

**EXECUTIVE REPORT**

**BEREAVEMENT SERVICES DEVELOPMENT PLAN**

**EXECUTIVE MEMBER FOR:  
COMMUNITY SAFETY AND LEISURE  
BARRY COPPINGER**

**EXECUTIVE DIRECTOR:  
JOHN RICHARDSON**

**27<sup>th</sup> September 2005**

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**PURPOSE OF THE REPORT**

1. To set out progress to date, and to identify potential priorities for the future in a draft Development Plan in order to better inform the medium term financial plan and the capital programme.

**BACKGROUND AND EXTERNAL CONSULTATION**

2. In common with the UK as a whole, Middlesbrough cemeteries have suffered historic under investment. This is exacerbated by the unusual situation whereby income from burials is received only once, whereas this attracts a rising rate of maintenance and repair in future years. Recently however, work has begun to again raise standards. Additional income has been generated, capital funding has been made available, and external funding has been gained. Nevertheless there are very significant, and in some cases, urgent problems to address. The Development Plan is a means of seeing the totality of these in order that decisions can be better informed.

## OPTION APPRAISAL/RISK ASSESSMENT

3. The attached Development Plan in Appendix A identifies the options available with costs where known, so that political direction can be given. The capital programme bids and the Heritage Lottery Bid have been subject to optional appraisal and risk assessments.
4. The headstone safety issue does however, require an immediate decision. To ensure the council meets its legal health and safety responsibilities, headstones are tested (risk assessed) in accordance with national guidelines. Large numbers of relatively recent headstones are failing the test and are being laid flat immediately in order to minimise the risk to cemetery users. It is expected that 25% of all headstones, numbering some 3500 will fall into this category. As a consequence, considerable distress is being caused to bereaved relatives, and the visual impact on the cemeteries is adverse. Unless the council intervenes and reinstates those headstones that are laid flat, only a very few will be re-erected, and the nature of the cemeteries will be changed permanently.

## FINANCIAL, LEGAL AND WARD IMPLICATIONS

5. **Financial** - The projected costs are given next to each proposal in the Development Plan. Unless a funding source is quoted, then no funding is available or committed.
6. **Ward Implications** - The Cemeteries are located in Acklam, Thorntree, North Ormesby and Linthorpe but serve a much wider community.

Member consultation has taken place with the elected members who attend the Bereavement Services Forum, which is also attended by religious groups, faith groups, voluntary groups and funeral directors. Members with cemeteries in their ward have been advised in advance of headstone testing and details have appeared on the members weekly briefing lists. Public signs are also displayed in cemeteries and press releases issued in accordance with national guidance.

7. **Legal Implications** – The Council is responsible for health and safety in council managed cemeteries and has legal powers to lay flat, remove or repair headstones.

## **SCRUTINY CONSULTATION**

8. The report is 'non-urgent.

## **RECOMMENDATIONS**

9. The Executive is invited to

- Note the achievements to date in paragraph 3 of Appendix A,
- Consider the issues identified in the attached Development Plan, including the proposal to re-erect and secure unstable headstones.
- Support the priorities for future work summarised in paragraph 6 of the attached Development Plan.
- Support the proposal to seek capital and / or revenue funding for the short-term high priorities identified in Paragraph 6 of the attached Development Plan (shaded grey in the table).
- Consider the policy in Appendix D to re-erect headstones.
- Instruct officers to produce a further report on the most appropriate way forward in terms of 'value for money' and a clearer estimate of total cost.

## **REASONS**

10. To ensure compliance with legal requirements, and to ensure work is prioritised and bids for funding are made in accordance with council priorities.

## **BACKGROUND PAPERS**

**The following background papers were used in the preparation of this report:**

- Bereavement Service Forum Reports.
- Health and Safety Executive Guidance to local authorities on Headstone Safety
- Institute of Cemeteries and Cremation Management Guidance on Headstones

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## APPENDIX A

### CEMETERIES AND CREMATORIUM DEVELOPMENT PLAN

#### 1 Introduction

Middlesbrough Council's Bereavement Services provides burial and cremation facilities. There are over 125 acres of land in the grounds and Teesside Crematorium is the 6<sup>th</sup> busiest in the UK.

#### 2. Reason for a Development Plan

This Development Plan consider the actions required to address and recognise the following issues, some of which are particularly pressing:-

- Health and safety pressures, particularly headstone maintenance problems
- Recent achievements and work in progress
- Historic under investment
- Increasingly stringent environmental legislation
- Burial trends and income
- Increasing expenditure pressures as more land in used for burials
- External funding opportunities
- Long term land availability for burials
- Meeting the needs of an increasingly diverse community

#### 3 Achievements

Though, in common with the UK as a whole, historic under-funding and ever increasing maintenance costs has been a barrier to raising standards, in recent years some significant improvements have been achieved.

- **Linthorpe Cemetery.** Work has commenced to improve standards following detailed public consultation in 2001. For example, the Cemetery Lodge building has been restored, a communal baby memorial erected (in partnership with the NHS and funeral directors), a woodland burial area opened, land has been purchased for new graves, a new boundary wall constructed (£40,000), a dedicated gardener employed (£18,000 pa), gates closed at night from 2002 (£10,000 pa), urgent path work completed (£30,000), Nature Conversation Designation Area declared, urgent work carried out to preserve the former Mortuary Chapel (£25,000 with 50% external funding), consultants funded to help develop a successful bid to the Heritage Lottery Fund, tree management work has commenced, and a 10 year Maintenance Plan adopted to meet HLF requirements.
- The **Linthorpe Cemetery Restoration Initiative** will continue in 2005 to 2007 period with a HLF £597,000 grant and £550,000 matched funding to restore and

improve buildings, paths, enhanced tree management, signage, artwork, boundary improvement etc.

- The **Acklam Cemetery** road and path network has been extended with £166,000 capital funding.
- The **Thorntree** Protestant/Muslim Cemetery path and road network has been extended with £100,000 capital funding.
- A derelict Lodge in **North Ormesby** cemetery was demolished at a cost of £10,000 to improve the appearance of the Cemetery and reduce anti social behaviour.
- Memorial schemes have been extended at Teesside Crematorium/**Acklam** Cemetery to meet public need and to extend revenue income by £100,000 pa.
- A hydrogen fuel cell has been installed at the **Acklam** Chapel of Remembrance with a £28,000 external grant. In addition, £18,000 has been spent on limited Chapel improvement work.
- A basic CCTV system has been installed in Teesside Crematorium and the Chapel of Remembrance.
- Office facilities at Teesside Crematorium and public access areas have been considerably enhanced.
- New external lighting has been installed in and around **Acklam** Cemetery/ Teesside Crematorium at a cost of £28,000.
- Additional car parking provision has been made available at Teesside Crematorium at a cost of £10,000.
- We funded the part restoration of the old Jewish cemetery when significant numbers of headstones were destroyed one weekend at a cost of £5,000.
- We have funded a new 0.6fte post from within the revenue budget to test headstones for safety to meet legal requirements.

#### 4 **Major issues to consider**

- Head stone safety (see 5 below)
- **Linthorpe Cemetery**, Old Jewish Cemetery section - The Jewish Community have requested that a wooden fence is replaced by railings to make the Cemetery more open and exposed. Cost £6,000.
- **Linthorpe Cemetery**, Central Space - The Heritage Lottery Fund declined to fund the component involving the restoration of the Central Space, when they made their £597,000 grant, as the original £100,000 proposal did not meet the

funding criteria. To carry out minimal restoration work to improve the appearance of the surface and edging of central space will cost £50,000 approximately. The Bereavement Services Forum endorsed the original proposal to restore the Central Space.

- **Linthorpe Cemetery** - The boundary hedge/fence between the cemetery and GP Practice on Acklam Road requires restoration at a projected cost of £4,000. The Friends of Linthorpe Cemetery are involved in work to improve this hedge/fence. We plan to complete this work and fund it from the 2005/6 revenue budget.
- **Linthorpe Cemetery** - A concrete post and panel fence on the boundary with West Lane hospital is in poor condition and requires replacing at a cost of £15,000.
- **Linthorpe Cemetery** - The matched funding towards the £1.2 million project about to commence is in place, except for £47,000 to restore specific gates. EU and Arts Council funding is not available. We hope to bid to other external funding sources for this; otherwise we will lose £23,500 of the Heritage Lottery grant (50%). The Bereavement Services Forum endorsed the restoration of the gates, which is part of the HLF bid developed following substantial public consultation.
- **Linthorpe Cemetery CCTV** - A capital bid for £30,000 is outstanding to provide CCTV coverage of the Hebrew Prayer House (to be restored to a Community Education and Resource Centre) and the new Jewish Cemetery Section. The bid arises from discussions with the Jewish Community. Vandalism is a problem in this area.
- **Thorntree Protestant Cemetery** (which includes the Muslim Cemetery section). The Muslim community would like the northern boundary fence made more secure to provide more privacy and improve security issues. The Bereavement Services Forum, with elected members and officers in attendance, agreed to explore if funding could be made available from the capital programme for the fence, and to carry out surface work in the immediate vicinity of the fence. The estimate total cost is £25,000 to £35,000.
- **Thorntree RC Cemetery**. Nearby residents have previously asked for a more substantial fence to be provided along the southern boundary. Approx cost £25,000. On 14th June, following a discussion in the Bereavement Services Forum, elected members and officers in attendance agreed to explore if funding could be made available from the capital programme.
- **Thorntree RC Cemetery**. There is only one water point in the Cemetery. An additional water point at the other end will cost £5,000. We may be able to fund this from the 2005/6 revenue budget.
- **Thorntree Cemetery Gates**. The gates were installed in 1930 and require major restoration or replacement at a projected cost of £15,000.

- **Acklam** Cemetery paths and roads. Immediate repairs are required at a cost of £8,000 to £10,000. We may be able to fund this from the 2005/6 revenue budget. Health and safety issues are a concern.
- A capital bid of £25,000 is outstanding to extend the Memorial Wall facility at **Acklam** Cemetery/Teesside Crematorium. The memorial wall is budgeted to raise £30,000 pa income, and space runs out on the existing wall in 12 months. Another extension to the wall will be needed in approx 2008.
- **Acklam** Cemetery CCTV. Ideally, the existing system (which covers Teesside Crematorium and the Chapel of Remembrance) should be extended to cover key parts of the Cemetery. The estimated cost is £30,000, or greater if the Teesside Crematorium and Acklam Cemetery complex are connected to the CCTV Control Room.
- **Acklam** Cemetery southern boundary railings. These require major restoration or replacement at a projected cost of £22,000.
- **Acklam** Chapel of Remembrance. A capital bid to restore the Chapel based on an architects options report and consultation with the Bereavement Services Forum was not successful. Over the last 2 years, £18,000 has been spent on the Chapel from the revenue budget. There is a need for additional work, which is receiving low priority due to other needs.
- **North Ormesby**/St Josephs Cemetery. The Community Protection Service (CPS) Service Plan identifies that this Cemetery ideally requires general restoration. A feasibility study would identify external funding opportunities and quantify overall costs and priorities. We do not expect to progress this until 2008 onwards.
- Enhanced emission controls at **Teesside Crematorium**. The Council is legally required to upgrade the existing cremators to comply with new environmental legislation. Overall 50% of the cremators in the UK have to upgrade with the non up-graders contributing to those who upgrade. The options are complex, although it is likely that officers will recommend that Middlesbrough upgrades, rather than funds work in another crematorium. We have until December 2005 to make a decision in principle, on whether we want to upgrade or contribute to another crematorium's upgrade, and another 5 years to complete any work. The cost of upgrade work at Teesside Crematorium is provisionally estimated at £1.6 million (and in theory we should be able to recover 50% of the costs from a non up-grading council, unless we upgrade only 50% of Middlesbrough's cremation capacity). A consultant will be appointed to advise on the technical and economic options before details are reported to the Executive on matters of detail by January 2006. Fee increases over inflation could mitigate these costs if raised in advance of the work. The consultant's technical and economic study this year may cost £5,000 to £10,000, which we plan to fund from the revenue expenditure budget. We are in discussions with Darlington and Hartlepool Councils who run public crematoria as their decisions could impact on Middlesbrough and vice versa.

- **Disability Discrimination Act.** Paths have been ideally recommended at the new burial area in Linthorpe Cemetery and in Thorntree RC Cemetery at £10,000 to £12,000 per cemetery.
- **Cemetery signage.** Key signage should be reviewed and updated at a projected cost of £20,000 for all 5 cemeteries.
- **Cemetery grounds maintenance standards.** This budget was cut significantly in the late 1980s and 1990s. To re-establish the former standards for shrub cutting, strimming, flowerbeds etc would cost an extra £60,000 pa minimum

## 5. Headstone safety

Memorial management in cemeteries is becoming of greater importance nationally as a result of an increasing number of accidents caused by unstable memorials. Whilst the gravestone 'owner' is responsible for repairs and maintenance, often the owner cannot be traced or is unwilling to undertake repairs. The Council is responsible for protecting the health and safety of persons in cemeteries. Extensive guidance has been issued to councils by the Health and Safety Executive (HSE), including a letter sent to Chief Executives in June 2004. The Bereavement Services Forum has debated the issue in January 2003, July 2004 and June 2005.

The HSE state that there have been 21 serious accidents caused by loose headstones, including 3 fatalities in the 5 years up to up June 2004. In Middlesbrough, the worst known alleged accident involved a broken leg in Linthorpe Cemetery caused by an alleged loose headstone.

The Council has a legal responsibility to ensure headstones are safe and cemeteries are safe. The Health and Safety Executive have ongoing investigations against Councils and individual managers following serious accidents. Harrogate Council is reported to have spent £1 million to make their cemeteries safe following a fatality. What is clear is that councils must have a work programme in place to check headstones and make safe any dangers.

In 2003, Middlesbrough Council appointed a 0.6fte post to test headstones and lay them flat when unsafe. A national procedure is followed involving the application of a 35kg test pressure. Headstones which fail the test are deemed to be unsafe and are laid flat, and where possible the owner is notified. An explanatory sign is placed next to each headstone. Since 2003, all of Linthorpe Cemetery has been tested and 380 headstones laid flat.

Significant problems have arisen now that we have moved onto the Thorntree cemeteries. For example, in Thorntree RC Cemetery, headstones are failing the national standard test at more than 10 times the rate in Linthorpe Cemetery, due to poor foundations used and the dowel and plinth assembly used nowadays. Our projection is that 25%-30% of headstones will fail the test as work continues.

Laying headstones flat has naturally raised concerns from the public, both in general terms with regard to the overall effect on the cemetery, and specifically with regard to the particular grave that they visit.

There is an expectation that the Council has a responsibility to maintain headstones and repair those that are loose. In fact, the council sells the right to erect a headstone on its land, and the responsibility for proper erection and subsequent maintenance stays with the owner of the headstone. It is clear that the standard of assembly and installation in recent years has been far less than that needed to enable headstones to stay erect for a reasonable period of time.

The Council has a duty of care to visitors to the cemetery and to its employees and so must consider the risk raised by insecure headstones alongside other risks. Standard industry practice is to operate a programme of testing and where headstones are insecure to lay the flat, thereby reducing the risk. Any delay between discovering a health and safety problem and addressing it must be minimised.

The programme of testing must continue in order to ensure the Council meets its legal health and safety obligations.

If testing reveals problems the headstone must:-

- be laid flat, or
- kept upright by using a temporary support, for example, staking and strapping the headstone.
- effectively fenced off pending making safe.

The second and third options can be discounted on the grounds that a stake and straps are as unsightly as laying flat, and also have a cost implication, and fencing off is not practicable due to vandalism issues.

Once laid flat there are several options:-

- leaving owners to carry out repairs – which would leave the majority of those laid flat in situ, not restored.
- Removing headstones that are not repaired or restored by the legal owner within a reasonable period. This would facilitate easier maintenance arrangements for graves, and would simply require provision of a dedicated place in each cemetery where the headstones could be stored.
- The Council repairing headstones and making them safe in all or some cases.

If the Council opted to repair headstones using in house resources the current estimated cost is £170,000 in year 1, inclusive of materials (and as high as £250,000 in total). This would reduce considerably per year over time. The priority would probably be lawn graves, as there is often no space available on the grave to lay the headstones flat, so these headstones are unfortunately often laid sideways across the head of the grave often with a sharp plinth pointing upwards.

Further work needs to be considered to assess whether a tendering exercise would provide better value for money.

The Bereavement Forum met on 14<sup>th</sup> June 2005 to discuss the problem. Their advice to the Council is reproduced in Appendix B. The option of the Council

removing headstones from graves could result in the council removing 25 to 30% of headstones from graves, and there would be concerns to address in the local community. There would be costs in recording, transporting, storing and disposing of headstones at some point. This would cost less than the £170,000-£250,000 mentioned above to re-erect headstones, possibly £120,000 subject to detailed costings.

Advice from the Institute of Cemeteries and Crematorium Management on the health and safety implications of testing and accidents is attached as Appendix C.

## 6. Summary of funding options

ISSUE	COST	REASON	PRIORITY
Linthorpe Cemetery Old Jewish section fence. Replace with railings	£6,000	Request of Jewish community. Other requests for repair and restoration work met, but this item is outstanding	Long term.  Low to medium priority.
Linthorpe Cemetery Central Space	£50,000	Excluded from restoration programme by HLF. Previously approved by Bereavement Services Forum and through public consultation process.	Long term  Low to medium priority.
Linthorpe Cemetery concrete panel fence	£15,000	Poor condition	Long term  Medium priority
Linthorpe Cemetery gates, matched funding shortfall towards £1.2 million HLF project	£47,000	EU and Arts Council funding not available. Anticipate external funding bid in 2006.	Review in 2006/7, subject to outcome of external funding opportunities. If matched funding is not found, the Council will lose £23,500 of a HLF approved grant
Memorial Wall	£25,000 (2005) £25,000 (2008)	To maintain income and meet public need. A wall is required to maintain a £30,000 pa income commitment in the revenue budget	<b>Short term High priority</b> To fund in 2005/6 subject to available funding in revenue budget.
Acklam Cem CCTV	£30,000	To extend basic system to key areas in Acklam	Long term

		cemetery	Low priority
Thorntree Protestant/Muslim Cemetery Northern fence and surrounding land / footpath	£25,000 to £35,000	Request from Muslim community and supported by BS Forum. This was discussed at the Forum on 14 <sup>th</sup> June and 14 <sup>th</sup> September 2005	<b>Short term</b> <b>High priority.</b> <b>Submit bid through capital programme</b>
Thorntree RC Cemetery	£25,000	Previous request from residents for more substantial fence. Supported by BS Forum	<b>Short term</b> <b>High priority.</b> <b>Submit bid through capital programme</b>
Acklam Cemetery southern boundary railings	£22,000	Poor condition	Long term Low priority
Thorntree Cemetery gates restoration	£15,000	Poor condition	Long term Low priority
North Ormesby/St Joseph's Cemetery	Unknown	Possible restoration project 2008/9 onwards. Possible external funding Need to commission expert study in 2007/8 at cost of £15,000	Long term Medium priority
Mercury abatement at Teesside Crematorium	Est. £1.6 million, to be funded from substantial fee increase, and possible capital programme contribution in 2008 onwards.	National environmental legislation. Potential to recover significant proportion through fee increases. Detailed options study needed in 2005 at projected cost of £10,000.	Report to Executive once consultants options report available (estimate Jan 2006)
Acklam Chapel of Remembrance restoration	£40,000 plus	Restoration	Long term Low to medium priority
Disability Discrimination Act recommendation re paths to individual graves in Acklam and Thorntree	£24,000	Disability access improvements	Medium term Medium priority
Headstone safety	Re-erect / re-fix and secure unstable	Health and safety	<b>Short term</b> <b>High priority</b>

	headstones in accordance with the policy in appendix D. Cost may be up to £170,000 in year 1, subject to discussion on options, probably £250,000 in total (over 2 years).		<b>To consider in terms of 'value for money' the most appropriate way to re-erect the headstones in accordance with the policy in Appendix D and report back to the Executive on the preferred method and estimated cost.</b>
<b>WORK IN PROGRESS / ANTICIPATE 2005/6 COMPLETION. Please see below</b>			
Linthorpe Cemetery Boundary hedge	£4,000	Poor condition, work in progress	To complete in 2005. Funded through revenue budget
Linthorpe Cemetery CCTV. Jewish cemetery and Prayer Hall	£30,000	Vandalism problems and security of former Hebrew Prayer Hall/Education Centre	Capital bid approved. / Work in progress
Thorntree RC Cemetery water point	£5,000	Inadequate supply	Hope to fund from the 2005/6 revenue budget.
Cemetery grounds maintenance standards.	Under review	Improving standards	Discussions underway with Streetscene to look at working practices and use of dedicated gardeners in cemeteries
Cemetery signage	Up to £20,000	Improving standards/ complying with corporate guidelines / required to carry out enhanced enforcement in response to complaints. Signage at present is in need of	Propose to progressively fund via the revenue budget.

		short term and medium term improvement	
Acklam Cemetery roads and path repairs	£8,000	Health and safety	High priority. To fund from 2005/6 revenue budget subject to available funding
Consultants report on national programme to reduce mercury emissions	£8,000 (estimate)	Compliance with legal requirements	High priority. Fund from revenue budget and report to Executive on options by January 2005 (estimate)

## 7. Bereavement Services Income and Expenditure

Within the Bereavement Services budget, cremation income accounts for 75% of total income, burials account for 13% and memorial sales account for 12%.

For burial and cremation fees, Middlesbrough is generally around the lower end of the national top quartile or near the top of the second quartile, so approx 25% of crematoria are more expensive and 75% are less expensive. Middlesbrough's adult cremation fee at £356 is lower than charged by Darlington (**£372**) and higher than Hartlepool (**£355**), which for local residents are the nearest alternative providers. Our burial charges, at £478 for a grave plot, £315 for an interment and £99 for permission to erect a headstone are 12% above the local average, though a more inclusive service is provided.

When surveyed, Funeral Directors rate the burial and cremation service provided by Middlesbrough Council very highly.

To fund the £1,200,000 Linthorpe Cemetery Restoration project and secure the matched funding, in consultation with the Bereavement Services Forum, prices were raised by 1% above inflation in recent years. This has raised the additional revenue required to contribute to the project and future ongoing costs, subject to final approval on matters of detail now being discussed with the design consultant. (with the exception of the £47,000 shortfall highlighted in the table above which we plan to raise through an external bid led by Middlesbrough Environment City).

Raising cremation fees significantly above inflation would be counter productive and may result in lost business and lost income. Raising burial fees above inflation has resulted in complaints from the religious groups whose faith requires burial rather than cremation.

## 8. Availability of future burial land

Middlesbrough has adequate space set aside to meet the burial needs of the local community for the next 25 years. After that period, a new cemetery would be required if current burial practice and trends continue. There has however, been recent national consultation in a paper issued by the Home Office entitled 'Burial Law and Practice – The Need for a Sensitive and Sustainable Approach', which may result in the widespread practice of re-using graves subject to local choice and decisions. Burial plot availability and provision in Middlesbrough's Cemeteries is as follows :-

- Thorntree RC Cemetery - 10 to 15 years remaining.
- Thorntree Cemetery. (Including Muslim Cemetery Section) - 25 years remaining
- Linthorpe Cemetery. (Including Jewish Cemetery Section) - 100 new traditional plots created due to land purchase from NHS Trust. Approximately 100 plots in woodland section.
- Acklam Cemetery - 30 years burial space, with current path and road infra structure for 7 years approx. Limited woodland plots available.
- North Ormesby/St Joseph's Cemetery - approximately 15 plots created by demolition of derelict Lodge
- Nunthorpe Private Church yard - limited space available
- Stainton and Marton Private Church yards - legally closed for new burials

## **9. Meeting the needs of a diverse community**

The Bereavement Services Forum provides the formal mechanism for officers, elected members, faith/religious groups, funeral directors and voluntary bodies to meet and discuss matters of mutual interest. The Forum meets three times a year and has elected Father Thurnham as the chair, with an elected member taking the role of vice chair.

Staff are trained to meet the religious needs of all faiths in the provision of cremation and burial services. Individual meetings are arranged regularly, often on site to deal with special requests.

## Appendix B

### Bereavement Services Forum Minute

14<sup>th</sup> June 2005

#### Loose headstones in Thorntree Cemeteries

JD tabled a press notice recently issued by the council following public concern and media interest in the significant number of headstones which were failing the standard 35 kg test. The Forum was advised about the importance of health and safety issues and national guidance. The initial conclusion was that the headstones were failing due to defective plinth and dowels, and poor foundations. The failure rate was far higher than in the older Linthorpe Cemetery. JD advised that the testing programme has temporarily been suspended as the council needed to consider potential health and safety problems caused by laying flat headstones, and the untidiness resulting from laying flat large numbers. The Forum were advised that all new headstones are now tested, and the latest high failure rates appeared to be with headstones 10 to 40 year old with plinth and dowel construction.

There was a lengthy debate in the Forum and the following advice was given

1. The Forum supported the proposal for the council to call a meeting with memorial masons to discuss the results of the tests and possible options to resolve the situation.
2. The Forum felt that the council's priorities should remain public safety, and not necessarily re-erecting the headstones.
3. Consideration should be given to removing headstones which have been laid flat and not repaired/re-erected after a set period
4. New headstones could be installed to a higher standard than what was required in the national guidance.
5. A site visit with representatives from the local Mosque(s) is needed with regard to headstones re-erected and still loose, and to consider the possibility of removing headstones when a grave was no longer visited.

JD advised the Forum that he would seek legal advice on the option of removing headstones that did not belong to the Council.

## Appendix C

### Memorial Inspections and Actions –Information COURT JUDGEMENT

A grave owner recently took legal action against an authority questioning the Council's authority to carry out inspections of memorials and to take immediate action (by laying flat) in order to eliminate risks to public safety. The claimant further argued that the test procedure caused the foundation of the headstone to fail and that the Council had neglected its duty by not controlling the installation of memorials over the past decades. The claimant acknowledged that he had seen the public notices put in the local press and the cemetery, but insisted that he should have been contacted in advance and been given the opportunity to witness the test. The validity of the force-measuring device used by the authority was also challenged. The claim against the Council was for the cost of having the headstone re-installed to current standards, including a NAMM approved ground anchor. The Council, in defence, produced its Working Procedure for Memorial Inspections and associated documents that indicate and include:

- A Hand test as the primary test
- Use of a force-measuring device on memorials that pass the hand test so as to ensure the application of 35kg (and no more)
- Use of a force-measuring device on memorials that fail the hand test with the fail pressure being recorded
- Evidence of calibration of force measuring device
- Risk assessments
- Safe system of work
- Evidence of staff training and competence
- Copies of various notices
- Copies of inspection records
- The ICCM Code of Practice for the Management of Memorials

The case was heard before Deputy District Judge Kenny sitting at Staines County Court on 19 th February 2004.

#### ***The Judge accepted that:***

- 1. The testing had been carried out properly***
- 2. The reading had to be accepted***
- 3. The Council had the power to remove a danger and therefore had the power to take the action it did as a result of the test reading. The Council had done no more than it was statutorily obliged to do.***

#### **The General Form of Judgement or Order States:**

**'Upon hearing claimant in person and representative for defendant  
IT IS ORDERED THAT the claimant's claim be and is hereby  
dismissed'.**

From the above it is evident that the Council Officer responsible for the memorial inspection programme had acted in a diligent, proper and reasonable manner in accordance with national guidance and health and safety law.

### **Issued by The Institute of Cemetery & Crematorium Management and The Confederation of Burial Authorities**

The management of memorials has been a major problem throughout the UK for most cemetery managers. There have been six deaths over the past 10 years and many serious accidents. The ICCM are active across the UK providing a range of assistance to authorities from the provision of Memorial Safety Workshops to consultancy reports to support the service in obtaining the necessary funding for the service.

We are aware of the following accidents that have occurred with far reaching implications in some cases:

October 2002. In a Manchester authority a two foot tall memorial fell on a lady, stripped her skin off her shin and broke her ankle in four places. The authority is currently under investigation by the HSE and the manager has been subject to a formal interview, with legal representation, under Section 20 of the Health and Safety at Work Act 1974 and has been required to produce a 9 page statement to comply with the Criminal Justices Act.

November 2002. A 19 year old man was killed in a churchyard by a falling memorial. The HSE are currently investigating the circumstances and are considering prosecution.

February 2003. A North West authority received a prohibition order from the HSE for one of their cemeteries when dangerous memorials were found to be present. This effectively required the authority to prohibit access to the site until memorials were made safe. The authority responded quickly to the notice, however, the HSE are currently indicating that they are likely to proceed to prosecution.

March 2003. A report was received that in an authority near Leeds a lady was visiting a grave when a memorial fell and stripped the skin from both legs. She was taken into hospital for four weeks and has been told that she will be unable to walk for at least three months. We are currently unaware of the extent of the HSE involvement.

March 2003. The HSE have issued a letter to all authorities in the North West of the country requiring them to provide evidence of a policy on the management of memorials and to detail what they have carried out to date. Authorities have one month to respond.

June 2003. Whilst a child was playing in the cemetery a memorial fell and caused a crush injury to his leg. The authority is now being sued by the child's family for negligence.

July 2003. Following the circular issued by the HSE in March to all North West

Authorities follow up inspections were carried out. One authority was issued with an improvement notice by the HSE as their cemeteries were found to be in an unsafe condition. They were given 3 months to complete a full inspection on all of their memorials.

October 2003. Harrogate BC have settled out of court following the death of a six year old boy in one of their cemeteries almost three years ago. The settlement amounted to £33,000, in addition to a cost of around £1.0m to deal with the memorial safety issues surrounding the death. Harrogate have suffered investigations from both the HSE and the Local Government Ombudsman in addition to numerous public meetings about the problem.

## **ADDENDIX D**

### **Draft POLICY PROPOSAL ON LOOSE OR INSECURE HEADSTONES**

To commence the following activities to re-erect / re-instate up to 3,500 potentially loose and insecure headstones.

1. To seek tenders to re-erect loose or insecure headstones, which have failed the nationally prescribed health and safety test carried out by the Council.
2. To produce a comprehensive report after 6 months to include reference to potential implications to the Council's mid and long term financial plans.
3. To organise prominent display signs in all cemeteries advising that the Council has implemented a programme to test, and where practicable, re-erect insecure headstones under the provisions of Article 16 of the Local Authority Cemeteries Order 1977. This legislation enables the Council, as the local burial authority, to 'put and keep in order any grave or vault, or any tombstone or other memorial'
4. To promote details of this health and safety testing and headstone re-erection work programme in the local community and media, including Middlesbrough News.
5. To re-erect to current safety standards, insecure, loose and flat headstones, which have inadequate foundations, provided they are in a fit condition to be re-erected.
6. To re-erect to current safety standards, insecure, loose and flat headstones which have defective dowel or plinth joints, where practicable, provided that the work can be carried out at reasonable cost and the headstone is in a fit condition to be re-erected.
7. The Council will not undertake or authorise any repairs to stonework, inscriptions and specialist cleaning work
8. Headstones which are found to be damaged, fractured or otherwise broken and which cannot be safely re-erected at reasonable cost, will be laid flat in an orderly manner onto the original grave or at the head of the grave (with special attention given to the appearance of lawn grave headstones)
9. To leave flat all headstones over 100 year old which have already been laid flat.
10. To write to the headstone or grave owner, where practicable, at their last known address, whenever the Council is unable to re-erect a headstone in accordance with this policy. When practicable, the owner of any headstone, which cannot be erected, will be offered a site meeting to discuss the situation. However, all reasonable attempts will be made to re-erect headstones and enhance / preserve the appearance of grave plots.
11. To reimburse any person who produces written evidence to the Bereavement Services Manager that he or she has funded the re-erection of a headstone in a Middlesbrough Council owned or managed cemetery and that the work has been completed by a competent person within a period of 2 years prior to this policy being adopted. The reimbursement shall be up to a maximum of £75, and is subject to the restored headstone passing the nationally prescribed health and safety test conducted by the Council.
12. The Council recognises that the owner of an insecure headstone may wish to organise remedial work in advance of the Council's re-erection programme. This could include commissioning work in addition to a simple headstone re-erection. Provided the proposed re-erection work has the prior approval of the Bereavement Services Manager and is completed by a competent person, and provided that the headstone passes the nationally prescribed health and safety test upon completion

of the work, the Community Protection Service will pay a grant of up to £75 on the receipt of written evidence on the cost of the re-erection.

13. To continue to test all new and re-instated headstones erected in Middlesbrough Council owned and managed cemeteries in accordance with procedures notified to local and regional memorial masons. The Council will require all memorial masons and others to make appointments to erect headstones in Middlesbrough Council owned or managed cemeteries, and subject consultation adopt the national registration scheme known as BRAMMS.
14. To investigate the opportunity to amend the Cemetery Rules, and consult the Bereavement Services Forum, to require enhanced concrete foundations for all new headstones.
15. Any headstone which fails the nationally prescribed health and safety test and which as been erected within 6 years prior to the date of failure, will be notified to the memorial mason with a request to carry out urgent remedial work free of charge.
16. To continue to carry out a health and safety programme and to periodically test headstones to meet Health and Safety Executive guidance.
17. This policy document will be reviewed at least every 6 months.