, that have got legible names on, then it may well be an appropriate policy is to line them up around the edges.

482. VISCOUNT STANSGATE: Is it the case that in the old symmetry, on the whole, before regulations might have been brought in to regulate the size of headstones, they tend to be bigger?

483. MR PARKER: They did tend to be bigger, and obviously health and safety does need to be considered as well because bigger headstones are more likely to topple on you but, yes, I think the scenario that you have suggested is quite a reasonable scenario.

484. I do not want to prejudice the town council's options, because I am sure that it will take advice from the heritage officer, from the diocese and from others before creating the final policy, which will have to deal with probably several more cases than those that I have just alluded to.

485. MR LATIF-ARAMESH: My Lord, just to address why the word "destroy" is used, because I understand that it can come across as severe, it is primarily intended—I have looked back at the records for some of the earlier enactments—to be of benefit to those who do not want their memorials reused or put on the side of the cemetery. It is there to enable destruction where someone has said, "I do not want it to be reused. That is not appropriate". There is no intention to, as they do in France, grind up tombstones and reuse them for road building. That is not what the word is there for. It is intended to respond to people who say, "Please do not turn mine around. Put an inscription on it", that kind of thing.

486. VISCOUNT STANSGATE: Have there been cases where someone has objected to the potential removal and use elsewhere of the headstone and therefore has asked the local authority to destroy it?

487. MR LATIF-ARAMESH: I am not aware of an example, but I understand that was the rationale for its introduction, and that was certainly why the term is used in some of the enactments that I have mentioned. I would not be able to give you a specific example.

488. BARONESS THORNHILL: Chair, would it be convenient, through you at this point, to ask the question that was not appropriate before we broke to actually have what I would call the in-law clarification of the care of the family graves? Mr Careless reacted at one point to something that was said. What is the scenario, from their point of view entirely, for how they could go about ensuring against what were Mr Careless's final words: "I do not want someone digging up my family". Please talk us through that, because it is quite important.

489. MR LATIF-ARAMESH: Of course, my Lady. The starting point on the general position is that we do not consider it appropriate to extend the notice provisions to collateral relatives on the basis that there would be an onerous and disproportionate obligation to identify particular persons, and I think Mr Careless acknowledged that when he was giving evidence.

490. This would be disproportionate, particularly because the writer only permitted to be extinguished 75 years after the last burial. So when we are talking in the context of lineal versus collateral descendants, you have to imagine placing ourselves in position of 75 years from now.

491. This point was considered during the course of the Highgate Cemetery Opposed Bill Committee and it was not taken forward. The definition of "relatives" is identical in this Bill and the Highgate Cemetery Act.

492. We understand that this is a point of detail that you may wish to examine further should we proceed past the preamble. What I would say at this juncture is that, having communicated with Mr Careless throughout the pre-deposit period and in the period leading up to today's proceedings, we offered not to exercise the powers in the Bill at all

in relation to all the graves that are referenced in his petition and his supplementary evidence.

493. We did so on the basis that we acknowledged his private interest but also that the general case for the Bill would stand, notwithstanding the limited voluntary disapplication. Unfortunately, the offer was not accepted. However, I will not go too much more into detail. I should probably stop talking, but the point about the definition of "relatives" may be better suited—if you permit us to proceed—to the second part.

494. THE CHAIR: Yes. I mean the short point you made is that the current definition is the same as in Highgate. The point about the width of the definition was considered but they ended up with what they have got, and we have followed that, and you have followed that.

495. MR LATIF-ARAMESH: Correct.

496. THE CHAIR: I think that is as far as you go at the moment. Let us come back to this later on. Thank you all very much. We will now go into private session. I cannot tell you how long or short we are going to be but we are going to decide now as a Committee whether to allow the Bill to proceed or not.

497. MR LATIF-ARAMESH: Thank you.

Sitting suspended

On resuming –

498. THE CHAIR: Thank you. We are very grateful for everything that is been said so far. We have thought carefully and had a discussion amongst ourselves, which has been quite detailed.

499. In the event, we have decided that the Bill should go forward and the question is now how we deal with the specific provisions that Mr Careless would like to put in. There are some amendments that the local authority or the burial authority would like to put in as well; I think they are of a small nature. What is the most efficient and effective way of doing that but ensuring that everybody is satisfied they have had their say?

500. I want to just explore that. We will finish at 4 pm today, but I want to explore the

best way forward. So far as the local authority is concerned, you were going to take us to all the clauses, both contentious and uncontentious, in your response, and you have written a response document.

501. Mr Careless, do you have this response document? Has Mr Careless been given this? This is the document prepared by the promoter, East Hertfordshire District Council, and it goes through literally each provision. I am just wondering whether, as we did with Mr Careless's evidence, we can take this as read and read it into the transcript, and then you can add to it where you think there is something that we need to understand or appreciate, which may not be fully clear from what we have heard so far. Of course, it will not stop Mr Careless from then elaborating. What do you feel about that?

502. MR LATIF-ARAMESH: I am happy to proceed as you have suggested, my Lord. Can I just clarify that when you are referring to the document you mean Section 2, which is titled "Provisions of the Bill" and describes each Bill. Is that what you mean by "take as read", or do you mean the detailed responses in the table to the specific comments raised by Mr Careless?

503. THE CHAIR: Yes, there are two documents, are there not? One is the promoter response document. It is just two pages.

504. MR LATIF-ARAMESH: Yes.

505. THE CHAIR: And then there is the detailed response to the sole petition, which also takes extracts from the Bill.

506. MR LATIF-ARAMESH: Yes.

507. THE CHAIR: How were you going to deal with this, if I had not made that suggestion?

508. MR LATIF-ARAMESH: I was going to briefly describe each clause and stop at each clause where Mr Careless had raised an objection or had proposed an amendment, so that rather than dealing with the unopposed clauses and opposed clauses separately it would just go through the Bill, but I will comment on those aspects which Mr Careless had raised under each relevant clause.

509. THE CHAIR: Are you satisfied that your two-page document would cover what you would otherwise have said in relation to each provision other than Mr Careless's points?

510. MR LATIF-ARAMESH: Yes.

511. THE CHAIR: You are satisfied that that would cover that.

512. MR LATIF-ARAMESH: Yes.

513. THE CHAIR: If we are all agreed, I would suggest that that document, if you are all content, is read into the transcript. I then suggest that you take us to those parts which you think are relevant to the amendments suggested by Mr Careless, or which the local authority wishes to have amended, or which you think are of particular significance and which you should draw our attention to orally. Does that make sense?

514. MR LATIF-ARAMESH: That makes complete sense, my Lord, and we are happy to proceed on that basis.

515. THE CHAIR: Mr Careless, are you content with that?

516. MR CARELESS: Yes, I think I am, sir. Thank you.

517. THE CHAIR: Let us proceed on that basis. We will sit until 4 pm and then carry on tomorrow morning. Yes, thank you.

518. MR LATIF-ARAMESH: Could I just clarify that we will provide a response to the items raised in the petition and the supplementary evidence? We will assume that the descriptions of the clauses are read in.

519. On the question of Mr Careless then providing his submissions, we will then have an opportunity to reply. Is that the proposal?

520. THE CHAIR: I think we will proceed exactly as before.

521. MR LATIF-ARAMESH: Thank you.

522. THE CHAIR: Yes.

523. MR LATIF-ARAMESH: We can go past Clause 1. Clause 2 is the provision of the Bill that includes all the relevant definitions, and we have touched on this already in today's proceedings, but the first is the definition of "relative", which Mr Careless has raised comments on. We made our position on this clear that we do not think it is appropriate to extend it beyond lineal descendants on the basis that there would be an onerous and disproportional obligation on the promoter in implementing that or identifying such persons, bearing in mind it would be 75 years after the last burial.

524. We would also note that there are protections in place at the first stage, as you refer to it, Lord Etherton, where any other person can object. So the question of their status as a relative or otherwise would not bear on that specific question. We think that is an appropriate protection. As I mentioned before we had a pause in proceedings, the Highgate Cemetery Opposed Bill Committee was asked to consider this argument specifically, and it accepted that the administrative burden involved in having to identify collateral relatives would be disproportionate in light of the other protections offered by the Bill.

525. THE CHAIR: Yes, right.

526. MR LATIF-ARAMESH: There are no other comments that we have identified in the petition or the supplementary evidence relating to Clause 2.

527. In relation to Cause 3, Mr Careless's petition says that they would have no right to object, under the category, to an extinguishment. That is not correct for two reasons, and I think we dealt with this in the proceedings at the start.

528. First, it is possible to transfer the ownership of a burial right and therefore the protections in Clause 3 will continue to apply. The promoter, as we set out, considers the right of burial to be a heritable asset and provision may be made to transfer it. In Mr Careless's supplementary evidence he has included his family's rights of burial and the grants of those burial rights, and you will note that it extends to his heirs and assigns explicitly.

529. THE CHAIR: When you go through Clause 3 and Clause 4, I think it will be helpful to relate that specific to Mr Careless's situation.

530. MR LATIF-ARAMESH: Understood. I think on Mr Careless's situation in relation to Clause 3, where there is a right of burial that has been granted to him or has been transferred to him, he would have the ability to object and prevent the exercise of the powers under Clause 3.

531. THE CHAIR: How would he do that? How would he show that?

532. MR LATIF-ARAMESH: I might ask Mr Parker to comment on the process involved in that so that Mr Careless is aware of how he would go about doing it.

533. MR PARKER: Where the person wishing to object is the owner of the right of burial, then they would object in accordance with the proposed provision by, for example, writing to the town council or ringing up the town council.

534. THE CHAIR: I do not mean that. I mean, how would somebody who is third generation from the original registered owner satisfy you that they now have the right?

535. MR PARKER: First, we have a process for this. It happens quite often, actually. The right is inherited. It is inherited, of course, by multiple people in principle in many cases. For example, typically the exclusive right of burial is in the residual of the estate. Very few people make specific provision in their will for the passing of the exclusive right of burial, so it ends up in the part of their will, which says, "The remainder of my estate passes in equal proportions to … ".

536. Frequently, there will be more than one inheritee, so when people approach us, in the normal course of events—this is aside from this Bill—claiming to be an inheritee, we ask them to show the family tree, and where there are other live relatives we ask one of them to nominate who is going to be the owner and ask the others to renounce their rights, thereby getting to the point where the rights reside in one person.

537. That is a pretty much standard process, which occurs quite frequently in the case of existing graves where there has been one burial, the person who was the owner has died, there is space for another burial, and some while later someone wants to bury someone else. There are then sometimes even third or fourth burials, not in coffins but as cremated remains, because although you can only fit two coffins in our graves, you can fit another four sets of cremated remains.

538. We have on a couple of occasions gone down more than one generation with that. People have somehow, by one way or another, proved it. We had one only about a year ago where the executors for both generations of the family were the same firm of solicitors. They said, "As executors, we hereby determine that this is the line of inheritance" and we were happy to accept that, so there is a process that we use by which people can prove that they are lineal, that they have inherited the grave.

539. If there is evidence missing, providing that the evidence that remains is sufficient and offers reasonable certainty, we would sometimes ask people to make a statutory declaration at their local solicitor, for which a princely fee of £5 or sometimes £10 is generally charged.

540. VISCOUNT STANSGATE: Can I ask whether it is essential to extinguish the rights of others to inherit this?

541. MR PARKER: It is.

542. VISCOUNT STANSGATE: Do they have to renounce their rights?

543. MR PARKER: They do, and there is a very good reason for that. Certainly in the case where we are going to rebury, if several people share the ownership of the right—

544. VISCOUNT STANSGATE: They could disagree.

545. MR PARKER: It might be that three, for example, share the ownership of the right. It may be that one wishes this new person to be buried in the grave and one of the other owners does not. We certainly do not wish to be in the position, in the general run of burials, where we receive instructions from one owner of a grave and either at that time or, worse still, several decades later—sadly, this has happened—another owner of that grave pops up and says, "my brother might have agreed to it, but I did not".

546. VISCOUNT STANSGATE: You prefer to let the families themselves decide.

547. MR PARKER: I do not think it is for the local authority to sort out family problems, with respect, so yes.

548. In the case of this particular Act, should the Bill come to force—that is slightly different, I accept, from the case where there is a burial to be done in an existing family

grave—that would be the starting point of the process.

549. Certainly in practice, unless there was some good reason to the contrary, and if someone could reasonably prove that they had a reasonable inheritance right, as Mr Careless has done in our discussions with him, if they objected we would simply take that objection. We would not, in that circumstance, require them to become the sole owner of the grave, and so on. They are clearly related to the original owner, they are clearly one of the people who will have inherited some proportion of the ownership, and they clearly object, and they clearly have a reasonable reason to object. So that registers an objection as far as the town council is concerned.

550. THE CHAIR: Would that cover a grave with the three infants that I mentioned? They obviously did not leave wills and they would not have had any property, I would have thought—they are all infants—so does that mean that, if you accepted Mr Careless as, for pragmatic purposes, the person who is the current owner of the right of burial, that would extend to the children?

551. MR PARKER: In that case, there is no right of burial, because those three infants are buried in graves that are common graves, public ownership, so the objection to that will come under the provisions for the disturbance of human remains.

552. THE CHAIR: Because they are not in a private grave.

553. MR PARKER: They are in a common grave.

554. THE CHAIR: I am sorry, I did not pick up that detail. They are in a common grave.

555. MR PARKER: They are in common graves. I think three children are referred to. We checked with Mr Careless at lunchtime, and they are in two separate common graves. There are two in one grave, and one is interred in another, so there was no right of burial to extinguish. That case would be covered by the right to object to the disturbance of human remains.

556. I understand that Mr Careless is not a lineal descendant of the children in question, so he would not be covered by the right to object as a lineal descendant. I am only going on what Mr Careless has said. However, he would retain the right to object under the

general right to object, which then gets referred to the Secretary of State. Is that correct?

557. MR LATIF-ARAMESH: Not for the disturbance part. In those circumstances, without an extension to collateral descendants and with no burial rights in place, there would be no opportunity to object to the disturbance of human remains under Clause 4.

558. THE CHAIR: That is a problem, is it not? It is something that otherwise the Secretary of State could have dealt with under Clause 3.

559. MR LATIF-ARAMESH: Yes.

560. THE CHAIR: Because it is a common grave, you are saying that that does not arise, and under Clause 4, on the power to disturb human remains, the only people who can object would be the registered owner of the extinguished or expired right of burial, which does not apply because you have said that, and the registered owner of any memorial erected—that is obviously not the case—or a relative of a person whose remains are proposed to be disturbed. What are you going to do about that?

561. MR LATIF-ARAMESH: As I mentioned before the break, we offered not to exercise any of the powers in relation to any of the graves including the infants' graves, which was our attempt to understand and address this particular issue.

562. Unfortunately, that offer was not accepted, and in circumstances where we are discussing a general amendment to the Bill itself the position that we have landed on is that the administrative burdens associated with that, given the other protections in the Bill, are appropriate.

563. THE CHAIR: Why can there not be a provision in the Bill which says that if the extinguishment of the rights of burial has not taken place under Clause 3 because it is a common grave, in relation to the removal of remains, there should be a right of removal if anybody objects, only with the consent of the Secretary of State?

564. MR LATIF-ARAMESH: Thank you, my Lord. The point is understood and I hope you will appreciate that I will likely have to take instructions.

565. THE CHAIR: I am not asking now. I am trying to provide a mechanism, because this is not necessarily a one-off. This is a very good illustration. I had not really focused

on the point. Here are people who are buried in a common grave. Therefore, for those people there is no need to go through the process in Clause 3, but there are a limited number of people who can then object under Clause 4.

566. If it is a common grave and there is no person who is a relative as defined, then there is nobody who can step in, but there should be in this type of situation. What has happened is that because it is a common grave, they have forgone the ability to apply to the Secretary of State. Why should we not then have a Secretary of State, as it were, put it into Clause 4 to deal with that category? Am I making any sense?

567. MR LATIF-ARAMESH: You are making sense. Just one point of clarification, my Lord. Is your suggestion that the exact process in Clause 3 should be replicated or that non-lineal—i.e. collateral—descendants should have special treatment in relation to Clause 4?

568. THE CHAIR: I am sorry. I am not quite sure I understand. The lineal descendant point is a Clause 4 point—the definition of "relative".

569. MR LATIF-ARAMESH: Yes.

570. THE CHAIR: Here we are dealing with somebody who is not a lineal descendant and cannot be a registered owner because they are infants. We have to remember the various epidemics and so on that there were in the 19th and early 20th century. There may be many people in this situation, and the point is that they should not fall between protections, as I think we have now worked out would happen to these three.

571. I know you have made the offer, but I do not think that answers the more general point as to whether we should introduce here a refinement to the Highgate Bill which deals with that situation of a common grave, and there is no registered owner, so Clause 3 simply does not apply. Could you think about that overnight?

572. MR LATIF-ARAMESH: Yes.

573. THE CHAIR: Maybe you could come up with something. I think this is one of the processes that one goes through with repeat applications of precedence, which is that with each one you are very often standing on the shoulders of somebody else, so you are discovering a new point, but it seems to me at the moment that there is a lacuna here.

574. MR LATIF-ARAMESH: My Lord, we are grateful and we will consider that.

575. THE CHAIR: Anyway, that is as far as we can perhaps go. Is that a convenient moment to stop, and you can come back tomorrow morning and think about that?

576. MR PARKER: Yes, my Lord. In order to help out, I shall think about it overnight. I do not know whether you are even willing to answer this question. I think you made the point that it is not right that someone, because of the history, is put in the position of not being able to object.

577. Is your thought that the right to object should somehow extend to anyone, or just to relatives but more broadly defined, or you do not have a view?

578. THE CHAIR: I cannot speak for the rest of the committee. We have not considered this, but I am assuming for the moment that we do not extend relatives to include collaterals.

579. MR PARKER: Right.

580. THE CHAIR: That is the starting point, and that is the assumption I am making, because of all the administrative difficulties of finding out who all these people are. If you have 14 children, goodness knows how many people I am talking about. I am assuming that it stays the same but you have not had to go through the Clause 3 process, and if you are moving human remains, and you have to have some legitimate reason for doing that, you should have the ability to apply to the Secretary of State stating your reason, and, as is shown in that letter that you handed us to do with the removal of the graves, they are considered on the merits of each case. I know that is aimed at Clause 3, but equally that should apply to Clause 4.

581. MR LATIF-ARAMESH: My Lord, that is a very helpful clarification, but I just wanted to put forward one submission. The nature of the interests being protected by Clauses 3 and 4 are slightly different, in the sense that Clause 3 is dealing effectively with a proprietary right.

582. THE CHAIR: Yes.

583. MR LATIF-ARAMESH: The interests that are recognised in Clause 4, in relation

to the disturbance of human remains, are those that are directly affected. My concern would be that, if it is extended beyond relatives or registered owners, it would not just be a closing of the gaps; it would be giving a new status to disturbance of human remains. Under the current law as it stands, you can apply to the Secretary of State to disturb human remains.

584. THE CHAIR: No, you cannot. There is no position for the Secretary of State in Clause 4.

585. MR LATIF-ARAMESH: No. I am talking about the position in the existing law under the Burial Act 1857.

586. THE CHAIR: Right.

587. MR LATIF-ARAMESH: If you propose to disturb human remains and you applied for a licence under the 19th century enactment, you would apply and a decision would be made.

588. THE CHAIR: Right.

589. MR LATIF-ARAMESH: The statutory provision in Section 25 does not give a status to any person who then objects to that disturbance.

590. My concern is that extending the ability of any person to object to a disturbance is treating the disturbance of human remains as though it is a right of some kind of public interest rather than of relatives or those who have a specific interest in the remains.

591. THE CHAIR: Why is this not simply, in the private Bills, reflecting what is in the Burial Act? Let us have a look at the Burial Act.

592. MR LATIF-ARAMESH: It is in tab 8A, my Lord.

593. THE CHAIR: Right. It is an offence for any body or human remains interred to be removed unless one of the conditions is complied with. Here we are concerned with "the body or remains is or are removed under a licence from the Secretary of State".

594. MR LATIF-ARAMESH: My point is that, in those circumstances, as part of that process, the provision does not include the ability for any person to object which would

trigger the process or would otherwise be considered.

595. THE CHAIR: It would be an offence. I am not following you. I am being a bit slow, sorry.

596. MR LATIF-ARAMESH: No. I will try to rephrase it. Under the current restrictions on the disturbance of human remains, you cannot do it. It is an offence, unless you have a licence from the Ministry of Justice. The process for that is that you make an application to the Ministry of Justice and they decide. Nowhere in this process is anyone able to object to the application. Nor does the Secretary of State, explicitly in the provisions themselves, consider objections.

597. My contention, going back to the phrasing in the Bill, is that Clause 3 protects a proprietary right. Clause 4 is intended to protect those who are very specially affected by the disturbance of human remains, which in our view would be those who have a proprietary right or are relatives.

598. What I was considering taking away to close the gap that you have mentioned is the point about collateral versus lineal descendants, because the gap that you have identified relates to no process being in place to object in those circumstances.

599. VISCOUNT STANSGATE: You are worried that this would become an open-ended new area.

600. MR LATIF-ARAMESH: We would be concerned.

601. THE CHAIR: There are two ways of looking at this, then. One, in relation to somebody who is in some way related collaterally to a person who is buried but they are buried in a common grave so you have had no opportunity of objecting under Clause 3, is that you would extend the range of persons who could object in that situation. That was not what I was aiming at, but that is one possibility.

602. What I do not understand at the moment is that if you create an offence whereby it is an offence to do this, then surely a public body would want to avoid the offence by getting a licence.

603. MR LATIF-ARAMESH: The Bill disapplies that section.

604. THE CHAIR: I know it does, but I am suggesting that, rather than just disapplying the section, you have disapplied it because you have Clauses 3 and 4, which do what I said you should do, which is to give a right to a person to apply to the Secretary of State for a licence and still disapply the Section 25 of the 1857 Act. Effectively, you are slightly rewriting the provision, as you are doing anyway in Clause 3 and Clause 4. Let us not debate it now, because we are going beyond.

605. You think about the point. You put an alternative suggestion, which might work, but I am beginning to think that this point is not purely a one-off for Mr Careless because of the position of people who are buried in common graves, particularly infants, where there is no protection under Clause 3, that there should be an ability, which is wider than being restricted to lineal descendants, to object to the removal of their remains.

606. VISCOUNT STANSGATE: I have a quick question. You have told us, in effect, that you offered an agreement, which was not accepted, but is it the intention of Bishop's Stortford and the council to adhere to the offer anyway?

607. MR PARKER: I do not think I would want to comment on that.

608. MR LATIF-ARAMESH: I think we would need to take instructions. You will appreciate that the offer was made in an attempt to avoid expending funds associated with the preparation. It was effectively a settlement offer. It was refused.

609. VISCOUNT STANSGATE: Fair enough. Nevertheless, I will still ask.

610. MR LATIF-ARAMESH: I am grateful for the question, and I would have to take instructions on that.

611. MR PARKER: I think I would want to discuss it with the existing chief executive.

612. I can, without question, see your point. In terms of the objective of an amendment, am I right in thinking that you are thinking that it could be desirable if some amendment were made which allowed a wider range of relatives, but not necessarily a wider range of the general public, to object or somehow prevent, whether by objection or by another means, human remains being disturbed where Clause 3 does not apply?

613. THE CHAIR: I have to say that because there seems to be a certain reluctance to extend it to any member of the public, I would go for a wider range of family.

614. MR PARKER: That is very helpful, thank you. I think that gives us some very useful material to think about overnight, if that is okay with you.

615. BARONESS THORNHILL: There is a final comment from our point of view. We have counsel to advise us. I am concerned about whether we are doing anything that in effect undoes primary legislation of some sort that is already settled and established if we decide to go to 100 years rather than 75, because you referred to a parent Act.

616. I would just like us to be sure that, if we agree this, we are not, in some way, putting a spanner in the works or making things more difficult. I do not have a legal background like our eminent Chair, so I would like to be reassured of that. Tomorrow is fine.

617. THE CHAIR: Take the case of Mozart. He was buried in a common grave because he had no money. Let us assume that happened here. Now, it is impossible at this point to identify any lineal descendant. I do not know. Who knows? All I was suggesting was that, whoever you might be, whether you are—I do not know—a musicologist or just someone who loves Mozart's music, you could apply to the Secretary of State and say, "I really think we should not be removing the human remains, such as they are, of Mozart".

618. Now, you are worried that an impractically wide group of people could object, but it has a certain simplicity to it, whereas, if you are talking about collaterals, you still have to go trace everybody through. Anyway, I am just leaving you with those ideas. I think it is something we have now alighted on which probably does need some quite careful thought.

619. MR LATIF-ARAMESH: Thank you, my Lord. We will definitely give it some detailed thought.

620. THE CHAIR: Thank you very much. We will start again at 10.30 tomorrow.

621. MR LATIF-ARAMESH: Thank you.