

TONBRIDGE & MALLING BOROUGH COUNCIL

CABINET

31 January 2017

Report of the Management Team

Part 1- Public

Executive Non Key Decisions

1 OPEN CHURCHYARDS

A report setting out the outcome of discussions with the Rural Deans, and recommending that: firstly, no budgetary provision should be made in respect of discretionary financial contributions towards the maintenance costs of open churchyards; and secondly that the results of a study regarding burial capacity commissioned in partnership with the Rural Deans should be brought back to Cabinet in due course.

1.1 Background

- 1.1.1 Members will recall the series of reports which culminated, at the Full Council meeting on 1 November 2016, in the introduction of a Special Expenses Scheme and simultaneous withdrawal of the s136 Financial Arrangements with Parish Councils (FAPC) Scheme with effect from 1 April 2017.
- 1.1.2 During discussion of those reports, and highlighted through the consultation with both the public and parish councils, an issue emerged regarding the funding of open churchyards which was 'wrapped up' in the FAPC grants. It was confirmed that, in the past, the Borough Council had chosen to financially support the maintenance of open churchyards on a discretionary basis. The reasoning behind this decision, we believe, was to help to keep churchyards as open as long as possible so that the burial capacity across the borough was maximised; at the same time easing the pressure on the capacity at Tonbridge Cemetery.
- 1.1.3 As Members are aware, an open churchyard is the responsibility of the church but once closed, an application can be made, within a certain timescale, to transfer responsibility for maintenance to the local council.
- 1.1.4 Cabinet were cognisant that the recommendation to cease the FAPC grant scheme and introduce a Special Expenses scheme could mean that local churches were faced with financial challenges in respect of this function; particularly in the event that parish councils were unable/chose not to provide funding instead.

- 1.1.5 Thus, at its meeting on 28 July in respect of the open churchyard issue, Cabinet recommended at **CB 16/60 (4)** that:

“information be sought from the church authorities on the capacity status of open churchyards throughout the Borough to enable further consideration of whether grants (under section 214 of the Local Government Act 1972) should continue to be offered to support their maintenance in furtherance of the previous policy in this regard.”

1.2 Progress

- 1.2.1 Further research on open churchyards has been undertaken and, in late November, Management Team met with the Rural Deanery, in line with the Cabinet’s recommendation above.
- 1.2.2 It is worth commenting at the outset that, through the Management Team’s bi-annual meetings with the Rural Deans, the clergy are aware of the significant financial challenges facing the Council. Therefore, they fully appreciate that Members need to make difficult choices about funding priorities and this issue was not a complete surprise.
- 1.2.3 Clearly, in an ideal world, the clergy would wish to see the Council continuing to support open churchyards, but we believe they understand why this might not be possible moving forward. Liaison with other Kent district councils confirmed that the vast majority do not provide any funding towards open churchyards.
- 1.2.4 The Rural Deans confirmed to us that a churchyard can only be closed by Order of the Privy Council if it is full - i.e. there is no further usable land where graves could reasonably be made. (There are some other exceptional circumstances but these would be rare).
- 1.2.5 Thus, a churchyard cannot be closed simply on the grounds of lack of, or reduced, funding. As the Rural Deans advised, in many areas volunteer services or other innovative methods have to be employed to maintain the churchyards in good order.
- 1.2.6 What the Rural Deans were currently unable to advise is how soon the open churchyards in our borough are likely to reach capacity and be eligible for closure. They did, however, helpfully commit to progressing some work to assess the capacity in their churchyards.
- 1.2.7 This work by the Rural Deans will be undertaken in parallel with an assessment of capacity in our own cemetery (Tonbridge Cemetery) by the Director of Street Scene, Technical Services & Leisure which shortly due to commence. To complete the picture, the Director is also liaising with the parish councils within our borough that provide a local cemetery to understand the capacity there also.

1.2.8 An overall understanding of capacity within the borough will help us to formulate a view about future need, particularly in view of the anticipated growth in population. It is however, worth noting that, in law, no one body presently has statutory responsibility to provide burial grounds. It is presently a matter for discretion by local authorities, private companies and religious organisations; although it is possible that this position will change in due course with more responsibility falling on local authorities.

1.3 Summary

1.3.1 With the assistance of the Rural Deans, a capacity assessment is now underway which will help to inform potential needs in terms of burial places for the future.

1.3.2 Whether, or not, the Borough Council should provide some financial support towards the cost of maintenance of open churchyards now needs to be addressed. As Cabinet are aware, through the Parish Partnership Panel, many parish councils are waiting to hear how the Borough Council is to proceed prior to them making any commitments about funding to their local parochial church councils beyond 2017/18.

1.3.3 It is worth reiterating that, all the time that capacity remains and a churchyard is open, it is the legal responsibility of the parochial church council to maintain the grounds, walls and fences in decent order. Whilst we, and parish councils, have discretion to make contributions to assist with those costs (as we have done in the past via the old FAPC scheme) there is no requirement to do so.

1.3.4 A 'closure' application for a churchyard can only be granted if the churchyard is full (other than in some very exceptional circumstances). Financial considerations are not part of the decision making process.

1.3.5 As Members are fully aware, there are many competing demands on the Council's limited financial resources. At the time of writing, based on current projections, we need to find savings of circa £1.6m through our Savings & Transformation Strategy. Inevitably, this is going to put pressure on the levels of (statutory) service we deliver directly; and may require some harsh decisions about which discretionary services we can continue to provide.

1.3.6 This, together with some questions about equalities set out in paragraph 1.7 below, leads us to conclude, regrettably, that the Borough Council cannot afford to financially contribute towards an 'arms-length' function which is legally the responsibility of another party. Cabinet are asked to consider through this report whether they concur with this view.

1.3.7 The work being conducted by the Rural Deans in respect of capacity will help us to assess the potential 'risks' of costs falling to the Borough Council in due course as and when churchyards become full and applications are made for closure. This is currently an 'unknown quantity'.

1.4 Legal Implications

- 1.4.1 If the Council wished to continue supporting open churchyards with discretionary funding it would need to do so under s137 (3)(a) of the Local Government Act 1972.
- 1.4.2 In previous reports to Cabinet in respect of 'Fairer Charging', it had been suggested that s214(6) of the Local Government Act 1972 could be used. However, on further investigation, this is not appropriate because the power to give funding to burial authorities in s214(6) only applies if the churchyard in question is open for burial by all of the inhabitants of the Council donating the funding. For TMBC this would be the inhabitants of the entire borough and this is at odds with the common law position which only requires a parish to accept burials from persons resident at the time of their death within that parish.
- 1.4.3 If closure of a churchyard is granted by Order of the Privy Council, under s.215(3) of the Local Government Act 1972, a request to take on the maintenance of a closed churchyard may be served on a parish council (or a district council if there is no parish council). Where notice is served on a parish council, within three months of that notice, written notice can be given by the parish council of their intention to pass on the responsibility to the district council. If such notice is served within the timescales provided, responsibility cannot be refused.

1.5 Financial and Value for Money Considerations

- 1.5.1 Full Council has already made a decision to cease FAPC grants from April 2017 and therefore draft budgets and the updated Medium Term Financial Strategy (MTFS) have been prepared accordingly. The FAPC grants did include an element for open churchyards; approximately £35k per annum.
- 1.5.2 If Cabinet decides that funding should be provided towards supporting the costs of open churchyards, this would now constitute growth and a budget would need to be assigned.

1.6 Risk Assessment

- 1.6.1 If a churchyard is closed in due course, there is a risk that the maintenance responsibility could transfer to the Borough Council. The Council is already responsible for the maintenance of two closed churchyards in Tonbridge for which costs are included in our Revenue Budget.
- 1.6.2 It is currently unclear as to the likely timescales for closure of churchyards within the borough based on them reaching their capacity. The work by the Rural Deans will assist us in assessing the potential risks, and alongside our own review of the Cemetery, this may also help us in managing and formulating future solutions.

1.7 Equality Impact Assessment

- 1.7.1 Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to (i) eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010, (ii) advance equality of opportunity between people from different groups, and (iii) foster good relations between people from different groups.
- 1.7.2 Therefore, as part of this decision making process, Members need to consider the equalities angle of proving funding directly to parochial church councils. What special reasons would we have for supporting one faith group by way of financial contribution over and above others?
- 1.7.3 The recommendation is not to provide funding for open churchyards. Therefore the decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.8 Policy Considerations

- 1.8.1 Equalities/Diversity
- 1.8.2 Community

1.9 Recommendations

- 1.9.1 Taking into account all the issues that have been discussed and researched during the investigation of this matter, Cabinet is recommended to:
- 1) Confirm that no future budgetary provision should be made in respect of discretionary financial contributions towards the maintenance costs of open churchyards;
 - 2) Note that a 'capacity study' of burial spaces within the borough of Tonbridge & Malling has commenced in partnership with the Rural Deans;
 - 3) Request that Management Team present a report on the results of that study to a future meeting ; and
 - 4) Thank the Rural Deans for their understanding and assistance in progressing this project.

Background papers:

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Nil

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