Community Spaces
Closed Churchyards Management Plan

Making Aylesbury Vale the best possible place to live and work

Reviewed: May 2015
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1 Introduction

This management plan, produced by Aylesbury Vale District Council (AVDC) has been created to assist AVDC in maintaining its stewardship of closed churchyards, it outlines the management and maintenance practices carried out within closed churchyards in our District. They are places of peace and tranquillity, to be treated with respect and managed to the same high standards as our open spaces.

The principal aim of this operational management plan is to review current arrangements and to develop a robust system of inspection and maintenance. This will be approached in a way that is sensitive to the needs of the community and that recognises the amenity value of these special places.

It is a live document, written with approval from the relevant Diocese and Parochial Church Councils that govern each site and any amendments made will seek approval from the aforementioned.

Closed churchyards currently managed by AVDC are located in the grounds of the following churches:

- St Mary’s Church, St Mary’s Square, Aylesbury, Bucks, HP20 2JJ (Approx. 280 memorials)
- Churchyard of St Peter & St Paul Church, Hunter Street, Buckingham (Approx. 50 memorials)
- St Mary’s Church, Station Road, Marsh Gibbon, Bucks (Approx. 60 memorials)
- St Mary’s Church, Lower Road, Stoke Mandeville, Bucks (Approx. 70 memorials)
- All Saints Church, Church Walk, Wing, Bucks (Approx. 650 memorials)
- All Saints Church, The Green, Hulcott, Bucks (Approx. 60 memorials)

2 Background

A closed churchyard is a Church of England burial ground that no longer has capacity for further planned burials and as such has been termed ‘closed’. The closure of a churchyard brings to an end the formal right of burial for parishioners, (apart from individual vaults or graves which have been reserved by faculty). The internment of cremated remains in a closed churchyard must be authorised by faculty. In the case of a churchyard maintained at the expense of the local authority, in addition to a faculty the consent of the local authority to such interment should first be obtained, and no monument may be erected to mark the place of burial without the like consent.

The Diocese of Oxford is the administrative body of the Church of England that covers the three counties of Berkshire, Buckinghamshire and Oxfordshire; however each individual churchyard and its burial records are owned and managed by its own Parochial Church Council (PCC), details of which can be found in appendix 1. If an incumbent and PCC wish a churchyard to be closed an appropriate Order in Council under the Burial Act 1853 (section 1) has to be sought from the Secretary of State for Justice.

Once a churchyard is closed the PCC concerned may, under Section 215 of the Local Government Act 1972, serve a written request on the Parish Council to take over the maintenance of the churchyard. If the Parish Council rejects the request and gives written notice requiring the District Council to take over the responsibility then the responsibility for maintaining the churchyard then becomes mandatory upon the District Council. There is no Legal Transfer Deed transferring the closed churchyard as the ownership of the closed churchyards does not pass to the local authority. The cost of maintenance has to be met exclusively by the local authority. The Church of England’s document; “Responsible Care for Churchyards, A brief practical guide for parishes” provides further information, a copy of which is provided in appendix 2.

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1 URL: http://www.aylesburyvaledc.gov.uk
2 URL: http://www.oxford.anglican.org/
Under section 215 of the Local Government Act 1972, the Council must:
“maintain (the closed churchyard) by keeping it in decent order and its walls and fences in good repair”.

AVDC will arrange to cut the grass and keep any areas of vegetation generally tidy and is responsible for most features in the churchyard. Boundary walls and upkeep of footpaths are included under the Council’s responsibilities. We also undertake to identify any risks associated with trees within the churchyard and to carry out safety work where necessary. The safety of headstones and monuments is generally accepted to be the responsibility of AVDC under these arrangements; however some PCCs have requested to perform their own memorial testing.

There are some limitations as to what work can be carried out in a closed churchyard. There may be planning restrictions appertaining to buildings and trees. The land remains consecrated and the Council is required to obtain permission from the church authorities for a Faculty Jurisdiction before making any significant changes or works, which will also have to take into consideration, Conservation Areas, Historic and Listed Buildings, The Commonwealth War Graves Commission (CWGC) and Tree Preservation Orders.

**Conservation Areas**
Conservation areas were introduced in 1967 and seek to preserve or enhance the character of the area and not just individual buildings within it. A conservation area is described as “an area of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance” therefore designating a Conservation Area does not remove or diminish other legislation that may apply in that area, including Listed Building Protection, protection for Ancient Monuments and Tree Preservation Orders. Development or works that are controlled by Conservation Area designation require applications for planning notification or permission for Conservation Area consent. All current AVDC maintained churchyards are located within designated Conservation Areas, with the exception of St Mary’s Church in Stoke Mandeville. Before carrying out routine tree work six weeks notice must also be given to the AVDC Planning service.

**Tree Preservation Orders**
Tree Preservation Orders exist in All Saints Churchyard, Hulcott, on three Sycamore and two Lime trees, (Order No.1994, No. 18). Consent must be obtained from AVDC for any proposed works to protected trees unless the work is deemed to be exempt under the current Town and Country Planning Act.

It should also be noted that trees within Conservation Areas are also protected and any proposed tree works in these areas must not be carried out until AVDC have been put on notice that works may take place.

**Historic and Listed Buildings**
A listed building or structure has special protection under the Planning (Listed Buildings and Conservation Areas) Act 1990 and allows for additional powers of protection. Owners have extra responsibilities; they need to obtain listed building consent for certain works and it is an offence to carry out works to a listed building without consent. A detailed outline of listed structures and monuments within AVDC’s closed churchyards is provided in appendix 3.

**The Commonwealth War Graves Commission**
The Commonwealth War Graves Commission (CWGC) has a responsibility for all the war graves in the United Kingdom and others located across 152 countries. The graves belong to people from the Commonwealth who died when fighting in the two World Wars. The CWGC holds records of all Commonwealth War Graves and these can be accessed via their website. Sites maintained by AVDC that

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3 URL: http://www.oxford.anglican.org/support-services/legal-registry/faculty-jurisdiction/
4 URL: http://www.aylesburyvaledc.gov.uk/environment/conservation-listed-buildings/conservation-area/
5 URL: http://www.aylesburyvaledc.gov.uk/environment/conservation-listed-buildings/listed-building/
6 URL: http://www.cwgc.org/
7 URL: http://www.aylesburyvaledc.gov.uk/environment/trees/protected-trees-and-hedgerows/
have Commonwealth War Graves are located at Marsh Gibbon, Stoke Mandeville, Wing, and Hulcott. The war graves are visited by a representative of the CWGC every two years who organise any works to ensure they are safe, legible and in good condition.
3 Risk Management

In assuming responsibility for the maintenance of a closed churchyard a Local Authority assumes liability for public safety in accordance with the Public Liability Act 1951. In early 2009, the Ministry for Justice introduced revised guidance for effectively managing the safety of headstones (and other risks) within cemeteries; “Managing the safety of Burial Ground Memorials – Practical advice for dealing with unstable memorials”. A copy of this and other useful documents can be found on their website at https://www.gov.uk/government/publications/burial-grounds-guidance-on-managing-unstable-gravestones.

The Legal Advisory Commission of the General Synod of the Church of England8’s publication “The Maintenance of Monuments in Closed Churchyards” provides further legal advice on a local authority’s responsibility, a copy of this can be found in appendix 4.

A duty of care arises in the Occupiers Liability Act 1957 (those lawfully on the land – visitors) and 1984 Act (trespassers). AVDC also has a duty of care to control risks from memorials to their employees, contractors, volunteers and members of the public. Responsibilities are set out in various legislation covering burial grounds, including the Local Authorities’ Cemetery Order 1977. Where the operator is an employer they also have duties under The Health and Safety at Work Act 1974 and associated regulations such as the Management of Health and Safety at Work Regulations 1999.

Contractors employed by AVDC to carry out grounds maintenance implement their own site and task specific risk assessments in connection with such operations carried out in the churchyard to ensure the safety of their operatives and the general public.

This plan adopts principles of the guidance prescribed by the government and sets out a risk-based approach for the Council to develop a proportionate regime to managing the risks associated with memorials based on good practice.

4 Maintenance

AVDC’s Community Spaces are responsible for the maintenance of the closed churchyards listed above; this is through an integrated street cleansing and horticulture contract, currently with Sita UK and John O’Conner Grounds Maintenance Ltd, (JOC).

4.1 Routine Maintenance

Routine operations carried out within the churchyards are listed below: Grass cutting, hedge and shrub maintenance are in line with the specification set out in AVDC’s current contract.

Grass Cutting – Generally grass will be maintained to an amenity standard that equates to 13 cuts per year, generally from late March to late October. The grass is maintained carefully to retain the rural character and to avoid damage to headstones and other structures. Grass cuttings are not removed. Contractors are required to clean all arising’s which adhere to memorials and other grave furniture following cutting operations, methods include brushing, blowing, wiping or washing depending on weather conditions. Variations are able to be made depending on the requirements of each PCC to allow for different maintenance regimes.

Hedges – Hedges vary in terms of individual purpose, species, height, width and layout. All hedges are cut to a standard guided by good horticultural practise. Hedge cutting does not take place between April to

8 URL: http://www.churchofengland.org/
September due to nesting birds and observed in accordance with the Wildlife and Country Side Act 1981. Hedge cutting operations vary on species, ranging from 1 cut to 3 cuts per year.

**Weed Control** – As and when required.

**Litter Picking** – Litter picking within the churchyards is carried out by SITA and the frequencies are stated below:

<table>
<thead>
<tr>
<th>Churchyard</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>St Mary’s Church, Aylesbury</td>
<td>Output A*</td>
</tr>
<tr>
<td>Graveyard of St Peter &amp; St Pauls Church, Buckingham</td>
<td>Output B*</td>
</tr>
<tr>
<td>St Mary’s Church, Marsh Gibbon</td>
<td>Monthly</td>
</tr>
<tr>
<td>St Mary’s Church, Stoke Mandeville</td>
<td>Monthly</td>
</tr>
<tr>
<td>All Saints Church, Wing</td>
<td>Monthly</td>
</tr>
<tr>
<td>All Saints Church, Hulcott</td>
<td>Monthly</td>
</tr>
</tbody>
</table>

*Output A – brought up to ‘A’ standard under the Litter Code of Practice by 8am each day and kept at that standard throughout the day until 6pm and between 10am-4pm on Sundays and Bank Holidays.*

*Output B – brought up to ‘A’ standard under the Litter Code of Practice by 10am each day and kept at that standard throughout the day until 6pm and between 10am-4pm on Sundays and Bank Holidays.*

Maintenance Maps can be found in Appendix 5.

Any litter bins are emptied as part of the litter picking visits and in addition to this dog waste bins within the churchyards are emptied 78 times a year; once a week in the winter and twice a week in the summer. Bins are located in St Mary’s churchyard Aylesbury, All Saints Church Wing and the Churchyard of St Peter & St Paul Church, Buckingham.

The PCC should contact AVDC’s Community Spaces team for a quote if it wishes to discuss works over and above these routine maintenance operations.

If the PCC or volunteer groups do undertake any works within the churchyards, AVDC should be informed of these prior to them taking place so that we can advise our grounds maintenance contractors. Please note, that all works undertaken must follow the correct procedures as detailed under Section 2 ‘Background’ of this document.

### 4.2 General Maintenance

AVDC has an obligation to keep infrastructure features such as boundary walls, fences and footpaths in a good and safe state of repair. The arboricultural ‘duty of care’, rights and responsibilities of the PCC also apply to the local authority after “transfer” of a closed churchyard.

**Walls/fences/paths** – When AVDC takes on a closed churchyard it commissions a structural survey of the site, including its boundaries and footpaths and work closely with Engineering and Conservation colleagues to identify hazards and carry out repairs. Whilst AVDC retains responsibility for timely, safe and essential
remedial action and given the expensive cost of some repairs and no funds being provided by the government or local taxes, consideration should be given to fund raising by the PCC, Church and AVDC, in order to achieve the most desirable solution.

**Site Furniture** – The safety of site furniture (e.g. seating, bins & signage) and its ultimate liability remains with the owner who installed it. If AVDC identify such an item as a hazard or that it requires repairing it will make every reasonable effort to identify the owner, to give them the opportunity to repair or remove the item. If the owner is unidentifiable or fails to repair/remove the item within 3 months of notification, AVDC (who hold the secondary liability as one aspect of their duty to keep the churchyard in decent order) will remove the item. Any new proposed installations have to first seek approval from the PCC and then AVDC. AVDC will not normally agree to new installations that generate a cost to AVDC e.g. through their installation or their future maintenance. A faculty jurisdiction must be obtained before any removal or installation is carried out.

**Biodiversity** – Churchyards are valuable habitats for wildlife where longer grassed or wildflower areas exist. PCC’s need to liaise with AVDC if they have any such areas which they wish to be managed accordingly. If appropriate, a conservation cut could be put in place which equates to 2 cuts per year with cuttings collected, usually in July and late September.

### 4.3 Trees

Trees are managed in accordance with AVDC’s current Tree Management Strategy⁹. Granted faculty No. 8137 allows AVDC to undertake general works for the period 2011-2025 for the majority of closed churchyards maintained by AVDC, except for St Mary’s Church in Marsh Gibbon. Urgent and minor tree surgery and felling works does not normally need a Faculty.

Trees within Conservation Areas with stem diameters of 75mm or greater when measured at a height of 1.5m above ground level are legally protected. Anyone wishing to work on such trees must normally give six weeks notice to the local planning authority.

The duties and responsibilities of the PCC’s for their trees are fully set out in the ‘Chancellor’s Guidance to all Parochial Church Councils Concerning Trees in the Diocese of Oxford pursuant to Section 6(3) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991’ dated Trinity Sunday 2005. This document can be found in appendix 6. This guidance pertains to open and closed churchyards which have **not** been transferred to the Local Authority and acts as guidance for the PCC.

The church authorities are still the legal landowners of the trees and may choose to manage their trees in addition to, or in concert with any works carried out by the local authority.

### 4.4 Site Inspections

A programme of fortnightly inspections has been integrated with normal maintenance duties in order to report defects or potential hazards requiring maintenance or repair to AVDC. Trees will not be inspected every two weeks; these are managed in accordance with the Tree Management Strategy.

If any defects or hazards are noted which are not the responsibility of AVDC e.g. on Public Rights of Way running through the churchyard, the relevant owners and PCC will be informed.

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Public Rights of Way\(^{10}\) (which are the responsibility of Buckinghamshire County Council) run through All Saints churchyard in Wing (WIN/16/3 & WIN/32/1 (Church Walk) forming part of the Wing Circular Walk and alongside St Mary’s Church in Stoke Mandeville (SMA 3).

AVDC is not responsible for maintaining the church itself or reinstating/securing any memorials laid flat after inspections.

## 5 Memorial Safety and Testing

The safety of individual memorials and ultimate liability remains with the family of the deceased, who own the memorial. The following programme aims to assess and control the risks posed by memorials within the churchyards, it seeks to identify these and to describe an approach to control them that is reasonable to all involved within the churchyards.

AVDC will appoint suitable contractors to perform site risk assessments and test memorials using visual inspections, looking for signs of damage and also test them by hand to identify instability. Consideration will be given to the location and type of memorial as part of the assessment to determine action; this will include memorials alongside or close to footpaths as these present a higher risk to visitors. A Faculty Jurisdiction will be obtained before works commence.

Testing will include checks for damaged or eroding bonding, movement of parts of a memorial from its original position, kerb stones breaking apart, undermined or unstable foundations, leaning memorials (particularly if there is evidence of recent movement), evidence of structural damage or disturbance (e.g. cracks) and the presence of vegetation, which may cause cracks. Where there is a significant risk found on large memorials, arrangements for more detailed inspections by a structural engineer or memorial mason will be made.

### Safe Memorials

Where a headstone is tested and it is deemed safe no action will be taken with that memorial and it will be the subject of a re-inspection as part of a five year rolling program.

### Unstable Memorials

If a memorial is found to be unstable but not imminently dangerous the memorial will be temporarily supported ensuring no damage will occur to the memorial. AVDC will inform the PCC who in turn shall notify the memorial owner/next of kin, (if they can be identified) to rectify the situation. If no owner/next of kin can be traced or no action has been taken after 6 months the Council will make safe the memorial by laying it flat, inscription side up. Once identified as being unstable a warning sign displaying AVDC and the PCC contact details will be placed next to the memorial on the stake alerting visitors to the potential danger until repair or laying down has been completed. If circumstances make this impractical the memorial will be cordoned off until it is made safe, which will be done in a manner to minimise negative visual effect. The owner/next of kin of the memorial, if known, maybe invoiced by AVDC for the cost of making the memorial safe and administration in organising the works.

### Imminently Dangerous Memorials

Only when a memorial poses a significant risk, such as collapsing, will immediate action be taken by the Council. It will be laid flat immediately, inscription side up, for the safety of the general public and council

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\(^{10}\) URL: [http://www.bucksc.gov.uk/environment/rights-of-way/](http://www.bucksc.gov.uk/environment/rights-of-way/)
operatives. If this is not possible, access will be restricted by whatever means are possible to reduce the risk. AVDC will request the PCC contacts the memorial owner/next of kin and signage will be installed next to the memorial on a stake informing why the memorial has been laid flat. The owner/next of kin of the memorial maybe invoiced for the cost of making the memorial safe and administration to arrange works, (if they can be traced). It is then up to the memorial owner/next of kin to decide on whether to leave it laying flat or repair it at their cost. The headstone will be left lying flat unless the owner chooses to repair it or cannot be traced.

AVDC will only be ‘staking’ headstones for a maximum of 6 months to support unstable memorials, not imminently dangerous memorials, as it is recommended that stakes should not be used routinely to support unsafe headstones. They can be unsightly; the process of staking can present a risk of harm and can also divert attention away from the consideration of the risk presented by a memorial.

The inspections will help all parties build up a profile of memorials within the closed churchyards, prioritise potential risks and provide a focus for the future inspection and assessment processes. Records will be kept digitally.

PCCs that wish to carry out memorial testing themselves in their own churchyards must provide AVDC with written confirmation that their insurers agree with their proposal as well as notify AVDC if any memorials are deemed unstable or imminently dangerous after each test. St Mary’s Church, Marsh Gibbon have requested to carry out their own memorial testing within their churchyard.

6 Communication

Good communication regarding the memorial inspection and assessment process is required to maintain the support and understanding of the local community.

Notices informing the public about forthcoming memorial testing will be displayed at least 28 days prior to commencing the inspection works at entrances and other prominent places throughout the site. The PCC will be informed and asked to notify its members/congregations and AVDC will also publish dates on its website.

AVDC’s Community Spaces will engage with the following in regards to the management and maintenance within the churchyards:

<table>
<thead>
<tr>
<th>Contact</th>
<th>Role/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Diocese of Oxford</td>
<td>Apply for Faculties and inform regarding works</td>
</tr>
<tr>
<td>PCC</td>
<td>Inform of works and ownership of memorial records, liaise with regardining maintenance regimes</td>
</tr>
<tr>
<td>AVDC Legal</td>
<td>Legal Information</td>
</tr>
<tr>
<td>AVDC Engineering Team</td>
<td>Works relating to infrastructure features</td>
</tr>
<tr>
<td>CWGC</td>
<td>Inform of works taking place and if any faults to a CWG</td>
</tr>
<tr>
<td>AVDC Conservation Team</td>
<td>Consent for works undertaken in Conservation Areas and in regards to Listed Buildings consent</td>
</tr>
<tr>
<td>Tree Officers</td>
<td>Tree work. Works to protected trees subject to TPO’s and</td>
</tr>
</tbody>
</table>
### Conservation Area Status

<table>
<thead>
<tr>
<th>Aylesbury Vale District Council</th>
<th>Bucks County Council Rights of Way</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Inform of works within churchyards</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Grounds Maintenance Contractors Sita/JOC</th>
<th>Works within the churchyards</th>
</tr>
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<table>
<thead>
<tr>
<th>Cabinet Member/Local Councillors</th>
<th>Inform of works to be carried out</th>
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</table>

<table>
<thead>
<tr>
<th>Parish and Town Councils</th>
<th>Inform of works to be carried out</th>
</tr>
</thead>
</table>

### Budgets

Basic maintenance costs are currently met by Aylesbury Vale District Council. AVDC is committed to working in partnership with the Parochial Church Councils and other groups to take a balanced approach to keeping the churchyards safe and pleasant places to visit. While maintenance responsibilities are passed to AVDC no funding comes from the Department for Communities and Local Government, the Church, or local taxpayers; this means only essential maintenance can be carried out.

AVDC has identified a number of possible external grant funders (see Appendix 7) which it encourages PCC’s, Churches and other community groups to apply to in order to support major works within the closed churchyards e.g. repairs to walls, footpaths and other infrastructure.

Where works are carried out on memorials then AVDC will endeavour to recover all costs from the memorial owner.
# Appendices

## Appendix 1

### Closed Churchyards Contact Details

<table>
<thead>
<tr>
<th>Organisation/Closed churchyard</th>
<th>Contact details</th>
</tr>
</thead>
<tbody>
<tr>
<td>AVDC Community Spaces</td>
<td><a href="mailto:Communityspaces@aylesburyvaledc.gov.uk">Communityspaces@aylesburyvaledc.gov.uk</a> - 01296 585235</td>
</tr>
<tr>
<td>Diocese of Oxford</td>
<td><a href="mailto:reception@oxford.anglican.org">reception@oxford.anglican.org</a> - 01865 208200</td>
</tr>
</tbody>
</table>
| All Saints Church, Wing | District Councillor: Cllr Netta Glover  
PCC contact: Malcolm Oliver  
Parish Council Clerk: Maxine Hayes wingparishclerk@gmail.com |
| Hunter Street (St Peter & St Paul) Buckingham | District Councillors: Cllrs Simon Cole and Tim Mills  
PCC contact: Revd Will Pearson-Gee  
Manager@buckinghamparishchurch.org.uk  
Town Council Clerk: Mr C Wayman office@buckingham-tc.gov.uk |
| St Mary’s Church, Marsh Gibbon | District Councillor: Cllr Angela MacPherson  
PCC contact: Rev David Hiscock  
Wardens – Roy Lambourne  
Parish Council Clerk: Carole Jackman clerk@marshgibbon-pc.gov.uk |
| St Mary’s Church, Stoke Mandeville | District Councillors: Cllrs Bill Chapple, Michael Collins and Carole Paternoster  
PCC contact: Peter Terry & Rev Jan Henderson  
Church office Tues-Thurs 10am-12pm 01296 615886  
Parish Council Clerk: Sarah Coley clerk@stokemandevilleparishcouncil.org.uk |
| St Mary’s Church, Aylesbury | District Councillor: Cllrs Barbara Russel and Edward Sims  
PCC contact: [http://opencharities.org/charities/1133973](http://opencharities.org/charities/1133973)  
Parish Administrator – Mrs Karen Baker 01296 437641 aylesbury.stmary@virgin.net |
<table>
<thead>
<tr>
<th>All Saints Church, Hulcott</th>
<th>District Councillor:* Cllrs Julie Ward, Allison Harrison, Mary Stamp</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>PCC contact:</strong> Rev Mark Ackford</td>
</tr>
<tr>
<td></td>
<td><a href="http://opencharities.org/charities/1133973">http://opencharities.org/charities/1133973</a></td>
</tr>
<tr>
<td></td>
<td><strong>Email link on webpage:</strong> <a href="http://www.achurchnearyou.com/hulcott-all-saints/">http://www.achurchnearyou.com/hulcott-all-saints/</a></td>
</tr>
<tr>
<td></td>
<td><strong>Wardens:</strong> Pam Masini/Peter Bolton</td>
</tr>
<tr>
<td></td>
<td><strong>Parish Council:</strong> Mrs R. Powell</td>
</tr>
</tbody>
</table>

*See website for latest District Councillor information - [http://www.aylesburyvaledc.gov.uk/councillors/](http://www.aylesburyvaledc.gov.uk/councillors/)
Appendix 2

Responsible Care for Churchyards; A brief practical guide for parishes

Introduction

This Guide was originally prepared by the Church Commissioners’ Pastoral Division in 1993 and subsequently published under the title “Responsible Care for Churchyards – A brief practical guide for parishes”, in association with the Council for the Care of Churches, as a companion guide to the 3rd Edition of The Churchyards Handbook in response to the difficulties many parishes were experiencing in making adequate provision for the churchyards in their care. It was hoped that the guide would help those responsible for churchyard maintenance to take account of some of the main considerations, especially the legislation affecting the closure of churchyards and how it operated in practice. For a more detailed study of churchyards, the reader should refer to the 4th Edition of The Churchyards Handbook edited by Thomas Cocke (ISBN 0715175831) and published by Church House Publishing in April 2001.

Responsibility for maintenance of churchyards

1. Although the legal ownership of a churchyard, either open or closed, is usually vested in the incumbent, his own rights and obligations in respect of it are very limited. Today, under Canon F13, responsibility for maintaining the churchyard in good condition and maintaining fences rests with the parochial church council (PCC), except in the case of a burial ground which has been closed by Order in Council and where the obligation has been passed to the local authority (see paragraphs 14-18), but the PCC can seek financial help from local authorities and other public bodies. The PCC, whatever the funds at its disposal, must take appropriate steps to deal with any dangerous situation, such as an unsafe monument. The incumbent and the PCC should be adequately covered by insurance against any damages which may be awarded in the event of an accident, but the insured will still be required to take all reasonable steps to remedy any defect which is discovered.

2. Individual tombstones remain primarily the responsibility of those who erected them and, after their death, of the heirs-at-law of those commemorated, but the PCC may be liable for injury caused by an unsafe tombstone. It is open to anyone to give money on trust for the upkeep of the churchyard as a whole, though not on trust for the upkeep of a particular grave. Where a monument becomes dangerous or derelict, or where its space is required for a new grave, a faculty may be sought for its removal or resiting. Reasonable efforts must be made to find the owner who must be given the opportunity to remove the monument. The parish should try to be aware of those relatives who regularly tend monuments and memorials as it is important that their concerns are taken into account before embarking on any rearrangements. Equal sensitivity is needed to ensure that churchyards are not cluttered with artificial flowers and inappropriate containers.

3. Cremation is an increasingly popular means for disposing of human remains. It is becoming common for part of a churchyard to be set aside as a Garden of Remembrance, perhaps with a central feature as a focus for meditation, to provide an appropriate place for the commemoration of those cremated and the interment of their ashes. The creation of such an area is a complex operation, involving both the practical requirements of commemoration and maintenance and the historical and landscape character of the churchyard. A faculty will certainly be needed. It is strongly advised to seek the advice of the Diocesan Advisory Committee as early as possible, which can guide the parish in all these aspects.

Fees

4. Any parishioner has the right of burial in the churchyard if there is room, and if it has not been wholly closed for burials by Order in Council. Tables of fees, made by the Church Commissioners with the approval of the General Synod and Parliament under the Ecclesiastical Fees Measure 1986, govern the amounts payable in respect of burials and the erection of monuments and memorials. But the charge for a burial may be much greater than the statutory fee to cover the cost of “extras” such as digging the grave.
5. The statutory fees provide the only regular source of outside support for the maintenance of churchyards. However, in those cases where a faculty is sought for the erection of a monument of a kind which might make it more difficult to keep the churchyard tidy, or for the reservation of a grave space, it has become customary in many dioceses for a faculty to be granted subject to the payment of an additional sum to the PCC to help towards the maintenance of the churchyard. Permission may also be given, at the discretion of the incumbent, for a non-parishioner to be buried, normally on payment of an extra charge to be applied towards the maintenance of the churchyard. It is advisable for a PCC to set up a separate Churchyard Maintenance Fund for churchyard fees. In at least one diocese a special fund has been set up to assist in the repair of important churchyard monuments and it is to be hoped that this example will be followed elsewhere. Money for the purpose may also be obtained from some local authorities (see paragraph 12).

Protection of churchyards

6. Under the Faculty Jurisdiction Measure 1964 the land surrounding a consecrated church, whether or not it is consecrated, and also detached consecrated burial grounds, are subject to the jurisdiction of the Bishop, exercised by the Diocesan Chancellor in the Consistory Court. Where faculty jurisdiction applies, any but very minor alterations require a faculty from the court. A faculty may authorise parts of churchyards to be put to some appropriate and desirable secular use, permit the laying of cables or drains, or grant a right of way, so long as such provision is not inconsistent with the act of consecration.

7. There are, however, other important restrictions on what can take place in a churchyard. Under section 6 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 a PCC is, subject to faculty jurisdiction and guidance from the Chancellor, responsible for all the trees in a churchyard. This includes the felling, lopping and topping of existing trees and the disposal of their timber (any sale proceeds being applied for the maintenance of the church or churchyard) as well as the planting of new trees. (Previously the felling etc. of churchyard trees was subject to the consent of the Diocesan Parsonages Board under section 20 of the Repair of Benefice Buildings Measure 1972.) If a tree is subject to a Tree Preservation Order or located within a Conservation Area, the consent of the local authority is also required before felling, lopping or topping.

8. Any object or structure in a churchyard considered to be an ancient or interesting feature is not only subject to faculty jurisdiction but may also be listed as an Historic Building on its own account. A churchyard, or various features in it, will also be protected if in a Conservation Area or if the churchyard is either scheduled as an Ancient Monument or designated as an area of archaeological importance under the Ancient Monuments and Archaeological Areas Act 1979. Any significant alterations to the churchyard or to structures within it will require a faculty and may also require planning permission from the local authority or consent from the Secretary of State (via English Heritage) for any scheduled monument.

9. Historians have always valued the information they can collect from the monuments to be found in churchyards but conservation and environmental issues are becoming increasingly important. The whole or part of a churchyard may be notified by English Nature as a Site of Special Scientific Interest “by reason of any of its flora, fauna, or geological or physiographical features”; this prohibits any operation within the churchyard which is likely to cause damage. The churchyard is often one of the few areas that has not been affected by chemical fertilisers and pesticides and it is therefore rapidly becoming one of the few places where the environmental development of a locality can be traced.

Extensions to churchyards and new churchyards

10. If an existing churchyard becomes full or if a new church is being provided, there is no obligation upon the parish to provide an extension or a new churchyard. The normal course today is to rely upon the local authority, as the burial authority, to provide ground for burials, if possible next to the churchyard. In appropriate circumstances a burial authority may provide a secular cemetery adjacent to an old churchyard.
or a newly created church and arrange for part of it to be consecrated and supervised by the church authorities.

11. Where it is practicable for the PCC to extend the churchyard or open a new one, land may be acquired for this purpose by the Church Commissioners (until 31 August 2010, after which the diocesan board of finance concerned), under the New Parishes Measure 1943, to vest in the incumbent. The purchase price will have to be found by the parish unless the land is to be donated, and planning permission will be required. Conversely, the New Parishes Measure gives authority to dispose of any unconsecrated churchyard which is no longer needed for its original purpose, unless the Chancellor wishes to deal with the disposal under the authority of a faculty. Consecrated land can normally be dealt with by a Scheme under section 30 of the Pastoral Measure 1983 (see paragraph 20).

Assistance from Local Authorities

12. The Local Government Act 1972 provides that "a burial authority may contribute towards any expenses incurred by any other person in providing or maintaining a cemetery in which the inhabitants of the authority's area may be buried" (section 214(6)). This allows for local authority assistance in the upkeep of churchyards in use. Local authorities and English Heritage also have powers under the Ancient Monuments and Archaeological Areas Act 1979 to contribute towards the expense of preserving ancient monuments and thus may provide assistance for features such as memorials, mausolea, sundials, stocks and lych-gates. The War Memorials (Local Authorities Powers) Act 1923 provides power to incur expenditure on the maintenance of war memorials. Local authorities also have general and specific powers under which they may provide help for the maintenance or improvement of the curtilage of a church which has not been used for burials.

13. Under the Open Spaces Act 1906, local authorities have power to agree to undertake the entire or partial care, management or control of a churchyard without laying it out as a public open space and while permitting burials to continue there. This could be appropriate for a burial ground still in use where there are inadequate funds for maintenance. Normally when a local authority takes over the maintenance and control of a churchyard under the Open Spaces Act, the churchyard will not be permanently transferred but will be maintained by the local authority under an agreement. It is advised that wherever possible such an agreement should be for a set period and should contain express provisions for termination since an agreement of indefinite duration may cause legal difficulties in any matters subsequently affecting the churchyard. Whatever the powers under the Act by which a local authority acquires control of a churchyard, section 10 requires the authority to maintain the churchyard in a good and decent state with a view to enjoyment by the public as an open space. A faculty is still required before the local authority may make alterations or exercise powers of management over such a churchyard but, subject to the terms of the faculty, tombstones may be removed and the ground laid out afresh.

Closure of churchyards

14. If an incumbent and PCC wish a churchyard to be closed, so that the responsibility for maintenance may be transferred to the local authority or so as to terminate the incumbent's responsibility for providing future burial space, an appropriate Order in Council under the Burial Act 1853 (section 1) has to be sought from the Ministry of Justice (Coroners Unit, 5th Floor, Steel House, 11 Tothill Street, London SW1H 9LH). Nearly 500 such Orders were made during the last ten years. An application will be successful if one of the following conditions is met: the churchyard is full; the continuing use of the churchyard for burials may constitute either a risk to public health or be contrary to decency; or the discontinuance of burials may prevent or mitigate nuisance. An application will not normally be considered if it relates to part of the churchyard only.

15. Closure by Order in Council does not remove the legal effects of consecration and the churchyard is still part of the freehold of the incumbent and under faculty jurisdiction. It may still be used for the interment
of ashes provided that no human remains are disturbed and, if the Order permits, it may also be possible for further burials to take place in specified areas.

16. A burial ground closed by Order in Council is subject to the Disused Burial Grounds Act 1884 which prohibits building on such grounds except for the purpose of enlarging the church. This restriction is a major factor to be taken into account if a church extension is planned which encroaches on to the surrounding churchyard. A pastoral or closure scheme under the Pastoral Measure 1983 may, however, provide for development to take place in a churchyard where there have been burials, provided that in cases where burials have taken place within the previous 50 years, no relative or personal representative of the deceased has sustained an objection to the scheme.

17. Once a churchyard is closed the PCC concerned may apply to the local authority to take over its maintenance under the Local Government Act 1972. Section 215 of this Act provides a simple procedure for a PCC to request the local authority at three months' notice to take over the responsibility for future maintenance of the churchyard (including its boundary walls). In many cases, however, three months' notice is too short and can cause budgeting difficulties for the local authority. It has been agreed therefore that twelve months' informal notice should be given of the intention to serve the three months' statutory notice. It should be noted that the Act merely provides for a local authority to take over the maintenance of a closed churchyard at a PCC's request; the onus is on the PCC to ensure that the churchyard is "in decent order and its walls and fences in good repair" (section 215(1)) before responsibility passes to the local authority.

18. Closure under the Burial Act may be the prelude to a subsequent agreement and faculty for a disused ground's conversion by the local authority into a public open space under the Open Spaces Act 1906 (see paragraph 13). Transferring all or part of the PCC's maintenance and repair liability to the local authority does not mean that the churchyard itself is transferred; all other rights, powers, functions and liabilities remain under the control of the incumbent. Churchyards closed in this way may be disposed of under a pastoral or redundancy scheme.

Pastoral Measure 1983

19. A pastoral scheme under section 30 of the Pastoral Measure, prepared by the Church Commissioners on the basis of proposals initiated through the Diocesan Mission Pastoral Committee, may provide for the appropriation of (a) the whole or any part of a churchyard or other land annexed or belonging to a church, (b) any burial ground vested in the incumbent of a benefice which is not annexed to a church, or (c) any other burial ground which is subject to the jurisdiction of the Bishop. The scheme may provide for the disposal of the land for specified uses or without such restriction and will generally remove the legal effects of consecration and free the land from faculty jurisdiction.

20. The Commissioners may also include in any closure scheme (or a pastoral scheme under sections 46 or 47 of the Measure) provisions dealing with the whole or part of the land annexed to a redundant church which is to be appropriated to a new use or demolished. Under such a scheme, the land and building (or the cleared site) may be disposed of by the Commissioners, together or separately, by sale, gift or exchange, or they may be leased by the Diocesan Board of Finance (DBF). Unless the scheme provides otherwise, the building and land will cease to be subject to the legal effects of consecration and, in particular, faculty jurisdiction. If the scheme does not specifically deal with the churchyard, it remains vested in the incumbent, in the care of the PCC and subject to faculty jurisdiction in the usual way, although it may be necessary to provide in the scheme for rights of way or other easements over or in the churchyard to be conferred on the new owner of the redundant church. Where a scheme provides for a redundant church to be vested in the Churches Conservation Trust (or in the DBF) for care and maintenance, the churchyard may also be vested in the Trust (or DBF). Generally, however, it will only be vested in the Trust in exceptional circumstances, e.g. where there are important monuments or memorials or where having a part of the churchyard will greatly assist the Trust in preserving the church building or in presenting it to visitors. A redundant church or land vested in the Trust ceases to be subject to faculty jurisdiction, but otherwise the legal effects of consecration continue to apply to it.
21. Where a scheme provides for the appropriation of a churchyard which has been used for burials to another use, the provisions of section 65 of, and Schedule 6 to, the Measure about the disposal of human remains must be complied with. Notices must be published, as appropriate, setting out the proposals for dealing with human remains and tombstones, and drawing attention to the right of any relatives to undertake the removal of remains and the disposal of tombstones themselves in a manner other than that set out in the notice.

22. The Commonwealth War Graves Commission (2 Marlow Road, Maidenhead, Berks, SL6 7DX) is responsible for marking and maintaining the graves of the members of the forces of the Commonwealth who died in the two world wars. Many of those commemorated lie in special war cemeteries maintained by the Commission, but war graves are also to be found in many parish churchyards. Not all are commemorated by the Commission's distinctive headstones for some are buried in family graves, but the Commission is, nonetheless, concerned to see that they are maintained. In order to ensure that the Commission is aware of possible changes of ownership of churchyards, there is a provision in sections 6(3)(a) and 50(3) of the Measure for notice of draft pastoral and redundancy schemes to be served on the Commission.

**Churchyards - future trends**

23. Although the pressure on both church and secular burial grounds has been relieved this century by the gradual increase in the percentage of cremations, nearly a third of deaths still involves burial. In the present economic climate the resources available to the Church have become increasingly stretched and maintaining a churchyard, particularly in an urban area, may be regarded as a burdensome expense. If a church in an inner city area is designated under the Inner Urban Areas Act 1978, it may be possible for a re-ordering scheme to be made for part or the whole of the surroundings of the church in partnership with the local authority. If the churchyard is full, it may be particularly desirable for it to be closed formally by Order in Council and transferred to the local authority so that it may be looked after at public expense. Even if it has not been used for burials, the local authority may still be prepared to take over control and maintenance under the Open Spaces Act 1906; but the extent to which a local authority responds will depend on its available resources, often now very stretched, and the degree to which it is concerned with the appearance of its open spaces.
Appendix 3
Listed Buildings and Monuments within AVDC Churchyards

Hunter Street, St Peter and St Paul, Buckingham

1  SP6933 BUCKINGHAM  CHURCH STREET
879-1/6/50  Market Cross remains in Old Churchyard (Formerly Listed as: Remain of Market Cross in Old Parish Churchyard)
GV  03/04/73  II
Stump of market cross. Medieval. Limestone. Square base with shaped top corners. Square shaft with chamfered corners and fleurons to chamfers. Cross originally stood in the Horse Fair, West Street, on an open space nearly opposite Castle House, remaining there until c1800, when removed to garden of the Dun Cow, to serve as a pedestal for a sundial. Other moves followed until it returned to Buckingham in 1858. It was finally set up in the Old Churchyard, where it marks the site of west door of medieval parish church, demolished 1775, following second collapse of tower. (Harrison JT: Historical Buckingham: Buckingham: 1909-: 71).

2  SP6933 BUCKINGHAM  CHURCH STREET
879-1/6/55  Old Churchyard revetment wall
GV  II
Revetment wall. C18 and C19, with older origins and C20 repairs. Coursed squared limestone, coursed limestone rubble, some red brick in English garden wall bond and chamfered ironstone coping. Wall borders Mill Lane to east, Manor Street and Church Street to north, and Hunter Street to west, enclosing 3 sides of churchyard. Gateway opposite south end of Church Street near NE corner and to SW corner, at either end of path which crosses churchyard diagonally. Wall varies in height, being highest to west side, where level of Hunter Street is almost 2m below that of churchyard, and lowest to NE corner, where streets are only slightly below level of churchyard. The red brick occurs in southern section of stretch alongside Mill Lane.

3  SP6933 BUCKINGHAM  CHURCH STREET
879-1/6/49  Old Churchyard: Bartlett family vault & associated chest tombs & headstones
GV  II
Family vault, chest tombs and headstones. C18 and early C19. Limestone ashlar vault, ironstone memorials. Large, low rectangular family vault with rusticated quoins forms plinth for pair of chest tombs either end, both with balustraded corners and early C19. Headstones in between and facing Hunter Street to W have segmental tops and 3 winged cherub's heads above scrolled cartouches bearing inscription. One commemorates Esther, wife of Robert Bartlett, died Feb 19 1763. All commemorate various members of Bartlett family. The vault stands close to revetment wall of Old Churchyard (qv) and overlooks Hunter Street to West side.
4  SP6933  BUCKINGHAM  CHURCH STREET
879-1/6/54  Old Churchyard: Box and Ridgeway chest tombs to south of path

II

Pair of chest tombs. Early C19. Portland stone. Chest tomb commemorating Phillip Box is square and relatively high and has plain Doric columns to angles and bears gadrooned urn on tapered base. That to Thomas Ridgeway d.1818 has fluted pilasters to corners, moulded shaped top and inscriptions to other members of the Ridgeway family. Both were formerly railed and are surrounded by York stone slabs.

5  SP6933  BUCKINGHAM  CHURCH STREET
879-1/6/51  Old Churchyard: French tomb near Church Street entrance to south side of

II


6  SP6933  BUCKINGHAM  CHURCH STREET
879-1/6/52  Old Churchyard: Thomas chest tomb approx. 2m north of southern boundary wall

II

Chest tomb. Early C19. Ironstone. Square with balustered corners and formerly bearing urn, now gone, on panelled tapered plinth and double-stepped base. Commemorates Benjamin Thomas d.1792 'for 3 years Rector of Foscott' and other members of his family. The tomb stands beside south boundary wall of Old Churchyard.

7  SP6933  BUCKINGHAM  CHURCH STREET
879-1/6/53  Old Churchyard: group of 5 chest tombs at east side, to south of path

GV  II

Chest tombs. Early C19. Limestone and ironstone. That furthest N of limestone, with panelled pilasters, to Thomas Hearn d.1808; formerly railed. The rest are of ironstone and have balustered corners and worn inscriptions.

8  SP6933  BUCKINGHAM  CHURCH STREET
879-1/6/48  Old Churchyard: three chest tombs to north of path

GV  II

Chest tombs. Early C19. Ironstone with balustered corners. They commemorate various members of Baxter family (furthest east); John Tombs 'Citizen Livery Man and Poulterer of the City of London' d.1812; and Alexander Norton d.1819 (furthest west) and other members of the Norton family; this tomb has paired inscription panels to sides.
ALL Saint's Church, Wing

SP 82 SE  WING  CHURCH STREET
6/96   Shaft of Church-yard cross
GV    II


ST Mary's Church, Marsh Gibbon

SP 6423  MARSH GIBBON  CHURCH STREET(north-west side)
8/39  Churchyard Cross
GV    II


ST Mary's Church, Aylesbury

1  SP 8113 NE  AYLESBURY  ST MARY'S SQUARE
1/68A  South Gateway to St Mary's Churchyard
GV    II

C18. Red brick piers, ashlar cornices and stepped blocking courses, stone urns with gadrooning and spiral fluting. Wrought iron inner pilasters, late C19 or early C20 overthrow. The gateway marks a point along the principal approach to the church via Church Street lined by many fine listed buildings, mainly refronted in the late C18 or early C19.

2  SP 8113 NE  AYLESBURY  ST MARY'S SQUARE
1/68B  East Gateway to St Mary's Churchyard
GV    II

Wrought iron C18 overthrow with lampholder incorporated in C19 wrought iron spear pattern gateway. Low brick and stone piers, partly rendered.

3 Curtilage listed wall to Prebendal House
All Saints Church, Hulcott

1 SP8516 HULCOTT, THE GREEN

Grade II

Reference 2/120

Listing Date 11/10/1985

Description – Lychgate and boundary wall. C. 1860-70 probably by Devey. Lychgate: Oak posts with curved braces supporting plates of steeply pitched tiled roof with scissor brace truss each side. Modern iron gates. Wall red brick with plinth and gabled piers with trefoil headed panels tiled copings between bays of open balustrade walling each opening with a trefoiled head. Weathered copings. 9 bays to S. of lychgate one bay to N.

2 SP8516 HULCOTT, THE GREEN

Grade II

Reference 2/122

Listing Date 11/10/1985

Description – Stable and boundary wall. C19 perhaps by George Devey. Red brick stable with tiled roof and ornamental shaped gable facing the green with diaper brick patterning and circular opening in gable. Attached brick boundary wall about 1m high with semi-circular brick coping continues to churchyard wall. (G.V.).
Appendix 4

Legal Advisory Commission of the General Synod – The Maintenance of Monuments in Closed Churchyards

LEGAL ADVISORY COMMISSION OF THE GENERAL SYNOD
THE MAINTENANCE OF MONUMENTS IN CLOSED CHURCHYARDS

Introduction
1. The purpose of this Opinion is to provide advice upon the extent to which a local authority, taking over responsibility for the maintenance of a churchyard under Section 215 of the Local Government Act 1972, thereby becomes responsible for the safety of monuments within the churchyard.

2. Section 215 of the 1972 Act applies specifically to churchyards closed by an Order in Council. The procedure for making such Orders is contained in Section 1 of the Burial Act 1853. A churchyard may have been entirely disused for many years but it would not on that account be described as a closed churchyard, nor would a churchyard where all further burials have been prohibited by a local Act of Parliament. Where the requisite Order in Council has been made, section 215(1) provides that,

…the parochial church council shall maintain [the churchyard] by keeping it in decent order and its walls and fences in good repair.

A PCC which is liable to maintain a closed churchyard under subsection (1) may however serve upon the appropriate local authority a request under subsection (2)

…to take over the maintenance of the churchyard
in which event, three months after service of the request

…the maintenance of the churchyard shall be taken over by the authority on whom the request is served …

Subsections (2) and (3) contain additional provisions, irrelevant for present purposes, identifying the organ of local government which is actually to assume the maintenance responsibility.

Relevant powers and duties of the parochial church council
3. The PCC is a body corporate which is entirely the creature of legislation. Its powers are derived exclusively from statute, measure or canon. They do not extend to ownership of the churchyard, the legal interest in which is vested elsewhere. Specific powers and duties in relation to the churchyard (as outlined in the following paragraphs) have however devolved upon the PCC.

4. Before the passing of the Parochial Church Councils (Powers) Measure 1921, responsibility for the maintenance of churchyards was borne by the churchwardens pursuant to Canon 85 of 1603. In the case of closed churchyards, Section 18 of the Burial Act 1855 (now repealed, with a saving in respect of the City of London) enabled the churchwardens to recover the resultant expenses from the poor rate.

5. As from 21 July 1921, by the successive operation of Section 4(1)(ii)(c) of the Parochial
Church Councils (Powers) Measure 1921 and Section 4(1)(ii)(c) of the Parochial Church Councils (Powers) Measure 1956, there were transferred to the PCC all the powers and duties of churchwardens in relation to open or closed churchyards.

6. Canon 85 of 1603, in a modernised form, became Canon F 13 of the modern Canons of the Church of England:

1. The churches and chapels in every parish shall be decently kept and from time to time, as occasion may require, shall be well and sufficiently repaired and all things therein shall be maintained in such an orderly and decent fashion as best becomes the House of God.
2. The like care shall be taken that the churchyards be duly fenced, and that the said fences be maintained at the charge of those to whom by law or custom the liability belongs, and that the churchyards be kept in such an orderly and decent manner as becomes consecrated ground.
3. ….

Canon F 14 reflected the transfer of the churchwardens’ responsibilities to the PCC by providing that:

The things appertaining to churches and chapels, and the obligations relating thereto, and to the care and repair of churches, chapels and churchyards referred to in the foregoing Canons shall, so far as the law may from time to time require, be provided and performed in the case of parochial churches and chapels by and at the charge of the parochial church council.

7. The drafting of Section 215(1) of the Local Government Act 1972 is consistent with Canon F 13.2, Canon F 14, and Section 4(1)(ii)(c) of the Parochial Church Councils (Powers) Measure 1956. Whether a churchyard is open for burials, or closed by Order in Council, precisely the same duty to maintain it falls upon the PCC concerned until the obligation to maintain has been taken over pursuant to Section 215(2) of the Act. The content of the duty is expressed throughout the legislation in almost identical terms, there being no material difference between a churchyard being kept ‘in decent order’ and ‘in such an orderly and decent manner as becomes consecrated ground’.

The duty to maintain monuments

8. Churchyard monuments, whether ancient tombs or modern memorials, are not annexed to the freehold but remain private property. The legal complexities concerning the devolution of title to monuments are identified in the Commission’s Opinion, Churchyards: Ownership of Monuments and Trees. The owner of the monument is the party primarily liable for maintaining it in a safe condition, and may have to satisfy a claim for damages if injury is caused by a negligent failure to keep it in good order.

9. In the case of a churchyard maintainable by the PCC under Canon F 13.2 or Section 215(1) of the Local Government Act, a liability for personal injury (secondary to that of the owner) may arise by reason of the failure of the PCC to exercise its powers in relation to a dangerous monument. These powers are also identified in the Commission’s Opinion, Churchyards: Ownership of Monuments and Trees. They are ancillary to the duty to keep the churchyard ‘in decent order’ or ‘in an orderly and decent manner’, a concept which extends beyond its cosmetic appearance. Safety to the public is one necessary aspect of what, in the context of a place of burial, amounts to ‘decency’. Thus in The Vicar and Churchwardens of St Botolph
Without Aldgate v Parishioners of the Same [1892] P 173, the Chancellor of London held that the filling and levelling of a dilapidated vault came within the duty to keep the churchyard in a sanitary and decent order.

10. The existence of the general duty to maintain the churchyard, coupled with the power (under faculty) to make safe any dangerous monument there, constitute a sufficient degree of control for the PCC to be liable as an occupier under legislation considered at paragraph 14 of this Opinion.

**Consequences when maintenance is taken over by a local authority**

11. The drafting of Section 215 of the Local Government Act 1972 demonstrates that, after a request has been made for the appropriate authority to maintain a churchyard, the responsibility of the PCC will in its entirety pass to the authority leaving the PCC without any residual maintenance obligation in respect of that churchyard. So much is clear from the phrase ‘the maintenance of the churchyard shall be taken over’ which appears in subsection (2). The words ‘taken over’ themselves signify a complete transfer from one entity to another. Their meaning is reinforced by the unqualified reference to ‘the maintenance of the churchyard’, which relates back to the expression ‘the parochial church council shall maintain’ in subsection (1). The remaining words in subsection (1), which appear after those just quoted, only serve to define the content of the statutory duty to maintain, and do not create separate self-standing duties with regard to walls or fences.

12. Where notice is properly served under Section 215, it is not open for the local authority to agree with the PCC to limit its maintenance liability or to confine it to particular areas in the churchyard whilst including liability in respect of others. The recent decision in Lydbrook Parochial Church Council v Forest of Dean District Council (heard in Gloucester County Court before District Judge Thomas in December 2003 and noted at (2004) 7 Ecc LJ 495), reinforces the legal position that the duty is one of substantive maintenance and not merely management of decline (see generally R v Burial Board of Bishopwearmouth (1879) 5 QBD 67 at 68) nor is it conditional on adequate funds being available.

13. By Section 215(2) the PCC is therefore wholly divested of its duties under subsection (1), which are also co-extensive with the duties imposed by Canons F 13.2 and F 14. The canonical obligation does not survive the transfer of function under Section 215(2) because the canon only operates ‘so far as the law may from time to time require’. Thus the canon on its own terms is supplanted by the local authority’s legal duty under the Act. It follows that there is nothing of a mandatory nature left for the PCC to do by way of churchyard maintenance.

14. The legal responsibility for injuries arising from the state of land, or property annexed to land, is predicated not upon ownership but occupation. The duty of care is articulated in two Occupiers’ Liability Acts, that of 1957 in respect of those lawfully on the land (styled ‘visitors’), and that of 1984 for trespassers. An occupier is someone who has control over the land in question. Since control may be shared (for example, as between a landlord and a tenant) two or more persons may simultaneously be occupiers. See Wheat v E Lacon & Co Ltd [1966] AC 552. The owner of a monument exercises control over it, and hence owes a duty of care under these statutes. Following a Section 215(2) transfer, the element of control which is the necessary foundation of an occupier’s liability passes from the PCC to the local authority. Even if in particular circumstances a PCC is found voluntarily to have retained some residual control over the churchyard, it is entitled to claim an indemnity or contribution
pursuant to the Civil Liability (Contribution) Act 1978 from the local authority whose breach of duty occasions injury.

15. The operation of Section 215 of the Local Government Act 1972 has no effect upon the primary liability of the owner of a monument. The secondary liability, however, is taken over by the local authority under Section 215(2) as one aspect of the duty to keep the churchyard in decent order. The local authority thereby acquires sufficient standing to apply to the Consistory Court for a faculty empowering it to make safe dangerous monuments. See generally Re Keynsham Cemetery [2003] 1 WLR 66 (Bath and Wells Consistory Court), and Re Welford Road Cemetery (2006) Times 2 November (Court of Arches). Where there is an emergency involving interests of health and safety, the Consistory Court has special powers under Rule 13(10) of the Faculty Jurisdiction Rules 2000 to grant a faculty at short notice.

**Employer's liability**

16. The law as outlined above has further consequences for a local authority whose workforce is engaged in churchyard maintenance. The churchyard thereby becomes a ‘workplace’ for the purposes of the Workplace (Health, Safety and Welfare) Regulations 1992. Under Regulation 4 of those Regulations the employer has duties in relation to the safety of any workplace under his control, while parallel duties are imposed upon any other person having control of a workplace.

17. Where the workplace is a closed churchyard the maintenance of which has been taken over by a local authority, the duty to maintain it, associated with the power to seek any necessary faculty from the Consistory Court, gives rise to the requisite control under Regulation 4. If a dangerous monument constitutes a hazard to the authority’s workforce (whether directly employed or not) the duties under the Regulations require the authority to take the necessary steps to obviate the hazard. In doing so the authority has to plan and conduct its operations in such a way as to comply simultaneously with the Regulations, Section 215(2) of the Local Government Act 1972, and the requirements of the faculty jurisdiction. Compliance with each of these legal regimes is mandatory.

**Conclusion**

18. The legal position may be summarised as follows. The primary responsibility for the safety of a monument in a churchyard closed by Order in Council rests with the owner of the monument. If the owner defaults, a secondary responsibility is imposed upon the body having the duty to maintain the closed churchyard. This may be the PCC, pursuant to Section 215(1) of the Local Government Act 1972. Where, however, a local authority has taken over the maintenance of the churchyard under Section 215(2) its maintenance obligation extends to the safety of the monuments there. In that event the PCC is discharged from further liability as from the time of transfer and, if sued for injury caused by a dangerous monument it is entitled to seek indemnity or contribution from the local authority. January 2007.
Appendix 5

Churchyards Maintenance and Boundary Maps
Appendix 6

Chancellor's Guidance to all Parochial Church Councils Concerning Trees in the Diocese of Oxford pursuant to Section 6(3) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991

1. General

1.1 Every Parochial Church Council has the responsibility of caring for trees in the churchyard, whether the churchyard is open or closed. The responsibility extends to the planting of trees as well as to every aspect of the maintenance of trees, and, ultimately, their felling.

1.2 Trees are a traditional feature of churchyards and are to be valued for their aesthetic and environmental advantages. Some modern uses of churchyards can inadvertently cause damage to established trees, for example, a parking area close to trees can damage roots near the surface of the ground, as can spillage from a fuel heating tank. Conversely, ill-advised tree planting can give rise to damage from roots spreading to a wall of the church, tombstones, a churchyard path, or the nearby highway.

1.3 All this points to the need for the Parochial Church Council to seek and follow expert advice as to the planting, felling, lopping and topping of trees in churchyards. The Parochial Church Council would be well advised to appoint one of their members as their tree officer.

2. Expert Advice

2.1 Many local authorities employ an Arboricultural Officer, who should be able to give advice as to the safety of a tree in a churchyard and as to the type of maintenance work required.

2.2 An Arboricultural Consultant is a person with special experience in the management and assessment of trees, able to give advice on what work should be undertaken. A report from such a consultant would be evidence that the Parochial Church Council has acted in a prudent manner, as is expected generally by the law and by insurance companies. A Consultant will, however, charge for this advisory work.

2.3 An Arboricultural Contractor is more often known as a Tree Surgeon and it is he who will undertake work to a specification prepared by a consultant or on the basis of his own recommendations.

2.4 A Directory of Arboricultural Consultants and Contractors (Tree Surgeons) is maintained by the Arboricultural Association, which is a registered charity concerned with tree care. Listing within the Directory is an assurance that the consultant or contractor has been examined and found to have satisfied a number of standards such as technical knowledge and provision of insurance cover. The address is Arboricultural Association, Ampfield House, Ampfield, Nr. Romsey, Hants. SO51 9PA. The Diocesan Advisory may well have an Arboricultural Consultant who can assist.

3. Inspection of Trees

3.1 The need for a full and regular inspection of trees increases with their age. In order to start on the right footing, every churchyard (open or closed) with any trees more than 10 years old should be inspected within twelve months from the date of issue of this Guidance. The inspection should be carried out by one of the experts mentioned above. The inspecting person should be asked to categorise any work recommended in his report in order of priority, so that it can be undertaken as funds permit.
3.2 Thereafter good practice requires that regular inspections of all mature trees in the churchyard should take place every five years at the time of the Quinquennial Inspection under the Inspection of Churches Measure 1955 with the tree report annexed to the Quinquennial report. This is in fact obligatory in the case of a tree which is subject to a Tree Preservation Order (Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Schedule 3 para3). Any concern expressed by the inspecting architect or surveyor should be referred to an expert, as identified in paragraph 2 above.

3.3 Any specification of work, other than emergency work (which may be authorised by interlocutory faculty on application to the Registrar) is to be sent to the Diocesan Advisory Committee for its advice and comments before the work is undertaken.

4. Planting

4.1 Before planting any trees, the Parochial Church Council should consult an expert identified in paragraph 2 above as to the suitability of any proposed species for the churchyard in question and as to the appropriate location in the churchyard. The Parochial Church Council must also obtain the consent of the Archdeacon. In any case, where a major scheme of planting is proposed, the Parochial Church Council must seek the advice of the Diocesan Advisory Committee and a Faculty from the Chancellor.

5. Felling

5.1 Where the Parochial Church Council is advised by an expert, as identified in paragraph 2 above, that a tree or trees should be felled because of disease or for safety reasons, relating to either buildings or people, a copy of the written report of such expert must be supplied to the Registrar, whose directions in this matter are to be followed. Any direction as to felling is likely to be conditional upon a photograph of the churchyard with the tree or trees concerned being taken and retained, together with the expert's advice, with the parish records.

5.2 If the Parochial Church Council wishes to fell a tree which is sound but is occupying a space in the churchyard required for some other use, then the Parochial Church Council must seek the advice of the Diocesan Advisory Committee and a Faculty from the Chancellor in the usual way.

6. Lopping and Topping

6.1 All trees are capable of shedding deadwood and can consequently be hazardous to persons using the churchyard. Beech, Ash, Horse Chestnut and Sycamore are especially prone to this. Standard remedial work such as the removal of split and hanging limbs and major deadwood (more than 50mm in diameter) may be carried out as advised by an Arboricultural Contractor (Tree Surgeon) in the Directory of the Arboricultural Association or approved by the Diocesan Advisory Committee after reference to the Registrar for directions.

6.2 Other works of tree surgery, for example, cable bracing, crown reduction and removal of major limbs, must be recommended in a written report by an expert as identified in paragraph 2 above. The report must be submitted to the Registrar whose directions are to be followed.
7. **Town and Country Planning Act 1990**

7.1 Where any tree is subject to a Tree Preservation Order made under Section 198 of this Act, or is in a Conservation Area in respect of which no Tree Preservation Order is for the time being in force, restrictions are imposed by the Act upon cutting down, topping, lopping and other acts to trees in question (see Sections 198 and 211). They do not apply where the tree is dying, dead or has become dangerous (Sections 198 (6) (a)). In any other case, the consent of the Local Planning Authority, as well as any other authorisation mentioned above, will have to be obtained before anything is done to the trees.

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### Appendix 7

**Possible Grant Funders and Closed Churchyard Eligibility**

<table>
<thead>
<tr>
<th>Funding Body (list in highest grant value order)</th>
<th>Details</th>
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<tr>
<td><strong>Heritage Lottery Fund</strong></td>
<td>Range of grant programmes with grants from £3,000 to £5 million available. Complete either the expression of interest form or the project enquiry form when you know which programme you wish to apply under. Please register online first. <strong>Website:</strong> <a href="http://www.hlf.org.uk/Pages/Home.aspx">http://www.hlf.org.uk/Pages/Home.aspx</a></td>
</tr>
<tr>
<td><strong>English Heritage</strong></td>
<td>A number of grant schemes to assist with the cost of caring for all sorts of buildings, monuments and landscapes. To find out if your project is eligible please read the Guidance Notes online first. <strong>Website:</strong> <a href="http://www.english-heritage.org.uk/professional/funding/grants/">http://www.english-heritage.org.uk/professional/funding/grants/</a></td>
</tr>
<tr>
<td><strong>SITA Trust</strong></td>
<td>Grants are available up to £60,000 under Core Funding or £20,000 under Fast Track Funding. Please read the Application Guide for project eligibility online first. Please note that only St Mary’s Church, Aylesbury, All Saints Church, Hulcott and St Mary’s Church, Stoke Mandeville would be eligible for this funding as they fall within the funding zone (three mile radius of SITA waste processing location). <strong>Website:</strong> <a href="http://www.sitatrust.org.uk/p/community-funding">http://www.sitatrust.org.uk/p/community-funding</a></td>
</tr>
<tr>
<td><strong>WREN – Resourcing your projects</strong></td>
<td>Grants are available through the Main Grant Scheme (£15,001 to £75,000) and the Small Grant Scheme (£2,000 to £15,000). Please read the guidance notes for eligibility. Please note that only All Saints Church, Wing would be eligible for this funding as they fall within the funding zone (ten mile radius of landfill site). <strong>Website:</strong> <a href="http://www.wren.org.uk/">http://www.wren.org.uk/</a></td>
</tr>
<tr>
<td><strong>Biffa Award</strong></td>
<td>Grants are available through the Main Grant Scheme (£10,000 to £50,000) and the Small Grant Scheme (£250 to £10,000). Please read guidance notes for eligibility. Please note that only All Saints Church, Wing would be eligible for this funding as they fall within the funding zone (ten mile radius of landfill site). <strong>Website:</strong> <a href="http://www.biffa-award.org/main-grants-scheme">http://www.biffa-award.org/main-grants-scheme</a></td>
</tr>
<tr>
<td><strong>All Churches Trust Limited</strong></td>
<td>Grants will be considered in response to appeals in support of Churches, Church establishments, religious charities and charities preserving UK heritage. Please read the online guidance for eligibility. <strong>Website:</strong> <a href="http://www.allchurches.co.uk/">http://www.allchurches.co.uk/</a></td>
</tr>
<tr>
<td><strong>The Ironmongers Company</strong></td>
<td>Grants are available of up to £5,000 to support the conservation of historic ironwork or the creation of decorative iron or steel work. Please read the application procedure for eligibility. Website: <a href="http://www.ironmongers.org/charity_iron_projects.htm">http://www.ironmongers.org/charity_iron_projects.htm</a></td>
</tr>
<tr>
<td><strong>The Co-Operative Membership Community Fund</strong></td>
<td>Grants available between £100 to £2,000 for Community Groups. Please read the online funding guidance for eligibility. Website: <a href="http://www.co-operative.coop/communityfund">http://www.co-operative.coop/communityfund</a></td>
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### Additional Funding Information

<table>
<thead>
<tr>
<th>Funding Body</th>
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<tr>
<td><strong>Funds for Historic Buildings</strong></td>
<td><a href="http://www.fundsforhistoricbuildings.org.uk/">http://www.fundsforhistoricbuildings.org.uk/</a></td>
</tr>
</tbody>
</table>
| **National Churches Trust** | **Website:** [http://nationalchurchestrust.org/home.php](http://nationalchurchestrust.org/home.php)  
WREN, the Landfill Communities Fund, used to give funding for churches through the Bucks Historic Churches Trust, but they now use the National Churches Trust to distribute this.
Appendix 8

Photographs

St Marys Church, Aylesbury

Churchyard of St Peter and St Paul Churchyard, Buckingham

St Marys Church, Marsh Gibbon
St Marys Church, Stoke Mandeville

All Saints Church, Wing

All Saints Church, Hulcott