CLOSED CHURCHYARDS – BACKGROUND INFORMATION

A closed churchyard is one which has been closed for burials by an Order in Council under the provisions of the Burial Acts. The term 'closed churchyard' does not refer to one which has been disused or where burials have been prohibited by a local Act of Parliament. Neither does it apply to any area of churchyard which has been appropriated to another use under the provisions of the Pastoral Measure.

# What is the process for closing a churchyard?

Under the provisions of the Burial Act 1853 an Order of Closure can be made by the Queen at a meeting of the Privy Council in response to representations by the Secretary of State for the Home Department (ie the Home Office). An application for closure would normally be made by the Parochial Church Council (PCC).

**THE APPLICATION FOR CLOSURE OF DONISTHORPE CHURCHYARD WAS APPROVED ON 21 DECEMBER 1874**

1. **What does closure mean?**

Once a Churchyard is Closed, responsibility for maintenance falls on the PCC for the Parish in which the Churchyard lies pursuant to section 215(1), Local Government Act 1972 (LGA 1972). The PCC is required to keep the Churchyard in decent order and its walls and fences (including gates) in good repair.

**FOR CLARITY THE PARISH AT THAT TIME WOULD HAVE BEEN ASHBY WOULDS**

By virtue of s.215(2) of the LGA 1972, a PCC may at any time serve a written request on the Parish Council, to take over the maintenance of the Churchyard.

**IT IS NOT KNOWN WHEN THIS REQUEST WAS MADE BUT ASHBY WOULDS URBAN DISTRICT COUNCIL ASSUMED RESPONSIBILITY FOR THE MAINTENANCE OF THE CHURCHYARD IN ACCORDANCE WITH THE PROVISIONS OF THE LGA 1972. WHOEVER WAS THE LOCAL GOVERNING BODY BETWEEN 1872 AND 1972 WOULD HAVE BEEN MAINTAINING THE CHURCHYARD IN ACCORDANCE WITH ITS LEGAL RESPONSIBILITIES.**

# Who owns a closed churchyard?

Closure by Order in Council and the subsequent transfer to the local authority (under section 215 of the Local Government Act 1972) of the PCC's liability for maintenance and repair have no effect on the ownership of the land.

# Who controls a closed churchyard?

A closed churchyard remains under the control of the PCC. No change can lawfully be made without a faculty granted by the Court.

# Does the local church continue to have an interest in a closed churchyard?

A closed churchyard continues to form part of the church site and may still be used for church purposes. Apart from the liabilities for maintenance and repair all other rights and responsibilities of the PCC are unaffected.

# Specific duties of Local Authorities

Where a churchyard has been closed by Order the responsibilities for maintenance and repair transfers to the local authority. The practical effect of the transfer of the PCC's responsibility for maintenance and repair is that it is for the authority to decide how and when and by whom the work shall be done. Set out below is a summary of the specific duties transferred to the authority in relation to different aspects of maintenance and repair:

# Boundary walls

To undertake any necessary repair of boundary walls (and fences), including the repair of gates, and also the renewal of a fence or gate when, according to the rules of good management, they should be replaced.

# Retaining walls

A degree of flexibility is required in determining the liability for repairs to a retaining wall. If the wall forms part of the churchyard boundary then clearly the local authority has a degree of liability. If a wall which serves as a boundary was built specifically as a retaining wall for a church building, then it is difficult to argue that the local authority is liable for its maintenance. Similarly repairs to a boundary wall which retains part of a churchyard needs to be discussed with a view to establishing a reasonable basis for apportioning liability. Every case needs to be looked at on its own merits and a fair and reasonable agreement reached. In some case adjacent landowners will be involved if any activity on their part may have contributed to the structural failure of a wall.

# Paths

To maintain and repair in a manner that is sympathetic to the nature of a churchyard.

# Tombstones, monuments and memorials

The local authority is responsible for the inspection of any tombstones, monuments or memorials so that any that are identified as dangerous are dealt with. The PCC will be responsible for obtaining consent from the heirs at law of the person commemorated before any tombstones etc are moved or repaired. If that consent is not available then the PCC will instruct the local authority what action should be taken.

# Trees

All churchyard trees are within the jurisdiction of the Consistory Court. The Chancellor has issued guidance to PCC’s on the subject and this can be found in his General Directions Concerning Churches and Churchyards issued in April 2001. These cover planting, felling, lopping, and topping of trees. The Directions extend to closed churchyards.

In maintaining a closed churchyard the duty of the local authority extends to identifying trees which in their present condition could present a risk to the public or to property. The General Directions explain the procedures to be followed in such cases and these should be followed in consultation with the PCC. Where a tree preservation order is in place, consent is required from the local authority in addition to the necessary faculty.

# Herbage

Maintaining the churchyard and keeping it in decent order will involve dealing with saplings, bushes, brambles, weeds and grass. Whilst none of this work requires authorisation it will be helpful if there is liaison between the local authority and the PCC to seek agreement on the way in which the local authority will carry out this work.

1. **Legal Liability and Insurance**

In assuming responsibility for the maintenance of a closed churchyard a Local Authority assumes liability for public safety. A positive duty of maintenance is imposed on the Local Authority and breech of that duty could make the authority liable to any person injured. It can be argued that this duty is shared by the PCC and any legal proceedings could be against the Local Authority and the PCC.

If a Local Authority identifies any remedial work which it thinks should be carried out on grounds of public safety then there will be liaison with the PCC. If the PCC does not approve the work or part of any such work, then the local authority may be in some difficulty. It could seek an alternative means of removing the risk but careful consultation would be needed.

**THE CLERK HAS CONTACTED ZURICH MUNICIPAL AND THERE IS NO INSURANCE LIABILITY AS THE LOCAL AUTHORITY DOES NOT OWN THE LAND, THEY WILL NOT BE OCCUPYING IT AND NO EMPLOYEES OF THE COUNCIL WILL WORK THERE. IN TERMS OF PUBLIC SAFETY THE ONLY LIABILITY THE LOCAL AUTHORITY WOULD NEED TO CONFIRM IS THAT OF ITS MAINTENANCE CONTRACTOR(S).**

# Working with the local authority

It is important to remember that local authorities have budgets in the same way that any other organisation does. Works in churchyards have to be budgeted for just like any other work the authority undertakes. It is imperative that requests for works other than routine repair and maintenance are made in writing at the earliest possible opportunity as councils can have anything up to a twelve month lead-in to actually having their budget agreed.

**CURRENT SITUATION**

What I believe has happened is that the duties of the parish in terms of maintaining the closed churchyard have got lost in translation.  One area in particular is the definition of 'parish'. Prior to the LGA 1972 the parish was the council administrative area at the time, that is Ashby Woulds Urban District Council, and their boundaries would have mirrored the parish church boundaries. These boundaries existed until 1974 (when the LGA 1972 provisions became law) and Ashby Woulds UDC was split into two parishes - Ashby Woulds Town Council and Oakthorpe Donisthorpe and Acresford Parish Council.

At the same time, because Donisthorpe Cemetery served both new parishes, the Joint Burial Board was created to oversee the management of the cemetery on behalf of the two new councils. In my opinion it follows that that the cost of maintaining the closed churchyard should have been with the Joint Burial Committee (or the Joint Burial Board in 1974) as the churchyard still serves the parish church boundaries.

This was clearly overlooked in the creation order for the Joint Burial Board and Oakthorpe Donisthorpe and Acresford Parish Council assumed responsibility for the maintenance of the churchyard.

I suspect this none of this was realised at the time and ODAPC just took on the maintenance in or around 1974 simply because the churchyard was in the ODAPC parish - but St Johns Church similarly serves Ashby Woulds.

In putting this document together I want to emphasise that in no way do ODAPC want to stop maintaining the churchyard. However St John’s Church serves Ashby Woulds in accordance with the parochial church boundaries, so the indication is that Ashby Woulds Town Council should be contributing to the cost of maintaining the churchyard via the Joint Committee.

**Recommendation**

* **That the Joint Burial Committee assume responsibility for the cost of maintaining St John’s Churchyard, in accordance with its specific duties, effective from 1 April 2021.**\*
* **That representatives of the Joint Burial Committee arrange to meet with the Parochial Church Council to explain the change and provide reassurances that the maintenance of the churchyard will not be affected.**

\* the existing grounds maintenance contract will remain with ODAPC, as the ‘host’ authority for the burial function, as financial guidelines do not permit the Joint Burial Committee to hold contracts.