



Brixham Town Council

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Town Clerk: Mrs Tracy Hallett

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Contact Officer	Tracy Hallett	Job Title	Town Clerk
Report Title	St. Mary's Churchyard		

Summary

An application has been received from the PCC to close the churchyard at St. Mary's. The application outlines their grounds for doing so. There is no room for new graves with the last burial taking place on 17th August 1999. The Town Council is obliged to consider the request within 3 months of the notice. Research has been carried out and it is considered that the regular maintenance on the Town Council would be a financial burden with no opportunity to offer a burial site for the community of Brixham.

It should be noted that the Non Conformist Church have asked for advice on how they go about closing their Churchyard. According to the information available, it is understood that a statutory process for discontinuing burials in non-Church of England churchyards is not required as burial rights, in accordance to the Burial Act 1853, do not apply.

Recommendation

Whilst Brixham Town Council has the power to provide burial grounds, cemeteries and crematoria, it is recommended that Brixham Town Council advise Brixham Mission Community that it resolves not to take on the maintenance responsibilities and thereby all responsibilities fall to Torbay Council.

It is further recommended that Brixham Town Council continue to work with Torbay Council and urge them to find a satisfactory solution to the increasing issue of lack of availability for interment grounds.

Legislation

Section 215 of the Local Government Act 1972, a Parochial Church Council (PCC) can serve written request to the local authority, upon three months' notice, to assume responsibility for the maintenance of a closed churchyard, or specific parts of a churchyard which are deemed to be closed.

A churchyard is closed 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
- The discontinuance of burials may prevent or mitigate nuisance

Initially the obligation for a closed churchyard is passed to the Parish or Town Council, who may decide to accept the obligation or decline. In the instance of a Parish or Town

Council declining to maintain the churchyard, the obligation is then passed to the Local Authority or District Council.

Section 215 of the Local Government Act 1972 also requires that where 'a churchyard has been closed by an Order in Council the Parochial Church Council shall maintain it by keeping it in decent order and its wall and fences in good repair.' However, a PCC may at any time serve a written request for this obligation to be placed on to parish or district councils.

Notice

Whilst the application was given to the Town Council on 6th July, it should be noted that the notice is dated 23rd June. Therefore, the three months expires on 23rd September.

It should be further noted that there are no scheduled August Full Council meetings and the September Full Council meeting would be too close to the deadline.

If the three months period expires without the Town Council making a resolution, Torbay Council can no longer be required to take over the maintenance of the churchyard.

The meaning of closing a Churchyard

Subject to the relevant permissions being granted, it is expected that:

- Burial in existing family plots that have space will still be allowed to continue for as long as there is space in these graves
- Interment (burial) of ashes in the 'lower' section of the churchyard can still continue subject to approval from the Church authorities. The PCC intends to seek this approval and it is generally issued as a matter of course
- All that will cease is the digging of new graves but this has not been an option since 1999, when the last grave was dug.

The Churchyard provision in Brixham would effectively remain unchanged. The churchyard at St. Mary's will continue to function as it has since it became full. Closure is a formal acknowledgement that there is no space for new graves and a passing of responsibility from the PCC to either the Town Council or Torbay Council, being the Local Authority.

Research Information

The St. Mary's Churchyard is made up of three areas:

- Closed Churchyard
- Brixham Mission Community
- Non Conformist Church

The closed Churchyard is maintained by Torbay Council, with the PCC and the Non Conformist Church being wholly responsible for maintenance for their areas.

The Churchyard contains war memorials and a list of 43 known war graves has been given to the Town Council as part of the application process.

Maintenance

The PCC judge the Churchyard to be in a fair condition, with regular mowing and tree work completed and the walls and paths are in a satisfactory state.

It should be noted that it is more than two years since the headstones were last formally surveyed for safety.

To maintain a churchyard, the following should be taken into consideration in any maintenance plan:

1. Regular grass cutting.
2. Inspection and supervision of trees.
 - Tree condition surveys are carried out five yearly.
 - This does not include regular inspections / maintenance.
3. Repair and maintenance of boundary walls / fences / hedges.
4. Memorial Safety tests
 - Safety test are carried out five yearly.
 - All memorial testing are carried out by competent persons in accordance with recognised national guidance from the Ministry of Justice.
 - Any found to be dangerous should be secured or laid down depending on the severity and nature of the damage.
5. Maintenance of pathways and other hard standings.

Financial Responsibility

As with any maintenance programme, there is a financial liability to consider. The Town Council has been advised that the annual general maintenance of the Churchyard costs the PCC in the region of £5,000 per annum to employ a contractor to carry out the work. However, this does not include the additional responsibilities of repair work to the boundaries, tree condition surveys, works to trees, Memorial Safety tests and any necessary maintenance of the Memorials.

Whilst there is potential that the Town Lengthsmen could include this in their programme of works, it is considered that they are at capacity and could not take on any further work at this stage. Any additional work would require either an additional person to be employed by the Council or seek external contractors.

It should also be noted that if the PCC contractors have a staff member that works on the churchyard for a certain percentage of their working week, there may be TUPE liability to consider.

Interment Sites

It is understood from Brixham Future that they have been researching the need for interment sites in Brixham. The latest information they have shared with the Town Council states that residents are having to travel several miles for interment, which makes it difficult for families of the deceased and without access to their own vehicle to visit the grave. The Town Clerk has been involved in recent meetings and discussions with Brixham Future and Torbay Council identifying a need to find more interment sites which is a problem for the whole of Torbay.

It is considered that the Town Council should continue to be involved in these discussions and meetings and urge Torbay Council to find a satisfactory solution.

The Brixham Peninsula Neighbourhood Plan, Brixham Town Design Statement states:

6.3 Cemetery

6.3.1 There is a need for a Cemetery in Brixham and this has been acknowledged by Torbay Council and Brixham Town Council.

6.3.3 Brixham Town Council is continuing to work towards making cemetery provision in Brixham a reality in the future, as such provision is seen as an intrinsic part of a viable community. The

work is ongoing.

Previously Brixham Town Design Statement 2010 - 2015 Page 16 stated that:

'There is a need for cemetery in Brixham and this has been recognised by Brixham Town Council. In 2009 the Town Council Regeneration Committee met with the Westerleigh Group, who manage the cemetery provision on behalf of Torbay Council to discuss provision and subsequently a questionnaire was placed in the Brixham Signal on the issue which returned the response that the majority of people felt there was a need for a cemetery in Brixham.'

In 2012, the Town Council worked closely with a local firm of Funeral Directors and a local land owner with the intention of creating a Green Burial Site. Unfortunately, this did not come to fruition and the Town Council has not carried out any further work on this matter.