

Report of		Meeting	Date
Corporate Director of Neighbourhoods		Overview and Scrutiny Committee	11 August 2008

MEMORIAL SAFETY IN CLOSED CHURCHYARDS

PURPOSE OF REPORT

1. The report is intended to provide a summary of the Council's present position with respect to the management of closed churchyards for which the maintenance responsibility, including memorials, has been passed to the Council.

RECOMMENDATION(S)

2. It is recommended that the report be noted and officers be requested to update the Committee on progress in the matter in six months time in order to allow the Committee to consider further the work at St Johns and the broader issues.

EXECUTIVE SUMMARY OF REPORT

3. A Church of England churchyard may be "closed" by Order of the Privy Council, effectively ending burials there, subject to appropriate conditions. The maintenance of the site can, then, be passed to the District Council, including the responsibility for maintaining the memorials. There is no associated funding and, therefore, the Council must accept the financial burden.
4. The churchyards at St Laurence's and St George's are maintained by the Council but have no remaining memorials of significance. The churchyard at St John's Whittle-le-Woods was passed to the Council in 2000 and has a large number of memorials, many in a poor state.
5. The Council's officers have assessed the memorials and infrastructure at St Johns and carried out a minimum of work to support unstable memorials at a cost of approximately £25,000. Work is now in hand to stabilise those closest to the church building and access, at a cost of £4,300, and to identify and prioritise further work, within a capital budget of £30,000 in the current year.
6. The report identifies a number of conclusions both specific to the St John's project and, generically, with regard to possible future transfers.

REASONS FOR RECOMMENDATION(S)

(If the recommendations are accepted)

7. The Council has statutory obligations for the maintenance of the churchyard and a duty of care to those who enter it. It is necessary to establish a framework within which future transfers may be managed.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

8. The report deals with a situation brought about by the legislative framework governing the management of churchyards. In the short term the Council does not have options, other than in the detail and timing of the actions to be taken. Options for the conduct of future transfers of other churchyards are limited and remain to be clarified.

CORPORATE PRIORITIES

9. This report relates to the following Strategic Objectives:

Put Chorley at the heart of regional economic development in the Central Lancashire sub-region		Develop local solutions to climate change.	✓
Improving equality of opportunity and life chances		Develop the Character and feel of Chorley as a good place to live	
Involving people in their communities		Ensure Chorley Borough Council is a performing organization	

BACKGROUND

10. At its meeting on the 23 June 2008 the Committee considered the recent and planned expenditure on St John's churchyard in Whittle le Woods and requested a report on the issue of the safety and maintenance of memorials in closed churchyards and the associated costs.
11. An application may be made to the Privy Council for an Order in Council closing a Church of England churchyard. Generally it was intended for the procedure to be used to deal with issues of public health and to relieve the incumbent of the duty to find burial space for parishioners – rather than simply as a means of passing on the maintenance liability. The Order may allow for certain further burials that meet defined conditions, as is the case at St John's.
12. The maintenance of Church of England churchyards that have been closed by Order in Council can be passed to the Borough/District Council – which has no right to refuse. Therefore, the maintenance of any such churchyard in the Borough may in future fall to the Council – even though a defined range of permissions may continue to exist for further burials. This maintenance responsibility includes the maintenance of memorials. The management of the churchyard remains under the control of the incumbent and the Parochial Church Council. So, for example, the Borough Council could not insist on access being limited. (Interestingly, in the case of a churchyard that is not closed, the District/Borough Council is responsible for enforcement of safety requirements.) In addition, the diocese retains control over any works carried out in the churchyard – which require a Faculty (an authorisation from the diocesan registrar).
13. Attached as Appendix A is a Legal Opinion, summarising the legal background to the issue and the maintenance responsibilities.
14. The management of the safety of the site is clearly closely related to the maintenance responsibility and the Council, in taking over a closed churchyard, must assume considerable responsibility for discharging the maintenance function in such a way as to not compromise the safety of the users of the churchyard. With regard to memorials, there is an established body of good practice in inspection and repair and also in the associated communications and administrative procedures. While the lack of memorial ownership records in churchyards is a handicap, it is not difficult to extend the Council's memorial testing regime to other, smaller, sites.

15. In the past the Council has take over the closed churchyards at St Laurence's and St George's. Neither of these have any remaining memorials of relevance and the Council's role relates primarily to grounds maintenance. In 2000 the churchyard at St John's in Whittle was closed. Although the Council took over grounds maintenance it did not become clear until 2006 exactly what liability the Council had taken over. The churchyard contains several hundred graves – of which well in excess of a hundred were in need of some attention, some quite urgently. In order to deal with urgent safety issues action has been taken by the Directorate and significant costs incurred. The closure Order allows for further burials under a range of conditions. This further complicates the safety issues and the application of the normal administration of testing and remediation procedures. The poor state of such a large number of memorials still further exacerbated the issue.
16. The maintenance responsibility passed to a Council includes all of the infrastructure in the churchyards including walls, fences and memorials. In the case of St John's there is at least one extensive retaining wall, on the western boundary, for which there is no historical information. It would appear that the wall was built and the land then filled in behind it and subsequently used for burials. Considerable settlement has occurred in this lower area. The cost of putting St John's churchyard in reasonable order (ie to the standard of Chorley cemetery) could be of the order of £200,000 to £300,000 although it is not possible to estimate this accurately. The cost would be higher still if all memorials were restored to their original condition in a stable form. There is clearly an argument that the churchyard could not have been in much better condition eight years ago when it was closed. In this context it should be noted that the Church has no right to expect the maintenance of the churchyard to be to a higher standard than prior to the closure – in effect, the Council does not need to refurbish or restore the churchyard.
17. In the course of 2006 the incumbent of St John's approached the Council on the matter of memorial safety. The Directorate has since done considerable work on the issue. Unfortunately, the Church does not maintain records of grave "owners" as does a cemetery operator and, therefore, it is impossible to trace more than a small number of the owners of the memorials. The Church had made a number of attempts to publicise the need for the owners of memorials to come forward but to little effect. The cost of making safe or restoring graves and memorials thus falls largely on the Council – although our intervention has prompted a number of families to have repairs carried out.
18. The case of St John's highlights the two main issues, given that transfers are not avoidable. The first issue is that the transfer process must be conducted carefully. It is arguable (but unclear) that the transfer requires the churchyard to be in good order. If it is established that the churchyard should be transferred in reasonable order then that standard must be proved by surveys and, logically, reasonable steps taken to deal with any outstanding work. It is a requirement that three months notice is served on the Council – and the accepted norm is twelve months to allow for budgetary provision to be made. However, unless a very careful evaluation is carried out, the only financial provision made may be for grass cutting.
19. The second issue is that the maintenance of the churchyard is inextricably linked to its continued operation as a burial ground. Much of St John's churchyard is the subject of settlement or lateral movement – either generally or because parts are in filled ground or on steep slopes and also because of the situation being exacerbated by graves, necessarily, being dug and filled. This in turn has a major effect on memorial safety. However, it is also possible when gravedigging is not directly controlled, that some burials might take place at depths and in locations that may compromise the future maintenance of the area and of the memorials. The only logical conclusion would be that a Council should have the option to carry out or oversee all grave digging in future. However, the churchyard is not in a Council's control. It would be preferable to have the opportunity to end the use of the site for burials at the time of the order.
20. A further issue related to settlement is the state of certain paths and the steps which provide the only access to the lower part of the churchyard. Mention is also made, above, of the

retaining wall to the western boundary. From a safety point of view it is clear that the steps and some parts of the paths are in need of repair to avoid exposure to reduce the risk of injuries public liability claims. The extent of the work required is at present being quantified.

21. Also in 2006, the Council was approached by members of the Church of St Barnabas at Heapey who were seeking to establish whether the Council might provide financial assistance toward the ongoing maintenance of the churchyard. Officers have met with them and discussed the issue. The Church members have pragmatically agreed to allow the Council to consider the wider issue before pressing for a response. St Barnabas' has a field adjacent to the churchyard bequeathed for the purpose of extending the churchyard. This is unusual and the scale of the asset, even if replicated at a number of churches across the Borough, would not make a material difference to the borough's needs for future burial space.
22. Burials in Church of England churchyards are, we understand, subject to a fixed scale of fees. The additional space at St Barnabas' church is then, in effect, a liability – because it will attract further maintenance costs with little prospect of balancing income. It would appear that a sustainable future for churchyards like St Barnabas' requires either a financial commitment from the Council (or some other third party) or a radically different business model that introduces the freedom to fix charges at an economic level.

WORKS CARRIED OUT TO DATE AND PLANNED

23. In the course of the financial year 2006/07 grounds maintenance work at St Johns was suspended because the risk of injury to the workforce was significant and not quantifiable. Agreement was reached with the diocese that memorial safety inspections would be carried out and appropriate temporary support provided to unstable memorials.
24. The Council's officers carried out assessments of the memorials in accordance with accepted practice. It was not possible to follow guidance on notifications to grave owners because the records did not permit this.
25. In accordance with established good practice and safety requirements a chartered structural engineer should be employed to assess all headstones over 2.5m in height. In view of the instability of the site and the number of complex headstones in the range 1.8m to 2.5m it was decided to extend the structural engineer's assessment to all headstones over 1.8m. This coincides also with the manageable height of memorial that can be stabilised with the normal wooden post and banding method of support. Those over 1.8m have been stabilised using a scaffolding contractor. From examinations by the structural engineer and the Council's officers it was clear that the immediate priorities were the taller memorials, those on the slope west of the church building and the steps to the lower area.
26. Subsequently, Council staff have been trained in erecting scaffold support to tall headstones in order to minimise the risk and cost of the procedure in the future. The total cost of works and consultancy in 2007/08 was £21,541.
27. Council officers and the structural engineer also considered the state of existing structures within the site and identified that the retaining wall to the western boundary is worthy of further examination in the future.
28. The placing of temporary support to the unstable memorials prompted a limited number of families to have repairs carried out to their memorials. The greater proportion of those dealt with remain supported. Grounds maintenance work was allowed to resume and funding was sought for further work. A capital budget of £30,000 has been made available for the current financial year and a local memorial mason has been commissioned to repair the most prominent memorials between the church door and the main road, at a cost of approximately £4,300 from that budget. Memorials that, on being dismantled, are not capable of being safely re-erected, will be laid down. Further work is being done to identify the estimated cost

of urgent remedial work to paths and steps. It is also essential that the retaining wall to the western boundary is assessed in the longer term to determine the likelihood of any further settlement behind it. When these issues have been clarified and priorities established further quotations for the remediation of memorials and infrastructure will be sought and the project will be subject to the Council's project management protocols before proceeding.

FURTHER AND FUTURE ISSUES

29. There does not seem to be any prospect of a change in the legislative framework governing closed churchyards. The issue was discussed by the Select Committee on Environment, Transport and Regional Affairs two years ago, without any significant conclusion. It is, therefore, necessary for local authorities to plan their future management of the problem within the existing rules.
30. An important issue, then, is whether it makes more sense to provide limited financial support (and perhaps some support in kind) to churchyards or to accept the inevitability of their closure and the subsequent financial burden and risk. It may be most helpful at present to open a dialogue with the diocese (and possibly the Roman Catholic Archdiocese which manages these issues independently) with a view to developing options and financial models.
31. In considering the issues involved in the liability for the future maintenance of closed churchyards a wide range of other issues are of relevance. The whole life cost of a churchyard is of the order of £2,500 per grave – although the Council's involvement starts at perhaps half way through that period. While there is little experience to draw on it is possible to re-use such sites a hundred years after the last burial – subject to considerable restrictions.
32. The lack of documentation similar to that of a municipal cemetery is a serious problem in remediating headstones. The possibility of transferring the maintenance to some other form of management, for example a trust, could be considered. The opportunity to use parts of some sites as open space, by removing memorials, should be considered. Future requirements in relation to environmental legislation are indeterminate. Other issues include the limits placed on incumbents in charging for graves in churchyards. This limits severely the individual church's financial options.
33. At present we are dealing with the churchyards of St Laurence's and St George's, both of which are without memorials, as well as St Johns. It would seem logical to try to assess the future liability and the rate at which it would develop as churchyards become full. Given the lack of any clear national norms or policies the way appears to be open to the Council to establish a dialogue with the diocese and other Councils in order to agree protocols and good practice. This would offer the opportunity to predict, if not minimise, the total cost of future churchyard maintenance and to control the proportion that would fall to the Council.

CONCLUSIONS ON THE ST JOHNS CHURCHYARD PROJECT

34. It is acknowledged that the Council has no alternative but to continue to maintain the churchyard to a reasonable standard and, specifically, in a condition that discharges the Council's responsibility for the safety of its employees and others within the churchyard.
35. The Council has dealt with immediate safety issues and is dealing with the maintenance of the churchyard on a risk management basis. Further and future work must be managed to minimise safety issues while maintaining the churchyard to a reasonable standard. Agreement over the longer term objectives of the maintenance regime should be sought from the Diocese.
36. Subsequent to the initial provision of support to dangerous memorials and the commissioning of remedial work to the most prominent ones it is now necessary to prioritise the currently

outstanding work into a programme which may be considered for funding alongside the Council's other priorities.

CONCLUSIONS ON FUTURE TRANSFERS

37. At present the Council has no means of establishing the scale of the long term financial burden that might arise as more churchyards are closed. It is clearly essential that sufficient investigation is done to reduce the financial uncertainty in this respect – even though the costs can only be very approximate. It may also be that other management models might offer a better alternative, both for the churchyard and the Council.
38. The actual transfer of the maintenance of a closed churchyard should be managed very carefully in view of the immense whole life cost and the potential existing and short term future maintenance liability.
39. The transfer of a closed churchyard should be preceded by agreement on details of the future operation (if any) of the churchyard as a burial ground. The continuation of burials to any limited degree should only be permitted if it is clear that the stability of memorials will not be prejudiced. Consideration should be given to seeking amendments to closure orders where continued burials present a risk to safety through destabilising memorials.
40. The transfer should be conditional upon the completion of detailed professional assessments of memorials and infrastructure and necessary remedial works – whether this is by repair, laying down or removal.
41. Any transfer should, if possible, be the subject of an accompanying agreement or understanding, which should recognise the considerable whole life cost of maintaining the churchyard and should take into account the possible re-use of the site at some point in the distant future.
42. There is no legal reason for the Church not to have a churchyard transferred to the Council. Although the Council is not aware of any immediate prospect of further closures it would be prudent to reach a conclusion on how a “model” future transfer might be managed. In view of the considerable costs, for whoever does retain the liability, the future options should be explored with the diocese, perhaps by a number of authorities together.

IMPLICATIONS OF REPORT

43. This report has implications in the following areas and the relevant Corporate Directors' comments are included:

Finance	✓	Customer Services	
Human Resources		Equality and Diversity	
Legal		No significant implications in this area	

COMMENTS OF THE ASSISTANT CHIEF EXECUTIVE (BUSINESS TRANSFORMATION & IMPROVEMENT)

44. ***

ISHBEL MURRAY
CORPORATE DIRECTOR (NEIGHBOURHOODS)

There are no background papers to this report.

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