

Central Dudley Area Committee - 10th March 2009

Report of the Director of the Urban Environment

Closed Churchyards

Purpose Of The Report

1. The purpose of this report is to inform the Committee of the Council's responsibilities in the adoption and maintenance of closed churchyards.

Background

2. The local authority maintains a number of closed churchyards in the Borough, following adoption of maintenance responsibilities from the Parochial Church Council.
3. Section 215 of the Local Government Act 1972 is the legislative framework in which local authorities are obliged to take over the maintenance of closed churchyards and only relates to Church of England churches. S215 of the Act refers to churchyards outside areas subject to the Welsh Church Act 1914 (the 1914 Act terminated the establishment of the Church of England in Wales) and also refers to parochial church councils making a request to the Council to transfer liability.
4. The Council are not obliged to take over responsibility for the maintenance of churchyards or burial grounds of any other religious groups under the local Government Act 1972. Whilst mechanisms may exist through the Open Spaces Act, any such adoption of land has financial implications for the Council.
5. Under the provisions of section 215 of the Local Government Act 1972, the Parochial Church Council (PCC) can require a local authority, upon three months notice, to assume responsibility for the maintenance of a closed churchyard.
6. Following agreement with the Local Authorities Association, in practice, twelve to eighteen months informal notice should be given to the local authority of an intention to serve the 'three months statutory notice'.
7. A closed churchyard remains consecrated ground vested in the incumbent and subject to the faculty jurisdiction of the Diocesan Chancellor.

8. It is generally accepted that the responsibility of the local authority in respect of a closed churchyard is the same as the responsibility of the PCC in an open churchyard: thus the authority is obliged to maintain the churchyard in decent order and as a safe place for visitors. Boundary walls, paths, grass, lighting (if any), grass cutting and trees all come within this responsibility.
9. The burial of cremated remains may continue in a closed churchyard provided that an area has been reserved under faculty for that purpose. If there is no reserved area for cremated remains any individual burial must be by faculty.

Procedures

Parishes

10. If a Parish comes to the conclusion that there is no room in the churchyard for further burials the Parochial Church Council (PCC) may pass a resolution that an application should be made for closure by Order in Council. An application for a closure order should be made to the Home Office through the Coroner's Section.
11. The Parish should inform the local authority that in twelve to eighteen months time such an application will be made and that thereafter the Authority will be required to assume responsibility for maintenance.
12. If there is not already an area reserved by faculty for the burial of cremated remains, part of the churchyard should be allocated for this purpose and prepared for use under faculty.
13. The Parish should then ensure that the Authority is provided with a large scale up-to-date plan of the churchyard, showing the precise location of each burial as far as is known. This can be problematic as information is not always available.
14. Most closure orders permit the opening of existing graves for the burial of other members of the same family. The fee, usually payable to the PCC on such occasions, is specifically for the upkeep of the churchyard and should in equity be remitted to the Authority. The same applies to fees paid at the time of the interment of cremated remains. In practice, there are few instances where existing graves are reopened on closed churchyards with any associated fees kept by the faculty.

Local Authority

15. On receiving notice of the intention of the parish to transfer maintenance liabilities, a representative of the Authority will visit the churchyard and point out to the Parish any aspects which need attention. **It should be noted that under the provisions of the Local Government Acts 1972 the local authority may NOT refuse to assume responsibility until such time as the churchyard is in satisfactory order. However, it is in the interests of both the parish and the Authority if the churchyard is in as decent an order as possible before the handover.**
16. The Authority must then make necessary budgeting arrangements for the maintenance of the churchyard.

17. Prior to August 2005, closed churchyards were generally accepted by the authority in the condition that they were left in. Many having received little or no maintenance for many years. As such, in some cases their overall condition had declined to such an extent that areas were overgrown, general infrastructure was poor and memorials had been damaged and vandalised. Upon transfer of grounds, liability for such instances passed to the authority with no transferring budget from faculty to repair and maintain.
18. It is reasonable to presume that if the Council is expected to keep a churchyard in decent order it should receive it in that condition, with an emphasis on defects being remedied by the church prior to it being closed by an Order in Council.
19. In August 2005, following cross departmental consultation two key guidance management documents were produced (Appendix A and B) aimed at clarifying the process for all concerned. As such, negotiations have taken place and continue to take place with the Parochial Church Council on the adoption of future closed churchyards to ensure that where reasonably practical, churchyards are in satisfactory order prior to adoption by the authority.

Works Inside Closed Churchyards

20. Routine maintenance such as grass cutting, control of undergrowth, replacement of electric light bulbs, replacement of vandalized bollards and fence posts, does not generally require any faculty authorisation.
21. Major work, re-ordering or excavation etc. does however require authorization by faculty. The Authority must first discuss the matter with the Parish; and the Diocesan Registry will give precise advice.
22. The Diocesan Chancellor, under the provisions of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991, has directed that the advice of the Tree Consultant to the Diocesan Advisory Committee (DAC) should be followed by parishes in respect of any aspect of churchyard tree maintenance, felling or replacement. However, in respect of closed churchyards, the advice of the Diocesan Consultant as to the treatment of trees may be substituted for that of a Local Authority Officer or agent acting for the local authority with a recognized arboricultural qualification or with the relevant amount of experience and technical expertise. Negotiations are currently taking place with the diocese concerning individual closed churchyards in the borough and management of their trees in accordance with the Councils Tree Strategy.
23. Frequency of maintenance on closed churchyards generally reflects the layout of the site and previous maintenance regimes prior to transfer to the authority. However, the Council must equally consider its Duty of Care and inherited liability. In such cases, where there is a risk to the public significant infrastructure works may be required to paths, fencing and external walls. In these cases, the authority must consider risk compared to other service areas and act accordingly. It is however important to note that any identified repairs outstanding after Order in Council in addition to maintenance costs must be met by the Council.

24. An example of this was the Christchurch and Victoria Road closed churchyard extension in Quarry Bank, which transferred to the Council in late 2004. Following initial site visits by the Council, a number of remedial works were identified. Equally, the site at Victoria Road was subject to a Nature Conservation report in 1990 and was subsequently classified as a SINC. (Site of Importance to Nature Conservation) This in itself limited the work that could be undertaken on the site. Notwithstanding this, and in recognition of the conservation requirements, initial clearance works from the boundary fence line was identified in addition to programmed strimming works and managed chemical control around the perimeter and obstructions. The total cost of remedial works on both sites was identified at approximately £3,000, with ongoing yearly programmed maintenance costs of £4,000, including tree inspection. Remedial works at a cost of £9,700 was also identified in respect of repairs / safety work to fencing and paths, with the authority incurring additional ongoing cost for inspection and management of memorials.
25. At the time of transfer to the Authority, management procedures for adoption and future management of closed churchyards were not fully established and as such the remedial work was not undertaken by the church resulting in a transfer of liability to the Council.
26. A list of closed churchyards maintained by the Authority is included in Appendix A of this report.

Memorials

27. A memorial introduced into a churchyard is the property of the person who commissioned it and, after that person's death, it becomes the property of the family of the person commemorated. In practice, the ownership of most memorials is uncertain if not impossible to ascertain and the duty to ensure that they are not a danger to the public falls upon those responsible for the maintenance of the churchyard. In an open churchyard the responsibility lies with the PCC; in a closed churchyard with the local authority.
28. Dudley MBC has responsibility for the management of seven cemeteries in addition to sixteen closed churchyards. Bereavement Services have inspected large, potentially dangerous memorials within five of the seven cemeteries owned and managed by the Authority, and anticipate completing inspections and subsequent safety work in the final two cemeteries later this year.
29. On completion of the seven cemeteries officers will start inspections in closed churchyards. Where memorials are found to be unstable and therefore posing a potential danger to visitors, work will be carried out to lay the memorial flat. Signs will be erected within the churchyards explaining that inspections and safety work is taking place.
30. In all instances, each Church Officiate will be notified in writing of the date when inspections are to commence and the action to be taken where memorials are deemed to be unsafe.
31. An Action Plan is currently being developed for inspections within closed churchyards which will prioritise the order in which they are to be inspected.

The plan will consider issues such as the size and number of memorials present and the number of visitors that attend or pass through. It is anticipated that it will take up to 5 years for inspections and subsequent safety work to be carried out, due to the cost of associated work and available budget.

Finance

32. Although current legislation entitles a church to apply to Central Government to close a graveyard, with future responsibility for upkeep of the site passing to the local authority. There is no corresponding transfer of financial resources.
33. Additional costs associated with maintenance must be met by the local authority with the respective Council Department having to accommodate the new costs from within existing service budgets. This potentially results in pressure on Council budgets and to date no additional resources have been allocated by the Council specifically for maintaining closed churchyards.
34. The estimated approximate cost to maintain a closed churchyard can vary considerably dependant upon its size, location and features. Equally, any remedial works must be considered at time of transfer.
35. The total cost for maintaining closed churchyards in the Borough for 2007/8 was £100,000.

Law

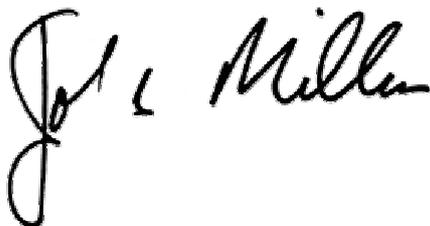
36. The Parochial Church Council can require a local authority to assume maintenance of a closed churchyard under the provisions of section 215 of the Local Government Act 1972.
37. The Council is responsible for the maintenance of Church of England churchyards closed by Order in Council.
38. Under Section 1 of the Burial Act 1853 a churchyard may be closed to fresh burials by Order in Council (usually with provision for the opening of existing graves for burial of members of a family). The closure order does not apply to the burial of cremated human remains. However, the proviso to section 3(1) of the Church of England (Miscellaneous Provisions) Measure 1992 provides that a person shall not have a right of burial of his/her cremated remains in a closed churchyard in the absence of a particular or general faculty authorizing such interment.
39. The Occupiers 'Liability Act 1957 imposes a duty of Care on the Council to ensure that the land it occupies is reasonably safe for those people who can be expected to enter it. The Occupiers Liability Act 1984 extends this duty of care where trespassers are involved.

Equality Impact

40. This report takes account of the Council's equal opportunities policies in the management and maintenance of closed churchyards in the Borough.

Recommendation

41. That the Committee note the legal process involved in adopting closed churchyards.
42. That the Committee note the Guidance Procedures attached as Appendix A and B regarding Adopting and Managing Closed churchyards in the Borough.
43. That the Committee note the additional costs incurred by the Council to maintain closed churchyards and its direct impact on service budgets.
44. That the Committee note the work that is taking place in liaison with the Parochial Church Council regarding management of trees and memorials.
45. That the Committee note the contents of this report.



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Director of the Urban Environment – John B. Millar

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Adopting Closed Churchyards

Dudley MBC
Directorate of Law & Property

Introduction:

This briefing note is intended to set out a simple approach to adopting closed churchyards.

Background:

The Council can become responsible for the maintenance of Church of England Churchyards that are closed by Order in Council. Section 215 of the Local Government Act 1972, gives church councils the authority to request their local council to take over the maintenance of a closed churchyard ‘...by keeping it in decent order and its walls and fences in good repair’.

The Occupiers’ Liability Acts 1957 & 1984, impose a duty of care on the Council to ensure that the land that it occupies is reasonably safe for those people who can be expected to enter it, and also to trespassers [particularly children, as they are likely to be at greater risk than an adult]. However, although the responsibility for the maintenance of graves (and memorials) remains with grave owners or their heirs, where no person can be shown to be responsible or where it is impractical to trace an owner (or heir), the Council has general powers to maintain.

There are significant liabilities associated with these maintenance responsibilities – churchyards commonly suffer through neglect and vandalism. The Council may be faced with overgrown vegetation in need of clearance and regular upkeep, dangerous trees in need of pruning or felling, dilapidated walls, fences and paths in need of repair, and unstable memorials that need to be made safe.

It is reasonable to presume that if the Council is expected to keep a churchyard in decent order, then it can expect to receive it in that condition. Therefore, it is important that the condition of the churchyard be established (prior to it being closed by an Order in Council) to enable any identified defects to be remedied by the Church.

Clearly, it is in the best interests of the Council to work with church councils to amicably reach agreement on the closure process and ensure that a long-term care regime for these churchyards is properly implemented. It will do this by undertaking the key duties outlined below:

Appendix A Cont'd

Key Duties:

- **Corporate Estate Services** will manage and coordinate the process of adopting closed churchyards, establish local parish communication routes and seek access to grave owner records
- **Bereavement Services** will assess the condition of the graves and memorials, identify the work/cost to restore them to decent condition and determine the maintenance liabilities
- **Green Care Services** will assess the condition of the trees and identify the work/cost to restore them to decent condition and determine the maintenance liabilities
- **Green Care Services** will assess the condition of the green environment and identify the work/cost to restore it to decent condition and determine the maintenance liabilities
- **Dudley Property Consultancy** will assess the condition of the major features and identify the work/cost to restore them to decent condition and determine the maintenance liabilities

Appendix 1 contains a list of closed churchyards maintained by the Council, useful references to this topic, and a list of relevant contacts within the Council.

**Paul Bickerdike
19 August 2005**

List of Closed Churchyards:

All Saints Church, Sedgley
Christ Church, Lye
Christ Church, Coseley
Holy Trinity Church, High Street, Wordsley
Sedgley Old Cemetery, Vicar Street, Sedgley
St Andrew's Closed Churchyard, Highbridge Road, Netherton
St Edmund's Closed Churchyard, Castle Street, Dudley
St James's Closed Churchyard, The Parade, Dudley
St John's Closed Churchyard, High Street, Halesowen
St John's Closed Churchyard, St John's Road, Kates Hill, Dudley
St Thomas's Closed Churchyard, Vicar Street, Dudley
St Mark's Closed Churchyard, Vicarage Lane Pensnett
St Michael's Church, Bell Street South, Brierley hill
Christ Church, High Street, Quarry Bank
Victoria Road, Quarry Bank,
St Augustine's Closed Churchyard, Hall Church Road, Holly Hall, Dudley

Useful References:

ABA – The Association of Burial Authorities (in association with Zurich Municipal) publish a guide to 'Safety Management in Burial Grounds, Cemeteries and Churchyards'

IBCA – Institute of Burial and Cremation Administration publish a 'Guide to the Management of Safety in Burial Grounds'

NAMM – The National Association of Memorial Masons publish a 'Code of Working Practice' that includes guidance on memorial stability

Cemeteries and their management – Report by Brenda Wilson and Jill Robson commissioned by the Home Office (Online Report 1/04)

Adopting Closed Churchyards – Dudley MBC Briefing Note (August 2005)

Contacts:

Bereavement Services	Stuart Connelly – Bereavement Services Manager Directorate of the Urban Environment T: 01384 813972
Green Care Services	Russ Newey – Team Manager Green Care Directorate of the Urban Environment T: 01384 815516
Dudley Property Consultancy	Paul Bickerdike – Head of Building Surveying Directorate of Law & Property T: 01384 814107
Corporate Estate Services	Steve Cooper – Head of Asset Management Directorate of Law & Property T: 01384 815319

Managing Closed Churchyards

Dudley MBC
Directorate of Law & Property

Introduction:

This briefing note is intended to set out a simple approach to managing closed churchyards.

Background:

Three fatal accidents to children from falling memorials have recently drawn attention to the risks associated with closed churchyards and to the local authorities responsible for maintaining them.

The Occupiers' Liability Act 1957 imposes a duty of care on the Council to ensure that the land that it occupies is reasonably safe for those people who can be expected to enter it. The Occupiers' Liability Act 1984 extends this duty of care where trespassers are involved [particularly to children, as they are likely to be at greater risk than an adult].

The Council is responsible for the maintenance of Church of England Churchyards closed by Order in Council. Section 215 of the Local Government Act 1972, gives church councils the authority to request their local council to take over the maintenance of a closed churchyard '...by keeping it in decent order and its walls and fences in good repair'. However, in consecrated areas, certain work may need the consent of the bishop of the diocese in which the churchyard is situated.

The responsibility for the maintenance of graves (and memorials) remains with grave owners or their heirs. However, where no person can be shown to be responsible or where it is impractical to trace an owner (or heir), the Council has general powers to maintain.

Clearly, it is in the best interests of the Council to control the risks associated with churchyards for which it has responsibility, and it will do this (where it can within available resources) by undertaking the key duties outlined below.

Key Duties:

- ❑ **Bereavement Services** will undertake a periodic risk assessment of graves and memorials and (subject to the responsibilities of grave owners) maintain them in decent order
- ❑ **Green Care Services** will undertake a periodic risk assessment of major trees and maintain them in decent order
- ❑ **Green Care Services** will maintain the green environment of closed churchyards in decent order
- ❑ **Dudley Property Consultancy** will conduct an annual inspection of the major features (walls, fences, paths and the like) of closed churchyards and maintain them in decent order
- ❑ **Corporate Estate Services** will conduct a (5 yearly) periodic condition survey of closed churchyards and maintain this information on the Council's property information system

Appendix 1 contains a list of closed churchyards maintained by the Council, useful references to this topic, and a list of relevant contacts within the Council.

PLEASE CONSIDER THE SENSITIVE NATURE OF THIS WORK – REMEMBERING THE WISHES OF THE DECEASED AND THEIR RELATIVES, THE RIGHTS OF THE GRAVE OWNERS, AND THE CULTURAL, HISTORIC AND CONSERVATION ASPECTS OF CHURCHYARDS

**Paul Bickerdike
August 2005**

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