

## CHURCHYARD CLOSURE AND TRANSFER OF MAINTENANCE RESPONSIBILITY – ST MARY THE VIRGIN HORSELL

### Executive Summary

Under section 215 of the Local Government Act 1972, and at the request of the local Parochial Church Council, Woking Borough Council would be required to take over maintenance responsibility for the closed churchyard at St Mary the Virgin in Horsell. A draft application to close the churchyard and transfer maintenance responsibility has been received by the Council for consideration. Upon inspection of the churchyard, concerns with some aspects of the site have come to light, namely the structural condition of a boundary wall on the southern side of the churchyard. At present this means the requirements of the above act cannot be met fully and is currently preventing handover from being agreed.

### Recommendations

The Executive is requested to:

#### RESOLVE That

- (i) the application to close the churchyard at St Mary The Virgin Horsell not to be progressed, pending necessary repairs to the southern wall;
- (ii) ongoing ground maintenance functions currently being undertaken by the Council's Environmental Partner, Serco, to continue in the interim; and
- (iii) Officers to seek external funding opportunities to assist the church in delivering the repair works to the southern boundary wall.

### Reasons for Decision

Reason: To meet the obligation imposed on the Council under section 215 of the Local Government Act 1972.

The Executive has the authority to determine the recommendation(s) set out above.

**Background Papers:** None.

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Horsell**

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# **Churchyard Closure and Transfer of Maintenance Responsibility – St Mary The Virgin Horsell**

## **1.0 Introduction and background**

1.1 Section 215 of the Local Government Act 1972 (the “Act”) is the legislative framework in which local authorities are obliged to take over the maintenance of closed churchyards in relation to Church of England Churches. A churchyard can be closed 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; and/or
- An incumbent and Parochial Church Council (PCC) wishes a churchyard to be closed, and an Order in Council under section one of the Burial Act 1853 has been sought from the Home Office.

1.2 In these circumstances a PCC can require the local authority to assume responsibility for the maintenance of a closed churchyard. Closure does not remove the legal effects of consecration and the churchyard is still part of the freehold of the incumbent and under faculty jurisdiction.

1.3 The process is that any closed churchyard is first offered by the PCC to the local parish council but if the parish council rejects such an approach, the District/Borough Council is obliged to accept the transfer. In this instance there is no local parish council and therefore responsibility is directly transferred to Woking Borough Council (‘the Council’) who are obliged to accept this transfer of responsibility.

1.4 It should be noted that the Act merely provides for a local authority to take over the maintenance of a closed churchyard at a PCC's request; the onus is on the PCC to ensure that the churchyard is "in decent order and its walls and fences in good repair" (section 215(1)) before responsibility passes to the local authority.

1.5 The responsibility of the local authority in respect of a closed churchyard is to ensure it is maintained in good order and as a safe place for visitors. Boundary walls, paths, grass, lighting (if any), grass cutting and trees all come within this responsibility. It should be noted that graves and headstones within the churchyard remain the responsibility of the family of the deceased to maintain. However, in many cases these are no longer alive or living in the local area to be able to do this. Therefore, in the interest of public safety, best practice dictates that the local authority arranges regular safety inspections of headstones and any found to be unstable are typically laid flat.

1.6 The Council is already responsible for four other closed burial grounds in Woking Borough. Management of these falls to the Green Infrastructure team, with the majority of the general maintenance requirements incorporated into the wider grounds maintenance contract with Serco. Any additional adhoc maintenance needs are funded by a small annual revenue budget specifically for closed burial grounds.

## **2.0 Situation to date**

2.1 In 2017, the Council was informed by representatives of St Mary the Virgin Church of their intention to close their burial ground. A draft application for closure was submitted to the Council on 17 June 2018. However, since the submission of this draft the Council has not been in receipt of a formal completed application for closure. A plan of the churchyard can be found at Appendix 1.

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- 2.2 Upon receipt of the draft application, the Council sought to undertake an initial survey to assess the condition of the churchyard to ensure that it was in 'decent order', as stipulated in the legislation, and establish agreement in principle to accommodate the request. The churchyard was largely found to meet the requirements, though concerns were raised about the condition of a section of wall on the churchyard's southern boundary.
- 2.3 As a result the Council commissioned Dovetail Building Consultants, a specialist surveying contractor, to undertake more detailed inspections of the wall. Three inspections have since been undertaken in November 2019, July 2020 and November 2020 in order to definitively understand the condition of the wall. Following the latest inspection in November 2020, the Structural Engineer's report identified that sections of the wall between existing buttress supports were 'at risk of failure'. Based on these findings, it was evident that the southern boundary wall was not in a good state of repair and that section 215(1) of the act could not be satisfied.
- 2.4 These findings were communicated to representatives of the church who in turn asked that the Council consider the findings of its own 5 yearly inspection of the church and its grounds, the latest of which was carried out by MEB Design Ltd on 11 June 2020. However, this contained very limited comment in regards to the boundary walls in general and no reference to the specific section of the southern boundary wall subject to the ongoing discussions. As a result the Council's position was not altered with regards to the condition of the wall.
- 2.5 In their report, Dovetail Building Consultants included a specification for the necessary remedial works required to bring the wall up to a satisfactory condition, whereby the Council could be confident in accepting responsibility of it. Costs for these works were estimated at £50,000. Officers have since obtained comparative quotes from suitable contractors, which support this estimate.
- 2.6 As the wall is currently the responsibility of the church, Council officers have enquired as to whether the church might undertake the necessary remedial works themselves prior to transfer of maintenance responsibilities for the churchyard. The church have advised that they do not have funds available at this time. Though they have advised that upon transfer of maintenance responsibilities, they may be able to liquidate their graves maintenance trusts, which will no longer be needed. However, this would be a long way off the amounts required to undertake the required works to the wall.
- 2.7 With the condition of the wall preventing progress in the closure of the churchyard, church representatives have stated that they would be willing to exclude the southern boundary wall from the area of the closed churchyard, thereby retaining responsibility for it themselves. This option has been explored with the Council's legal department, however, the legal position is such that once the churchyard is closed it will be the Council's responsibility to maintain the paths, grass, trees and boundary walls to ensure that the churchyard is a safe place for visitors. Therefore the Council cannot limit its liability in this respect and this is not an option that can be taken forward.
- 2.8 As an interim measure whilst this matter is resolved, from June 2021 the Council arranged for its Environmental Partner, Serco, to begin general maintenance tasks. This includes grass cutting, hedge trimming, and tree inspections, as it would be required to do if handover is to be formally agreed.

### **3.0 Corporate Strategy**

- 3.1 The 2021/22 corporate plan has the objective of '*Improving the borough's biodiversity and green infrastructure*'. The closure of the burial ground relates to the achievement of this objective as churchyards are important green spaces and often have wildlife and biodiversity benefits alongside their primary functions.

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### **4.0 Implications**

#### Finance and Risk

- 4.1 Going forward the cost for ongoing environmental maintenance is expected to be approximately £20,000 annually. Should transfer of responsibility be agreed, it is proposed that this schedule is permanently added to the environmental grounds maintenance contract.
- 4.2 Were the Council to accept responsibility for the churchyard in its current condition, then in the interests of public safety it would be duty bound to undertake the necessary works to the southern boundary wall at its own expense. The current allocated annual revenue budget for closed burial grounds would not be sufficient to cover the costs of the remedial works required to the wall, therefore funding would need to be found from elsewhere.
- 4.3 The report proposes that external funding opportunities are explored to assist the church with the required repairs to the southern boundary wall.

#### Equalities and Human Resources

- 4.4 There are no equalities and human resources requirements arising from this report.

#### Legal

- 4.5 The Council is legally obliged to take on the maintenance of closed churchyards, where requested by the PCC.
- 4.6 The Council's legal team have been consulted on this report and have raised no issues.

### **5.0 Engagement and Consultation**

- 5.1 Officers have been in regular contact with the church to progress the proposed closure, and then subsequently to discuss the issues with the southern boundary wall. The church have in turn advised neighbouring residents who share this boundary about the issue with the wall and the potential safety risk.
- 5.2 The Portfolio Holder for the environment has been consulted, along with local Ward Councillors.

REPORT ENDS