



Diocese of Liverpool

CLOSED CHURCHYARDS

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.

1) 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 PCC. Both the District Council and the Parish Council will be asked by the Home Office to comment on the case made for closure but neither body is asked to approve what is proposed or to give its consent. The procedure provides an opportunity for objections to be made to the Home Office.

2) Who owns a closed churchyard?

An open churchyard forms part of the freehold of the incumbent of the benefice. 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.

3) Who controls a closed churchyard?

A closed churchyard remains under the control of the incumbent subject to the overriding control of the Consistory Court. No change can lawfully be made without a faculty granted by the Court. Faculties can only be issued for proposals which are consistent with the sacred nature of consecrated burial ground.

4) 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

referred to above all other rights and responsibilities of the incumbent and PCC are unaffected.

5) Can burials or interment of ashes continue?

An Order in Council for the closure of a churchyard can make provision for future burials to take place in specified areas in the future. This is normally limited to those whose relatives are buried in graves where there is space available for surviving relatives, or those who have reserved a grave space under a faculty. Interment of ashes can continue provided that no human remains are disturbed.

6) Specific duties of Local Authorities

Where a churchyard has been closed by Order in Council and the PCC's responsibilities for maintenance and repair transferred to the local authority it is likely that, in law, the authority assumes the responsibilities and liabilities of an occupier. 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, subject to obtaining the necessary faculty from the court. Set out below is a summary of the specific duties transferred to the authority in relation to different aspects of maintenance and repair:

1) 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.

2) 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 however 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.

3) Paths

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

4) Tombstones, monuments and memorials

To maintain and repair in a manner which is consistent with archaeological and historic value of these items. Care must be taken to identify potentially dangerous stones or structures so that appropriate action can be taken. Except in the case of emergency (see below) the consent of the heirs-at-law of the person commemorated by the headstone must be obtained before any tombstones etc are moved or repaired.

5) Trees

All churchyard trees are within the jurisdiction of the Consistory Court. The Chancellor is required to issue 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. Where a tree preservation order is in place, consent is required from the local authority in addition to the necessary faculty.

6) 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 the authorisation of a faculty it will be helpful if there is liaison between the local authority and the incumbent and PCC to see if agreement can be reached on the way in which the local authority will carry out this work. In cases where a churchyard has been designated as a Site of Special Scientific Interest (SSSI) or a Site of Importance to Nature Conservation (SINC) then consultation should take place with English Nature so that an appropriate management plan for the churchyard can be drawn up.

7) Legal Liability and Insurance

In assuming responsibility for the maintenance of a closed churchyard a Local Authority assumes liability for the public safety. A positive duty of maintenance is imposed on the Local Authority and breach 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 the normal faculty process needs to be followed. If approval is not given by the Court (or by the Court of Arches on appeal) for all

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.

❖ **Emergency works**

The requirement for faculty approval also extends to emergency works and a procedure exists for obtaining a quick response where there is danger of injury or structural damage. The main point of contact is the Archdeacon for your area who will ensure that quick and appropriate action can be taken in such situations. If the Archdeacon is not available then contact should be made with the Diocesan Registrar, or the DAC Secretary.

❖ **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.

It is sensible to develop a good working relationship with the officer who deals with the maintenance of the churchyard, often in the Parks and Gardens department. It is through them that requests for work and assistance should be channelled.