

CODDENHAM PARISH COUNCIL

ST. MARY'S CLOSED CHURCHYARD POLICY

(CLOSED 27 JUNE 1894)

1. Introduction

A closed churchyard is a churchyard belonging to (but not necessarily physically attached) to a parish or cathedral church of the Church of England which has been formally closed by an Order in Council made by the Privy Council. A disused burial ground is a place used, or intended to be used, for burial purposes by any other person or body and which is no longer used for such purposes (and may include a closed churchyard). "Consecrated" means consecrated in accordance with the rites of the Church of England.

2. The Closure of a Churchyard

Under common law a parishioner (a person resident in a parish or a person who dies there) has a legal right to be buried in a Church of England parish church regardless of religious belief or lack of belief. When a churchyard becomes full, it is necessary for this right to be restricted or rescinded. Accordingly, under s.1 of the Burial Act 1853, the Privy Council may make an Order in Council to close a churchyard for burial subject to any exceptions specified in the Order. An Order must be sought from the Ministry of Justice. The grounds for making an Order are –

- that further burials would constitute a health risk
- that further burials would be contrary to decency
- that burials should be discontinued for the prevention or mitigation of nuisance or
- there is no proper room for new graves.

Closure by Order in Council does not remove the legal effects of consecration. A churchyard closed by Order in Council may still be used for the interment of ashes provided that no human remains are disturbed. If the Order permits, it may also be possible for further burials to take place in specified areas.

3. Responsibility for Maintenance of a Closed Churchyard

Once a churchyard had been closed, responsibility for maintenance falls on the Parochial Church Council ("PCC") for the parish in which the churchyard lies (the Local Government Act 1972 ("the 1972 Act"), s.215(1)).

By virtue of s.215(2) of the 1972 Act, a PCC may at any time serve a written request on the local council to take over the maintenance of the churchyard. Subject to s.215(3) of the 1972 Act, the council takes over the maintenance three months after service of the request.

Within the three-month period, the council can pass on the maintenance responsibility to the district council. 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 1972 Act. 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.

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There are advantages and disadvantages in resolving to hand on responsibility to the district council. The advantages may include –

- the parish council has no management responsibility for the upkeep of the churchyard
- the parish council does not have to use its own financial resources for maintenance, and
- the parish council does not have to employ staff or contractors to carry out maintenance work.

Some disadvantages may be –

- the district council may (and probably will) treat the expense of maintenance of the churchyard as a “special expense” under s.35 of the Local Government Finance Act 1992 chargeable only on the council taxpayers of the parish
- the cost of maintenance by the district council may be higher than that which the parish council would incur
- 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.

5. The Standard of Maintenance for a Closed Churchyard

There is no statutory guidance on the appropriate standard to which a closed churchyard should be maintained.

Responsibility for maintenance includes the maintenance of paths which cross a churchyard up to the standard of “decent order” as well as cultivated and uncultivated areas. The obligation to maintain memorials is likely to extend to a duty to ensure that they do not topple over.

The ordinary maintenance of monuments and tombstones is not the responsibility of the PCC or the parish council but of the owners, who are usually the heirs of the persons commemorated. Where the heirs or other owners cannot be traced, the parish council will have to take responsibility for dealing with dangerous monuments, since safety is part of keeping a closed churchyard in decent order. The removal of monuments, whether dangerous or not, requires the consent of the Church of England authorities (usually in the form of a faculty).

When it is necessary for works to be undertaken to a memorial for safety reasons, Coddendam Parish Council (“CPC”) will –

- inform the PCC and incumbent
- undertake a search of the heirs or owners
- place a waterproof notice on the memorial for a period of 12 months
- place notices on PCC, CPC and Parish noticeboards for a period of 12 months
- place an advert in the local newsletter for the heirs or owners to come forward
- place an advert on the CPC website for the heirs or owners to come forward

Where the heirs or owners cannot be traced, CPC will become responsible for dealing with dangerous monuments. CPC is subject to Faculty Jurisdiction and will establish permission from the Church of England before any action is taken to repair or remove monuments.

Responsibility for the churchyard does not include responsibility for any church, chapel or other building (such as a shed) in or adjacent to the churchyard. The responsibility does not include an obligation to undertake improvements to the churchyard.

Whilst responsible for maintenance, CPC is not the owner or tenant of the churchyard. It cannot therefore prevent the incumbent and the PCC from exercising their powers over the churchyard (e.g. to allow the interment of cremated remains).