

SOUTH STAFFORDSHIRE COUNCIL

DECISION PROPOSED **BY MEMBER OF THE CABINET**

I propose to make the following decision set out below in accordance with the powers vested in me by Part 3 of the Constitution of the Council approved by the Council pursuant to Section 37 of the Local Government Act, 2000.

The decision will be made by me on or after 26th July 2023

Councillor Kath Perry M.B.E, Cabinet Member for Community Services.

Date: 13th July 2023

1. SUMMARY OF PROPOSALS

- 1.1 In October 2019 Members approved that a Special Expense under Section 35 of the Local Government Finance Act 1992 could be charged to residents in a parish to cover any future maintenance and one-off major repairs to closed churchyards that have already transferred to South Staffordshire Council or may do so in the future.
- 1.2 It is proposed that in light of the current inflation and cost of living pressures the residents of South Staffordshire are facing a revised approach to financing works within a close churchyard is implemented.

2. Proposed Decision by Member of the Cabinet

- 2.1 I propose that a Special Expense under Section 35 of the Local Government Act is applied based on the 2019 decision. However, to reflect the current inflation and cost of living pressures the residents of South Staffordshire are facing this figure will be capped at 2 % of a resident's annual council tax bill. If the amount recouped does not cover the cost of repairs within a Parish Council area any cost above the cap will be funded by South Staffordshire Council.
- 2.2 I propose the council can under the Section 35 legislation also spread payments over a maximum of two years and it is proposed to review repayment costs on a case-by-case basis.
- 2.3 I propose that any outstanding costs of repairs not covered by the Special Expense and funded by South Staffordshire Council will be capitalised subject to the nature of the work undertaken. In addition, a revenue sink fund of £25,000 per annum would also be created which will be used to offset future costs and reduce the borrowing liabilities of the council.
- 2.4 I propose that a policy will be introduced on the approach that South Staffordshire Council will take to the maintenance of any closed churchyards where the maintenance responsibility has transferred to South Staffordshire Council.

- 2.5 Routine grounds maintenance of closed churchyards will continue to be reviewed annually and should additional closed churchyards be passed to South Staffordshire Council; we reserve the right to review the standard of grounds maintenance provided or treat the costs for routine grounds maintenance and memorial testing under the Special Expense legislation.
- 2.6 If more than one churchyard in a parish area becomes closed and the responsibility transfers to South Staffordshire Council, the decision will be reviewed to reflect the change in circumstances at that point in time.

2. SUMMARY IMPACT ASSESSMENT

POLICY/COMMUNITY IMPACT	Do these proposals contribute to specific Council Plan objectives?	
		These proposals will have a direct link to the Council Plan priorities within 'Vibrant Communities' by helping provide a quality environment that we can all be proud of.
	Has an Equality Impact Assessment (EqIA) been completed?	
		Yes
SCRUTINY POWERS APPLICABLE		Report and Proposed Individual Cabinet Member Decision voluntarily taken to the Councils Overview and Scrutiny Committee.
KEY DECISION		No; although there will be an impact in certain wards, it is considered that any impact, given the proposed 2% cap will not be significant and therefore fall within the Key Decision definition.
TARGET COMPLETION/ DELIVERY DATE	August 2023	
FINANCIAL IMPACT		The decision implemented in 2019 was undertaken to reduce the long-term financial risk to the Council for the inherited cost of maintenance and major repairs within a closed churchyard. By introducing a cap to the Special Expense, costs either in full or in part will be chargeable directly to the council taxpayers of the relevant parish. This will reduce the burden on residents particularly those in smaller parishes. However, introducing a capped approach presents a financial unknown to the council as the cost of repairs will vary along with the number of closed churchyards that transfer to the council in the future. To account for this, provision should be made within the annual budget and a reserve created to help offset long term financial liabilities to the Council.

LEGAL ISSUES	<p>All transfers of closed churchyards take place under Section 215 of the Local Government Act 1972.</p> <p>The council has a legal duty under the Health and Safety at Work Act (1974) to ensure so far is reasonably practicable, the health and safety of members of the public using our portfolio of open spaces.</p> <p>The Occupier's Liability Act (revised 1984) requires that people can expect to be 'reasonably safe' when using any of the open spaces that we manage.</p> <p>As 'occupier' of a closed churchyard, this Council therefore has a duty of care to members of the public using / visiting the site.</p> <p>Section 35 of the Local Government Finance Act 1992 provides that the Council can impose a Special Expense on Council Tax.</p> <p>A Special Expense can only be applied in the parish area where a closed churchyard is located, and work is required. Should a special expense be applied, this would include all villages and hamlets within the parish boundary. Whilst all residents within a parish may not live in the parochial church / diocese boundaries, Ecclesiastical boundaries relate to church matters and are administrative functions of the diocese which do not match local authority boundaries and are not part of the council's jurisdiction or decision-making processes in relation to the Section 35 legislation.</p>
OTHER IMPACTS, RISKS & OPPORTUNITIES	<p>Mitigate the risk of danger from 'unsafe' structures within by providing a mechanism whereby necessary works can be financed quickly.</p> <p>Risk of potential fallout with the public and residents of parishes regarding the implementation of a special expense.</p> <p>Covering the costs of any major structural repairs in a closed churchyard may cause an unacceptable increase in council tax to a particular parish in any one year. Introducing a cap ensures a standardised approach across all parish areas and</p>

		the council also can spread payments over a maximum of two years utilising the Section 35 legislation.
IMPACT ON SPECIFIC WARDS		Revising the position on the Special Expense could potentially be a district wide issue in the years to come as more churchyards 'close' and are passed to South Staffordshire Council.

PART B – ADDITIONAL INFORMATION

3. INFORMATION

3.1 South Staffordshire Council is currently responsible for four Closed Churchyards. The date in brackets indicates the year the churchyard transferred to the Council.

- St Benedict's, Wombourne, (2007)
- St Pauls, Coven, (2008)
- St Johns, Swindon, (2008)
- St Peters, Kinver – (2017)

3.2 The 2019 decision to impose a special expense was introduced to reduce the long-term financial risk to the Council for the inherited cost of maintenance and major repairs within a closed churchyard. By applying a 'Special Expense' under Section.35 of the Local Government Finance Act 1992 these costs would then be chargeable directly to the council taxpayers of the relevant parish and would not impact on the councils' budgets or its ability to provide its current service provision.

- The special expense covered any future maintenance and one-off major repairs to closed churchyards that have already transferred to this council in Swindon, Kinver, Wombourne and Brewood and Coven Parish Council areas.
- It was also approved that this stance would be taken to any additional closed churchyards that transfer to South Staffordshire Council in the future.

3.3 Guidance issued in May 2002 by the then Department of the Environment, Transport and Regions (DTLR) on Financial Arrangements with Parish and Town Councils specifically mentions the use of special expenses in relation to the maintenance responsibility under section 215 of the Local Government Act. Key to note is that the responsibility for maintenance and associated works here is not being passed back to a Parish Council, but that the costs are charged locally. Special expenses cannot be charged retrospectively but a subsequent charge for churchyards where maintenance responsibility has been assumed is permissible.

3.4 As members are aware, the position has moved on from 2019 and in light of the current cost of living pressures, the position has been reviewed and alternative proposals put forward.

Option 1 – No Change

- 3.5 Whilst it is acknowledged that the current economic climate is challenging, it was considered if it was still the right decision to continue with the imposition of the special expense in those parishes with closed churchyards that fall to the Council to maintain or any in the future.
- 3.6 The rationale behind this would be that, in line with the original decision, it is appropriate that only those residents within an affected parish are liable for the costs and the wider council tax base should not incur additional liability for parish specific costs. This option is not one I wish to pursue.

Option 2 – Introduction of A Cap To The Special Expense.

- 3.7 I am of the view that it is still appropriate to utilise Section 35 special expense powers, however, the current economic climate justifies a more nuanced approach. To reflect the current inflation and cost of living pressures the residents of South Staffordshire are facing the special expense could be subject to a cap. The figure could be capped at 2% of a resident's total annual council tax bill. This would give a degree of equanimity across the council tax base. If a set figure cap were imposed, this would have a disproportionate negative impact on people occupying lower band properties.
- 3.8 Introducing a cap is likely to result in a shortfall in funding against major repair work projects or work in parishes with a smaller taxbase. If the amount recouped via the special expense (with cap) does not cover the cost of repairs within a Parish Council area, any cost above the cap will be funded by South Staffordshire Council (unless alternative funding mechanisms e.g., charitable donations, can be sourced). There will therefore be an impact on the wider council budget position, and it is not known the number of churchyards that could transfer or the cost of works in the future.
- 3.9 The table below uses the average band D Council Tax for 2023/24 and uplifts by the certain percentages listed in the table.

Table 1 – average band D

	BANDS									
	AV BAND D	INCREASE F	A	B	C	D	E	F	G	H
AVERAGE COUNCIL TAX IN SOUTH STAFFORDSHIRE	2017.39									
ADD 1%	2037.56	20.17	13.45	15.69	17.93	20.17	24.66	29.14	33.62	40.35
ADD 2%	2057.74	40.35	26.90	31.38	35.86	40.35	49.31	58.28	67.25	80.70
ADD 3%	2077.91	60.52	40.35	47.07	53.80	60.52	73.97	87.42	100.87	121.04

To work out what that means for the income as a special expense in a certain parish, you can multiply the relevant band D charge against the individual parish council's taxbase (below). (It must be noted that each property will be charged 2% on their individual banding, band D is only used as a guide to demonstrate the average).

Table 2 – Details of the Parishes which have Churches with burial grounds.

PARISH	CHURCHES	TAXBASE
ACTON TRUSSELL, BEDNALL & TEDDESLEY HAY	ST JAMES, ACTON TRUSSELL & ALL SAINTS CHURCH, BEDNALL	610.26
BLYMHILL & WESTON-UNDER- LIZARD	ST MARY'S, BLYMHILL & ST ANDREW'S WESTERN UNDER LIZARD	348.08
BOBBINGTON	HOLY CROSS	246.91
BREWOOD & COVEN	ST MARY'S & ST CHAD, BREWOOD & ST PAULS, COVEN	3134.18
CODSALL	ST NICHOLAS	3182.28
DUNSTON WITH COPPENHALL	ST LEONARDS, DUNSTON & ST LAWRENCES, COPPENHALL	272.87
ENVILLE	ST MARY'S	232.18
ESSINGTON	ST JOHN THE EVANGELIST	1655.08
GREAT WYRLEY	ST MARK'S	3373.70
HATHERTON	CHURCH OF ST SAVIOUR	282.83
HIMLEY	ST MICHAEL & ALL ANGELS	514.41
KINVER	ST PETER'S	3340.93
LAPLEY, STRETTON & WHEATON ASTON	ALL SAINTS, LAPLEY & SAINT JOHN'S, STRETTON & ST MARY'S, WHEATON ASTON	1028.02
PATTINGHAM & PATSHULL	ST CHAD'S	1014.24
PENKRIDGE	ST MICHAELS	3311.33
SHARESHILL	ST MARY & ST LUKE	307.36
SWINDON	ST JOHN'S	485.33
TRYSULL & SEISDON	ALL SAINTS	593.21
WOMBOURNE	ST BENEDICT'S	5237.23

- 3.10 An example of the cap being applied to the Special Expense using the band D average in our smallest parish Enville and our largest parish Wombourne is highlighted in the table below.

Smallest Parish Enville	Largest Parish Wombourne
1 % = £4,683	1% = £105,630
2% = £9,368	2% = £211,312
3% = £14,051	3% = £316,957

- 3.11 Whilst Enville has the smallest tax base several parishes contain more than one church located within them. For example, Dunston with Coppenhall has a tax base of 272.87 and two churches located within it. This exposes the Council to greater financial risks where maintenance is required to multiple church yards and there is a low tax base.
- 3.12 The inclusion of costs of major repair works via a special expense may cause an unacceptable increase in council tax in any one year for residents in smaller parishes.

The introduction of a cap will address affordability concerns providing a standardised payment mechanism across South Staffordshire. The council can under the Section 35 legislation also spread payments over a maximum of two years and it is proposed to review repayment costs on a case-by-case basis.

Option 3 – Reverse Special Expense Decision

- 3.13 A further option was to determine to reverse or overturn the 2019 decision in respect of using Section 35 special expense powers. This would result in the full costs of repairs to closed churchyards falling to the general fund and inevitably would impact on the MTFs position. It may have been necessary to consider which other service delivery items would be stopped or reduced as a result of reversing the decision. This is not an option I intend to pursue.

Financial Council Impact Option 2

- 3.14 In considering the financial implications of the potential residual cost to the council of option 2, there is the option of capitalising the costs subject to the nature of the work undertaken, this could be mirrored alongside the build-up of a revenue sink fund which could be used to fund the work in the future.
- 3.15 This option needs to be considered based on the current financial uncertainty of the council and any capital decision would bring a long-term liability to the Council and a change to the borrowing arrangements. Typically, the capital is based on extending the life of the asset which would be 40 – 50 years.
- 3.16 Any addition to the capital programme will, if funded from borrowing incur a revenue MRP charge and interest payment. As an example, if the asset life was extended by 40 years and a cost of works undertaken were £200,000 funded from borrowing, the estimated ongoing revenue implication is approximately £12-15,000 per year. In order to fund this, an ongoing revenue budget provision should be established to account for the MRP and interest; if not called upon this budget could then be set aside to an ear marked reserve to build up balances for any future liabilities. It would be preferable and more cost effective to fund any investments in the year of works rather than taking external borrowing as there is not an income stream that flows from any capital investment.

Other matters for consideration

- 3.17 Routine grounds maintenance of closed churchyards is reviewed annually and currently costs South Staffordshire Council circa £30,000 per annum and is met from existing Street Scene budgets. Each churchyard receives 14 boxed grass cuts annually throughout the grass cutting season, and a maximum of 2 shrub prunes and 2 hedge cuts. Key to note that South Staffordshire Council maintains any closed churchyards to the exact same standard as that of our own cemetery sites at Sytch Lane and Strawberry Lane. In addition, the council is also required to carry out memorial testing at each closed churchyard which is undertaken every five years at a current cost of £6,000. If any issues are identified during memorial testing the council is also liable

for these costs which in 2022/23 equated to £9,000. Should the maintenance of additional closed churchyards be passed to South Staffordshire Council, then the council reserves the right to review the standard of maintenance provided or treat the costs for routine grounds maintenance and memorial testing under the Special Expense legislation.

- 3.18 I recommend the council introduces a policy that clarifies the approach we will take to the maintenance of any closed churchyards where the maintenance responsibility has transferred to South Staffordshire Council.

4. IMPACT ASSESSMENT – ADDITIONAL INFORMATION

5. PREVIOUS MINUTES

6. BACKGROUND PAPERS

2019 Individual Cabinet Member decision, Cabinet Member Briefing May 2023



Closed Churchyards
Statement of Decision

7. APPENDICES

Report prepared by: Assistant Director Community Services