

Policy & Resources Committee

Date:	10 December 2013
Title:	St Mary's Churchyard
Purpose of the Report:	To consider the level of responsibility the Council can offer in maintaining the churchyard.
Contact Officer:	Helen Stewart, Town Clerk

Background

Cemeteries can and should be distinguished from churchyards. Churchyards, traditionally, are places of burial connected to churches either physically or through their ownership by the Church of England. Their use has been recorded since the eighth century.

It is important to distinguish between cemeteries and churchyards because they operate under different kinds of legislation. Churchyards are consecrated tracts of land subject to Church or Canon law. Certain types of activity within a churchyard – such as reserving burial space or removing headstones – require ‘permission’ or faculty. Cemeteries may contain consecrated sections, which are also subject to Church law. However, for the most part cemeteries are managed under civic legislation. Cemeteries are almost always owned by statutory authorities.

In the UK both cemeteries and churchyards continue to be used as burial space. A lot of churchyards located centrally in towns and cities were closed in the nineteenth century, as a consequence of concerns about public health. However, Victorian investment in new church building meant that in many places new churchyards were laid out towards a city's periphery, often at the same time that new cemeteries were being developed. Furthermore, many churchyards were extended when space was required. In many rural locations, villages are still reliant on churchyard space.

Closed Churchyards

If a churchyard is closed then a parish/town (local) council can accept the responsibility for the maintenance of it under Section 215(2) of the Local Government Act 1972, but the freehold remains the property of the existing owner.

Fees for any subsequent interment of cremated remains or the occasional earth burial (which can be allowed for in the closure Order), continue to be charged by, and paid to, the PCC in accordance with the Parochial Fees Order whilst, other than routine maintenance, most other works are subject to Faculty jurisdiction. If the PCC chooses to offer/donate interment fees to the local council as a goodwill gesture they are free to do so but it cannot be insisted upon.

If a local council, faced with a request to accept responsibility for a closed churchyard, decides to invoke Section 215(3) of the LGA 1972 to pass on the responsibility to the district council then that council has the power under Section 35(2) of the LG and Finance Act 1992 to recharge those maintenance costs to the parish by way of a special expense. This can leave the local council with little or no control over costs or maintenance standards.

St Mary's Churchyard

Under common law a parishioner (a person resident in the parish or a person who dies there) has a legal right to be buried in the parish churchyard. St Mary's churchyard is the only burial space within Thame and it is managed by St Mary's Parochial Church Council (PCC), an unincorporated charity that has the responsibility for the day to day administration of the assets and church. A copy of the PCC's accounts for the financial year 2010, 2011 and 2012 are provided as an appendix to this report.

At a Council meeting in July 1994 approval was given for a 45% contribution to be made towards the repairs of the churchyard wall. At that meeting there was some discussion as to whether there was a legal responsibility or even a power to make the payment. It was concluded that although the Council may contribute to the maintenance of the churchyard there was no legal duty to oblige the Council to contribute. It would appear, following that meeting that some ad hoc arrangements for a sharing of costs for grass cutting developed with the PCC contributing 55% and the Town Council 45%.

In addition in 2009 the Council received a request to contribute 45% to the cost of repairing the churchyard wall and other requests have been received since for a contribution towards the 3 yearly pollarding of the lime trees. These additional costs are usually taken from the capital rolling fund.

This ad hoc approach does not assist the Council when setting its budget for the churchyard maintenance nor is it clear what the Council does or will contribute to. In more recent years the Council has also taken on the responsibility of letting the grass cutting contract with the PCC making a contribution to the Council rather than the other way round.

This report seeks to have the Committee agree the level of support the Council is willing and able to make towards the maintenance of the churchyard and its position in letting contracts for such work.

If an ongoing commitment is agreed for all aspects of the maintenance requirements including repairs to the wall a maintenance plan will be developed with estimated costs so that budgeting can be more evenly distributed over a number of years. This would allow the Council to review its commitment on a more formal and regular basis and would better inform the annual budget estimates.

Risk Assessment

There is a risk that without assistance the PCC may decide to close the churchyard which would leave the Council with total (100%) responsibility and associated costs as explained within the section above on closed churchyards.

Resource Appraisal

Expenditure: The revenue maintenance costs include grass cutting and the pollarding of the lime trees. The Maintenance Team also offer assistance on one day a year when the congregation to do their bit in serving the rest of the town in the autumn clean up. The figures take no account of the maintenance costs of the wall which are by their nature sporadic.

Income: The Income includes all income from burials and interments of ashes less an administration charge which covers all the legal issues and interface with undertakers. The income figures for the PCC depend on how many burials there are in a year.

The Council has contributed the following (45% of total cost), to grass cutting from the revenue budget with additional costs for pollarding of lime trees and repair to the wall being met separately from the capital rolling fund.

Revenue Costs

	PCC Income	PCC Expenditure	TTC Revenue	PCC 55%	TTC 45%
2011	£6681	£6185	£9044	£4975	£4069
2012	£6627	£5764	£9587	£5273	£4314

The budget estimate does not take any planned maintenance requirements such as the repairs to the wall into account.

Legal Powers: Local Government Act 1972, s214(6)

Recommendation:

- i) That a formal agreement be drafted showing that the Council will make a commitment of 45% towards agreed maintenance costs of the churchyard.*
- ii) That a 5 year maintenance plan is developed and used to inform budget estimates.*