

# Public Document Pack

Legal and Democratic Services



## STRATEGY AND RESOURCES COMMITTEE

Thursday 5 May 2022 at 7.30 pm

Place: Council Chamber, EpsomTown Hall

Link for public online access to this meeting:

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The members listed below are summoned to attend the Strategy and Resources Committee meeting, on the day and at the time and place stated, to consider the business set out in this agenda.

Councillor Colin Keane (Chair)  
Councillor Hannah Dalton (Vice-Chair)  
Councillor Kate Chinn  
Councillor Bernice Froud  
Councillor David Gulland

Councillor Graham Jones  
Councillor Eber Kington  
Councillor Lucie McIntyre  
Councillor Clive Woodbridge

Yours sincerely

Chief Executive

For further information, please contact Democratic Services, email: [democraticservices@epsom-ewell.gov.uk](mailto:democraticservices@epsom-ewell.gov.uk) or tel: 01372 732000

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## Public information

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This meeting will be open to the press and public to attend as an observer using free GoToWebinar software, or by telephone.

A link to the online address for this meeting is provided on the first page of this agenda and on the Council's website. A telephone connection number is also provided on the front page of this agenda as a way to observe the meeting, and will relay the full audio from the meeting as an alternative to online connection. A limited number of seats will also be available in the public gallery at the Town Hall. For further information please contact Democratic Services, email: [democraticservices@epsom-ewell.gov.uk](mailto:democraticservices@epsom-ewell.gov.uk), telephone: 01372 732000.

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### **Exclusion of the Press and the Public**

There are no matters scheduled to be discussed at this meeting that would appear to disclose confidential or exempt information under the provisions Schedule 12A of the Local Government (Access to Information) Act 1985. Should any such matters arise during the course of discussion of the below items or should the Chairman agree to discuss any other such matters on the grounds of urgency, the Committee will wish to resolve to exclude the press and public by virtue of the private nature of the business to be transacted.

### **Questions from the Public**

Questions from the public are permitted at meetings of the Committee. Any person wishing to ask a question at a meeting of the Committee must register to do so, as set out below.

Up to 30 minutes will be set aside for written or oral questions from any member of the public who lives, works, attends an educational establishment or owns or leases land in the Borough on matters within the Terms of Reference of the Strategy and Resources Committee which may not include matters listed on a Committee Agenda.

All questions whether written or oral must consist of one question only, they cannot consist of multi parts or of a statement.

The question or topic may not relate to a specific planning application or decision under the Planning Acts, a specific application for a licence or permit of any kind, the personal affairs of an individual, or a matter which is exempt from disclosure or confidential under the Local Government Act 1972. Questions which in the view of the Chairman are vexatious or frivolous will not be accepted.

To register to ask a question at a meeting of the Committee, please contact Democratic Services, email: [democraticservices@epsom-ewell.gov.uk](mailto:democraticservices@epsom-ewell.gov.uk), telephone: 01372 732000.

Written questions must be received by Democratic Services by noon on the tenth working day before the day of the meeting. For this meeting this is **Noon, 21 April 2022**

Registration for oral questions is open until noon on the second working day before the day of the meeting. For this meeting this is **Noon, 3 April 2022**

## **AGENDA**

### **1. QUESTION TIME**

To take any questions from members of the Public.

### **2. DECLARATIONS OF INTEREST**

Members are asked to declare the existence and nature of any Disclosable Pecuniary Interests in respect of any item of business to be considered at the meeting.

### **3. TREE MAINTENANCE AND INSPECTION PROGRAMME; CONTRACT AWARD (Pages 5 - 14)**

This report seeks approval to award the Tree Maintenance and Inspection Programme contract to Advanced Tree Services Ltd (ATS).

### **4. HORTON CEMETERY (Pages 15 - 26)**

This report considers a formal request from a local charity for the Council to exercise its compulsory purchase powers to acquire Horton Cemetery.

### **5. EXCLUSION OF PRESS AND PUBLIC (Pages 27 - 28)**

The Committee is asked to consider whether it wishes to pass a resolution to exclude the Press and Public from the meeting in accordance with Section 100A (4) of the Local Government Act 1972 on the grounds that the business involves the likely disclosure of exempt information as defined in paragraphs 3 of Part 1 of Schedule 12A to the Act (as amended) and that pursuant to paragraph 10 of Part 2 of the said Schedule 12A the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### **6. COMMERCIAL PROPERTY UPDATE (Pages 29 - 40)**

This report has not been published because the meeting is likely to be closed to the press and public in view of the nature of the business to be transacted/nature of the proceedings. The report deals with information relating to the financial or business affairs of the Committee and third parties and the public interest in maintaining the exemption currently outweighs the public interest in disclosing the information.

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## TREE MAINTENANCE AND INSPECTION PROGRAMME; CONTRACT AWARD

<b>Head of Service:</b>	Victoria Potts; Head of Place Development
<b>Wards affected:</b>	(All Wards);
<b>Urgent Decision? (yes/no)</b>	No
<b>If yes, reason urgent decision required:</b>	
<b>Appendices (attached):</b>	Appendix 1 – Commercially sensitive financial breakdown

### Summary

This report seeks approval to award the Tree Maintenance and Inspection Programme contract to Advanced Tree Services Ltd (ATS).

### Recommendation (s)

The Committee is asked to:

- (1) **Agree to award a 3-year contract, with the option to extend for a further two periods of 3-years, to Advanced Tree Services Ltd (ATS) based on the commercially sensitive financial breakdown set out in Appendix 1.**
- (2) **Authorise the Head of Place Development, in consultation with the Director of Environment, Housing and Regeneration and Chief Finance Officer, to progress and complete the legal documentation.**
- (3) **Agree that the Director of Environment, Housing and Regeneration in consultation with the Chief Finance Officer and the relevant Committee Chair is tasked with identifying the £39,500 of savings from within existing budgets required to meet the budget shortfall.**

### 1 Reason for Recommendation

- 1.1 Following a compliant procurement procedure, ATS can offer the Council firm reassurance that they have the experience and capacity to successfully deliver this contract and continue to minimise the Council's risk to insurance claims.

### 2 Background

- 2.1 The Council is responsible for the trees on its land and managing the risk they pose to the public and minimising insurance claims. The Council is required by the Occupiers Liability Act 1984 to take reasonable care to "maintain its land in such a condition that it does not harm any person or damage any property." This

requirement is reinforced in certain circumstances by the Health and Safety at Work Act 1974.

- 2.2 The Tree Maintenance and Inspection Programme (TMP) is critical to the Council, and it is imperative that an experienced supplier is in place to deliver this service. Tree care can be dangerous and lead to damage therefore only fully competent suppliers should be utilised to reduce the risks and ensure high safety standards.
- 2.3 The Council therefore has a legal duty of care to reasonably inspect and maintain its trees in order to keep people and property safe: This contact enables the Council to target this duty.
- 2.4 There are approximately 32,000 trees within the borough that are inspected through the TMP.
- 2.5 The current supplier is ATS. The original contract ran from 1<sup>st</sup> June 2012 until 31<sup>st</sup> May 2020. Two 12-month contracts, using waivers, were subsequently awarded to ATS following the expiration of the original contract. The first waiver was approved due to Covid, the second due to insufficient resources within the Team and ongoing impact of Covid.

### **3 Benchmarking**

- 3.1 In early 2021 a benchmarking exercise was undertaken to ascertain market appetite, potential costs and explore the types of contracts neighbouring authorities were utilising.
- 3.2 While the market is flooded with suppliers able to perform this contract range from large national to small firms local to Epsom, the market is experiencing high levels of demand predominantly from private work, leaving smaller local authority contracts less desirable.
- 3.3 There is a nationwide shortage of tree surgeons impacting suppliers. In turn, suppliers are offering higher wages to attract employees.
- 3.4 In late 2019 Surrey County Council (SCC) established a Countryside Framework with a designated Epsom and Ewell Arboricultural 'Lot' that the Council is able to utilise. Suppliers awarded to this 'Lot' have set out their pricing for specific items of work based on a direct award basis. From initial analysis, there appears to be a 26% increase in price. This increase does not include Surveying, OPM control, cyclical pruning of amenity verge trees and some ancillary items as these were not priced within the framework. It is therefore anticipated that the 26% cost increase would increase further to include these items and yearly RPI increases awarded to suppliers.

### **4 Procurement**

- 4.1 An options appraisal was conducted exploring the options available including utilising frameworks, in-house service delivery, collaborating with neighbouring authorities and tendering.

- 4.2 It was agreed approaching the market through an open tender would foster effective competition, allow local suppliers not listed on the framework to bid, demonstrate best value and frame the tender documentation and terms & conditions to our requirements. An in-house service would not be cost effective nor offer sufficient resilience. Collaboration with a neighbouring District and Boroughs would also not be viable as they all procure their tree services independently and contract dates do not align to enable a joint procurement.
- 4.3 The contract was tendered for 3-year period with the option to extend for two periods of 3-years. The optional extension allows for:
- Aligning the contract with tree surveying cycles
  - Consider opportunities to collaborate with other council's in the future
  - Enabling a degree of flexibility for mutual contract termination if circumstances change (on both sides).
  - Provides ample time to continue working with an effective supplier
  - Allow suppliers a longer-term commitment for improved security and resource planning.
  - Enabling the Council to plan resources more effectively over a longer period.
  - Enabling continuity of service at a time when Ash Dieback Management (ADM) could create additional demands.
- 4.4 On the 14<sup>th</sup> October 2021, the TMP tender was formally published on the Councils eSourcing platform, In-Tend. This platform alone advertised the tender opportunity to 470 registered suppliers.
- 4.5 The Council has a further obligation to advertise this tender on both Contracts Finder (CF) and Find a Tender Service (FTS). CF and FTS are platforms set up by Central Government to advertise public sector contract opportunities to ensure maximum market exposure.
- 4.6 The tender was live within In-tend for 47 calendar days which is 12 days longer than statutorily obligated. Considering the complexity and nature of this contract the additional days ensured high-quality bids were received.
- 4.7 During this time, the Council received twenty (20) Expressions of Interest (Eoi). An Eoi is a bidder's decision to look at and review the Council's tender documentation.
- 4.8 The tender closed on Tuesday 30<sup>th</sup> November 2021 and four (4) bids were received. Several other authorities received similar interest in their tree contracts.
- 4.9 The Transfer of Undertakings (Protection of Employment) (TUPE) was considered to be in scope for this procurement. However, the incumbent operator confirmed in writing that they would not be transferring staff once the contract expired in May 2022.
- 4.10 Under the Social Value Act 2012, contracting authorities are required to have regard to economic, social and environmental well-being in connection with public services contracts. Within the quality section of the tender, bidders were asked and subsequently scored on the response to their commitment on environmental suitability, reducing their carbon footprint and engaging with the local tree warden groups.

- 4.11 These questions were worth 10% of the total 35% marks available. Generally, this type of question receives 2-3% of the marks therefore demonstrating the Council's commitment to sustainable procurement.

## 5 Bid Offering

- 5.1 ATS will undertake the full range of arboriculture inspections and maintenance works detailed below. The works are to be performed to trees located within the borough on the Council's landholding and co-managed sites - Nonsuch Park and the Downs:

- Tree inspections programme
- Tree planting and aftercare
- Tree maintenance
- Emergency call out
- Oak Processionary Moth (OPM) control

- 5.2 From the 1<sup>st</sup> June 2022, it is anticipated that ATS will transition seamlessly into the new contract continuing to protect the Council, the public and property.

- 5.3 ATS have a proven track record working with the council and have established a positive working relationship with Officers.

- 5.4 Bid criteria included

5.4.1 Relevant experience – proven track record in successfully delivering this type and scale of contract

5.4.2 Resource and operation – active personnel assigned to the contract and technical competencies.

5.4.3 Health and Safety and Training – protecting its employees with an emphasis on continuing development.

5.4.4 Social Value and Sustainable procurement - Supporting the Council's commitment to reduce its carbon footprint and increase environmental sustainability.

- 5.5 Due to commercial sensitivity, a confidential financial breakdown of this contract is detailed within Appendix 1.

- 5.6 During the evaluation process, ATS scored highly and achieved 91.4% of the possible 100% marks available. This should provide considerable comfort to Committee that we're awarding to a supplier who is able to offer a high-quality service at a competitive price.

- 5.7 Overall ATS are able to offer best value, were scored high in terms of quality during evaluation and were significantly cheaper than the three other bidders.



- 5.8 Each commercial bid was scrutinised for anomalies and abnormally high or low prices. ATS have been able to offer the most competitive price based on (but not limited to) previous experience, knowledge of the council & its contract and have the appropriate infrastructure in place to continue delivering the contract.

## 6 Risk Assessment

Legal or other duties

### 6.1 Equality Impact Assessment

6.1.1 No specific impact identified from EIA

### 6.2 Crime & Disorder

6.2.1 No specific issues

### 6.3 Safeguarding

6.3.1 No specific issues

### 6.4 Dependencies

6.4.1 The significant cost increase will put additional pressure on the Councils budget.

6.4.2 The possibility of OPM and ADB becoming a greater problem than expected is also considered a risk.

6.4.3 Working in partnership to deliver the Climate Change Action Plan (CCAP) and reduce impact on the environment and work towards carbon neutral by 2035.

### 6.5 Other

6.5.1 Award of this contract will support the delivery of Tree Planting Scheme (TPS) and agreed programme of tree planting 22/23 as outline in the Annual plan for 22/23.

## 7 Financial Implications

7.1 The annual cost of the previous tree contract was c.£81,000 plus a budget of £5,000 to address Oak Processionary Moth. Therefore, a total available budget of £86,000.

7.2 The indicative cost of the new contract is c.£185,000 per annum, an increase of £104,000 compared to the previous contract.

- 7.3 Of this £104,000 increase, £59,500 can be linked to industry inflation as the contract has not been re-tendered for a number of years. The remaining £44,500 increase is due to additional growth items (i.e. service enhancements) that were included within the specification and bidders were subsequently asked to price. This has significantly impacted on the cost of this contract.
- 7.4 These additional items included inspections that the Tree Officer currently undertakes, work on verges belonging to EEBC and planting of young trees to meet some of the tree planting commitments set out in the Council's Annual Plan and Climate Change Action Plan. Due to new standards, it is also expected that a third man will be required within the 24-hour response team. An additional cost for OPM is also included. Currently OPM work is funded from relevant park/open space budget.
- 7.5 The council has an £81,000 per annum budget for the tree maintenance contract plus a separate £5,000 budget to manage Oak Processionary Moth, taking the total budget to £86,000. The tree maintenance budget has remained at a similar level for 5-years as it was sufficient to cover the previous contract. However, it no longer reflects incremental inflation costs nor the additional growth items.
- 7.6 The £185,000 cost of the new contract exceeds the Council's existing budget by £99,000.
- 7.7 It is proposed that the £59,500 increase due to industry inflation can be funded by the Council's budgeted contingency for contract inflation. However, the unbudgeted £39,500 increase attributable to growth items/service enhancements will need to be found within the tree maintenance service's existing budget envelope, or from alternative service areas.
- 7.8 Pricing was submitted by bidders based on quantities of work expected on a yearly basis. These quantities were based on the average over the past three years and could increase or decrease over the life of the contract.
- 7.9 The tree officer will take samples of tree orders regularly to monitor the contracts cost and performance.
- 7.4 The bid from ATS demonstrates good value for money that benchmarking supports. ATS were able to offer the most economically advantageous bid with the second cheapest bid being 14.7% more expensive.
- 7.5 **Section 151 Officer's comments:**
- 7.6 Financial implications are set-out in the body of the report. The £39,500 unbudgeted contract increase attributable to service enhancements will either need to be funded within the tree maintenance service's existing budget envelope, or from alternative service areas.
- 7.7 It is recommended that the Director of Environment, Housing and Regeneration in consultation with the Chief Finance Officer and the Committee Chair is tasked with identifying the necessary level of savings from within existing budgets required to meet the £39,500 budget shortfall.

## 8 Legal Implications

- 8.1 The council has conducted a compliant open procurement process selecting a supplier based on the evaluation criteria set out in the tender documentation.
- 8.2 The terms and conditions were drafted by external solicitors, SLLP and permit a 3-year contract to deliver the TMP with the option to extend for two periods of 3-years based on supplier performance and the discretion of the Council.
- 8.3 **Monitoring Officer's comments:** none arising from the content of this report

## 9 Policies, Plans & Partnerships

- 9.1 **Council's Key Priorities:** The following key priorities are engaged:
  - 9.1.1 Effective Council
  - 9.1.2 Green and Vibrant
- 9.2 **Service Plans:** This contract is included within the Service Delivery Plan 2022-23.
- 9.3 **Climate & Environmental Impact of recommendations:** This contract enables effective tree management and tree planting in line with the Climate Change Action Plan (CCAP).
- 9.4 **Sustainability Policy & Community Safety Implications:** There are no specific concerns.
- 9.5 **Partnerships:** Partnership opportunities were explored during the options appraisal stage but were not viable. The D&B's have a varied approach to their contracting arrangements.

## 10 Background papers

- 10.1 The documents referred to in compiling this report are as follows:

**Previous reports:**

None

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## HORTON CEMETERY

<b>Head of Service:</b>	Mark Shephard, Head of Property and Regeneration
<b>Wards affected:</b>	(All Wards);
<b>Urgent Decision?(yes/no)</b>	No
<b>If yes, reason urgent decision required:</b>	
<b>Appendices (attached):</b>	Appendix 1 – Confidential Budget Breakdown

### Summary

This report considers a formal request from a local charity for the Council to exercise its compulsory purchase powers to acquire Horton Cemetery.

### Recommendation (s)

#### The Committee is asked to:

- (1) Consider the formal request and implications outlined in this report  
and either
- (2) Decline the request  
or
- (3) A) Authorise the Head of Property & Regeneration, in consultation with the Chief Finance Officer, to progress a Compulsory Purchase Order of Horton Cemetery, and;  
  
B) Agree a budget of £342,000 as detailed in Appendix 1 to be funded from the Corporate Projects Reserve (revenue element) and the Capital Receipts Reserve (capital element).

## 1 Reason for Recommendation

- 1.1 To allow the Council to consider whether it wishes to exercise its compulsory purchase powers to acquire Horton Cemetery.

## 2 Background

- 2.1 Horton Cemetery is a derelict 5-acre cemetery historically linked to Epsom's five former psychiatric hospitals comprising the Manor, Horton, St Ebba, Long Grove and West Park Asylums, collectively known as the "Epsom Cluster".
- 2.2 The site has not been used for burials since the 1950s and was sold by the Department of Health & Social Care in 1983 to a private property company. Since private ownership, the site has become extensively overgrown.
- 2.3 Above ground, the only evidence today of the former hospital cemetery are the boundary railings and a number of original trees (the previous chapel and gravestones all removed). Below ground, Epsom & Ewell History Explorer's website confirms approximately 8,450 patient burials.
- 2.4 At its 9 September 2021 meeting, the Council's Licensing and Planning Policy Committee agreed to the Local Listing of Horton Cemetery, including the boundary railings and a war memorial built in 2004 outside the railings and facing onto Horton Lane. The Local Listing will aid in protecting the site from development which would be considered harmful to its historic significance.
- 2.5 A local charitable organisation, The Friends of Horton Cemetery ("the FHC"), is active in raising the site's historic profile. Their stated goal is to:

*"Bring dignity and respect to the thousands of mental health patients, including war heroes, who died within the Epsom Cluster of asylums and are buried, forgotten and unmarked on a neglected piece of land in Surrey, England.*

*Our ambitious plans include reclaiming the derelict site and transforming it into a beautiful, calming garden-arboretum, with a lasting memorial and 'book of the dead' containing the names and details of all known burials."*

The FHC were instrumental in securing the Local Listing. They have also tried repeatedly, without success, to engage with the private owner to seek a sale of the site to the Charity.

Further information on the FHC and the history of Horton Cemetery can be found on their website:

<https://hortoncemetery.org/>

- 2.6 The Council has recently received a letter and supporting documentation from the FHC, formally requesting the Council to exercise its statutory powers to compulsorily purchase Horton Cemetery for the benefit of the community.
- 2.7 To enable Committee to consider the request, this report considers the implications and likely budget requirement of the Council exercising a Compulsory Purchase Order (CPO).



### 3 Land acquisition using compulsory purchase powers

- 3.1 The use of a CPO is one of last resort and there must be a compelling case in the public interest for the Council to use the powers.
- 3.2 In promoting a CPO the Council should be sure that the purposes for the CPO justify interfering with the human rights of those with an interest in the land affected. The Council must also take into account its public sector equality duty contained in the Equality Act 2010.
- 3.3 There are a range of enabling statutory powers depending on the purpose for which the land is being acquired. In its latest guidance update (July 2019) to acquiring authorities, the Department for Levelling Up, Housing and Communities (DLUHC) reiterates best practice to use the most specific power available for the purpose in mind, and to only use a general power when a specific power is not available.
- 3.4 A general power to acquire is contained in section 121 Local Government Act 1972 and the Act further allows under section 214, a single specific power to acquire land for a statutory function, including the operation of cemeteries.
- 3.5 Previously in April 2018, the Committee considered a paper seeking authority to use a CPO to extend Epsom Cemetery to provide further burial capacity in the Borough. A CPO would have been pursued as a last resort but fortunately, was not required as agreement was reached with the private landowner.
- 3.6 The Council does not consider section 214 would apply to Horton Cemetery as the purpose of the acquisition is not for the statutory function to provide burial capacity. In contrast, the purpose as proposed by FHC is to acquire the land for its environmental, historical and cultural significance.
- 3.7 To acquire Horton Cemetery using a CPO would therefore require reliance on a general power and Section 226 of the Town and Country Planning Act 1990 is typically used to acquire land compulsorily for development and other planning purposes. This broad power can be used where no single specific compulsory purchase power is appropriate.
- 3.8 To exercise its compulsory purchase powers under section 226, the Council would need to consider whether there is a public interest in acquiring Horton Cemetery. Under section 226(1A), the acquisition would need to satisfy the following:

*“(1A) But a local authority must not exercise the power under paragraph (a) of subsection (1) unless they think that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects—*

- *the promotion or improvement of the economic well-being of their area;*
  - *the promotion or improvement of the social well-being of their area;*
  - *the promotion or improvement of the environmental well-being of their area.”*
- 3.9 An acquiring authority must dedicate extensive resource both in terms of time and cost to successfully exercise a CPO. It is very process driven and specialist external legal and CPO property advice would be required by the Council.
- 3.10 External legal and property consultants would advise on procedure, justification and valuation, draft orders and represent the Council in any proceedings.
- 3.11 The Council does not have in-house property or legal resource to prepare or undertake a CPO. To coordinate the various external appointments, the Council would require a temporary internal project management resource.
- 3.12 For the Council to be in a position to seek DLUHC consent would take at least 18 months and would almost certainly include a public inquiry. The government’s target for deciding compulsory purchase orders is 20 weeks from the close of a public inquiry with the remaining cases to be decided within 24 weeks. It is therefore likely that the whole process could take 2 – 3 years to complete.
- 3.13 Furthermore, there is no guarantee that the CPO will be confirmed by the DLUHC. If it is not confirmed, the reasonable costs of remaining objectors will need to be met by the Council.

#### **4 Land value**

- 4.1 Horton Cemetery has value as an amenity woodland. The site is covered by Tree Preservation Order (TPO) 319/A1 dated 8 May 1996; *“For land at former cemetery, Hook Road, Epsom – area comprising Poplars, Horse Chestnuts, Sycamores, Sweet Chestnuts, London Plane, Ash, Acacia, Copper Beech, Oak, Lime, Maple and Lawsons Cypress.”*
- 4.2 In its Amenity Woodland Spotlight dated October 2021, Savills mention:  
*“According to Forest Research, around 50% of people who have visited local woodlands as a result of Covid-19 restrictions reported an increase in their level of happiness when in the woods.”*
- 4.3 They go further to state that:  
*“Since the lockdowns, we have seen an increase in demand for amenity woodland – clients are coming to us wanting to buy pockets of woodland as places to escape the city and reconnect with nature.”*

- 4.4 Savills report that the average price for a woodland (under 5 ha) across the UK from 2017 – 2021 is £45,000. The report is assessable in the link below:
- 4.5 [https://www.savills.co.uk/research\\_articles/229130/320470-0](https://www.savills.co.uk/research_articles/229130/320470-0)
- 4.6 Amenity woodlands for sale are available on many public websites including:
- <https://www.woodlands.co.uk/>
- <https://www.woods4sale.co.uk/>
- 4.7 South East woods recorded as sold on the above websites were marketed with the following guide prices:
- |                                |            |         |
|--------------------------------|------------|---------|
| Garrison Copse, near Guildford | 3.16 acres | £54,500 |
| Waddler Wood, near Guildford   | 2.23 acres | £38,000 |
| Buffers Wood, near Winchester  | 5 acres    | £89,000 |
| Saddle Wood, Tunbridge Wells   | 4 acres    | £75,000 |
| Cradle Wood, Rye, East Sussex  | 5 acres    | £95,000 |
- 4.8 The basis of compensation payable for the compulsory acquisition of land is based on the principle that the owner should be paid neither less nor more than their loss.
- 4.9 There are several components to CPO compensation but the relevant one to Horton Cemetery is market value under the Land Compensation Act 1961, section 5, rule 2:
- “5(2) The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise.”*
- 4.10 The determination of Horton Cemetery’s market value would form an important element of the CPO process and be assessed on the Council’s behalf by specialist valuers. The process further allows for the market value to ultimately be determined by the Upper Tribunal (Lands Chamber) in the absence of agreement between the respective specialist valuers.
- 4.11 Based on Horton Cemetery being a 5-acre Surrey site and with due regard to the publicly available information contained in paragraphs 4.4 to 4.7, it is reasonable to assume that its market value could be in excess of £100,000. The total cost of land acquisition could be even higher if the case went to Tribunal.

## 5 Other costs

5.1 The Council has undertaken a brief boundary inspection of the site. The trees on the site are neglected and following an acquisition, there would be a high cost of tree safety management. To maintain a safe woodland / woodland garden, a proposed outline programme would likely include:

- One-off works to bring trees to acceptable standard for access
- Felling of approximately 15 large mature trees
- Clearance of fallen trees where necessary
- 700m of crown lifting/cutback to railings to clear highway obstruction
- Approximately six trees with large broken limbs to remove
- Oak processionary moth control
- Thinning by 30% of saplings on entire site
- Pruning to clear signs, street lamps
- 2 days hazard survey
- Decay detection analysis
- Installation of bat boxes

5.2 The approximate cost for the above is £27,000. In addition, there is likely to be further cost for working over burial remains and any ecology work required for the trees. After the initial maintenance work, the ongoing tree inspection / maintenance would incur an annual cost.

5.3 The existing wrought iron fencing is part of the Local Listing and in very poor condition. It would require extensive specialist repair along its entire length where trees have fallen through the railings over the years. At this stage, it is not unreasonable to assume that repair work of the existing would be of a similar price to modern replacement and installation. The latter is estimated to be at least £45,000.

5.4 To promote safe and accessible public access, the creation of public pathways would need to be included. In addition, insurance costs would also be incurred as the Council would be liable for any injury or damage within the cemetery.

5.5 To support and deliver the acquisition, an allowance has been made for an internal project management resource. This includes the likelihood of coordinating an Upper Tribunal challenge from the freeholder.

## 6 Proposal

6.1 The Council has tentatively engaged with the FHC to understand their intended post-acquisition involvement if the Council was to purchase Horton Cemetery.

- 6.2 The FHC have confirmed that they are fully prepared to cooperate closely with the Council and either receive a freehold transfer or be long leased the Cemetery for say, 125 years. Furthermore, they would be happy to enter into any other appropriate contractual relationship between the Charity and the Council.
- 6.3 The FHC have further confirmed that they do not currently have the financial means to contribute to the cost of acquisition or look after the Cemetery.
- 6.4 A full confidential breakdown of the estimated acquisition costs is attached at Appendix 1. It is considered commercially sensitive due to the inclusion of untendered external consultancy fees.
- 6.5 A total project budget requirement of £342,000 is considered necessary if Committee is minded to pursue a CPO acquisition of Horton Cemetery. The Committee would also need to identify further annual savings or additional income to fund the estimated annual maintenance requirement of £22,000 per annum.

## **7 Risk Assessment**

### Legal or other duties

#### 7.1 Equality Impact Assessment

7.1.1 Not applicable.

#### 7.2 Crime & Disorder

7.2.1 Not applicable.

#### 7.3 Safeguarding

7.3.1 Not applicable.

#### 7.4 Dependencies

7.4.1 None.

#### 7.5 Other

7.5.1 None.

## **8 Financial Implications**

- 8.1 To avoid incurring costs in relation to Horton Cemetery, the Council can decide to decline the request at this stage, as per recommendation 1.

- 8.2 If the Council decided to pursue a CPO, the estimated one-off costs of £342,000 could be funded from the Corporate Projects Reserve (revenue element) and the Capital Receipts Reserve (capital element). However, this would reduce the funds available for other corporate and capital priorities. While the capital receipts reserve holds an estimated balance of £2.94m at 31 March 2022, the reserve is already close to the minimum threshold of £1m when considering future capital liabilities as set-out in the Council's Asset Management Plan.
- 8.3 The Council has no budget identified to fund the estimated recurring post-CPO maintenance costs of £22,000 per annum. To fund this liability on an ongoing basis, either additional recurring income or savings from services would need to be identified.
- 8.4 **Section 151 Officer's comments:** In general terms, Councils shouldn't enter into unfunded future commitments. No budget has been identified to fund any future annual maintenance costs associated with the cemetery, and with the Council already facing a projected revenue budget deficit of £1.4m from 2023/24 (as reported to Full Council in February 2022), the Council's reserves are already likely to come under substantial pressure in future years. As such, unless funding can be identified, the Council's budget does not appear to support a proposed CPO acquisition and the future annual associated maintenance liability of the cemetery.

## 9 Legal Implications

- 9.1 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:
- "...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..."*
- 9.2 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. However the acquisition of land "in the public interest" is specifically allowed by the Convention and if there is a compelling case in the public interest for the compulsory acquisition of land which outweighs the Convention rights and the use of compulsory purchase powers in this matter must be proportionate.

- 9.3 The Council is empowered under s 226(1)(a) of the Town and Country Planning Act 1990 (TCPA) as amended, to acquire any land in its area if it is satisfied that the proposed acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land. The Council may utilise its compulsory purchase powers under section 226 of the TCPA:
- A if it thinks the acquisition will facilitate the carrying out of development, or redevelopment or improvement on, or in relation to the land or
  - B which is require for a purpose which is necessary to achieve in the interests of the proper planning of an area in which the land is situated
- 9.4 In order to make an acquisition under section 226(1)(a) of the TPCA, the Council must also consider that the development, redevelopment or improvement will contribute to the promotion or improvement of the economic social or environmental well-being of its area.
- 9.5 The Acquisition of Land Act 1981 governs the procedures which apply to compulsory acquisition. The Compulsory Purchase Act 1965 governs post confirmation procedures and the Land Compensation Act 1961 governs the amount and assessment of compensation.
- 9.6 The Council must pay due regard to its Public Sector Equality Duty (PSED) as set out in section 149 of the Equalities Act 2010
- 9.7 **Legal Officer's comments:** As set out above and in the body of the report.

## 10 Policies, Plans & Partnerships

- 10.1 **Council's Key Priorities:** The following Key Priorities are engaged:
- 10.2 **Service Plans:** The matter is not included within the current Service Delivery Plan.
- 10.3 **Climate & Environmental Impact of recommendations:** An acquisition of the land using its CPO powers would give EEBC the right as landowner to ensure the site remains open and the historic asset retained. However, this is currently addressed through the Council's planning powers assisted by the recent Local Listing.
- 10.4 **Sustainability Policy & Community Safety Implications:** Not applicable.
- 10.5 **Partnerships:** None.

## 11 Background papers

11.1 The documents referred to in compiling this report are as follows:

### **Previous reports:**

- Local Listing of Horton Cemetery, Licensing and Planning Committee 9 September 2021

<https://democracy.epsom-ewell.gov.uk/ieListDocuments.aspx?CId=131&MId=1170>

- Epsom Cemetery Extension, Strategy & Resources Committee 17 April 2018

<https://democracy.epsom-ewell.gov.uk/ieListDocuments.aspx?CId=132&MId=420>

### **Other papers:**

- Guidance on Compulsory purchase process and The Criche Down Rules, Department for Levelling Up, Housing & Communities July 2019



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**EXCLUSION OF PRESS AND PUBLIC**

Under Section 100(A)(4) of the Local Government Act 1972, the Committee may pass a resolution to exclude the public from the Meeting for Part Two of the Agenda on the grounds that the business involves the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A to the Act (as amended) and that pursuant to paragraph 10 of Part 2 of the said Schedule 12A the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

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