

SOUTH STAFFORDSHIRE COUNCIL

PROPOSED DECISION AND STATEMENT OF DECISION
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 the 8th October 2019 unless called in for scrutiny before that date

Councillor Len Bates BEM – Cabinet Member for Community Services

Date: 30th September 2019

CLOSED CHURCHYARDS – FUTURE MAINTENANCE AND SPECIAL EXPENSES

1. SUMMARY OF PROPOSALS

To examine the current procedure for the maintenance of closed churchyards by South Staffordshire Council and to propose a method of financing these works in the future.

2. PROPOSED DECISION BY CABINET MEMBER FOR COMMUNITY SERVICES

- 2.1 That a special expense can be charged to residents in a Parish where a closed churchyard has transferred to South Staffordshire Council. The special expense will cover any future maintenance and one-off major repairs in the future to closed churchyards that have already transferred to this council in Swindon, Kinver, Wombourne and Brewood and Coven Parish Council areas.
- 2.2 This stance would also be taken for any additional closed churchyards that transfer to South Staffordshire Council should a church or parish council not wish to retain responsibility for the maintenance of a closed churchyard.

3. SUMMARY IMPACT ASSESSMENT

POLICY/COMMUNITY IMPACT	Do these proposals contribute to specific Council Plan objectives?	
		2. A safe and sustainable district. This report contributes by ensuring that we are maintaining our open spaces in a manner that is safe and appropriate for residents to use
	Has an Equality Impact Assessment (EqIA) been completed?	
		No – not envisaged that proposals will have any negative impact on any protected group.
SCRUTINY POWERS APPLICABLE	<p>The Constitution and associated protocol provides that front line Councillors, the Monitoring Officer (Corporate Director Governance), and the Corporate Director Resource will have five clear working days following dispatch of a notification of a proposed decision in which to call in for scrutiny, decisions proposed by the Cabinet or its members.</p> <p>In accordance with the provisions of the Constitution and associated protocol, any two or more members wishing to request that this proposed decision should be called in for scrutiny should do so by giving notice to the Assistant Director Democratic and Regulatory Services either by e-mail or in writing before the end of the fifth day specifying the reason or reasons therefore. The Assistant Director Democratic and Regulatory Services will then call in the proposed decision and arrange for it to be considered by the Overview and Scrutiny Committee/relevant Scrutiny Panel. A copy of such notice must also be sent to me either by email or in writing by the end of the fifth day.</p> <p>This proposed decision will be confirmed and implemented on or after the date to be notified upon circulation of the minutes of the meeting of the Cabinet, unless called in for scrutiny by that date.</p>	
KEY DECISION	No	
TARGET COMPLETION/ DELIVERY DATE	Implementation from April 2020	
FINANCIAL IMPACT		Reduce financial risk to this council for the inherited cost of maintenance and major repairs within a closed churchyard by applying a 'Special Expense' under s.35 of the Local Government Finance Act 1992. These costs will then be chargeable directly to the council tax payers of the relevant parish.

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 as 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 Local Government Finance Act 1992 provides that the Council can impose a Special Expense on Council Tax.</p>
OTHER IMPACTS, RISKS & OPPORTUNITIES		<p>Mitigate the risk of danger from 'unsafe' structures within churchyards by providing a mechanism whereby necessary works can be financed quickly.</p> <p>Risk of potential fallout with the public and local residents of parishes – to be mitigated through consultation with local members.</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. The council could consider a cap of these charges or alternatively recharging of costs could be spread over a period of time.</p>
IMPACT ON SPECIFIC WARDS		<p>Potential district wide issue in the years to come as more churchyards 'close' and are passed to South Staffordshire Council. Future increases will impact upon the services provided by this council.</p>

4. INFORMATION

- 4.1 Under the Burial Act 1853 (section 1), a churchyard belonging to a Church of England church, may become closed by an order in council which is sought by the Parochial Church Council (PCC) from the Ministry of Justice. Essentially a church will apply to 'close' a churchyard (or in some instances, a set area within a churchyard) when it becomes full and they are no longer accepting new burials on the site. Once a churchyard is closed (or part closed), the responsibility for ongoing maintenance of the site can initially be passed onto the relevant parish council who may accept or decline this responsibility. If the parish do decline, then this responsibility for maintenance is transferred to South Staffordshire Council. This transfer is compulsory, not dependant on the condition of the churchyard in question, and nor dependant on the council's ability to meet this increase in maintenance costs.
- 4.2 During the transfer of any closed churchyard to the council under section 215 of the Local Government Act 1972, best practice suggests that the onus is on the PCC to ensure that the churchyard is 'in decent order and its walls and fences in good repair' before maintenance passes to this council. However, there is currently little in the way of a legal basis to ensure that this is the case. In order to minimise the inherited risk to this council, we commission an initial series of professional reports to identify any remedial tree works, and structural / buildings works that are necessary to bring each closed churchyard site up to a 'safe' standard.
- 4.3 In taking on the responsibility for maintaining a closed churchyard, South Staffordshire Council asks each church to contribute to the cost of any works identified through the reports listed in 4.2. When a church is unwilling / unable to contribute, then from a liability point of view it is not acceptable for this council as 'occupier' of the site to simply manage the decline of the closed churchyard and associated features. In order to fund any one-off costs identified this council intends to treat these as a 'special expense' under section 35 of the Local Government Finance Act 1992. This act allows different amounts of council tax to be calculated for different locations and so these costs can be passed directly to those residents living locally to the closed churchyard in question.
- 4.4 Guidance issued in May 2002 by the 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 and cites Cherwell District Council as an example of where this is automatically considered to be a special expense. Key to note is that the responsibility for maintenance and associated works here is not being passed back to a Parish Council, but just 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.
- 4.5 At a local level, the most effective means of managing a closed churchyard is through a Parish Council and we would recommend this from the point of view of local accountability and direct financial management. When taking the decision about whether or not to accept this responsibility, a Parish Council should be aware of the

possible risks involved in order that they may consult and inform local residents. Once a closed churchyard has transferred to South Staffordshire Council, the Parish Council gives up any control over future maintenance arrangements and the scope / cost of future works on site.

- 4.6 The cost of liability associated with boundary walls and structures within a closed churchyard can be extremely high. As a worked example, in recent years this council funded the repair of a collapsed church wall in Swindon and the total cost for repairs was approximately £80,000. In future and under these proposals, these one-off costs would be passed onto the local residents. In the example of Swindon which has 620 properties, this would have equated to a one-off cost of £129 per property. Assuming that in the future, a similar repair bill was incurred in Kinver which has 3,254 properties, this cost would then be £24.59 per property.
- 4.7 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. If there are affordability concerns, then it is proposed to spread repayment costs over a period of time on a case by case basis.
- 4.8 This council will implement a rolling programme of site / building / tree etc. inspections for each closed churchyard in order to mitigate the potential effect of any required work in the future. Should any future works be identified that can't be funded through existing council budgets, and again if the church is unwilling / unable to contribute then it is our intention to treat these as a special expense as outlined above.
- 4.9 Routine maintenance of closed churchyards currently costs South Staffordshire Council under £10,000 per annum and is met from existing Street Scene budgets. This work includes all grass cutting, hedge cutting and shrub pruning operations. Should the maintenance of additional closed churchyards be passed to South Staffordshire Council, then we reserve the right to review whether these routine maintenance costs should also be treated as a special expense in the future.
- 4.10 In all instances, South Staffordshire Council will encourage community groups and local volunteers to get involved in work within each closed churchyard in order to reduce the likely cost of routine maintenance going forward.
- 4.11 When any works outside of routine maintenance are necessary within a closed churchyard, a Faculty from the Diocese is necessary. To support staff efficiency, this council will insist a church take all responsibility for securing Faculty licences, permissions and associated consultation etc.
- 4.12 All proposals within this report are subject to the principles and practices set out in the code of practice on local authority accounting, as published by the Chartered Institute of Public Finance and Accounting.

5. IMPACT ASSESSMENT – ADDITIONAL INFORMATION

N/A

6. PREVIOUS MINUTES

N/A

7. BACKGROUND PAPERS

N/A

- 8.1 This proposed decision has not been called in for scrutiny and was not a Key Decision subject to scrutiny before being formally made. Accordingly, I made this decision on (Friday 11th October 2019) for the reasons and having regard to the alternative options and circumstances set out above.

Councillor Len Bates BEM – Cabinet Member for Community Services