

Sourton Parish Council
Closed Churchyard Policy

Sept 2020

1. The closure of a Churchyard

Under the common law a parishioner (a person in a parish or a person who dies there) has a legal right to be buried in the Church of England parish Church. When a churchyard becomes full, it is necessary for this right to be restricted. Accordingly, under section 1 of the burial act 1853, the Privy Council may make an order in council to close a churchyard for burial subject to any exceptions specified in the order. Such an order is made at the request of the Secretary of State for the Environment. The grounds for making an order are –

- Further burials would constitute a public health risk
- Further burials would be contrary to decency
- Burials should be discontinued for the prevention or mitigation of nuisance
- There is no proper room for new graves.

An order may permit further burials, but only-

- In existing walled graves or vaults which have room
- In existing earthen graves where the top coffin is at least 3 feet below the normal level of the ground.

It is the view of the Department of the Environment that the interment of cremated remains is allowed in a closed churchyard, subject to obtaining a faculty (if required) where this can be done without disturbing human remains.

2. Responsibility for maintenance of a closed Churchyard.

Once a churchyard is closed, responsibility for maintenance falls on the Parochial Church Council (PCC) for the parish in which the churchyard lies pursuant to section 215(1), local Government act 1972. The PCC is required to keep the Churchyard in decent order and its walls, fences and gates in good repair. By virtue of S.215(2) of the local Government act 1972, a PCC may at any time serve a written request on the Parish Council, to take over the maintenance of the Churchyard. Subject to S.215(3) of the local Government act 1972, the Parish Council must take over the maintenance for three months after the service of the request. Within the three-month period referred to above, the parish council can pass on the maintenance responsibility to the district council. The mechanism by which the parish council can do that is by passing a resolution and then giving notice of that resolution to the District Council and to the Parochial Church Council.

In November 2018, Sourton Parochial Church Council served a written request requiring the Parish Council to take responsibility for the areas of closed churchyard of the Church of St.Thomas a Beckett, Sourton, subject to Ministry of Justice Closure Orders dated 6th March 1902 and 2nd October 1998.

On balance the view of Sourton parish council was that the disadvantages of passing responsibility back to the District Council outweigh the advantages. The disadvantages are-

- The District Council may (and probably will) treat the expense of maintenance of the churchyard as a “special expense” under section 35 of the Local Government Finance Act 1992 chargeable on to the council taxpayers of the parish
- The cost of maintenance by the district council is likely to be higher than that which the parish council would incur
- The standards and policies of the District Council in relation to the upkeep of the Churchyard may not be to the liking of the Parish Council or parishioners

Sourton Parish Council therefore RESOLVED at the Parish Council meeting in December 2018 to continue to take responsibility for the maintenance of the closed section of churchyard to a decent standard, henceforth.

3. The standard of maintenance

There is no statutory guidance on the appropriate standard to which a closed churchyard should be maintained. Advice given to wardens is worth quoting-

“To see that the churchyard is kept in a decent and fitting manor, that it is cleared of all rubbish, muck, thorns, shrub and anything else that may annoy parishioners when they come into it”

Under section 5.6 of the care of Churches and ecclesiastical jurisdiction measure 1991 (in force from 1st March 1993), the powers, duties and responsibilities of a PCC with respect to the care and maintenance of churchyards (both open and closed) extends to all trees therein, including those proposed to be planted. When the maintenance of the closed churchyard was transferred to Sourton Parish Council the responsibility for the trees was transferred as well, meaning that the council will have to keep the trees trimmed and will be responsible for lopping or felling trees which are dangerous or diseased. The trees remain under Faculty jurisdiction and a faculty must be sought prior to work being undertaken. Responsibility also extends to the repair of walls, fences and gates. Responsibility for maintenance includes the maintenance of paths which cross a churchyard up to the standard of “decent order” as well as cultivated and uncultivated areas

The ordinary maintenance of monuments and tombstones is not the responsibility of PCC or Sourton Parish Council but of the owners, who are usually the heirs of the person commemorated.

When work is necessary to a memorial for safety reasons, the Parish Council will take the following actions:

- Inform the PCC and incumbent
- Search Sourton PCC and Church records.
- Place waterproof notices on the memorials for a period of 12 months
- Place notices on Church and parish notice boards for a period of 12 months
- An advert in local newsletter (BASE)
- An advert on Sourton Parish Council website

Where the heirs or other owners cannot be traced, Sourton Parish Council will be responsible for dealing with dangerous monuments to keep the closed churchyard in decent order. The Parish Council is subject to Faculty Jurisdiction and will establish permission from the Church of England before any action is taken to repair or remove monuments.

The obligation to “maintain” memorials is likely to extend to a duty to ensure they do not topple over. Sourton Parish Council will take reasonable steps to ensure the health and safety of employees (contractors) working in churchyards in accordance with their duties under S.2 of the health and safety at work act 1974.

Sourton Parish Council will use the service of a qualified monumental mason for advice and site inspection as and when it considers it necessary to ensure the safety of monuments.

Responsibility for the churchyard does not include responsibility for any Church, Chapel, or other building (such as a shed or bier house) in or adjacent thereto.

Whilst responsible for the maintenance, Sourton Parish Council is not the owner or tenant of the churchyard. It cannot therefore prevent the incumbent and the PCC from exercising their powers over the churchyard (e.g. to allow the internment of cremated remains).

Sourton Parish Council will inspect the closed section a minimum of twice a year to establish what actions if any may be required to continue to maintain it in good order. A tree survey will be conducted every three years.

Sourton Parish Council will employ a person/persons to cut the grass during the growing season.

Sourton Parish Council will keep a ‘Churchyard record book’, detailing all actions and work undertaken to ensure safety of the closed Churchyard.

Sourton Parish Council has no obligation to undertake improvements to the churchyard.