

# Public Document Pack

**Steve Atkinson** MA(Oxon) MBA FIoD FRSA  
Chief Executive

Date: 19 May 2014



Hinckley & Bosworth  
Borough Council

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To: **Members of the Executive**

Mr SL Bray (Chairman)  
Mr DC Bill MBE (Vice-Chairman)  
Mr DS Cope  
Mr WJ Crooks

Mr DM Gould  
Mr KWP Lynch  
Mr MT Mullaney  
Ms BM Witherford

Copy to all other Members of the Council

(other recipients for information)

Dear Councillor,

There will be a meeting of the **EXECUTIVE** in the De Montfort Suite, Hinckley Hub on **WEDNESDAY, 28 MAY 2014 at 6.30 pm** and your attendance is required.

The agenda for the meeting is set out overleaf.

Yours sincerely

A handwritten signature in purple ink, appearing to read 'Helen Rishworth'.

Helen Rishworth  
Communications & Democratic Accountability Officer

**EXECUTIVE - 28 MAY 2014**

**A G E N D A**

1. APOLOGIES

2. MINUTES (Pages 1 - 8)

To confirm the minutes of the meetings held on 26 March and 16 April 2014.

3. ADDITIONAL URGENT BUSINESS BY REASON OF SPECIAL CIRCUMSTANCES

To be advised of any additional items of business which the Chairman decides by reason of special circumstances shall be taken as matters of urgency at this meeting.

4. DECLARATIONS OF INTEREST

To receive verbally from Members any disclosures which they are required to make in accordance with the Council's code of conduct or in pursuance of Section 106 of the Local Government Finance Act 1992. **This is in addition to the need for such disclosure to be also given when the relevant matter is reached on the agenda.**

5. QUESTIONS

To hear any questions in accordance with Council Procedure Rule 10.

6. MEMORIAL SAFETY POLICY (Pages 9 - 58)

Report of the Deputy Chief Executive (Community Direction).

7. MALLORY PARK - NOISE CONTROL (Pages 59 - 74)

Report of the Chief Executive.

8. ISSUES ARISING FROM OVERVIEW AND SCRUTINY

(If any)

9. ANY OTHER ITEMS WHICH THE CHAIRMAN DECIDES SHOULD BE DEALT WITH AS MATTERS OF URGENCY

# Agenda Item 2

## HINCKLEY AND BOSWORTH BOROUGH COUNCIL

### EXECUTIVE

26 MARCH 2014 AT 6.30 PM

PRESENT: Mr SL Bray - Chairman  
Mr DC Bill MBE – Vice-Chairman  
Mr DS Cope, Mr WJ Crooks, Mr KWP Lynch and Ms BM Witherford

Members in attendance: Councillors Mr PR Batty and Mr JS Moore

Officers in attendance: Steve Atkinson, Storme Coop, Bill Cullen, Edwina Grant, Simon D Jones, Sanjiv Kohli, Rebecca Owen, Rob Parkinson, Sharon Stacey and Nic Thomas

#### 448 APOLOGIES

Apologies were submitted on behalf of Councillors Gould and Mullaney.

#### 449 MINUTES OF PREVIOUS MEETINGS

It was moved by Councillor Witherford, seconded by Councillor Crooks and

RESOLVED – the minutes of the meetings held on 21 & 22 January and 13 February 2014 be confirmed and signed by the Chairman.

#### 450 ADDITIONAL URGENT BUSINESS BY REASON OF SPECIAL CIRCUMSTANCES

It was noted that, whilst there was no urgent business, the Car Parking update report which had been marked 'to follow' on the agenda had been circulated separately, along with a report on 'Supplementary Budget for Trade Waste' which had been omitted from the agenda and would be taken after item 13.

#### 451 DECLARATIONS OF INTEREST

Councillors Cope and Lynch declared a personal interest in paragraph 4.10 of the Car Parking update report due to their interest in Sparkenhoe Business Centre. Councillor Bill declared the same personal interest on arrival.

#### 452 HINCKLEY MARKET SUBSIDY

Members received a report which provided the financial position for the Markets and asked them to consider the financial subsidy required to support the Hinckley Markets in 2014/15. It was reported that efforts were continually being made to reduce the net operating cost. Members felt the markets were very important to the people of Hinckley and the wider area. It was moved by Councillor Bray, seconded by Councillor Crooks and

RESOLVED –

- (i) the proposed subsidy for 2014/15 of £14,472 be approved;
- (ii) the difficult economic trading circumstances for market traders and the work by officers to reduce the net operating costs be recognised;

- (iii) two corresponding supplementary budgets be approved as follows:
  - (a) a decrease in the market expenditure budget of £29,300 (market contract saving);
  - (b) a reduction in the market income budget of £25,010 (market rental reduction offset by additional rental income);

and the net impact of a saving of £4,290 be noted.

Councillor Bill arrived at 6.34pm.

#### 453 VCS SUPPLEMENTARY BUDGET REQUEST

The Executive considered a request for a supplementary budget for two years in order to develop and establish sustainable VCS arrangements for the locality. The positive progress with the new VCS commissioning arrangements supported by the Council over the last 12 months was noted. Members emphasised the importance of the work of the voluntary and community sector. It was moved by Councillor Bill, seconded by Councillor Witherford and

RESOLVED – the supplementary budget of £24,660 for 2014/15 to 2015/16 be approved.

#### 454 LEICESTER & LEICESTERSHIRE STRATEGIC ECONOMIC PLAN, CITY DEAL & EUROPEAN FUNDING

Members were provided with an overview of the Leicester and Leicestershire Enterprise Partnership's (LLEP) key strategic plans. Key examples of projects being facilitated in the Borough were discussed, including MIRA Enterprise Zone, RGF improvements to the A5 and the Sustainable Urban Extensions. These were building on the success of regeneration initiatives in the Town Centre including the Atkins Building, the new College campus, Midlands Studio School and Vocational Training Centre, Hinckley Hub and Greenfield's employment scheme. On the motion of Councillor Bray, seconded by Councillor Bill, it was

RESOLVED –

- (i) the Executive be minded to approve the Leicester and Leicestershire Enterprise Partnership's Strategic Economic Plan (SEP) with final approval delegated to the Leader and Chief Executive;
- (ii) the submission of the City Deal be supported with final approval delegated to the Leader and Chief Executive;
- (iii) The Hinckley & Bosworth Local Economic Plan be endorsed.

#### 455 STATEMENT OF COMMUNITY INVOLVEMENT

A report was presented which sought approval to consult on the updated Statement of Community Involvement. It was reported that a periodic review of the Statement of Community Involvement was required as part of the Local Development Scheme. On the motion of Councillor Bray, seconded by Councillor Bill, it was

RECOMMENDED – Council approves the updated Statement of Community Involvement for public consultation.

456 COUNCIL TAX, NON-DOMESTIC RATES & HOUSING BENEFIT OVERPAYMENT WRITE-OFFS

The Executive received a report detailing recommended write-off of debts over £10,000 in respect of outstanding business rates. The report also detailed business rate, council tax and housing benefit overpayment debts written off under delegated authority. In response to a member's question, it was noted that following a debt write-off, should the debtor be tracked down, the debt could be re-instated, however many business rate debts were due to companies going into administration. It was further noted that whilst the authority's debt collection rates were similar to other authorities, the amount of debt written off was comparatively low. On the motion of Councillor Lynch, seconded by Councillor Crooks, it was

RESOLVED –

- (i) the two business rate write-offs of £26,628.35 and £27,567.82 be approved;
- (ii) the sums written off under delegated powers be noted;
- (iii) officers be congratulated for their high collection rate in relation to amounts written off.

457 REVIEW & ALIGNMENT OF EXISTING POLICIES / GUIDELINES FOR THE REVENUES & BENEFITS SERVICE

Updated policies and guidelines for the Revenues and Benefits partnership were presented to the Executive. It was moved by Councillor Lynch, seconded by Councillor Crooks and

RESOLVED – the following revised policies be approved:

- (i) Discretionary Housing Payment guidelines;
- (ii) Housing benefit and Council Tax Support Verification Policy;
- (iii) Local Housing Allowance Safeguarding Policy;
- (iv) Non Domestic Rate Hardship Relief Policy;
- (v) Non Domestic Rate Discretionary Relief guidelines;
- (vi) Recovery Policy;
- (vii) Sanctions and Prosecutions Policy.

458 MALLORY PARK

It was reported that this had been deferred to the extraordinary meeting on 16 April.

459 CAR PARKING UPDATE

Members were presented with a report which attempted to address concerns regarding car parking for the Hub. Options outlined included the use of the Rock Garage site on a temporary basis (including allocated spaces for car sharing), the use of Westfield Community Centre for LCC staff, and longer term possibilities including re-designation of car parks and potential provision off Willowbank Road.

Concern was expressed regarding the current situation whereby staff in the Hub with permits for Willowbank or Brunel Road car parks, continued to park on the residential streets surrounding the Hub. It was felt that if staff were charged for parking permits, the situation would worsen. The Leader reported that HBBC officers had been asked to be considerate to residents when choosing parking locations, and he asked that senior officers at Leicestershire County Council be asked to do the same for their staff. Members requested an update in three months.

It was moved by Councillor Lynch, seconded by Councillor Bray and

RESOLVED –

- (i) the use of the Rock Garage site as temporary staff parking be approved;
- (ii) negotiation for the use of Westfield Community Centre as parking for LCC staff be supported;
- (iii) extension of staff concessionary parking for a further six months be approved;
- (iv) future options be noted and explored at the appropriate time;
- (v) an update be brought back to the Executive in three months.

460 SUPPLEMENTARY BUDGET FOR TRADE WASTE

Approval was sought for revisions to income and expenditure budgets in respect of Trade Waste services following notification from the County Council, as disposal authority, that waste disposal charges would apply to trade waste collected from 1 April 2014. In response to a member's question, it was reported that the current arrangement with Leicestershire County Council provided the best value for money. On the motion of Councillor Crooks, seconded by Councillor Lynch, it was

RESOLVED –

- (i) a supplementary income budget of £12,000 be approved;
- (ii) a supplementary expenditure budget of £38,500 for estimated disposal charges effective from 1 April 2014 be approved.

461 OPTIONS FOR NEIGHBOURHOOD ACTION FACILITY IN THORNTON

The Executive was informed of the development of a model of sustainable community led solutions proposed for St Peter's Drive, Thornton, through the provision of a Neighbourhood Action Hub, following the 'Neighbourhood Takes Charge' project in the same area. It was stated that this was a pilot model which could be used in other areas. All Members present felt that it was an important initiative which would bring agencies

and the community together. On the motion of Councillor Bray, seconded by Councillor Bill, it was

RESOLVED –

- (i) work already undertaken in St Peter's Drive, Thornton, be noted;
- (ii) the development of a community led solution in St Peter's Drive, Thornton, by way of a Neighbourhood Action Hub, be approved;
- (iii) a one off capital budget of £15,500 financed from revenue to fund the set up costs of the hub, be approved;
- (iv) a supplementary budget of £23,311 to fund revenue costs of the hub to be funded from the HRA regeneration reserve be approved.

462 TENANCY CONDITIONS

Members were advised of proposed new tenancy conditions for council tenants and two related policies – the Successions Policy and the Recharge Policy. It was explained that the recharge policy would charge for repairs and was intended to make tenants aware of the consequences of their actions. With regard to the Successions Policy, it was noted that this had been updated following new legislation as part of the Localism Act which allowed greater discretion in agreeing successions of tenancies. During debate, the following points were raised:

- There would be wide consultation on the proposals
- The changes would apply to not only new tenants, but would also be applied to existing tenants, given the correct consultation and notice
- Flexible payment plans would be available as part of the recharge policy
- Accidental damage may be covered by the tenant's contents insurance policy depending on the nature of the accident, and the authority also had its own insurance
- A tidy garden scheme was being considered to assist elderly tenants and a tool share scheme to provide equipment for people who were able to look after their garden themselves
- If a tenant left a property in a poor state, they would be recharged for the work if they had left a forwarding address. If not, they would not be able to get housing with the authority again as they would be considered to be in debt
- The Probation Service had assisted in the past with providing people for gardening and DIY.

A Members asked if other RSLs would be part of the initiatives, and in response it was noted that it was up to each provider, but that contact could be made with them to ask.

It was moved by Councillor Bray, seconded by Councillor Bill, and

RESOLVED – the Tenancy Conditions, Successions Policy and Recharge Policy be approved for consultation with tenants.

463 EXCLUSION OF THE PUBLIC AND PRESS

On the motion of Councillor Bray seconded by Councillor Bill, it was

RESOLVED – in accordance with section 100A(4) of the Local Government Act 1972, the public be excluded from the following item of business on the grounds that it involves the disclosure of exempt

information as defined in paragraphs 1, 2, 3 and 10 of Part I of Schedule 12A of that Act.

464 TRANSFORMING HOUSING & COMMUNITY SAFETY SERVICES

The Executive received a report which proposed increased capacity and a restructure in the Housing & Community Safety service which intended to improve services to customers. A consultation response from Unison had been circulated to the Executive for their consideration. The Unison response was noted and agreed as part of the report. Members asked that an update be brought back when the new structure was in place. It was moved by Councillor Bray, seconded by Councillor Bill, and

RESOLVED –

- (i) the additional capacity and restructure be approved;
- (ii) the supplementary budgets outlined in the report be approved;
- (iii) a further report be brought back to the Executive once the new structure was in place.

(The Meeting closed at 7.40 pm)

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CHAIRMAN



HINCKLEY AND BOSWORTH BOROUGH COUNCIL

EXECUTIVE

16 APRIL 2014 AT 6.30 PM

PRESENT: Mr SL Bray - Chairman  
Mr DC Bill MBE – Vice-Chairman  
Mr WJ Crooks, Mr DM Gould, Mr MT Mullaney and Ms BM Witherford

Members in attendance: Councillors Mr PR Batty

Officers in attendance: Steve Atkinson, Rebecca Owen, Rob Parkinson and Shilpa Thakrar

510 APOLOGIES

Apologies were submitted on behalf of Councillors Cope and Lynch.

511 DECLARATIONS OF INTEREST

No interests were declared at this stage.

512 OMBUDSMAN REPORT - MALLORY PARK

The Chief Executive presented the report and updated councillors and members of the public present on recent progress towards an agreement. He reported on a meeting, convened by and held with a small group of residents, RML and Council officers, with Cllr Gould also present, the previous day during which a proposal was made which must now be considered, as would any further proposals which had been suggested, and as such it would be inappropriate to discuss the detail of a proposed Notice at this meeting. He reiterated that the topic under debate would be the Local Government Ombudsman's report only, and the recommendations relating to that.

During his presentation, the Chief Executive acknowledged that the above would mean that a Notice could not be served immediately but that the reasons for this were in the interest of all involved. It was therefore suggested that a further meeting of the Executive would need to be convened to make that decision at a later date. Should no further proposals come forward, it was stated that this meeting would take place no later than the end of May. In any event, a 'backstop' meeting date with RML and residents had been set for 6 May. It was also confirmed that the independent legal advice recommended in the Ombudsman's report had been sought and received, but was privileged information to the Council.

A member expressed concern about the final cost to the public purse taking into account compensation recommended by the Ombudsman, and in response it was stated that this figure could be around £50,000 in total. It was also explained that the costs of £23,000 (within that £50,000) due to the Authority from the previous operator would not be forthcoming due to that company going into liquidation.

A member who had attended the meeting with residents the previous day felt that it had been a positive and productive meeting and confirmed that officers and members wished to bring the matter to a conclusion as soon as possible.

It was moved by Councillor Gould, seconded by Councillor Crooks and unanimously

RESOLVED –

- (i) the report and recommendations of the Local Government Ombudsman be accepted;
- (ii) it be noted that the independent legal advice recommended by the Ombudsman had been commissioned and received;
- (iii) the Chief Executive be instructed to action the recommendations contained in paragraph 74 of the Ombudsman's report immediately, with the exception of the immediate service of a Statutory Notice, whilst further urgent discussions continued between residents, RML and the Council;
- (iv) a further extraordinary meeting of the Executive be convened to consider any final proposals and agree the content of a Statutory Notice no later than the end of May 2014;
- (v) the request for an additional payment to residents be noted and considered at that extraordinary meeting.

(The Meeting closed at 6.53 pm)

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CHAIRMAN

**EXECUTIVE – 28 MAY 2014**

**MEMORIAL SAFETY POLICY (UPDATE MAY 2014)**  
**REPORT OF DEPUTY CHIEF EXECUTIVE (COMMUNITY**  
**DIRECTION)**



Hinckley & Bosworth  
Borough Council

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**WARDS AFFECTED: PRIMARILY HINCKLEY, EARL SHILTON,**  
**BARWELL AND MARKFIELD ALSO AFFECTED**

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1. PURPOSE OF REPORT

1.1 To seek approval from Executive to adopt the updated Memorial Safety Policy.

2. RECOMMENDATION

2.1 That Executive adopt the Memorial Safety Policy.

2.2 That Executive delegate implementation of the policy to the Head of Street Scene Services.

3. BACKGROUND TO THE REPORT

3.1 Members will recall that our policy for the safe management of memorials was adopted in August 2009 and follows Ministry of Justice guidance. Following the introduction of our revised policy there has been no adverse publicity and no complaints.

3.2 The policy has been reviewed and updated to reflect:-

- New guidance on testing (National Association of Memorial Masons)
- Comments from the memorial masons who operate in our closed church yards.
- The known occurrences of unsafe memorials (from the last 5 years testing).

3.3 The Councils adopted policy remains that we will carry out safety inspections on all memorials in burial grounds managed by the authority. Currently approximately 5300 memorials need to be inspected.

3.4 The successful management of memorial safety has resulted in a year on year reduction in the percentage of memorials found to be unsafe. For example fail rates at Earl Shilton Baptist Church in 2009 was 16.16% compared with 0% in 2013.

3.5 The likely incidence of unsafe memorials in the future will be lower given that

- all new memorials are now installed to industry standards,
- all memorials found to be unsafe previously have now either been repaired or have been permanently made safe (either part buried or laid flat).

3.6 The Policy therefore recommends a reduction in the frequency of inspections from once every 5 years to once every 10 years for

- lower risk memorials

- sections / burial grounds where no memorials have failed the inspection on the previous 2 full inspections of the section / burial ground AND where the risk rating for the section / burial ground is less than 16. This will be reviewed annually.
- Annual site risk assessments will identify changes in ground conditions which would act as an alert to change inspection frequencies if necessary.

3.7 The number of memorials inspected each year has therefore reduced from approximately 3000 to 1000 as these risks have now been successfully managed and reduced.

3.8 Other than the reduction in the frequency of inspections the majority of the policy remains unchanged, and memorials found to be unsafe still continue to be dealt with in the same manner.

#### 4. FINANCIAL IMPLICATIONS [KP]

4.1 The cost of inspecting memorials is met by budgets for those hired and contracted staff used to conduct the work. The budget for this is set at £6,000 for 2014/2015. This has been reduced from £11,000 in 2012/2013 to reflect the reduction in the number of inspections conducted.

#### 5. LEGAL IMPLICATIONS [EP]

5.1 The Council must manage memorial safety in line with the Local Authority Cemeteries order 1977, the Health and Safety at Work act 1974, the Management of Health and Safety at Work Regulations 1999 and Occupiers Liability Act 1957. Should there be an accident then the Council needs to be able to demonstrate that we have done all that is reasonably practical to prevent incidents from occurring and that the relevant legislation has been complied with.

In terms of the expenditure of resources, the Local Government Act 1972 allows for local authority assistance in the upkeep of churchyards in which the inhabitants of the authority's area may be buried.

#### 6. CORPORATE PLAN IMPLICATIONS

6.1 The memorial safety programme contributes to improving our parks and green spaces by improving the safety and maintenance of memorials within Council maintained burial grounds.

#### 7. CONSULTATION

7.1 All memorial masons who work within our cemetery and churchyards have been consulted on the revised policy. The addition of the RQMF (register of Qualified Memorial Fixers) registration scheme was added as a result of this consultation.

#### 8. RISK IMPLICATIONS

8.1 It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

8.2 It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

8.3 Due to the long term risk management approach of the policy no significant risks associated with this report / decisions were identified from this assessment:

9. KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS

9.1 The oldest memorials in Ashby Road cemetery are now over 150 years old and it is unlikely that owners of these memorials will be found. The Borough Council therefore has to act on behalf of the wider community to repair or make these memorials safe. Decisions are made based on the heritage value of the memorial, the amenity value of the memorials, and its visibility.

10. CORPORATE IMPLICATIONS

10.1 By submitting this report, the report author has taken the following into account:

- Community Safety implications
- Environmental implications
- ICT implications
- Asset Management implications
- Human Resources implications
- Planning Implications
- Voluntary Sector

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Background papers: Memorial Safety Policy – May 2014 Update

Contact Officer: Caroline Roffey, Head of Street Scene Services  
Executive Member: Cllr Bill Crooks

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Hinckley & Bosworth  
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# HINCKLEY & BOSWORTH BOROUGH COUNCIL

## POLICY FOR THE SAFE MANAGEMENT OF MEMORIALS

Policy Created August 2009  
Updated May 2014  
Next Review Date 2025

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  2. Site Survey and risk assessment for different burial grounds
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## 1.0 Summary

This policy for Memorial safety was developed in response to guidance from the Ministry of Justice in January 2009, and follows the principles set out in that guidance.

A review of the policy was done and this document was updated in May 2014. It was found that actions taken over the last 5 years from the outcome of previous inspections had significantly reduced the amount of unsafe memorials. The fail rates have been analysed and a new testing frequency identified.

Generic risk assessments have been developed for different types of memorial using hazard and likelihood ratings to establish levels of risk for each type of memorial. Likelihood has been defined as the likelihood of a memorial causing an injury, and the Corporate Health and Safety policy has been followed in determining levels of risk and controls needed for each risk.

Site specific risk assessments have also been developed based on the types, condition, location and age of memorials. In combination with the generic risk assessments for different memorial types, a rolling inspection programme has been developed see appendix 3. Each memorial will be tested at least once every ten years with a visual and hand test to determine instability.

Typical responses to control the risks from different types of memorials have been developed and will result in the following actions for unsafe memorials:

Most low risk memorials – warning sign

Medium risk – warning sign and fit structural support or cordon off

High risk – warning sign and cordon off or lay flat.

Every reasonable effort will be made to contact memorial owners or their heirs to enable them to instruct a qualified memorial mason to make a proper repair. However if our efforts fail then the Council will permanently make safe the memorial by part burying it, laying it flat, or where memorials have heritage / amenity value paying for a repair to be made. In these cases, should relatives be traced in the future they will be asked to contribute to the cost of the repair. Priority will be given to making safe higher risk memorials.

Memorial masons working in the Borough Council's burial grounds will be required to hold a BRAMM / NAMM fixers licence or be suitably qualified and to fix to the NAMM code of working practice. They will have to supply a certificate of compliance for their work, ensuring high standards of workmanship in our cemetery.

## **2.0 Introduction**

2.0.1 The following document sets out Hinckley & Bosworth Borough Council's policy for the management of memorial safety in its burial grounds. The Authority currently has responsibility for the following cemeteries and closed churchyards:

- Ashby Road Cemetery, Hinckley
- St. Mary's Parish Church, Hinckley
- The Unitarian Chapel, Hinckley
- Holy Trinity Church, Hinckley
- St. Mary's Parish Church, Barwell
- Earl Shilton Baptist Church
- Earl Shilton Congregational Church
- St. Simon & St. Jude's Parish Church, Earl Shilton
- St. Michael's Parish Church, Markfield

However there are no memorials at Holy Trinity Church or the Unitarian Chapel, Hinckley.

## **2.1 Background**

2.1.1 In 2004, on the advice of the Health and Safety Executive (HSE) and the Institute of Cemetery and Cremation Management (ICCM), Hinckley & Bosworth Borough Council began a programme of inspecting and maintaining all memorials in its cemeteries and closed churchyards.

2.1.2 To ensure that the Council was following the best possible practice on memorial safety it commissioned the ICCM to carry out an initial assessment and undertake training of relevant staff. This enabled the Council to carry out safety inspections to a nationally recognised standard following the best possible guidance available to local authorities at that time.

2.1.3 Initial inspections in 2004 revealed a large number of memorials that were unstable and posed a significant risk to the health and safety of people visiting or working in the Council's burial grounds.

2.1.4 Having found memorials to be unsafe the Council employed a range of measures to reduce or remove the risk to public safety. Again the Council followed current guidance and, depending on the level of risk, either fenced off the memorial, installed a temporary structural make safe support, lay the memorial flat or attached an advisory notice to the memorial. Where it has been necessary the Council has obtained faculty permission from the Leicester Diocese.

2.1.5 Prior to carrying out memorial safety inspections every effort was made to keep the public informed, through notices around the burial grounds and through notices and articles in the local press. Opportunity to object or be present during inspections is always given to the friends or relatives of the deceased. A high level of publicity and good communication throughout the inspection programme helping to minimise distress to the bereaved and reduce cause for complaints.

- 2.1.6 The Council identified that in general people were far more distressed to find the memorial to a loved one laid flat than they were to have it temporarily supported. The make safe support gave them the time to have a repair completed whilst maintaining safety. With the large number of memorials found to be unsafe during early inspections fencing would have meant restricting access to large sections of the cemetery/churchyard to the distress of many visitors. The make safe structural supports, have therefore, been a good solution under these circumstances.
- 2.1.7 Hinckley & Bosworth Borough Council's priority has been to deal first with those memorials that represent a significant risk to public safety. It has therefore, actioned a number of repairs to large memorials within Hinckley Cemetery. These have been old memorials where it has not been possible to trace the grave owner or their heir or where no one from the family is willing or able to pay for the repair. Having these memorials repaired not only ensures safety but also conserves heritage value within the Cemetery.
- 2.1.8 Since initial memorial safety inspections in 2004 the Council has continued with a rolling programme of re-inspections using the information gathered for each memorial over the years.(see appendix 5 for last three years fail rates). Although the priority of this programme has been health and safety, action taken has also ensured good management practice, improving maintenance and preventing further infrastructure decay and disrepair.
- 2.1.9 At the same time the council has acted to ensure that all new memorials installed within the cemetery are now safe. This has included:-
- All masons working to the National Association of Memorial Masons (NAMM) code of working practice
  - All masons to be on the register of qualified memorial fixers (RQMF) maintained by NAMM
  - All masons providing a certificate of compliance
  - All masons having British Association of Accredited Memorial Masons (BRAMM) fixer licences
- As such all memorials installed since 2005 should be safe.
- 2.1.10 The Councils policy for managing the safety of its burial grounds has developed and evolved with the most current advice and guidance available. The priority has always been to ensure the safety of all those visiting and working in the Councils burial grounds whilst also being mindful to the thoughts and feelings of the bereaved.

### **3.0 National Policy Guidance & Advice**

- 3.0.1 The Council has consistently reviewed its policy on memorial safety to take account of current national guidance and best practice.
- 3.0.2 The Council, from the outset has sought the advice and guidance of the **Institute of Cemetery & Cremation Management (ICCM)** on implementing a programme of memorial safety inspections. The ICCM represents professionals working in burial and cremation authorities and companies throughout the UK. Their guidance '**Management of Memorials**' is a comprehensive guide to burial authorities responsibilities, offering a clear methodology for the management, inspection and making safe of memorials. The document has been supported by training provided by the ICCM to key Council staff involved in the process of managing memorial safety.
- 3.0.3 The Council continues to draw on the expertise and guidance of the ICCM. Council policy on the management of memorials is principally based on the guidelines and recommendations provided by 'Management of Memorials' adapted to meet local requirements and taking into consideration further guidance provided by The Local Government Ombudsmen, Ministry of Justice, Health & Safety Executive (HSE) and the National Association of Memorial Masons (NAMM).
- 3.0.4 In 2006 **The Local Government Ombudsmen** issued the **Special Report – 'Memorial safety in local authority cemeteries'**. This document reinforces much of the advice offered by the ICCM, providing general guidance on memorial safety testing with the aim of reducing public offence. The guidance advocates the use of temporarily structural supports to allow owners of unsafe memorials the time to have a repair completed.
- 3.0.5 The Local Government Ombudsmen Special Report provides guidance on how burial authorities can prevent being found guilty of maladministration in their memorial safety testing procedures. This includes making sure that reasonable steps are taken to inform the public and memorial owners of the authority's intention to carry out safety testing. The authority must also ensure adequate training of staff carrying out safety testing as well as having an adopted testing policy.
- 3.0.6 By following ICCM guidance the Council has complied with the recommendations of the Local Government Ombudsman and is satisfied that that all that can be reasonably expected has been done to prevent distress to the public and those grave owners affected by the safety testing.
- 3.0.7 As the organisation that represents the memorial industry the National Association of Memorial Mason's (NAMM) provides technical guidance and training on the safety of memorials, specifically the correct way to install or repair memorials. Advice and training on inspecting the safety of memorials is also provided by NAMM.

- 3.0.8 The Council as a local authority member of the National Association of Memorial Masons (NAMM) The NAMM Code of Working Practice supports the **British Standard BS8415 – ‘Monuments within burial grounds and memorial sites’ (2005)**. This standard sets out the requirements for checking the condition and stability of memorials and procedures for their inspection. The Standard supports the use of a visual inspection, hand test and a 35kg force test.
- 3.0.9 The most recent advice on memorial safety has come from the **Ministry of Justice – ‘Managing the safety of Burial Ground Memorials’ (2009)**. This guidance has been developed by a sub-group of the Burial and Cemeteries Advisory Group, which advises the Ministry of Justice on all aspects of burial law.
- 3.0.10 Ministry of Justice advice is that operators should do all that is reasonably practicable to ensure that people visiting and working in burial grounds are not exposed to risk to their health and safety. Guidance sets out a risk-based approach to memorial safety based on good practice guidelines. They advocate a sensible, proportionate and sensitive approach to managing risks in burial grounds and for carrying out remedial work to memorials to avoid unnecessary distress to the bereaved.
- 3.0.11 Ministry of Justice guidelines state that *‘only when the memorials poses a significant risk, such as imminent collapse in a way that could lead to serious injury, does immediate action need to be taken to control the risk.’* The routine staking of unsafe memorials is not recommended, instead advising the use of warning signs or cordoning off of memorials.
- 3.0.12 The ICCM has responded to the Ministry of Justice guidelines with advice to its members *‘to ensure that risk assessments are in place that identify the risks posed by the various types and sizes of memorials, consider the likelihood of identified risks being realized, consider the injuries that might be sustained should an accident happen and take suitable and sufficient steps (as far as is reasonably practicable) to eliminate or significantly reduce the risks identified.’*
- 3.0.13 The ICCM feels that ‘a visual inspection followed by a hand test will identify the majority of unstable memorials however a confirmatory mechanical test to a pressure of 35kg on those memorials that pass a simple hand test will ensure that no memorials are over-pressured. This action will also ensure that no hazards are missed. In the past the public has accused some authorities of over pressuring memorials and hence the introduction of the force measuring device as a means of proving that memorials are not being over pressured.’ The correct use of force measuring devices is, therefore, still recommended by the ICCM despite Ministry of Justice advice to the contrary.
- 3.0.14 The ICCM still supports the use of temporary supports on unstable lawn type memorials if the risk assessment warrants it. Temporary supports are considered a more sensitive approach than laying memorials flat and

is generally seen as the method of remedial action preferred by the public.

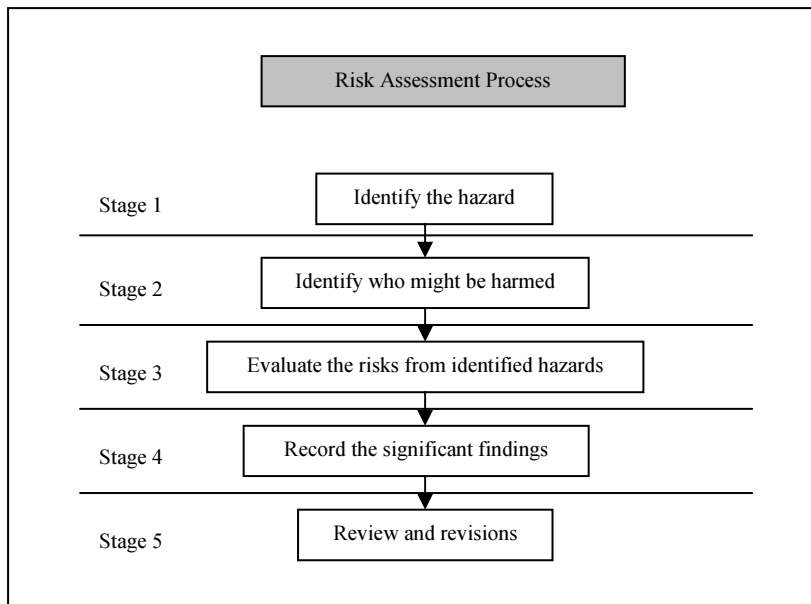
- 3.0.15 The ICCM does not support the Ministry of Justice guidance presumption that temporary supports are hazardous in their own right, stating that 'there is no logical basis to support the statement that a temporary support constitutes a trip hazardous or could cause damage to a memorial if properly installed. A temporary support significantly reduces the risk of serious injury posed by an unstable memorial.'
- 3.0.16 The ICCM maintains that an unstable lawn memorial is capable of inflicting serious injuries and, therefore, any guidance must meet with the requirements of health and safety legislation. A risk assessment of an unstable lawn memorial would indicate that immediate action is required.
- 3.0.17 The Council is mindful of letters and explanatory notes given by the HSE on the issue of memorial safety. Whilst this advice may have been issued well before the advice/guidance detailed above it still provides a good indication of the HSE's position. A letter to all Local Authority Chief Executives in 2004 encourages all burial authorities to manage the risks with the utmost sensitivity in line with industry guidance.
- 3.0.18 The HSE is clear in saying that the risk associated with unstable memorials is real and cannot be ignored. In the event of an accident and subsequent investigation by the HSE it is important that their advice has been taken and the Burial Authority can demonstrate they have done all that is reasonably practicable to prevent incidents from occurring.
- 3.0.19 The Council is bound by the conditions of the Local Authorities Cemeteries Order 1977 and must manage memorial safety in line with these regulations and those of health and safety legislation i.e. Health & Safety at Work Act 1974, Management of Health and Safety at Work Regulations 1999 and Occupiers Liability Act 1957.

## **4.0 Risks Assessment**

- 4.0.1 In recent years the safety of memorials has become a focus of much attention with the risk of injury an issue of debate. The most recent guidance available to local authorities from the Ministry of Justice (2009) is that the risk of injury from a gravestone or other memorial, which has become loose and unstable, is very low.
- 4.0.2 Ministry of Justice advice states that over the last 30 years, eight people in the UK have been killed when a memorial has fallen on them. Given the number of memorials and the number of visitors to burial grounds in any one year, the risk of any injury is “extremely low.” Action to manage risks in burial grounds, therefore, needs to be sensible, proportionate and undertaken in a sensitive way.
- 4.0.3 Ministry of Justice advice does not appear to take into consideration that over time memorials, if not properly maintained, will deteriorate and therefore lead to greater risk in the future. If no measures are taken now to properly inspect and maintain burial grounds the risk to safety in the future will only increase.
- 4.0.4 Statistics from ICCM indicate that there have been six deaths in the last ten years and many serious injuries caused by unsafe memorials. They also highlight the instances where local authorities have been investigated by the HSE and improvement notices issued. In the most serious cases the HSE has threatened prosecution.
- 4.0.5 In the event of a serious injury it is probable that HSE inspectors would investigate. They will want assurances that the Council had followed guidance and carried out a risk-based assessment of its burial grounds. They will consider whether a significant risk was foreseeable and whether reasonable and practicable measures were undertaken to control such risks. The Ministry of Justice is also clear that “there is no requirement to remove all risk”.
- 4.0.6 The Council has a legal duty under the Health and Safety at Work Act 1974, Management of Health and Safety at Work Regulations 1999 and Occupiers Liability Act 1957 to ensure that its burial grounds are safe places to work and visit. Managing memorial safety, therefore, is an essential part of controlling the risks to health and safety.
- 4.0.7 Both the ICCM and Ministry of Justice recommend taking a risk-based approach to managing memorial safety. When carrying out memorial inspections, therefore, Hinckley & Bosworth Borough Council’s corporate ‘Risk Assessment Guidance’ (GN1) will be followed. This guidance utilises the Health & Safety Executives five stage risk assessment process as illustrated in figure 1 below:

4.0.8

**Figure 1: HSE 5-stage risk assessment process**



4.0.9 Risk is determined by the calculation:

**RISK = (LIKELIHOOD x SEVERITY) PERSONS AFFECTED**

4.0.10 The calculation of risk is used to determine what controls may be required to minimise the likelihood of injury occurring and the priority of action. When completing risk assessment the following evaluation conventions will be used:

<b>Hazard Rating</b>	
HRR	Descriptor
1	Very minor or no injury
2	Minor injury (cut)
3	Serious injury (over 3 day/equipment damage)
4	Major injury or permanent disability
5	Single or multiple deaths
<b>Likelihood Rating</b>	
LRR	Descriptor
1	Very unlikely
2	Unlikely
3	Possible
4	Probable
5	Definite
<b>Action Required after Calculation (HRR x LRR)</b>	
CRR	Descriptor
1-5	No further controls required
6-8	Further control to be considered, low priority.
9-15	Further controls required – medium priority.
16-20	Further controls required – high priority.
21-25	Immediate action required – urgent priority.



- 4.0.11 As part of the risk assessment process it is necessary to carry out periodic inspection of each memorial within burial grounds and take measures to control any risk that may be identified. To help with this process a summary of generic risk assessments for the most common types of memorial have been produced (appendix 1). These reflect the risk should a memorial be found to be unsafe.
- 4.0.12 In developing these risk assessments the Council has been mindful of the Ministry of Justice guidance that “in most cases the actual level of risk from an unstable memorial will be very low” and that where there is an imminent risk of toppling, “very few cases where this could result in a serious injury”
- 4.0.13 Ministry of Justice advice is that “a hazard is anything that may cause harm; the risk is the chance, high or low, that someone could be harmed by a hazard, together with an indication of how serious the harm could be”. This has been followed in developing these risk assessments.
- 4.0.14 When taking action to make safe or repair memorials that are found to be unsafe priority will be given to those memorials alongside or close to paths and main thoroughfares, memorials of historical or social importance, and memorials within highly visited sections. These memorials present the biggest risk in terms of potential injury to people visiting or working in the burial ground.
- 4.0.15 Site surveys have been carried out for each burial ground to identify different areas by type of memorial, age, prevailing ground conditions, areas of particular historical and social importance, visitor frequency etc. This information has been used to produce a risk-based assessment of each burial ground (appendix 2).
- 4.0.16 These site surveys and previous inspection results have been used to develop a rolling programme of inspections and remedial safety works (appendix 3). On all sites a ground condition assessment will be done when completing the annual site risk assessment, if any changes are identified that would cause issues with the memorials the frequency schedule will be altered accordingly. The Council will follow the Ministry of Justice guidance that it is for Burial ground operators to determine the frequency if inspections.
- 4.0.17 The Council still has to act to remove risk and therefore timescales to permanently make safe memorials have been developed where no owner or heir willing to make a repair can be found for a memorial. For high risk memorials this is 6 months, medium risk 1 year and low risk 2 years. These are detailed in appendix 1.

## **5.0 HBBC Policy**

- 5.0.1 The following section sets out Hinckley & Bosworth Borough Council's policy for the safe management of memorials in its cemeteries and closed churchyards. The purpose of this policy is clarify the Council's position in all areas of memorial management including what procedures have been adopted for the treatment of memorials that are found to be unsafe.
- 5.0.2 No part of this policy will replace the councils responsibilities and duties under health and safety legislation or other legislation covering burial grounds e.g. Local Authorities Cemeteries Order 1977 (LACO).

## **5.1 New Memorials**

- 5.1.1 All new memorials and all memorials re- erected following internment will be installed by a BRAMM / NAMM accredited memorial mason in accordance with the NAMM Code of Working Practice.
- 5.1.2 An application to erect a memorial (or to add an additional inscription or carry out other works) must have been accepted before any works on a memorial are permitted. All new memorials must confirm to maximum size criteria relevant to particular burial grounds and individual sections. Details of specific restrictions are available from the Council on request.

## **5.2 Carrying Out Memorial Safety Inspections**

- 5.2.1 Prior to commencing memorial safety inspections the Council will follow the notification procedure as set out under the Local Authorities Cemeteries Order (LACO) 1974. This includes notices around the burial ground and in local papers along with notification of Church of England and Commonwealth Graves Commission where required.
- 5.2.2 The Council will carry out safety inspections on all memorials in burial grounds managed by the authority. These inspections will be undertaken as part of a rolling programme on annual, three, five and ten yearly cycles depending on the condition and risk assessment for each memorial, on location, ground conditions an overall memorial height.. High risk memorials will be inspected on an annual basis, medium risk every 3/5 years, and low risk every 5/10 years
- 5.2.3 All memorial safety inspections will be carried out by suitably trained persons in accordance with NAMM and Ministry of Justice guidelines.
- 5.2.4 A record of all memorial inspections and the results of these inspections will be kept by the Council and will be available to view on request at the Council Offices (one weeks notice will be required for each request).

- 5.2.5 For each memorial inspected a Risk Assessment (Appendix 6) will be completed. This assessment will provide a hazard rating (severity of outcome) and likelihood rating (probability of outcome), which will in turn be used to calculate the risk associated with the memorial and whether or not further action to control that risk is required.
- 5.2.6 For memorials up to 2.5 metres inspections will include both a visual check and a hand test. The hand test will be used to determine stability of the memorial. Even where a visual check reveals no sign of defects the hand test will be used to confirm that the memorial is stable.
- 5.2.7 The hand test will be carried out by standing to one side of the memorial and applying a firm but steady pressure in different directions. The hand test will be used to determine if or to what degree the memorial is unstable.
- 5.2.8 The Council acknowledges that memorials fitted with a ground anchor may move when tested. Staff are trained to identify when a ground anchor has been fitted and, therefore, would not fail the memorial for movement at the base to foundation joint, as the memorial will 'lock' on the ground anchor.
- 5.2.9 For memorials over 2.5 metres a visual check and risk assessment will be completed. Where there is cause for concern or uncertainty a BRAMM / NAMM, Council registered, memorial mason will be instructed to carry out a more detailed assessment. Where assessment of the memorial falls outside the experience of this memorial mason or where there remains uncertainty of safety a specialised structural engineer or other suitably qualified professional will be instructed to inspect the memorial thoroughly.
- 5.2.10 Mechanical force measuring equipment will not be routinely used to test the stability of memorials. Such equipment will only be used if the safety of a memorial is under dispute. In these circumstances mechanical force measuring equipment may be used to confirm that the memorial is unable to withstand a force approximating 350 Newtons (circa 35kg) and is, therefore, an 'immediate danger'.
- 5.2.11 Grave owners or relatives of the deceased can request to be present at the time of the memorial inspection. The request should be made to the Cemetery Office as far in advance of planned inspections as is reasonably practical.

### **5.3 Procedure For Contacting Grave Owners/Relatives of Deceased**

- 5.3.1 At least 28 days prior to starting memorial safety inspections notices will be displayed at all main entrances and in conspicuous positions throughout the burial ground. These notices will detail what is being done, when it will be done and how people can obtain further information or raise objections.
- 5.3.2 Press releases will be issued to relevant local newspapers at least 2 weeks in advance of the Council's intention to inspect memorials and/or carry out works to make memorials safe. Information will also be included within the Borough Bulletin.
- 5.3.3 Where memorials are found to require maintenance every effort will be made to contact the grave owner or their heirs to effect a repair. The methods of contact will be:
1. A notice attached to the unsafe memorial;
  2. A letter to the last known address of the grave owner or updated contact address;
  3. General local press releases;
  4. The Council website.
- 5.3.4 For all memorials found to be unsafe a letter will be sent to the grave owner at their last known address or updated contact address. If the Council receives no response a further letter will be sent after three-months of sending this first letter. These letters will inform the owner that their memorial has been found to be unsafe and details of the action needed to be taken. If there is no response to these initial two letters a third and final letter will be sent at least six months after the date the first letter was sent.
- 5.3.5 If after at least six months from finding a memorial unsafe the Council has received no response to all attempts to contact the grave owner the Council will take the necessary steps to permanently make safe the memorial. This will also be the case for memorials where the grave owner or their heirs have been contactable but where they are unwilling or unable to effect a repair.
- 5.3.6 Timescales for the Council to permanently make safe memorials are dependent on the level of risk from the memorial. High risk memorials will be permanently made safe after 6 months, medium risk after 1 year and low risk after 2 years.
- 5.3.7 The Council will keep an up to date database of all grave owner/relative contact information. When purchasing grave rights new owners will be encouraged to keep the Council informed of any changes in address.
- 5.3.8 On consecrated ground the Council will notify the Church of England (Leicester Diocese) of the intention to maintain graves and where appropriate obtain faculty permission for works.

5.3.9 Where appropriate the Council will notify the Common Wealth Graves Commission of the intention to maintain graves and keep them informed of any works to be carried out.

## 5.4 Dealing with Unsafe Memorials

5.4.1 Ministry of Justice advice states 'only when the memorial poses a significant risk, such as imminent collapse in a way that could lead to serious injury, does immediate action need to be taken to control the risk'. Based on this advice when a memorial poses a **significant risk** one or more of the following actions will be taken:

- i) A **Safety Notice** informing people that the Memorial has found to be unsafe and the action to be taken by the owner or their heir(s) will be displayed on or near to the memorial.
- ii) A temporary **Make Safe Structural Support** will be used to secure unsafe memorials whilst the grave owner or their heir(s) is contacted and repair arranged. These supports will be used for a maximum of six months.
- iii) **Fencing/Cordoning Off** unsafe memorials may be necessary under some circumstances e.g. for very large memorials or where a significant number of memorials are unsafe within a specific area.
- iv) Memorials will be **Laid Flat** if there is no other practical means of making the memorial safe or where the grave owner or relative has requested it.

5.4.2 The Council acknowledges advice from the Ministry of Justice against the routine staking of memorials. Experience shows, however, that locally this method is preferred to fencing off memorials where people access to memorials is restricted, making leaving floral tributes difficult and causing unnecessary distress. The Council will, therefore, continue to use temporary make safe structural supports on memorials that pose an immediate risk to safety whilst the grave owner or their heir(s) are contacted. The Council will ensure proper training of its staff in the installation of these supports to minimise the risk of incorrect fitting and/or damage to memorials.

5.4.3 If large numbers of memorials are found to be unsafe within a section of a burial ground fencing of a whole area will be undertaken and signage displayed on the outside to inform visitors of the danger and contact details for further information. Fencing will be used to secure the area.

5.4.4 Where a memorial poses only a low risk a safety notice will be placed on the memorial and the grave owner or their heir(s) notified.

5.4.5 Appendix 1 contains generic risk controls where different memorial have been found to be unsafe and the methods used to control the risk caused by these unsafe memorials. The risk matrix below also gives an indication of what methods are appropriate to make a memorial safe depending on the level of risk identified:

<b><u>High Risk</u></b>	<b><u>Medium Risk</u></b>
Cordon Off Lay Flat Repair Make Safe Support	Make Safe Support Lay Flat
<b><u>Low Risk</u></b>	<b><u>Negligible Risk</u></b>
Safety Notice	No further controls

- 5.4.6 If visual checks identify a defect/issue with a memorial outside of the experience and knowledge of the person carrying out the check a BRAMM / NAMM registered memorial mason from the Councils list of approved masons will be instructed to carry out an assessment of the problem. If the problem is viewed to be outside the experience of the memorial mason instructed a structural engineer or other suitably qualified professional will be called in.
- 5.4.7 Where a memorial is thought to have a historical or social significance the Councils Conservation Officer will be consulted prior to any remedial works being carried out.
- 5.4.8 Where after at least six months from being found to be unsafe the Council has been unable to contact the grave owner or their heir(s) a decision will be taken as to how to make the memorial safe. Under these circumstances the memorial will be partially buried in the ground, permanently laid flat or repaired. Where the grave owner or their heir(s) has been contacted but they are unwilling or unable to have the memorial repaired they will be given the choice to have the memorial partially buried or permanently laid flat.
- 5.4.9 If no grave owner can be found but a memorial is determined to be of heritage or amenity value, the Council may decide to repair a memorial. In these circumstances any relative being found in the future would be requested to pay the cost of the repair.
- 5.4.10 The Council will make no charge for applications from memorial masons to carry out repairs to an existing memorial.
- 5.4.11 Where kerbstones are found to be breaking apart and the grave space in a generally poor state of repair the Council, under the Local Authorities Cemeteries Order (1974) is permitted to remove them from the site and tidy the grave space. Where this is the intention, notices will be displayed on the grave space for a period of three months and letters sent to the last known address of the grave owner or their heir(s).

## **6.0 Safe Systems of Work**

### **6.1 Memorial Safety Inspections**

- 6.1.1 All memorial safety inspections will be carried out by a suitably qualified person trained in accordance with the guidance provided by this policy and other relevant national guidelines.
- 6.1.2 Persons carrying out safety inspections must ensure they have the correct tools, equipment and protective clothing to carry out the task.
- 6.1.3 Inspections must not be carried out under adverse weather conditions or if temperatures fall below freezing.
- 6.1.4 Immediately prior to carrying out the inspection of any memorial the inspector must ensure that the area around the memorial is clear of all potential hazards, for example, loose memorial components, glass jars etc. Particular care should also be taken if the ground conditions are noted as poor or uneven.
- 6.1.5 If the memorial is overgrown with weeds/vegetation this must be removed prior to inspection. This should be done with great care to avoid damage to the memorial and possible risks to safety.
- 6.1.6 For memorials up to 2.5 metres inspections will include both a visual check and a hand test. The visual check must be completed first and the results recorded on the memorial risk assessment form
- 6.1.7 The hand test will be carried out by standing to one side of the memorial and applying a firm but steady pressure in different directions. The hand test will be used to determine if or to what degree the memorial is unstable.
- 6.1.8 Inspectors must ensure that their actions do not pose a hazard to other employees or visitors. When carrying out the hand test it is the inspector's responsibility to ensure that they and all other persons stand out of the possible fall area of the memorial.
- 6.1.9 Inspector must be vigilant at all times and consider their actions and omissions in respect of the health and safety of all users of the burial ground.
- 6.1.9 The risk assessments should be reviewed by the memorial inspector prior to commencing works, taking into account local conditions and potential risks not previously identified. If required the risk assessment should be amended to reflect any changes and the controls put in place to manage these risks.

## **6.2 Memorial Safety Remedial Works**

- 6.2.1 All works to make safe a memorial that has been identified as of an immediate risk to health and safety will be carried out by a suitably qualified person trained in accordance with the guidance provided by this policy and other relevant national guidelines.
- 6.2.2 The methods used to make safe memorials found to be of an immediate risk to health and safety are as follows:
- a) Installation of a temporary make safe structural support;
  - b) Laying the memorial down;
  - c) Cordoning off the memorial/s;
  - d) Partially burying memorial in the ground;
- 6.2.3 The persons carrying out this work must review these risk assessments prior to commencing works, taking into account local conditions and potential risks not previously identified. If required the risk assessment should be amended to reflect any changes and the controls put in place to manage these risks
- 6.2.4 Persons carrying out remedial works must ensure they have the correct tools, equipment and protective clothing to carry out the task. These tools, equipment and protective clothing must be made readily available.
- 6.2.5 Persons must ensure they follow the manufacturers instructions when using equipment or installing memorial make safe structural supports. Users of the Council's gantry must also have undergone the necessary training in the safe use of this particular piece of equipment.
- 6.2.6 All tools and equipment should be inspected prior to use. Any fault that should develop with any article must be reported immediately. The affected item must not be used until such time as a competent, authorised person has made full repairs.
- 6.2.7 Temporary make safe structural supports should be fitted according to the manufacturers guidelines. If due to the construction of the memorial the support cannot be fitted correctly then an alternative method of making the memorial safe should be used. Correct fitting of the structural support should not cause a trip hazard or create any other increased risk of injury.
- 6.2.8 When removing temporary make safe structural supports the manufacturers guidelines should be followed using equipment appropriate for the task. All equipment and materials should be completely removed and appropriately stored or disposed of.
- 6.2.9 When laying a memorial down the gantry should be used to lift any memorial that is considered too heavy to lift by hand. No person should attempt to lift or carry any item that they consider too heavy.
- 6.2.10 When laying a memorial down the risk of creating a trip hazard should be considered and all necessary precautions taken to reduce this risk e.g.



resting memorial on timber packing, positioning of memorial in line with other adjacent memorials etc.

- 6.2.11 Before attempting to move any memorial the likelihood of any component parts of the memorial falling during the operation must be assessed by a competent person. Any loose or detached parts must be removed independently.
- 6.2.12 Where it is considered that Council staff cannot move a memorial safely the assistance of a specialist outside company or organisation will be engaged.
- 6.2.13 If laying a memorial down results in any dowels protruding from the memorial these will be removed or cut off level with the stone.
- 6.2.14 Where possible when laying memorials down a slight angle will be maintained using timber packing or by laying the memorial plate on its base to prevent the accumulation of water on the memorial face and the potential for long term damage to the inscription. The exception to this is crosses, which will be laid flat to prevent them from breaking in two.
- 6.2.15 When cordoning off a memorial the cordon will be around the fall area of the memorial not just the memorial as it stands.
- 6.2.16 The integrity of all temporary make safe works must be inspected regularly to ensure safety standards are maintained.
- 6.2.17 When partially burying an unsafe memorial in the ground at least 25% or 15" (380mm) (which ever is the greater of the height) must be below ground. When in place the soil around the memorial must be thoroughly consolidated. When measuring how much of the memorial is to be below ground the measurement is taken from the last joint.
- 6.2.18 In some circumstances it may be necessary to employ a specialist company or organisation to make memorials safe through repair, laying flat or partial burial. Under these circumstances the guidance in this policy and other relevant national guidelines will still be applicable.

### **6.3 General Health & Safety Requirements**

- 6.3.1 The following section outlines general health and safety requirements relevant to the inspection and making safe of memorials found to be of immediate risk.

#### **Tools & Equipment**

- 6.3.2 Mechanical and Electrical Equipment must not be interfered with by unauthorised personnel. Any fault that should develop with any article of machinery or equipment must be reported immediately to a Supervisor/ Manager. The affected item must not be used until such time as a competent, authorised person has made full repairs.
- 6.3.3 The operative must use the correct tools and equipment required to carry out a particular job.

- 6.3.4 Tools and equipment provided must be suitable for the purpose.
- 6.3.5 Care is to be taken in the use of and laying aside of tools with sharp edges.

### **Lifting**

- 6.3.6 No person should attempt to lift or carry any item that they consider too heavy. Assistance should be called for if there is any doubt whatsoever.
- 6.3.7 The correct lifting technique is as follows:

Do not jerk or shove as twisting the body may cause injury. Lift in easy stages, i.e. from floor to knee then from knee to carry position. Reverse the lifting method when setting the load down.

Hold weights close to the body. Lift with the legs and keep the back straight. Grip load with the palms of the hands, not with fingertips. Do not change grip whilst carrying. Do not let the load obstruct view. Ensure that the route to be taken is clear of obstructions before commencement.

- 6.3.8 All staff will receive specific manual handling training.

### **Protective Clothing**

- 6.3.9 Steel toe capped boots must be worn when carrying out any operation in a burial ground.
- 6.3.10 Gloves must be worn when handling any materials that may lead to abrasions, cuts, punctures, tearing or bruising.
- 6.3.11 Safety helmets must be worn when dealing with memorials over 1.5 metres in height.

### **Hazard Reporting**

- 6.3.12 Staff must advise the Cemetery Office whenever damage to a memorial is reported e.g. vehicle collision or if it is suspected a memorial has become unsafe. Cemetery office staff must record these incidents and arrange for the memorial to be inspected as soon as practical.
- 6.3.13 It is the responsibility of every employee to report any hazard or potential hazard that he/she should notice. In the first instance the employee should, where it is safe to do so, remove the hazard or prevent any person from coming into contact with the hazard. Should it not be possible to remove the hazard immediately, the employee should report the fact to a supervisor/manager who will take the necessary action to remove the hazard.
- 6.3.14 A hazard report should be completed by a supervisor / manager to be used to evaluate risk and make any policy or risk assessment update.

## **Accident Reporting**

- 6.3.15 All accidents and injuries, regardless of how slight, should be reported to a supervisor/manager, who will ensure that an entry is made in the Accident Book. All accidents should be investigated by a supervisor/manager, and where findings indicate, a change in working practice should be made to prevent recurrence.
- 6.3.16 All accidents causing an employee to be absent for more than 3 days must be reported to the enforcing authority.
- 6.3.17 Should a Doctor give notification that an employee suffers from a work related disease the employer must notify the enforcing authority.
- 6.3.18 Accidents that result in a fatality must be reported immediately by telephone to the enforcing authority.
- 6.3.19 Dangerous occurrences (near misses) must be investigated by a supervisor/manager who will change working practices or take such action as is necessary to prevent a recurrence. Any change in working practice will be identified from the result of risk assessment. If it is considered that a near miss could have resulted in a reportable injury the enforcing authority must be notified immediately.
- 6.3.20 All persons who suffer threats from another person should report the matter immediately to a supervisor/manager. Should an employee be absent for more than 3 days as a result of physical violence whilst at work the incident should be reported as a work related injury.

## **Protection of the Public**

- 6.3.21 Employers and employees have a positive duty to protect the health and safety of members of the public who visit their burial grounds. Staff must be vigilant at all times and consider their actions and omissions in respect of the health and safety of visitors.

## **7.0 Useful Contacts**

- **Institute of Cemetery and Cremation Management (ICCM) –**  
Address: ICCM National Office, City of London Cemetery, Aldersbrook Road, Manor Park, London E12 5DQ.  
Tel: 020 8989 4661  
e-mail: Julie.callender@iccm-uk.com  
website: www.iccm-uk.com
- **National Association of Memorial Masons (NAMM) –**  
Address: 1 castle Mews, Rugby, Warwickshire CV21 2XL.  
Tel: 01788 542264  
e-mail: enquiries@namm.org.uk  
website: www.namm.org.uk / www.nammregister.org.uk
- **British Register of Accredited Memorial Masons (BRAMM) –**  
Address: 8 The Crescent, Taunton, Somerset TA1 4EA.  
Tel: 01823 448259

e-mail: bramm@bramm-uk.org  
website: www.bramm-uk.org

- **The Dioceses of Leicester** –  
Contact: Rupert Allen  
Address: St Martins House, 7 Peacock Lane, Leicester,  
LE1 5FZ  
Tel: 0116 2615332  
website: www.leicester.anglican.org
  
- **Health and Safety Executive (HSE)** –  
- General Enquiries:  
Tel: 0845 3450055  
e-mail: hse.infoline@connaught.plc.uk  
website: www.hse.gov.uk  
  
- Report incident:  
Address: Incident Contact Centre, Caerphilly Business Park,  
Caerphilly, CF83 3 GG.  
Tel: 0845 3009923  
e-mail: riddor@connaught.plc.uk.  
website: www.hse.gov.uk
  
- **Commonwealth War Graves Commission** –  
Address: Jenton Road, Sydenham, Leamington Spa, Warwickshire  
CV31 1XS.  
Tel: 01926 330137  
website: www.cwgc.org
  
- **Ministry of Justice** –  
Address: 102 Petty France, London SW1H 9AJ.  
Tel: 020 3334 3555  
e-mail: general.queries@justice.gsi.gov.uk  
website: www.justice.gov.uk
  
- **Commission for Local Administration in England** –  
Address: 10<sup>th</sup> Floor Millbank Tower, Millbank, London SW1P 4QP.  
Tel: 020 72174620  
e-mail: enquiries@lgo.org.uk  
website: www.lgo.org.uk

## 8.0 Appendices:

## **Appendix 1:**

### **Generic Memorial Risk Assessment Summary for different memorial types should they fail the safety test**

#### **Type**

Based on NAMM code types of memorials

#### **Hazard rating / Likelihood rating / Calculation / Priority**

See 4.0.9 – 4.0.13

#### **Immediate controls**

See 5.4

#### **Inspection frequency**

Typical inspection frequencies for types of memorial

Low risk – every 5/10 years

Medium risk – every 3/5 years

High risk – every year

#### **Date for removal of risk**

See 5.3.6. Higher risks will be removed quicker than lower risks

Memorial type	Hazard Rating	Likelihood rating	Calculation	Priority	Immediate controls	Inspection frequency	Date for removal of risk	Comment
Lawn (with base) less than 60cm	2	2	4	Low	Consider warning sign if in prominent location	10 years	None	Increase likelihood rating if fail on dowels
Lawn (with base) 60-90cm	3	2	6	Low	Warning sign	5 years	2 years	Increase likelihood rating if fail on dowels
Lawn (with base) 90-120cm	4	2	8	Low	Warning sign	5 years	2 years	Increase likelihood rating if fail on dowels
Lawn (with base) 120-180cm	4	3	12	Medium	Warning sign Consider temporary support	3 years	1 year	Increase likelihood rating if fail on dowels
Lawn (with base) greater than 180cm	4	4	16	High	Warning sign Lay flat or cordon off	1 year	6 months	Increase likelihood rating if fail on dowels
Tablets / plaques less than 60cm	2	2	4	Low	Consider warning sign if in prominent location	10 years	None	
Vases less than 60cm	2	2	4	Low	Consider warning sign if in prominent location	10 years	None	Depends on stability of vase. i.e tall slender vases will be greater risk than shorter wider ones.
Vases greater than 60cm	3	3	9	Medium	Warning sign Consider laying flat / cordoning off if in prominent location	3 years	1 year	Depends on stability of vase. i.e tall slender vases will be greater risk than shorter wider ones

Memorial type	Hazard Rating	Likelihood rating	Calculation	Priority	Immediate controls	Inspection frequency	Date for removal of risk	Comment
Open books less than 60cm	2	2	4	Low	Consider warning sign if in prominent location	10 years	None	If rest or book / rest joints have failed, increase likelihood rating
Open books 60-90cm	3	2	6	Low	Warning sign	5 years	2 years	If rest or book / rest joints have failed, increase likelihood rating
Open books 90-120cm	3	3	9	Medium	Warning sign Consider laying flat / cordoning off if in prominent location	3 years	1 year	If rest or book / rest joints have failed, increase likelihood rating
Open books greater than 120cm	4	4	16	High	Warning sign and lay flat or cordon off	1 year	6 months	If rest or book / rest joints have failed, increase likelihood rating
Crosses less than 60cm	2	3	6	Low	Warning sign Consider temporary support if in prominent location	5 years	2 years	If failed at top tier or joint between cross and top tier increase likelihood. Need to consider location and likely fall of cross if it fails
Crosses 60-90cm	3	3	9	Medium	Warning sign Consider temporary support if in prominent location	3 years	1 year	If failed at top tier or joint between cross and top tier increase likelihood. Need to consider location and likely fall of cross if it fails
Crosses 90-120cm	3	4	12	Medium	Warning sign Consider temporary support	3 years	1 year	If failed at top tier or joint between cross and top tier increase likelihood. Need to consider location and likely fall of cross if it fails
Crosses 120-160cm	4	4	16	High	Warning sign and fit support / lay flat / cordon off	1 year	6 months	If failed at top tier or joint between cross and top tier increase likelihood. Need to consider location and likely fall of cross if it fails
Crosses greater than 180cm	4	4	16	High	Warning sign and cordon off or lay flat	1 year	6 months	If failed at top tier or joint between cross and top tier increase likelihood. Need to consider location and likely fall of cross if it fails

Memorial type	Hazard Rating	Likelihood rating	Calculation	Priority	Immediate controls	Inspection frequency	Date for removal of risk	Comment
Monoliths/Headstone (No base) less than	2	2	4	Low	Consider warning sign if in prominent	10 years	None	If ground conditions are poor likelihood should be increased

60cm					location			
Monoliths/Headstone (No base) 60-90cm	3	2	6	Low	Warning sign	10 years	2 years	If ground conditions are poor likelihood should be increased
Monoliths/Headstone (No base) 90-120cm	4	2	8	Low	Warning sign	10 years	2 years	If ground conditions are poor likelihood should be increased
Monoliths/Headstone (No base) 120-180cm	4	3	12	Medium	Warning sign Consider temporary support	5 years	1 year	If ground conditions are poor likelihood should be increased
Monoliths/Headstone (No base) greater than 180cm	4	3	12	Medium	Warning sign and lay flat / cordon off	5 year	1 year	If ground conditions are poor likelihood should be increased
Full grave less than 60cm	2	2	4	Low	Consider warning sign if in prominent location	10 years	None	Increase likelihood rating if fail on dowels
Full grave 60-90cm	3	2	6	Low	Warning sign	5 years	2 years	Increase likelihood rating if fail on dowels
Full grave 90-120cm	4	2	8	Low	Warning sign	5 years	2 years	Increase likelihood rating if fail on dowels
Full grave 120-180cm	4	3	12	Medium	Warning sign Consider temporary support	3 years	1 year	Increase likelihood rating if fail on dowels
Full grave greater than 180cm	4	4	16	High	Warning sign Lay flat / cordon off	1 year	6 months	Increase likelihood rating if fail on dowels
Kerbs	2	2	4	Low	None	10 years	None	Assessment needs to be made if trip hazard dependent on location
Flat tablets / plaques	1	2	2	Low	None	10 years	None	

Memorial type	Hazard Rating	Likelihood rating	Calculation	Priority	Immediate controls	Inspection frequency	Date for removal of risk	Comment
Monuments 120-180cm	4	3	12	Medium	Warning sign Consider temporary support / cordon off	3 years	1 year	Seek further assessment by structural engineer if required
Monuments greater than 180cm	5	4	20	High	Warning sign Cordon off / lie flat	1 year	6 months	Seek further assessment by structural engineer if required



## **Appendix 2 Site Surveys:**

### **Burial Ground Memorial Safety Risk Assessment**

#### **Age of memorials**

It is assumed that memorials will deteriorate with age, and that maintenance will decrease as memorials age as there will be less living relatives to assume this responsibility. Therefore risk ratings for each burial ground are based on the predominant age of the memorials are:

- 3- High - 75 years plus
- 2- Medium – 25 – 75 years
- 1- Low – less than 25 years
- 0 –Very low – memorials installed since 2005 to the NAMM code

#### **Condition of memorials**

It is assumed that the general condition of the memorials will affect the likelihood of them failing a safety test i.e. memorials which are chipped, cracked, leaning or damaged are more likely to pose a risk. Also sections which have had previous repairs undertaken are likely to be in a better condition. A general assessment of the condition of memorials in each burial ground will result in the following risk ratings:

- 3 - High – poor condition (25% or more of memorials showing deterioration)
- 2 - Medium – fair condition (10 – 25% of memorials showing deterioration)
- 1 - Low – good condition (less than 10% of memorials showing deterioration)
- 0 – None – excellent condition (less than 2% of memorials showing signs of deterioration)

#### **Ground conditions**

It is assumed that the ground conditions in each burial ground will affect the likelihood of memorials failing a safety test i.e. burial grounds which have subsidence or tree root damage are more likely to pose a risk. Leaning memorials on their own do not necessarily indicate subsidence. A general assessment of the condition of ground conditions will result in the following risk ratings:

- 3- High – Poor condition (wide spread evidence of subsidence, cracks to ground etc affecting 25% or more of memorials)
- 2 - Medium – Fair condition (some evidence of subsidence affecting 10-25% of memorials)
- 1 - Low – Good condition (some evidence of subsidence affecting less than 10% of memorials)
- 0 – None – Excellent condition (little or no evidence of cracks or subsidence)

#### **Proportion of graves still visited / tended**

It is assumed that a higher proportion of graves still being tended will indicate an increased likelihood of injury if a memorial were to fail as there is more likely to be people in the vicinity. This can only be judged based on evidence at time of inspection ie fresh flowers, well tended graves etc

- 3- High – More than 25% of graves visited
- 2 – Medium – 10 - 25% of graves visited
- 1 – Low – Less than 10% of graves visited
- 0 – Very low – less than 2% of graves visited

## **Predominant types of memorials**

- L - lawn
- C – cross
- M – monolith
- B – books
- Mn – monuments
- K – kerbs
- T – tablets
- V – vases

## **Proportion of high / medium / low risk memorial types**

It is assumed that different types of memorial have different levels of risk should they be found to be unsafe. Using the generic risk assessments in Appendix 1 approximate proportions of memorials in each risk category can be identified. From this the following risk rating can be calculated:

- 6 - High – Greater than 25% of memorials of type likely to pose high or medium risk
- 4 - Medium – 10- 25% of memorials of type likely to pose high or medium risk
- 2 - Low – 2- 10% of memorials of type to pose high or medium risk
- 0 -Very low – Less than 2% of memorials of type to pose medium or low risk

As this is the major determining factor in determining risk higher points have been allocated for these ratings.

## **Position within burial ground**

It is assumed that section nearer entrances and pathways will have increased likelihood of injury should a memorial fail as more people will be in the vicinity.

- 3 – High – Near entrance
- 2 – Medium – Near major path
- 1 – Low – Near minor path

## **Total**

Sum of risk factors

## **Inspection Frequency**

It is assumed that burial grounds / sections with higher total number of risk factors will have greater risk and therefore require more frequent inspections. However the type of memorial will also be significant. In general inspections will be:

- 10 year inspections for all memorials – 4 or less
- 10 years inspections - where no memorials have failed the inspection on the previous
- 2 full inspections of the section / burial ground AND where the risk rating for the section / burial ground is less than 16. Review annually.
- 5 year inspection for all memorials – 12 or less
- 5 year inspection for all memorials with high and medium risk memorials adjacent to paths inspected every 3 years – 13 to 16
- 3 year inspection for all memorials – 17 plus
- Annual inspection for all memorials – for memorials of particular concern identified through individual risk assessment of memorials. No inspection required for memorials installed since 2004 as fixed to NAMM standards.

**Burial Ground: Ashby Road Cemetery Old Section**

Burial ground section	Age	Condition	Ground	Visited	Types	% memorial types				Type risk	Position	Total	Additional Information/Comments
						H	M	L					
A, B & 15	3	3	2	1	Mn CK L V M	1 5	50	35		6	3	18	Memorials well spaced and some repairs have been made.
E, G, H,	3	3	2	0	CKM	1 0	80	10		6	3	17	Memorials well spaced and some repairs have been made.
L													No memorials
C D F I J K	3	3	3	0	M C K Mn >180cm	4 0	40	20		6	3	18	Memorials well spaced and some repairs have been made mainly to larger memorials.
1	2	2	2	2	L V B K C	1 0	10	80		4	2	14	Some high and medium risk memorials along paths
2	3	3	2	2	C L V Mn > 180cm	1 0	10	80		4	2	16	Some high and medium risk memorials along paths
3	3	3	2	1	KC>180 cm L V	5	5	90		0	2	11	Some high and medium risk memorials along paths
4	3	3	2	1	K C M V	8 0		20		6	2	17	Small section so all memorials near paths.

Burial ground section	Age	Condition	Ground	Visited	Types	% memorial types				Type risk	Position	Total	Additional Information/Comments
						H	M	L					
5	3	3	2	1	Mn C K L V M	15	50	35		6	3	18	Memorials well spaced and some repairs have been made.
6 16	3	2	2	2	C Mn M V L K	40	30	30		6	2	17	Small section so all memorials near paths.
7 17	3	3	2	1	K V M C	10	15	75		4	2	15	Small section so most memorials near paths.
8	2	2	2	3	L K V			100		0	2	11	
9	3	0	0	0	M			100		0	3	6	1 memorial in field of hope
10	3	3	2	1	K V L X Mn>180 cm	10	5	85		4	3	16	Some high and medium risk memorials along paths
11	3	3	2	1	K V L C Mn M	10	5	85		4	3	16	Some high and medium risk memorials along paths
12	3	3	2	0	C K B V L	5		95		0	3	13	Some high and medium risk memorials along paths
13	2	3	2	2	L K V		10	90		0	3	12	

Burial ground section	Age	Condition	Ground	Visited	Types	% memorial types				Type risk	Position	Total	Additional Information/Comments
						H	M	L					
14	3	3	2	0	C M K	20	60	20		6	3	17	Small section so most memorials along paths.
18	3	1	0	0	M			100		0	3	7	1 Memorial in field of hope.
19	2	3	3	2	V B K L 1xMn >6ft	3		97		0	3	13	Childer memorial test every 3 years
20	2	2	3	2	K L V B	2		98		0	3	12	
Memorial wall and garden of rest													All tablets therefore no need to inspect

#### Burial Ground: Ashby Road Cemetery Extension

Burial ground section	Age	Condition	Ground	Visited	Types	% memorial types				Type risk	Position	Total	Additional Information/Comments
						H	M	L					
21a	1	0	0	3	L V WoodC			100		0	3	7	All memorials less than 60cm so no inspections required
21	1	1	1	3	L,V, B			100		0	2	8	

22	1	0	2	3	L B		2	98		0	2	8	
A (X)	2	3	1	2	L V C	5	5	90		0	3	11	Large number of brick built graves 3 years for Dominican sisters cross Ground conditions to be monitored annually.
B (X)	2	3	2	2	K V L 1xC	1	1	98		0	3	12	Cross 3 years
C(X)	2	3	1	2	L V B			100		0	3	11	
D (X)	2	2	1	2	L B V 1x smlC		1	99		0	2	9	
E (X)	2	2	2	2	L B V 2xsmlC 2statues		4	96		0	2	10	
F (X)	2	2	1	2	B V L C 1x statue		1	99		0	2	9	Henry Price statue every 3 years.
G (X)	2	2	1	3	L B V 1xstatue smlC		1	99		0	2	10	
J (X)	0	0	0	3	L B T			100		0	1	4	All installed to NAMM standards
K KC (X)	1	0	0	3	L B M 1>120cm		1	99		0	2	6	
L (X)	1	1	1	2	L V B			100		0	3	8	
M (X)	1	1	1	3	L T			100		0	1	7	
N (X)	0	0	0	3	L B			100		0	3	6	All installed to NAMM standards

**Burial Ground: St Marys Hinckley**

Burial ground section	Age	Condition	Ground	Visited	Types	% memorial types				Type risk	Position	Total	Additional Information/Comments
						H	M	L					
All	3	2	1	0	M,		25	75		4	3	13	Low fail rate on previous inspections. Large number of flat memorials

**Burial Ground: St Marys, Barwell**

Burial ground section	Age	Condition	Ground	Visited	Types	% memorial types				Type risk	Position	Total	Additional Information/Comments
						H	M	L					
All	3	2	1	0	M, Mn C		50	50		6	1	13	Low fail rate on previous inspections. Some repaired recently Some high and medium risk memorials by paths

**Burial Ground: St Michael and All Angels, Markfield**

Burial ground section	Age	Condition	Ground	Visited	Types	% memorial types				Type risk	Position	Total	Additional Information/Comments
						H	M	L					
All	3	2	1	0	M		50	50		6	1	13	Memorials are mainly monoliths around perimeter of churchyard so lower risk of failure than type risk indicates Low fail rate on previous inspections.

**Burial Ground: St Simon and St Jude's, Earl Shilton**

Burial ground section	Age	Condition	Ground	Visited	Types	% memorial types			Type risk	Position	Total	Additional Information/Comments
						H	M	L				
1	3	3	1	0	M Mn>180cm C	20	60	20	6	3	16	Some high and medium risk memorials by paths
2	3	2	1	0	M C K	5	90	5	6	2	14	Some high and medium risk memorials by paths
3	3	3	3	2	K M L Mn>180cm C	5	55	45	6	1	18	
4	3	3	2	1	M K Mn C	20	30	50	6	1	16	Some high and medium risk memorials by paths
5	3	3	2	1	M K Mn		50	50	6	1	16	Some high and medium risk memorials by paths
6	3	1	1	0	M Mn		80	20	6	3	14	Some high and medium risk memorials by paths

**Burial Ground: Baptist Chapel, Earl Shilton**

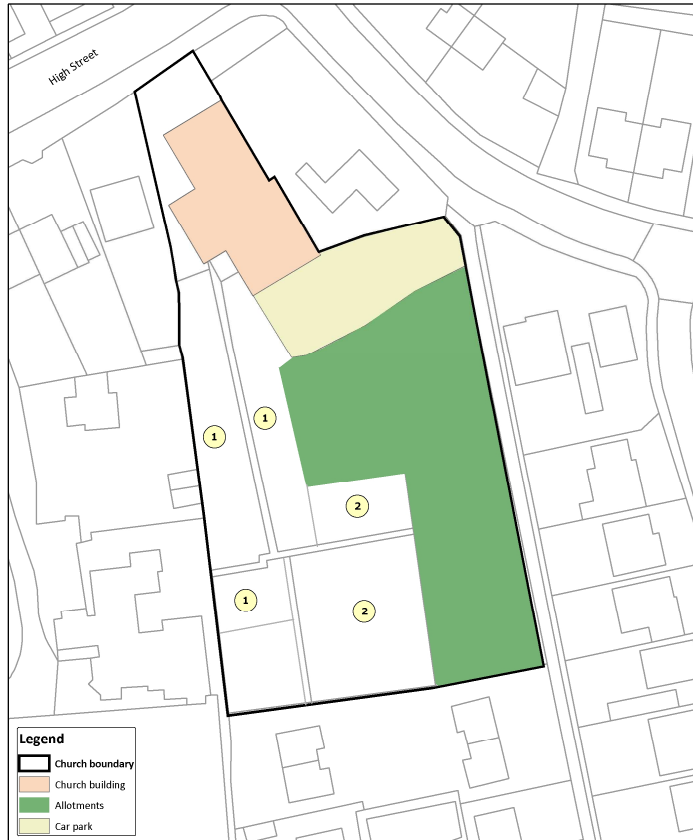
Burial ground section	Age	Condition	Ground	Visited	Types	% memorial types			Type risk	Position	Total	Additional Information/Comments
						H	M	L				
All	3	3	1	1	K M Mn	30	10	60	6	1	15	



**Burial Ground: United Reform Church, Earl Shilton**

Burial ground section	Age	Condition	Ground	Visited	Types	% memorial types			Type risk	Position	Total	Additional Information/Comments
						H	M	L				
1	3	2	2	1	Mn>180cm M K L C	20	55	25	6	2	16	Some memorials near allotments.
2	2	2	2	2	K L 1x180cmMn by path	2	5	93	0	1	9	

Earl Shilton Congregational Church - Section Plan

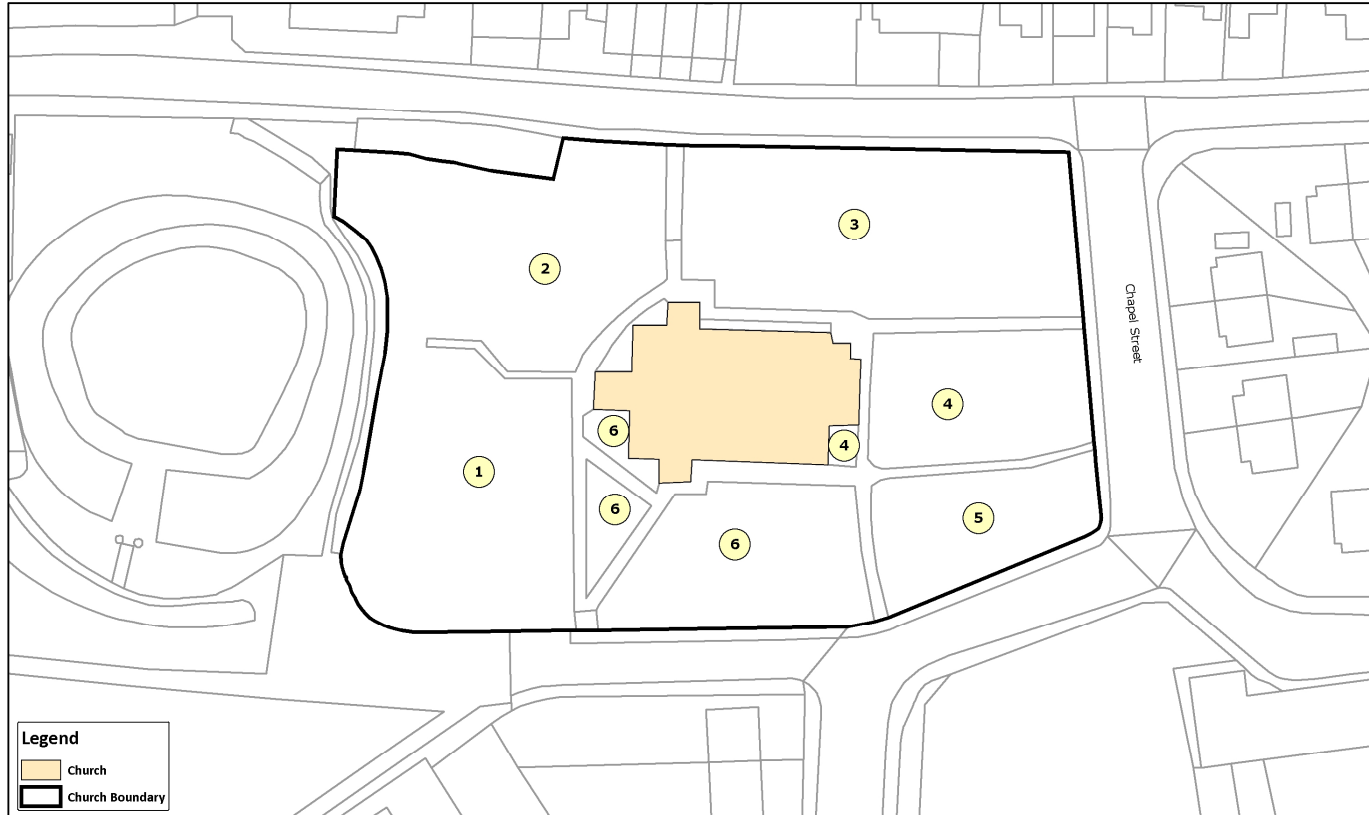


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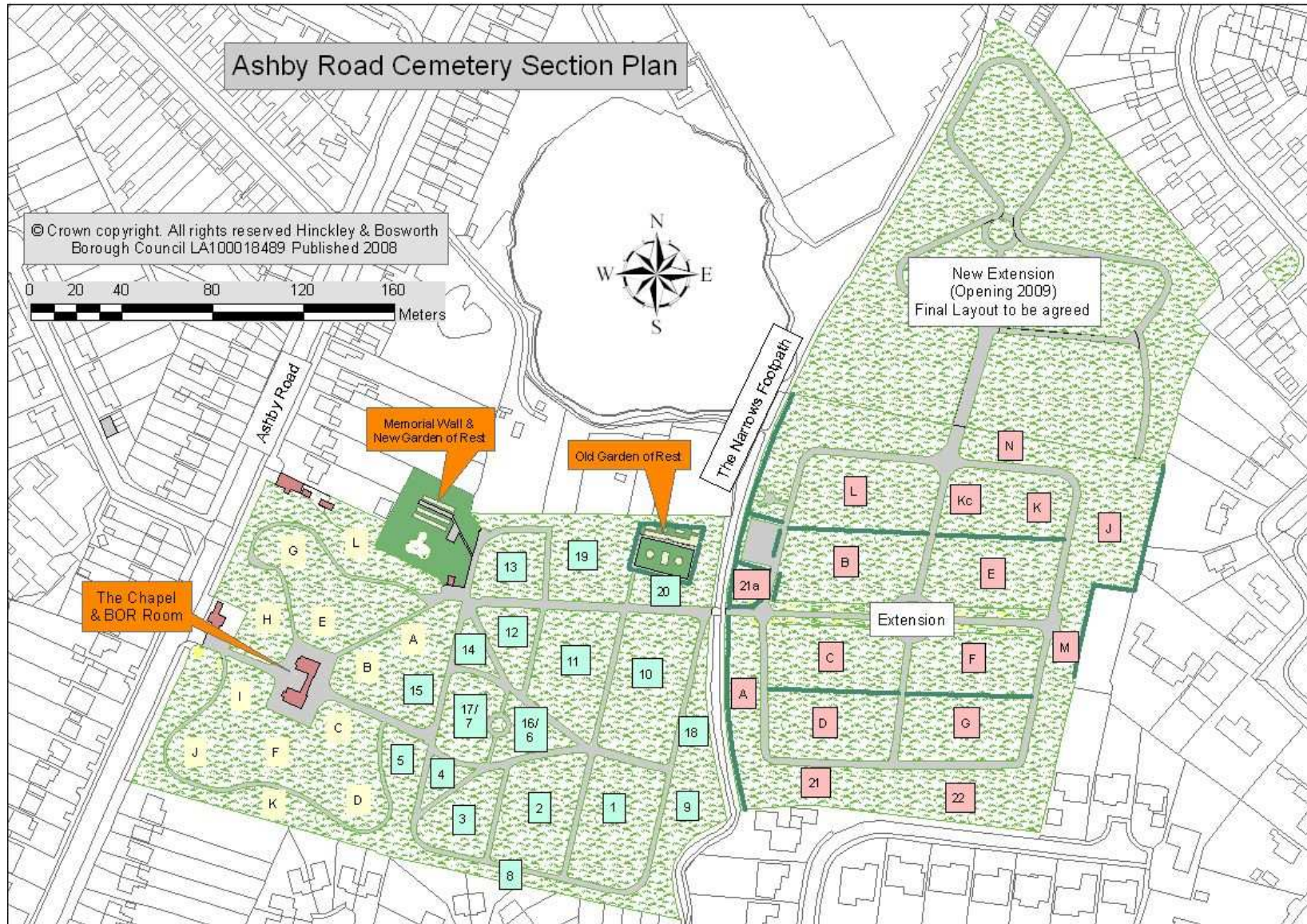
Earl Shilton - St Simon and St Judes Section Plan



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### Appendix 3: Programme of memorial inspections

#### Year 1 – 2014 / 15

Burial Ground	Section	Inspect all memorials	Inspect high and medium risk memorials
ARC (Old Sections)	B,C,D,E,F,G,H,I,J, K,4,5,6,14,15,16	X (approx 610 memorials)	

#### Year 2 – 2015 / 16

Burial Ground	Section	Inspect all memorials	Inspect high and medium risk memorials
ARC	21,22,A,B	X (approx 1,050 memorials)	
St Simon & St Jude's			X
St Mary's, Barwell			X
Baptist, Earl Shilton			X
URC, Earl Shilton			X

#### Year 3 – 2016 / 17

Burial Ground	Section	Inspect all memorials	Inspect high and medium risk memorials
ARC	1,2,3,7,8,10,11, 12,13,17,19,20	X (approx 900 memorials)	
ARC	C,D,E,F,G,J,K,L	X (approx 1,800 memorials)	

#### Year 4 – 2017 / 18

Burial Ground	Section	Inspect all memorials	Inspect high and medium risk memorials
ARC (Old Sections)	B,C,D,E,F,G,H,I,J, K,4,5,6,14,15,16		X
St Simon & St Jude's			X
URC, Earl Shilton			X
St Mary's, Barwell			X
Baptist, Earl Shilton			X

**Year 5 – 2018 / 19**

Burial Ground	Section	Inspect all memorials	Inspect high and medium risk memorials
ARC	1 2 3 8 7 17 10 11 12		X (approx 161 memorials)
ARC	9 13 19 20 18	X	
ARC EXTENSION	A B F		X
St Mary's Hinckley			X
Baptist, Earl Shilton		X	
URC Earl Shilton		X	
St Simon and St Jude's		X	

**Year 6 – 2019/2020**

Burial Ground	Section	Inspect all memorials	Inspect high and medium risk memorials
ARC	21,22,A,B		X
ARC	C,D,E,F,G,J,K,L		X

**Year 7 – 2020/2021**

Burial Ground	Section	Inspect all memorials	Inspect high and medium risk memorials
ARC (Old Sections)	B,C,D,E,F,G,H,I,J, K,4,5,6,14,15,16	X (approx 610 memorials)	
Baptist, Earl Shilton			X
St Mary's, Barwell			X

**Year 8 – 2021/2022**

Burial Ground	Section	Inspect all memorials	Inspect high and medium risk memorials
ARC	1,2,3,7,8,10,11, 12,13,17,19,20	X (approx 900 memorials)	

**Year 9 – 2022/2023**

<b>Burial Ground</b>	<b>Section</b>	<b>Inspect all memorials</b>	<b>Inspect high and medium risk memorials</b>
ARC	21,22,A,B	X (approx 1,050 memorials)	
ARC	C,D,E,F,G,J,K,L	X	

**Year 10 – 2023/2024**

<b>Burial Ground</b>	<b>Section</b>	<b>Inspect all memorials</b>	<b>Inspect high and medium risk memorials</b>
ARC (Old Sections)	B,C,D,E,F,G,H,I J,K,4,5,6,14,15,16	X (approx 610 memorials)	
St Mary's, Hinckley		X	
St Michael's, Markfield		X	
St Mary's, Barwell		X	
Baptist, Earl Shilton		X	
St Simon & St Jude's		X	
URC. Earl Shilton		X	

## Appendix 4: Churchyard Frequency

<b>Baptist, Earl Shilton</b>			
	<b>Due</b>	<b>Due</b>	<b>Due</b>
	<b>3 Years</b>	<b>5 Years</b>	<b>10 Years</b>
	13	51	51
<b>St Mary's, Barwell</b>			
	<b>Due</b>	<b>Due</b>	<b>Due</b>
	<b>3 Years</b>	<b>5 Years</b>	<b>10 Years</b>
	5	210	210
<b>St Mary's, Hinckley</b>			
	<b>Due</b>	<b>Due</b>	<b>Due</b>
	<b>3 Years</b>	<b>5 Years</b>	<b>10 Years</b>
	0	38	127
<b>St Michaels, Markfield</b>			
	<b>Due</b>	<b>Due</b>	<b>Due</b>
	<b>3 Years</b>	<b>5 Years</b>	<b>10 Years</b>
	0	0	138
<b>St Simon &amp; St Jude, Earl Shilton</b>			
	<b>Due</b>	<b>Due</b>	<b>Due</b>
	<b>3 Years</b>	<b>5 Years</b>	<b>10 Years</b>
	77	343	343
<b>URC, Earl Shilton</b>			
	<b>Due</b>	<b>Due</b>	<b>Due</b>
	<b>3 Years</b>	<b>5 Years</b>	<b>10 Years</b>
	44	186	186



**Appendix 5: Previous Fail Reports:**

Ashby Road Cemetery - Testing 2009/2010 % Fail					
Section			Total Tested	Total Fails	%
A	NO MEMORIALS				
B			39	0	0.00%
C			43	2	4.65%
D			30	0	0.00%
E			89	0	0.00%
F			73	0	0.00%
G			24	0	0.00%
H			28	0	0.00%
I			36	0	0.00%
J			37	0	0.00%
K			13	0	0.00%
4			25	0	0.00%
5			48	0	0.00%
6			29	1	3.45%
14			24	1	4.17%
15			37	0	0.00%
16			39	1	2.56%

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Testing 2011/2012 % Fail					
Section			Total Tested	Total Fails	%
1			143	10	6.99%
2			97	6	6.19%
3			59	3	5.08%

7			21	2	9.52%
8			23	2	8.70%
9			1	0	0.00%
10			193	12	6.22%
11			103	7	6.80%
12			44	3	6.82%
13			69	5	7.25%
17			32	2	6.25%
18			3	0	0.00%
19			80	7	8.75%
20			22	2	9.09%

Testing 2012/2013 % Fail					
Section			Total Tested	Total Fails	%
21			580	16	2.76%
22			134	7	5.22%
A			93	0	0.00%
B			91	2	2.20%
C			121	3	2.48%
D			158	7	4.43%
E			221	3	1.36%
F			184	8	4.35%
G			198	5	2.53%
J			76	0	0.00%
K			93	1	1.08%
KC			74	0	0.00%
L			261	4	1.53%
M			2	0	0.00%
N			24	0	0.00%

Churchyard Testing 2009 % Fail					
Churchyard			Total Tested	Total Fails	%
St Michaels & All Angels			138	0	0.00%
St Mary's, Barwell			246	12	4.88%
St Marys, Hinckley			204	1	0.49%
St Simon & St Jude, Earl Shilton			462	49	10.61%

Baptist Church, Earl Shilton	99	16	16.16%
United Reformed Church, Earl Shilton	339	46	13.57%

Churchyard Testing 2011 % Fail			
Churchyard	Total Tested	Total Fails	%
St Michaels & All Angels	10	0	0.00%
St Mary's, Barwell	16	1	6.25%
St Marys, Hinckley	75	0	0.00%
St Simon & St Jude, Earl Shilton	154	6	3.90%
Baptist Church, Earl Shilton	53	8	15.09%
United Reformed Church, Earl Shilton	54	8	14.81%

Churchyard Testing 2013 % Fail			
Churchyard	Total Tested	Total Fails	%
St Michaels & All Angels	12	0	0.00%
St Mary's, Barwell	215	0	0.00%
St Marys, Hinckley	165	0	0.00%
St Simon & St Jude, Earl Shilton	451	3	0.67%
Baptist Church, Earl Shilton	96	0	0.00%
United Reformed Church, Earl Shilton	330	4	1.21%





Hinckley & Bosworth  
Borough Council

*A Borough to be proud of*

## **EXECUTIVE - 28 MAY 2014**

### **MALLORY PARK - NOISE CONTROL**

#### **REPORT OF CHIEF EXECUTIVE**

#### **WARDS AFFECTED: NEWBOLD VERDON WITH PECKLETON AND DESFORD**

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#### **1. PURPOSE OF REPORT**

To seek approval for the outline content of a new statutory Notice, to be served on the new track operator - Real Motorsport Ltd (RML) - as soon as possible.

#### **2. RECOMMENDATION**

That the Executive:

- a) endorses the principles of a Statutory Notice, as set out in section 4.4 of the report.
- b) agrees the terms of the Notice for the remainder of 2014 [Appendix B].
- c) agrees the conditions and the timescales to be met if a revised Notice is to be issued for 2015 [Appendix C(i)].
- d) agrees the terms of a Notice for 2015 and after, including the requirement of an annual review before the end of each racing season [Appendix C(ii)].
- e) does not agree to the request for an additional payment to one of the complainants, for sharing with other residents.

#### **3. BACKGROUND TO THE REPORT**

3.1 At the last meeting of the Executive on 16 April 2014, Members agreed to defer consideration and action on a Statutory Notice for activities at Mallory Park Race Track, to allow further discussion with interested/affected parties in the village of Kirkby Mallory, some of whom had the previous evening approached Council officers/RML with an alternative to what was being presented to the Executive.

3.2 Since that time, further meetings have been held with that group and one meeting with the Mallory Park Support Group (MPSG) - another group, which has submitted a second alternative. All these meetings have been perfectly affable and constructive in their attempts to achieve a position which all parties could accommodate, if not fully agree.

- 3.3 However, it is regrettable that I have to advise the Executive that, despite the constructive nature of these discussions, there has been recorded at least one incident of intimidation by person or persons unknown. There has developed a continuing division between some residents, the healing of which can begin only when a decision is made on both the immediate and longer term arrangements for the operator. A decision, therefore, is more than pressing for tonight's meeting.
- 3.4 In the report to the last meeting, I referred to the Independent Legal Advice commissioned and received by the Council, in response to a recommendation from the Local Government Ombudsman (LGO). The summary of that advice is reproduced at Appendix A, as it was not a matter considered at the meeting, for the reasons stated earlier. The summary has been criticised by some as not properly representing the Advice and has been the subject of a detailed critique by MAS, an organisation commissioned by one group of residents. Members of the Executive have had access to the privileged independent advice and will be able to form their own views as to the accuracy of the summary.
- 3.5 Whilst much in the two proposals from village residents is common ground, there are differences in relation to the number of days' activity which would be acceptable. It must be recorded, nevertheless, that there have been attempts at accommodation from all parties, as a result of which the terms for the draft Notices attached at Appendix B (for 2014) and C(ii) (2015 onwards) have been prepared for adoption by the Executive, informed by those discussions. It is equally important, however, to record that these Notices have not been agreed with any resident group at any point.

#### 4. **POSITIONS AND PRINCIPLES**

- 4.1 It would, of course, be perfectly legitimate for Executive simply to accept the overall conclusions of the independent advice and agree to levels of activity considerably above those allowable under the strict interpretation of the 1985 Notice. The advice is, after all, 'independent' and has taken into account all the aspects required by the Ombudsman. It is the case that there is 'no legal answer'.
- 4.2 However, Members are advised to take a different approach within the Advice, for the following reasons:
- a) Whilst negotiation of a 'balance' is advised as the appropriate way forward, in all the circumstances, and we are advised that the Council is entitled to take into account the wider public interest in motor racing, we are strongly advised also by the LGO that significant priority in any such balance must be given to the rights of the residents of Kirkby Mallory to a quality of life far better than some have experienced in the last three years. The proposed terms of the Notice thereby attempt to strike this balance.
  - b) Moreover, consultation with residents of the village in May 2013 revealed that a significant proportion (by 2:1) strongly rejected a proposal which would have had around 166 days' activity per year. More recently, the consultation prior to the meeting on 16 April received a much lower response (29%, compared to 52%), but a consistent proportion of 2:1

against moving from 92 days - the strict interpretation of the 1985 Notice. Further detail on the consultations is included in Section 9 of this report.

- c) Whatever position is adopted, it could be sustained only if there were reduced activity on Saturdays and Sundays; certainly in summer months. Constant activity at weekends, with no 'respite', was at the core of the many complaints received in 2012/13. I have commented already in July 2013 that this concern was entirely justified. Any overall allowance must:
- \* be distributed to provide a more acceptable level of weekend activity.
  - \* seek to reduce noise levels.
  - \* be at lower frequency of activity during the week than actually experienced in recent years.
  - \* allow more frequent 'respite' to residents at weekends, particularly after 'full weekend' (Saturday and Sunday or Saturday to Monday) activities.
  - \* enable 'normal business activity' to take place.
  - \* enable a 'viable' (see 4.3) and sustainable operation to be undertaken by RML, to allow the company to fund the alterations needed to ensure reduced noise for residents in the longer term and, potentially, enable greater use which does not affect residents' quality of life.

- 4.3 a) It is necessary to address the issue of 'viability', as this was one criticism levelled by complainants and reinforced by the report of the Ombudsman. Whilst it is acknowledged by the Council that priority must be given in any consideration of the operation of the track to the quality of life of residents, the independent legal advice provides for the public interests in motor racing to be also considered. This is reflected by the weight of support now generated within the village for the operation of the track at a level higher than the strict interpretation of the 1985 Notice would allow.
- b) It is the case that RML have taken on a lease from the landowner which is onerous in the longer term and which, to some extent, is driving the activity requirements. That, however, is a matter between RML and Titan Properties, the Landlord. The Council has no locus in that arrangement, other than to ensure that the use of the land does not result in unreasonable levels of nuisance experienced by residents in the village.
- c) We have been requested to investigate, nevertheless, the position of the lease and, having done so, are satisfied (without revealing details of commercial sensitivity) as to the existence of that lease arrangement.

- 4.4 The fundamental principles on which any long-term Notice should be based are set out below. They take into account the consultations in both May/June 2013 and April 2014, the conclusions reached by the Executive in July 2013, the proposals submitted and discussed with two resident groups in April/May 2014,

the findings of the Local Government Ombudsman and the Independent Legal Advice, commissioned by the Council in response to the recommendation in the LGO report.

- \* No more than three 'noisy' days in any one week (defined as Monday to Sunday), with 20 of those days in a year being at a lower than 'full noise' level, but distributed across the year.
- \* A maximum of four two-day weekends in a year.
- \* A maximum of two three-day weekends (Friday to Sunday or Saturday to Bank Holiday Monday) in a year.
- \* A minimum of one fully quiet weekend per calendar month, with each 'noisy' weekend being followed by a fully quiet weekend, to provide 'respite' to residents.
- \* Non-noisy activity can be undertaken at any point, provided that it does not create significant disturbance to residents.

4.5 It must be made clear that Mallory Park is a race track and has always produced noise. The intent of the 1985 Notice was to control the frequency and level of the Nuisance; it was not to prevent noise. Until the last few years, the Notice achieved its objective. The purpose and intent of the Notice for the remainder of 2014, and the provisional Notice for 2015, is based on the principles used in that introduced in 1985.

## 5. **PROPOSED NOTICES**

5.1 There are two terms for Notices attached to this report, which the Executive is asked to adopt.

Appendix B - A Notice which would confirm the events already booked and in the calendar for the rest of 2014. The 'gaps' in the Notice would be completed, once the precise date of issue is known, in accordance with the programme. The principles set out in 4.4 above were discussed with RML early in 2014 (before the start of the season) and, with the exception of one instance of two consecutive two-day weekends, is compliant with those principles for the rest of 2014. Members will note (and are asked to accept) that there may be variations, due to event cancellations and/or reallocations of events.

Appendix C(ii) - A Notice for 2015 onwards, which complies fully with the principles in 4.4 and allows 92 'high noise' and 20 'medium noise' days (total 112 days) in a year (with their distribution controlled). The definitions are contained at the start of the Notice. This Notice would be issued only when certain conditions are met. These are set out at Appendix C(i). It will be in the interests of RML to discharge these conditions as soon as possible, to allow early service of the Notice and confidence for bookings for 2015 onwards.



Should the above actions not be undertaken, the Council will issue a notice prior to 31 December 2014 reflecting the controls under the former Control of Pollution Act 1974 notice dated 18 December 1985.

## 5.2 **OUTSTANDING PLANNING ISSUES**

The outstanding planning matters are as follows:

- \* The non-determination of application 13/00031/FUL for proposed regularisation of groundworks carried out at the site.
- \* The non-determination of application 12/01133/FUL for regularisation of groundworks carried out at Mallory Park circuit, including extension to run-off area, hardcore track, earth bank pond and re-profiling of bank.
- \* The non-compliance with condition 10 (completion of approved landscaping) of planning permission 06/01361/FUL.
- \* The non-compliance with condition 4 (completion of approved landscaping) of planning permission 08/00374/FUL.

The Borough Council is working with the new operators of the site to ascertain whether the groundworks the subject of applications 13/00031/FUL and 12/01133/FUL have any adverse impact on noise levels outside of the circuit. If the applicant is able to demonstrate with evidence that the earthworks have not resulted in any significant adverse impact, it is likely that the application will be approved. Should it be demonstrated that the earthworks do have a significant adverse impact, further mitigation for amendment to the scheme will need to be considered. The Borough Council will only seek to support a positive outcome in respect of noise.

The Borough Council has asked that the noise assessment be submitted by the end of May 2014. Should it not be received, the Borough Council is likely to instruct its noise consultants to carry out the noise assessment to demonstrate the implications of the groundworks, which in turn will be material in the determination of the applications.

The Borough Council is firmly of the opinion that the planning applications cannot be refused without first understanding the noise implications associated with the development. The refusal for the applications without a clear understanding of the arising implications will not resolve the matter.

The matter of the non-compliance with the conditions of permission 06/01361/FUL and 08/00374/FUL related in part to the application sites subject of the two undetermined applications 13/00031/FUL and 12/01133/FUL. Should these applications be approved, they will in part supersede the requirements of the conditional obligations. Should they be refused, the conditional obligations remain in breach. Accordingly, it is the Borough Council's intention to determine the current applications, which will then determine the scope of the enforcement action in respect of the breach of conditions. The site operator is aware of the conditional obligations and is committed to completing the landscaping schemes for the benefit of the circuit, the village and the landscape.

### 5.3 **MATTER OF ADDITIONAL PAYMENT**

Members will recall, at the meeting on 16 April, being asked to consider an additional payment to be made to residents, as a contribution to receipted expenses. This would be in addition to the £5,000 payment already made and would be in the region of another £2,500.

The rationale for the request is to assist covering the cost of securing independent expert advice, to 'save HBBC potentially more significant internal and external costs in the future' and to reflect the view that the group 'has significantly assisted HBBC with balancing their duty and responsibilities in this difficult issue.'

At the April meeting, Members agreed to defer consideration until a final set of proposals could be brought before you; hence the repeat request to this meeting. It has been made clear that the payment would be shared, not retained by one household.

Whilst it has been acknowledged already that both groups of residents with whom meetings have been held in the last few weeks had sought to adopt a constructive approach, there is little evidence that any research has been applied to the process of discussion beyond that evidenced already by the Ombudsman. The Ombudsman has made a recommendation, adopted by the Executive, and there is no reason to agree to any additional payment being made.

### 6. **FINANCIAL IMPLICATIONS [KP]**

6.1 During 2013/14, the Council incurred costs of £16,666 on the legal proceedings and, whilst awarded £23,400 in costs by the Court, none has been received to date from the liquidated company. In addition to this, the Council has expended £7,500 on legal costs to date for this new case and further action could result in significant additional costs.

6.2 The results of the above report will inevitably result in additional legal costs for the Council, which will be reported when known and approved for funding through an 'enforcement reserve' (subject to Council approval).

### 7. **LEGAL IMPLICATIONS [ST]**

The original abatement notice was dated 18 December 1985 and served following negotiations with then operators of the Mallory Park circuit. Case law has decided that it was valid, notwithstanding the coming into force of the current legislation, namely the Environmental Protection Act 1990 (EPA 1990).

The Notice was enforced in the present case in 2013 with the result that the operator, Mallory Park (Motor Sports) Limited, went into liquidation. As a result, it now stands lapsed.

Under s. 80 of the EPA 1990, the Council is obliged to serve an abatement notice on the operator if satisfied that a statutory nuisance exists or is likely to occur or recur. It is accepted that the circuit is a racing circuit which will generate noise. The proposed Notice is intended to restrict the nuisance.

The owners of the circuit have leased it to Real Motorsport Limited (RML) as operators. Negotiations and discussions have taken place between all relevant/interested parties, including village residents. Independent legal advice has been received, in line with the recommendation of the local Government Ombudsman. A summary of this is attached hereto, as previously referred, at Appendix A. Consideration has been given to this Advice, as well as to the above matters, at the time of drafting the new Notices.

The terms of any Notice would require compliance. The proposals contained in the 2 new Notices as previously discussed are annexed hereto as Appendix A and Appendix C(ii).

## 8. **CORPORATE PLAN IMPLICATIONS**

The considerations and conclusions/recommendations in this report have particular relevance to the elements in the Council's Corporate Plan relating to Cleaner and Greener Neighbourhoods (minimising environmental nuisance).

## 9. **CONSULTATION**

In all the cases below, only those people resident in the Parish have been included. There have been two formal consultations:

May/June 2013 - 166 noisy days' operation a year.

- \* 84 households responded (52.5%)
  - 25 supported the proposal
  - 51 rejected the proposal
  - 8 expressed views/comments, but not an outright conclusion
- \* In terms of individuals, (158 in total), the responses were:
  - 44 supported the proposal
  - 99 rejected the proposal
  - 15 provided comments only

April 2014 - 105 noisy days' operation a year.

- \* All residents' responses were considered, even if they had a commercial/business interest as well as residential interest.
  - 48 households responded (20.8%)
    - 31 premises rejected the proposal
    - 14 supported the proposal
    - 3 expressed views/comments, but not an outright conclusion
  - In terms of individuals, 81 responses in all
    - 56 people rejected the proposal
    - 19 supported the proposal
    - 6 expressed views/comments, but not an outright conclusion

In addition, the Mallory Park Support Group (MPSG) has gained the following support for a proposal of 115 days' operation a year. This was undertaken during late April/early May 2014. Two households that signed were outside the electoral boundaries for the village and therefore excluded from below.

- Support 127 people - 70 premises (44%)

We have not been made aware of the level of support for the group which proposed 92 days (i.e. a modified 1985 Notice). However, at the last meeting with them, they were flexible in agreeing to consider additional 'lower noise' days. This is very close to the proposal for the 2015 Notice set out in Appendix C(ii).

The total eligible population of the village is approximately 322 people (sourced from Electoral Register). There are 160 premises.

## 10. **RISK IMPLICATIONS**

It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives as well as carry out its statutory duties.

It is not possible to eliminate or manage all risks all of the time and no doubt risks will remain which have not been identified. However, it is the officer's opinion, based on the information available, that the significant risks associated with this decision/project have been identified, assessed and that controls are in place to manage them effectively.

The following significant risks associated with this report/decisions were identified from this assessment:

Management of significant (Net Red) risks		
Risk Description	Mitigating Actions	Owner
That the local community remains dissatisfied with the Council's actions.	a) Work undertaken to work with the the community and the operator to explain the actions.	Chief Executive
	b) That any Notice is subject to enforcement, in accordance with the Enforcement Policy.	Chief Officer (Environmental Health)
	c) That the Council responds to any further complaints/action (including Judicial Review) as necessary, (see Financial Implication 6.2)	Chief Executive
That the operator is dissatisfied and enters an appeal	Respond to the appeal, as appropriate, using funds set aside in the enforcement reserve.	Chief Executive

## 11. **KNOWING YOUR COMMUNITY - EQUALITY AND RURAL IMPLICATIONS**

This report has attempted to ensure that the primary responsibility of the Council towards affected residents is met, whilst taking into account the views of other residents in the village of Kirkby Mallory and the legitimate minimum commercial needs of the operator.



Without prejudiceINDEPENDENT LEGAL ADVICE

One important recommendation in the LGO report states:

*"Any new negotiations [with the operator] must be informed by independent legal advice about an acceptable level of nuisance causing activity in the location as most of the village is within 500 metres of the racetrack."*

This advice was commissioned from a Counsel familiar with this area of work. As it is 'privileged' information for the Council, it is not reproduced with this report. However, a confidential copy has been submitted to the Ombudsman, as evidence that the Council has implemented this recommendation and as background to the recommendations in this report. A further confidential copy is available from the Chief Officer (Environmental Health).

- 5.3 It is necessary and legitimate, nevertheless, to summarise the main points in the Independent Advice, prior to making comments and recommendations, so that Members have the necessary context.
- a) The basic principle is that, as there were few complaints prior to July 2011, activity prior to that point was 'an acceptable level of nuisance' (LGO).
  - b) From the most reasonable calculations, the level of annual activity (exclusive of the non-noisy days permitted by Clause 11 of the 1985 Notice) was less than the 166 proposed by MPML in May/June 2013, but significantly greater than the 92 days in the strict interpretation of the 1985 Notice
  - c) Limits to Saturday use had been established by the judgement in the August 2013 case against MPML.
  - d) Comparisons with activity/noise at other events around the country is inconclusive.
  - e) The 'Fen Tigers' judgement of the Supreme Court seems to have the "possibly unintended consequence that councils who are required to issue abatement notices must take into account public interest in motor racing" (paragraph 12 of the Advice).
  - f) "There is no legal answer to the question, 'What is an acceptable level of nuisance?' " Ultimately, it is for the Courts to decide on the specific facts of each case.

**Without Prejudice**

The following limitations will form the terms of a notice served under Section 80 Environmental Protection Act 1990 to apply from ? June 2014 to 31 December 2014 only. The number of days remaining (XX) will be calculated from the date of service based on the Calendar supplied to HBBC on 11 April 2014

**DEFINITIONS:**

**NOISY DAY** A Race Day, High Noise Day, or Medium Noise Day as defined below.

**RACE DAY R1** A day when vehicles are raced in competition or paraded for the purposes of demonstration or entertainment.

**HIGH NOISE DAY N1:** A day where noise from vehicles on the track is greater than 45dB LAeq10min and is less than 68dBLAeq30min measured in any continuous 30 minute period at a measurement position.

**MEDIUM NOISE DAY N2** A day where the noise from vehicles on the track does not exceed 55dBLAeq30 min measured in any continuous 30 minute period at a measuring point.

**NON-NOISE EVENT DAY:N3** A day where the Noise level from vehicles on the track does not exceed 45dB LAeq,10min and 55dB LAmax over the same period measured in any 10 minute period at a measuring position.

**QUIET DAY: N4** A day where Noise level from vehicles on the track does not exceed 38dB LAeq,10min measured in any continuous 30 minute period at a measuring position.

**NOISE MEASURING POSITION:** Stapleton Lane Pumping Station or the façade of houses whichever is greater. Where facade levels are to be measured, levels shall be increased by 3dBA.

**RACING/RACED** Where vehicles compete against other vehicles by position, time or judgement of others.

**A: WEEKEND DAYS:**

1. XX Noisy days (R1, N1,) until 31 December 2014. Boxing Day Race Meeting included irrespective of the day 26 December falls on.
2. No more than XX weekends (including Bank Holiday Mondays) with two consecutive Noisy days (R1,N1)
3. A maximum of one (1), Two Day Noisy weekend per calendar month (Two days at R1,N1, N2).
4. One weekend per calendar month shall be 2 Quiet Days (N4)
5. Hours of track operation 9.30am - 18.00pm, with a 1 hour continuous lunch break to be taken between 12.00 and 14.00.

6. Hours of operation for non race Noisy Days (N1) 9:00 - 17.00  
Minimum of 1 hour lunch break to be taken between 12.00 and 14.00.
7. All other weekend days to not exceed 45dB LAeq/10mins (Non-noise event Day) (N3)
8. There must be at least 2 'Quiet' or 'Non-noise event' Days between Noisy weekend days (R1,N1,N2) and Noisy weekdays (N1,N2)
9. No consecutive three noisy days (R1, N1, N2)

**B: WEEKDAYS:**

10. XX High Noise days (N1) at a maximum of two per week to 31.12.14
11. Hours of operation 09.00am - 17.00 with a 1 hour continuous lunch break to be taken between 12.00 and 14.00. 16.30 finish if 30 minute lunch break taken.
12. At least two (2) 'Quiet' weekdays per week (N4)
13. All other weekdays to not exceed 45dB LAeq, 10min (Non-noise event' Day)( N3)
14. No consecutive three noisy weekdays (N1-N2)
15. The operator may use 4 or 5 consecutive non noise producing days (N3) in one week replacing any N1 or N2 days in the same week.

**General**

16. All vehicles to be effectively silenced according to the levels set by the Auto Cycle Union or Motor Sport Association. Where no levels are set, the appropriate standard shall be agreed with HBBC in writing.
17. No unsilenced vehicles permitted except for the non- racing of vehicles on two (2) days per year when classic vehicles may parade in their original exhaust configuration on a Race Day (R1)
18. A calendar of activities to be produced 8 weeks in advance and available on a publicly accessible location. Any changes to be notified to the Council at least 7 days before the changed date and the calendar updated.
19. In any 7 days from Monday to Sunday inclusive there shall not be more than three (3) Noisy Days (R1,N1,N2)
20. No drifting or motorcross at any time.
21. Any day which is not a Race Day where the noise from vehicles on the track is above 68dBLAeq 30 min measured at a measuring position is prohibited.
22. The controls shall not apply to use of the Circuit by Motor Vehicles for the purposes of access or egress to the Circuit buildings or land, or for the maintenance or repair of the track, land or facilities.



**Proposal for Notice following 31 December 2014**

The HBBC will serve a new notice prior to 31 December 2014 to cover the period from the service of the new notice based on the following controls in Annex A below subject to:

1. The operator shall install and maintain a drive- by noise monitoring system calibrated to identify individual vehicles exceeding the vehicle equivalent static test or other agreed noise limit. This shall be used to identify those vehicles exceeding the required noise level and action shall be taken by the operator to immediately remove the vehicle from the track. The details of the system and action levels shall be submitted to and approved by HBBC within two months of the service of the first notice. The data from this system shall be provided to the HBBC on request and direct access allowed.
2. The operator shall install a trackside monitoring system to measure noise arising from track activities. The details of the system shall be submitted to and approved by HBBC within two months of the service of the first Notice. Once installed the system shall be calibrated and levels agreed with HBBC as to reflect the noise limits given in the definitions of days of use. Once agreed these levels will form the levels for control over days in a future notice. Data from the system shall be provided on request to HBBC and direct access allowed.
3. Within two months of the service of the first Notice, a noise report is produced by the operator identifying suitable and cost effective measures for the attenuation of noise from the track affecting the village to be agreed by the Council. A planning application if required to be submitted within a further month for the identified works. The agreed measures identified shall be installed prior to 1. March 2015 or other such date or dates as agreed with the Council.

Should the above actions not be undertaken, the Council will issue a notice prior to 31 December 2014 reflecting the controls under the former Control of Pollution Act 1974 notice dated 18 December 1985.

Without prejudice**Annex A Proposal for Notice****DEFINITIONS:****NOISY DAY**

A Race Day, High Noise Day, or Medium Noise Day as defined below.

**RACE DAY R1**

A day when vehicles are raced in competition or paraded for the purposes of demonstration or entertainment.

**HIGH NOISE DAY N1:**

A day where noise from vehicles on the track measured at an agreed trackside monitoring position is equivalent to greater than 45dB LAeq10min and is less than 68dBLAeq30min measured in any continuous 30 minute period at the Stapleton Lane monitoring position or façade of residential property. (These will be determined and inserted in this paragraph)

**MEDIUM NOISE DAY N2**

A day where the noise from vehicles on the track measured at an agreed trackside monitoring position is equivalent to the level not exceeding 55dBLAeq30 min measured in any continuous 30 minute period as measured at the Stapleton Lane monitoring position or façade of residential property. (These will be determined and inserted in this paragraph)

**NON-NOISE EVENT DAY:N3**

A day where the Noise level from vehicles on the track measured at an agreed trackside monitoring position is equivalent to the level not exceeding 45dB LAeq,10min and 55dB LAm<sub>ax</sub> over the same period measured in any 10 minute period at the Stapleton Lane monitoring position or façade of residential property. (These will be determined and inserted in this paragraph)

**QUIET DAY: N4**

A day where Noise level from vehicles on the track measured at an agreed trackside monitoring position is equivalent to the level not exceeding 38dB LAeq,30min measured in any continuous 30 minute period at the Stapleton Lane monitoring position or façade of residential property. (These will be determined and inserted in this paragraph)

**NOISE MEASURING POSITION:** Agreed trackside monitoring position or positions (this will be defined within the notice). Any level relating to façade measurements at residential property shall be plus 3 dB for reflective sound.

**RACING/RACED**

Where vehicles compete against other vehicles by position, time or judgement of others.

## **A: WEEKEND DAYS:**

1. Forty (40) Noisy days (R1, N1,) per year maximum including multiple day weekends. Boxing Day Race Meeting included irrespective of the day 26 December falls on. Not more than a total of 22 days to be for use by motorcycles.
2. No more than six (6) weekends (including Bank Holiday Mondays) with two consecutive Noisy days (R1,N1,). of which up to two (2) weekends which may be three consecutive noisy days. (R1,N1,) i.e. a maximum of four two day weekends and two three day weekends
3. When a 2 or 3-day Noisy weekend is held, the following weekend are both quiet days.(N4) and a maximum of two noisy weekdays (N1 and N2) in the following week, subject to paragraph 12.
4. A maximum of one (1), 2 or 3-day Noisy weekend per calendar month (R1,N1).
5. One weekend per calendar month shall be 2 Quiet Days (N4)
6. No more than two (2) Noisy Bank Holiday Days per year (R1, N1).
7. Hours of track operation 9.30am – 18.00pm, with a 1 hour continuous lunch break to be taken between 12.00 and 14.00.
8. Hours of operation for non race Noisy Days (N1) 9:00 – 17.00. Minimum of 1 hour lunch break between 12.00 and 14.00. 16.30 finish where 30 minute lunch break is taken.
9. All other weekend days to not exceed the noise levels for a Non-noise event Day) (N3)
10. There must be at least 2 'Quiet' or 'Non-noise event' Days between Noisy weekend days (R1,N1,N2) and Noisy weekdays (N1,N2)
11. No consecutive three noisy days except as per paragraph 1.

## **B: WEEKDAYS:**

12. One High Noise day (N1) per week maximum.
13. Between 1 March and 31 October each year there shall be a maximum of fifteen (15) Medium Noise Days (N2) at no more than one per week. Between 1 November and 28 February each year there shall be a maximum of five (5) Medium Noise Days (N2) at no more than one per week.
14. Hours of operation 09.00am – 17.00 with a 1 hour continuous lunch break to be taken between 12.00 and 14.00. 16.30 finish where 30 minute lunch break is taken.
15. At least two (2) 'Quiet' weekdays per week (N4)
16. All other weekdays to not exceed the noise levels for a Non-noise event' Day( N3)
17. No consecutive three noisy weekdays (N1-N2)
18. The operator may use 4 or 5 consecutive non noise producing days (N3) in one week replacing any N1 or N2 days in the same week.

### **General**

19. All vehicles to be effectively silenced according to the levels set by the Auto Cycle Union or Motor Sport Association. Where no levels are set, the appropriate standard shall be agreed with HBBC in writing.
20. No unsilenced vehicles permitted except for the non- racing of vehicles on two (2) days per year when classic vehicles may parade in their original exhaust configuration on a Race Day (R1)).

21. A calendar of activities to be produced 8 weeks in advance and available on a publicly accessible location.
22. In any 7 days from Monday to Sunday inclusive there shall not be more than three (3) noisy days (R1,N1,N2)
23. No drifting or motorcross at any time.
24. Any day which is not a Race Day where the noise from vehicles on the track measured at an agreed trackside monitoring position is equivalent to above 68dBLAeq 30 min measured at a measuring position is prohibited.
25. The controls shall not apply to use of the Circuit by Motor Vehicles for the purposes of access or egress to the Circuit buildings or land, or for the maintenance or repair of the track, land or facilities