

Report Statement

Report Purpose:

Holy Trinity Hurdsfield Graveyard

Author:

Town Clerk

Current Situation

A Notice of Intention to Apply to transfer maintenance responsibility of Holy Trinity Hurdsfield Graveyard to Macclesfield Town Council.

Under common law a parishioner has a legal right to be buried in the Church of England parish churchyard regardless of religious belief or lack of belief. When a churchyard becomes full, it is necessary for this right to be restricted or rescinded. Accordingly, under s. 1 of the Burial Act 1853, the Privy Council may make an Order in Council to close a churchyard for burial subject to any exceptions specified in the Order. An Order must be sought from the Ministry of Justice. The grounds for making an Order are –

- a. that further burials would constitute a public health risk;
- b. that further burials would be contrary to decency;
- c. that burials should be discontinued for the prevention or mitigation of nuisance; or
- d. there is no proper room for new graves.

The notice we have received states that there is no proper room for new graves (d).

The Church says it will maintain the graveyard for the next 12 months, to allow the Town Council time to prepare and budget.

Legalities and Consideration (taken from NALC briefing Nov 2021)

Once a churchyard is closed, responsibility for maintenance falls on the parochial church council ("PCC") for the parish in which the churchyard lies (s.215(1) of the Local Government Act 1972 ("the 1972 Act")). The PCC is required to keep the churchyard in decent order and its walls and fences (including gates) in good repair.

By virtue of s.215(2) of the 1972 Act, a PCC may at any time serve a written request on the local council or, in a parish without a council, on the chair of the parish meeting, to take over the maintenance of the churchyard. Subject to s. 215 (3) of the 1972 Act (see next paragraph), the council or meeting takes over the maintenance three months after service of the request.

Within the three-month period referred to above, the council or the meeting can pass on the maintenance responsibility to the district council. The mechanism by which they can do that is by passing a resolution and then giving written notice of that resolution to the district council and to the PCC. At the expiry of the three months the district council must take over

the maintenance. If the three months period expires without the parish council having made such a resolution, the district council can no longer be required to take over the maintenance of the churchyard although it has the power to enter into an agreement to do so pursuant to s.101 of the LGA 1972. Additionally (or alternatively) the district council has the power to make a financial contribution to the parish council towards the cost of maintenance pursuant to s. 214 (6) of the 1972 Act.

Whilst the statutory minimum period of notice under s.215(2) of the 1972 Act is three months, longer notice is usually given in practice with at least twelve months' informal notice of the intention to serve the three months' statutory notice recommended in Church of England guidance. Such notice enables the relevant local authority to budget and precept for any necessary expenditure. The onus is on the PCC to ensure that the churchyard is in decent order and its walls and fences are in good repair before responsibility passes to the parish council or chair of the parish meeting.

If a formal request is received from the PCC, there are advantages and disadvantages in resolving to hand on responsibility to the district council or county council. The advantages may include:

- a. the parish council/parish meeting has no management responsibility for the upkeep of the churchyard;
- b. the parish council/parish meeting does not have to use its own financial resources for maintenance; and
- c. the parish council/ parish meeting does not have to employ staff or contractors to carry out maintenance work.

Some disadvantages may be:

- a. the district council/ county council may (and probably will) treat the expense of maintenance of the churchyard as a "special expense" under section 35 of the Local Government Finance Act 1992 chargeable only on the council taxpayers of the parish;
- b. the cost of maintenance by the district council may be higher than that which the parish council/ parish meeting would incur;
- c. the standards and policies of the district council in relation to the upkeep of the churchyard may not be to the liking of the parish authority or to the local inhabitants.

Maintenance includes, paths, fences, walls and to ensure headstones are safe and will not topple over. Official guidance states: 'to see that the churchyard is kept in a decent and fitting manner, that is cleared of all rubbish, muck, thorns, shrubs and anything else that may annoy parishioners when they come into it'.

For Consideration and Decision

Option 1:

To accept and take over the maintenance as requested. This would involve costs for the Town Council, and as present we have no expertise or experience in this area.

Option 2:

For the Town Council to pass a resolution at Full Council 25th July 2022, within the 3 month period, to pass the responsibility of the maintenance to Cheshire East Council and then give written notice of that resolution to the district council and to the PCC.