

Report of:	Head of Commissioning
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Key Decision:	No
Report Track:	Cabinet: 17/07/14

CABINET
17 JULY 2014
ADOPTION OF ST JOHN'S CHURCHYARD, HEATH HAYES, CANNOCK

1 Purpose of Report

- 1.1 To inform Members of an application received from Heath Hayes and Wimblebury Parish Council to take on responsibility for the maintenance of the closed churchyard at St. Johns Church, Heath Hayes.

2 Recommendations

Cabinet are asked to:

- 2.1 Formally note the adoption of the closed churchyard at St. John's Church, Heath Hayes and
- 2.2 Approve the use of and reallocation of the contingency budget to cover the one off cost required to bring the churchyard up to an acceptable standard and to provide a budget from 2015-16 to meet the ongoing maintenance cost as set out in the report.

3 Key Issues and Reasons for Recommendation

- 3.1 The Council has received a request to adopt and take over the maintenance responsibility of the closed churchyard at St. Johns Church, Heath Hayes
- 3.2 The closure of St. Johns churchyard was approved on 12th October, 2011 and on the 10th September 2012 the Parish Council notified the authority of its intention to pass on responsibility for the maintenance of the churchyard to the Council.
- 3.3 Although there appears to have been some confusion as to whether the correct process had been followed which unfortunately has led to an undue delay in dealing with this matter. This is a statutory requirement and the

Council cannot refuse to assume responsibility for the maintenance of a closed churchyard if it is formally closed by Order and requested to do so by the Parochial Church Council (PCC) and it has previously been refused by the appropriate Parish Council; in this case Heath Hayes and Wimblebury Parish Council.

- 3.4 The additional responsibilities for the Council are set out in the body of this report including the need to seek Cabinet's approval to make appropriate budgetary provision to undertake the one off works associated with bringing the churchyard up to an acceptable standard and for the ongoing maintenance regime each year. The estimated costs are £10,000 and £3,500 respectively.

4 Relationship to Corporate Priorities

- 4.1 This report supports the Council's Corporate Priorities particularly around Place and the improved living environment. Making places more pleasant and attractive will benefit the whole of community.

5 Report Detail

Statutory Responsibility

- 5.1 Once a churchyard is closed, the Parochial Church Council (PCC) concerned may apply to the local authority to take over the maintenance responsibilities under the Local Government Act 1972.
- 5.2 The Council's involvement in the maintenance of closed churchyards is a statutory requirement. The Council cannot refuse to assume responsibility for the maintenance of a closed churchyard if it is formally closed by Order and requested to do so by the PCC and it has previously been refused by the appropriate Parish Council.
- 5.3 Whilst the statutory minimum period of notice is 3 months, longer notice is usually given in practice, with at least a further 12 months being the norm. Such notice is required to enable the relevant local authority to budget for any necessary expenditure.
- 5.4 It should be noted that the Local Government Act 1972 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 walkways and fences in good repair" before responsibility passes to the local authority. This appears not to be the case at St. Johns where a fence has been damaged and the grounds have many sunken graves.
- 5.5 The closure of St. Johns churchyard was approved on 12th October, 2011 (with the exception that the PCC can still allow re-opening of graves for additional burials where space permits) and on the 10th September 2012 the

Parish Council notified the authority of its intention to pass on responsibility for the maintenance of the churchyard to the Council.

- 5.6 It appears that there was some confusion as to whether this request had been made correctly. It was unclear as to whether the Parish Council had formally resolved to pass on responsibility for the maintenance to the Council and given notice of their resolution to the District Council. As a consequence it appears that all parties believed they had taken the appropriate action in this case, the PCC and the Parish Council believing that the District Council had taken on the maintenance responsibility for the churchyard and the District Council seeking the appropriate resolution from the Parish Council, before it actually did so.
- 5.7 This period of confusion resulted in no action being taken by any party in respect of this matter or the maintenance of the churchyard and was only highlighted by a number of complaints from members of the public and elected members.

Maintenance and other Responsibilities

- 5.8 There is no statutory guidance on the appropriate standard to which a closed churchyard should be maintained. However, responsibility for maintenance includes the following:

Walls and Fences – must be maintained in decent order and replaced in accordance with good management.

Paths – that cross the churchyard are also an asset that are transferred and must be maintained and repaired on an ongoing basis to a “decent order”.

Grass and Vegetation – grass cutting and vegetation maintenance would form part of the grounds maintenance responsibility and because of the condition of the ground in between the graves would initially be very difficult. The burial area is in need of levelling and areas may need to be re-turfed before regular maintenance can occur.

Trees – the Council have a responsibility to maintain the trees in accordance with good practice to reduce any foreseeable risks and hazards. This extends to the felling, lopping and topping of trees where it is required as part of good arboricultural maintenance/practice. Therefore, it is considered that the Council should incorporate these activities into the maintenance programme where deemed necessary following routine tree inspections. This does not alter the position that the PCC is still the owner of the trees and therefore have a duty to consider their management.

Health and Safety – the Council will be responsible for the safety of operatives/employees working on site and must provide undertake risk assessments and appropriate training.

Legal Liability and Insurance – In assuming responsibility of the maintenance of a closed churchyard a local authority assumes liability for public safety.

- 5.9 The ordinary maintenance of memorials, headstones and tombstones is not the responsibility of the PCC or the local authority but of the owners, who are usually the heirs of the persons commemorated. Where the heirs or other owners cannot be traced, the PCC or the local authority will have to take responsibility for dealing with dangerous monuments, since safety is part of keeping a closed churchyard in decent order. Where the District Council identifies a dangerous memorial, it must notify the PCC who may issue a faculty (consent of the Bishop) for the making safe of the memorial.
- 5.10 Responsibility for the churchyard does not include responsibility for any church, chapel or other building in or adjacent thereto.
- 5.11 Council officers have arranged for an assessment of the health and safety issues by the Council's Health and Safety Officer and Grounds Maintenance staff have assessed the maintenance issues.

Financial Responsibility

- 5.12 A rough estimate of the cost of works required to bring the churchyard up to an acceptable standard is circa £10,000. An ongoing budget of £3,500 will also be required to undertake an annual maintenance regime of the churchyard.
- 5.13 The cost to the Council for maintaining the 5 closed churchyards is currently around £11,250 per annum and this is met from within existing grounds maintenance budgets. This amount excludes any one off costs such as repairs to boundaries and hedge and tree works which are subsidised from other budgets.
- 5.14 It is clear that there is insufficient budget to take on the additional maintenance responsibility for St. John's closed churchyard and subject to Cabinet approval the one off cost associated with bringing the churchyard up to an acceptable standard will be met from contingencies and provision will be made from 2015-16 onwards to meet the annual maintenance cost.

6 Implications

6.1 Financial

The one off cost required to bring the churchyard up to an acceptable level will be met from contingencies and future budget provision will be made from 2015-16 onwards to meet the cost of the annual maintenance programme.

6.2 Legal

Section 215 of the Local Government Act 1972 allows a parochial church council to notify the parish council to take over maintenance of a closed churchyard. If the parish council serves notice on the district council, within 3 months of receiving such request, then the district council must take over maintenance.

6.3 Human Resources

None

6.4 Section 17 (Crime Prevention)

None

6.5 Human Rights Act

None

6.6 Data Protection

None

6.7 Risk Management

In assuming responsibility of the maintenance of a closed churchyard a local authority assumes liability for public safety. The addition of this closed churchyard will require the Council to adopt best practice and undertake a number of annual inspections and grounds maintenance regime. Not maintaining closed churchyards may lead to reputational damage for the Council.

6.8 Equality & Diversity

None.

6.9 Best Value

None.

7 Appendices to the Report

Previous Consideration

Background Papers

NALC Legal Topic Note LTN 35 Closed Churchyards and Disused Burial Grounds and LTN 64 Tombstones and Memorials.