

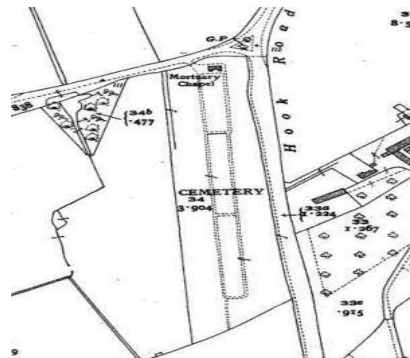


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THE CASE FOR THE COMPULSORY PURCHASE OF HORTON CEMETERY



Old photo of the Cemetery



Hook Road Epsom and Ewell

Written by

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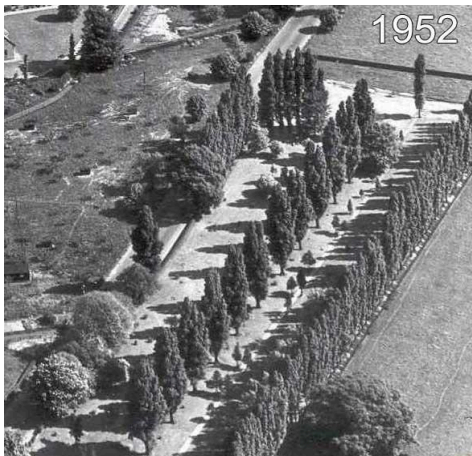
Pro bono Secretary to the Friends of Horton Cemetery

Charity No. 1190518 Regd Office 7 Waterloo Road, Epsom, KT19 8AY

OVERVIEW

Horton Cemetery is five acres in which @ 9000 patients of five psychiatric hospitals are buried. The Cemetery closed to burials in 1955 but the NHS continued to maintain it in excellent condition until sold to Marque Securities Ltd in 1983, from which time it has been totally neglected.

The following series of dated photographs demonstrate the decline:



KEY POINTS

- The Cemetery is not open to the public or relatives.
- The law applicable to this Cemetery means it is impossible to develop without the consents of Epsom and Ewell Borough Council, the Ministry of Justice, The Commonwealth War Graves Commission and thousands of descendant relatives of the buried.
- Alternative development would require millions of pounds to be spent on tracing relatives, exhuming the bodies and purchasing other land for the reburial of the bodies.
- [Section 214 of the Local Government Act 1972](#) empowers Epsom and Ewell Borough Council to maintain cemeteries.
- [The Government reply to the Eighth Report from the Environment, Transport and Regional Affairs Committee Session 2000–2001 HC91](#) on Cemeteries urges Councils and local charities to work together to restore abandoned cemeteries.
- Compulsory purchase powers have been exercised by the London Borough of Southwark and Bristol City Council to acquire neglected cemeteries in their areas. This power can be exercised to vest ownership in the Council or our Charity or such other arrangement the Council deems appropriate for the benefit of the community.
- The private owner has ignored all [communications from the Charity](#) and the Council concerning the future of the Cemetery, including an offer by the Charity to purchase it.

THE CASE

The positive motivation behind a CPO is to open the Cemetery to the public and relatives of the buried. To properly respect the departed. To engage volunteers in a land project that will tidy the Cemetery, create within it a garden of rest and implement a nature management plan preserving the best features of its evolved bio-diversity.

If no change to the site is pursued it will continue to deteriorate in condition and become a deepening public disgrace. Horton Cemetery is the largest asylum cemetery in the United Kingdom and Europe. The objects and research work of the Charity have received attention nationally and internationally.

That inaction is not a moral option is established by the legal restrictions on any alternative development. Which is the reason why it is certain that the present private owner will continue to neglect the site totally. Hence I set out in more detail the basis of the legal restrictions:

1. The [planning status of the land is "sui generis"](#), meaning "one of a kind" or "unique". Its use as a cemetery does not fall into any established category of use. This means that planning permission from the local authority is required for any change of use from its use as a cemetery. For example it could not be used even for grazing without permission.
2. In September 2021 Epsom and Ewell Borough Council [added the Cemetery to the local list of heritage assets](#).
3. The [Burial Act 1857](#) s25 makes it a criminal offence to disturb human remains in a cemetery. To do so lawfully requires a licence from the Ministry of Justice. A [requirement for the grant of a licence](#) is the consent of a living direct descendant relative or spouse. No plan that provides for the location of any of the 9000 graves can be found. The owner has ignored [a request to produce one](#). We believe he does not have one. This means that a qualifying relative for each of the 9000 buried persons must be traced to consent to the

disturbance of any one body. Any one body could be the body of any one. A licence also requires details of the proposed re-burial of the body. Thus tracing, exhumation and reburial costs will run into £10,000 or £12,000 per body. A re-development of the whole site would cost many many millions of pounds in respect of exhumations and reburials, plus the cost of purchasing a suitable site for the reburials. Many living relatives have been traced by the Charity and those persons have confirmed that they would object to any disturbance of their buried ascendants.

4. The [Disused Burial Grounds Act 1884](#) places an absolute bar on building on the Cemetery except if authorised by an Act of Parliament. An [Oxford Consistory Court decision](#) in 2011 on Radcliffe Infirmary Cemetery holds that the Act would no longer apply by virtue of the fact that the Cemetery was sold by the Government in 1983 exercising a general statutory power to sell its land. Parliamentary debates (e.g., [Ld. Amulree 17/06/1964 7.15pm](#)) and the firmly established practice of [passing special Acts](#) to permit building over even *ancient* burial grounds (e.g., for roads and railways) indicate that an Act specific to Horton Cemetery *would be* required. The Oxford decision appears to have been reached *per incuriam* (“without care”) and may not be binding. Even if the decision was correct any development disturbing human remains would still engage the requirement for a licence; especially as the Cemetery is in historic terms a recently closed cemetery rather than an ancient burial ground.

5. The Commonwealth War Graves Commission [recognises two war graves](#) in Horton Cemetery of servicemen remembered in Epsom Cemetery. A [covenant is imposed on the Cemetery](#) requiring the CWGC to be informed of any plan to disturb human remains. As the exact location of the war graves is unknown the covenant effectively applies to any plan to disturb any human remains of the 9000 buried there.

6. A charge on the property in favour of the director of the owner company is no impediment to a Compulsory Purchase Order. The compensation payable to the owner would be determined solely by the value of the land. If that value was less than any mortgage on it the lender would lose out as the CPO would remove the charge and the creditor would be left to pursue the debt outwith the land.

7. In 1996 an [Area Tree Protection Order](#) was imposed on the whole Cemetery protecting a wide range of species of trees spread across the whole site.

As a consequence of these legal restrictions the sale value of the Cemetery is minimal. The Charity has received [a valuation](#) from an experienced estate agent of £1000.

Epsom and Ewell Borough Council may seek the advice of the District Valuers Office on the compensation to be paid to the owner if a CPO was proceeded with. If such a step is taken it would be advisable to send to the District Valuer this document and the independent valuations obtained by the Charity.

HM Land Registry does not have a public record of the purchase price paid to the Secretary of State for Health by Marque Securities Ltd in 1983. The accounts filed with Companies House by Marque Securities Ltd do not reveal the value (if any) the Company itself attaches to the Cemetery.

CONSECRATION

A word or two on consecration as this is a frequently asked question. Consecration is a formal process of recognition undertaken by a Bishop of the Church of England. Was Horton Cemetery consecrated?

If the Cemetery had been consecrated it would be protected by ecclesiastical laws. There is no evidence that this Cemetery or any section of it was ever consecrated. Enquiries have been made of the relevant Dioceses of Guildford and Southwark. It was the final resting place for all patients whose bodies were not or could not be received by relatives or institutions for burial or cremation elsewhere. Typically those without means or who had been disowned. Though there is evidence of Christian funeral ritual attending the burials the Cemetery was essentially a State and secular facility. Not even the one surviving cluster psychiatric hospital chapel in Haven Way was ever consecrated.

COMPULSORY PURCHASE ORDERS

The London Borough of Southwark used a CPO in 1971 to acquire for £1 the 52 acre Nunhead Cemetery. The Friends of Nunhead Cemetery charity, in partnership with the Council, obtained money from the National Heritage Lottery [Fund for its restoration](#)

The Ministry of Housing Communities and Local Government: [Guidance on Compulsory Purchase Process](#) and [The Criche Down Rules](#) (published July 2019) lists cemeteries as one of the purposes for which the general power of compulsory purchase at [section 121 of the Local Government Act 1972](#) can (subject to certain constraints including Ministerial consent) be used by local authorities. See Paragraph 107 Page 51. The Council may rely on this power in pursuit of its right to maintain a cemetery under s214 (2).

The Council can pray in aid of all arguable legal bases for a CPO. It is not limited to one legal pathway. This was evident in the CPO made by Bristol City Council for the Arnos Vale Cemetery in April 2001 where alternative bases were relied on to justify the Order. See the decision of the High Court in [Arnos Vale Cemetery v Secretary of State and Bristol City Council \[2003\] EWHC 981 Admin.](#)

[The Town and Country Planning Act 1990](#) s226 as mentioned in Para 111 of the CPO Guidance quoted above permits a CPO for: “the benefit, improvement or development of their area”.

s226 Compulsory acquisition of land for development and other planning purposes.

A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land,

(b) which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.

(1A) But a local authority must not exercise the power under paragraph (a) of subsection (1) unless they think that the development, re-development or

improvement is likely to contribute to the achievement of any one or more of the following objects—

the promotion or improvement of the economic well-being of their area;

the promotion or improvement of the social well-being of their area;

the promotion or improvement of the environmental well-being of their area.

The Support of the Community

Within little more than a week from the establishment of the Charity in July 2020 the following representative figures agreed to be Patrons:

The Epsom and Ewell Borough's Freeman Michael Arthur and David Smith

The Epsom and Ewell Borough's Aldermen Jean Smith, Michael Staples, Jean Steer, Keith Mann and Robert Lewis. Alan Carlson is a Trustee of the Charity.

Former Mayor of Epsom and Ewell Sheila Berry is Chair of the Charity.

Member of Parliament Chris Grayling.

A third of Epsom and Ewell's elected Councillors also agreed to be Patrons but upon the private owner failing to engage and it became clear that the Council would need to become involved legally, this section of Patrons was closed.

Local support for the objects of the Charity is overwhelming.

There is cross-party and non-party support for correcting the mistake of the nineteen-eighties of the sale of this resting place of thousands in Epsom and Ewell to a private property speculator.

If I can be of any further service in assisting the Epsom and Ewell Borough Council in pursuing this worthy object of acquiring the Horton Cemetery for the benefit of the community I am at your disposal at all times.



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10th November 2021