

## **Gary Moor Parish Council Policy: Payment of Churchyard Maintenance Grants**

### **Background**

Over the past years there has been regular debate as to whether a Town or Parish Council can under its powers of the Local Government Acts contribute towards the maintenance of its Church of England graveyards.

The Local Government Act (LGA) of 1894 Sec 6 (1) & Sec 8, transferred powers from the Church to the newly formed Parish Councils. Those powers are to:

- Hold & manage parish property, and do any works including to maintain and improve it, and contribute to expenses (*but NOT property relating to affairs of the church or held for an ecclesiastical charity*).

In practice this includes the church building itself, the churchyard and the church hall.

- **Exceptions**

As is often the case, there are specific exceptions which came about as a result of the LGA 1972. These are:

- **Sec 215 LGA 1972** - allows a council to maintain a closed churchyard.
- **Sec 214 (6) LGA 1972** - allows a burial authority to contribute to anyone else providing a cemetery (e.g. church, temple, synagogue.)

Whilst it is widely accepted now that a parish council can legally maintain a closed churchyard, there remains a difference of opinion amongst some legal professionals over whether a parish council is permitted to maintain or contribute to the maintenance of an open churchyard. The debate being, 'does Sec 214 (6) of the LGA 1972 override the provisions of the 1894 Act?'

Current guidance from the National Association of Local Councils (NALC) (Legal Briefing L01-18) accepts that, in the absence of case law and specific clarification from government, there is no definitive answer to the question as to whether a council can legitimately maintain or contribute to the maintenance of an open churchyard. This may only be resolved if there is a judicial review on the point, a view also shared by the Somerset Association of Local Councils (SALC).

In December 2019 NALC issued a Legal Update in response to the 2018 ChurchCare document 'Local Authority Investment in Church Property'. In their opinion the free resource section of the LGA 1972 (Sec 137) could not be used towards this use. Their reason for this is that Sec 8 of the LGA 1894 prohibits expenditure by local Councils on property relating to the affairs of church.

### **The present situation and alternative legal advice**

This view expressed by NALC is not supported by Central Government as they say that Sec 137 of the LGA 1972 is not overridden by the 1894 Act and the fact that Councils have for many years contributed towards the cost of churchyard maintenance

without any apparent challenge or questions by the appointed external auditors to these Councils.

Central Government stand that this legislation is valid and further new legislation is not necessary.

Further independent legal advice on this matter is given by Paul Clayden consultant and author of many reference books relating to law and procedures for Town and Parish Councils. It is his opinion that Sec 137 of the LGA 1972 gives a very wide power to spend money on matters of general benefit to the inhabitants and it would be strange if that power did not extend to benefiting a church / churchyard maintenance of local importance.

He further supports the view that this has not been challenged by the appointed external auditors.

Paul Clayden also gives the view that a Council can contribute to the cost of churchyard maintenance under Sec 214(6) of the LGA 1972. This provision overrides the provision of Sec 8 of the LGA 1894.

Furthermore it should be considered that if the Parish churchyard be closed then the Parish Council will be served a written request to take over the maintenance of the churchyard LGA 1972 Sec 215 (2).

### **Resolution by Cary Moor Parish Council**

The Parish Council has debated this issue and supports the opinions of Central Government and that of the independent legal adviser Paul Clayden.

The PC resolved at minute ref. 23/05 to make an annual grant towards the maintenance of the Parish churchyards as burial grounds, which are of benefit to the inhabitants of the area. This is specifically allowed under the Open Spaces Act 1906 Sec 9-12. It is also supported by the LGA 1972 Sec 111, which again allows any council to support an area where local inhabitants are buried.

Should Central Government issue further advice/guidance on the matter then this would be considered by the PC and a further resolution made accordingly.

### **Minute References:**

**June 2021, item 21/57:** The Annual Internal Audit Report, carried out by Mr S Pritchard, was received with observations noted and agreed. There were two areas of particular note by the Auditor; churchyard maintenance grants and Community Infrastructure Levies (CIL)/S137 grants.

Churchyard Maintenance Grants. The Clerk previously circulated the National Association of Local Council's (NALC) briefing sheet L01-18 – Financial Assistance the Church, to all councillors for consideration prior to the meeting. There followed a full discussion on churchyard maintenance grants. Councillors agreed that such payments help the four Church PCC's to maintain burial facilities for parishioners of all religions within the four parishes covered by the PC, failing which, such responsibility and cost would fall on the PC. Hence community benefit and an overall

cost saving is provided by the four Church PCC's providing such facilities with the assistance of the PC's annual grant. Councillors also considered that a well maintained churchyard enhanced the visual amenity for its parishioners.

**RESOLVED:** Councillors, having weighed up the risks and benefits, agreed to continue to provide churchyard maintenance grants.

**Annex 2 - Supporting notes to the Precept 2022/23 agreed in January 2022 at item 22/10:** S8 of the Local Government prohibits a parish council from spending money on “property relating to the affairs of the church”, however, there is much discussion around S8 and it has become a grey area in recent years. The PC agreed that such payments help the four Church PCC's to maintain burial facilities for parishioners within all four parishes covered by the PC, failing which such responsibility, and cost, would fall on the PC. Hence community benefit and an overall cost saving is provided by the four Church PCC's providing such facilities with the assistance of the PC's annual grant. (As S137 cannot be used to get around a restriction in legislation, churchyard maintenance grants are not categorised as S137 spend).

**June 2022, item 22/46.** The Annual Internal Audit Report, carried out by Mr S Pritchard, was received with observations discussed at length. Councillors agreed unanimously that their resolution to continue to pay churchyard maintenance grants to Alford, Lovington, North Barrow and South Barrow Parochial Church Councils was an informed decision, having weighed up the risks and benefits and following advice sought, received and considered. The same position applied to the use of Community Infrastructure Levies arising from the Mulberry Lane development in Lovington towards the cost of providing an accessible WC, servery and gallery at Lovington church where specific advice had been sought, received and considered from SSDC.  
*(Cllr Roberts returned to the room at 4.10pm)*

**January 2023, item 23/05. RESOLVED:** The Clerk previously circulated the draft policy, which was approved unanimously. The Policy would be reviewed annually when setting the budget, prior to submitting the precept return.

### **Payment Process**

Payment of churchyard maintenance grants will only be made after receipt of a copy of the previous year's church accounts, which should itemise churchyard income and expenditure in sufficient detail for the PC to be able to understand how its previous grant had been used. Grants will be paid as soon as the copy of the account has reached the Clerk, which should in any case be by the beginning of October of each year.