

FDPC - Closed Churchyard Update and Proposals April 2019

Summary

Estimates provided indicate the cost of repairs to the Churchyard WEST Wall could be in the order of £59,000 (Pre the tendering process). The east wall may also need pointing to prevent its condition deteriorating. There is no indication at this time that any repairs are urgent or safety related.

With the current number of households this is the order of £200 per property. This per household cost may reduce if work can be deferred until the tax base increases with Wing. The keyword here is “may” as the timing and final administrative arrangement of Wing may change or fall outside the powers of the existing council.

The PC had deferred a decision on accepting responsibility for the Close Churchyard Wall pending a detailed survey as its condition was not known and legal advice being; “Churchyards which are to be transferred to the District Council must be in good order & repair and have been maintained to the satisfaction of the District Council at the point of transfer. “

A previous understanding that the PCC would be making a significant contribution to the repairs is not clear as it would suggest. Their offer is “to make an *ex gratia* payment of its choosing”, which in light of the current estimate may not be significant.

With this major financial burden now quantified the PC can decide on the next stage, for example, how to raise the funds, or explore the option to transfer responsibility to the District Council.

Brief History

See appendix 2 for links to full reports.

A PCC can ask (in writing) for a local authority to take over the responsibility for a Closed Churchyard under the ***Local Government Act 1972 Section 215***

The FDPC received such a letter requesting this transfer take place on the 27 February 2016, however they claim we had accepted responsibility under previous legislation.

The key question for the PC was/is the condition of the wall and the liability to get it into a good condition.

The ***Local Government Act 1972 Section 215 (1)***

“parochial church council shall maintain it by keeping it in decent order and its walls and fences in good repair.”

Other local authority documents state **“Churchyards which are to be transferred to the District Council must be in good order & repair and have been maintained to the satisfaction of the District Council at the point of transfer. “**

However, further research suggest that legal advise on this point is conflicting at best.

Before the scale of the costs were appreciated, AND pending a decision on accepting responsibility for the wall, the PC put £10,000 into reserve in 2018 and a further £5,000 in the 2019 budget towards repairs.

The PC has accepted responsibility for ongoing grass cutting etc.

PC Meeting April 2016

The meeting was informed of the differences of opinion between the PC and the PCC and a document with proposals was voted on based on a compromise from the PCC of a “significant” contribution to any repairs undertaken within 5 years.

The PC also decided to defer accepting responsibility for the wall until the extent of the liability was quantified and if the parish therefore had the resources to undertake any required repairs. See meeting agenda item 2015/303.

Please see the minutes and appendix 1 for the details and exact wording.

Update

District Council

The PC had believed the District council could/would charge the parish for closed churchyard costs. Latest reports suggest this may not be the case, or alternatively (see appendix 1) SCDC has/does not implement this option.

Surveyors Report

A second more detailed survey report was received in December 2018, and reported to the council in the Jan 2019 meeting.

An estimate for repairs was provided, totalling approx. £59,000 for the west wall, assuming the work was undertaken in one hit.

The £59,000 was used as a *starting point* for budgeting in the PC finance/budget meeting for 2019 in anticipation of the formal vote on the wall. It is anticipated a tendering process would reduce the final cost.

PCC Communication

Following communications from the PCC it now appears the offer of a significant contribution towards the wall repairs was a *misunderstanding*, or in light of the estimate would not longer be significant.

As we understand it the PCC is claiming that liability had been accepted under s.18 of the Burial Act 1855 (now repealed) and so should continue notwithstanding the lack of any further notice under s.215 until 2016. If this is accurate the condition of the wall is not material.

However, no documentary evidence is available to the PC to support a past acceptance, and as noted in the Jan 2016 report, PC records from 1895 do not support this position either (in our opinion).

We therefore have an impasse on the PC and PCC positions and worst case no contribution from the PCC would be available.

Legislation

It is noted that while the *Local Government Act 1972 S 215* calls for the PCC to keep the churchyard in good condition there is no penalty for not doing so and it does not specifically state that it must be in good condition at the time of transfer. This contradicts legal advice and other opinions, but it does raise doubt. There are legal cases of PCC vs Local Authorities on the internet, but none on this specific point so we cannot get a clearer answer without further legal cost.

Proposals

1. To handover the responsibility for the Closed Churchyard to the District Council, following confirmation that there would not be a charge-back to the parish under section 35 of the Local Government Finance Act 1992. (The DC may also not accept the transfer of responsibility due to the time delay, or they may also decide that PC had previously accepted liability under s.18 of the Burial Act 1855).
2. To continue to build up reserves until sufficient funds are available to make a full repair, or safety considerations take precedent. (This process could take over a decade)
3. To continue to build up reserves at the current rate of £5k pa until precept from Wing becomes available then increase reserve build up until sufficient funds are available to make a full repair sooner, or safety considerations take precedent.
4. To make repairs in stages as funds become available and accept the overall increased costs.
5. As these proposals supersede resolution 2015/303 propose we retain the section (in 2015/303) on seeking grant funding assistance for wall repairs stands.
6. Routine Maintenance - The 2015 estimate for churchyard maintenance was in the order of £700 per annum (source Churchwarden, email Oct 2015), the 2019 budget is £2,400.

The proposal is we reduce the maintenance budget to the original estimate and use the funds to add to the reserve fund.

7. Other..

Appendix 1 Legal notes from National Association of Local Councils

Extracts

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 chairman 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.

5. 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.
6. 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 chairman of the parish meeting.

National Association of Local Councils

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9. If a parish council or chairman of a parish meeting is asked, whether formally or informally, to take over maintenance of a closed churchyard, a request should always be made to see the relevant Order in Council. It sometimes happens that the churchyard in question, although no longer used for burials, has not been formally closed. In such a case, the parish council/ chairman of the parish meeting is not obliged to take over responsibility although may contribute financially to the maintenance expenses of the PCC (s.214 (6) of the 1972 Act). In practice, a parish council (or chairman of a parish meeting) could seek to avoid a formal transfer of

responsibility by offering financial assistance under s.214 (6). By so doing, the PCC would remain responsible for maintenance with the parish council/ chairman of the parish meeting helping financially.

10.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:

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

11.Some disadvantages may be:

1. 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 tax payers of the parish;**
2. b) the cost of maintenance by the district council may be higher than that which the parish council/ parish meeting would incur;
3. 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.

Appendix 2

Archives

A detailed report dated Jan 2016 available on the PC web site looks in detail at documents available in the Shire Hall archives.

fenditton-pc.org.uk/docs/view.php?file=Churchyard/Churchyard%20Jan2016%20reportv1.4.pdf

all reports

<http://fenditton-pc.org.uk/documents.php?dir=Churchyard&by=date&order=asc>