

**Agenda Item No:** 6

**Report To:** Cabinet

**Date:** 10/03/2016

**Report Title:** Memorial Safety in Burial Grounds

**Report Author:** Julie Rogers: Head of Environmental and Customer Services

**Portfolio Holder:** Councillor Clair Bell



**Summary:**

The Council undertook a limited cemeteries memorial testing programme in 2003 for the operating of open cemeteries and closed churchyards for which it is responsible. Following a review shortly afterwards, a revised approach and procedures were adopted for any future inspection programme. The report provides Members with an update on the present position and recommends an updated policy and procedures for the safe management of memorials in the Borough.

**Key Decision:** YES

**Affected Wards:** All wards in Ashford

**Recommendations:** **The Cabinet is recommended to:-**

- (i) Note the current position with regard to memorial testing and inspection; and**
- (ii) Adopt the updated policy and operational procedures as set out in Appendix 1 of the report for the inspection and safe management of memorials; and**
- (iii) Add to delegation 17.1(f) the words "...and such closed burial grounds that are now, or subsequently become, the responsibility of the Council."**
- (iv) Agree a further report to Cabinet in the autumn, following the initial survey, with findings, initial costs and proposed changes to the Cemetery Rules and Regulations and Memorial Headstone documentation.**

**Policy Overview:**

As a burial authority the Council, has the enduring responsibility for safety in the cemeteries and closed churchyards under its management. This responsibility encompasses an overriding duty to take, as far as reasonably practicable, measures to prevent injury or death from unstable memorials. In order to fulfil this duty Councils are recommended to have a testing policy and inspection programme with a maximum interval of five years.

<b>Financial Implications:</b>	Unknown at this stage, provision to be made from repairs and renewals. Please refer to February 2016 Cabinet 16/17 Budget Report that takes steps to increase the level of this reserve to address this and other needs.
<b>Risk Assessment</b>	The risk of injury from unstable memorials is recognised by the Health and Safety Executive as being low. However, Councils that have no proper testing and inspection programme may significantly raise their liability and risk of claim should any incident occur. In addition, Councils who have undertaken inspections and testing that is not in accordance with the Local Authorities' Cemeteries Order 1977 have been found guilty of maladministration by the Local Government Ombudsman.
<b>Equalities Impact Assessment</b>	N/A
<b>Background Papers</b>	None
<b>Portfolio Holders Comments</b>	<p>The cemetery work outlined in this report is essential but it is crucial that a balance is achieved between the interested of grave and memorial owners, legitimate safety concerns and amenity or aesthetic considerations.</p> <p>I endorse the work outlined but don't underestimate the pressure on resources this review will bring about. This may become emotive for family and loved ones and our communication strategy and sensitive handling of situations is going to be critical to the success of this review work.</p>
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## Agenda Item No. 6

### Report Title: Memorial Safety in Burial Grounds

#### Purpose of the Report

1. This report outlines the duties and responsibilities with regard to the safety of memorials in burial grounds. Burial grounds are cemeteries and closed burial grounds (also known as closed churchyards) under the direct control or

management of the Council.

2. The report reviews the current position with regard to memorial safety in burial grounds.
3. The report recommends that the Council updates its approach to the testing and inspection of memorials and develops a forward plan.

## **Summary**

4. Burial Grounds in the Borough are comprised of cemeteries which are owned and managed by the Council. They are also comprised of closed burial grounds, which are usually closed churchyards. If an Order is made in Privy Council closing a churchyard, and the Parochial Church Council serves notice on the Council, under section 215 of the Local Government Act 1972 the Council becomes responsible for the maintenance of the closed churchyard three months later. The Council will not own the close churchyard and, as it is consecrated ground will, if it has to carry out any works, have to apply to the Diocese for permission (a faculty) to do so. A delegated authority to the Head of Environmental and Customer Services to exercise the Council's functions in relation to maintenance of trees, parks, open spaces, gardens, recreation grounds and play areas omitted to include closed burial grounds so the recommendation in this report seek to remedy that position.
5. The Council undertook a limited cemeteries memorial inspection and testing programme in 2003/04 in the burial grounds it was responsible for at that time.
6. Concerns were raised regarding the procedures adopted and in particular to the practice of laying down any memorials considered a higher risk or unsafe. A significant number of complaints were raised, particularly in respect of limited publicity and communication, and in response the Council undertook a range of restorative works.
7. A report to the Executive in November 2003 resolved that revised procedures for the future management of memorials should be adopted.
8. A more recent general review of the cemeteries service, supported by an audit in December 2014, suggests that few further recorded inspections have taken place.
9. The service audit recommended that in order for the Council to meet its responsibilities a full inspection and testing of memorials should take place.
10. This report outlines what the Council needs to do and recommends the adoption of a revised policy and operational procedures to manage any forward inspection and testing programme at Appendix 1.

## **Background**

### **General Responsibilities and History**

11. The responsibility for any memorial lies with its owner or family of the deceased and this includes its safety and any maintenance. Insurance is available, often via stonemasons, to support this responsibility. However, local authorities as owners or managers of burial grounds have responsibilities for general safety and the management of any risks within them which includes any arising from memorials.
12. The likelihood of death or injury associated with memorials is classified as very low. A 2009 review listed 8 deaths over the previous 30 years in the UK.
13. The very low risk of injury from unsafe memorials is recognised by the Health and Safety Executive, as the enforcing authority under the Health and Safety at Work Act 1974 (ASW74), in that they do not consider the risk warrants inclusion in their proactive inspection regimes. However, in the event of any accident, as part of an investigation, assurance would no doubt be sought that any guidance for the safe management of memorials available has been followed and a sensible risk based approach adopted.
14. In recognition of its responsibilities, the Council undertook a limited cemeteries memorial inspection and testing programme in 2003/04 for the burial grounds it was responsible for at that time. However, some significant complaints were received with regard to some of the procedures followed. These centred around lack of adequate pre-publicity, communication to burial and memorial rights holders and a default policy of laying down memorials considered a risk. This generated adverse publicity for the Council and saw it having to undertake a range of restorative actions.
15. The Council's Executive reviewed the approach followed in November 2003 and adopted new guidelines and procedures to manage any future inspection and testing programme. Further consideration of the issues relating to memorials was proposed following an inspection of Bybrook Cemetery. However, recent reviews of the cemeteries service and records suggest that little further work has been undertaken.

### **Guidance and Recommended Practice**

16. A range of guidance to support local authorities in generally managing memorial safety and meeting their duties and responsibilities under the LACO 1977 and HASW74 is available. These include information from the Health and Safety Executive, the Ministry of Justice, the Local Government Ombudsman and Institute of Cemetery and Crematorium Management.
17. Features of the guidance cover things such as risk assessment, inspection procedures, inspection programmes and how to manage any findings, publicity protocols and wider communication strategies.
18. The consequences of not following the guidance or recorded best practice can include:
  - a. increased general risk;
  - b. direct liability in the event of an accident or injury;

- c. findings of maladministration and award of compensation arising from insufficient general publicity or direct communication with owners of memorials; and
- d. directed complaints with more associated and general adverse publicity as illustrated in Paragraph 154.

19. The potential for much distress where there is poor communication with the bereaved and the wider community as part of the management of memorials should not be underestimated.

### **Burial Grounds in the Borough**

20. The Council owns and manages 4 open cemeteries (burial grounds still accepting new or re-open interments) and, it is suggested from grounds maintenance contract activities, maintenance of 13 closed churchyards. The 2003 report to the Councils Executive recognised maintenance responsibility, including memorial inspection, for 11 closed churchyards. Therefore, Ashford's responsibility and liability for closed churchyards is the subject of an ongoing investigation and records check.

21. The base data available for the 4 open Council cemeteries is included in the table below:

Site	Earliest Burial Record	Number of Plots	Number of Memorial Plots
Canterbury Road	1859	8753	1013
Willesborough	1882	4191	1072
Tenterden	1887	2489	538
Bybrook	1928	5277	2306
<b>TOTALS</b>		<b>20710</b>	<b>4929</b>

22. The number of plots and memorials in closed churchyards for which the Council may be determined as responsible for and for assessing their safety is not known at the current time.

23. It may be appreciated that the current position represents a significant challenge to the Council with a minimum of around 5000 plots for which the Council has a record, there could be a number not yet recorded on the Council's own land that need inspecting and recording with a potential for further action required (see '*A Structured Inspection Programme*')

## The Way Forward

### Understanding the Risk

24. It is accepted that any approach to managing memorials should be risk-based and proportionate. An effective risk-based approach should include:
  - a. Knowledge of the different types and ages of memorial installed, including any that are listed or noted as of other historical or social importance
  - b. Knowledge of sites to include such as number of potential visitors, vicinity of memorials to footways and roads and ground conditions or topography that may affect the stability of memorials
  - c. A method for assessing and classifying general risks to inform any inspection programme
  - d. A clear inspection procedure and methodology for classifying and recording risks associated with individual memorials.
25. Local Authority Circular 23/18 Health and Safety Executive (Revised August 2001) stated that where an authority is a burial authority "...burial authorities are under a legal duty to assess the risk from all cemetery structures (including memorials) and work activities in their cemeteries, and ensure that risk is controlled". Whilst this was later withdrawn, as it was not intended as guidance, local authorities were urged to draw up proper procedures.
26. New guidance developed in partnership by the Health and Safety Executive, Ministry of Justice and Burial Authorities was published in 2009 building upon the key principles about sensible risk management previously referred to in a letter to local government burial authorities in 2007.
27. Assessing the general risks ahead of any structured inspection programme is recommended to adopt the Five Step approach suggested by the Health and Safety Executive:
  - a. Identify the hazard – for example, an unstable memorial
  - b. Identify who may be harmed and how – may be employees, members of the public, contractors, volunteers
  - c. Evaluate the risk – of a memorial falling or with the potential to fall accounting for known site or other factors
  - d. Record findings – pay attention to any classified as significant to inform any immediate or follow up action(s)
  - e. Review – the risk assessment, its findings and any material changes that may affect it at a review date consistent with these
28. Whilst the timescale for assessing risks and undertaking any inspection programme remains for individual authorities, a timescale of five years since that 2009 date appears to be widely adopted in practice. Where authorities have yet to commence or have made only limited progress some guidance suggests a time period of 12-18 months.

### A Structured Inspection Programme

29. Having undertaken a general risk assessment as summarised in Para 287, to determine which areas should be prioritised, a structured inspection programme

needs to be developed. An overall procedure is included and recommended for adoption by the Council at Appendix 1 to this report. The key features of any programme and issues to be decided upon are set out in the following paragraphs.

30. Trained personnel will be needed to undertake inspections with authorities deploying their own staff, specialist contractors or a combination of both.
31. It should be recognised that where contractors are used then there is still a very significant administrative demand on Council staff.
32. The responsibility for ensuring inspections are carried out properly, information is captured and recorded correctly, any corrective actions are organised according to risks identified, publicity and communication ultimately lies with the Council.
33. The inspection and testing procedure will need to cover different types, design and sizes of memorials. These will require different levels of training and, where a memorial exceeds 1.5m in height, the expertise of a qualified structural engineer and/or stonemason.
34. The inspection programme should include for classifying each memorial according to a '*Priority For Action*'. It is recommended that there be three simple classifications of the priority of action which ensures records are easily maintained and will, therefore, be properly utilised. The priorities suggested are :
  - a. Category 1 - Immediate action is required to make the memorial safe or to stop the public accessing the memorial;
  - b. Category 2 – The memorial is not an immediate danger but is not fully stable and will, therefore, need to be monitored every 12 months to assess any further deterioration of the memorial; and
  - c. Category 3 – The memorial is perfectly stable and will only need to be inspected in 5 years time.
35. Memorials assessed as Category 1 need a clear policy in place to respond. In the past a default approach has been to dismantle or lay flat any such memorials. However, whilst not precluded in clearly defined circumstances, this is now recommended to be an absolute last resort policy based upon:
  - a. the significant distress that this approach where used has caused to bereaved families over the years. This was experienced some by the Council in 2003;
  - b. the impact on the appearance of the cemetery or closed churchyard;
  - c. findings of maladministration for not consulting or clearly communicating such a policy; and
  - d. general reputational impact.
36. An approach generally adopted and recommended for the Council is either:
  - a. Installation of a temporary support using a staking and protective banding system where the size and location of the memorial allows; or

- b. Installation of a temporary barrier to the perimeter of the memorial or sections of a cemetery where there is more than one Category 1 assessed memorial.
37. The policy needs to consider how long any temporary arrangements will be in place. This should not be indefinite but needs to allow sufficient time for any follow up communication and/or notices of intent to be completed. A minimum period of 3 months is recommended and is included in the policy and procedures for adoption at Appendix 1.
38. Whatever temporary support or barrier is adopted needs to be accompanied by appropriate and clear warning signs, Council contact information and a brief explanation of the policy (*see Publicity and Communication*).
39. Any form of warning sign attached to or relating to a memorial must be seen to be actively managed and maintained. A sign in itself will not be sufficient to protect the Council's interests as, by its very presence, it acknowledges a risk or hazard.
40. The majority of burial authorities who undertake memorial inspections have encompassed the guidance published in 2012 by the Institute of Cemetery and Crematorium Management, (of which the Council is a member). An illustration of the inspection process is included with the recommended procedures and policy for adoption by the Council at Appendix 1 to this report.

## **Publicity and Communication**

41. Where Councils have had significant problems and criticism to date they have most often been associated with poor or insufficient communication relating to:
  - a. Not publicising planned memorial inspection programmes;
  - b. Not making clear the approach they will take in response to the findings of an inspection;
  - c. Not seeking to contact the owners of memorials or families of the bereaved in line with the requirements of the LACO 1977;
  - d. Not consulting with or notifying the relevant Diocese and acting in accordance with any responses received and requiring agreement via a Faculty; and
  - e. Not having sufficient general guidance and information available or incorporation into agreements for burial rights and rights to erect a memorial.
42. The recommended policy and procedures for adoption at Appendix 1 include communication and publicity with the key features being:

Advance public notices in prominent places, on sites to be inspected, for up to 6 weeks prior to commencement:-

- a. Comprising sections and plot numbers covered by the inspection
- b. Advertisement in local newspapers accompanied by press releases;
- c. Detailed information on the Councils website to include an explanation of any policies and procedures to be operated;
- d. Writing to the last known address for owners of graves / memorials especially where it is considered that removal, re-positioning or other disturbance of memorials may occur:



- i. For a period going back 30 years (LACO 1977);
    - ii. To advise or remind of responsibilities and invite direct discussion of any concerns; and
    - iii. To advise that the Council will write again following the inspection of the memorial;
  - e. Secondary communication to grave / memorial owners advising of any required action arising from the inspection, a period of time for the owner to undertake it to the required standards with evidence to the Council and what the Council will do should it not be completed.
  - f. Drawing attention to the responsibilities of owners of memorials and the terms and conditions in the agreement the Council requires when granting a right to erect a memorial.
43. Should there be no response to initial communications, including letters returned, then a follow up can be considered. Ultimately, if no contact with owners can be established after reasonable means have been exhausted, they refuse or are unable to meet their obligations then a policy on what the Council will do needs to be established.
44. Options for the Council to consider include:
  - a. Undertaking work in default to repair the memorial and place a charge on the grave plot;
  - b. Repair the memorial from public funds to preserve the aesthetic, historic or general integrity of the burial ground;
  - c. Removing the memorial to storage for a period to be determined;
  - d. Removing the memorial to a communal place elsewhere within the burial ground and displaying;
  - e. Burying the memorial to at least half its height, where suitable, to create a "monolith"; and
  - f. Laying the memorial down
45. There is no one answer that will cover all memorials. It is recommended that this matter is re-visited and a policy amendment determined and agreed once any initial risk assessment has been undertaken and a better understanding of the scale of the inspection programme has been gained.

## **Conclusions**

46. The Council faces a significant challenge in developing and undertaking an inspection and forward management programme to satisfactorily manage the risk associated with memorials in burial grounds where it has a duty or responsibility.
47. It is crucial that a balance is achieved between the interests of grave and memorial owners, legitimate safety concerns and amenity or aesthetic considerations.
48. The Council needs to agree a revised policy and operational procedures to properly manage memorial safety.
49. Given the current position, significant further work will need to be undertaken and policy actions agreed to determine the potential cost of any inspection and forward management programme.

## Next Steps

50. Following adoption of the necessary supporting policy and procedures an initial high level risk assessment of the burial grounds needs to be undertaken to inform where the first round of individual memorial inspections need to take place.
51. The initial survey and plan for the first phase inspection programme that follows will enable:
  - a. Indicative numbers of memorials to assess resource needs and most economic means of organising and undertaking inspections;
  - b. Firmer costings for options to supply and install any temporary supports for budget planning; and
  - c. A better feel for the likely administrative and communication demand for budget planning.
  - d. A further report to Cabinet with findings, indicative costs and proposed changes to the Cemetery Rules and Regulations and Memorial Headstone documentation

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Cabinet: 10<sup>th</sup> March 2016  
Memorial Safety in Burial Grounds  
APPENDIX 1



**Ashford Borough Council**

**Policy and Procedures for the Management of Memorials**

**Key Aims**

- 1) Ashford Borough Council (The Council) recognises that the management of memorials in burial grounds needs to be undertaken in a sensitive and sympathetic manner. In operating this policy and associated procedures it will seek to achieve the best balance possible between the interests of grave and memorial owners, legitimate safety concerns and amenity or aesthetic considerations.
- 2) The Council will carry out an inspection of all memorials which prioritises those assessed as higher risk over a period not exceeding 5 years.
- 3) The Council will do all that is reasonably practicable to minimise the risks to people associated with memorials in burial grounds (cemeteries and any closed churchyards) where it has a direct or other management responsibility.
- 4) In applying these policies and procedures the Council will draw upon recognised good practice published by the Health and Safety Executive, The Ministry of Justice and the Institute of Cemetery and Crematorium Managers.

**Publicity and Communication**

- 1) The Council undertakes to keep all interested parties and the general public informed of any inspections or works programmed for memorials in burial grounds (cemeteries and any closed churchyards) where it has a direct or other management responsibility.
- 2) The Council will make clear in its relevant agreements the primary responsibility of owners of memorials and the terms and conditions it requires to be entered into when granting a right to erect a memorial.
- 3) Before undertaking any memorials inspection programme the Council will:
  - a) Place prominent notices on the site to be inspected for up to 6 weeks prior to commencement which will include the sections and plot numbers covered by the inspection
  - b) Place advertisements in local newspapers accompanied by press releases
  - c) Provide detailed information and guidance on the Councils website, signposted as appropriate, to include an explanation of any elements to be operated forming part of this policy and procedure
  - d) Write to the last known address, where held, of owners of graves / memorials especially where it is considered that removal, re-positioning or other disturbance of memorials may occur:

- i) For a period going back 30 years from the date of the planned inspection;
  - ii) To advise or remind owners or families of their responsibilities and invite direct discussion of any concerns; and
  - iii) To advise that the Council will write again following the inspection of the memorial.
- 4) Following the completion of any set of inspections the Council will write again to grave / memorial owners advising:
- a) The assessed condition of the memorial and if satisfactory when it will be scheduled for inspection again;
  - b) What, if any, temporary actions the Council has considered necessary after the inspection of their memorial and in accordance with its published policy and procedures;
  - c) What action, if any, they are required to take to make the memorial safe arising from the inspection and period of time for them to undertake it to the required standards with evidence to be supplied the Council; and
  - d) What the Council may do should works for which the owner is responsible not be completed and in accordance with its published policy and procedures.
- 5) Information relating to the general findings of any inspection undertaken will also be placed in prominent places around the relevant site and on the Councils website.
- 6) General information, to include guidance and frequently asked questions, will be placed on the Council's website along with a copy of the Council's policy and procedures for the management of memorials.

### **Inspection Process**

- 7) The inspection of memorials will be undertaken in line with industry and best practice guidance published by the Institute of Cemetery and Crematorium Management.
- 8) The inspection process will be informed and guided by an initial assessment of relevant sites to determine:
- a) potential hazards- site geology and topography, general age of memorials, site layout (roads, access) and proximity of memorials to them;
  - b) who may be harmed and how – visitors, cemetery workers or other; and
  - c) what the risk might be – of a memorial falling or with the potential to fall or otherwise part collapse accounting for known site or other factors.
- 9) Findings will be recorded and immediate action taken arising from any risks classified as Category 1 (see 13) below.
- 10) The risk assessment and any material changes that may affect it will be reviewed at a date consistent with the findings.
- 11) Inspections will be undertaken by properly trained and certificated personnel.
- 12) Memorials will be inspected in accordance with the following categories:
- a) Memorials up to 500mm: full visual inspection and hand stress test;

- b) Memorials 500mm – 1500mm: full visual inspection, primary hand stress test followed by confirmatory mechanical force device test for those that pass the hand stress test;
- c) Memorials 1500mm – 2500mm: full visual inspection, primary hand stress test (non complex structures), review for more complex structures in line with (d) below; and
- d) Memorials over 2500mm and complex structures: full visual inspection, note potential problems and consider cordon off, follow up full inspection supported by a structural engineer and/or qualified stonemason.

13) Memorials inspected will be classified into one of three categories:

- a) Category 1 - Immediate action is required to make the memorial safe or to stop the public accessing the memorial; or
- b) Category 2 – The memorial is not an immediate danger but is not fully stable and will, therefore, need to be monitored every 12 months to assess any further deterioration of the memorial; or
- c) Category 3 – The memorial is perfectly stable and will only need to be inspected in 5 years time.

14) Memorials that are classified as Category 1 will be made temporarily safe by:

- a) The installation of a temporary support using a staking and protective banding system where the size and location of the memorial allows; or
- b) The installation of a temporary barrier to the perimeter of the memorial or sections of a cemetery where there is more than one Category 1 assessed memorial.

15) Any temporary support or barrier will remain in place for a minimum period of 3 months to enable any communication with grave/memorial owners to take place or further actions to be considered by the Council.

16) Any memorial which is the subject of a temporary support or barrier will have appropriate and clear warning signs, Council contact information and a brief explanation of the Councils policy attached to or around it.

17) An illustration of the inspection process to be followed is appended to this policy and procedures document.

## **Records and Information**

18) Ashford Borough Council will keep and place information relating to the following on it's website and in writing upon request:

- a) Memorial inspection programme(s)
  - i) Current programme details
  - ii) Forward plan (future years and/or re-inspection)
- b) Inspection results: by site: generic information (section and plot numbers)
- c) Information relating to:
  - i) It's general memorial management policy and procedures
  - ii) Guidance on the responsibilities of memorial owners to include the standards required for new memorial installations

- iii) Agreements that the Council requires to be entered into when seeking to erect a memorial in the Council's burial grounds
- iv) Contact information for the Borough (or local Diocese for enquiries relating to closed churchyards).

19) All records will be held and stored in line with the associated regulatory, legislation or the Council's adopted information or financial policies.

# Cemeteries Memorial Testing Procedure

