

Burials in Private Land

1. INFORMATION

Although burial principally occurs in purpose designed cemeteries or churchyards, there are some exceptions. Families with large estates have routinely built a mausoleum or similar building on their land, for the burial of family members. Some individuals have been buried in farmland and others in gardens, without this becoming generally known. More recently, this form of burial has obtained media coverage and numbers have significantly increased. Much of this has been due to the Natural Death Centre, a charity formed to support a less formalised routine for funerals, as well as a better approach to death generally. They have issued a handbook and a further publication called "Green Burial", which explains how to arrange these burials within legal and planning requirements.

There are several advantages of this form of burial. It allows you to organise a very personal funeral, in which you maintain total control. You are able to reduce costs significantly by not having to purchase a grave in a cemetery. Some families may make their own coffin and undertake the whole funeral themselves whilst others may use a Funeral Director. It is essential that you obtain permission to complete a burial, where you are not the landowner of the ground involved. You are also advised to notify any individual or mortgage company that has an interest in the property. Access to the grave may be denied or restricted by change of ownership.

The difficulties are also significant, although these vary according to the location. Most locations fall into two categories, on farmland and in a garden.

(a) FARMLAND

These locations are rarely overlooked and will not offend neighbours or the public at large. The gravesite should be on land with a deep water table and be sufficient distance from watercourses so as not to pose a pollution threat. Electrical or other services must obviously be avoided. A limited number of burials over a period of time may not constitute a "change of use" and no planning approval is thereby necessary. Information submitted by the Natural Death Centre states "Recent local authority Certificates of Lawfulness have decided that planning permission is not required for the non-commercial burial on private land of a limited number of family, friends or those living in the house. These decisions have not been tested in the courts. The Department of the Environment are more cautious, and accept merely that planning permission is not required for the burial of one or two person in back gardens".

Exceeding a "limited" number of burials may require planning approval for use as a cemetery or for "mixed use" if farming is also to continue.

Safe grave excavation would be a further consideration, as well as leaving sufficient depth of soil (three feet) over the body. If it is intended to fence or mark the grave(s) with a memorial, planning permission may be required. In effect, a single burial in a farm situation can proceed without an approach to, or the approval of, any council or other official organisation.

(b) GARDEN

The situation in a garden is complicated by the proximity of neighbours. They may oppose a burial nearby and may be offended by the sight of a coffin or body. Although these may not pose legal objections, it may not be conducive to good relationships. Otherwise, the aspects outlined under farm burials above are broadly similar. The particular difficulty in these locations is the reduction of the property value due to the presence of a grave. Although figures of 20% are mentioned, this has yet to be proven. Undoubtedly, a significant fall will occur although the fact that many buyers would not even consider the purchase at all seems more relevant.

Two major concerns influence this choice of burial. Firstly, the body could be exhumed by any new property purchaser, and re-buried in a cemetery. This reason for obtaining an exhumation licence has yet to be tested, neither has the need to obtain consent from the near relatives. There are legal means (restrictive covenant) by which you can ensure the grave remains untouched, but this will involve costs and other uncertainties. Secondly, details of the burial will not be officially recorded, as they would be in a cemetery.

It would seem that the Registration of Burials Act 1864 would apply to both back garden and farmland burial and that an appropriate register should be kept. This register could be in the form of a notebook containing the necessary details of the burial(s). It would also seem appropriate to mark the precise location of the burial(s) on the plans of the property and retain these with the deeds.

A certificate for burial issued by a Coroner or Registrar of Births and Deaths will have to be obtained. The detachable section of this is to be completed and returned to the Registrar by the person arranging burial. It is important to note that, as explained above, the Registrar does not record the details of the burial, including the burial location. The Registrar is appointed to record population data and is not able to record the place of burial.