

Supplemental Exhibits

- 1. Green Belt Map and Open Street Map**
- 2. Precis of Commons Briefing Paper on Re-use of Graves**
- 3. Precis of an Audit of London Burial**
- 4. Precis of Home Office Memorandum CEM49**
- 5. Precis of Burial Ground Survey by Ministry of Justice**
- 6. Faculty – Report and Plan**
- 7. Analysis of Circulatory Area of Old Cemetery**
- 8. East Herts District Council Consultation Advertisement and Council Report**
- 9. Bishop's Stortford Town Council Consultation Document**
- 10. Swavesey By-ways Act 1984**
- 11. Ministry of Justice Burial Ground Report 2007 Full Version**
- 12. House of Commons Briefing Paper 2017 Full Version**
- 13. Publications Reviewed**

SUPPLEMENTAL EXHIBITS – SET 1

EXHIBITS 1 – 9

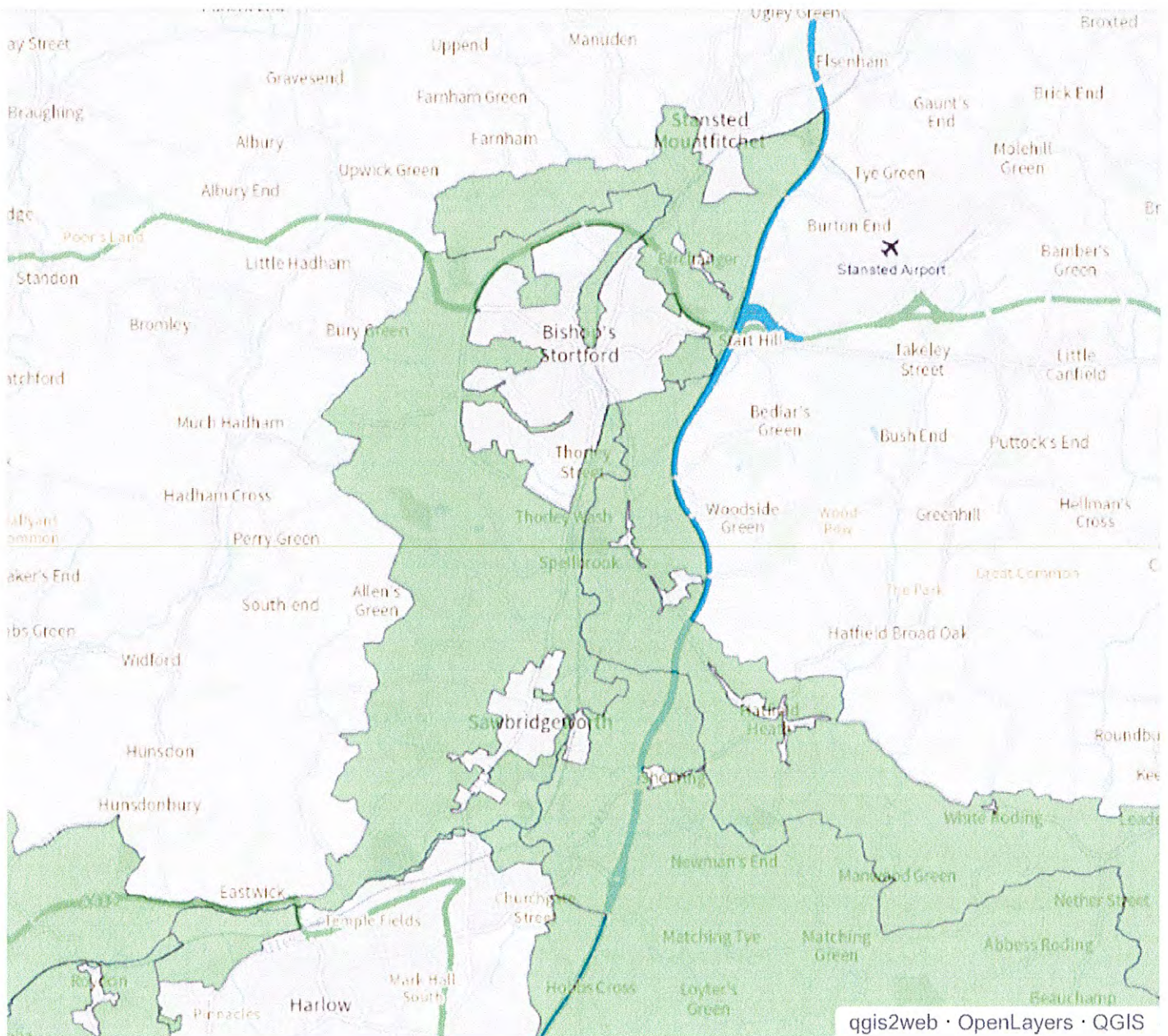
of 13 Exhibits

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1.



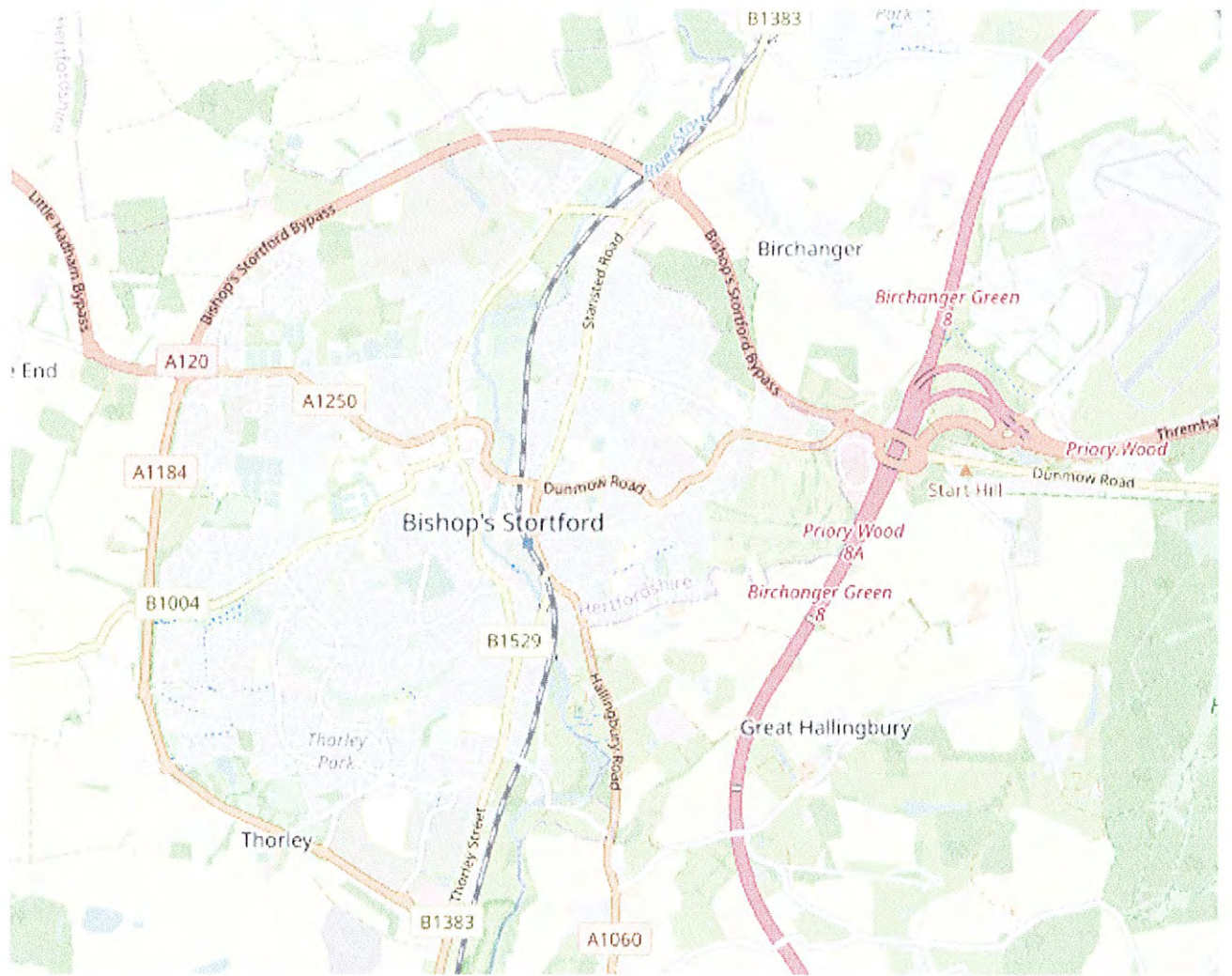
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2.

House of Commons Briefing Paper on Re-use of Graves

Dated 2017: Author Catherine Fairbairn

In some Areas land is scarce.

(There is no evidence for this as only 39% of authorities ever answered the enquiries. If there was an acute shortage it would be shown up by activity recorded by the office of National Statistics, as opposed to uncorroborated claims by the industry relying on the ratepayer for facilities being available for them in a competitive industry.

Mainly in London. Inner London 7 years, outer 18. But we are not talking about London here)

Many people do not want to be cremated.

(Cremation figures tell a different story. The social trend is toward evermore cremations)

For some faith groups burial is required.

(Only three faith groups are identified. Moslem, Orthodox Christians and Jews)

London Burial Authorities can lift and deepen.

(We are not talking about London. London authorities also have the ability to reclaim i.e. adding another on top instead of disturbing and deepen.

Simon Hughes, Minister of Justice...use of powers non-existent.

(Even the Government has no explanation for this and it seems that power was unnecessarily created)

Talks about Scotland

(Not relevant when considering a small cemetery in Hertfordshire)

Refers to the Home Office memo...discretion by relevant Local Authorities.

(Re-iterated by the recent answer to the written question in the Commons by Luke Hall to MP Fiona Bruce)

Harriet Harman, Minister of Justice...median time remaining 25 to 30 years with 20% of land unused.

(How do you look at that statistic now? Do you say that most are three quarters full, or do you say that most only have less than a quarter left? Where is the groundswell of voices demanding that something must be done?)

Audit of London Burial Provision

(Again, we are not dealing with London here, but does highlight that some are using space not originally planned for when the cemetery was first laid out, such areas originally planned as pathways, land between graves and adjacent to paths etc.)

Current Position on Reuse of Graves...

(Basically repeats the position that all grave spaces are now time limited and those that haven't been used and are empty can be recovered for use after 75 years, even if they had been paid for)

Church of England (Miscellaneous Provisions) Measure 2014

(This allows the Church of England EXEMPTION to Section 25 of the Burial Act 1857 to allow for lift and deepen to be carried out on consecrated land only by a Diocese Faculty. It does not amend the Public General Act where un-consecrated sections still have the protection of the Secretary of State)

Diocese of Southwark

(Suggested all graves should be reused after 75 years and large swathes should be brought into re-use than on any grave basis. Now there is a Diocese that has no regard for the heritage contained in those cemeteries, but it would be income)

Reclamation and Re-use in London

(We are not talking about London today. And why was this not raised in regard to the New Southgate and Highgate Bills? They were never affected by these acts of Parliament, nor are the Bishop's Stortford cemeteries and should be left for the consideration of the Law Commission, now sitting on the subject. London has always legislated for its own particular circumstances, whether it be for Public Health, Building Regulations and should be considered in context)

Simon Hughes... Sect. 74 of the London Authorities Act 2007

(reported to the House that of the 33 Local Authorities having the right to lift and deepen, only the City of London reused 900 graves in 4 years and NOT under this Act but under a Church Faculty and couldn't be give a reason for this)

Government Consideration of re-use...Public concerns and acceptability need to be tested...There was a substantial minority entirely averse to reuse, especially from the General Public.

(In 2007 Labour Government announce plans were in hand however to allow Local Authorities to reuse graves)

In 2008 Bridget Prentice junior Justice Minister reported plans going well.

2009 Lord Bach junior Justice Minister announced plans were being shelved. Research (not published) show a good proportion of individuals are doubtful about the issue and on such issues, it is important to take people with you and to try to achieve consensus.

In 2016 Phillip Lee junior Justice Minister reiterated that VERY FEW public burial authorities in LONDON have used the legislation (*which Bishop's Stortford is trying to copy*) and it is not clear that pressure on burial space is a national issue that requires Government intervention

(And there it was left, with successive Administrations to keep; it under review until now where even those reviews have been dropped)

3.

Precis of An Audit of London Burial

This is a report for the Greater London Authority by Julie Rugg and Nicholas Pleace of the Cemetery Research Group University of York

Dr Julie Rugg is a member of the M of J Burial and Cremation Advisory Group

She is the principal advisor to the House of Commons Environmental Transport and Regional affairs Committee 'Inquiry into Cemeteries'

It was published in 2011

Para 1.2 Under the London Local Authorities Act 2007, burial authorities in the Capital were given power to disturb human remains in a grave where burial rights had been extinguished.

It appears no London Borough has adopted these powers.

The Corporation of London began a programme of re-use only in conjunction with the grant of a Faculty on condition that disturbed remains from the consecrated section were interred in another consecrated section.

This practice has not been adopted in any other cemetery in the capital.

Para 1.3 The failure of almost all the burial authorities to adopt permitted grave re-use indicates other strategies have been successful underpinned by the creation of graves in areas of cemeteries where burials were not originally anticipated.

Para 2.5 The extent of demand is affected by cremation. Cremation first exceeded Burial rates in 1968

Para 2.18 128 private and London Borough cemeteries were included in the survey covering a total of 1,193.5 hectares. Only 4 cemeteries have opened since the mid 1990's. Before that, the last local authority or private cemetery was laid out in 1974.

Para 2.21 The vast majority of cemeteries in London were open for burial.

Para 2.22 Virgin space includes land either within the cemetery or some other location or graves using space not originally planned for when the cemetery was laid out.

Para 2.24 With respect to unused space, 4,000 to 5,000 grave spaces are expected per hectare dependant on the mix of purchased or unpurchased graves and to dig to the deepest depth where there is an unpurchased grave

Para 2.26 About half of private and borough cemeteries had virgin land available. In some cases, London Boroughs have been able to add to their supply of virgin space by demolishing unused chapels, greenhouses, other work buildings, clearing scrub or by using land planted ornamentally near the site entrance. Eg Ladywell/Brockley Cemetery Lewisham

Para 2.28 Strategies include finding space between graves, reclaiming unused space in private graves (which does not disturb the incumbent), using as yet unused capacity in common graves.

Para 2.32 Burial legislation required has been carried out as to preference and there is evidence of unequal use of the two types so that some cemeteries may have excess capacity in less popular type of burial space. (See Bishop's Stortford deed for additional consecrated area as consecrated area was getting crowded)

Para 3.2 It remains possible to apply for a licence to permit disturbance but the Ministry of Justice has not issued licences for the purpose of disturbing remains in order for the grave to be re-used

Para 3.3 Legislation to permit reclamation of grave space was established in Section 9 of the Greater London (General Powers) act 1976 (as referred to in the bill's explanatory memorandum) which permitted LONDON authorities to extinguish burial rights in graves where no interment had taken place for 75 years. As yet unused grave space within the grave could be used for the purpose of further interment. This would not disturb the existing occupant and has been termed RECLAMATION

Para 3.4 There was limited take up of this option with only 4 London Boroughs considering adding to existing graves

Private sector cemetery providers are restricted in their ability to implement reclamation as the Greater London (General Powers) Act 1976 does NOT extend to companies established under Private Act of Parliament

at least half to be consecrated. No research

Para 3.6 London Boroughs did not pursue RECLAMATION as they thought the policy simply unnecessary

Para 3.7 Sect 74 of the London Local Authorities Act 2007 gives the option to re-use purchased graves where the right has been extinguished and are at least 75 years old on a lift and deepen approach where the remains would be lifted placed in another container and reburied at a deeper level where the necessary Faculty has been obtained.

(Bishop's Stortford say that any remains discovered would be emptied into another deeper trench in the same grave or if not possible would be placed elsewhere)

The City of London Cemetery is only pursuing a re-use in a consecrated section which does not involve lift and deepen as they will simply transfer remains from one location to another consecrated location,

3.12 London Boroughs have not taken advantage of the new powers as they relate to purchased graves and do not relate to the much larger number of unpurchased COMMON graves

4.

Home Office Memorandum CEM49

There are no central records and total number of burial places is unknown.

Chartered Institute of Pub. Finance say Councils have 1124 cemeteries.

LGA 1972 consolidated earlier legislation which had authorised cemeteries to be provided by local burial boards and subsequently local authorities.

C of E and private grounds not subject to Council legislation. Most grounds now operated by burial authorities.

No Gov. Dept. has sought to intervene in day-to-day management.

The Gov. has no general responsibility for the protection of cemeteries.

The Min of Justice is responsible for the protection of human remains and cremains from unauthorised disturbance.

Public Policy for the provision of cemeteries is a matter for local decisions whether they want them or not in the light of demand.

The Gov. interest in environmental historical or cultural is limited to whether they should be closed or not.

Councils can enter into agreements with third parties to provide facilities under LGA 1972.

No obligation on Gov. to provide cemeteries or require others to do so.

In some areas, it has been claimed that there is nowhere suitable for new burial grounds but the then Home Office was not aware of any communities which have been unable to provide themselves with or have access to burial facilities even if not always as conveniently located as they might wish.

Cremation has grown steadily in favour of burial which has inevitably mitigated the need for burial space. The question whether there was a long term need to plan for new cemeteries has mainly been raised by reps of the burial industry.

Authority to re-use graves is a new departure requiring new legislation and procedures to regulate the process.

Consideration should be informed by a wider PUBLIC view. No decision has been taken how a consultation may be effectively undertaken.

Minimum standards in respect of all burial grounds are maintained by the prohibition on the disturbance of buried human remains.

Cemeteries require planning permission. PPG2 SAYS CEMETERIES CAN BE ACCEPTABLE IN GREEN BELT.

Councils can provide crematoria which are profitable and can subsidise burial grounds

5.

Burial Ground Survey by Ministry of Justice 2007

A survey was commissioned by the Ministry of Justice as there were no central records of the number of burial grounds, church yards, or cemeteries and the replies were incomplete.

Of the estimated 18,000 Church of England burial grounds and 2,000 Welsh burial grounds, just under 7,000 replied, suggesting a 35% to 40% response.

Of 147 cemeteries in London, 120 replied.

Out of London, 1,900 of 2,031 Local Authorities replied.

Of a total of 9,747, 7,316 were churchyards.

2/3rds of Church of England sites and ¾ of council sites were open for new burials.

Church sites average 1 acre, Council sites 8 acres.

Overall, 20% of land set aside for funerals was unused.

Average lifespan for Council sites was 30 years, for Church lands 25 years.

Only 44% of Council sites achieve cover for 75% of costs.

Only 24% of Church sites achieve cover for costs.

6.

FACULTY

In the Consistory Court of the Diocese of St Albans

Bishop's Stortford Old Town Cemetery

**Roger Godfrey Kaye QC, Chancellor of the Diocese and Official Principal
of the Right Reverend Alan by Divine Permission Lord Bishop of St
Albans**

To:

**Bishop's Stortford Town Council, The Old Monastery, Windhill, Bishop's
Stortford, Herts CM23 2ND**

A petition presented by you has been submitted to the Registry of this Court together with designs, plans, photographs or other documents, requesting a faculty authorising the works or other proposals specified in the petition.

A public notice was duly displayed giving an opportunity to all persons interested to object and give reasons why a faculty should not be granted.

The proceedings were unopposed and did not give rise to a question of law or of doctrine, ritual or ceremonial or relate to proposals that affect the legal rights of any person or body.

This Court now grants a faculty authorising you to carry out the works or other proposals described in the Schedule in accordance with the designs, plans or other documents accompanying the petition and subject to the conditions set out in the Schedule below.

A copy of this faculty is to be supplied by you to the architect or surveyor and contractor to be employed in respect of the authorised work before any work is commenced.

This faculty is duly authenticated by the seal of this Court.

Dated 22 April 2016

COPY.....

Joint Registrar

SCHEDULE

Description of works or proposals

The re-use of consecrated parts of the 'old' town cemetery by means of the "lift and deepen" method, as described in a letter from the Chief Executive Officer of Bishop's Stortford Town Council with enclosures

Conditions

This Faculty does not permit the "double decking" option. It only extends to the first option in the letter from James Parker.

Report – Re-use of Consecrated Ground in the Old Cemetery of Bishop's Stortford

Introduction

Bishop's Stortford Town Council currently runs two cemeteries, 'Old' cemetery and 'New' Cemetery, at a central location in the town. The 'Old' Cemetery has been in operation since 1855 and is split between consecrated burial space to the East and un-consecrated burial space to the West. A second cemetery, 'New' cemetery, was opened in 1940.

Like many authorities responsible for the provision of burial space Bishop's Stortford Town Council is currently looking at ways to ensure that provision is available for the foreseeable future. The Town Council has already purchased adjacent land to the 'New' Cemetery which, along with the small amount of space still remaining at the 'New' Cemetery itself, allows for future provision estimated at just below 14 years (or just below approx. 350 graves). This land is un-consecrated. We will shortly exhaust altogether land for consecrated burials and there is no option at all currently in place for continued provision of burial spaces (whether consecrated or un-consecrated) once this 'adjacent' land is exhausted.

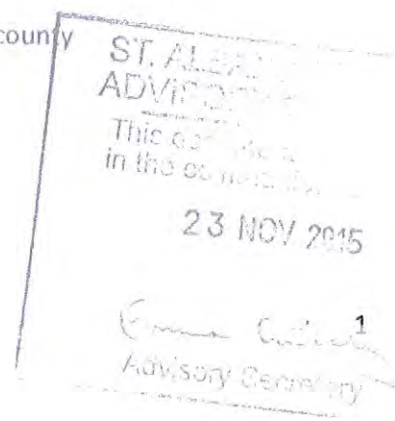
As of the 1st January 2015 a change in the law means that it is possible to re-use parts of a cemetery that are consecrated with a faculty from the local diocese. The Old Cemetery has extensive areas which are suitable for re-use and lies within the Diocese of St. Albans.

A further option which also requires a faculty, 'double decking' (where soil is deposited on top of previously used burial ground to allow for more burial space above that which previously existed), has also been considered. 'Double decking' would require further permissions than a faculty, such as planning permission, but a faculty would be the first stage of the project.

Options explored by the Town Council

Bishop's Stortford Town Council has looked at multiple options regarding the continued provision of burial space. These have included:

- Options with which we are already proceeding:
 - The recovery of unused private graves that were purchased over 75 years ago
 - The recovery of unused War Graves
- Options for which a faculty requested at this time:
 - The re-use of a section of the consecrated part of the old cemetery
 - 'Double Decking', a process which sees extra earth deposited on top of existing burial space in order to allow for further burials above older burials
- Options which are not proceeding at this time:
 - A third cemetery, outside the parish and in adjacent county
 - The use of pre-cast 'burial-chambers'



Options with which we are already proceeding

Remaining space in New Cemetery

Burial space sufficient for approximately 3 years remains in the New Cemetery as currently designated. This is currently all consecrated.

Purchase of additional space adjacent to the existing cemetery

The Town Council has already purchased land adjacent to 'New' Cemetery which allows for future provision estimated at 10 ½ years (or approx. 260 graves). This is and will remain un-consecrated, in order to ensure an adequate supply of un-consecrated land is maintained as required by law.

Recovery of Unused Private Graves

Following processes in the Local Authorities' Cemetery Order 1977 the Town Council currently expects to recover around 90 private graves that remain unused and were sold over 75 years ago. Of this, 46 are in the consecrated section of the 'Old' Cemetery.

Recovery of Unused War Graves

The Council has recovered 11 unused war graves from the War Graves Commission.

Summary

The above space and recovery, already in progress, will yield around 450 burial spaces, or approx. 18 years provision. Of these only about 130 spaces are consecrated.

Options for which a faculty is requested at this time

Re-Use

Investigation into the re-use of an area of the consecrated section of the Old Cemetery has shown that an estimated 1,818 burial spaces would, in principle, appear suitable for re-use. This number was gained by looking at all Common Graves within the consecrated section that had not had a burial in over 100 years.

The re-use of these burial spaces would be in the form of a 'lift and deepen' approach which requires a faculty. No other permissions are required where there is no subsisting privately owned exclusive right of burial and no monument. Approximately 30% of these burial spaces have a monument or tombstone which we may be forbidden, by the Local planning Authority, from removing (the cemetery is in a conservation area). In practice, therefore, the number of available graves may reduce to 1,273. This figure would still equate to over 50 years of consecrated burial provision.

'Double Decking'

The Council has approved the principle of 'double decking' for suitable graves at the Old Cemetery. Although this does not involve disturbing remains a faculty is still required and in addition planning and conservation area approval is required from the Local Planning Authority, which is by no means certain. However if the approach is viable approximately 7.2 years of consecrated burial space would be available (180 burial spaces).

Summary

Around 1,450 burial spaces, or 58 years burial provision, could be gained by the reuse of land in the ways described above, all of which would be consecrated.

Options which are not proceeding at this time

Third Cemetery

Land is available for purchased for possible use as a third cemetery however this has serious drawbacks and is regarded as a last resort. This land is outside the civil parish and indeed outside the County, in the adjacent county of Essex. Should we be forced to use this land those buried there would not be buried within their locality. Furthermore it is not conveniently accessible from the Town Centre and there is no direct public transport route from the town to the site. Furthermore a recent change in planning law casts doubt on whether planning consent would be given for this site which is in green belt. This site is therefore considered an option of last resort for the Town Council.

Pre-Cast 'Burial Chambers'

A limited area of the Old Cemetery might be suitable for pre-cast 'burial-chambers', however further study would be required to confirm this. These chambers would be expensive and the cost would inevitably be passed on to those purchasing the burial space. Whilst this is a possible option it is not suitable for general provision. This method would also require planning permission along with a faculty. In view of the various disadvantages this is not considered worth pursuing at the present time.

Summary of Yield

The current provision of burial spaces available to Bishop's Stortford Town Council, together with those which can be released by the methods outlined above that require no further permissions, amounts to around 450 (approximately 18 years provision), of which only approx. 130 would be consecrated. As a result of the imbalance and shortage we are forced to bury in un-consecrated land those who would happily be buried (or may even prefer to be buried) in consecrated land.

By introducing re-use by lift and deepen and 'double decking' 1,450 consecrated burial spaces would be created. This would enable Bishop's Stortford Town Council to provide a balance between consecrated and un-consecrated burial spaces for the foreseeable future and, most importantly, to plan burial provision in a sustainable manner having regard to the need to maintain a balance between consecrated and unconsecrated space.

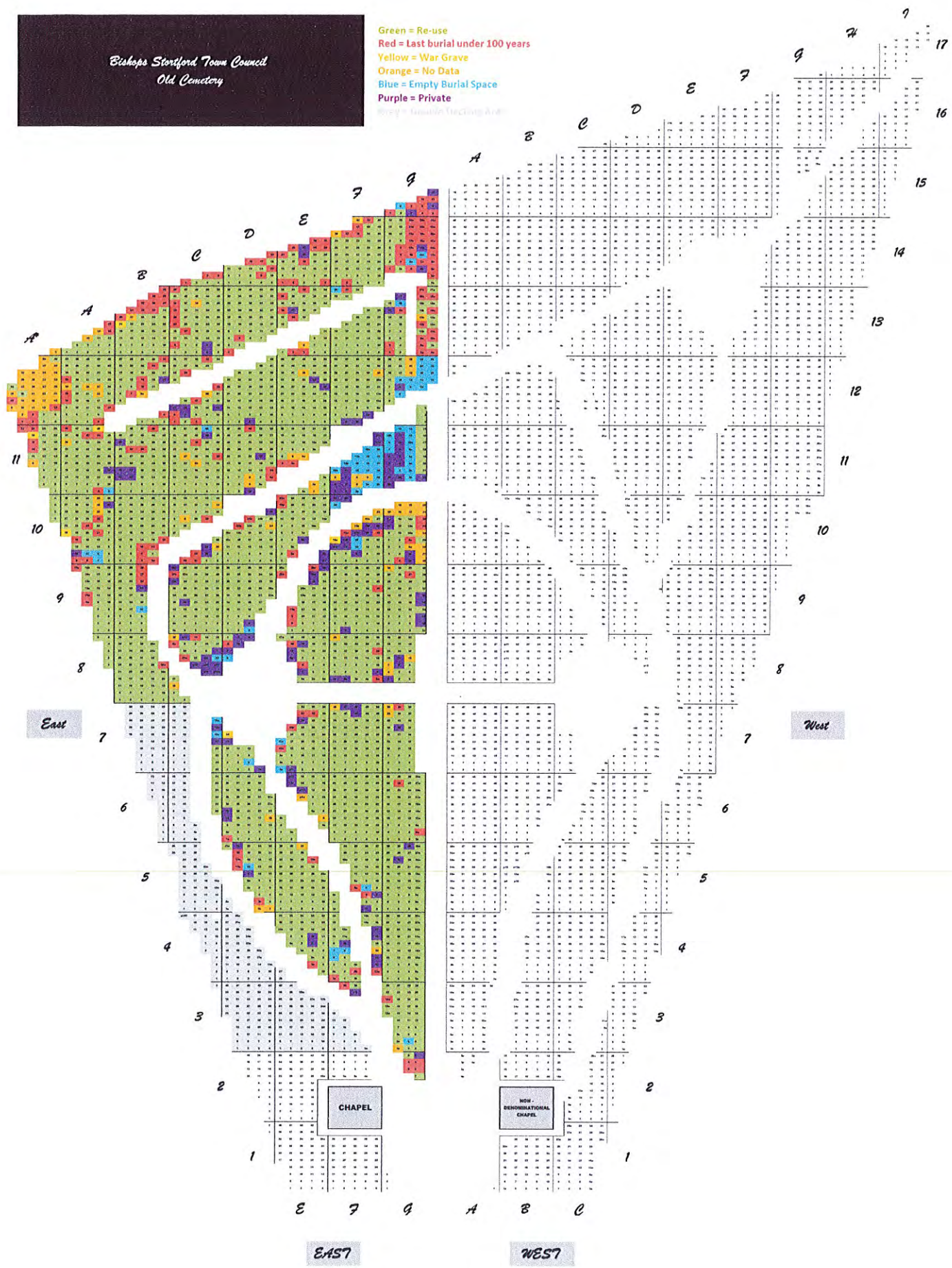
Conclusion

Bishop's Stortford Town Council requests a faculty from the Diocese of St Albans to allow for the re-use in a 'lift and deepen' approach of all graves marked green on the attached plan. This would enable Bishop's Stortford Town Council to continue to provide consecrated burial space in a centralised location for a significant number of years.

Bishop's Stortford Town Council would also like a faculty for the possible 'double decking' approach (area shown grey on plan), although this approach would require other permissions in order to proceed.

Bishops Stortford Town Council
Old Cemetery

- Green = Re-use
- Red = Last burial under 100 years
- Yellow = War Grave
- Orange = No Data
- Blue = Empty Burial Space
- Purple = Private



7.

		graves	spaces	
LHS	A*	13	1	0
		12	40	0
		11	26	0
		10	4	0
	A	13	15	0
		12	48	2
		11	49	1
		10	46	0
		9	27	0
		8	6	0
	B	13	40	0
		12	32	18
		11	49	1
		10	47	3
		9	30	20
		8	45	5
		7	35	0
		6	14	0
	C	14	6	0
		13	50	0
		12	34	16
		11	50	0
		10	32	18
		9	50	0
		8	28	22
		7	28	22
		6	29	21
		5	34	8
		4	19	1
		3	1	0
	D	14	19	0
		13	42	8
		12	42	8
		11	47	3
		10	33	17
		9	42	8
		8	7	43
		7	15	35
		6	47	3
		5	34	16

	4	36	14
	3	45	0
	2	20	0
	1	2	0
E	14	31	0
	13	34	16
	12	50	0
	11	30	20
	10	37	13
	9	33	17
	8	26	24
	7	42	8
	6	26	24
	5	44	6
	4	33	17
	3	45	5
	2	44	0
	1	44	0
F	14	46	0
	13	34	16
	12	47	3
	11	29	21
	10	33	17
	9	50	0
	8	35	15
	7	50	0
	6	50	0
	5	33	17
	4	32	18
	3	18	32
	2	16	4
	1	40	0
G	15	12	0
	14	42	8
	13	37	13
	12	30	20
	11	32	18
	10	35	15
	9	40	10
	8	21	29
	7	30	20
	6	40	10
	5	40	10
	4	40	10
	3	35	15
	2	7	37

could have same as E2

		1	3	45
RHS	A	15	25	0
		14	50	0
		13	50	0
		12	29	21
		11	43	7
		10	40	10
		9	50	0
		8	35	15
		7	50	0
		6	50	0
		5	50	0
		4	50	0
		3	41	9
		2	6	38
		1	0	48
	B	15	37	0
		14	50	0
		13	38	12
		12	42	8
		11	50	0
		10	28	22
		9	50	0
		8	35	15
		7	50	0
		6	43	7
		5	28	22
		4	27	23
		3	39	11
		2	20	0
		1	39	1
	C	16	1	0
		15	48	0
		14	50	0
		13	37	13
		12	29	21
		11	32	18
		10	45	5
9		27	23	
8		9	41	
7		14	36	
6		32	18	
5		50	0	
4		46	4	
3		29	21	
2		33	11	

based on E1 (E1 misses a further 4 for border)

could have same as E2
similar E1 & G1 could have 48

	1	41	0
D	16	10	0
	15	50	10
	14	46	4
	13	40	10
	12	50	0
	11	48	2
	10	36	14
	9	26	24
	8	13	37
	7	32	18
	6	33	17
	5	29	21
	4	33	13
	3	29	0
2	10	0	
E	16	22	0
	15	50	0
	14	23	27
	13	27	23
	12	44	6
	11	34	16
	10	36	14
	9	50	0
	8	40	10
	7	32	18
	6	31	4
5	17	0	
F	16	33	0
	15	50	0
	14	16	34
	13	24	26
	12	40	10
	11	50	0
	10	50	0
	9	50	0
8	32	0	
7	6	0	
G	17	1	0
	16	38	9
	15	29	21
	14	46	4
	13	50	0
	12	50	0
	11	50	0
10	25	0	

H	17	9	0
	16	34	16
	15	47	3
	14	44	0
	13	25	0
	12	7	0
I	17	20	6
	16	26	9
	15	15	0
		Graves	Spaces
Total		6248	1772

NB This does not include the central footpath, 1 grave wide and 144 long

Or an area of 7 x 8 graves for each of two Chapels.

So the total area of the Cemetery, in terms of graves, is 6248 (used) + 1772 (unused, for roads, pathways etc excluding central pathway) + 144 (central pathway) + 112 (Chapels) = 8276

Keeping the Chapels and just the central footpath, means 1772 unused graves / 8276 total area = 21.4% of the total area.

Total area is 8 acres = $8 \times 0.4047 = 3.24$ Hectares

21.4% = 0.69 Hectares of potentially unused grave sites

8.

East Hertfordshire District Council

Consultation on Private Bill Bishop's Stortford Cemetery

East Hertfordshire District Council (EHDC) is seeking to promote a private Bill on behalf of Bishop's Stortford Town Council (BSTC) in order to ensure the continued provision of burial space within two cemeteries in its area, one either side of Cemetery Road, Bishop's Stortford, Hertfordshire. These cemeteries are the only municipal cemeteries in the civil parish (hereafter referred to as 'the Town').

BSTC has advised that grave space available for new graves is sufficient to last less than a generation at the current rate of purchase, approximately 25 graves per year (a value which has been stable for several years but which may change in light of population growth). The population of the Town is approximately 40,000 and is expected to grow to around 50,000 by 2030. There is therefore an acute concern that grave space will not be sufficient or sustainable for the Town, meaning it will be impossible to provide burial space for residents within the Town.

BSTC previously consulted on the proposals for a Private Bill and has carried out considerable investigation, including searching for further land, using its existing powers as well as considering areas with tree root protection, and has concluded that the only practical way to ensure the continued provision of space for burial within its area is to seek additional powers through a private Act of parliament, similar to those acquired by burial authorities in the London Local Authorities Act 2007, the New Southgate Cemetery Act 2017 and Highgate Cemetery Act 2022.

Under s.239 of the Local Government Act 1972 a District Council can promote a private Bill if it considers it is expedient to do. Following consideration of consultation responses, EHDC will resolve whether the promotion of a Bill to enable burial space re-use in the cemeteries is expedient, at a full council meeting held on 16th November 2022.

The powers under the proposed Private Bill for the cemeteries would in brief comprise of:

- A) The power to extinguish exclusive rights of burial issued in perpetuity or for more than 75 years
- B) The power to disturb human remains and thus to reuse graves (subject to certain conditions)
- C) The power to remove memorials from any grave where the powers above have been exercised

These powers can only be exercised in respect of any particular grave provided that no objection is received from the owner of the grave or relatives of any person whose remains are interred, following a period of advertising.

The Bill, if enacted, would immediately allow space for an estimated 1000+ graves. These additional powers would provide a supply of grave space for at least the next century and quite possibly and with appropriate management, indefinitely. By providing for a sustainable re-use, it would also make it less likely the cemeteries fall into disrepair.

Consultation Comments

EHDC is now seeking comments from residents and other stakeholders on its proposal to seek these additional powers through a Private Bill. Comments received will be duly considered prior to any final decision to proceed with the promotion of the Private Bill. Comments should be sent:

By email to Victoria.Wilders@eastherts.gov.uk with the subject line 'Cemetery Consultation'

or by post to

East Hertfordshire District Council, Wallfields,
Pegs Lane, Hertford, SG13 8EQ

Comments must be received no later than 10th October 2022.

All comments received will be duly considered prior to any final decision to proceed with the promotion of the private Act.

East Herts Council Report

Council

Date of meeting: 16 November 2022

Report by: Councillor George Cutting – Executive Member for Corporate Services and Local Ward Member for Bishop's Stortford Central

Report title: Local Act – Bishop's Stortford Cemeteries Bill

Ward(s) affected: Bishop's Stortford Central, Bishop's Stortford All Saints, Bishop's Stortford Meads, Bishop's Stortford South, Bishop's Stortford Silverleys

Summary – This report sets out the case for the promotion of a Private Bill to enable the reuse of burial space in two cemeteries in Bishop's Stortford.

RECOMMENDATIONS FOR Council that

- a) The Council authorises the promotion and deposit of the private Bill on behalf of the Bishop's Stortford Town Council to authorise the reuse of certain graves with two cemeteries in its area subject to appropriate protections substantially in accordance with the attached draft Bill.**

- b) The Council authorises the Head of Legal and Democratic Services, in consultation with the Executive Member for Corporate Services, to address procedural matters which may arise in relation to the promotion of the Bill and to enter into undertakings or commitments in relation to it**

- c) The Council authorises the Head of Legal and Democratic Services to agree to the making of any necessary amendments to the Bill that may arise during the course of the promotion of the Bill.**

1.0 Proposal(s)

- 1.1 The council is seeking to promote a private Bill ("the Bill") on the request of and on behalf of Bishop's Stortford Town Council (BSTC) to ensure the continued provision of burial space within two cemeteries in its area, on either side of Cemetery Road, Bishop's Stortford. These cemeteries are the only municipal cemeteries in the civil parish.
- 1.2 The council sought advice from Parliamentary Agents who have produced a draft Bill (copy of which is annexed to this report)

2.0 Background

- 2.1 BSTC has advised that grave space available with existing powers is sufficient to last less only until 2036 (or thereabouts) at the current rate of purchase, approximately 25 graves per year (a value which has been stable for several years but which may change in light of population growth). The population of the Town is approximately 40,000 and is expected to grow to around 50,000 by 2030.
- 2.2 There is an acute concern by BSTC that grave space will not be sufficient or sustainable for the town, meaning it will be impossible to provide burial space for residents within the town. BSTC previously consulted on the proposals for the Bill and has carried out considerable investigation, including searching for further land, using its existing powers and has concluded that the only practical way to ensure the continued provision of space for burial within its area is to seek additional powers through a private Act of parliament, similar to those acquired by burial authorities in the London Local Authorities Act 2007, the New Southgate Cemetery Act 2017 and Highgate Cemetery Act 2022. The possibility of using land, situated in Essex but owned by the BSTC was also considered, however this was not deemed suitable by the BSTC as a) the land is currently used for amenity purposes and is being further developed for that use, b) it is not conveniently accessible by foot or public transport from the town, c) it does not provide residents with the opportunity to bury their loved ones within the local area, d) the road access is poor and cannot practically be upgraded.

Procedure

- 2.3 In order to promote the Bill, the council must comply with the provisions of section 239 of the Local Government Act 1972 (LGA 1972). The relevant legal notices are annexed to this report. Primarily, the Council must pass the necessary resolutions. The first resolution (to be given at the 16 November 2022 Council meeting) confirms that the Council considers it expedient to promote the Bill. The second resolution (to be given at a later meeting) confirms the first resolution and follows the deposit of the Bill in Parliament.

The procedure to be followed is as follows:

- 2.4 The Council meeting on the 16th November 2022 will consider approval for pursuing the Bill. A full majority of the Whole of the Council will be required to pursue the Bill. A majority of those present and voting is not sufficient.
- 2.5 If the first resolution is made at the 16th November 2022 meeting, the Bill is to be deposited in Parliament by 28th November 2022 (27th November falls on a Sunday this year hence the 28th is the next working day). If it is not deposited by this date, the council will have to wait until 27 November 2023 to deposit the Bill. This is because private Bills can only be deposited once a year, on or before the 27 November.
- 2.6 A second Council resolution must also be confirmed by a majority at a further meeting convened and held no earlier than 14 days after the deposit of the Bill, confirming that the Council wishes to proceed.
- 2.7 There will be various stages of the Bill through Parliament which will be facilitated by our Parliamentary Agents. If successful, the Bill is likely to be enacted by late 2023 and mid 2024.

Proposed powers

- 2.8 The proposed Private Bill for the cemeteries would in brief comprise of:

- (a) The power to extinguish exclusive rights of burial issued in perpetuity or for more than 75 years;
- (b) The power to disturb human remains and thus to reuse graves (subject to certain conditions);
- (c) The power to remove memorials from any grave where the powers above have been exercised

2.9 These powers can only be exercised in respect of any particular grave provided that no objection is received from the owner of the grave or relatives of any person whose remains are interred, following a period of advertising. The Bill, if enacted, would immediately allow space for an estimated 1000+ graves. These additional powers would provide a supply of grave space for at least the next century and quite possibly and with appropriate management, indefinitely. By providing for a sustainable re-use, it would also make it less likely the cemeteries would fall into disrepair.

3.0 Reason(s)

3.1 Whilst BSTC owns, maintains and is the burial authority for the 2 cemeteries the Houses of Parliament have been unable to agree whether or not a Town or Parish Council can promote a private bill in Parliament independently. X

3.2 Whereas, the council can promote a private Bill if it considers it is expedient to do so under s.239(1) LGA1972. In this context "expedient" includes, being of benefit to the inhabitants of the council's area. It will, ultimately, be for the Council to resolve whether the promotion of a Bill is expedient, at a full council meeting held in accordance with section 239 LGA 1971. X

4.0 Options

4.1 To approve the recommendation to promote and deposit the Bill.

4.2 To refuse the recommendation to promote and deposit the Bill

5.0 Risks

- 5.1 There is no direct implication on the council as it is promoting this on behalf BSTC at its request.

6.0 Implications/Consultations

6.1 The council carried out a public consultation on the Bill proposals which was published in the local newspapers circulating the area (Bishop's Stortford Independent and the Hertfordshire Mercury). The consultation was open for approximately six weeks and closed on 10th October 2022. A total of seven responses was received (six citing concerns/objections towards the Bill and one in support of it).

6.2 A summary of the responses are: -

- That the proposed time period of 75 years for extinguishment of exclusive rights was too short considering a family's life span.
- General objections to family members graves being disturbed.
- Those buried for religious reasons that may not have descendants in the local area.
- Concerns over the scope of the consultation given that some relatives may have moved out of the local area.
- Instead of reusing burial space a suggestion of exploring land elsewhere, even if outside the Bishop's Stortford area.
- Disagreement that that the present land bank is insufficient to accommodate the burials of an expanding population.
- That central government has not taken any action in the form of creating primary legislation to deal with any alleged national shortage of burial spaces.
- The council should be looking at other statutory powers such as the Town and Country Planning Act 1990 to identify suitable areas to identify suitable areas or acquire land for the purpose of burial spaces.
- In terms of the response in favour of the Bill it was considered that the Bill is the best option for providing burial space for the future and believes that there are no other alternative suitable sites available.

6.3 The consultations responses have been thoroughly considered by the council, BTSC and the Parliamentary Agents. Many of the objections relate to specific graves, however the Bill (annexed) is proposed to include specific protections for grave owners, including a notice period (including notices in local newspapers and on BSTC's website), and a veto over proposed extinguishment, as well as facility for relatives to prevent human remains from being disturbed for at least 25 years

6.4 In relation to the in principle objections, it should be noted that the Bill provides that the proposed powers must not be used unless 75 years have passed since the last interment. That period is considered proportionate in balancing the need for local burial space provision (likely to come under acute pressure given population trends), whilst allowing relatives to continue to pay their respects in light of the aforementioned protections. The 75 year period also reflects the position adopted in respect of New Southgate, Highgate and publicly run burial authorities in London. The powers would unlock significant burial space for inhabitants in the district council's area, and that alternatives would not be as sustainable or cost effective."

Community Safety

No

Data Protection

No

Equalities

No

Environmental Sustainability

No

Financial

No – Costs for the Bill will be paid by BSTC in its entirety. This includes the Parliamentary Agents fees and disbursements. It is expected that if the Bill is passed, the BSTC will recoup some of the costs through contributions obtained via Planning obligations pursuant to s.106 Town and County Planning Act 1990

for the area. The costs of obtaining the Bill are estimated to be £50,000-£100,000.

Health and Safety

No

Human Resources

No

Human Rights

Yes – Parliamentary Agents for the council will finalise a statement on the compatibility of the proposals with the European Convention on Human Rights, but have concluded that there is no breach of any Convention Rights. Following the deposit of the Bill, the Attorney General will be required to provide a report confirming his agreement that there is no incompatibility.

Legal

Yes – The Bill would lead to a change in legislation which would be applicable in the Bishop’s Stortford administration area only.

Specific Wards

Yes

7.0 Background papers, appendices and other relevant material

7.1 Draft Bill /consultation documents/notice requirements

Contact Member

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(if different from contact officer)

9.



BISHOP'S STORTFORD TOWN COUNCIL

CONSULTATION – BISHOP'S STORTFORD CEMETERY

Background

Bishop's Stortford Town Council owns, maintains, and is the burial authority for two cemeteries, one either side of Cemetery Road, Bishop's Stortford, Hertfordshire. These cemeteries are the only municipal cemeteries in the civil parish (hereafter referred to as 'the Town') and the only cemeteries in the Town which permit new coffin burials. They are known as the 'Old Cemetery' and 'New Cemetery'. Interments in the Old Cemetery were first carried out in the 1850s; the New Cemetery came into use in the 1940s. The population of the Town is approximately 40,000 and is expected to grow to around 50,000 by 2030.

Burials both of cremated remains and coffins are permitted and a range of styles offered in the cemetery. As at October 2021 the space available for new graves is sufficient to last approximately 10 years at the current rate of purchase, approximately 25 graves per year (a value which has been stable for several years but which may change in light of population growth).

The Town Council has, for some time, been conscious that grave space is limited and has taken steps as are within its existing powers to address the problem. After some considerable investigation the Town Council has concluded that the only practical way to ensure the continued provision of space for burial within its area is to seek additional powers through a private Act of parliament, similar to those acquired by London boroughs authorities in the London Local Authorities Act 2007, and the burial authority for New Southgate Cemetery following the passing of the New Southgate Cemetery Act 2017. Similar powers are currently being sought by Highgate Cemetery's burial authority. The purpose of this consultation is to set out the case for this plan, and seek comments from residents and others. Comments received will be duly considered prior to any final decision to proceed with the promotion of the private Act.

Search for land

Conscious of the limited supply of space within its existing cemeteries the Town Council sought, in 2016, land within, or immediately adjacent to, the Town for use as additional Cemetery space. No suitable available land was available identified, other than a relatively small plot immediately adjacent to the Cemetery, and owned by East Herts District Council. This land was subsequently acquired (in 2021) and there is now no further land adjacent to the Cemetery which could be acquired for burials.

In September 2021 the Town Council circulated to landowners and estate agents dealing with non-domestic properties a 'call for sites' for suitable land. No sites were forthcoming, an outcome which is not unexpected. Land in and around the town is highly sought after for housing development. The most recent Local Development (District") Plan allocates space for more than four thousand houses and, in order to do this, the Local Planning Authority was forced to re-designate green belt land for housing. In the Council's experience, undeveloped land is unlikely to be released for amenity purposes other than in very special circumstances, unless, for example, it is in or near the flood plain, in which case it would be unsuitable for burials.

The Town Council does own a separate plot of land in the adjacent parish of Little Hallingbury, however this is not considered suitable. It is both outside Bishop's Stortford and outside the County of Hertfordshire. Visitors to this land are made acutely aware of this by 'gateway' signs on the connecting road including one saying 'Welcome to Essex'. It is not within convenient walking distance of town centre nor is it on or near to a regular public transport route. Burials on this land would therefore not meet the expectations of the majority of clients, who would seek accommodation in a cemetery provided in their local area which is conveniently accessible from the Town.

The Town Council is therefore forced to conclude that there is little or no prospect of further land suitable for use as a cemetery coming forward in the foreseeable future.

Current alternatives to reuse

The Town Council has powers under the Local Authority Cemeteries Order 1977 to extinguish (subject to a specified procedure) exclusive rights of burial which were issued prior to the making of the order, were for a period of greater than 75 years (or in perpetuity) and which have never been exercised. These powers have been deployed to the maximum extent possible and the exclusive rights on 47 graves can now be extinguished. However only a relatively small proportion of these will in practice be usable due to the large number of mature trees in the Old Cemetery, where the graves in question are located. New burials must avoid or minimally invade the 'root protection zone' of each tree to ensure that the trees are not damaged. The Old Cemetery is within a Conservation area and the felling of any significant number of mature trees would be highly unpopular, environmentally damaging and damaging to the appearance of the area, and is anyway likely to be resisted by the Local Planning Authority. Based on the average tree cover in the areas concerned, it is estimated that about 25% will be usable, approximately 13 graves.

Reuse under existing powers

Taking the above into consideration it is clear that, if the residents of the Town are to continue to benefit from the availability of burial space within their local area, reuse of land is the only option and the Town Council has therefore been actively exploring this.

Following a change in law in 2015, limited opportunities for reuse became available to the Council. More specifically it became lawful to re-use graves in consecrated land where there was no existing private right of burial (ie 'common graves') provided that a faculty permitting the reuse was first obtained from the Diocese. The Town Council applied for, and obtained, a faculty for the reuse of such graves in the 'Old' cemetery in April 2016 and, subsequent to this, has offered grave space in this area as an option. This option is alongside the availability of graves in the 'New' cemetery which are in previously unused ('virgin' soil). The reuse option has proved popular with many and approximately 23 interments in re-used land have been carried out in the period November 2017 to date. Coffin graves are pre-prepared by excavating and retrieving any remains found, which are re-interred at the lowest level of the excavation before the new funeral party arrives. Records of the remains found are kept. This 'lift and deepen' method is well established and in use in other municipal, ecclesiastical and even private cemeteries.

Unfortunately the number of graves available using these powers is quite limited. Although there are in excess of 3100 common graves in the area to which the faculty applies, the majority cannot be used in practice because of the tree cover mentioned previously. In addition, the presence of even an isolated privately owned grave, unless it has a headstone, creates a sizable 'exclusion zone' in which re-use cannot occur, because it has not been possible to establish precisely the grid on which the existing graves were dug, and it would be all too easy inadvertently to breach a privately owned

grave which happens to be located within an area that otherwise comprises predominantly common graves. Taken together these restrictions mean that only approximately 156 graves can be recovered with the powers currently available, approximately six years supply. The extension of the powers available under faculty to the 'new' cemetery is a future possibility, however the common graves in this area will not become available until the 2050s and the supply is insufficient to meet the expected demand.

Furthermore, relying solely on the powers currently available to the Council severely prejudices the planning and layout of the cemetery and forces the reuse of graves which are much more recent than would otherwise be necessary, because we are limited to common graves in consecrated land and denied the opportunity to reuse graves in un-consecrated land, or graves where the exclusive right of burial was issued in perpetuity, the vast majority of which are never visited by the relatives. Without these additional powers the Council will be forced to consider re-using more recent graves just because they happen to be both 'common' and in consecrated land. This is neither desirable nor sympathetic. Furthermore it will be unable to guarantee a continued supply of graves beyond 2036 or thereabouts.

Private Act of parliament

This situation would be transformed if the Town Council had additional powers which are available to several other burial authorities. The powers in question are exemplified by the New Southgate Cemetery Act 2017 and in brief comprise

- a. The power to extinguish exclusive rights of burial issued in perpetuity or for more than 75 years
- b. The power to disturb human remains and thus to reuse graves (subject to certain conditions) in un-consecrated land
- c. The power to remove memorials from any grave where the powers above have been exercised

These powers can only be exercised in respect of any particular grave provided that no objection is received from the owner of the grave or relatives of any person whose remains are interred, following a period of advertising.

Taken together with the exiting power to reuse graves in consecrated land where a faculty has been obtained, these additional powers would provide a supply of grave space for at least the next century and quite possibly and with appropriate management, indefinitely. As importantly, they would allow the burial authority to plan the use of grave space and enable it to reuse the oldest graves first.

Unfortunately the powers concerned can be acquired only through new legislation, in practice a private Act of parliament. The Town Council has the power to promote a Private Act on the basis of its general power of competence under the Localism Act. Such an act grants powers to a legal entity which are not available generally.

The cost of a private Act of parliament is not inconsiderable (in the order of £50,000-£100,000) however when compared to land prices (were land available, which it isn't) this is very modest given the yield. The local market value for land is in the region of £1.7M per ha. Assuming the cost for obtaining a private Act was £75,000, that amount would purchase, just 0.04ha of land, sufficient for just 120 graves. The private Act, on the other hand, would immediately allow space for an estimated 1000+ graves. Moreover a continuous supply of grave space would become available in time as the currently 'newer' graves age. With careful management it is expected that the new powers will guarantee a sustainable supply of grave space into the 2100s and beyond, quite possibly indefinitely. The acquisition of these powers would enable the necessary

strategic plan to be created which optimises the grave space availability, the amenity value of the cemeteries, and maximises the time elapsed between the most recent interment and any reuse.

There is one further advantage in the acquisition of these powers, namely that it provides a reason to maintain the Cemetery, particularly the 'Old' Cemetery, in good condition and the financial resources to do so. Without the powers conferred by a private act the Cemetery has little economic value and hence it is almost inevitable that its condition will deteriorate given the pressure on funding.

In summary the acquisition, by the Town Council, of powers similar to those granted in the London Local Authorities Act 2007, New Southgate Cemetery Act 2017, and Highgate Cemetery Bill, is a cost effective, sensitive, environmentally sustainable, space efficient and only currently available way of ensuring that burial capacity to meet the demand currently continues to be available in the Town and the Town Council therefore proposes to seek these powers, subject to any comments received and the necessary decision making processes.

Consultation Comments

The Town Council is now seeking comments from residents and other stakeholders on its proposal to seek these additional powers through a private act of parliament. Comments should be sent:

By email to james.parker@bishopsstortfordtc.gov.uk with the subject line 'Cemetery Consultation'

or by post to

Bishop's Stortford Town Council (Cemetery Consultation), The Old Monastery, Windhill, Hertfordshire.

Comments must be received no later than 15th January 2022. All comments received will be duly considered prior to any final decision to proceed with the promotion of the private Act.

Issued by the Chief Executive Officer
10th November 2021

Supplemental Exhibits

- 1. Green Belt Map and Open Street Map**
 - 2. Precis of Commons Briefing Paper on Re-use of Graves**
 - 3. Precis of an Audit of London Burial**
 - 4. Precis of Home Office Memorandum CEM49**
 - 5. Precis of Burial Ground Survey by Ministry of Justice**
 - 6. Faculty – Report and Plan**
 - 7. Analysis of Circulatory Area of Old Cemetery**
 - 8. East Herts District Council Consultation Advertisement and Council Report**
 - 9. Bishop’s Stortford Town Council Consultation Document**
 - 10. Swavesey By-ways Act 1984**
 - 11. Ministry of Justice Burial Ground Report 2007 Full Version**
 - 12. House of Commons Briefing Paper 2017 Full Version**
 - 13. Publications Reviewed**
-

SUPPLEMENTAL EXHIBITS – SET 2

EXHIBITS 10 - 13

of 13 Exhibits

- 10. Swavesey By-Ways Act 1984**
- 11. Ministry of Justice Burial Ground Report 2007 Full Version**
- 12. House of Commons Briefing Paper 2017 Full Version**
- 13. Publications Reviewed**

10.



Swavesey Bye-ways Act 1984

CHAPTER xii

ARRANGEMENT OF SECTIONS

Section

1. Citation and commencement.
2. Interpretation.
3. Duty to make financial provision for maintenance of bye-ways.
4. Determination of expenses.
5. Bye-ways charges.
6. Occupier to be bye-ways chargepayer.
7. List.
8. Alterations to list.
9. Arbitration.
10. Person aggrieved.
11. Amendments to list.
12. Publication of amount of charge.
13. Demand note.
14. Recovery of charges.
15. Parish council to pay charges.
16. Accounts.
17. Local land charge.
18. Repeal and revocation.
19. Parish council to pay part of cost of Act.
20. Costs of Act.

ELIZABETH II



1984 CHAPTER xii

An Act to enable the South Cambridgeshire District Council to make financial provision for the maintenance of the Swavesey bye-ways and to raise a special charge on certain lands and on the Swavesey Parish Council for the payment of part of the costs incurred; to empower the Swavesey Parish Council to contribute towards the costs incurred and towards the costs of the promotion of the Bill for this Act; and for other purposes.

[12th July 1984]

WHEREAS—

(1) By the local Act whereof the regnal year and chapter is 1 Vict. cap. 6 and long title is "An Act for inclosing Lands in the Parish of Swavesey in the County of Cambridge" provision was made for enclosing certain lands and grounds in the parish of Swavesey in the county of Cambridge and commissioners were appointed for carrying the said Act into execution: 1838 c. 6.

(2) The commissioners in their award in pursuance of the provisions of the said Act set out and appointed a hauling way

or towing path and bridle-way and also private carriage roads and drift-ways and public footways or paths, and in respect of those ways, paths and roads the award contained the following provisions, namely that the said hauling way or towing path and bridle-way and also the said private carriage roads and drift-ways and public footways or paths so by them set out and appointed should for ever thereafter be supported, maintained and kept in repair by the surveyor or surveyors for the time being of the highways within the said parish of Swavesey by and at the expense of the owners and proprietors of the lands and grounds in Swavesey aforesaid by the said Act directed to be divided and allotted and the respective tenants and occupiers thereof in the same proportions that they contribute to the repair of the public roads:

(3) The duties of the surveyor or surveyors of highways for the said parish of Swavesey are now vested in the South Cambridgeshire District Council:

S.R. & O.1931/
333.

(4) By the Swavesey (Inclosure Award) Order 1931 it was provided that the value of the lands on which the road maintenance award was made should be based on the gross annual value for income tax purposes:

(5) Land being no longer assessed in the manner contemplated by the said Order of 1931 and there now being no effective machinery for determining new or revised assessments, it is expedient that the assessment of the lands be put on a more effectual basis:

(6) It is expedient that the other provisions contained in this Act should be enacted:

(7) The purposes of this Act cannot be effected without the authority of Parliament:

1972 c. 70.

(8) In relation to the promotion of the Bill for this Act the requirements of section 239 of the Local Government Act 1972 have been observed:

(9) A plan showing the lands to be rendered liable to the charge to be authorised under the powers of this Act, and the limits of the area within which the charge may be imposed, and defining the bye-ways subject to the provisions of this Act, has been duly deposited in the office of the Clerk of the Parliaments and in the Private Bill Office, House of Commons, and with the proper officer of the Cambridgeshire County Council, which plan is referred to in this Act as the deposited plan:

May it therefore please Your Majesty that it may be enacted, and be it enacted, by the Queen's most Excellent Majesty, by

and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) This Act may be cited as the Swavesey Bye-ways Act 1984. Citation and commencement.

(2) This Act shall come into operation on the expiry of a period of one month beginning with the date on which it is passed.

2. In this Act, unless the context otherwise requires— Interpretation.

“bye-ways” means so much of the hauling way or towing path and bridle-way, private carriage roads and drift-ways, and public footways or paths specified in the road maintenance award, shown coloured green on the deposited plan;

“bye-ways chargepayer” has the meaning ascribed to it in section 6 (Occupier to be bye-ways chargepayer) of this Act, and “bye-ways chargepayers” shall be construed as the total of all bye-ways chargepayers;

“district council” means the South Cambridgeshire District Council;

“expenditure” includes costs of administration and collection of charges imposed under this Act;

“hereditament” means a unit of land falling within subsection (5) of section 5 (Bye-ways charges) of this Act which is or could fall to be included as a separate item in the list prepared under section 7 (List) of this Act;

“inclosure area” means the area to which the road maintenance award relates;

“parish council” means the Swavesey Parish Council;

“proper officer” means the officer appointed by the district council to act in connection with their functions under this Act;

“road maintenance award” means the award of the Commissioners of Inclosure made in 1838 under the 1838 c. 6. Act whereof the long title is, “An Act for inclosing Lands in the Parish of Swavesey in the County of Cambridge”.

3. The district council shall make financial provision for the maintenance of the bye-ways. Duty to make financial provision for maintenance of bye-ways.

Determination
of expenses.

4.—(1) Not later than 31st March in each year, the district council shall determine the sum estimated by them to be the sum required to meet the expenditure expected to be incurred by them in the discharge of their functions under this Act during the financial year beginning with 1st April next following their determination, after taking into account expenditure previously incurred and any money in the fund or likely to come into the fund during that financial year.

(2) In this section “the fund” means the moneys held in the account authorised by section 16 (Accounts) of this Act.

Bye-ways
charges.

5.—(1) For the purpose of meeting a proportion of the expenses incurred in the discharge of their functions under this Act, the district council may not later than 1st April at the commencement of the financial year to which the expenses relate fix and demand such charges as they resolve—

- (a) from the bye-ways chargepayers; and
- (b) from the parish council.

(2) The district council may recover such charges as they demand under subsection (1) above.

(3) The amount to be demanded from the bye-ways chargepayers shall be 50 per centum of the sum determined under section 4 (Determination of expenses) of this Act.

(4) The amount to be demanded from the parish council shall be 16 per centum of the sum determined under section 4 (Determination of expenses) of this Act.

(5) The charges demanded by the district council under paragraph (a) of subsection (1) above shall be at a uniform amount for each hectare or part thereof for each hereditament exceeding 0.5 of a hectare which is—

- (a) situate within the inclosure area; and
- (b) used for the purposes of agriculture or the working of minerals.

(6) For the purposes of paragraph (a) of subsection (1) above a resolution of the district council as respects the charges to be demanded shall be taken to be validly determined if such resolution specifies the amount per hectare at which the charges are to be levied, notwithstanding that the resolution is made without reference to individual hereditaments.

(7) In this section—

“agriculture” has the meaning given to it by section 109 of the Agriculture Act 1947; and 1947 c. 48.

“minerals” has the meaning given to it by the Town and Country Planning Act 1971. 1971 c. 78.

6.—(1) The occupier of each hereditament which is included in a list compiled under section 7 (List) of this Act shall be a bye-ways chargepayer. Occupier to be bye-ways chargepayer.

(2) The district council in demanding the charges resolved under section 5 (Bye-ways charges) of this Act in respect of bye-ways chargepayers shall demand in respect of each bye-ways chargepayer the amount appropriate to the area of his hereditament calculated in accordance with subsection (5) of that section.

7.—(1) For the purposes of this Act the district council shall prepare and maintain a list of the hereditaments on which charges may be demanded pursuant to subsection (5) of section 5 (Bye-ways charges) of this Act, and when necessary cause it to be altered in accordance with the following provisions of this Act. List.

(2) There shall be inserted in the list—

- (a) a number allocated to each hereditament;
- (b) a description of the hereditament by reference to its use; and
- (c) the area of the hereditament.

8.—(1) The district council may propose an alteration to the list. Alterations to list.

(2) The proposal may be made if the district council is of the opinion that there is an error in the list relating to—

- (a) the inclusion or exclusion of any hereditament in or from the list; or
- (b) the area ascribed in the list to any hereditament.

(3) If the district council propose an alteration to the list under subsection (1) above they shall serve on any bye-ways chargepayer or occupier affected, notice of the proposal, and on the parish council if they are affected.

(4) A person aggrieved by a proposal to alter the list under subsection (1) above on the ground of any matter specified in paragraphs (a) or (b) of subsection (2) above may on that

ground, within 28 days of being notified of the proposal, counter-propose that—

- (a) the proposal to alter the list be not made; or
- (b) the proposal to alter the list be amended in the manner specified in the counter-proposal.

(5) The counter-proposal shall be served on the proper officer and at the same time notice of the counter-proposal shall be served on any bye-ways chargepayer or occupier affected by the counter-proposal, and on the parish council.

(6) The parish council, any bye-ways chargepayer or occupier affected by a counter-proposal may, on being notified of the counter-proposal under subsection (5) above, serve an objection to the counter-proposal on the proper officer within 14 days of being so notified.

(7) The proper officer shall consider the counter-proposal and any objection thereto and within two months of the service of the counter-proposal or objection thereto shall execute one of the following acts:—

- (a) approve the alteration to the list as proposed by the district council; or
- (b) not approve the alteration to the list as proposed by the district council; or
- (c) make an amendment to the alteration to the list in the manner proposed by the person serving the counter-proposal;

and in all cases shall give in writing notice of his decision and of the reasons for his decision to the person who served the counter-proposal or the objection.

(8) A person who is aggrieved by—

- (a) the inclusion or exclusion of any hereditament in or from the list; or
- (b) the area ascribed in the list to any hereditament;

may on that ground, at any time, make a proposal for the alteration of the list.

(9) Every proposal made under subsection (8) above shall be served—

- (a) in the case where it is made by a bye-ways chargepayer on the proper officer and, at the same time, notification thereof upon any occupier or other bye-ways chargepayer affected by the proposal and on the parish council if they are so affected;

- (b) in the case where it is made by an occupier on the proper officer and, at the same time, notification thereof on any bye-ways chargepayer or other occupier affected by the proposal, and on the parish council if they are so affected;
- (c) in the case where it is made by the parish council on the proper officer and, at the same time, notification thereof on any bye-ways chargepayer or occupier affected by the proposal.

(10) The parish council or bye-ways chargepayer or occupier affected by a proposal made under subsection (8) above may, within 14 days of receiving notification under subsection (9) above, serve an objection on the proper officer, and if they do so, or he does so, they or he (as the case may be) shall at the same time also serve a copy thereof on the person making the proposal.

(11) The proper officer shall consider every proposal and objection thereto and within two months of the service of such proposal or objection shall either—

- (a) amend the list in the manner specified in the proposal;
or
- (b) not amend the list;

and shall give—

- (i) to the person who made the proposal, notice of his decision together with reasons for his decision; and
- (ii) to any person who gave notice of objection to the proposal, notice of his decision.

(12) Any proposal, counter-proposal or objection served under this section shall—

- (a) be in writing;
- (b) specify the grounds on which it is made; and
- (c) include a statement of the facts upon which it is based.

9.—(1) A person aggrieved by the decision of the proper officer under section 8 (Alterations to list) of this Act may within 28 days of being notified of that decision give written notice to the proper officer of his intention to refer the difference to arbitration.

(2) Where notice is given in accordance with subsection (1) above any difference between the person aggrieved and the proper officer shall be referred to and settled by a single arbitrator to be agreed between the person aggrieved and the proper officer or failing agreement to be appointed on the

application of either the person aggrieved or the proper officer (after notice in writing to the other) by the President of the Royal Institution of Chartered Surveyors.

Person
aggrieved.

10. No person shall be a person aggrieved for the purposes of section 8 (Alterations to list) or section 9 (Arbitration) of this Act unless he is—

- (a) a bye-ways chargepayer;
- (b) an occupier; or
- (c) the parish council;

and is affected by any relevant entry in or omission from the list, or any proposal for the alteration of the list, any counter-proposal or any objection thereto.

Amendments
to list.

11.—(1) The proper officer shall amend the list in accordance with any determination made by an arbitrator appointed under section 9 (Arbitration) of this Act.

(2) Any amendment to the list made pursuant to this section or either subsection (7) or (11) of section 8 (Alterations to list) of this Act shall take effect from the date of the happening giving rise to the proposal, provided that no amendment shall take effect earlier than the commencement of the financial year in which the proposal was made.

Publication of
amount of
charge.

12. Notice of the amount per hectare of the charge resolved under subsection (5) of section 5 (Bye-ways charges) of this Act shall be given within 7 days of the passing of the resolution by the district council in the manner prescribed by section 4 (2) (means of publicising notice of rates) of the General Rate Act 1967.

1967 c. 9.

Demand note.

13.—(1) The district council shall send to every bye-ways chargepayer a demand note containing information with respect to the following matters:—

- (a) the area of the hereditament upon which the charge is assessed; and
- (b) the amount per hectare of the charge; and
- (c) the charge demanded; and
- (d) a statement informing the bye-ways chargepayer of his rights under section 8 (Alterations to list) of this Act.

(2) A bye-ways chargepayer shall be liable to pay the charge demanded in the demand note, notwithstanding that a proposal has been made in respect of the hereditament and not finally determined.

(3) Where any amendment to the list is made, and that amendment affects the amount of any charge demanded in respect of any hereditament in accordance with the list, then the difference shall—

- (a) if too much has been paid, be repaid or allowed;
- (b) if too little has been paid, be paid on demand.

14.—(1) The Council may recover any charge assessed from the person from whom it was due 14 days after it has been demanded of him. Recovery of charges.

(2) In proceedings for the recovery of such a charge a bye-ways chargepayer shall not be entitled to raise by way of defence any matter which could have been the subject of a proposal for the alteration of the list pursuant to subsection (2) of section 8 (Alterations to list) of this Act.

15.—(1) It is hereby declared that the parish council are empowered to pay to the district council the sum demanded of them by the district council under section 5 (Bye-ways charges) of this Act. Parish council to pay charges.

(2) Where in any financial year the parish council have issued a precept to the district council they shall not issue any further precept to meet the amount of the charges demanded of them under section 5 (Bye-ways charges) or section 20 (Costs of Act) of this Act.

16.—(1) The district council shall maintain a revenue account of their income and expenditure under this Act. Accounts.

(2) It shall be the duty of the district council to discharge their functions under this Act so as to secure that, taking one year with another, their revenue in respect of this Act is not less than sufficient to meet their total outgoings in respect of this Act.

(3) Moneys recovered through the exercise of powers authorised under this Act shall not form part of the general rate fund of the district council.

17. Any charge made in respect of a hereditament under section 5 (Bye-ways charges) of this Act shall be a local land charge. Local land charge.

18.—(1) The Act of 1838 whereof the long title is "An Act for inclosing Lands in the Parish of Swavesey in the County of Cambridge" is repealed. Repeal and revocation. 1838 c. 6.

(2) The Swavesey (Inclosure Award) Order 1931 is revoked. S.R. & O.1931/333.

1929 c. 17. (3) In the road maintenance award for the reference to the same proportions that they would contribute to the general rate if subsection (1) of section 67 of the Act of 1929 (being the Local Government Act 1929) had not been passed and that rate were levied on the ascertained value as defined in the Order (being the Swavesey (Inclosure Award) Order 1931) there shall be substituted a reference to the manner prescribed under section 5 (Bye-ways charges) of this Act.

S.R. & O. 1931/333.

Parish council to pay part of cost of Act. 19. The parish council shall be empowered to contribute to the costs of this Act.

Costs of Act. 20.—(1) The costs, charges and expenses preliminary to, and of and incidental to, the preparing, applying for and obtaining of this Act, or otherwise in relation thereto shall be paid by the district council, who may recover the following proportions of the costs:—

- (a) 50 per centum from the bye-ways chargepayers;
- (b) 16 per centum from the parish council.

(2) For the purpose of this section the district council may fix, demand, take and recover a special charge as if that charge were a charge to which section 5 (Bye-ways charges) of this Act relates.

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11.



Ministry of
JUSTICE

Burial Grounds

The results of a survey of burial grounds
in England and Wales

June 2007

Contents

Introduction	3
Executive summary	4
Methodology, coverage and data quality	5
Survey methodology	5
Coverage and data quality	5
Commentary	7
Location, type and burial authorities	7
Rural / urban classification of burial grounds	8
Operational status	8
Area usable for burials	9
Predicted future period of operation	11
Number of burials	12
Finance	12
Staffing	12
Grounds maintenance	13
Public access arrangements	13
Criminal activity	13
Safety procedures and plans	14
List of tables	15
Further information	33
References	34
Appendix A: Defra rural / urban classification for England	35

Introduction

In 2001, the Environment Sub-Committee of the Environment, Transport and Regional Affairs Select Committee identified in its eighth report¹ long-term problems with the provision and maintenance of burial space. The report further identified that there was little or no information readily available about the number, condition and operational status of the country's burial grounds, cemeteries and churchyards. In its response² to the Committee's report, the Government undertook to carry out a survey of burial grounds, and to conduct research into their management, in order to attempt to fill this information gap.

The Home Office, which at that time was the government department responsible for burial policy, commissioned research into the management of burial grounds, including training, planning and maintenance standards. This report³ was published in 2004.

In 2005, following a pilot exercise, the Home Office launched a survey with the objective of gathering information on every piece of land in England and Wales which is, or ever has been, used as a burial ground, and which is not now being used for any other purpose. The survey aimed to capture information on all burial grounds of any nature, ranging from fully-functioning modern cemeteries to centuries-old churchyards. Its purpose was to establish the identity, nature, location, operational status, capacity and management arrangements of every burial ground in England and Wales. This is the first time a survey of this type and scale has been undertaken.

Since that time, responsibility for burials policy passed from the Home Office to the Department for Constitutional Affairs and now lies with the Ministry of Justice. Information on some 9,700 burial grounds has been returned in response to the survey. This report presents the survey results. Statistics are shown for England and Wales as a whole, along with separate data for Wales and the nine Government Office Regions of England.

¹ HC 91-I Cemeteries.

² HC 91 Cemeteries – The Government's Reply to the Eighth Report from the Environment, Transport and Regional Affairs Committee, cm 5281.

³ Wilson B and Robson J, Cemeteries and their management, Home Office online report 1/04, see <http://www.homeoffice.gov.uk/rds/pdfs2/rdsolr0104.pdf>.

Executive summary

A total of 9,747 burial grounds, cemeteries and churchyards in England and Wales responded to the survey. Of these, 21 per cent were identified as having a first- or second-tier local authority as the burial authority, 70 per cent operated under the Church of England or, in Wales, the Church in Wales, while the remaining 9 per cent includes those owned or managed by other faiths or charitable trusts, woodland cemeteries, and those where the burial authority could not be identified. [see Table 1]

Nearly three quarters of local authority burial grounds were open for burials in new graves, with 11 per cent completely closed to new burials and 12 per cent open only for new burials in existing graves. A lesser proportion (64 per cent) of Church of England⁴ burial grounds were open for new burials, while a little under 20 per cent were closed to new burials. Approximately two-thirds of local authority burial grounds located in predominantly major urban areas were open for new burials. [see Tables 4, 5 and 6]

For both Church of England and local authority burial grounds it was reported that, overall, approximately 80 per cent of land available for burials was already occupied by graves, with 20 per cent still unused. Twenty per cent of local authority burial land was occupied by graves over one hundred years old, compared to 36 per cent of Church of England burial land. [see Tables 7 and 8]

The median predicted time for unused burial land to be filled by new interments was, for those burial grounds that were still open to new burials, 30 years for local authority sites and 25 years for Church of England / Church in Wales locations. In England, burial grounds in mainly urban districts had a slightly lower median predicted period of time until unused land was expected to be filled by new burials than those in principally rural areas. These are aggregate results for England and Wales as a whole, so do not reflect the range of pressures on burial space at more local levels. [see Tables 7, 8 and 9]

⁴ Throughout this report, all references to "Church of England" include the Church in Wales unless specifically stated otherwise.

Methodology, coverage and data quality

Survey methodology

The aim of the survey was to identify and obtain information about any area of land that has been specifically set aside for interments. Since there were no central data on the locations of burial grounds in England and Wales, it was decided to post survey questionnaire forms to all Chief Executives of second-tier and unitary authorities in England and Wales, in other words district councils, London boroughs, other metropolitan boroughs and unitary authorities. These were all potentially burial authorities in their own right, and could be expected to be aware of other burial grounds in their area. The forms were then to be forwarded on to officials of first-tier and other authorities known to have responsibility for the management of burial grounds, cemeteries and any non-Church of England churchyards in their area. Following the initial distribution of forms, a further exercise was undertaken to confirm their receipt, and, where appropriate, their onward transmission. There was also some further spot-checking of the receipt and return of the forms. Forms were separately distributed to all clergy in the Church of England through their diocesan network. Separate arrangements were made by the Welsh Assembly for distribution of the questionnaires in Wales.

When the forms were returned, data cleansing was undertaken in order to, for example, correct any obvious response errors, data entry errors occurring when transferring the data into electronic format, and any duplicate returns. Geographical coding of addresses and other location information provided on the survey forms was carried out with support from officials at Communities and Local Government (CLG). MOJ would like to thank CLG colleagues for their assistance and guidance in this work.

Coverage and data quality

In total, over 9,700 unique survey questionnaire responses were received. However, as there is no comprehensive list of burial ground locations to compare the set of returned survey forms against, there is no reliable way of estimating the degree of coverage that has been achieved. The Wilson report (see footnote on page 3) estimated that there are between 16,000 and 18,000 Church of England burial grounds and nearly 2,000 Church in Wales burial grounds. Just under 7,000 survey returns were received from Church of England or Church in Wales sites, suggesting that coverage of these burial grounds could be approximately 35 to 40 per cent of the total.

The degree of coverage is less clear for those burial grounds where the burial authority is some tier of local authority. In London, about 120 survey forms were returned from cemeteries, whereas a report by the London Planning Advisory Committee in the mid-1990s⁵ suggested that, at the time, there were 147 cemeteries in the capital. That would suggest that the survey's coverage in that part of the country is high – although responses were not received from several boroughs and it is known that some responses have not been received for some sites. Elsewhere in England and Wales the coverage picture is less clear. Since either or both first- and second-tier local authorities may provide burial grounds in their areas, but neither are under an obligation to do so, the number

⁵ London Planning Advisory Committee, *Burial Space Needs in London*, 1997.

of local authority burial grounds cannot readily be predicted. However, a total of 1,900 survey forms were returned from areas (other than London) where the burial authority was a local authority.

Another possible indicator of coverage can be derived from the total number of burials taking place. Responses to the survey reported a total of close to 90,000 burials taking place in the financial year 2003/04. There are just over half a million deaths per year in England and Wales, with approximately 30 per cent of them resulting in burial⁶. This suggests that the number of burials in any given 12-month period is roughly 150,000. These figures suggest that the survey has covered somewhere in the region of 60 per cent of overall burial capacity – though not necessarily the same proportion of individual burial sites.

The survey has thus not been able to obtain data from every burial location in England and Wales, as originally intended. Although a significant amount of response chasing was undertaken, the outcome suggests that near-full coverage would only be likely to be achieved if provision of the data were a statutory obligation supported by a well-resourced communications effort including highly pro-active response chasing. Since coverage was not complete, the survey has a number of limitations and biases which should be borne in mind when interpreting the results. It seems probable that responses are more likely to have been received from burial grounds that are still open and actively managed, and that it is those that have been closed and not maintained for many years which will be more poorly represented among the respondents.

Nevertheless, with nearly 10,000 questionnaire responses received in total, the survey results form a significant repository of detailed data covering a large number of burial grounds across the England and Wales. The results appear to provide a good illustration of the wide range of types and size of burial grounds, their operational status, the pressures on burial space, and the different burial authority arrangements, at both a national and regional level.

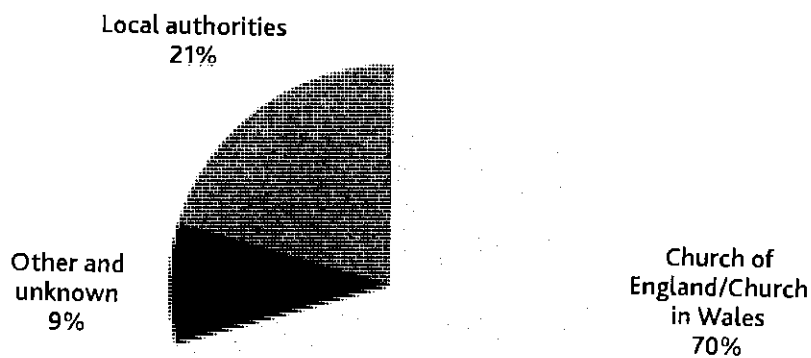
⁶ HC 902-1 Constitutional Affairs Select Committee Eighth Report, 2006.

Commentary

Location, type and burial authorities [Table 1, Table 2 and Figure A]

Responses to the survey were received from a total of 9,747 burial grounds, cemeteries and churchyards in England and Wales. Of these, 2,031 (21 per cent) were identified as having a first- or second-tier local authority as the burial authority, be it parish, community or town councils, district councils, unitary authorities or, in London, borough councils. A further 6,840 (70 per cent) operated under the Church of England (or, in Wales, the Church in Wales). The remaining 876 (9 per cent) includes those owned or managed by other faiths or charitable trusts, natural burial grounds, commercial concerns, and those where ownership was not specified or clearly identifiable from the questionnaire response.

Figure A: Number of burial grounds by type of burial authority



Detailed geographic coding was undertaken, with the help of officials at Communities and Local Government, to provide accurate information on the location of burial grounds responding to the survey. For the ten regions of England and Wales, the total number of survey responses ranged from 1,522 in the South West to 330 in London. As has already been noted, it is difficult to know whether, or by how much, the different regional level of survey responses is a reflection of the true picture of the number of burial grounds across the country or rather the result of varying rates of survey coverage.

At a national level, churchyards were the most common type of burial ground, accounting for 7,316, or 75 per cent, of the total. A further 1,819 sites (19 per cent) were identified as cemeteries or other forms of burial ground. The remaining 6 per cent did not specify this on their survey form and could not be clearly identified as one or the other from the other information provided. A similar relative proportion of churchyards was also seen in most of the ten regions, although in London, the North East and Wales the proportion of churchyards was much lower at less than 60 per cent. Some 10 per cent of local authority sites were local authority-maintained churchyards.

Rural / urban classification of burial grounds [Table 3]

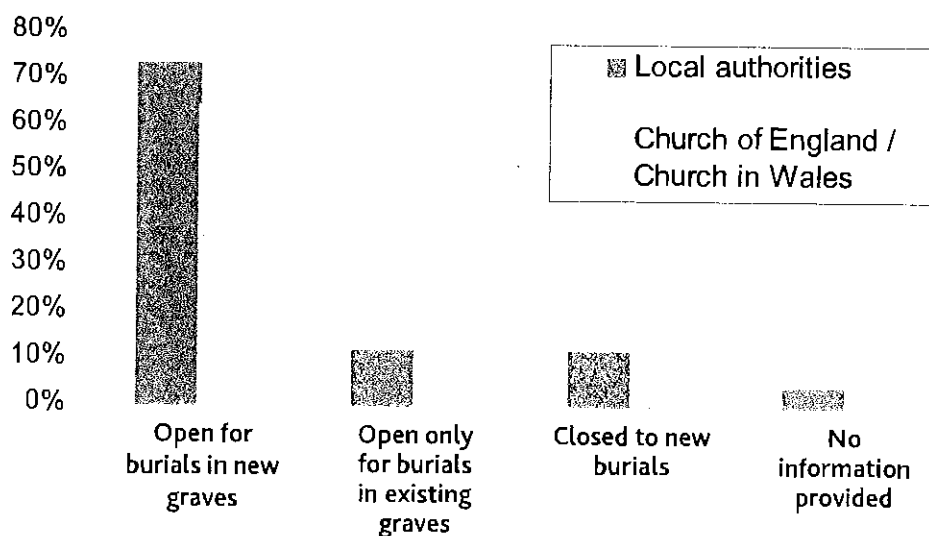
The geo-coded location information was used to estimate a rural / urban breakdown of burial grounds in England. Where possible, each burial ground was assigned one of six classifications of rurality. This was achieved by categorising the rurality of the local or unitary district within which each burial ground was located in accordance with the Department for Environment, Food and Rural Affairs's (Defra) recommended method. (For more information, see Appendix A or the Defra website: <http://www.defra.gov.uk/rural/ruralstats/rural-definition.htm>).

It should be noted, however, that it was not possible from the geo-coded information to identify a rurality category for over 40 per cent of burial grounds. This includes all burial grounds in Wales, which are not covered by the Defra classification. Of those burial grounds that could be assigned a rurality level, a third (33 per cent) were located within a "Rural-80" local or unitary authority district (that is, where at least 80 per cent of the population lives in rural settlements and larger market towns). Fifteen per cent were situated in a "Major Urban" area, defined as having either 100,000 people or 50 per cent of its population living in an urban area with a population of at least 750,000. Just under 60 per cent of those Church of England burial grounds that could be classified were in "Rural-50" or "Rural-80" areas, compared to 40 per cent of local authority sites.

Operational status [Tables 4 to 6 and Figure B]

Across England and Wales as a whole, nearly a quarter (23 per cent) of local authority burial grounds were either closed completely to new burials (11 per cent) or open only for burials in existing graves (12 per cent). Over 30 per cent of Church of England burial grounds reported that they were closed to burials in new graves (19 per cent) or permitting only burials in existing graves (12 per cent). Just under two-thirds (64 per cent) of Church of England burial grounds were open for new burials, compared to nearly three quarters (73 per cent) of local authority sites. Information on operational status was not provided by about 4 per cent of respondents.

Figure B: Operational status of local authority and Church of England / Church in Wales burial grounds



There was a significant degree of variation between the regions. In London, the survey results indicate that there is already considerable pressure on the existing burial space. Only half (50 per cent) of local authority burial grounds and fewer than a quarter (21 per cent) of Church of England burial grounds were open to burials in new graves. Forty-one per cent of Church of England sites in the capital were "full" and completely closed to new burials. In Wales, however, 73 per cent of Church in Wales burial grounds and 85 per cent of local authority sites reported that they were open to burials in new graves, with only a few per cent of locations completely closed. It should be noted that these figures present summary data for the burial grounds within each region as a whole, so do not indicate where much more acute pressure on burial land is being experienced on a more localised level.

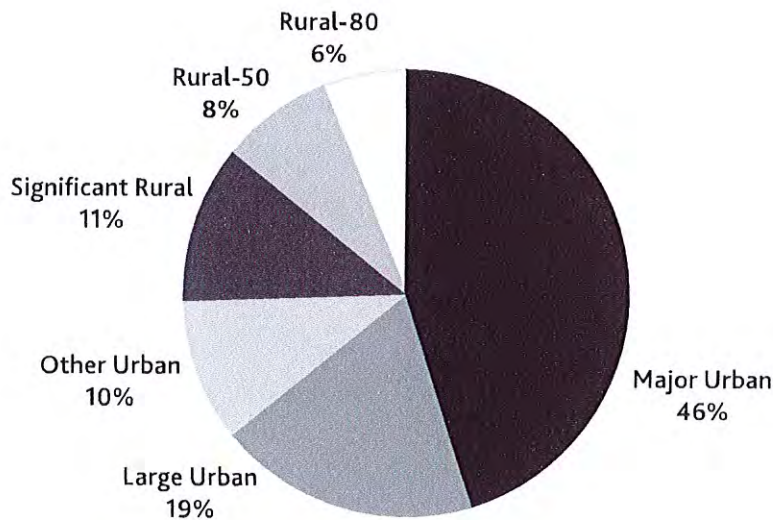
A much smaller proportion of Church of England burial grounds in predominantly urban areas were open to new burials than those in mainly rural districts. Around 40 per cent of Church of England burial grounds in districts classified as urban were open to new burials, while around 30 per cent were closed to new burials. By contrast, approximately 70 per cent of Church of England burial grounds in rural districts were open to new burials with about 17 per cent closed. Sixty-one per cent of local authority burial grounds in "Major Urban" districts were open for new burials, a lower proportion than in the other five rural / urban classifications.

Area usable for burials [Tables 7 to 9, Figure C and Figure D]

Many burial grounds include areas set aside for the interment of cremated remains. The information on the area of burial grounds still available for use for burials presented in this section and the predicted future period of operation of burial grounds in the following section, relates specifically to burial plots and land set aside for burials, not to areas set aside for cremation.

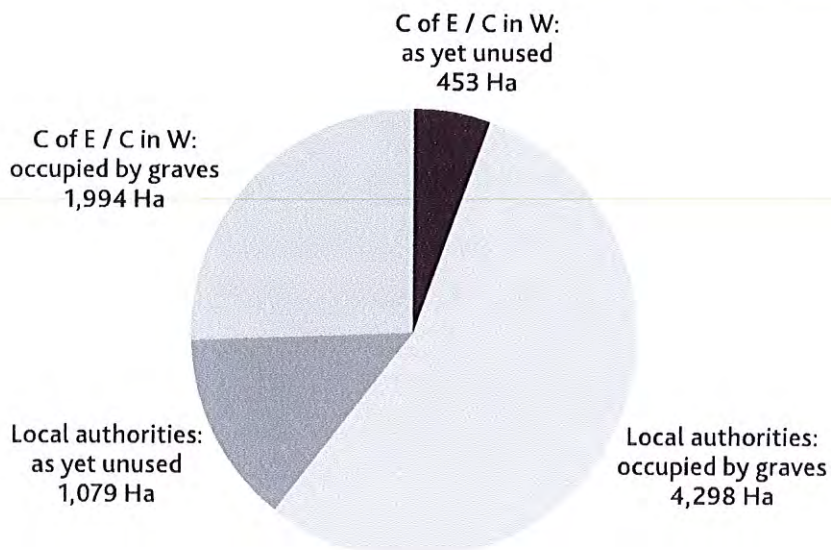
Some 1,757 of the 2,031 local authority burial grounds responding to the survey gave details of the area of burial land at the site. These sites had an estimated total area of 5,378 hectares of land suitable for burials (i.e. excluding land which is part of the burial ground but is unsuitable for burials, for reasons such as being prone to waterlogging, too steep, or set aside for the burial or scattering of cremated remains). Their average size was therefore just over three hectares (seven to eight acres) each. Overall, eighty per cent of the land was occupied by graves with twenty per cent set aside for burials but as yet unused. Of those local authority burial grounds in England that could be assigned a rural / urban classification, sites located in "Major Urban" and "Large Urban" districts accounted for just under two-thirds (64 per cent) of the total area usable for burials.

Figure C: Total area of local authority burial grounds in England usable for burials, by rural / urban classification (where known)



Church of England burial grounds are on average much smaller; their 5,497 sites able to provide area information totalled 2,400 hectares of land suitable for burials, an average of just under half a hectare, or a little over an acre, each. However, the proportion of land already occupied by graves was very similar to that of local authority burial grounds, at 81 per cent.

Figure D: Total area of local authority and Church of England / Church in Wales burial grounds usable for burials, in hectares



Perhaps unsurprisingly, given its high proportion of burial grounds closed to new burials, London overall had the smallest proportion of land available for new burials: just 4 per cent of Church of England and 14 per cent of local authority burial land is available for new burials there. In the South West, a quarter of local authority burial land and a fifth per cent of Church of England burial land was unused at the time of the survey. Burial grounds in predominantly urban areas of England had, overall, a lower proportion of land available for new burials than sites in rural parts of the country.

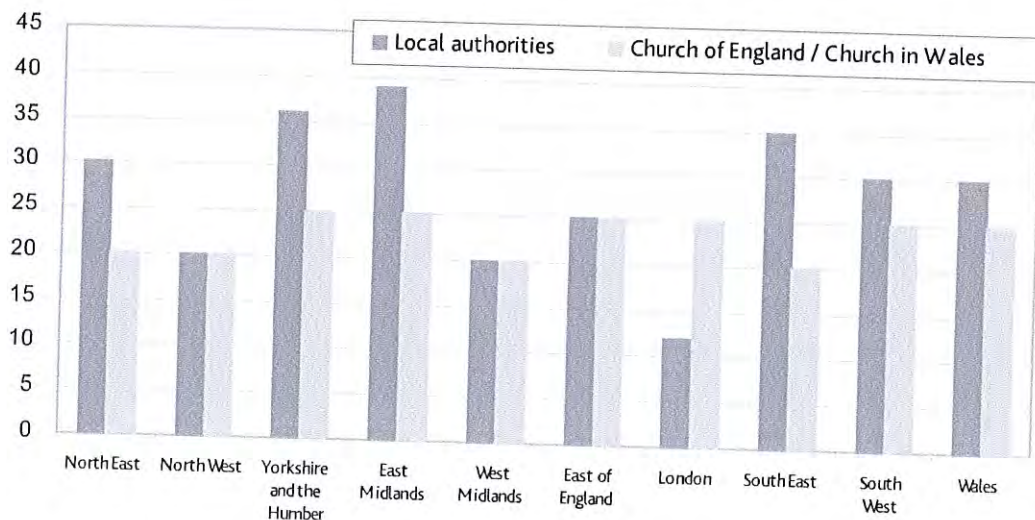
The survey also requested an estimate of the proportion of burial land that was occupied by graves that were greater than one hundred years old. Overall, 20 per cent of all local authority burial land was so utilised, close to the same total area of land as still available for new burials, and amounting to roughly a quarter (26 per cent) of used land. Thirty-six per cent of Church of England burial land in total was occupied by graves greater than one hundred years old, which comprised 46 per cent of the land already in use.

Predicted future period of operation [Tables 7 to 9 and Figure E]

The burial ground survey questionnaire asked for information on the expected number of years remaining before any land that was available for burials in new graves but not yet used would be filled by new interments. The average (mean) predicted remaining period of operation of both local authority burial grounds and Church of England burial grounds surveyed was 45 years. The median predicted remaining lifetime, however, was in both cases much lower, at 30 years and 25 years respectively. These differences between means and medians indicate that the predicted future period of operation data are positively skewed: many burial grounds' predicted period of operation are lower than the mean, which is pushed upwards by a relatively small number of burial grounds with a comparatively large unused capacity for new interments. All the regions also show this marked positive skew seen at the national level. Note that these figures relate solely to those burial grounds that are still open for burials in new graves and reported a predicted future period of operation. Burial grounds completely closed to new burials or open only for burials in existing graves are excluded.

Church of England burial grounds had a very similar pattern of predicted future periods of operation across the regions. Most regions had a median figure of 20-25 years and a mean figure of a little over 40 years. There appeared to be more variation in the predicted remaining future period of operation between regions for the local authority burial grounds. Those in the East Midlands had a mean predicted remaining period of operation of 52 years and a median of 39 years. By contrast, local authority burial grounds in London had a mean of 37 years and a median of just 12 years.

Figure E: Median predicted future period of operation of local authority and Church of England / Church in Wales burial grounds, by region



Burial grounds in urban districts appeared to have a slightly lower median predicted future period of operation than those in rural areas.

The data presented in this report are aggregate results for England and Wales and their constituent regions, and so do not reflect the range of pressures on burial space at a more local level. Nevertheless, the figures show that across the country there will be heightened pressures on space in burial grounds across all sectors over the next 10 to 20 years.

Number of burials [Table 10]

The large majority of burials in recent years have taken place at local authority burial grounds. In England and Wales as a whole, a total of nearly one million burials took place in the 10 years preceding the survey at local authority or Church of England / Church in Wales burial grounds providing a response. The large majority, accounting for over three-quarters (77 per cent) of the total, were undertaken at local authority burial grounds. The results also show a significant regional variation in the proportion of burials taking place at local authority burial grounds, ranging from 59 per cent in the South West to 95 per cent in London. It is difficult to say, however, if and by how much these differences are the result of varying rates of survey coverage rather than a reflection of genuine regional patterns.

The total number of burials reported as taking place during the financial year April 2003 to March 2004 at burial grounds responding to the survey was approximately 87,000. This is lower than the overall annual average of 98,000 reported during the 10 years preceding the survey. The proportion of those burials occurring in local authority burial grounds was 79 per cent, slightly higher than the overall proportion for the previous decade. It is not possible to deduce from the survey results whether or not the 2003/04 figures indicate a trend towards fewer burials overall and a greater proportion of burials in local authority burial grounds in recent years.

Finance [Table 11]

In general, in the 2003/04 financial year, the most recent complete financial year at the time the survey was launched, a higher proportion of the costs of local authority burial grounds were met by income such as fees or a local authority budget, than in the case of Church of England burial grounds. **Just under a half (44 per cent) of local authority burial grounds in England and Wales were reported to have more than 75 per cent of costs met by income, compared with a little under a quarter (24 per cent) for Church of England sites.** Many Church of England burial grounds benefited from voluntary financial contributions: 35 per cent were reported to receive income in this form. Only three per cent of local authority burial grounds were reported to receive voluntary financial contributions.

Staffing [Table 12]

A quarter of the survey responses relating to local authority burial grounds reported that no staff were directly employed, either relying on voluntary help or not being actively maintained. More than three-quarters (79 per cent) of the Church of England responses reported that no staff were directly employed, and nearly as many (74 per cent) reported that they received practical help and assistance from volunteers. The figures in respect of burial grounds not directly employing any staff are likely to be an underestimate; an additional 11 per cent of local authority responses and 14

per cent of Church of England responses in the survey did not provide any information in relation to this issue, which in many cases is expected to indicate that no staff are employed.

In some 60 per cent of local authority burial grounds, some, but fewer than five full-time equivalent (FTE), staff were employed. This compares with an equivalent figure of just 7 per cent for Church of England burial grounds. Fewer than 100 burial grounds in total in England and Wales were staffed by five or more FTE staff members, most of which were run by local authorities.

Grounds maintenance [Table 13]

Many burial grounds are actively maintained. This is usually done either by staff employed to do so or by volunteers. The large majority of burial grounds (79 per cent of local authority and 63 per cent of Church of England or Church in Wales) operate a "traditional" maintenance policy – regularly cutting the grass, pruning hedgerows, planting flowers, and so on – across the entire site. A quarter of Church of England burial grounds reported operating a deliberate policy towards allowing plants to grow freely and wildlife to thrive in at least a part of the burial land, including those that operate as part of the Living Churchyards and Cemeteries scheme. Some 11 per cent of local authority burial grounds also operate a deliberate policy towards allowing plants and wildlife to flourish on some or all of the site.

Public access arrangements [Table 14]

The large majority of burial grounds for which survey responses permit public access to the site at any time. This was the case for over 90 per cent of Church of England burial grounds and nearly two-thirds (62 per cent) of local authority sites. In a further 29 per cent of local authority burial grounds, public access is allowed only during the daytime, while in a further 6 per cent of sites access is permitted only by visitors making a prior arrangement. A significantly higher proportion of burial grounds in London were reported to permit access only during the daytime than in other parts of the country.

Criminal activity [Table 15]

The survey also asked whether there had been any incidents of criminal activity that were known to have taken place at each burial ground during the previous twelve months. For many burial grounds (43 per cent of local authority respondents and 57 per cent of Church of England respondents), no criminal activity was reported to have taken place. It is likely that most, if not all, of the further 15 to 16 per cent of burial grounds for which no information on criminal activity was provided also experienced no criminal activity. One third of local authority burial grounds had been the scene of disorderly or anti-social behaviour, such as drinking or drug use, in the year preceding the survey, with a similar number reported to have had at least one incident of theft or other criminal damage. Burial grounds in London were reported to have experienced a higher incidence of violent crime than the other regions. Note that these figures do not indicate the number of criminal incidents that took place at burial grounds, but the different forms of criminal activity known to have occurred.

Safety procedures and plans [Table 16]

For the large majority of local authority burial grounds in England and Wales, safety procedures were reported to be in place. Over three quarters (77 per cent) had safety procedures for memorials, covering the design, installation, foundations and repair. Inspection and audit plans existed for 81 per cent, while 79 per cent had safety plans for plot layouts, grave digging and ground care. Proportionally fewer Church of England burial grounds had such safety procedures in place than at local authority sites; for example, just over half (55 per cent) had safety procedures for memorials.

The large majority of burial grounds had an up to date diagrammatic plan of burial plots at the site. However, approximately one in eight of local authority burial grounds and one-third of Church of England burial grounds had no up to date diagrammatic plan of burial plots, with a further four to five per cent providing no information.

12.



BRIEFING PAPER

Number 04060, 6 June 2017

Reuse of graves

By Catherine Fairbairn

Contents:

1. Why is reuse of graves being considered?
2. What is the current position on reuse of graves?
3. Government consideration of reuse of graves
4. The position in Scotland



Contents

Summary	3
1. Why is reuse of graves being considered?	4
1.1 Shortage of space for burial – the problem	4
1.2 Reuse of graves – a possible solution?	5
2. What is the current position on reuse of graves?	7
2.1 Buried human remains not to be disturbed without specific authority	7
2.2 Exclusive rights of burial	7
2.3 Use of remaining space in grave after exclusive rights of burial have ended	7
2.4 Reuse with Church of England permission	8
2.5 Reclamation and reuse of graves in London	9
3. Government consideration of reuse of graves	12
3.1 Labour Government consultation	12
3.2 Labour Government response to consultation	12
3.3 Reuse of graves kept under review	14
4. The position in Scotland	15

Summary

England and Wales

Shortage of space for burial

In some areas, land for burial is scarce and some burial grounds have closed because they are full. Many people, including some faith groups for whom burial is a religious requirement, do not wish to consider the option of cremation. The reuse of graves has been under consideration for some time as a means of addressing this problem.

Current position

The general position is that buried human remains may not be disturbed without specific authority. Section 25 of the Burial Act 1857 makes it an offence to remove buried human remains without a licence from the Secretary of State or, in relation to ground consecrated according to the rites of the Church of England, a faculty (permission from the Church).

In limited circumstances, London burial authorities already have power to disturb graves older than 75 years for the purpose of deepening the grave to allow further burials to take place. However, in September 2014, the then Justice Minister, Simon Hughes, indicated that the use of the statutory powers by London burial authorities at that time was "almost non-existent". He said that it would be necessary to look at why the powers available to London burial authorities were not being used before considering whether similar powers should be made available in other areas. Graves have, however, been reused in London with Church permission.

Labour Government consultation

In 2004, the Labour Government consulted on a number of issues relating to burial law, including the reuse of graves. The method suggested (the "lift and deepen" method) involves the exhumation of remains in an existing grave, digging the grave to a greater depth, re-interring the remains (in a fresh coffin, if necessary), and using the rest of the grave for fresh burials. The proposal to reuse graves had a mixed reception.

In its response to the consultation, the Labour Government initially indicated it was satisfied that it would be right to enable graves to be reused, subject to appropriate safeguards. However, it later said that this issue was being kept under review but was not being taken forward at that time. Successive Governments have similarly kept the issue under review.

Scotland

In Scotland, graves are referred to as "lair".

New legislation, the Burial and Cremation (Scotland) Act 2016, provides for the reuse of burial lairs in specified circumstances.

The legislation followed a Scottish Government consultation on a proposed Burial and Cremation Bill, which asked questions about alleviating pressure on burial grounds. Most individuals who responded to the consultation opposed the proposal to reuse burial lairs.

The Scottish Government considered that, despite these objections, the fundamental purpose of the proposal remained valid and would be taken forward, and pointed to the safeguards which would be put in place.

1. Why is reuse of graves being considered?

The reuse of graves has been under consideration for some time as a means of addressing the problem of shortage of space for burial.

1.1 Shortage of space for burial – the problem

Provision of burial grounds is a matter for discretion by relevant local authorities, private companies, or various religious organisations, in the light of demand or tradition.¹

In some areas there is now a scarcity of land available for burial and some burial grounds have closed because they are full. Many people, including some faith groups for whom burial is a religious requirement, do not wish to consider the option of cremation.

The position is particularly acute in London. A Labour Government consultation paper, [Burial Law and Policy in the 21st Century](#), published in 2004, specifically referred to this:

Some seven years ago, the London Planning Advisory Committee (LPAC), working in conjunction with relevant burial authorities and their representatives in London, carried out research into the existing capacity for burials in the Greater London area. According to this research, the Inner London Boroughs were then estimated to have, on average, only some 7 years' burial capacity remaining. The Outer London Boroughs were thought to have sufficient capacity to last a further 18 years. These average capacities concealed wide variations: some Boroughs had virtually no capacity for additional burials. It was for this reason that local authorities began to explore the prospects for burial land outside Greater London, or for using land within Greater London which was otherwise providing alternative amenities.²

The problem of shortage of space for burial is particularly acute in some areas of London. There are also regional variations in the amount of space available

In June 2007, Harriet Harman, who was then Minister of State at the Ministry of Justice, announced the publication of a report of a burial ground survey of England and Wales, and spoke of regional variations in the availability of burial space at that time:

The survey results indicate that less than three-quarters of burial grounds now have room to accept new burials, with only about 20 per cent of all designated burial land as yet unused. Burial grounds with unused burial space predict that the median time remaining until their land will be fully occupied by graves is about 25 to 30 years.

There is considerable regional variation in these values, and, while the survey results do not reflect trends and issues at a very local level, they suggest that there is particular pressure on burial space in predominantly urban areas, and that there will generally be increasing pressure over the next 10 to 20 years.

¹ Home Office, [Burial Law and Policy in 21st Century: the need for a sensitive and sustainable approach](#), January 2004, p1

² Ibid p15, footnotes omitted

Our survey has provided us, for the first time, with an essential factual basis on the number, size and usage of burial grounds. This will help inform future policy and operational development.³

The report of an [audit of London burial provision](#), borough by borough, was published in 2011.⁴ It found that provision of burial space remained uneven. A number of boroughs had no supply of burial space at all, some were reliant wholly on created graves,⁵ or had only a limited supply of new grave space, and some had sufficient space for the next twenty years or more.⁶

In September 2013, the BBC reported that it had conducted a survey which suggested that almost half of England's cemeteries could run out of space within the next 20 years.⁷

1.2 Reuse of graves – a possible solution?

The [eighth report](#) of the Select Committee on Environment, Transport and Regional Affairs, published in 2001, argued for legislation to enable reuse (with safeguards):

127. It is the almost universal view of those in the burial industry that reuse is the only long-term solution not only to the lack of burial space, but also to the long-term financial viability of cemeteries. If the public are to continue to have access to affordable, accessible burial in cemeteries fit for the needs of the bereaved, there appears to be no alternative to grave reuse. ... For the reasons stated above, and assuming that the necessary safeguards are included, we are ourselves of the opinion that legislation should be introduced allowing burial to take place in reused graves.⁸

The Labour Government's [2004 consultation paper](#) on burial law and policy set out how the "lift and deepen" method of reusing graves might alleviate the problem of shortage of space:

Although various models might have been considered, the method of re-use recommended by [London Planning Advisory Committee] LPAC was the so-called 'lift and deepen' practice.^[9] This involves the exhumation of remains in an existing grave, digging the grave to a greater depth, re-interring the remains (in a fresh coffin, if necessary), and using the rest of the grave for fresh burials. Since old remains would occupy less room, and the grave itself would be dug, wherever possible, deeper than has commonly been the practice (perhaps to 3.1 metres, allowing a

³ [HC Deb 5 June 2007 cc11-12WS](#)

⁴ [An Audit of London Burial Provision A report for the Greater London Authority by Julie Rugg and Nicholas Pleace, Cemetery Research Group, University of York, 2011](#)

⁵ That is, using space not originally planned for when the cemetery was first laid out, such as areas originally planned as pathways, land between graves and adjacent to paths, and new depth created by adding topsoil, *ibid* pp14 and 34

⁶ *ibid* p5

⁷ ["Reuse graves in England or run out in 20 years"](#), *BBC News*, 27 September 2013 [accessed 30 May 2014]

⁸ House of Commons Environment, Transport and Regional Affairs Select Committee, [Cemeteries](#), 2 April 2001, HC 91 2000-01, paragraph 127

⁹ Footnote to text: "Brick or vault graves are unlikely to be appropriate for re-use in this way"

further three burials above), it was said that, in practice, the grave could be used indefinitely if the cycle were repeated.¹⁰

¹⁰ Home Office, [Burial Law and Policy in 21st Century: the need for a sensitive and sustainable approach](#), January 2004, p15

2. What is the current position on reuse of graves?

2.1 Buried human remains not to be disturbed without specific authority

The general position is that buried human remains may not be disturbed without specific authority. Section 25 of the Burial Act 1857 makes it an offence to remove buried human remains without a licence from the Secretary of State or, in relation to ground consecrated according to the rites of the Church of England, a faculty (permission from the Church).

2.2 Exclusive rights of burial

When a grave is purchased, this generally refers to the “exclusive right of burial” for that grave space and not to the purchase of the actual land. A burial authority¹¹ may grant an exclusive right of burial, usually for a period not exceeding 100 years, or the right to burial in any grave space which is not subject to any exclusive right of burial.¹²

The general effect of purchasing the exclusive right of burial is that no one may be buried in the grave without the owner’s permission.

Rights may sometimes be ended by burial authorities, generally if they have not been exercised for 75 years and the relevant notice has been given.¹³ The [Guide for Burial Ground Managers](#), published by the then Department for Constitutional Affairs¹⁴ in November 2005, confirms the position:

2.29 Where the right to burial or to construct a walled grave or vault has not been exercised for 75 years (i.e. no burial has taken place), the right may be extinguished subject to compliance with due notice procedure. These rights may then be granted to any other person. A shorter period applies in London.¹⁵

2.3 Use of remaining space in grave after exclusive rights of burial have ended

The Labour Government’s [2004 consultation paper](#) on burial law and policy outlined how graves might be “fully used” when an exclusive right of burial has expired, or has been ended:

‘Private’ or ‘family’ graves are those where exclusive rights of burial have been granted, **formerly in perpetuity**, but now generally for a limited period.^[16] Such graves may also contain a

¹¹ Burial authorities are defined to include district councils, the councils of London Boroughs, and parish councils [Local Government Act 1972 section 214](#)

¹² [Local Authorities’ Cemeteries Order 1977](#), SI 1977/204, Article 10. Grants to the Commonwealth War Graves Commission may still be without limit

¹³ Ibid

¹⁴ Now Ministry of Justice

¹⁵ p12

¹⁶ Footnote to text: “Rights of burial may be granted under Article 10 of the Local Authorities’ Cemeteries Order 1977 for a maximum period of 100 years, except in the case of grants to the Commonwealth War Graves Commission which may still be without limit”

number of sequential burials, but only with the consent of the person holding the right of burial. Burial is usually confined to members of the same family, or to more distant relatives, as determined by the holder of the burial rights. Such graves may also be "reused", or, more accurately, fully used, where the exclusive rights of burial have expired or have been terminated and there is still space for additional burials within the grave. Expiry occurs after the specified number of years for which the rights have been granted, usually between 50 and 100 years. The rights may, however, be terminated by burial authorities in advance in circumstances prescribed in the relevant legislation, normally after 75 years.¹⁷

2.4 Reuse with Church of England permission

Section 25 of the Burial Act 1857 (as amended by [section 2 of the Church of England \(Miscellaneous Provisions\) Measure 2014](#)) allows for the disturbance of remains in churchyards and other consecrated ground, with Church permission. The Cemetery Research Group provides this information about the effect of the 2014 Measure:

The Burial Act, 1857 also allowed for exhumations to take place 'from one consecrated place of burial to another by faculty granted by the ordinary for that purpose' without need of a Ministry licence (S25). Essentially, this meant that where an exhumation is taking place in consecrated ground, with any remains re-interred in consecrated ground, then faculty only is required. Under Church law, it has been possible to re-use churchyards for - in some instances - centuries. Each diocese sets its own 'best practice' guidelines on churchyard management.

The Church of England (Miscellaneous Provisions) Measure, 2014 has subsequently made changes to the Burial Act, 1857. S2 of the Measure made a slight amendment to the wording of S25, which now allows for the disturbance of remains in churchyards and other consecrated ground without need for re-interment in consecrated ground. This change of wording permits a 'lift and deepen' approach to grave re-use in consecrated ground without a Ministry of Justice licence. This aspect of the Measure was enacted from January, 2015.¹⁸

The Diocese of Southwark has published advice that there should be an expectation of reuse of graves after 75 years:

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

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

¹⁷ Footnote to text: "Article 10 and Schedule 2 to the Local Authorities' Cemeteries Order 1977, as amended. Similar provision has been made in certain private Acts." Home Office, [Burial Law and Policy in 21st Century: the need for a sensitive and sustainable approach](#), January 2004, p14

¹⁸ University of York Cemetery Research Group, [Frequently Asked Questions, "Isn't it illegal to disturb human remains?"](#) [accessed 30 May 2017]

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

Rather than planning for re-use on a grave-by-grave basis, there is merit in seeking to bring larger areas into re-use as part of a coherent plan.¹⁹

The Cemeteries Research Group states that the City of London Cemetery in Newham is re-using graves with church permission:

In a consecrated section of the site, the local authority is re-using graves by disinterring any remains, and reintering them in a 'designated' grave, so releasing the grave for use by another family. The last interments in these graves took place eighty years ago.

The local authority is operating according to strict protocols, which preclude the disturbance of any remains more substantial than minor bone or coffin fragments. Any remains are placed in a hessian sack before being re-interred in the designated grave, and in no instance are remains cremated or taken away from the site. Hundreds of graves have been made available for re-use using this process.²⁰

2.5 Reclamation and reuse of graves in London

Legislation

In specified circumstances, burial authorities in London may reclaim a grave and then use the remaining space in it, where the rights of interment have not been exercised for 75 years or more and notice has been published.²¹

London burial authorities also have power to disturb graves older than 75 years for the purpose of deepening the grave to allow further burials to take place.²² The [Explanatory Memorandum](#) published with the [London Local Authorities Act 2007](#) provides information about the additional power this Act confers:

Section 74 enables the disturbance of human remains in certain graves, in cases where a burial authority wishes to deepen the grave to enable more burials to take place. Under the City of London (Various Powers) Act 1969 and the Greater London Council (General Powers) Act 1976, burial authorities are already able, if conditions are met, to carry out burials in existing graves without disturbing human remains. They may only do so in respect of graves in respect of which they have extinguished a registered right of burial. The 1969 and 1976 Acts provide that the burial authority is not entitled to extinguish any rights of burial until at least 75 years after the last burial in the grave, and after having made efforts to notify the holder of the right of burial, and allow objections to be made.

¹⁹ Diocese of Southwark, [Reuse of Graves](#) [accessed 18 May 2017]

²⁰ University of York Cemetery Research Group, [Frequently Asked Questions, "But haven't I heard something about grave re-use in London?"](#) [accessed 30 May 2017]

²¹ City of London (Various Powers) Act 1969 and the Greater London Council (General Powers) Act 1976

²² [London Local Authorities Act 2007 section 74](#)

Section 74 will only apply in relation to a grave where a registered right of burial or interment has been extinguished by the burial authority under either the 1969 Act or the 1976 Act. The burial authority would be able to disturb human remains for the purpose of deepening the grave to allow further burials to take place. No human remains may be disturbed under the Section if they have been interred for a period of less than 75 years. Any remains disturbed must be reinterred in the same grave.²³

Guidance

The London Environmental Directors Network has published [detailed guidance](#) on reuse processes.²⁴

Parliamentary debate

In a Westminster Hall debate on burial grounds in February 2007, Harriet Harman stated that the then Government was supporting London boroughs in the reuse of burial grounds over 75 years old:

On the reuse of old burial grounds, we are moving forward innovatively. In the first instance, we are supporting London boroughs in the reuse, at their discretion, of burial grounds that are more than 75 years old. We must proceed with caution and sensitivity because people have deeply held feelings. We are taking the matter forward, but we are starting by looking at how it works in London. That may show that people are prepared to take what is often considered to be a drastic step.²⁵

In September 2014, in response to an adjournment debate on burial space in London, the then Justice Minister, Simon Hughes, indicated that use of the statutory power by London burial authorities was “almost non-existent”:

My hon. Friend referred to, and other Members may be aware of, the reuse scheme available to London burial authorities by virtue of section 74 of the London Local Authorities Act 2007. That provides powers for burial authorities to extinguish the burial right in graves where—this is the crucial point—no interment has taken place for 75 years, and then to reuse the plots by redigging, lowering the existing burial, capping and putting in new bodies on top. Despite that facility having been available for several years now, take-up is almost non-existent. Although the City of London, one of the 33 local authorities in Greater London, reused just under 900 graves in the four years up to 2013, it did this in nearly every case using the powers not in the 2007 Act but those under ecclesiastical law where, on Christian consecrated land, reuse of graves is permitted if the Church authorities issue what is called a faculty. The York research group report that I mentioned earlier confirmed the limited use of these powers under the 2007 Act. It suggested that the reason for this is partly the difficulties involved in establishing who owns the monuments, and similar issues, and partly the administrative complexity of identifying grave ownership.²⁶

²³ [London Local Authorities Act 2007 Explanatory memorandum](#), p13

²⁴ London Environmental Directors Network, Cemeteries, Crematoria and Burial Provision Sub-Group, [Technical Guidance on the Reuse and Reclamation of Graves in London Local Authority Cemeteries](#), October 2013

²⁵ [HC Deb 27 February 2007 c240WH](#)

²⁶ [HC Deb 5 September 2014 c630](#)

Simon Hughes said that it would be necessary to look at why the powers available to London burial authorities were not being used before considering whether similar powers should be made available in other areas:

A number of those who are calling for something to be done have asked that access to the reuse scheme in the 2007 Act that applies in Greater London be extended to apply to the rest of England and Wales. There must clearly be reasons why London councils are not generally making more use of these powers, and before the Government consider legislation to extend the scheme more widely, we need to make sure that we understand the reasons why they have not been used significantly in London.²⁷

3. Government consideration of reuse of graves

3.1 Labour Government consultation

On 15 January 2004, the Home Office published a consultation paper, [Burial Law and Policy in 21st Century: the need for a sensitive and sustainable approach](#).²⁸ The consultation paper covered a number of issues relating to burial law.

The then Government asked for views on the reuse of graves:

Given the sensitivities on this issue, the Government believes that the arguments in favour of the re-use of graves need to be tested, in particular, so as to gauge public concerns and acceptability, and to determine the practicality and economics of any new approach, having regard to the need for any exceptions and safeguards. Comments are therefore invited on the principle as to whether the disturbance of remains would be justified in the interests of preserving and funding local, viable burial grounds, and reducing demands for new land for burials.²⁹

The Government stated that the “lift and deepen” method was its preferred approach, but invited views on any foreseen disadvantages of this method, or advantages of alternative methods.³⁰

3.2 Labour Government response to consultation

The consultation period ended on 13 July 2004. On 7 April 2006, the Department for Constitutional Affairs³¹ published a [summary of responses](#) to the consultation. This indicated that a range of opinions had been received in relation to the proposal to reuse graves:

Most respondents were in favour of pursuing a re-use option for burial grounds, varying from those who considered the practice should be implemented immediately to those who regarded it as very much a last resort which would need careful presentation and handling, or fuller consideration of the financial, logistical and safety implications. The 'lift and deepen' method was preferred, but additional options were proposed, and there was a degree of support for local decisions on the method to be used. There was, however, a substantial minority entirely averse to re-use, especially from the general public.³²

On 5 June 2007, the Ministry of Justice published its response to the consultation, [Burial Law and Policy in the 21st Century The Way](#)

²⁸ At that time the Home Office was responsible for burial matters. In 2005, responsibility was transferred to the Department for Constitutional Affairs, now the Ministry of Justice.

²⁹ Home Office, [Burial Law and Policy in 21st Century: the need for a sensitive and sustainable approach](#), January 2004, Question 22, p15

³⁰ *Ibid*, Question 26, p16

³¹ As it was then, now Ministry of Justice

³² [Burial law and policy in the 21st century Response to consultation](#), CP (R) DCA/HO 1/05, p9

[Forward](#).³³ Announcing publication in a written Ministerial Statement, Harriet Harman said that the then Government was satisfied that it would be right to enable graves to be reused, subject to appropriate safeguards:

One solution which the Government have been urged to consider is the reuse of burial grounds after a suitable lapse of time. It is a solution which can offer sustainable land use for the future, and the prospects of keeping burial facilities in good order and near to the communities they serve. It is an option which has received wide support.

The Government are now satisfied that it would be right to enable graves to be reused in this way, subject to appropriate safeguards. For example, no grave should normally be reused unless the last burial took place at least 100 years before. And families should have the opportunity to defer reuse of their relatives' graves for at least another generation.

We therefore intend to introduce measures which, using powers available under the Deregulation and Contracting Out Act 1994, will allow local authorities to reuse graves in their cemeteries, if they wish. At the same time, we will develop, in consultation with burial professionals and others, good practice guidance on the reuse of old burial grounds, the provision of burial space generally, and the maintenance of existing burial grounds.³⁴

In March 2008, Bridget Prentice, who was then a junior Justice Minister, said that work was progressing well on the practical details of how proposals to allow local authorities to reuse graves in their cemeteries would operate. At that time, she said that it was expected that an announcement would be made in the near future about how the initiative would be taken forward, including a public consultation exercise.³⁵

However, in April 2009, Lord Bach, who was then a junior Justice Minister, indicated that this issue was still being kept under review but was not being taken forward at that time:

The Lord Bishop of Southwell and Nottingham: ... On 2 April the Parliamentary Under-Secretary of State wrote to the chairman of the Churches Funeral Group explaining that,

"after careful consideration, the Government has concluded that this is not the most appropriate time for taking these matters forward".

Why, after eight years of discussion, is there a shortage of parliamentary time for legislation, or is there a more fundamental reason?

Lord Bach: My Lords, this remains a sensitive issue; that should not be a surprise to the House. Research indicates that a good proportion of individuals when asked are concerned and doubtful about the issue. I hope that the right reverend Prelate and others

³³ Ministry of Justice, [Burial Law and Policy in the 21st Century The Way Forward](#), Government Response to the Consultation carried out by the Home Office/DCA, June 2007

³⁴ [HC Deb 5 June 2007 cc 11-12 WS](#)

³⁵ [HC Deb 19 March 2008 c1194W](#)

in the House agree that on issues such as this, it is important to take people with you to try to achieve consensus...³⁶

3.3 Reuse of graves kept under review

Coalition Government stance

In July 2012, Jonathan Djanogly, who was then a junior Justice Minister, said that the issue of burial space was "routinely discussed at bi-annual meetings of the Burial and Cremation Advisory Group, which is chaired by the Ministry of Justice".³⁷ He also stated that, in autumn 2011, he had taken the view that introducing a policy of reusing graves was not critical at that time, but that the then Government had committed to keeping the situation under review.³⁸

On 5 September 2012, there was an adjournment debate on the subject of burial space.³⁹ Helen Grant, then junior Justice Minister, acknowledged the problem of shortage of space for burial in some areas.⁴⁰ However, Ms Grant said that "we have not yet reached the stage where the position is critical or requires Government intervention", and stated that she did not consider that introducing a policy of reusing graves was critical at that time. The matter, she said, would be kept under review:

Nevertheless, my officials have offered help and advice to burial authorities, and guidance has been issued for burial ground managers so that they can make the best use of their cemeteries. I will, of course, continue to keep the matter under constant and careful review.⁴¹

In September 2014, Simon Hughes confirmed that the issue had continued to be kept under review. He committed to "continue working on and engaging with this issue to make sure that we come to some conclusions on the way forward over the next few weeks and months".⁴²

Conservative Government

In November 2016, junior Justice Minister, Phillip Lee, said that the Government was considering whether the issue of reuse of graves should be kept under review:

There is already private legislation that, for almost 10 years now, has enabled public burial authorities in London to reuse graves, yet very few have done so. It is therefore not yet clear that pressure on burial space is a national issue requiring central Government intervention. Successive Administrations have kept the situation under review; I and my ministerial colleagues are considering whether that position should continue.⁴³

³⁶ [HL Deb 22 April 2009 cc1497-9](#)

³⁷ [HC Deb 17 July 2012 c638W](#)

³⁸ [HC Deb 16 July 2012 c544W](#)

³⁹ [HC Deb 5 September 2012 cc354-60](#)

⁴⁰ [HC Deb 5 September 2012 cc360](#)

⁴¹ *Ibid*

⁴² [HC Deb 5 September 2014 c632](#)

⁴³ [HC Deb 29 November 2016 c1487](#)

4. The position in Scotland

In Scotland, graves are referred to as “lairs”.

New legislation, the [Burial and Cremation \(Scotland\) Act 2016](#) provides for the reuse of burial lairs.

The legislation followed a Scottish Government [consultation on a Proposed Bill Relating to Burial and Cremation and Other Related Matters in Scotland](#).⁴⁴ Paragraphs 57 to 88 dealt with [Alleviating pressure on burial grounds](#).

The Scottish Government’s [Consultation Analysis Report](#) was published in July 2015. It revealed that there had been a mixed response to the questions relating to [reuse of burial lairs](#) and that most individuals who responded answered only these questions and opposed the proposal:

161 There was clearly considerable concern about the concept of allowing burial lairs to be reused in certain circumstances, and some of the related proposals, particularly from members of the public who responded to the consultation. Given the sensitivity of this topic, this is perhaps unsurprising. The vast majority of individuals who responded to the consultation answered only those questions relating to burial lair reuse, and most of them opposed the proposal, or at least called for more information about the safeguards that would be put in place to govern the process. Most organisations who responded to this issue supported the proposal, although there were a number who did not, including a small number of burial authorities and the National Association of Funeral Directors.

162 As discussed at paragraphs 63 - 65, a variety of reasons were put forward in opposition to the reuse of lairs. A number of people believed that human remains should not be disturbed for any reason. Others were concerned that lairs in which they had an ongoing interest would be reused without the opportunity to object. A number of responses argued that safeguards needed to be set out to detail the process by which lairs would be selected for reuse. Some responses suggested that reusing lairs would harm the heritage and research value of the burial grounds in which they were located.

The Scottish Government considered that, despite these objections, the fundamental purpose of the proposal remained valid and would be taken forward, and pointed to the safeguards which would be put in place:

While remaining a sensitive subject, the benefits of allowing the reuse of burial lairs warrant the proposal being taken forward in legislation, supporting the sustainability of burial grounds and making burial a more affordable and viable option in places where there is severe pressure on burial land. If the policy came into force it would be an option for burial authorities to use in their management of burial grounds; it would not be mandatory.

The Scottish Government will continue to engage with stakeholders to further develop this policy with a view to taking account of the issues raised during the consultation process. This should ensure that the Burial and Cremation (Scotland) Bill

⁴⁴ 26 January 2015

contains provisions which offer a robust process for the reuse of lairs with safeguards built into every stage.⁴⁵

A SPICe [Financial Scrutiny Unit Briefing on the Burial and Cremation \(Scotland\) Bill](#) provides information about the provisions which deal with alleviating pressure on burial grounds:

The Bill enables full, partially full and unused lairs to be restored to use in certain circumstances. The Bill sets out the criteria for burial authorities to identify which lairs may be available for possible restoration. The Bill will be supplemented by regulations which will provide in detail the statutory procedure that must be followed by the burial authority to enable the restoration of lairs.

A lair which contains human remains will be considered potentially suitable for restoration only where the last interment was at least 100 years ago and where the lair appears to be abandoned. A lair which does not contain human remains (i.e., an unused lair) will be considered potentially suitable if 50 years have passed since it was last sold and it appears to the burial authority to be abandoned.

The test of whether a lair is abandoned is not set out in the Bill, but the Scottish Government intends to provide guidance on the restoration process which will set out the factors a burial authority should consider when determining if a lair is abandoned. After a burial authority has identified a suitable lair, it must consult with various organisations to ensure there is no reason why the lair cannot be restored to use.

The burial authority will be required to contact the owner of the lair. In cases where the owner is found and objects to the proposed restoration, the process cannot continue. If the owner cannot be found or no objections are lodged by this stage, the burial authority is required to undertake a public notification exercise.

While the process required is lengthy, it is likely that burial authorities will recover multiple lairs for restoration to use each time, including over numerous burial grounds. Burial authorities will be expected to use this process strategically to identify and recover enough lairs to provide additional capacity for a number of years.⁴⁶

A Scottish Government official has stated, "We are currently working on commencing other parts of the Act at the moment. We estimate that commencement of the reuse provisions will be in 2018".⁴⁷

⁴⁵ At paragraphs 163-7

⁴⁶ 15/70, 29 October 2015

⁴⁷ Personal communication from SPICe, 6 June 2017

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13.

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Metropolitan Interment Acts 1850 by William Cunningham Glen

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Burial Reform and Funeral Costs by Sir Arnold Wilson MP and Prof. Herman Levy

Local Government Act 1972

Sections 125, 126, 124, 239, Schedule 26

Burial Acts 1853 and 1857

Metropolitan Interment Act 1850

Local Authorities Cemeteries Order 1974 and 1977

New Southgate Act 2017

Highgate Cemetery Bill 2022

House of Commons Briefing Paper on Re-use of Graves 2017 By Catherine Fairbairn

Audit of London Burial by Dr J Rugg and Mr N Pleace

8th Report of Select Committee on Environment, Transport and Regional Affairs.

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Ministry of Justice Burial Grounds 2007 result of survey.

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Memorandum CEM49 by Home Office, CEM49d Rt.Hon. Paul Boateng, CEM64 Brookwood Cemetery, CEM70 Harlington Parish Council

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