



PART B: RECOMMENDATIONS TO COUNCIL

REPORT TO: POLICY AND RESOURCES COMMITTEE

DATE: 8 DECEMBER 2011

**REPORT OF THE: COUNCIL SOLICITOR AND MONITORING OFFICER
ANTHONY WINSHIP
CORPORATE DIRECTOR (s151)
PAUL CRESSWELL**

TITLE OF REPORT: MAINTENANCE OF CLOSED CHURCHYARDS

WARDS AFFECTED: ALL

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

- 1.1 To examine the current procedure for the maintenance of closed churchyards by Ryedale District Council and to consider consultation on a proposed new method of financing related works in the future.

2.0 RECOMMENDATIONS

- 2.1 That Council is recommended to approve a consultation with Parish Councils on the following principles:-

Where Parish Councils do not wish to retain responsibility for the maintenance of closed churchyards that Council:-

- (a) Agrees that a special expense be charged to cover Ryedale District Council's annual maintenance and administration costs in the event of any parish determining that it does not wish take responsibility for maintenance of a closed churchyard in its parish and passes this to Ryedale District Council;
- (b) Agrees that a special expense charge be made to cover costs henceforth for closed churchyards which have already transferred to this Council;
- (c) Consider whether they would wish to see an upper annual limit to any special expense charge levied for closed churchyards, and if so determine at what level they would wish this to be set.

3.0 REASONS FOR RECOMMENDATION

3.1 A local parish can include the on-going costs associated with maintaining closed churchyards within their precept setting process. This option should secure adequate resources to maintain the sites. If requested, Ryedale District Council could undertake the repair/rectification works under an agency agreement.

4.0 SIGNIFICANT RISKS

4.1 There are no significant risks in undertaking the consultation.

REPORT

5.0 BACKGROUND AND INTRODUCTION

5.1 Since 1993, 554 churchyards have been closed in the United Kingdom. The District Council currently manages seven closed churchyards.

5.2 An application for closure will be successful if one of the following conditions is met:-

- The churchyard is full
- The continuing use of the churchyard for burials may constitute either a risk to public health or be contrary to decency
- The discontinuance of burials may prevent or mitigate nuisance
- If an incumbent and Parochial Church Council (PCC) wish a churchyard to be closed, an Order in Council under the Burial Act 1853 (Section 1) has to be sought from the Home Office

5.3 Closure by Order in Council does not remove the legal effects of consecration and the churchyard is still part of the freehold of the incumbent and under faculty jurisdiction (ie permission is required from the Diocese for works in the churchyard). It may still be used for the interment of ashes provided that no human remains are disturbed and, if the Order permits, it may also be possible for further burials to take place in specified areas.

5.4 Once a churchyard is closed the PCC concerned may apply to the local authority to take over its maintenance responsibilities under the Local Government Act 1972 (the 1972 Act). The application is usually made to the Parish Council and, if they decline, to the District which, under the legislation, has a legal obligation to take on the responsibility.

5.5 Where the District Council does take on the responsibility for a closed churchyard, the Parish Council gives up any control over future maintenance arrangements. The churchyard would be managed by the District Council's regular grass cutting cycle.

5.6 The 1972 Act provides a simple procedure for a PCC to request that the local authority, at three months' notice, take over the responsibility for future maintenance of the churchyard (including its boundaries). In many cases, however, three months' notice is too short and can cause budget difficulties for the local authority. A guide originally prepared by the Church Commissioners' Pastoral Division in 1993, entitled "Responsible Care for Churchyards" recommended that twelve months' informal notice should be given of the intention to serve the three months' statutory notice.

5.7 It should be noted that the 1972 Act merely provides for a local authority to take over

the maintenance of a closed churchyard at a PCC's request. Best practice suggests that the onus is on the PCC to ensure that the churchyard is "in decent order and its walls and fences in good repair" before responsibility passes to the local authority. However, there is currently no legal basis to ensure that this is the case.

5.8 Closure under the Burial Act may be the prelude to a subsequent agreement and faculty (ie permission is required for the Diocese) for a disused burial ground's conversion by the local authority into a public open space under the Open Spaces Act 1906. Transferring all or part of the PCC's maintenance and repair liability to the local authority does not mean that the churchyard itself is transferred; all other rights, powers, functions and liabilities remain under the control of the incumbent. Churchyards closed in this way may be disposed of under a pastoral or redundancy scheme.

5.9 The Local authority has an option to charge the costs of maintenance of closed churchyards as a Special Expense. The legal basis is the Local Government Finance Act 1992 (the 1992 Act) which provides for different amounts of Council Tax to be calculated for different locations, eg parished and unparished areas of the District, depending on what, if any, special items relate to those locations. A more detailed summary of the law relating to special expenses is attached as ANNEX A. Special expenses are one form of a special item. Special expenses are defined in Section 35(2) of the 1992 Act and sub-paragraph (d) states that:-

"any expenses incurred by a billing authority in performing in part of its area a function performed elsewhere in its area by a Parish or Community Council or the Chairman of a Parish Meeting are the authority's special expenses unless a resolution to the contrary effect is in force."

5.10 Therefore, concurrent functions such as the maintenance of closed churchyards are clearly special expenses. Guidance issued by the DTLR on financial arrangements with Parish and Town Councils, specifically mentions the use of special expenses in relation to the maintenance responsibility under Section 215 of the Local Government Act and cites Cherwell District Council as an example of where this is automatically considered to be a special expense. Section 215 responsibility is not being passed back to the Parish Council, but the costs are charged locally. Special expenses cannot be charged retrospectively ie for previous years, but a subsequent charge for churchyards where maintenance responsibility has been assumed is permissible.

5.11 The responsibility for boundaries passes to the local authority as well as the annual maintenance, and this has more significant financial implications. Many of the churchyards are bordered by walls or fences and costs of repair can be very high.

6.0 POLICY CONTEXT

6.1 The charging of special expenses would be a policy change and a Council decision.

7.0 CONSULTATION

7.1 This report proposes consultation on this issue.

8.0 REPORT DETAILS

8.1 Ryedale District Council has already assumed responsibility for the following churchyards:-

- St Helen's Churchyard, Amotherby
- Holy Cross Churchyard, Gilling East
- St Mary's Priory Churchyard, Old Malton
- St Nicholas Churchyard, Norton (this provides the access to the swimming pool)
- All Saints Churchyard, Slingsby
- All Saints Churchyard, Terrington
- St Hilda's Churchyard, Ampleforth (this is an RDC responsibility but the Parish cut the grass)

8.2 In the coming years it is expected that this trend will continue and an increasing financial burden will be placed upon Ryedale District Council.

8.3 The funding of works within closed churchyards is currently drawn from Ryedale District Council's general fund budget for the grounds maintenance.

8.4 In addition to the above, there are three further Churchyards where applications have been made for an Order in Council under Section 1 of the Burial Act 1853 these being:-

- All Saints Churchyard, Thornton-le-Dale
- St Martins Churchyard, Bulmer
- St Mary's Churchyard, Gate Helmsley

Memorial Testing and Tree Management

8.5 Maintenance of the memorials in closed churchyards is the responsibility of the PCC under the Occupier's Liability Acts, however liability for injuries caused through unsafe memorials rests with the District Council.

8.6 Ryedale District Council is responsible for the safety of operatives working on its behalf under the Health and Safety at Work Act and appropriate training must be provided.

8.7 There are trees in five of the closed churchyards. Section 214 of the Local Government Act states that the local authority has a responsibility to maintain the trees in accordance with good practice to reduce foreseeable risks and hazards.

8.8 This extends to include the 'felling, lopping and topping' where it is required as part of good arboricultural maintenance/practice. Therefore, it is considered that the Council should incorporate these activities into its maintenance programme for closed churchyards where deemed necessary during routine tree inspections.

8.9 This does not alter the position that the church authorities are still the owners of the trees and, therefore, have a duty to consider their management. Historically, minimal tree work has been undertaken and this has been funded by Ryedale District Council.

8.9 The potential for more tree work to be undertaken is likely to increase over time. Within the present arrangements the additional costs would be borne by Ryedale District Council.

Future Procedure

8.10 The future financial burden for Ryedale District Council is likely to grow considerably. Such costs will inevitably impact on other services provided by the Council or lead to an increase in Council Tax.

- 8.11 In the event that Parish Councils do not accept this responsibility, it is suggested that where Ryedale District Council receives a request to assume responsibility for a closed churchyard, that the transfer should be subject to a condition that an appropriate budget is set as a special expense to cover the ongoing maintenance costs, one off works and an administration fee.
- 8.12 It is further suggested that special expenses are also set up for those churchyards which have previously been adopted by this Council from an agreed date. Charges would not be made retrospectively.

Resource Implications

- 8.13 The cost of maintaining closed churchyards by Ryedale District Council is currently met from the grounds maintenance budget within Property Services. This amounts to approximately £12,000 per annum for the regular grass cutting but excludes one-off costs such as repairs to boundaries and tree works.
- 8.14 Expenditure on wall repairs and safety measures has been approximately £7,000 for the last financial year.
- 8.15 Tree survey records indicate that works are currently outstanding. The tree maintenance costs for all of the churchyards are not currently known.
- 8.16 The cost of any more significant one-off works such as repairs to boundaries, are in addition to the annual maintenance costs. In the past such work would have been charged to capital, however, the accounting rules for capital have been tightened significantly and such expenditure is unlikely to qualify as capital in the future. Unless such costs are charged via special expenses or met directly by the parish they will present a further revenue cost burden to Ryedale District Council.
- 8.17 It is difficult to accurately quantify the potential impacts other than to highlight the number of parishes and churchyards within the district that could request a transfer.

Options Considered

- 8.18 **Status Quo** – continuing to accept closed churchyards in the current manner will incur Ryedale District Council additional costs which might not be affordable in the context of budget predictions. There are also potential major costs relating to health and safety risks and need to repair boundaries, cut the grass and manage all trees.
- 8.19 **Ask Parishes to retain responsibility for their closed churchyards** – this is believed to be the most effective way forward for direct financial management and better local accountability. The estimate of cost would be added to the parish precept and would be collected as part of the Council Tax bill from each household in the parish according to their Council Tax Band. This option may result in a lower charge to residents because a special expense arrangement through Ryedale District Council will also incur an administrative overhead. This option is also preferred from an expenditure control perspective because parish spending is outside of the capping rules whereas District Council spending could be capped. The parish would also have control over how the churchyard is managed and the maintenance regime applied which would be surrendered if the District Council took on the responsibility. Parishes would be encouraged to review potential liabilities regarding repairs and maintenance that could be inherited at the time of transfer and Ryedale District Council may be able to assist in this. It would also be recommended to parishes that they review whether the working life of the churchyard could be extended subject to a review of plots in accordance with statutory guidance.

- 8.20 **Ryedale District Council to charge all such costs as special expense to the Parish concerned** – whilst this has financial equity, particularly in the cost of the major repairs, it does create additional work to establish the costs attributable, consult on those costs and then maintain individual budgets to drive the special expense charges. Creating an additional layer of council tax for a parish will be a minor complication but some parishes may resolve to retain ownership of their respective sites.
- 8.21 Charging for closed churchyards via a special expense does not increase the overall level of funding the Council could generate from council tax. This is because sums identified as special expenses are still classified as part of the overall District Council's budget and, therefore, constrained by any national limits imposed on increases in Council expenditure.
- 8.22 **Ryedale District Council to set up a mechanism for recharging major costs such as repairs to boundaries** – the inclusion of these items might cause an unacceptable increase in council tax in any one year, therefore, this would be managed through a sinking fund.
- 8.23 The Council could consider a cap at Band D alternatively charging could be spread over a period of years. The option of spreading the repayment would only be used if the charge was above the cap, in order that the Council recovers any outlay over the quickest possible timeframe.
- 8.24 Indicative annual charges for five to ten years at Council Tax Band "D" are shown in Annex B.

9.0 IMPLICATIONS

- 9.1 The following implications have been identified:
- a) Financial
There are no significant new financial implications in undertaking the consultation
 - b) Legal
The proposed consultation presents no significant legal implications.
 - c) Other (Equalities, Staffing, Planning, Health & Safety, Environmental, Crime & Disorder)
The report has no other significant implications.

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SPECIAL EXPENSES – A SUMMARY

1.0 FINANCIAL ARRANGEMENTS WITH PARISH COUNCILS – THE PRINCIPLES

- 1.1 Financial arrangements with Parish Councils are specifically aimed at avoiding 'double taxation' – the situation where the costs of certain services are charged twice to local taxpayers because the parish provides a service but the District Council still charges taxpayers in the parish for the equivalent services it provides elsewhere.
- 1.2 Double taxation might apply, for example, if the residents of a parish were to be charged via the Parish Council precept, for the maintenance of playing fields in the parish (a function performed only by the Parish Council in that area and paid for only by the parishioners), and for a share of the cost of maintenance of playing fields in the remainder of the district (carried out by the District Council elsewhere).
- 1.3 Guidance provided in August 2004 by the then Office of the Deputy Prime Minister suggested that there should be five principles that should govern arrangements between District Councils and Parish Councils.
1. Fairness in the provision and access to services
 2. Simplicity to keep operating costs to a minimum
 3. Transparency to help understanding
 4. Democratic control and accountability to distinguish between funding provided to a parish by the district for a service carried out by the parish and funding raised through the parish precept for services carried out by the parish
 5. Finance should follow function so that where service provision is devolved or transferred from the District to the Parish Council funding is also transferred with the about agreed between the Councils.
- 1.4 Prior to the Local Government Finance Act 1992, the Council made grants to Parish Councils where they carried out a 'concurrent' function in their area that would normally have been performed by the District Council.
- 1.5 Other arrangements (that have not been used here) could be support in goods or in kind and agency agreements under S101 of the Local Government Act 1972 or S20 of the Local Government Act 2000 where a Parish Council acts as an agent for the District in carrying out a task for which it is paid an agreed rate.
- 1.6 The Local Government Finance Act 1992 provides for different amounts of council tax to be calculated for different parts, eg parished and unparished areas, of a district, depending on what, if any, 'special items' relate to those parts.
- 1.7 A special item is an item which relates to only part of a District Council's area. A parish precept is one special item. 'Special expenses' are another special item.
- 1.8 There are five different types of special expense, but the one affecting this district is set out in Section 35(2)(d) which provides that:-

“any expenses incurred by a billing authority in performing in a part of its area a function performed elsewhere in its area by the sub-treasurer of the Inner Temple, the under-treasurer of the Middle Temple, a parish or community council or the Chairman of a Parish Meeting are the authority's special expenses unless a resolution of the authority to the contrary effect is in force.”

ESTIMATED SPECIAL EXPENSE CHARGE AT BAND "D" : 10 YEAR BASIS FOR RECHARGING

Parish	Council Tax Base (Number of dwellings expressed as Band D) (a)	Estimated 10 year major repairs cost (b)	Estimated 10 year maintenance and trees cost (c)	Estimated 10 year total costs (d)	Estimated Annual charge (e)= (d)/10	Total estimated charge at Band "D" (f)=(e)/(a)
St Helen's Churchyard, Amotherby	152.32	£88,880	£13,730	£102,610	£10,261	£67.36
Holy Cross Churchyard, Gilling East	102.22	£34,450	£6,500	£40,950	£4,095	£40.06
St Mary's Priory Churchyard, Old Malton	1862.35	£24,330	£7,000	£31,330	£3,133	£1.68
St Nicholas Churchyard, Norton	2,459.57	£10,450	£3,500	£13,950	£1,395	£0.57
All Saints Churchyard, Slingsby	259.31	£48,220	£6,400	£54,620	£5,462	£21.06
All Saints Churchyard, Terrington	238.11	£19,455	£7,000	£26,455	£2,645	£11.11
St Hilda's Churchyard, Ampleforth	362.80	£29,400	£9,770	£39,170	£3,917	£10.80
TOTAL		£255,185	£53,900	£309,085	£30,908	