

Council – 19 September 2016

Petition for edgings and flower beds to be allowed round Muslim graves

1.0 Summary

- 1.1 This report is in response to the above named petition submitted by Walsall Helping Hands to the Leader of the Council on Monday 22 August 2016.
- 1.2 The petition contains 2016 signatures and is worded as follows:
“Petition for edgings and flower beds to be allowed round Muslim graves”
- 1.3 The council’s petition scheme provides that:
- 1.4 *‘If a petition contains at least 1,500 signatures it will be debated at a meeting of the Council. This means that the issues raised in the petition will be discussed at a meeting to which all Councillors can attend and speak. The Council will endeavour to consider the petition at its next meeting although on some occasions this may not be possible and consideration will then take place at the following meeting. The petition organiser will be given 5 minutes to present the petition at the meeting and the petition will then be discussed by Councillors for a maximum of 15 minutes. The Council will decide how to respond to the petition at this meeting’.*
- 1.5 *‘They may decide to take the action that the petition requests; not to take the action requested for reasons put forward in the debate, or to ask for further information. Where the issue is one where the Cabinet are required to make the final decision the Council will decide to make recommendations to the Cabinet. The petition organiser will receive written confirmation of this decision and this will be published on our website’.*

2.0 Recommendations

- 2.1 The council is asked to note the petition.
- 2.2 The council is asked to note that edgings and flower beds are permitted on adult lawn graves as per section 6.9 d) of the rules and regulations, approved by Cabinet on 15 June 2016, namely; ‘Any additional memorial in the form of a surround will not extend beyond 610mm (24”) from the head end of the

grave space or beyond the width of the grave space nor be of a height greater than 100mm (4")'.

- 2.3 The council notes the decision by Cabinet on 15 June 2016 regarding the procedure that will be used where there is non-compliance of the rules and regulations in particular unauthorised memorials.

3.0 Background information

- 3.1 The council manages Streetly Crematorium and eight cemeteries namely; Bentley, Bloxwich, James Bridge, North Walsall, Ryecroft, Streetly, Willenhall Lawn and Wood Street. The cemeteries at Streetly, North Walsall and Willenhall Lawn still have capacity for new adult graves and burials.
- 3.2 Each year around 2,000 cremations take place at Streetly Crematorium. Approximately 925 interments (full burial and cremated remains) are also carried out in Walsall cemeteries and it is estimated that something in the region of 150,000 people attend these funeral services. In addition approximately 100,000 visits are made to the Borough's cemeteries and crematorium in the main to tend graves and memorials.
- 3.3 This service is considered one of the most sensitive that the council is responsible for. Rules and regulations are needed to manage the council's cemeteries and crematorium for the benefit of all users whilst complying with relevant legislation, in particular The Local Authorities' Cemeteries Order 1977. While every effort has been made to avoid restricting individual rights and choices, the need for safe and tidy grounds and the provision of cemeteries as places for peaceful contemplation are also important considerations.
- 3.4 The majority of people will appreciate that there needs to be proper management of the regulations in place which need to be enforced to prevent these cemeteries, as places of remembrance, from becoming disorganised, chaotic, unattractive and/or unsafe.
- 3.5 The existence of rules and regulations for cemeteries is prevalent across the country. The Local Authorities' Cemeteries Order 1977, amongst other things, states:

Article 3.1

'A Burial Authority may do all such things as they consider necessary or desirable for the proper management, regulation and control of a cemetery'.

Article 14

'If a burial authority remove from a cemetery any tombstone or other memorial placed therein otherwise than in the exercise of a right granted by, or otherwise with the approval of, the burial authority or any predecessor of theirs, the burial authority may recover the cost thereby incurred by them;

- (a) from the person to whose order the tombstone or memorial was placed;
- (b) within two years from the placing of the tombstone or memorial, from the personal representative of such person, as a simple contract debt in any court of competent jurisdiction'.

Article 16.1 'A burial authority may:

- (a) put and keep in order any grave or vault, or any tombstone or other memorial, in a cemetery; and
- (b) level the surface of any grave, consisting wholly or substantially so of earth or grass, to the level of the adjoining ground'.

- 3.6 Up until around the early 1950's graves were only provided on traditional sections. This design of burial site would be recognised as "old English churchyards" with a range of large, rather grand, memorials (Appendix A). These would be made of natural stone and size would be dependant on available resources. Essentially, the richer the family, the larger the memorial. These graves could have memorials installed, upon application, along most of the length and breadth of the grave. Grave rights on these sections were sometimes 'reserved', and paid for, in advance of future burials meaning a grave might remain empty for many years.
- 3.7 The last traditional section graves were sold many years ago with, for example, the last "traditional" grave sold at Streetly Cemetery in January 1993. Bereavement Services' records show that the most recent burial in the traditional section at Streetly Cemetery was in July 2015 however the Exclusive Right of Burial for this grave was purchased in August 1987. The re-opening of graves on traditional sections will continue to happen for many generations as a lot of these graves were bought for more than one burial and may in fact be "double" or "treble" depth, but only in accordance with the grave rights owners instructions.
- 3.8 In the 1950's many local authorities across the country began introducing lawn sections, reminiscent of Commonwealth War Graves, to their cemeteries. Walsall Council was one of these authorities and, since that time, the significant majority of new adult burials across the borough have taken place in lawn graves. All lawn graves look broadly the same however different designs and colours of headstones, which must comply with the specified size

and material, can be erected at the head of the grave subject to permission being granted by the council. Small items such as plants or personal items can be placed immediately adjacent to the headstone. Nothing is permitted over the full length of the grave itself or around the edge as a raised kerbstone.

- 3.9 The lawn grave principle enables efficient and cost effective grounds maintenance whilst ensuring swift and simple access to all of the graves on the section. It also ensures fair and consistent options for all those who have an adult lawn grave to visit. Appendices **B** and **C** show typical, compliant, lawn sections at Streetly Cemetery.
- 3.10 Baby section graves have been laid out in the lawn style for many years. Since 2012 baby sections have been laid out on a shingle bed where the council lays a plastic membrane covered with shingle over an area in which the individual baby graves are located (Appendix **D**). This improvement was made as parents and family members were understandably keen to leave toys and other small memorabilia with their children.
- 3.11 Before this design was introduced it was found very difficult to undertake appropriate and safe ground maintenance with either mowers or strimmers. It was not possible to get in close to the graves and / or toys as they may have been easily damaged. In addition, the grass and soil tended to cause various toys to decay and rot. The shingle dries out much quicker and the toys have been found to last much longer; something that parents are keen to see. The Muslim baby section at Streetly Cemetery is still on a grassed area of lawn but does permit parents to leave toys if they wish, as in the shingle area of the cemetery. This is entirely at the Council's choice and does not represent discrimination. Burial authorities very often have different rules and regulations for babies and adult sections.
- 3.12 Grave rights owners can apply for permission to place "traditional" memorials on these graves as long as they comply with the sizes listed within the rules and regulations. As the graves are considerably smaller than adult graves memorials, consisting of a flatstone, headstone or vase along with a kerbset, can be placed along the full length and breadth measuring 610mm x 1,220mm (48" x 24") which is approximately equal to the space permitted on an adult lawn grave.
- 3.13 The council has provided Muslim burial sections for over 50 years. The first section was created at James Bridge Cemetery. It was agreed that the section would be orientated in compliance with Islamic requirements and was laid out in the lawn principle. All subsequent Muslim sections at Streetly, North Walsall and Willenhall Lawn cemeteries have been laid out in the same manner.

- 3.14 Following lengthy discussions with representatives of some of the Muslim communities, including at the Communities Services Scrutiny and Performance Panel in November 2011, certain changes were agreed to highlight where a body was buried in a grave. These included a “crowning” of the grave with a low mound to signify a burial has taken place. It was also agreed that no ride-on mowers would be used over the crowned grave itself and that all future grounds maintenance would be undertaken with, predominantly, hand-held strimmers where possible. It was acknowledged that this would however lead to a reduced standard of grass maintenance in the immediate area. Other requirements for ground level wooden frames to be installed around the grave edges have now also been permitted. Though this permission has now been in place for a few years, the option has not yet been taken up.
- 3.15 The placing of memorial objects on graves requires the consent of the burial authority (the council) who retain the ownership of the land. Unauthorised memorials are those that have not received permission from the council. Appendices **E** and **F** show examples of areas at Streetly containing unauthorised memorials which require compliance in accordance with the rules and regulations.
- 3.16 When unauthorised memorials are placed along the full length and breadth of the grave it becomes difficult to excavate pre-reserved graves within the time available to meet the short time-scale expected by the Muslim community. Such memorials also make it very difficult to undertake the appropriate grounds maintenance work which leads to complaints from members of the public.
- 3.17 Walsall Helping Hands was acknowledged as one of several representative groups (the others being the Union of Muslim Organisations and the Muslim Burial Committee) by the former Executive Director for Neighbourhoods in Spring 2013.
- 3.18 The representative who signed the covering letter for the petition approached the council, initially in 2012, to request a “traditional” style memorial for a particular grave at Streetly Cemetery. It was explained that this was not permitted, and the reasons why, which Helping Hands accepted at that time. Following this the grave in question was made fully compliant with the rules and regulations and agreed that it could be used as an example of “best practice” for the whole Muslim community to follow (Appendix **G**).
- 3.19 The question about installing raised concrete, marble or granite edging around the whole of the grave re-occurred in mid-June 2015 following the death and

burial of a local Imam. The family requested permission to install a “traditional” memorial and edging to the grave. This request was declined. Helping Hands became involved on behalf of the Imam’s family and has, since that date, persistently requested that all Muslim graves should be permitted to have the right to install “traditional” memorials.

- 3.20 During late 2015 the grave referred to in 3.18 of this report was changed from being a best practice example to a non-compliant state comprising initially of plastic fencing and other items and soon afterwards concrete edging (Appendix H).
- 3.21 The Executive Director for Economy & Environment and officers representing Leisure, Bereavement, Legal and Equalities met the petitioner and nine other members representing Helping Hands on Tuesday 5 January 2016 to comprehensively discuss the issue. It was confirmed that the Council would be undertaking extensive public consultation on its updated Rules and Regulations (1 February to 31 March 2016) and that, until this report had been submitted to Cabinet, no further compliance enforcement would be undertaken at Streetly.
- 3.22 Since then Helping Hands has engaged legal advice and a solicitors letter was received, on behalf of unnamed Muslim community members, accusing the council of discrimination on religious and age grounds. A response letter was issued by the council’s legal team in March 2016 although no counter response has been received. Helping Hands have consistently threatened the Council with legal action throughout the numerous items of correspondence over the last fourteen months.
- 3.23 For the purpose of managing burials and to maintain the cemeteries as peaceful and respectful grounds for the bereaved, and the community overall, the council’s rules and regulations set out both general and specific information about cremations, burials and memorials. Section 6 covers memorials with section 6.9, specifically relating to lawn sections, stating:
- g) ‘No kerbstone or any other form of monument or memorial whatsoever will be allowed in this section of the cemeteries. However, upon payment of a fee, the council will install a standard wooden frame level with the surrounding ground that will not impede the grass maintenance regime. The council will not maintain such a frame and will require it to be removed and replaced if a further burial takes place’
 - h) ‘No other items or structures may be placed or erected on or over a grave except flowers, wreaths and other small personal tributes at the time of the interment’

- 3.24 This is not to say that grave rights owners cannot leave plants and other items of memorabilia. On the contrary, this is fully permitted so long as the items are placed adjacent to the headstone within the space stipulated in section 6.9 d) 'Any additional memorial in the form of a surround will not extend beyond 610mm (24") from the head end of the grave space or beyond the width of the grave space nor be of a height greater than 100mm (4")'. An example of what is allowed is shown at Appendix I.
- 3.25 It is worth noting that the purchaser of the Exclusive Right of Burial (also known as 'grave rights') in a grave space does not buy the land itself. The applicant does not own the land nor do they have any automatic right to place anything on it. The land remains, at all times, the Council's property. Applications should be made to the burial authority for permission to place memorials. If these meet the rules and regulations they are authorised and a permit is issued, normally to the applicant's memorial mason.
- 3.26 A complete inspection of all adult and cremated remains lawn graves, numbering 21,728, last took place in October 2015. This confirmed that the scale of infringements of memorial regulations is generally well controlled both initially and proactively in the field. At that time the percentage of compliance at each cemetery was as follows:

Cemetery	Number of		Compliance rate
	Purchased Graves*	Infringements	
Bentley	675	0	100%
Bloxwich	4,900	10	99.796%
James Bridge	2,728	0	100%
North Walsall	1,659	4	99.759%
Ryecroft	2,887	0	100%
Streetly	3,571	48	98.656%
Willenhall Lawn	5,308	2	99.962%
TOTAL	21,728	64	99.705%

*These are up to, but not including, any grave where the interment had taken place in the previous six months

- 3.27 The most recent phase of compliance work began at Streetly Cemetery on Monday 25 July 2016. Inspections were completed across Sections N, R, S, T and V (1,089 graves). A total of 148 infringements were discovered, 110 (74%) of which were on Section T which is the Muslim community burial section. In accordance with the compliance procedure reaffirmed by Cabinet

in June 2016 letters were sent to the grave rights owners requesting that they remove the unauthorised items. The letter stipulated that failure to do so would mean the council would have to undertake the work.

- 3.28 The grave rights owners are given four weeks to remove items and make their graves compliant. At the end of this period Bereavement Services' officers will remove the items, place them in bags marked with the grave details and store them at the Willenhall office for collection by the owner. If, after a further four weeks, the items are not collected they will be disposed of. In some circumstances, on collection of the items a family may immediately reinstate the items onto their family grave. If this happens, officers remove the non compliant items at the earliest possible opportunity. No further notice is given or letters issued.
- 3.29 Walsall Council's grave rights run for 100 years from the date of purchase. If permission was given for the installation of edgings and flower beds on Section T at Streetly Cemetery such permission would also have to be given for all other sections across all the cemeteries in the borough to ensure that the Council did not discriminate against other faiths.
- 3.30 Any departure from the rules and regulations with regards to this petition would also make the council vulnerable to legal challenge, and compensation claims, from those grave rights owners who wish the section to remain a lawn section as stated on their Grant. The challenge would inevitably be around dispensing with the regulations on lawn graves on sections that have been managed in this way for many decades.
- 3.31 The time required for the excavation of burial plots would be significantly increased on those graves with full length edgings and flower beds and for those adjacent as the work would have to be done by hand in order to avoid disruption of the items.
- 3.32 The installation of raised concrete, marble or granite edgings to graves and permitting the introduction of flower beds above the graves would have a dramatic and negative impact on the maintenance of the sites. The simplest of tasks, for example cutting the grass, would become a very time and resource consuming process.
- 3.33 In terms of equality there are no major changes to the policies, procedures and services. The improvements to the service offered were considered as a minor revision of the Rules and Regulations and therefore an Equality Impact Assessment was not required. Walsall will continue to implement good practice in terms of equality throughout the service.

- 3.34 Bereavement Services received responses from service questionnaires sent to service users and consultations with funeral directors and other professional bodies accessing the services provided. There are active and regular discussions with recognised community groups, cemetery user groups and Walsall Manor Hospital.
- 3.35 Initial internal consultation with Head of Finance, Public Health, Equality and Diversity, Environmental Health and Legal Services was reflected in the proposed document. Responses from the wider consultation through the council website, the Multi-faith Forum and recognised community groups was considered and reflected in the updated rules and regulations document where appropriate.
- 3.36 The consultation pack was provided in a variety of ways:-
- Emails were sent directly to:
 - 75 local funeral directors
 - 42 local memorial masons
 - 10 local religious community groups
 - Area managers
 - Community Cohesion & Engagement Lead Officer
 - Public Health
 - Adult Social Care
 - Walsall Voluntary Action – approximately 600 community and voluntary organisations
 - Walsall Police
 - Citizens Advice Bureau
 - A message was displayed digitally on the council internet and intranet
 - A message was shown on the display screens in the First Stop Shop
 - A press release was issued to local media companies
 - An article was sent to all staff via the 'Weekly Bulletin'
 - Notice was given in the council's internal communication document 'Core Brief'
 - Printed copies of the press release were issued to all council Members
 - Notices containing a copy of the press release were displayed in each of the cemeteries and at the crematorium
 - Hard copies of the consultation packs were available from:
 - 16 local libraries
 - First Stop Shop
 - Willenhall Lawn Cemetery
 - Streetly Crematorium
 - The Register Office

- Hard copies of the pack were sent to individuals who were previously made aware that a consultation was imminent
- A dedicated page was set up within the Bereavement and Registration Services web pages

3.37 No major issues, concerns or adverse impacts were raised by people with protected characteristics. All responses were considered and reasonable changes and improvements (such as updated signage in cemeteries and diagrams to illustrate headstones conformity) have been made to the revised Rules and Regulations.


3.38 The fundamental issue here is that Walsall's cemeteries are set out to the lawn principle design and have been for several decades. It is understood that Helping Hands and the petitioner have seen the traditional sections (A, B and C) at Streetly and requested a traditional old English churchyard type memorial for their graves and the late Imam in 2015 on section T. These requests have been denied as they are not compliant with the Council's Rules and Regulations.

Background papers

1. The Local Authorities' Cemeteries Order 1977
2. Rules and Regulations (2016)
3. Compliance Procedure

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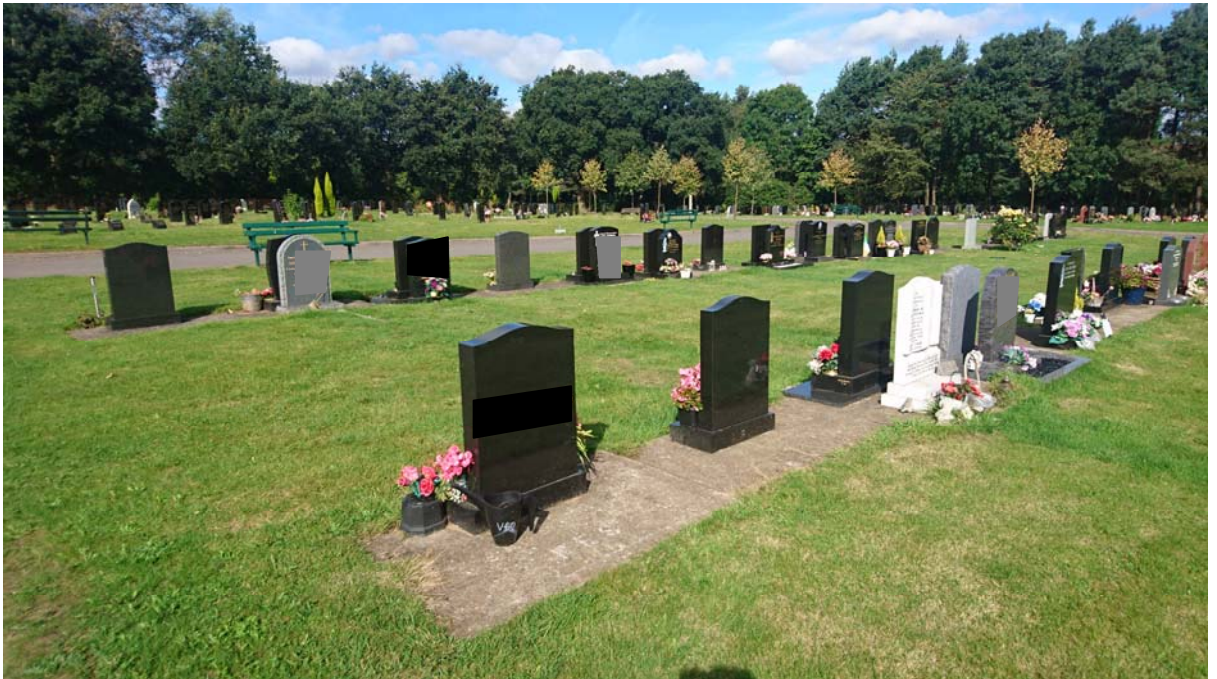
Simon Neilson
 Executive Director Economy and Environment
 19 September 2016

Appendices

A. Traditional “old churchyard” sections (A, B and C) – Streetly Cemetery



B. Compliant lawn section - Streetly Cemetery



C. Compliant lawn section (Muslim) - Streetly Cemetery



D. Section W (Children) at Streetly Cemetery



E. Infringements on Section T (Muslim) at Streetly Cemetery



F. Infringement on Section V at Streetly Cemetery



G. "Best practice" grave 2012



H. Same grave as at September 2016



I. Example of permitted headstone memorials and memorabilia

