

CANNOCK CHASE COUNCIL

CABINET

16 NOVEMBER, 2006

REPORT OF THE DIRECTOR OF PUBLIC HEALTH & POLICY

PORTFOLIO LEADER - HEALTH

PROGRESS REPORT ON THE MANAGEMENT OF HEADSTONES AND MONUMENTS WITHIN
COUNCIL MANAGED CEMETERIES AND BURIAL GROUNDS

1. Purpose of Report

- 1.1 To advise Members of the current position in respect of work carried out to ensure the safe management of memorials and headstones.
- 1.2 To advise Members of actions taken since the last report to Cabinet in October 2005.
- 1.3 To agree the process of works to be adopted following the identification of unsafe memorials and notification to grave deed holders.

2. Recommendations

- 2.1 That Members note the current position (detailed in Section 4, Actions to date).
- 2.2 That the actions contained in Section 3 (key Issues) to minimise the potential risk in the management of memorials and headstones within publicly accessible cemeteries and burial grounds be agreed.
- 2.3 That Members confirm that they agree to the Council assisting Grave Deed Holders, in the manner set out in this Report, in facilitating requisite repairs to unsafe memorials.

3. Key Issues

- 3.1 There are basically 2 scenarios in which the Council will find itself in when the anniversary date of the testing deadline elapses that is:-
 - (i) Headstones on temporary stakes where no grave deed holder can be traced (letter returned as not known at this address).
 - (ii) Headstones on temporary stakes where the grave deed holder has been contacted but has not taken any action to rectify the defective headstone.

It is therefore proposed to start the process of making safe those memorials which failed the test.

- 3.2 On the 24 month anniversary of the first letter to the grave deed holder (May 2007) the Council will write to all those affected who have not applied for a permit to fix their memorial again requesting that they make good defective headstones within one month. It is further proposed as part of a communications plan to post a list of all defective headstones in the cemeteries and on the Council website/local papers prior to Christmas when traditionally cemeteries are heavily visited. The purpose of the second letter is to inform the grave deed holder of the work required to make the defective headstone safe. Obviously in the case of 3 (i), there is no point in sending another letter as the Council now knows it will not get a response.
- (i) If no response is received from the second letter the Council will update its notices and website making it clear that the temporary supports will be removed and the headstone/memorial laid flat on the body of the grave with the inscription facing upward.
 - (iii) To avoid such headstones becoming a trip hazard/health and safety issue, notices will be posted to highlight the fact that headstones are lying horizontally and grass areas around the grave will be treated with weed killer to obviate the need to mow grass close to the headstone.
 - (iii) As mentioned in Section 1, Background, it is not possible to take this approach at Stile Cop Cemetery as the headstones are positioned back to back on Council provided runners. It is therefore proposed to remove those headstones which do not have a headstone at the back to a separate part of the cemetery, thereby eliminating risk.
 - (iv) When the procedure commences in May 2007 it is envisaged that there will be an influx of grave deed holders wishing to effect repairs. Having consulted the three memorial masons who returned the most competitive rates for repair, it is unlikely that any one company could cope with high numbers of repairs. The companies have, however, agreed that the Council can issue the necessary permit for repair and forward the work onto the company who can respond the fastest, thereby reducing the waiting period for the grave deed holder and the potential risks associated with the headstone.

4. Actions to Date

The process and results to date were reported to the Health Select Committee in July 2005.

As a result, a number of recommendations made by that Committee were adopted by Cabinet in October 2005 and the following actions have been taken:-

All of the headstones in the District have now been inspected (except those that been erected six months prior to testing).

Every grave deed holder, or last known grave deed holder has received a letter from the Council, in the event of headstone failure.

The Council has reduced the period of Exclusive Right of Burial to 30 years and reviewed its extension/assignment of burial rights procedure.

Introduced a Registration Scheme for Memorial Masons (currently has 16 members) and a leaflet for guidance for Members of the public.

Extended the period for grave deed holders to repair defective headstones from 12 months to 24 months, from the date of the original letter.

Met further with residents/residents groups concerning the testing.

Arranged Open Day and press releases on the testing process.

Arranged named testing days for different sections of the cemeteries to allow members of the public to attend whilst memorial testing was ongoing.

Established a number of stonemasons who have offered a competitive rate (£130 including VAT)* as part of a tendering process for batch repairs open to all of the stonemasons on the Council's Memorial Masons Registration Scheme.

Established a fallow period of 11 months between burial and memorial erection.

Agreed a minimum 10 year workmanship guarantee with all memorial masons working in the Council's cemeteries/closed churchyards.

* This is for a standard headstone on a concrete runner or slab base. Monuments, kerb sets, vaults etc. will require an individual quote from a stonemason.

5. Way Forward

There is some evidence to suggest that many grave deed holders have not applied for a permit to repair faulty headstones because they believe the Council will fund the repairs. When it becomes evident that this will not be the case, it is anticipated that large numbers of grave deed holders will contact the Council to affect repairs.

In order to facilitate the requisite repairs as effectively as can be reasonably arranged, it is considered appropriate that the Council should provide assistance to grave deed holders, given that the Council has a vested interest in ensuring all repairs are undertaken as soon as possible.

To promote and secure an effective programme of repair, the Council would agree to act on behalf of each grave deed holder, subject to the necessary consent being provided from the grave deed holder, in order to co-ordinate and undertake steps within its control to facilitate the repairs. Grave deed holders would be required to provide written confirmation (which will be a standard proforma prepared by the Council detailing the scope and extent of assistance the Council is prepared to provide). (Further details of the assistance to be provided by the Council are set out in the paragraphs below). The proforma would be sent to the grave deed holder with reminder letter and full details of the costs of the repairs detailed within it.

If a grave deed holder wishes to accept the offer of assistance, he/she is must return a signed copy of the proforma together with a cheque (made payable to the Council) for the total cost of the repair. Only upon receipt of the proforma and cheque would the Council be able to provide assistance. The full extent of the assistance the Council is prepared to provide will be detailed in the proforma. A summary of the scope of this assistance is detailed in Appendix A.

REPORT INDEX

Background	Section 1
Details of Matters to be Considered	Section 2
Contribution to CHASE	Section 3
Section 17 (Crime Prevention) Implications	Section 4
Human Rights Act Implications	Section 5
Data Protection Act Implications	Section 6
Risk Management Implications	Section 7
Legal Implications	Section 8
Financial Implications	Section 9
Human Resource Implications	Section 10
Conclusions	Section 11
List of Background Papers	Section 12
Appendix A – Summary of Scope of Pro-Forma Assistance Details	

Section 1

Background

Constructional defects are the responsibility of the erecting memorial mason and as highlighted in Section 4, the Council's Registration Scheme introduced in conjunction with the stonemasons working in our cemeteries will guarantee the standard of workmanship for a minimum period of ten years.

However, of the total number which failed the test and were staked and banded in the initial testing phase, only 10% have been reinstated by grave deed holders. Effectively this means by May 2007 (24 months after the first letters were sent out) there could be as many as 1,000 memorials which require fixing in accordance with the National Association of Memorial Masons Standards.

Despite the issue of headstone testing being debated in Parliament, a special report by the Local Government Ombudsmen "Memorial Safety in Local Authority Cemeteries" (March 2006) highlighted the fact there was still no national guidance on this subject with as many as eight organisations offering guidance.

The Ombudsmen's view is that it should not be necessary for burial authorities to lay down grave memorials on any large scale. However, the Ombudsman does not offer any guidance in the case where Council's have contacted the grave deed holder and no action has been taken by them.

In certain instances the Council would not be able to lay headstones down i.e. at Stile Cop Cemetery where the memorial rests on a concrete runner.

The Council's concern must be with those memorials where no grave deed holder can be traced. This maybe for a variety of reasons such as:-

- (i) Grave deed holder is deceased and contact with family lost.
- (ii) Grave unattended for many years.
- (iii) Last known grave deed holder left the country.
- (iv) No next of kin to effect grave deed assignment.

Section 2

Details of Matters to be Considered

The Council as a burial authority allow members of the public to purchase burial rights and can grant a deed to erect a memorial for a set period of time.

The maintenance liability for both the grave and the memorial rests with the grave owner for the period of the grant of the right of burial/memorial erection.

Council's have a duty to take, as far as reasonably practicable, measures to prevent injury or death from unstable memorials.

There has been increasing concern over memorial safety from the Health and Safety Executive and Local Authority insurers to the extent that the Health and Safety Executive has used its enforcement powers against local authorities. This has varied when an incident has been reported but has ranged from the issue of an enforcement notice requiring a Council to accelerate its testing process to a prohibition notice closing the cemetery until testing has been undertaken.

This Council's response was to arrange for the majority (8169) of its headstones/memorials to be inspected in accordance with the National Association of Memorial Masons and the Institute of Cemeteries and Cremation Management (formerly Institute of Burial and Cremation Administration) guidelines.

The results of the testing highlighted the following:-

Passed test – 5,309
Failed test – 2,860
Staked and banded – 1,279

Those that were staked and banded to provide a temporary support became the subject of intensive public debate as each grave deed holder was contacted or attempted to be contacted via a letter explaining the fact that "their" headstone had failed the industry test.

Section 3

Contribution to CHASE

- H stands for health and this process will improve the health and safety in its cemeteries and closed churchyards.
- E stands for environment which cemeteries and closed churchyards make a major contribution to as maintained public open space.

Section 4

Section 17 (Crime Prevention) Implications

There were none identified within this report.

Section 5

Human Rights Act Implications

There were none identified within this report.

Section 6

Data Protection Act Implications

There were none identified within this report.

Section 7

Risk Management Implications

A meeting with the Council's insurers as part of the Risk Management Strategy, commended the Council's approach to risk management. However, the issue of the wooden stakes having a limited lifespan was required to be kept under review.

Section 8

Legal Implications

The Council has a legal responsibility to ensure that cemeteries under its control are safe to all that visit them. The Council is on notice that various headstones have failed the requisite safety test and therefore it is incumbent upon the Council to take all reasonable steps to reduce/eradicate any risk that failing or failed headstones pose.

The Council will not be able to discharge its legal obligations by simply relying upon the fact that attempts have been made to contact or inform grave deed holders of the defective headstone. The Council must ensure that persons entering onto the cemetery are safe. In view of the potential injury that a headstone could cause to an able bodied, disabled person or child, it is imperative that the Council takes measures to render safe all defective headstones as soon as possible.

Whilst all requisite repairs will not be done simultaneously, the Council has a duty to ensure that all un-repaired headstones are rendered safe, until such time that they are repaired.

Whilst some actions by the Council may give rise to public concern, this cannot distract the Council from its statutory obligation to ensure that visitors to the cemeteries in the District are safe and protected as far as reasonably possible.

Failure to take the necessary actions to discharge the Council's obligations which subsequently result in personal injury/death, will inevitably render the Council liable to negligence claims and possible action by the Health and Safety Executive.

It is therefore clearly in the interests of the Council to encourage as many grave deed holders as it can to undertake the repairs required.

There is no restriction upon the Council assisting grave deed holders undertake the repairs. In fact there may be a public expectation that the Council does provide such assistance. However, the Council must not place itself in a position of conflict with a grave deed holder. Should there be a potential for conflict, the Council must withdraw any assistance it provides.

Under the proposals suggested for the provision of assistance, the Council would be acting on behalf of grave deed holders in relation to a very limited issue. The Council would in essence co-ordinate the requisite works. Any funds provided by grave deed holders would need to be identified separately to Council funds and a clear audit trail must exist. The funds provided by grave deed holders would be held to the order of the grave deed holder, unless used specifically for the purpose of effecting the repairs (and no contrary instructions being provided by the grave deed holder).

With regards headstones in respect of which the grave deed holder is not known or unavailable, the Council must consider its legal obligations in needing to make sure that steps are taken to discharge its obligations concerning health and safety. It is not adequate or sufficient for the Council to rely on the fact that grave deed holders cannot be found to fund the repairs.

Should there be an incident involving any headstone resulting in personal injury or death, it is very likely, if not inevitable, that a claim would be made against the Council.

Section 9

Financial Implications

The maintenance liability for a headstone or monument rests with the grave owner for the period of the grant of right to burial/memorial

The Council have undertaken a series of inspection tests of headstones and monuments but does not have any budget provision for making safe headstones or monuments or offering financial support.

The cost of laying down headstones will initially be met from existing budgets subject to only a reasonable number of headstones requiring such treatment. A further report would be required requesting a supplementary estimate if there is inadequate response to the request to undertake repairs.

If a member of the public contacts the Council and wishes to undertake a repair to a failed headstone or monument the Council will offer the facilitation of their repair via three local stone masons. This will involve the member of the public giving the details to the Public Open Spaces Admin Service along with a receipt of money to pay for the repairs. It is not proposed that an admin charge will be made for the service provided. This service will be accommodated within existing revenue budgets.

Section 10

Human Resource Implications

The Council's cemetery staff currently clerk all repairs undertaken across the eight sites under its control and this does have an impact on the number of burials offered per day.

Section 11

Conclusions

The Council now needs to proceed to the next stage of the Headstone Testing Process and remove the risks from defective headstones. This risk has been minimised by the use of temporary wooden staking but these now need to be removed as the stakes may start to rot. The issue of repair, both cost and timescales/procedure would be addressed by the Council assisting grave deed holders, as set out in this Report, in undertaking the requisite repairs.

Section 12

Background Papers

- Health Select Committee 2005 (July)
- Cabinet 2005 (October)
- Ombudsman Report "Memorial Safety in Local Authority Cemeteries" 2006 (March)

APPENDIX A

SUMMARY OF SCOPE OF PROFORMA ASSISTANCE DETAILS

- a. The Council does not and will not under any circumstances take on any responsibility or liability for any defective headstone.
- b. The Council will provide guidance (where no conflict of interest arises) to grave deed holders on issues relating to their respective headstones, their repair and on other relevant issues, such as assignment i.e. family member wishes to pay for a repair but they are not the grave deed holder or where the memorial deed has expired
- c. The Council will not and does not accept any ongoing responsibility for any headstone that has been repaired under this arrangement.
- d. The Council will co-ordinate and liaise with the stone mason(s) in order to arrange the requisite repairs on behalf of the grave deed holder. This will include the issuing of the requisite permit and forwarding payment of the costs of repair.
- e. No permit or payment will be forwarded to the stone mason in the absence of cleared funds.
- f. The standard fee (as agreed with stone masons) covers only a limited number of defects. Should there be other defects, the Council does not accept any liability for the cost of repair. The grave deed holder will be informed of any additional liability arising. This is particularly the case where the headstone shows internal fracturing. The stone mason will contact the grave deed holder directly to discuss any additional charges to make good the defects before replacing the headstone
- g. Whilst the costs of repair will be forwarded to the stone masons by the Council, the payment is made strictly on behalf of grave deed holders. Accordingly, the benefit of the stonemasons guarantee will be conferred solely upon and exercisable by the grave deed holder.