

TONBRIDGE & MALLING BOROUGH COUNCIL

LEISURE and ARTS ADVISORY BOARD

10 December 2012

Report of the Chief Leisure Officer and the Cabinet Member for Leisure, Youth & Arts

Part 1- Public

Matters for Recommendation to Cabinet - Non-Key Decision (Decision may be taken by the Cabinet Member)

1 MEMORIAL SAFETY

Summary

This report recommends a revision to the Council's current approach to memorial safety inspections/testing in response to new government guidance.

1.1 Background

1.1.1 In January 2007 the Council adopted a set approach to Memorial Safety Inspections with the approval of a Memorial Safety Policy and a Memorial Testing Policy. The Council's approach was informed by guidance at the time, primarily from the "Ombudsman's Special Report on Memorial Safety in Local Authority Cemeteries". A feature within the Special Report was the use of mechanical pressure testing to 35kg of memorials, with this approach being adopted within the Council's approved Memorial Testing Policy for memorials over 400mm. In accordance with the Council's Policy, a full inspection of all memorials was carried out in 2007/08, at Tonbridge Cemetery and the two Closed Churchyards in Tonbridge managed by this authority.

1.1.2 The Council's Memorial Safety Policy recommends that memorial inspections are undertaken every five years with the next inspections due to be progressed in the current financial year.

1.2 New Guidance

1.2.1 Since the last inspection the Ministry of Justice has published "Managing the Safety of Burial Ground Memorials - Practical advice for dealing with unstable memorials". This new Government guidance questions potentially "over-zealous" approaches to memorial safety that has "from time to time been subject of adverse publicity and public distress". The guidance acknowledges that the risk of injury from unstable memorials is extremely low and advocates a sensible, proportionate and sensitive approach to the management of risk in burial grounds.

- 1.2.2 The guidance advises that “*visual and hand checks can be carried out by a person with a working knowledge of memorials Hand testing is appropriate for many memorials, such as the modern, lawn type, as well as smaller stepped designs or tiered crosses*” the guidance does, however, acknowledge that “*Much larger, heavier memorials may require an assessment by a specialist engineer or competent memorial mason*”
- 1.2.3 The guidance also makes specific reference to the use of pressure testing equipment stating “*The routine use of mechanical test instruments as inspection tools is not recommended. Results from these instruments are liable to overestimate the actual risk. The approach suggested above (visual and hand testing) will enable the operator to assess the memorials in their grounds as either secure and stable or insecure and requiring action, and a mechanical test will not add to this judgement*”.

1.3 Proposed New Approach

- 1.3.1 In response to this new Government guidance a review of the Council’s current approach to memorial safety inspections has been undertaken. Following liaison with the Council’s Chief Solicitor, Health and Safety Officer and Insurance Officer it is proposed that the current requirement for mechanical testing of memorials is no longer needed and this requirement be removed from the Council’s Memorial Testing Policy. It is also proposed that the use of visual and hand testing be introduced at Tonbridge Cemetery and the Closed Churchyards in Tonbridge in accordance with the new guidance. A copy of the revised Memorial Testing Policy is attached at **[Annex 1]**. It should also be noted that some memorials may require specialist assessments, over and above hand testing, and the approach to future testing of such memorials will be agreed in liaison with an appropriate specialist contractor. For example, if larger memorials are deemed unsafe they may require additional inspection by a structural engineer.
- 1.3.2 Liaison has also taken place with the specialist contractor which undertook the memorial safety inspections at Tonbridge Cemetery in 2007/08. The contractor supports the removal of the requirement for mechanical testing and the introduction of visual and hand tests that, in his opinion, would offer a “*fair and practical assessment of risk*”.

1.4 Legal Implications

- 1.4.1 Proposals within this report are being brought forward in accordance with new government guidance. The sole responsibility for safety in public cemeteries rests with the burial authority. In common with all other local authority cemeteries, people do not buy graves but they buy the right to be buried in a specific place in the cemetery. The owner of the burial right may decide who is buried in a given plot and the length of the right depends on the terms of the grant (currently 60 years at Tonbridge Cemetery). Persons holding a Right of Burial can also choose, by agreement with the Council, to erect a memorial on the grave space at

their own expense for the duration of the lease. The agreement states that the Council does not accept responsibility for the future maintenance of the memorial. However, the Council has an obligation under the Occupiers' Liabilities Acts 1957 and 1984 to ensure that persons visiting the Cemetery are not exposed to risk of injury. Likewise, under the Health and Safety at Work, etc. Act 1974, the Council has similar duties towards its employees, contractors and others. Therefore, whilst the owner of the memorial has responsibility for its maintenance, it is important that the Council is aware of any potential dangers and takes action to avoid injury.

1.5 Financial and Value for Money Considerations

- 1.5.1 An approved scheme for memorial safety inspections and subsequent repairs is included within List A of the Council's Capital Plan. It is estimated that to undertake memorial safety inspections at Tonbridge Cemetery and the Closed Churchyards in Tonbridge in accordance with the revised policy would cost approximately £5,000, representing a saving on the previous approach.

1.6 Risk Assessment

- 1.6.1 The Council's approach to memorial safety is in accordance with latest Government guidance. Risk assessments will be sought from any contractor undertaking inspections on memorials.

1.7 Equality Impact Assessment

- 1.7.1 See 'Screening for equality impacts' table at end of report.

1.8 Policy Considerations

- 1.8.1 Health and Safety and Asset Management

1.9 Recommendations

- 1.9.1 It is **RECOMMENDED** to Cabinet that the Council's revised Memorial Testing Policy shown at **[Annex 1]** to this report be approved and be implemented as part of the forthcoming memorial inspections at Tonbridge Cemetery and Closed Churchyards in Tonbridge

The Chief Leisure Officer confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and Policy Framework.

Background papers:

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Nil

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Chief Leisure Officer

Maria Heslop
Cabinet Member for Leisure, Youth and Arts

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	The decision will not impact or discriminate against different groups in the community
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	Yes	The decision will allow the Council to continue to provide a safe environment for all visitors to Tonbridge Cemetery and the Closed Churchyards in Tonbridge.
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.