

## **Policy – Payment of Churchyard Maintenance Grants and Maintenance of St Michael’s Church Clock, North Cadbury**

### **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 church 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 North Cadbury and Yarlington 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 22/144 to make an annual grant towards the maintenance of the Parish churchyards as public open spaces 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:**

**November 2010, item 12.c.** It was agreed that Items i. to vii. of this minute would in future be the guidance on and authority for payment of Churchyard Maintenance Grants.

- i. It was appropriate for the PC to contribute to the costs of maintaining the churchyards
- ii. The PC cannot sustain the full re-imburement of all of the costs in such maintenance.
- iii. Assistance should continue to be given to the Parochial Church Councils (PCC) by way of grants.
- iv. Grants should be fixed for three year periods and reviewed thereafter.

- v. The 2010/11 grants already budgeted at £800 for North Cadbury and £250 for Yarlington should be paid forthwith.
- vi. Grants should be set for 2011/12 at £1,000 for North Cadbury and £350 for Yarlington.
- vii. In future the payment of grants would 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 could be paid as soon as the copy of the account had reached the Clerk, which should in any case be by the beginning of October of each year. The Clerk should report compliance to the PC and remind PCC treasurers of this obligation as appropriate.

**June 2021, item 21/69. RESOLUTION** Councillors, having weighed up the risks and benefits, agreed unanimously to continue to provide churchyard maintenance grants as they considered the churchyards to be community assets, which were also identified as local green space in the emerging Neighbourhood Plan.

**October 2022, item 22/144. RESOLUTION:** Following a robust discussion, the PC agreed by a majority vote to continue to provide financial support towards the maintenance of North Cadbury and Yarlington's churchyards. Should Central Government issue further advice / guidance on the matter then this would be considered by the PC and a further resolution made accordingly.

St Michael's Church Clock was donated by public subscription in 1887 for Queen Victoria's Diamond Jubilee and is, therefore, the property of the Church. However, it was agreed in November 2006, at item 10, that the PC has a civic responsibility to maintain the clock for the benefit of the Parish. The PC agreed in January 2007, item 10.1., to continue to meet the annual maintenance cost and repair costs would be shared between the PCC and the PC on a 2:1 basis.

**RESOLVED:** The PC agreed by a majority vote to continue to meet the annual maintenance cost and shared repair costs on a 2:1 basis. The Clerk agreed to produce a policy document to the effect of the above resolutions for approval at the next meeting.

**November 2022, item 22/162. 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.