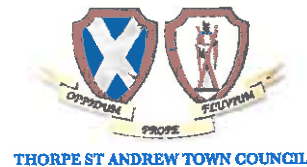


Thorpe St Andrew Town Council



Town Council : 12th November 2018

Transfer of the Maintenance of the Closed Churchyard inc. walls and fences under s.215 Local Government Act 1972 – for decision

Agenda Item: 79

Reason for this Report

This report has been prepared to seek a decision following service of a notice from the Parochial Church Council (PCC) of Thorpe St Andrew Parish Church under s.215(2)(a) of the Local Government Act (LGA) 1972.

Background

The churchyard at Thorpe St Andrew Parish Church was closed by Order in 1915. Under s.215(1), the PCC are required to "maintain it by keeping it in decent order and its walls and fences in good repair". Under s.215(2)(a) of the LGA the PCC may "if the churchyard is in a parish or community having a separate parish or community council, serve a written request on that council to take over the maintenance of the churchyard". Once the notice for the council to take over maintenance under s.215(a), "the maintenance of the churchyard shall be taken over by the authority on whom the request is served...three months after service of the request".

Prior to the expiration of the three month period of notice from the PCC, the council may through s.215(3) of the LGA resolve to give written notice to the District and PCC that the District Council, and not the parish council shall take over the maintenance of the churchyard at the expiration of the three months.

The Rector of Thorpe St Andrew, on behalf of Thorpe St Andrew PCC stated on 2nd November 2018 that a s.215 notice will be served on the Town Council, transferring responsibility for maintenance of the churchyard (including all walls, fences and boundaries) in three months time. Appendix A is a copy of the formal notice.

Result

The notice of the transfer in responsibility (and full costs of maintenance and repair), is complicated by the collapse of the retaining wall of the church in the March 2018 (photos Appendix B).

The remaining parts of the retaining wall have had 'tails' placed on them to monitor movement, with some other cracks visible (although the reason for these cracks would need to be investigated). It appears on a visit in November 2018 that further land slippage has taken place.

On its website, the Diocese of Norwich state that "Although the statutory period for giving notice to the Parish Council is three months, the General Synod Office suggested in 1981 that PCCs try to give Parish Councils at least twelve months' notice, in order to allow Parish Councils time to make appropriate provision in their budgets". Unfortunately, the notice issued by the PCC of Thorpe St Andrew gives the statutory three, rather than the suggested twelve months' notice.

Advice from Justin Smith (Cemetery Development Service Ltd), offered through Central Bedfordshire Council explains that "It should be noted that the Act merely provides for a local authority to take over the maintenance of a closed churchyard at a PCC's request; the onus is on the PCC to ensure that the churchyard is "in decent order and its walls and fences in good repair" (section 215(1)) before responsibility passes to the local authority".

The Ministry of Justice support this view by explaining that “Although there is provision for...maintenance responsibility to be transferred by the parochial church council to the local authority at any time once the churchyard has been closed by Order, it is considered good practice, and only fair and reasonable, for any parochial church council contemplating such a transfer of responsibility to ensure that the churchyard and its walls and fences are in good condition at the time of the application. If such an application is likely to be made soon after a closure Order has been obtained, it would be helpful for the parochial church council to have identified and carried out any remedial work necessary, including in relation to memorials”.

Despite the arguments of an ‘onus’ and being ‘only fair and reasonable’ for the work to be undertaken, in strict legal terms the transfer is not dependent upon the work being undertaken (there is no requirement for s.215(1) to be achieved prior to a s.215(2a) notice being issued). In making this s.215 notice, the Rector made clear that “At this stage the loss adjuster has indicated that the collapsed wall is not covered by our insurance policy, so for the time being in making any decision concerning this it should be assumed that it includes the churchyard and wall in its current state”.

In examining the legal position for the Council, it was concluded that “there is no express obligation on the Church to comply with their maintenance obligations before passing the churchyard on, but in the circumstances of this case their decision to do so may be perverse and judicially reviewable”. It should be noted that for a Town Council, this is not a viable option due to the significant resources required for such a challenge.

With regard to the financial cost of the wall, a surveyor’s report would be required and may well be supplied by the church. It is anticipated that the cost could be in the region of £100,000, given the wall is a historic retaining wall and a house is in close proximity to neighbouring properties (see photos).

Finally, although there may be potential for a cheaper option to be developed, it is a matter for the Diocesan Chancellor whether such works can take place, even if the maintenance is transferred to the local authority it would still require a faculty (or permission) from the church for any restoration work. This is due to the works unlikely to be considered *routine* rebuilding, but in any instance would require new ground disturbance below ground level. In considering this, I would direct the Council to findings of a Parliamentary Select Committee on Cemeteries:

“maintenance of St Mary’s Churchyard has been transferred to the London Borough of Newham under the legislative provisions referred to above. The churchyard contains two tombs and two gravestones which have had to be cordoned off for public safety. The Borough wishes to undertake work to make these monuments safe, but cannot afford to restore them fully. It was therefore proposed that the unsafe gravestones be laid flat, and the slabs on the top of the ‘table-top’ tombs be taken off and similarly laid on the ground, to ensure that they posed no danger to the public. However, despite the fact that responsibility for the maintenance of the churchyard lies with the Borough, a faculty has to be obtained from the Diocesan Chancellor (on behalf of the Bishop) for such work to be undertaken...the Chancellor’s deputy - in the absence of the Chancellor herself - has subsequently refused the faculty for the work which the Borough wished to do. This means that the tombs can now not be made safe unless the Borough agrees to pay for the restoration work the Diocese wants.

Therefore, it cannot be relied upon that the restricted funds of the local authority will be a factor in the decision as to whether the Diocese grant a faculty for a cheaper wall repair option.

Advice

Due to the limited timescale between formal service of this notice and the preparation of papers for the Town Council meeting, the following advice is offered and may be expanded upon at the meeting. It is advised that the potential liability of the maintenance and repair required under this s.215 notice is too great for this Council. Therefore, it is suggested that pursuant to section 215(3) of the Local Government Act 1972 this Council should give written notice to the Broadland District Council and to the Thorpe St Andrew Parochial Church Council that the Broadland District Council and not the Thorpe St Andrew Town Council shall take over the maintenance of the Thorpe St Andrew churchyard on the date three months from service of the Church section 215(2) notice.

Legal Implications

All decisions and actions taken by or on behalf of Thorpe St Andrew Town Council must (1) be within the local powers of the Authority; (2) comply with any procedural requirement imposed by law; (3) be within the powers of the body or person exercising powers on behalf of the Authority; (4) be undertaken in accordance with the Authority procedural rules inc. Standing Orders and Financial Regulations; (5) be fully and properly informed; (6) be properly motivated; (7) be taken with regard to the fiduciary duty of the Authority to its residents; and (8) be reasonable and proper.

Financial Implications

There are potentially significant financial implications arising from this report.

EMAIL

2nd November 2018

Dear Thomas

The PCC of Thorpe St Andrew voted on 18 October 2018 that we should give notice to Thorpe St Andrew Town Council in connection with the maintenance of the churchyard at Thorpe St Andrew Parish Church, which was closed by Order in Council in 1915, following the legislation set out in section 215 of the Local Government Act 1972. The formal letter with a narrative explanation and some background will be sent out on Monday 5 November.

At this stage the loss adjuster has indicated that the collapsed wall is not covered by our insurance policy, so for the time being in making any decision concerning this it should be assumed that it includes the churchyard and wall in its current state. We are awaiting the result of a causation report.

With every blessing,

James

The Revd James Stewart
Rector of Thorpe St Andrew Episcopi
The Rectory, 21A South Avenue,
Thorpe St Andrew, NORWICH, NR7 0EY
01603 439160
e-mail: JStewart1971@gmail.com



The Parish of Thorpe St Andrew

Received by
Thorpe St Andrew Town Council

7 NOV 2018

Dr Thomas Foreman JP
Town Clerk
Thorpe St Andrew Town Council
Town Hall
Fitzmaurice Pavilion
Thorpe St Andrew
NORWICH
Norfolk

7 November 2018

Dear Thomas,

Maintenance of a Closed Churchyard – Thorpe St Andrew Parish Church

This letter should accompany the email which I sent to you on 2 November in which notice was given pursuant to section 215 of the Local Government Act 1972 in connection with the maintenance of the churchyard at the **Parish Church of Thorpe St Andrew, Yarmouth Road, Thorpe St Andrew, NORWICH, NR7 0EW.**

The Ecclesiastical Parish of Thorpe St Andrew has had an increasingly good relationship with Thorpe St Andrew Town Council and therefore it should not be surprising that in a time of potential financial difficulty and stress for the parish we approach our community partners.

Members of the Town Council will probably be aware that on the night of 12/13th March part of the retaining wall at the northeast corner of the churchyard at the Parish Church collapsed. We were initially advised that an insurance claim would not be possible, but following advice from the Diocese of Norwich a claim was submitted. In August a loss adjuster representing our then insurers, Ecclesiastical, visited the site. He was not positive but due to the nature of the claim Ecclesiastical instructed Ridge Construction of Winchester to prepare a report as to the causation of the collapse. This report has been chased and is awaited.

Rector: The Revd James Stewart

The Rectory, 21a South Avenue, Thorpe St Andrew, NORWICH, NR7 0EY

Tel: 01603 439160 e-mail: rector@thorpeparishchurch.org

Registered Charity No: 1131592

The understanding here in Thorpe St Andrew of what is a legally a churchyard and what is not and whether it is open or closed has been the subject of a lot of confusion amongst previous incumbents of my role. The issue is perhaps complicated by the fact that the current burial ground on the Yarmouth Road is open and is a churchyard, as compared to a civil cemetery. The churchyard at the Parish Church is a Closed Churchyard by Order in Council, as far back as 1915.

As you are probably aware section 215 of the Local Government Act 1972 permits (in simple terms) a Parochial Church Council to give notice on the parish council (in this case the Town Council) that maintenance of the closed churchyard should pass to the said parish council, although if three months pass after that date the responsibility passes to the local District Council (in this case Broadland District Council).

It is probably not too bold a statement to say that most churches with closed churchyards have, for understandable reasons, followed this piece of legislation.

It is not possible to give an accurate reason as to why the PCC in Thorpe St Andrew have not done this in the past. It is quite possible that they were not aware they could do so. It may have been the fact that members of the parish took a pride in their garden and, forgetting the other possible benefits, sought to maintain this. It is also possible that the kind gesture of good will of the Town Council to contribute significantly towards the maintenance of the current open burial ground may have kept the thought of using this legal 'remedy' out of their mind.

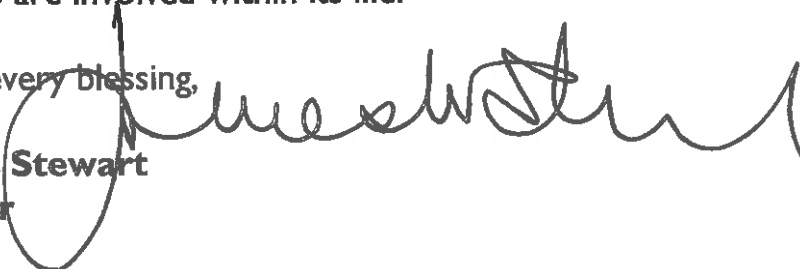
We now have a considerable bill ahead of us to remove the rubble and to shore up the wall from collapsing before then assessing long term solutions for the wall. We have already had considerable initial cost from Canham Consulting, which we have met. We have instructed David Lemon of Spire Services to 'project manage' this for us and he has introduced Simon Rossi of Rossi Long as Structural Engineer.

The PCC have not rushed into the decision to give notice under section 215 and since the collapse of the wall the Rector has certainly agonised over it. As charity trustees we are under a duty to do the best we can with the financial resources we have. Since notice could have been given any time since the mid seventies the PCC has unwittingly saved the 'local authority' (whomever it is deemed ultimately to be) a considerable sum of money. Indeed we had held back from giving notice, until our insurance company wanted written clarification as to whether section 215 Local Government Act 1972 had been complied with.

We appreciate that there will be the need for discussion and the sharing of information but felt it was helpful to write about (in a little more detail) the background surrounding this. We are extremely grateful for the support which the Town Council gives to life of our parish and all who are involved within its life.

With every blessing,

James Stewart
Rector

A handwritten signature in black ink, appearing to read 'James Stewart', written over a large, light-colored circular mark or stamp.

APPENDIX B









