

	<h2>ACTION TAKEN UNDER DELEGATED POWERS BY OFFICER</h2>
Title	Milespit Hill Cemetery Acquisition
Report of	Cath Shaw Deputy Chief Executive
Wards	Mill Hill
Status	Public
Enclosures	Appendix 1 – Title Plan – NGL603549 Appendix 2 – Scheme Plan – H/03608/13
Officer Contact Details	Abid Arai Re Programme Director 0208 359 4980 abid.arai@barnet.gov.uk Andrew Milne – Growth & Transformation Manager 0208 359 7470 andrew.milne@barnet.gov.uk

<h3>Summary</h3>
<p>This report provides a recommendation and update to the 27th November 2017 Assets, Regeneration and Growth Committee (ARG). Committee gave the approval for the acquisition of Milespit Hill Cemetery (the “Property”) subject to a maximum price and that direct arrangements with Westminster Council are negotiated prior to the acquisition of the site. The ARG report highlighted the shortage of new burial space at Hendon Cemetery and Crematorium (HCC) and the potential impact of burial space running out by 2020.</p>

<h3>Decisions</h3>
<p>1. To authorise the entry into a conditional contract for the acquisition of the Property as set out in the exempt report.</p>

2. To authorise completion of purchase of the Property on satisfaction of the conditions in the contract being the completion of a deed of easement granting a right of way and a right of drainage over the adjoining cemetery owned by Westminster and entry by Barnet into a side agreement (the “Side Agreement”) with Westminster to amend certain terms of the deed of easement

3. To authorise entry into the Side Agreement with Westminster City Council.

1. WHY THIS REPORT IS NEEDED

- 1.1 On 11th January 2017 a paper was submitted to Environment Committee highlighting the current issue regarding a shortage of burial space at Hendon Cemetery and Crematorium (HCC).
- 1.2 Analysis indicated that “based on current burial rates, burial space is more than likely to be exhausted within the next 2 to 3 years. Should an agreed solution not be forthcoming, the impact will be that the Council will no longer be able to offer burial plots to Barnet residents and a further impact on the Council’s budget and income required to run the existing service. It will also impact on further projected increased income”.
- 1.3 HCC is part of the service delivered by Re Ltd under the terms of the Development & Regulatory Services (DRS) contract to run to 2023. As such, the income received for this service contributes to the annual guaranteed income. Whilst the level of annual income to be achieved under the DRS contract is guaranteed for the duration of the contract, the impact highlighted above will have an adverse financial effect on both partners (LBB and Re Ltd) owing to the inability to satisfy the ongoing demand for burial space in the borough.
- 1.4 A suitable site at Milesplit Hill has been identified and approval has been given by ARG to acquire this site – the Property. The site is in a predominately residential area and is bounded by the grounds of houses to the North and East. To the West it is bounded by Milesplit Hill. The site is bounded to the South by the existing Paddington Cemetery, operated by Westminster Council. The site is approximately 12.5 acres, of this around 8.5 acres is “usable” with 7 acres expected to accommodate burials.
- 1.5 The site is currently overgrown and without infrastructure required to support a functioning cemetery (i.e.) road, maintenance shed, drainage, car park etc. Therefore an initial capital investment will be required to enable the site to function as an extension to HCC.
- 1.6 The Property is registered at the Land Registry under the title number NGL603549. The registered proprietor of the Property and the seller is Monument Property RS Ltd, a company registered in Jersey. The Property will be acquired with the benefit of a right of way and a right of drainage over Paddington Cemetery but Westminster will be able to revoke these rights if

Barnet as the grantee commits a serious breach of the terms of the agreement granting these rights (Deed of Easement) and does not remedy them timely.

- 1.7 Following the ARG recommendation to acquire the Property further due diligence and negotiations have taken place between the seller and Westminster City Council.

2. REASONS FOR RECOMMENDATIONS

- 2.1 The acquisition will enable LBB to fulfil sufficient burial space capacity for the next 20-40 years also resulting in an increase income. The number of years span is estimated based on single burial plot v family and/or multi-burial plots being utilised.
- 2.2 A large part of the Property benefits from a certificate of lawful use as a cemetery, therefore LBB's plans for provision of additional burial spaces can readily be implemented.
- 2.3 The site will be an asset owned by the Council. Therefore, the capital investment cost for the purchase of the site and the infrastructure investment will be borne by the LB Barnet.
- 2.4 This acquisition of the new burial site will enable the LB Barnet to satisfy the demand for burial space in the borough and generate additional income, which will allow the Council to recover its investment costs, but over the longer term, and should be viewed as an income generating asset.
- 2.5 The site is likely to be a Cemetery/Garden of Peace irrespective of ownership

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 Do nothing – this could lead to the council no longer being able to offer burial plots to Barnet residents and to reduction in the Council's budget and income required to fund the services it provides.
- 3.2 Re and LBB Officers have looked at alternative locations but these been discounted due to location and high acquisition and building costs. It is estimated that the Council will run out of burial space by 2020 if not action is taken.
- 3.3 An alternative to the recommended option is to take no action and to close HCC to new burials within 2 to 3 years. This is not recommended as it will deprive Barnet residents of the ability to have new burials close to other family graves. They would also have to seek burial space in cemeteries outside of Barnet at greater cost to them. This is contrary to the decision by the

Environment Committee of 11 January 2017 to “to extend the existing policy of providing cemetery provision for Barnet residents”

- 3.4 Graves are purchased by families and therefore generate an income for the council, some of which is depended on to run the service itself and maintain the site. Taking no action to maintain a supply of new burial space will impact upon Council revenues and the service budget. There would be a negative public perception should Barnet run out of burial space and potential equalities impact. (Please see Social Value)

4. POST DECISION IMPLEMENTATION

- 4.1 Enter into a contract for acquisition of the Property
- 4.2 To finalise the Side Agreement with Westminster City Council
- 4.3 To complete the acquisition of the Property after the Deed of Easement and Side Agreement have been completed.
- 4.4 To comply with the Planning conditions and discharging of pre commencement conditions.
- 4.5 To procure and construct the infrastructure to render the site usable.
- 4.6 The Council is under an obligation to file an SDLT return and pay the tax within 30 days of completion of the acquisition of the Property to avoid penalties.

4.7

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 The Corporate Plan 2015-2020 is based on the core principles of fairness, responsibility, and opportunity to make sure Barnet is a place:-

- Of opportunity, where people can enhance their quality of life
- Where people are helped to help themselves, recognising that prevention is better than cure.
- Where responsibility is shared fairly
- Where services are delivered efficiently to get value for money for the taxpayer

- 5.1.2 This report supports these core principles.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

- 5.2.1 Remedial works will be instructed and commissioned in accordance with the

Council's Contract Procedure Rules.

- 5.2.2 The cost of the acquisition, investigations and associated costs will be funded from the Strategic Opportunities Fund in the capital programme.
- 5.2.3 The purchase price for the freehold interest with vacant possession of the Property has been independently verified under the RICS Valuation – Professional Standards. and represents value for money. The valuation report is appended to the exempt report.
- 5.2.4 The Property is subject to an electricity sub-station lease dated 9th December 1963 and granted for 60 years from 25th March 1963 to the Eastern Electricity Board. The Lease grants a full right of way to and from the substation over and the right to lay, maintain, inspect, renew, use alter, remove electric cable and lines and conduits or pipes under a small part of the Property.
- 5.2.5 A large part () of the Property benefits from a Certificate of Lawful use as a cemetery issued by Barnet Council on 21st October 2013. The remaining part of the land being acquired is not covered by the certificate of lawful use as a cemetery. Planning Permission (subject to a number of conditions) for the formation of a new access road and car park and construction of a maintenance shed was granted on appeal on 16th March 2017.
- 5.2.6 The Deed of Easement grants for the benefit of the Property a right of way on foot with private vehicles and commercial vehicles up to a maximum of 3.5 tonnes across and a right to drainage from and to the Property through the drains, pipes etc. in on or through Paddington Cemetery and subject to obtaining the prior written consent of Westminster and provided that the exercise of such rights does not cause the capacity of the services to be exceeded to connect to such services. Utilities searches have not revealed any plant, apparatus or services affecting the Property.
- 5.2.7 The seller has not opted to tax the Property for VAT purposes; therefore no VAT is due on the purchase price.
- 5.2.8. A CIL of £24,961 has been levied in connection with planning permission ref 14/08161/FUL. The Council's advisors have agreed with the seller that the Seller will be responsible for payment of the levy and therefore the purchase price will be adjusted to reflect this.

5.3 Social Value

- 5.3.1 Hendon Cemetery and Crematorium is a multi-faith facility and routinely undertakes funerals for all major faiths as well as secular services. Reduced or no burial capacity could impact on all members of the community that either require or desire burial as the final act for the deceased.

Specific communities are unable to use 're-used' graves, for example the Muslim community. They also require the graves to be aligned to Mecca. Not taking action to address the shortage of new grave spaces will have an adverse impact on a specific community in Barnet. The options proposed and agreed, therefore need to ensure the potential for inequality and not providing a service accessible to all of Barnet's diverse communities, is addressed.

5.4 Legal and Constitutional References

- 5.4.1. Article 10 Table A of Barnet's Constitution states that the Assets Regeneration and Growth Committee (ARG) is responsible for authorising all acquisition of land at a price exceeding £500,000.
- 5.4.2 On 27 November 2017 ARG gave approval in principle to purchase the Property and delegated authority to finalise the purchase to the Director of Resources. The Deputy Chief Executive is currently authorised to discharge the relevant responsibilities of the Director of Resources due to the latter's absence and therefore is the right person entitled to exercise the authority delegated by ARG.
- 5.4.3 The Side Agreement with Westminster is ancillary to the purchase of the Property and therefore is covered by the authority delegated by ARG.

5.5 Risk Management

5.5.2 The Council has an established approach to risk management. Key corporate risks are assessed regularly and reported to Performance and Contract Management Committee on a quarterly basis

5.5.2 The recommendations provided in this report are being proposed to mitigate the following risks:

- HCC running out of burial space for new graves
- HCC turning into an unsustainable community asset
- Current residents and future generations not being able to have a local Cemetery for their family burials
- HCC losing the required investment to maintain the site and the facilities provided to the bereaved
- Barnet residents losing the option of affordable burial space
- Hendon Cemetery and eventually the crematorium ceasing to be economically viable
- Not meeting the projected service income and the guaranteed income in the Re contract as a result of reduced income.
- To ensure that the LA is compliant with Article 4(1) of the Local Authorities Cemeteries Order (LACO) 1977 which requires that a Local Authority keeps any cemetery that they are responsible for in good order, including buildings and infrastructure; most day-to-day operations would need to continue in order to complete horticultural and housekeeping duties, not to mention the health and safety functions for a public open space and so costs would not significantly reduce.

- There are eight pre-commencement planning conditions that require discharge but these are not considered to be of a high risk and will be discharged prior to construction activity in consultation with local planners
- There may also be services (e.g. electricity cables) which run through the land.
- The local land charges search results have revealed that there are a number of Tree Preservation Orders attached to the trees on the Property. Any cropping/felling etc of the relevant trees on the Property must be approved by the Planning Authority and the trees should not be cut down.
- Insurance risk will pass to Barnet so appropriate insurance will have to be arranged when the conditions in the contract have been satisfied .
- If Barnet defaults in performing its obligations under the Contract and completion is delayed as a result, Barnet would have to pay compensation to the Seller calculated at the higher 4% per annum above the National Westminster Bank PLC base rates and 6% on the purchase price (less the deposit paid) for the period between the agreed date of completion and date of actual completion.

5.6 Equalities and Diversity

5.6.1 The general duty on public bodies is set out in section 149 of the Equality Act 2010.

5.6.2 A public authority must in the exercise of its functions, have due regard to the need to:

(a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.

(b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it: and

(c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

5.6.3 Having due regard to the need to advance equality of opportunity between person who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

(a) Remove or minimise disadvantage suffered by person who share a relevant protect characteristic that are connected to that characteristic;

(b) Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it:

(c) Encourage person who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

- 5.6.4 The steps involved in meeting the needs of disabled persons that are different from the needs of person who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
- 5.6.5 Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and person who do not share it involves having due regard, in particular, the need to tackle prejudice; and promote understanding.
- 5.6.6 Compliance with the duties in this section may involve treating some persons more favourable than other but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.
- 5.6.7 The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
- 5.6.8 It also covers marriage and civil partnership with regard to eliminating discrimination.
- 5.6.9 The recommendations in this report are consistent with the Council's Equality duty

5.7 Corporate Parenting

- 5.7.1 Not applicable

5.8 Consultation and Engagement

- 5.8.2 Commercial negotiations have taken place with Westminster City Council to agree the finer points of the Deed of Easement and a shared service management agreement. In parallel to this Re, on behalf of the Council, have engaged with a contractor to identify an optimal construction methodology and have reviewed in principle the use of Milesplit Lane to direct construction traffic. Eight pre-commencement conditions will require discharge prior to progressing the works. This work will include consulting with Ward Councillors, residents and the local community during the construction of the access road, car park and maintenance sheds.

5.8 Insight

- 5.8.1 The Council has reviewed its current HCC burial site in production of this report.

6 BACKGROUND PAPERS

- 6.4 ARG paper dated 27th November 2017
<https://barnetintranet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=9435&Ver=4>
- 6.5 Environment Paper dated 11th January 2017
<https://barnetintranet.moderngov.co.uk/ieListDocuments.aspx?CId=695&MId=8592&Ver=4>

7. DECISION TAKER'S STATEMENT

- 7.1 *I have the required powers to make the decision documented in this report. I am responsible for the report's content and am satisfied that all relevant advice has been sought in the preparation of this report and that it is compliant with the decision-making framework of the organisation which includes Constitution, Scheme of Delegation, Budget and Policy Framework and Legal issues including Equalities obligations. The decision is compliant with the principles of decision making in Article 10 of the constitution.*

Chief Officer: Cath Shaw, Deputy Chief Executive

Signed:



Dated:08/05/18