

OFFICER DELEGATED DECISION JANUARY 2022

Report title: New Regulations for South Metropolitan (West Norwood) Cemetery

Wards: Gipsy Hill

Portfolio: Cabinet Member for Equalities and Culture: Councillor Sonia Winifred

Report Authorised by: Bayo Dosunmu: Strategic Director for Resident Services

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REPORT SUMMARY

The Regulations covering Lambeth's three cemeteries are believed to date from the 1970s and replace earlier byelaws. Because of the differences in our cemetery operations – and the Scheme of Management in place at West Norwood Cemetery – separate Regulations are being produced for each cemetery. New Regulations covering Lambeth Cemetery were approved through a separate decision report in October 2017; and for Streatham Cemetery in 2019. A revised set of Regulations for West Norwood Cemetery have now been completed and this report recommends their approval and adoption.

FINANCE SUMMARY

Updating the cemetery regulations will not create any significant costs for the service or authority.

RECOMMENDATIONS

1. To adopt and implement the new South Metropolitan (West Norwood) Cemetery Regulations (included as Appendix 2 to this report) with immediate effect.

1. CONTEXT

- 1.1 After Lambeth purchased West Norwood Cemetery in the 1960s it commenced a programme of memorial clearance and reuse of graves, which spanned several decades and included a number of actions which were not legal. This resulted in a Consistory Court ruling against the authority, which led to a Scheme of Management being imposed in 1997, covering the consecrated sections of the cemetery. The Scheme of Management Committee (SoMC) has agreed to propose a new governance model to the Diocese, but the 1997 arrangements are still in place. The new regulations will also need to be approved by the SoMC, whose members have been heavily involved in the wording.
- 1.2 The 1977 Local Authorities Cemeteries Order (LACO) permits local authorities to: "*do all such things as they consider necessary or desirable for the proper management, regulation and control of a cemetery.*"
- 1.3 It is assumed that Lambeth's current (undated) Cemetery Regulations were created shortly after LACO was published, as that is the last piece of legislation mentioned in the preamble. The document covers all three of Lambeth's cemeteries: Lambeth Cemetery, Streatham Cemetery and West Norwood (South Metropolitan) Cemetery. The Regulations replaced earlier cemetery byelaws.
- 1.4 The Institute of Cemeteries and Crematoria Management recommend that cemetery regulations are updated on a regular basis.
- 1.5 Under the current regulations all interments are to be lawn graves – this was intended to make maintenance of the grass easier. However, it has never been adequately enforced and many grave owners have edged the full grave and decorated and embellished their plots as they liked. As a result, the easy grounds maintenance regime has not been realised. Staff still need to strim around most plots individually, which is hugely time consuming.
- 1.6 Many bereaved families have requested traditional plots with full kerbs and ledger stones and the demand for this is high, but not permitted under our current regulations. There is no real justification for not permitting full memorials, and staff are regularly facing dissatisfied service users who can't understand why the rules are so restrictive, compared to most other cemeteries. For West Norwood Cemetery at present it is not possible to allow full kerbsets within the consecrated areas of the cemetery as this is prohibited under the Scheme of Management. However, the SoMC and Friends are content to see this changed and the intention is to seek consent from the Diocese to relax this condition in the future. If this change was granted, registered grave owners would then be allowed to retrospectively apply for full kerbsets and cover slabs. For the sake of consistency, it is not intended to make this change separately for non-consecrated areas.

2. PROPOSAL AND REASONS

- 2.1 It is proposed that the revised Regulations for West Norwood Cemetery are adopted, publicised and implemented with immediate effect.
- 2.2 The revised regulations have been fully updated, take account of changes within the industry since the original regulations were written; and aim to cover all potential issues which arise within the cemetery environment.
- 2.3 A summary document will be available at the cemetery office and this will include a weblink to the full Regulations.

- 2.4 The current regulations allow people to enter the cemetery in a car, but not on a motorbike or bicycle. This restriction has been removed and responsible cycling will be permitted.

3. FINANCE

- 3.1 Updating the cemetery regulations will not create any significant costs for the service or authority. There will be some small costs for producing a summary leaflet and some signs to be installed across the cemetery and these will be covered by existing budgets.
- 3.2 Updating the regulations does not offer increased income opportunities at the present time because of the conditions imposed by the Scheme of Management and the fact that there is no space available in the cemetery for new graves.

4. LEGAL AND DEMOCRACY

- 4.1 Lambeth, along with other London boroughs, became a burial authority by virtue of s. 214 of the Local Government Act 1972. This gave local authorities, among other things, the power to provide and maintain cemeteries. Article 3 of LACO provides that subject to the other provisions of the Order, a local authority "...may do all such things as they consider necessary or desirable for the proper management, regulation and control of a cemetery." Such things would include the making of regulations to ensure the good management of a cemetery.
- 4.2 It is essential that all using a cemetery and its services are aware of what may or may not be permitted within a cemetery. There is no legal requirement to have written regulations but it is recommended as a matter of good practice that any applicable rules and regulations are in writing. Any such regulations setting out what may or may not be permitted must be fit for purpose, clear and precise and capable of enforcement.
- 4.3 There is no legal duty for burial authorities to consult prior to amending cemetery regulations. Where there is no legal duty to consult consideration should be given to whether to consult. The Cabinet Office Principles on Consultation (2016) state that consultation should not be carried out for the sake of doing so.
- 4.4 Factors to consider in whether or not to consult include the issue or issues at stake, the nature and impact on the decision and whether any community groups or other interested persons have already been engaged with. The more significant the impact of the decision, the more likely the need to consult. In addition, a promise to consult or a previous practice of consultation on the issue in question is likely to give rise to a legitimate expectation of consultation.
- 4.5 Given that the revised regulations allow greater freedom and flexibility to users of West Norwood Cemetery rather than restrict what is currently permitted then there is likely to be less need for any consultation. Further, the history of the proceedings before the Consistory Court in respect of this cemetery and the fact that the Scheme of Management Committee (which includes parties with an interest in the cemetery, including the Diocese) has been consulted on the proposed regulations is likely to be sufficient consultation for these purposes.
- 4.6 The new regulations, if approved, will not override the need for a faculty from the diocese where that is required.
- 4.7 Regulation 15 of the Order allows a burial authority to charge such fees as it thinks proper for or in connection with burials in a cemetery, for the grant of a right to place and maintain a memorial in a

cemetery, and for the grant of a right to put an additional inscription on a memorial. It is noted that the increased memorial permit fee has already been addressed via the 2016/17 Fees and Charges Report.

- 4.8 Further, s.111 of the Local Government Act 1972 provides that a local authority generally has power to do anything which is calculated to facilitate or to be conducive or incidental to the discharge of its functions. The making of such regulations would fall within this power.
- 4.8 Section 149 of the Equality Act 2010 sets out the new public sector equality duty (“the Equality Duty”) replacing the previous duties in relation to race, sex and disability and extending the duty to all the protected characteristics i.e. race, sex, disability, age, sexual orientation, religion or belief, pregnancy or maternity, marriage or civil partnership and gender reassignment. The Equality Duty requires public authorities to have due regard to the need to:
- a. Eliminate unlawful discrimination, harassment and victimisation;
 - b. Advance equality of opportunity; and
 - c. Foster good relations between those who share a protected characteristic and those who do not.
- 4.9 Part of the duty to have “due regard” where there is disproportionate impact will be to take steps to mitigate the impact and the Council must demonstrate that this has been done, and/or justify the decision, on the basis that it is a proportionate means of achieving a legitimate aim. Accordingly, there is an expectation that a decision maker will explore other means which have less of a disproportionate impact.
- 4.10 The Equality Duty must be complied with before and at the time that a particular policy is under consideration or decision is taken – that is, in the development of policy options, and in making a final decision. A public body cannot satisfy the Equality Duty by justifying a decision after it has been taken.
- 4.11 The Council’s Constitution requires that issues of an important or sensitive nature will be published on the Council’s website for five clear days prior to the decision being taken (Constitution, Part 2, Section 3), where this is required by the Cabinet Member or Director concerned. It is suggested that this proposed decision is published on Officer Decisions in the interests of transparency. Any representations received during this period must be considered by the decision-maker before the decision is taken.

5. CONSULTATION AND CO-PRODUCTION

- 5.1 Consultation on the draft Regulations was arranged via the Norwood Forum, whose members were encouraged via their website and e-newsletter to read a short presentation, look through the proposed Regulations and send any comments to the Bereavement Services team. The consultation was also publicised on social media, and members of the Friends of West Norwood Cemetery were also encouraged by their committee to join the consultation. Due to a lack of comments, the consultation was retained as live on the Norwood Forum website and re-publicised to The Friends’ membership. However, no responses were received.
- 5.2 The Regulations have also been the subject of extensive consultation with the Scheme of Management Committee and the members of the Shadow Strategic Partnership Board for the cemetery. This produced a number of comments and amendments which have been made to the final document.

6. RISK MANAGEMENT

- 6.1 The proposed Regulations reduce risk to the authority from a thorough updating and will provide for the effective management of West Norwood Cemetery. They bring a number of positive improvements including: ensuring the full range of issues and challenges which have arisen at the site in the past have been addressed; removal of unnecessary restrictions; increased choice for grave owners making it much easier to ensure effective implementation of Regulations on the ground and standardised treatment for all grave owners.
- 6.2 The main risks that impede on the successful implementation of the Regulations are:

Table 1 – Risk Register

Risk	Likelihood	Impact	Score	Control Measures
Lack of enforcement of tribute regulations in the past makes implementation subject to persistent complaints	4	2	8	Experience at Lambeth and Streatham Cemeteries has demonstrated that effective enforcement of tribute regulations is impossible and controversial. The most dangerous items will be removed, otherwise a moderate line will be followed

Key

Likelihood	Very Likely = 4	Likely = 3	Unlikely = 2	Very Unlikely = 1
Impact	Major = 8	Serious = 4	Significant = 2	Minor = 1

7. EQUALITIES IMPACT ASSESSMENT

- 7.1 An Equality Impact Assessment (EIA) was completed on 18 September 2020 and approved on 22 September 2020 by the Director for Environment and Streetscene. Updating the Regulations will have a negligible impact on cemetery visitors and has no potential to negatively impact on the protected characteristics.

8. COMMUNITY SAFETY

- 8.1 None.

9. ORGANISATIONAL IMPLICATIONS

Environmental

- 9.1 The current Regulations ban bicycles from our cemeteries. The revised Regulations allow the use of bikes for visiting graves or the cemetery. Otherwise, there are no environmental impacts arising from the adoption of these revised regulations.

Health

- 9.2 None.

Corporate Parenting

9.3 None.

Staffing and accommodation

9.4 None.

Responsible Procurement

9.5 There are no procurement implications to this report.

10. TIMETABLE FOR IMPLEMENTATION

Activity	Proposed Date
Publication on Decisions online	October 2020
Officer Decision	November 2020

AUDIT TRAIL				
Consultation				
Name and Position/Title	Lambeth Directorate	Date Sent	Date Received	Comments in paragraph:
Cllr. Sonia Winifred	Cabinet Member for Equalities and Culture	15.10.20		
Bayo Dosunmu Strategic Director	Resident Services	15.10.20	15.10.20	Cleared
Venetia Reid-Baptiste Director of Environment and Streetscene	Resident Services	02.10.20	14.10.20	Cleared
Andrew Ramsden AD Finance	Finance and Investment	11.10.20	12.10.20	3
Jon Melnick Prosecutions Lawyer	Legal and Governance	18.09.20	08.10.20	4
Adrian Bentley Democratic Services Officer	Legal and Governance	18.09.20	25.09.20	4

REPORT HISTORY	
Original discussion with Cabinet Member	17.09.20
Report deadline	N/A
Date final report sent	N/A
Part II Exempt from Disclosure/confidential accompanying report?	No
Key decision report	No
Date first appeared on forward plan	N/A
Key decision reasons	N/A
Background information	The Local Authorities' Cemeteries Order 1977 Local Government Act 1972, s214
Appendices	Appendix 1 – existing Regulations covering Lambeth's cemeteries Appendix 2 – revised West Norwood Cemetery Regulations Appendix 3 – Equalities Impact Assessment

APPROVAL BY CABINET MEMBER OR OFFICER IN ACCORDANCE WITH SCHEME OF DELEGATION

I confirm I have consulted Finance, Legal and Democratic Services, and taken account of their advice and comments in completing the report for approval:

Signature: _____ **Date:** _____

Post: Kevin Crook, Assistant Director Neighbourhoods

I approve the above recommendations:

Signature: _____ **Date:** _____

Post: Bayo Dosunmu, Strategic Director of Resident Services

Any declarations of interest (or exemptions granted): None

Any conflicts of interest: None

Any dispensations: None.