



Maintenance Strategy for Closed Cemeteries

Introduction

It has been confirmed by Minute Reference- September 2009- that the East Cemetery owned by Amble Town Council is a closed Cemetery which the Council will continue to maintain at present.

Within the context of management strategies and principles there are many variations of traditional cemetery management within a very complex legal framework.

The Use and Context of the Cemetery

Cemeteries are generally ancient and are a significant part of our national Heritage; in caring for a closed Cemetery we accept we have a duty to ensure it is preserved for the present community, and handed on to posterity in a fit state.

The East Cemetery fulfils at least three different functions. It was a burial place, it constitutes a visual and historic setting for the local community, and it is an ecological oasis.

By long tradition, Cemeteries have been the burial place of the remains of parishioners. At present, Amble has plenty of Burial Land available at the West Cemetery; however there exists a presumption that any part of a churchyard largely or entirely occupied with graves over a hundred years old could be considered for re-use (*Re St Nicholas, Swayfield*, Lincoln Consistory Court, 2002). In *Re West Pennard Churchyard* (1992), 1 WLR 32, Newsom Q.C. Ch. held:

"But I should point out that no churchyard is full and ripe for closure until all parts of it in which reburial is possible have been buried over again at least once. Again, until closure, all legal burial rights continue. Over the centuries churchyards have been buried several times over and it cannot be said that a churchyard is nearly full considering only the areas which have never been used for burials."

New legislation being considered at present should also be born in mind as reuse may become a legal possibility in all burial grounds in the future. It is imperative that proper records of the burial ground are maintained. Should reasonably accurate records be available then there is always a possibility that previously closed churchyards may be able to be brought back into use as sustainable burial grounds for the local community should this be necessary.

The importance of the Cemetery as a visual and historic setting and of the Tower as the most distinguished building in the neighbourhood, is greater than is often appreciated. Standards of management should be high. Suitable maintenance for the area it lies within is essential, especially as it is an important habitat for a wide variety of plants and animals.

The Legal Framework

Once a Cemetery is closed, the Council must "*maintain it by keeping it in decent order and its walls and fences in good repair*" (Section 215(1), Local Government Act 1972) This includes tombs, monuments, war memorials and crosses etc. Again the maintenance of records remains very important given the possibility of new legislation on the reuse of burial grounds.

Questions often arise as to the precise standard of maintenance required of a local authority responsible for the maintenance of a closed Cemetery. The Council has a duty "*...to see that it be kept in a decent and fitting manner, that it be cleared of all rubbish, muck, thorns, briars, shrubs and anything else that may annoy parishioners when they come into it..*". Arguably, a failure to maintain a closed churchyard could expose an authority to actions under the Occupiers' Liability Acts 1957 and 1984 and the Health and Safety at Work Act 1974, for any injuries to visitors.

Although not declared as public open space, the Council anticipates that members of the public will use the area to observe its wildlife and plants as well as for quiet contemplation.

Therefore there is a duty of care to the users of the Cemetery area, including members of the public who might visit or walk through it. This overall responsibility for the safety of the Cemetery, including the risks arising from unstable memorials, falls to the Council; this is despite the fact that the ownership of individual graves and memorials and the responsibility for their maintenance rests with the grave owners or families of the deceased, for in many cases, there may no longer be an identifiable owner.

Where there is difficulty in tracing ownership/ responsibility and a question of public safety arises then the Council has the powers to make the situation safe and recover any costs from the grave owners when they come forward or are traced.

Under Section 19 of the Disability Discrimination Act 1995, Councils have to take **reasonable** steps to remove, alter or provide reasonable means of avoiding physical features that make it impossible or unreasonably difficult for disabled people to gain access to graves and facilities within the Cemetery. Therefore pathways were constructed around the Tower area but access to the grave areas cannot reasonably be made safe for disabled use.

[The maintenance of closed Cemeteries by local authorities is covered by section 215 of the Local Government Act 1972. As the council is the "burial authority" within the meaning of the preceding section (s. 214 Local Government Act 1972), section 214 and its subordinate legislation (the Local Authorities Cemeteries Order 1977), the detailed procedures and restrictions set out in the Local Authorities Cemeteries Order 1977 apply to the maintenance of closed Cemeteries by parish councils.]

Revocation of Closing Orders

The Law Officers of the Crown have stated that it is not possible to revoke an Order in Council closing a Cemetery. The Law Officers' reasons are that there is no express statutory power to do so, and that the power under section 1 of the Burial Act 1855 to "vary" a previous Order in Council does not extend to revoking the Order altogether, although it can be used, for example, to redefine the boundaries of a churchyard where they have been inaccurately described, or to change the categories of burial which are still allowed.

Whilst current legislation is considered not to allow revocation of Closing Orders this matter may have to be addressed should reuse of burial grounds be permitted in the future. Reuse is currently being considered without the need to amend primary legislation, so consideration will first be given to whether reuse is possible within closed Cemeteries on this basis. If this is not possible then it will take longer for primary legislation to be amended in respect of such closed Cemeteries.

Tracing Orders in Council

As Amble Town Council owned the East Cemetery and was therefore the Burial Authority, advice from the Ministry of Justice (previously the Home Office, then the Department of Constitutional Affairs) was taken and the Council was assured that the rules of closure involving the Secretary of State and a Legal Closure Order were not required; the Council did advertise and give due notice of its intention before passing a Closure Motion in Council.

General Issues

The maintenance strategy includes the following:

- Tree inspection and maintenance
- Memorial inspection and maintenance
- Maintenance of landscaped areas
- Historical and conservation management
- Maintenance of boundaries, gates and paths
- Improvements and alterations

This area benefits the local community featuring in the history part of the local schools education programme and being part of the Town Trail walk. This reinforces its importance to local people.

The Act requires Councils to keep a record of the location of burial and reserved grave spaces within the Cemetery. This record is essential for the ongoing maintenance of the site both in terms of historical record, identification of ownership, memorial management, improvement programmes and for the development of potential plans for reuse of graves should future legislation permit this.

Tree Inspection and Maintenance

The Council is responsible for the maintenance of the trees as well as the shrubs and hedges. The responsibility relates to ensuring the safety of the public under the Occupier's Liability Acts 1957 and 1984. The Council has a tree/ shrub/ hedge maintenance policy to ensure the ongoing health and safety of trees within this area.

Memorial Inspection and Maintenance

Reference should be made to the separate document on *Memorial Audit*. The main action points identified within this document can be summarised as follows:

- This is a documented memorial maintenance and safety policy for Cemeteries
- It enables a review of the memorials ensuring all aspects of memorial safety comply with national guidance
- It contains agreed 'make safe' options and when they should be employed
- It states standards of workmanship on memorial installation and repair
- It stresses the importance of informing and contacting representatives of the bereaved wherever possible

Landscape Maintenance

This maintenance schedule clearly identifies all the expected standards of landscape maintenance:

- the frequency or number of grass cuts/ strims to be carried out per annum- approx.. every 10 working days from April to September except of the wildlife area.
- the frequency of maintenance of shrubs/ bushes- at least once per annum.
- the frequency of weed killing- at least twice per annum
- the frequency of mole trapping or control- as required
- the conservation issues to be addressed- as noted on site inspections

An annual review will identify any areas for improvement required.

Historical and Conservation Considerations

The spire is a listed building and as such will, as far as possible, be maintained and preserved in a traditional manner. Advice will be obtained from various bodies concerned with these aspects.

There are many native wildflowers and plants which must be conserved wherever possible.

Amble Town Council has chosen to enhance the area in order to encourage the public to use it as a place of contemplation and observation.

To this end historical and flora/ fauna information panels and seating have been installed.

These will be regularly inspected and maintained.

Maintenance of Boundaries, Gates and Paths

Section 215(1), Local Government Act 1972 states that the Local Council must "*maintain it by keeping it in decent order and its walls and fences in good repair*"

- The hedges, shrubs, stone walling, gates, footpaths are included in a regular maintenance programme and all will be maintained, as far as possible, in good condition using traditional methods and materials wherever possible.
- As with other elements of Cemetery maintenance there is a responsibility as owner occupiers of the land, that the Council retain a primary responsibility for health and safety. Therefore there is a regular inspection programme and repairs are carried out as and when reported.

Agreed: