

DIOCESE OF ST ALBANS
CHANCELLOR'S GUIDANCE ON RE-USE OF CHURCHYARDS FOR
BURIALS

Introduction

1. This guidance as to the re-use of churchyards for burials is issued by the Chancellor after consultation with the Archdeacons, the Diocesan Advisory Committee ("DAC") and Registrar. This guidance supersedes and previous guidance on the subject.

Background

2. Historically, graves would have been unmarked and parish churchyards used for reburial many times. Since about mid-19th century the marking of individual graves has made such re-use less common. Legislation governing local authority cemeteries prevents reburials.
3. The past decade has seen a noticeable increase in the pressure of space for burials or cremated remains and a concomitant increase in the number of applications for reserved grave spaces. Space is becoming a premium. Local authorities are increasingly closing urban civic cemeteries. Many Church of England churchyards are closed by Order in Council preventing further burials (unless already reserved). Parochial Church Councils are increasingly struggling to maintain their existing commitments and responsibilities without the added pressure of finding more space for burials.

Closure

4. When a churchyard becomes full, one option is to apply for an Order in Council to close the churchyard. Responsibility for maintenance then passes to the local authority if responsibility has been formally transferred under section 215 of the Local Government Act 1972 (though occupier's liability, e.g. for safety in connection with trees) may remain with the relevant Parochial Church Council ("PCC") even if it has. There is a view that many local authorities take on this responsibility without enthusiasm and do not do the job as well as the PCC would. In many instances some PCCs with closed churchyards negotiate to have money that the local authority would spend and then do the job themselves. Responsibility will remain with the PCC where no formal transfer has taken place. Note also that where closure has occurred cremated remains may still be interred under authority of a faculty.

Options and Issues

5. There are a number of possibilities where a churchyard is full or filling up:
 - Reserve spaces. This merely hastens the declining available spaces and may make matters worse if, for example, the holder of a reserved space moves away or changes circumstances without informing the PCC;

- Buy more land. This may be practically impossible for many PCCs whether on grounds of finance or available land;
- Close the churchyard. Many local parishioners, particularly in rural areas, have a strong community attachment to their own churchyard and wish to be buried there, rather than in some distant municipal cemetery, particularly where those near and dear are already buried in the local churchyard. There are other issues with closed churchyards mentioned above.
- Allow re-use and re-burial.

Diocesan Policy on Re-Use and Re-Burial in Churchyards

6. The following guidance is issued in light of the foregoing to all incumbents, ministers, priests, priests in charge, curates and PCCs.
7. Reburial has already occurred historically in many churchyards. Many dioceses permit reburial such as Coventry, Ely, Leicester, Oxford, Rochester, Southwark, and Portsmouth. Successive governments in recent times have been concerned about the shortage of space for burials and encourage re-use.
8. Unless the churchyard has been closed¹ then it is perfectly lawful to re-use a churchyard that has already been used.
9. Any proposals to re-use an existing and unclosed churchyard should be widely debated within the parish.
10. All the options should be considered including acquisition of additional land. If this is not possible or practicable a carefully prepared and structured coherent plan for re-use is to be encouraged.
11. A faculty is required for the removal of individual headstones and memorials or the disturbance of existing burials. However, a PCC may apply for a faculty to re-use and re-order the whole or a specified area of the churchyard following the guidance in paragraphs 12 and 13 below. This will avoid the need for repeated individual permissions in future years provided the individual proposal is part of or consistent with the already approved and carefully preserved plan.
12. Thus the making and maintenance of a careful, accurate and detailed plan of the churchyard and proposals is essential.
13. The plan should give careful consideration to the following:
 - Using existing space or graves: even if the churchyard is full, or almost full, there may be available space between burials which does not involve disturbing existing graves or burials. Church records should

¹ This can be checked by contacting the Ministry of Justice Coroners and Burials Division, 3rd Floor, 102 Petty France, London SW1H 9AJ and by email at coroners@justice.gsi.gov.uk or telephone 0203 334 6390.

also indicate where plots are reserved by faculty or where family graves, tombs or vaults permit additions.

- Zoning: any plan should give consideration to re-use of particular areas of the churchyard, especially if they have older burials of 100 years or more. Areas already ear-marked for future burials which have been reserved by faculty should also be avoided. The proposed area should be assessed as suitable by a competent local undertaker.
- Headstones and memorials: their removal will always require a faculty. In addition
 - i. since they remain the property of those who originally paid for them, every effort (if necessary by advertisement) should be made to trace and consult them before removal.
 - ii. Any faculty will almost invariably require the safeguarding and preservation of the headstone or memorial, e.g. by standing or laying them in an appropriate place. (Note that standing headstones against a churchyard wall is likely to present problems of maintenance to the wall and possible damage.)
 - iii. Removal of those less than 100 years should be avoided since at less than that age their removal may give rise to distress and offence and at least offend sensibilities. The period may vary in the case of each churchyard to be slightly less or even more depending on soil conditions and other factors such as existing and current local connections.
 - iv. Graves older than 75 years where they relate to a family still well-established in the locality or one which is regularly visited may also require particular consideration and sensitivity.
 - v. War graves or those with a War Graves Commission headstone, those of especial aesthetic, artistic or historic significance, listed monuments or otherwise unusual should not generally be disturbed.
 - vi. Careful diagrammatic and photographic records of the churchyard and memorials or headstones to be removed (including transcriptions of any inscriptions) should be made and preserved as part of the church and possibly county records before and after removal.
- Areas close to church buildings, walls and other structures or trees (actual or projected) give rise to special concern:
 - i. Space for work and scaffolding should be left,
 - ii. Consideration should be given to the possibility of pipes and cables being laid underground and potential root damage to trees or hedges,
 - iii. Appropriate style for new headstones should be in keeping with the close association to existing structures,,

- iv. Consideration should also be given to leaving space in relevant areas in case an extension is required to the church or church buildings in the future.
- Care should be taken to avoid disturbing existing buried remains as far as possible. Where buried remains are discovered, they must be re-buried decently and reverently under the supervision of the incumbent or similar Clerk in Holy Orders usually in the deepened base before any new burial is added. The associated health and safety and aesthetic considerations should also be given careful consideration.
- Cremated remains: any proposal should also give consideration to and make provision to incorporate any existing or proposed plans for a garden of remembrance or other space for cremated remains.
- Maintenance: the plan should also give thought to how and in what manner any space so reused is to be maintained and cared for, along with the rest of the churchyard.

Advice

14. Advice and assistance with the foregoing can always be sought from the Archdeacon or Secretary to the DAC.

Roger Kaye QC, Ch
Feast of All Saints
1 November 2012