



GROUNDS & ENVIRONMENTAL COMMITTEE

MONDAY, 6 JUNE 2022

ADDITIONAL PAPERS

Date published: Wednesday, 1 June 2022

Agenda Item 15

CEMETERY UPDATE INCLUDING
HEADSTONE SAFETY SURVEY

To receive a report regarding the cemetery
service and to consider the
recommendation/s contained therein
(Pages 1 - 4)

PLEASE BRING THE ATTACHED PAPERS TO THE MEETING IN ADDITION TO
THE PREVIOUSLY CIRCULATED AGENDA.

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Grounds and Environmental Services Committee

Date: 6 June 2022

Title: Cemetery update including headstone safety survey

Purpose of the Report:

To provide Members with a cemetery update and review of the headstone safety survey as per the Risk Register Action Plan.

Contact Officer:

Ian Haynes, Head of Grounds and Environmental Services

Corporate Objective/s	LLTC Three Year Plan – Aim 3. “To provide great public open spaces, varied opportunities for sport and leisure and to exceed expectations in delivering cemetery and allotment services.”	
Implications:		
Financial	No	
Human Resources	No	
Operational/Service delivery	No	
Procedural/Legal	Yes	Health and Safety at Work etc. Act 1974, The Management of Health and Safety at Work Regulations 1999, Local Authorities Cemeteries Order 1977, Occupiers Liability Acts 1957 and 1984, Common law, Ecclesiastical law.
Risk/Health and Safety	Yes	
Environmental Aims	No	

1. RECOMMENDATIONS

1.1 To note the report.

2. BACKGROUND

- 2.1 The principal enduring responsibility for safety in public cemeteries rests with the burial authority. In England and Wales, people do not buy graves. They buy the right to be buried in a specific place in a cemetery. The owner of the burial right may decide who is buried in a given plot.
- 2.2 The length of the right depends on the terms of the grant. Although granted in perpetuity when cemeteries were first established, burial rights now maybe more typically be for 50 years or less. The Town Council offers 50 years and then additional 25 years after that.
- 2.3 The right to burial usually carries an implied right to erect a memorial. Some burial authorities grant the right to erect a memorial as a separate right of more limited duration than the right to burial. Original maintenance liability will rest with the grave owner for the period of the grant of the right of burial or the right to erect the memorial if separate.
- 2.4 Constructional defects are the responsibility of the erecting memorial mason. With the passage of time and address changes, coupled with a lack of adequate records, responsibility for maintenance has fallen mainly on the burial authority. Increasing awareness of memorial safety and its heavy cost implications may lead burial authorities to reduce the period for retention of the memorial to coincide with any warranty offered by the installing memorial mason and/or impose a requirement on the owner to obtain insurance. Many burial authorities now require fixing methods for new memorials which conform to National Association of Memorial Masons (NAMM) guidance or the new British Standard.
- 2.5 They may impose a similar requirement for existing memorials that must be re-fixed following testing.
- 2.6 A lawn memorial comprises an upright tablet or plate, which is usually dowelled to a supporting plinth. The plinth is then fixed to a foundation. The foundation was often a small concrete base installed by the mason.
- 2.7 Instability may be caused by a number of factors, including uneven settlement of the foundation. However, a significant and common cause of failure with lawn memorials has been the absence of any effective dowel between the memorial itself and the foundation base. Often there is only a mortar joint. Sometimes mortar is applied at just one or two spots, not even covering the whole of the joint.
- 2.8 This makes for ease of removal for the addition of a further inscription, but undermines the memorial's stability. Inherently, lawn memorials erected in this way are prone to movement and instability even though they are relatively recently constructed. There has been increasing concern over memorial safety. Following the Health and Safety Executive (HSE) intervention in several cases where injury or death had occurred, together with concern on the part of local authority insurers, burial authorities have instituted safety checks on memorials in cemeteries and graveyards for which they are

responsible. HSE has used its enforcement powers, in some cases where death or serious injury have occurred, to issue an improvement notice to require a council to accelerate its testing programme or even a prohibition notice to close a cemetery while testing is carried out and dangerous memorials made safe.

3. CONSIDERATIONS AND LEGAL POSITION

- 3.1 Health and Safety at Work etc. Act 1974** The Health and Safety Executive has a duty to ensure that risks to people's health and safety from work activities are adequately controlled. It has power to take enforcement action. In relation to burial grounds, HSE may use its enforcement powers to achieve the objectives of the legislation, for example, by issuing an Improvement or Prohibition Notice. Burial authorities, including councils, have duties under the 1974 Act to ensure, so far as is reasonably practicable, the health, safety and welfare at work of their employees and that persons not in their employment who may be affected by their undertaking are not thereby exposed to risks to their health or safety. Various Regulations made under the Act lay down detailed rules. In particular, the Management of Health and Safety at Work Regulations 1999 impose an obligation on an employer to assess the risk to employees and non-employees which arise out of the employer's undertaking. This applies to burial authorities who are employers and includes a duty to assess the risk from all cemetery structures, including memorials.
- 3.2 Occupiers Liability Acts 1957 and 1984** Civil liability is imposed on 'the occupier', which could include not only the owner of the memorial but also the burial authority. The remedy is an action for damages by the injured party. In broad terms, the obligation is to take reasonable care in all circumstances. Local Authorities Cemeteries Order 1977 Article 3(2)b empowers a burial authority to take any necessary action to remove a danger that arises by means of the condition of a vault, tombstone or other memorials. The burial authority has an obligation to keep the cemetery in good order and repair (Article 4(1)). The burial authority has various powers under Article 16. Under Article 16(1), it may put and keep in repair any memorial in a cemetery. The primary responsibility to maintain the memorial rests with the owner. However, in practice, particularly with older memorials, it may not be possible to trace the owner. The burial authority may, under Article 16(2), also remove from the cemetery and destroy any tombstone or other memorial on a grave which is dilapidated by reason of long neglect. It may alter the position on a grave of a memorial etc., or re-erect it at another place in the cemetery. It may level the surface of any grave to the adjoining ground level. These powers may only be exercised in accordance with Schedule 3 of the Order. This requires the authority to comply with publicity provisions on-site and in the local press and notify the owner of the right to place and maintain the memorial or on the person granted permission to place it.
- 3.3 Common law** A burial authority may be liable to an action in damages if someone is foreseeably injured by its acts or omissions. In general terms, such an employer will be responsible for the actions of its employees both to

third parties and to other employees. In an action for damages against a council in the Staines County Court to recover the costs of reinstalling a headstone to current standards, including a NAMM approved ground anchor, the judge dismissed the claim. The claimant questioned the council's authority to carry out inspections and to take immediate action by laying down memorials. He acknowledged that he had seen notices in the local press and at the cemetery, but contended that he should have been contacted in advance and given an opportunity to witness the test. He challenged the validity of the force-testing machine used, arguing that the test procedure caused the foundation of the headstone to fail and that the council had neglected its duty by failing to control the installation of memorials over the previous years. The council gave evidence of its working procedure for memorial inspections and associated documents that showed:

- a hand test as the primary test
- if hand test was passed then use of testing device to 35kg
- use of testing device on memorials which failed the hand test to record fail pressure • evidence of calibration of testing device
- risk assessments
- safe system of work
- staff training and competence
- copies of various notices
- inspection records
- ICCM Code of Practice for the Management of Memorials

3.4 The judge held that testing had been carried out properly, that the reading had to be accepted, and that the council had the power to remove a danger and, therefore, the power to act as it did as a result of the test reading. The council had done no more than it was statutorily obliged to do.

3.5 **Ecclesiastical law** governs not only churchyards but also consecrated areas in public and privately-owned cemeteries. A memorial may not be removed from a consecrated part of a cemetery without notifying the rural dean in the Church of England and allowing three months to make representations that have to be considered by the burial authority.

4. **CONCLUSIONS**

4.1 The Town Council has completed its latest memorial testing in Old Linslade Cemetery and Vandyke Road Cemetery as per the Town Council's Risk Register Action Plan. The testing of memorials within cemeteries, whether open or closed, is a legal requirement for the burial authority of the cemetery and should be carried out every five years by a trained professional, with unstable or unsafe memorials identified and cordoned off prior to making safe.

4.2 We have found several very old memorials that we would like to repair rather than lay down; costs to undertake these repairs will be obtained as per the Town Council Financial Regulations and brought back to the committee for consideration. **End.**