

## Epsom Cemetery Extension

<b>Report of the:</b>	Head of Housing & Community
<b>Contact:</b>	Rod Brown
<b>Urgent Decision?(yes/no)</b>	No
<b>If yes, reason urgent decision required:</b>	N/A
<b>Annexes/Appendices (attached):</b>	<b>Annexe 1:</b> Plan detailing previous extension in 1995 and proposed future site for further extension. <b>Annexe 2 (considered exempt from publication: paragraph 3 Schedule 12A LGA 1972):</b> Financial Information relating to the Cemetery Extension
<b>Other available papers (not attached):</b>	Capital Project Appraisal Form reported to Social Committee on 28 January 2016

### Report summary

This report provides an update on the current position of the Epsom Cemetery extension and seeks approval for the Council to exercise its compulsory purchase making powers ('CPO') to acquire land to extend Epsom cemetery.

### Recommendation (s)

That the Committee:

- (1) Note the progress to date;
- (2) Agree the submission of a planning application for the proposed extension of Epsom Cemetery prior to the completion of the purchase of the land;
- (3) Approve the appointment of a specialist consultant to:
  - i. undertake the necessary works to enable a planning application to be submitted.
  - ii. complete the tender process for the build contractor and oversee the completion of the works.;
- (4) Agree that the costs of the Planning Consultant are met from the current capital allocation for this project;

- (5) Authorise , if necessary, the use of compulsory purchase making powers pursuant to section 121 Local Government Act 1972 to acquire land shown edged on plan at Annexe 1 ('order land') for the purposes of extending the Epsom Cemetery for burials ('the scheme').**
- (6) Delegate to the Chief Operating Officer, in consultation with the Chief Legal Officer, authority to take all steps to secure the making, confirmation and implementation of the Compulsory Purchase Order ('the Order') including the publication and service of all notices and the promotion of the Council's case at any public inquiry, including but not limited to the following steps:**
  - i. take all necessary steps to secure the making, confirmation and implementation of the CPO, including the publication and service of all relevant notices and to support the presentation of the Council's case at any local public inquiry**
  - ii. serve a new requisition for information (in accordance with section 16 Local Government Act 1972) on the reputed owner and other parties that may have an interest in the land as part of the preparatory steps associated with the making and promotion of a CPO;**
  - iii. approve terms for the acquisition of legal interests by agreement, including for the purposes of resolving any objections to the CPO;**
  - iv. take all necessary steps to resolve any compulsory purchase compensation claims, including, if necessary, by way of making (or responding to) a reference to the Upper Tribunal (Lands Chamber);**
  - v. to retain and/or appoint external professional advisers and consultants to assist in facilitating the promotion, confirmation and implementation of the Order, the settlement of compensation and any other claims or disputes.**

## **1 Implications for the Council's Key Priorities, Service Plans and Sustainable Community Strategy**

- 1.1 Managing our Resources - Identifying new sources of revenue and maximising our existing income.
- 1.2 The expansion of the Epsom Cemetery is essential to maintaining the current burial service and will ensure current revenue receipts are continued.

## **2 Background**

- 2.1 The cemetery in Epsom is situated between Ashley Road and Downs Road.

## Strategy and Resources Committee

### 17 April 2018

- 2.2 In 1995 the Council completed a purchase of adjacent farmland for the purpose of cemetery expansion. This land was duly enclosed and became part of the cemetery.
- 2.3 At the time of purchase in 1995, there was an agreement with the land owner that the Council was to have the option to purchase the remaining 3.69 acres as shown at Annexe 1, at the open market value of the land at the time of any later purchase.
- 2.4 At the current rate of burial, the existing available space for Lawn Graves will be used up by spring 2019 so there is a pressing need to acquire new land to expand the existing cemetery.
- 2.5 The 3.69 acres of land referred to in 2.3 and shown in red at Annexe 1 is currently used for grazing horses and so can readily be converted for use as a cemetery.
- 2.6 In July 2015, Officers approached the land owner to advise that the Council was interested in acquiring the same parcel of land comprising 1.49 hectares (3.69 acres) adjacent to the existing cemetery and shown coloured red on the attached plan at Annexe 1. The land owner advised that it had instructed consultants to carry out a review of its whole estate including this land. The outcome of this review was expected in the autumn of 2015 and so the land owner would not be in a position to discuss this matter until the report had been published.
- 2.7 As of January 2016, this report had not been finalised and Officers therefore served a requisition notice on the land owner. This notice advised that compulsory purchase powers were being considered by the Council to acquire land in order to carry out the council's function in providing burial space in an expanded cemetery.
- 2.8 At the meeting on 5 April 2016, this Committee confirmed that in principle, the Council intended to use compulsory purchase powers to acquire land adjacent to Epsom Cemetery for the purpose of expansion of the cemetery. The Committee authorised Officers to advise the land owner of the Committee's decision and endeavour to progress acquisition by negotiation.
- 2.9 Negotiations between the parties were postponed as a result of the land being identified as located in a Groundwater Protection Zone. Officers felt that it was prudent to obtain the results of a Tier 2 and Tier 3 quantitative Groundwater Risk Assessment before progressing with further negotiations and incurring cost.
- 2.10 In August 2017 the results of the Groundwater risk assessment identified no significant concerns with the land and so the Council's agents were instructed to negotiate the purchase of the land.

# Strategy and Resources Committee

## 17 April 2018

### 3 Current Position

- 3.1 In order to decide if the land was suitable and therefore viable to purchase as a site for the extension, various key surveys have been carried out. The Ground Water Protection survey was a critical piece of work and was completed in August 2017.
- 3.2 The following surveys have also been completed between November 2017 and March 2018:
  - 3.2.1 Archaeological Desk Study
  - 3.2.2 Contaminated Land Desk Study
  - 3.2.3 Topographical Survey
- 3.3 None of the results so far have indicated any concern for the viability of the land use as a cemetery.
- 3.4 As a result of the complexity of the project and its specialist nature there is a need to appoint a planning consultant with specialist skills and expertise to prepare the planning application and the associated documents, undertake remaining surveys, discharge planning conditions, procure the build contractor, and oversee the works. To minimise delay, a fee tender was requested to five interested specialist agencies and two have been returned.
- 3.5 The Planning Consultant will be expected to pull together all the information required in order to submit a full planning application. This will include undertaking all outstanding surveys and consultations as required by the planning process. They will also prepare the specification, design drawings and documents ready for construction phase tender, analyse the tender returns and provide a summary and recommendations. They will act as Principal Designer under the construction design and will ensure the project is delivered on time and within budget.
- 3.6 Two tender returns were received by the deadline. The financial information is set out in **Annexe 2 (Part A) (considered exempt from publication at this time)**. There were a number of questions to be clarified and officers are awaiting responses from both consultants before final prices can be confirmed for each. Officers will seek to award the tender in two phases: Phase 1 will include everything required to submit a full planning application, Phase 2 will only be awarded if Planning Permission is obtained.
- 3.7 Under a call for sites, the land has been put forward as cemetery land for inclusion in the new Local Plan.
- 3.8 To date the Council has been unable to acquire the land despite continuing negotiations over a period of more than a year. The parties have been unable to agree the basis on how the land is to be valued. Given this, the Council may need to make use of compulsory purchase

# Strategy and Resources Committee

## 17 April 2018

powers to secure the land in order to meet the need for burial space in the borough.

### 4 Proposals

- 4.1 A valuer has been appointed by the Council to restart negotiations with the land owner. A copy of a letter from the appointed valuer detailing a recent meeting with the land owner's agent, is set out in **Annexe 2 (Part B) (considered exempt from publication at this time)**.
- 4.2 Officers will continue to seek a negotiated outcome for the purchase of the land, however, given the risks that this may not be successful, authority is now required to concurrently pursue the compulsory purchase of the land should this be necessary.
- 4.3 In order to be able to progress with a CPO, the Council must first obtain Planning Permission for the land in order to demonstrate that there is a viable and good justification for applying such powers. The Council is also required to identify the necessary funding to purchase the land and deliver the development.
- 4.4 The cost of the planning consultant can initially be met from the existing agreed budget as set out in **Annexe 2 (Part C) (considered exempt from publication at this time)**. However, this cost was not originally itemised in the original budget. It is therefore anticipated that a request to increase the budget will need to be brought to members once all additional costs are known. This will include the legal costs of pursuing a CPO, the costs for the planning consultant and remaining surveys, and the cost of the land and conveyancing fees.

### 5 Compulsory Purchase Order Process

- 5.1 A general power to acquisition is contained in section 121 Local Government Act 1972. The power is often used in relation to cemeteries, public conveniences, recreational facilities, refuse site and land drainage.
- 5.2 The use of the compulsory purchase powers is one of last resort and there must be a compelling case in the public interest to use the powers. The Council is required to demonstrate to the Secretary of State that compulsory purchase is the most appropriate action to achieve the extension to the Cemetery.
- 5.3 In promoting a CPO a council should be sure that the purposes for which the CPO is made justify interfering with the human rights of those with an interest in the land affected. A council must also take into account its public sector equality duty contained in the Equality Act 2010.
- 5.4 In order to confirm a CPO the Secretary of State must be satisfied, in particular, that:

# Strategy and Resources Committee

## 17 April 2018

- 5.4.1 the acquiring authority has a clear idea of how it intends to use the land that it is proposing to acquire;
  - 5.4.2 the acquiring authority can show that it has all of the necessary resources to achieve the objective of acquiring the land; and
  - 5.4.3 the reasons for acquiring the land will not be blocked by any physical or legal impediments to implementation.
- 5.5 As a part of this process the Council is required to submit a planning application for use of the Order Land as a cemetery. All the initial surveys have confirmed there is no impediment to the grant of permission.
- 5.6 It may still be that the land in question can be purchased by agreement, in which case it would not be necessary to proceed with the CPO.
- 5.7 In outline, the main steps in the CPO process are:
- 5.7.1 Making the Order
  - 5.7.2 Notification of the persons affected and the publicity for the making of the Order and the Council's intention to submit it to the Secretary of State for confirmation
  - 5.7.3 Submission of the Order to the Secretary of State
  - 5.7.4 Objections
  - 5.7.5 Public local inquiry if objections are not resolved
  - 5.7.6 Inspectors report to the Secretary of State
  - 5.7.7 Secretary of State decision on confirmation
  - 5.7.8 Notification and publicity for the Secretary of State decisions
  - 5.7.9 Six week challenge period
  - 5.7.10 Taking possession if the CPO is confirmed
  - 5.7.11 Compensation process if CPO is confirmed

## **6 Financial and Manpower Implications**

- 6.1 The Capital Programme includes an existing budget of £654,000 for the extension of the cemetery, agreed by members in February 2016, to be funded from capital receipts.
- 6.2 A separate report on this Committee agenda requests approval to switch the funding source from capital receipts to Community Infrastructure Levy, with no impact on the overall budget.

# Strategy and Resources Committee

## 17 April 2018

- 6.3 The £654,000 budget is detailed at **Annexe 2 (Part C) (considered exempt from publication at this time)**. It was based on 2014 building estimates that had been uplifted to 2015 prices by RICS Building Index. Since this time, prices are likely to have increased further.
- 6.4 The budget did not include provision for conveyancing fees nor for obtaining planning permission and associated surveys.
- 6.5 A fee tender request for a specialist planning consultant has been obtained although this will involve spending a significant amount from the existing budget, as shown in Annexe 2 (Part A), without any guarantee that planning permission will be agreed.
- 6.6 The land value is still to be negotiated and agreed. Previously, an open market value was expected on the basis of the land being used for grazing. However, the owner is currently seeking valuation on the basis of the land being a commercial graveyard. Whichever valuation basis is accepted will impact the purchase price; if it is commercial graveyard, the current budget will be insufficient.
- 6.7 Once all known costs have been confirmed, a further report will be presented to this committee to assess whether the project is still financially viable.
- 6.8 Should the Council need to implement its compulsory purchase powers it is estimated that it could take up to 18 months to complete.
- 6.9 **Chief Finance Officer's comments:** *The Council's 2018/19 revenue budget includes £451,000 expected annual income from the cemetery. The extension is thus an important project to safeguard this level of income for future years.*
- 6.10 *The 2016/17 Capital Programme included a £654,000 budget to undertake the project. An external planning consultant could initially be funded from this budget. There is a risk that should the extension subsequently become financially unviable or planning permission be refused, resulting in a decision to abort the scheme, the cost of the consultant would have to be written-off to revenue.*
- 6.11 *Once all projected costs of the scheme can be accurately established, a further report should be presented to this Committee accordingly.*

## 7 Legal Implications (including implications for matters relating to equality)

- 7.1 An acquiring authority should be sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected. In making this assessment an acquiring authority should have regard, in particular, to the provisions of Article 1 of the First Protocol and Article 6 of the European Convention on Human Rights ("the Convention"), and Article 1 states that:

# Strategy and Resources Committee

## 17 April 2018

*“...Every natural or legal person is entitled to peaceful enjoyment of his possessions... no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by the law and by the general principles of international law...”*

7.2 Although the owner of the land will be deprived of their property if the CPO is confirmed, this will be in accordance with the law and appropriate financial recompense will be made. The CPO is being pursued in the public interest as required by Article 1 of the First Protocol. The Council considers that the proposed CPO strikes a fair balance between the public interest underpinning the reasons for which it is being sought (i.e. securing more land for burial plots) and the private rights affected.

7.3 Article 6 of the Convention provides that:

*“In determining his civil rights and obligations... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.” Case law makes clear that the opportunity of objecting, including attending at an inquiry into the CPO, means that this requirement is satisfied in this instance.”*

7.4 Government guidance also provides that acquiring authorities are expected to provide *“...evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted”*. The report sets out the extent to which the Council has attempted to negotiate the acquisition of the land from the owner.

7.5 The Council, in making a CPO under these powers, is required to have regard to the extent of land held in the neighbourhood by an owner and to the convenience of other property belonging to the same owner and shall, as far as practicable, avoid taking undue or inconvenient quantity of land from any one owner.

7.6 The loss of part of the Order Land will not impact on the Owner's ability to access the balance of their land.

7.7 If an agreed value for the land can be achieved through negotiations then there will be conveyancing procedures to follow once the purchase has been approved by the Council.

## **8 Sustainability Policy and Community Safety Implications**

8.1 None for the purpose of this report

## **9 Partnerships**

9.1 None for the purpose of this report

# Strategy and Resources Committee

## 17 April 2018

### 10 Risk Assessment

- 10.1 Due to the size and complexity of this extension project, there are a number of risks associated with it.
- 10.2 The land identified for the extension is not owned by the Council and the current land owner is seeking an inflated value. There is a risk that the final negotiated value for the land is not affordable.
- 10.3 In order to exercise the Council's compulsory purchasing powers it must first obtain Planning Permission on the land. There is a risk that planning may not be granted although there is no obvious reason to suggest that planning would not be allowed and this will be mitigated by the appointment of a specialist consultant.
- 10.4 Any delay in obtaining Planning Permission would result in the further delay in acquiring the land if a CPO was being pursued.
- 10.5 Officers feel that there are not sufficient resources or expertise in-house to be able to successfully deliver the project. However, the appointment of a planning consultant would require a significant spend on the existing budget although there is no guarantee that planning permission will be granted or that negotiations for the land value will be agreed.
- 10.6 Any planning permission would be subject to the completion of a trench evaluation. Negotiations would need to take place with the land owner in order to carry out the trench evaluation survey. If the land was purchased by the Council following planning permission, then there would be a risk that the trench evaluation survey may find something significant that delays the project further whilst any archaeological finds were excavated.
- 10.7 The current capacity in the existing cemetery for Lawn Graves is likely to be full by Spring 2019. This will mean that people will not be able to be buried with their families unless further capacity is found.
- 10.8 The reduction in burial capacity will have a significant impact on future revenue income for the Council.
- 10.9 Any further delay in obtaining planning permission and acquiring the land will result in the project delivery programme being delayed, which will have a significant detrimental impact on the Council's ability to continue to provide a burial service.
- 10.10 The inability to continue to provide a burial service is likely to cause adverse negative publicity towards the Council.

# Strategy and Resources Committee

## 17 April 2018

### **11 Conclusion and Recommendations**

- 11.1 It is now necessary for officers to pursue the compulsory purchase order alongside continued negotiations with the land owners. In the event officers are able to negotiate a purchase, a further report will be brought back to this Committee to seek authority for the purchase.
- 11.2 In order to progress a compulsory purchase order, the Council needs to have secured planning permission for the cemetery extension.
- 11.3 Given the specialist nature of the works, a planning consultant needs to be appointed to complete remaining surveys, prepare the planning application and oversee the delivery of the development.
- 11.4 A revised budget will need to be approved in due course once the full costs of the development are known.

**Ward(s) affected** (All Wards);