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2 December 2015.

Clerk to the Local Government and Regeneration Committee
Committee Office
Room T3.40
Scottish Parliament,
Edinburgh.
EH99 1SP

Dear Sirs

Burial and Cremation (Scotland) Bill (the Bill)

We refer to the call for written evidence on the Bill issued by the Local Government and Regeneration Committee (the Committee) on 20th October 2015.

As the principal petitioner (of a residents' group in Bannockburn who are opposed to a proposed crematorium at an inappropriate site in Bannockburn) we are seriously concerned with a number of issues relating to planning and legislative decisions regarding crematoria. .

The Cremation Act 1902, (the Act); specifically - Chapter 8, sections 2 (definition of a crematorium) and 5 (no construction, without written consent, within 200yds of a dwelling nor within 50yds of any public highway) – is important because these sections of the Act prevail at the Bannockburn site.

The Scottish Government had initiated reviews and consultations for a proposed Bill to update burial and cremation legislation unfortunately we were too late to respond to the consultation. Nevertheless, we were reassured that the majority of respondents agreed with the Burial and Cremation Review Group that the minimum distance legislation in the 1902 Act should be maintained and that the Scottish Government stated it intended to include that part of the Act within a Bill to include additional enforcement powers.

We are surprised, to say the least, that the Scottish Government has reversed its stated intent to include the above sections of the Act in the proposed Burial and Cremation (Scotland) Bill; and is now "unconvinced" that the protections within the Act are necessary and that it will instead rely on the planning system to provide appropriate oversight. At least one developer, now linked to Bannockburn, has stated he was to seek meetings with government officials to have the 1902 Act overhauled.

The Scottish Government's reasons for changing its stance do not bear scrutiny and will ultimately exacerbate the serious problems and gross unfairness – currently existing despite the presence of the Act - if crematoria are sited in inappropriate locations. Consequently we are requesting that the Scottish Government give further consideration to the reasons outlined in: The Burial and Cremation (Scotland) Bill, Policy Memorandum, Minimum distance between crematoriums and housing, sections 114 to 119.

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Please find attached appendices containing reasons with attached evidence as to why we think this matter should be reconsidered.

John Fowler

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* AVAILABLE IN HARD COPY ONLY FROM COMMITTEE CLERKS

APPENDIX 1

Minimum distance between crematoria, housing and roads.

There is an apparent dichotomy between Planning Legislation and the Cremation Act 1902 wherein planning authorities may grant consent to an application despite the legal distance limitations as outlined in the 1902 Act. Sections 2 and 5 are specific to distance limitation relating to a crematorium: Within section 2 the expression "crematorium" is unequivocal; everything required to support the facility is included as a crematorium and therefore it is clear, distance requirements should be measured from the boundary of the facility.

Disputes have arisen only because developers have sought to take advantage of the dichotomy by ignoring their responsibilities under the 1902 Act and failing to properly consult communities, householders or other stakeholders. We can show that when they do consult, some may mislead communities and that planning authorities can proceed to consent even if they are made aware of the 1902 Act because their terms of reference allow them to do so. It is up to the aggrieved party to take steps to protect their rights within the terms of the 1902 Act.

We can show that a developer at Houndwood crematorium (a former listed church) near Grantshouse in the Borders and Scottish Borders Council were advised of the 1902 Act at the planning stage yet chose to ignore it, the developer proceeded to completion of the crematorium resulting in a lengthy dispute with a house owner. Such arrogance amounts to a failure to understand the concept of transparency and fairness and inevitably leads to acrimony and disputes.

It is evident from the above example that a warning of action under the 1902 Act is not difficult to enforce by someone with the knowledge and intent to act to protect his rights. Nevertheless, It is unjust and arbitrary when planning authorities are allowed to grant consent within planning legislation yet ignore limitations imposed by a contrary Act - even when they are made aware by a third party - in the knowledge that potential objectors may be ignorant of, or lack the means, to activate the protective measures within the 1902 Act.

There is evidence that communities' genuine concerns - when consent is granted to allow crematoria to be sited at distances much closer than 50 yards to public Highways - are treated with little regard. Concerns about injecting slow moving traffic into busy, fast or congested roads; entry/exit manoeuvres, parking and queuing have resulted in complaints because assurances from developers were not adhered to and that Councils appeared to stand to one side after granting consent.

It is disingenuous to claim that because it appears that the Cremation Act 1902, particularly sections 2 and 5, is difficult to enforce that is good enough reason for it not to be taken forward in the Burial and Cremation (Scotland) Bill and that such considerations should rely on the planning system in the general context of a given location. Ministers, in the consultation process, had committed to accept the advice of the majority of respondents, including the Review Group, to the question and to retain the minimum distance safeguards with additional enforcement powers. We can show, by citing examples, why the Scottish Government should of necessity be taking forward minimum distance restrictions in the Burial and Cremation (Scotland) Bill.

APPENDIX 2.

Policy Proposals Not Being Brought Forward In The Bill,

Minimum distance between crematoria, housing and roads.

Policy Objectives. (Response)

114. The reason why the distance restrictions in the 1902 Act that prevent construction of a crematorium next to an existing house or road but do not apply to a new development being constructed next to an existing crematorium is, with respect, obvious. No prospective developer is compelled to new build any development close to an existing crematorium. More importantly, no individual or organisation is, in turn, compelled to commission, live in or purchase housing or property in such a development - next to an existing crematorium - if they consider it is detrimental to their interests. Clearly that is not the case for an existing property owner if a crematorium is built adjacent to their property, without their consent. It is immediately inimical to their interests, regardless of their feelings and sensitivities; the immediate effect is property devaluation. That is not fair! We can show that in some cases the planning system has proved indifferent to householders concerns or to community reservations or concerns about traffic issues.

Proposed Approach. (Response)

115. Victorian/Edwardian Britain was black with industrial pollution! They had little or no understanding, let alone concern, of the health hazards of airborne emissions; whereas today there is real public concern about pollution, SEPA regulations unfortunately do not remove cause for concern. In 2014 three crematoria (11% of Scotland's total) and one animal crematorium were identified by SEPA as having had pollution breaches (Sunday Herald 8th Nov. 2015). It is well documented that cremation was unpopular, until relatively recently, with the public. Faith groups opposed it because burning human remains was contrary to their religious beliefs. Non-theistic people were probably opposed to an industrialised form of disposal of the remains of loved ones. Victorian /Edwardian governments would have been aware of the public sensitivity when creating the 1902 Act and made sure that crematoria were kept at a discrete and secluded distance. It is our view, for the same reasons, that more than 100 years later almost 40% of the public still resist cremation and we think that the public as a whole would balk at, for the foreseeable future, further industrialised methods of human disposal such as resomation or promession and would not want to live near facilities carrying out such processes.

Burial:

For more than 1200 years cremation was unacceptable in the Christian world, burial was the accepted method of disposal of human remains. The distance limitations of the 1855 Burial Act were primarily related to public health fears (in an age of deadly epidemics of diseases like cholera, typhoid, TB) and even burial did little to allay those fears; householders and the public could petition a Sheriff to ensure a safe distance of 100 yards. The recent Ebola epidemic lends understanding to the fear and trepidation that such diseases and the disposal of remains caused our ancestors, deep within us we have the same phobias and feelings.

116. (Response)

New crematoria currently require planning permission even with the 1902 Act still in force and yet local planning authorities in recent developments have shown little consideration to households closer than 200 yards or to community concerns where busy roads are closer than 50 yards. If distance limits are removed just how close can a crematorium be to a house before the "characteristics" or "material considerations" allow construction; 20yards, 25 yards from a home or 5 yards from an A or B road? If a site is considered as unsuitable for prestige, high quality/amenity development within the local development plan, what is to stop a planning authority from being less rigorous in its concerns for local residents and granting planning consent for something that *they* consider an asset on a site that would prove difficult to develop otherwise?

Planning authorities are currently charged with that responsibility and are failing.

117. (Response)

The Scottish Government claims that minimum distance regulation might “unnecessarily” prevent construction of crematoria in some areas; that given the “characteristics” of a site it may be “acceptable” to construct closer to households and roads.

Conversely: What conditions should make it so “necessary” i.e. imperative to build a crematorium on a particular site that the existing long-standing legislative rights of people – to be able to live, work or travel at a perfectly reasonable distance from a crematorium – become so unacceptable that their protective rights should be struck down?

Some local authorities like Stirling appear unwilling to build their own crematorium or to create new cemeteries in their area, why? Cost! Burial grounds are filling up, a burial in Stirling costs over £1,700 almost £900 more than in Falkirk (Citizens Advice Survey); many Stirling families are reluctantly opting for cremation in Falkirk at £1,000 less than a burial in Stirling. Statistics like that are an open invitation to developers! What are the characteristics of a site that allow planners to dismiss the concerns of the public? If the site is unsuitable for residential or commercial development, has listed or historic features of little value unsuited to most discerning developers, has high hedges or trees and does not conflict with the LDP; does that make it acceptable for a crematorium?

118. (Response)

The Scottish Government’s intention not to replicate the 1902 Act’s distance limitations in the Bill could prove to have unwelcome consequences for communities and households on the periphery of larger settlements. Bannockburn is such a place on the eastern edge of Stirling earmarked on the LDP as a dormitory site for 800 additional houses and a primary school sitting right on the junction of the M9/M80, A91, A9 and A872 feeder roads. Traffic volumes are already exceedingly high, right in the midst of this is a site where developers have expressed a wish to build a crematorium and where the 1902 Act would afford road-users and householders the protection intended within the Act.

119. Alternative approaches considered (Response)

We believe that the decision by the Scottish Government – in the Policy Memorandum to the Bill – not to include minimum distance limitations between crematoria, housing and roads is unwise. The reasons for its decision are ill-advised given that it flies in the face of the advice by the respondents to the Government’s own consultation. We have responded to the reasons set out by the Government in sections 114 to 119 of the Policy and we are including attachments to the above appendices, which, we consider, shows that reliance on the planning system to give proper consideration to the appropriate siting of crematoria is not always wise.