



**RECREATION AND COMMUNITY SERVICES
OVERVIEW AND SCRUTINY COMMITTEE**

MEMORIAL SAFETY REVIEW

**FIRST REPORT:
MUNICIPAL YEAR 2006-07**

Maidstone Borough Council

Recreation and Community Services Overview and Scrutiny Committee

Memorial Safety Review

1. Introduction

At their meeting on 20 June 2006, members of the Recreation and Community Services Overview and Scrutiny Committee considered a reference from the Environment and Transportation Overview and Scrutiny Committee regarding memorial safety at cemeteries. Following this discussion, the committee agreed to place the issue of memorial safety on the future work programme as a one-off review.

Additionally, the Cabinet Member for Leisure and Culture had a decision on the September – December 2006 Forward Plan regarding Memorial Safety in Closed Churchyards, and the local press has featured articles and letters denouncing memorial safety work in Maidstone Cemetery. The Committee hope that this report will feed into that decision.

Evidence for the review was sought from the Facility Management Officer, Tim Jefferson, and the Parks and Open Spaces Officer, Clare Lanes, who were interviewed at the committee's meeting on 19 September 2006. Members of the committee also undertook a visit to Maidstone Cemetery to view the memorial safety work being carried out there.

2. Background

The council is responsible for safety in cemeteries and churchyards under the following legislation:

Health and Safety at Work etc Act 1974

The council has duties under the 1974 Act to ensure the health, safety and welfare at work of their employees, as far as is reasonably practicable. In addition, the Management of Health and Safety at Work Regulations 1999, made under the 1974 Act, impose an obligation on an employer to assess the risks to employees and non-employees which arise out of the employer's undertaking. In the case of burial authorities who are employers, this includes a duty to assess the risk from all cemetery structures, including memorials.

Occupiers Liability Acts 1957 and 1984

Civil liability is imposed on 'the occupier' which includes the burial authority (in this case Maidstone Borough Council), as well as the owner of the memorial.

Local Authorities' Cemeteries Order 1977

Article 3(2)b empowers a burial authority to take any action that is necessary to remove a danger that arises by means of the condition of a vault, tombstone or other memorial. The burial authority has an obligation to keep the cemetery in good order and repair (Article 4(1)).

In 2004, the Chair of the Health and Safety Commission noted that, between 1999 and 2004, 21 serious accidents to members of the public involving unstable memorials had occurred, including 3 fatalities. Following the death of a child caused by an unsafe memorial in Harrogate, North Yorkshire, the Health and Safety Executive (HSE) reminded burial authorities of their responsibilities regarding memorial safety by writing to all Chief Executives in the country.

Maidstone Borough Council ('the council' hereafter) is responsible for the management of the following cemeteries and burial areas in the borough:

- Maidstone Cemetery

Closed Churchyardsⁱ:

- All Saints – Hollingbourne
- All Saints – Loose
- All Saints – Maidstone
- All Saints – Ulcombe
- St Nicholas' – Boughton Mulherbe
- St Mary's – Sutton Valence
- St Peter's – Bredhurst
- St Steven's – Tovil

Burial Ground areas:

- Union Street/Brewer Street
- Trinity Church
- Palace Avenue – rear of Carriage Museum

There are approximately 16,000 memorials in Maidstone Cemetery, and 3,000 in the closed churchyards and other burial areas. As the body responsible for the management of the churchyards the council had, from a health and safety perspective, a duty of care to protect both operatives working in and visitors to the churchyards from the potential danger of unstable memorials.

3. Current Actions

Following the involvement of the HSE, the council developed a plan that is considered to be best practice with regards to memorial safety. The plan included actions taken to test memorial safety, the sensitivity with which the issue is dealt with, and steps taken to inform residents and grave-owners. Further information on best practice is detailed later in this report.

It was reported to the committee that the council had undertaken safety inspections of approximately 16,000 memorials in Maidstone Cemetery. Memorials are tested by "risk assessing the condition of each memorial, noting the adjacent ground conditions and taking a common sense approach to establish the real safety risks present. Where it is not possible to make a final determination of the memorials stability by using the above approach, then a force testing machine will be used to ensure the memorial can withstand the industry standard force of 35kg (about 77lb)"ⁱⁱ.

Where necessary, action has been taken to make memorials safe. This has been done in a number of ways, including:

- Installing temporary support devices;
- Laying memorials down; or
- Cordoning off memorials.

Measures have been taken to inform residents of the work being carried out. Notices containing frequently asked questions have been placed at entrances, water taps and on posts, and cemetery staff are trained to answer questions from the public. The last known address of the grave owner has also been written to, although 70-80% of these letters were returned saying that the person was unknown at that address, emphasising the need for publicity and good lines of communication.

4. Future Actions

At their meeting on 19 September 2006, the committee heard that work was soon to commence on memorial safety testing in closed churchyards, though this was dependent on the Diocese Court in Canterbury granting a faculty to the council in order that work could be carried out in closed churchyards, as closed churchyards are consecrated ground. The work is to be phased according to several factors:

- Frequency of use;
- How regularly the churchyard is visited;
- If the churchyard was used as a thoroughfare;
- The size of the memorials; and
- The number of memorials.

The Facility Management Officer suggested that the age of the memorials was not such an important factor, as, in his experience, up to 80% of lawn memorials failed safety tests, compared to just 50% of traditional memorials. This is reaffirmed by guidance from the Local Government Ombudsman, which suggests that lawn memorials are over three times more likely to fail safety tests than Victorian memorialsⁱⁱⁱ.

In order to reassure and inform the public about the work being carried out, advertisements would be placed in the local press, and information would be circulated to funeral directors and other relevant parties. Methods used in Maidstone Cemetery would also be utilised, with appropriately trained churchyard staff, and information clearly displayed.

5. Site Visit

Members of the committee were accompanied on a visit to Maidstone Cemetery by the Facility Management Officer, Tim Jefferson, and the Bereavement Services Officer, Debra Herbert-Evers, on 10 October 2006. During the course of the visit, members were shown examples of completed memorial safety work, both on traditional memorials and lawn memorials, as well as examples of make-safe devices and memorials that had been laid down for safety. Members were pleased to note that the cemetery looked neat and tidy, with the make-safe devices, whilst not ideal, appearing far less intrusive than had been anticipated. A member also commented that they felt this "emotive and distressing issue is being dealt with in a sensitive and orderly way".

Members did, on the other hand, express concern about the cost to the council of the memorial safety work, and suggested that more could be done to deter young people from using the cemetery as a play area.

6. Funding

A key area of concern to the committee was the issue of funding for memorial testing, make-safe procedures, and memorial reinstatement. In the case of closed churchyards, basic general maintenance funds are currently allocated to keep closed churchyards in order, but no additional funds are available for memorial inspection. The committee was informed that a report due to go to cabinet in November 2006 would present a case for additional funding.

Officers informed the committee that, in Maidstone Cemetery, a risk assessment and memorial test would cost £3 and, if necessary, a make-safe device would cost a further £3.75. It was anticipated that reinstatement work in the closed churchyards could be more costly per memorial than the work in Maidstone Cemetery because of the broader range of memorials, and in particular, the large and unique memorials. It was suggested in the course of discussion that these more unique memorials should be reinstated rather than laid down due to their historical significance, and that this would be in line with the wishes of the Diocesan Court. It was also suggested that 'Friends of Closed Churchyards' type groups could be sought out to assist in funding where particularly old memorials existed. The Facility Management Officer said that, whilst such groups did exist and could obtain significant funds, they were usually more involved when landmarks within churchyards existed (such as at Highgate Cemetery in London). The Parks and Open Spaces Officer informed the committee that a group such as this did exist for St Stephen's churchyard in Tovil, which could be a potential source of funding.

If a memorial is found to be unsafe, responsibility for its repair lies, in the first instance, with the grave owner, if they can be found. The council sets a standard charge of £75 for this work to be carried out (except in the case of large or complex memorials), or the owner is permitted to use

a stonemason of their choice, provided the work carried out meets with National Association of Memorial Mason (NAMM) standards. This is considered by the Local Government Ombudsman (LGO) to be good administrative practice. Where the grave owner cannot be traced (as is particularly common in the case of memorials in closed churchyards), or where the grave owner cannot or will not pay for the repair work, responsibility falls to the burial authority or the occupier – that is, the council. In these cases, the main risk would be removed either by applying a make-safe device, laying the memorial down or by cordoning off the memorial. Whilst not ideal, this does not go against good practice guidelines, as the LGO states that “we do not consider that councils are required, as good administrative practice, to meet the cost of remedial works”^{iv}. The option to reinstate memorials would lie with the relevant cabinet member, as additional funding would be required for this.

7. Best Practice

The LGO’s Special Report, *Memorial Safety in Local Authority Cemeteries – Advice and Guidance*, outlines a number of points that are considered to be good practice with regards to memorial safety policy.

It is considered good practice to notify owners of burial rights individually before testing is carried out, though it is accepted that this may not be possible where up-to-date records are not available, or where urgent action is needed. In the case of the council, attempts have been made to contact the owners of graves in Maidstone Cemetery, but this has had very limited success. In closed churchyards, attempts to contact grave owners will be made where church records exist, but initial enquiries suggest that these records will be limited. The council also attempts to contact grave owners when memorials fail safety tests, and this is considered good practice by the LGO.

The LGO also suggests that councils should have a policy for prior public notification of the intention to carry out testing, and that it is maladministration to fail to inform in advance of testing. It is considered essential that notices are displayed in the cemeteries themselves, and as good practice to use other methods, such as local radio, local press, the council’s website, and discussions with interest groups, such as memorial masons and undertakers. This should be done at least 4 weeks in advance of testing taking place. During its review, members were informed that notices had been placed in prominent positions throughout Maidstone Cemetery, including at entrances and on taps, and that staff had been trained to answer questions on the testing. Officers were also aware of the importance of using local media. Members felt, however, that more could be done to inform residents of the work being carried out, and to present this work in a positive light, as press coverage had been very negative and controversial. The use of photographs and the council’s website were considered to be of particular importance.

A third area of good practice is suggested to be the posting of lists of those memorials that have failed the tests, both in the cemeteries or churchyards, and on the council’s website, as is practiced by Coventry City

Council. The memorials themselves should have notices displayed on them, or nearby, featuring the relevant council contact details and the period in which the council must be contacted.

It is considered inappropriate to lay down all memorials that fail safety testing. In this area, the council again meets the LGO good practice guidelines, with a variety of actions taken according to the severity of the problem.

Powys County Council's Memorial Safety Policy is highlighted in the LGO's Special Report as an example of good practice. The policy states that repaired memorials, or memorials that pass the safety tests, are subject to re-inspection as part of a five-year rolling programme. This conforms to the LGO's good practice guidelines, which suggest that memorials should be tested under a rolling programme, with a maximum of five years between inspections. The LGO also considers it maladministration for councils not to keep records of safety tests carried out. When interviewed, the Facility Management Officer confirmed that a similar rolling programme was being considered for Maidstone.

8. Recommendations

The committee recommends:

That

- (a) alternative sources of funding be sought for the testing and reinstatement of historic memorials;
- (b) 'before' and 'after' photographs be placed on the council's website to demonstrate the value of the memorial safety work;
- (c) information, including photographs in a 'storyboard' format, be placed on the council website, in the Borough Update, and on a notice-board at Maidstone Cemetery;
- (d) lists of memorials that have failed safety tests be posted on the council website and on cemetery or churchyard notice boards;
- (e) a five-year rolling programme of testing be introduced in cemeteries, closed churchyards and other burial areas in the borough.

ⁱ "A churchyard is sometimes described as closed in the non-legal sense that burials have been discontinued there. But the term closed may be used in a legal sense to mean that a churchyard has been closed for further burials by an Order in Council.": www.peterboroughdiocesanregistry.co.uk/churchyards.html, 30.09.06

ⁱⁱ *Information and Frequently Asked Questions* Maidstone Borough Council Bereavement Services, <http://www.digitalmaidstone.co.uk/digitalmaidstone/Default.aspx?page=1321>, 03.10.06

ⁱⁱⁱ *Special Report: Memorial Safety in Local Authority Cemeteries - Advice and Guidance* The Local Government Ombudsman, March 2006, p.13.

^{iv} *Special Report: Memorial Safety in Local Authority Cemeteries – Advice and Guidance* The Local Government Ombudsman, March 2006, p.29.