

Cabinet 4 February 2015	
Report of: Corporate Director, Development & Renewal	Classification: Unrestricted
Tower Hamlets Multi-Faith Burial Ground	

Lead Member	Cllr Alibor Choudhury, Cabinet Member for Resources
Originating Officer(s)	Service Head, Corporate Property & Capital Delivery
Wards affected	All wards
Community Plan Theme	One Tower Hamlets; Great Place to Live
Key Decision?	Yes

Executive Summary

Following a series of reports to members in December 2011, May 2012, September 2012 and June 2013, this report summarises the detailed discussions had with owners of suitable sites and makes recommendations and provides updates on how to proceed with the acquisition of a Tower Hamlets Multi Faith Burial Ground.

The proposals in this report will secure a burial site for the use of Tower Hamlets residents when the number of graves both nationally and locally is diminishing, ensuring that in the medium to long term, residents have access to burial services within close proximity to the borough at prices that are controlled by the council, thereby helping to protect vulnerable families in the poorest communities.

Recommendations:

The Mayor in Cabinet is recommended to:

1. Note the content of the report;
2. Authorise the Corporate Director Development and Renewal to terminate the Agreement to Lease in respect of the site that was approved as an Individual Mayoral Decision (decision log no. 33) dated 17 June 2013;
3. Authorise the Corporate Director Development and Renewal to enter into a Lease for the acquisition of three acres on a 125 year long lease basis and to enter into a Management Agreement for the management of the site, provision of graves and long term maintenance. This would be on the payment of a capital sum (detailed in the accompanying exempt report) for the long leasehold interest in the land;

1. REASONS FOR THE DECISIONS

- 1.1 To secure a burial site for the use of Tower Hamlets residents when the number of graves both nationally and locally is diminishing, ensuring that in the medium to long term, residents have access to burial services within close proximity to the borough at prices that are controlled by the council, thereby helping to protect vulnerable families in the poorest communities.
- 1.2 The new proposal will allow the council to control the cost of burials and the levels of subsidy given. It will ensure that minimum standards are maintained in terms of compliance, monitoring and reporting, whilst ensuring that the site is maintained effectively and is an asset that the borough is proud of. There will also be provision to terminate the agreement if standards are not maintained.
- 1.3 Officers are recommending termination of the Agreement to Lease that was entered into via Individual Mayoral Decision (decision log no. 33) dated 17 June 2013. This option is unlikely to progress due to the difficulties arising from planning. Rather than allowing this agreement to run its course and the owner/operator being able to terminate the agreement as a result of hitting relevant long stop dates thereby leaving the council without burial provision, officers have identified a viable alternative site elsewhere which is not subject to the same time delay in being implemented and is not subject to any degree of planning risk.
- 1.4 The new site is already developed out and is ready to start accepting burials on completion of the necessary agreements. It is also a cheaper long term option for the council than the scheme previously agreed.

2. ALTERNATIVE OPTIONS

- 2.1 Alternative options the council could consider are:
 - Do nothing and maintain the status quo of the current burial subsidy programme whereby residents are given £225 contribution to help fund burial cost that need to take place outside the borough.
 - Increase the current burial subsidy amount given to residents to mitigate the increased costs of travel and funeral arrangements as a result of diminishing grave numbers and inflationary costs.
 - Seek alternative sites suitable for burial. This could then involve the council having to procure a burial service provider.
 - Determine alternative delivery models for burial provision.

3. DETAILS OF REPORT

- 3.1 Following a series of reports to members in December 2011, May 2012, September 2012 and an Executive Mayoral decision of June 2013, this report summarises the detailed discussions had with owners of suitable sites and

makes recommendations on how to proceed with the acquisition of a Tower Hamlets Multi Faith Burial Ground.

- 3.2 The borough currently has no operational burial sites and residents who require burial services must seek services outside the boundaries of the borough. Where residents are able to use a municipal cemetery operated by another council or private operator, there is normally a premium charge. The majority of burials take place in the City of London Cemetery, Gardens of Peace and Wood Green.
- 3.3 The council is not under a statutory responsibility to provide burial services; however it must ensure the legal disposal of any person who dies within the borough boundary, where no suitable funeral arrangements have been made.
- 3.4 The London Plan confirms that many London boroughs will run out of burial space in the next few years. For central and inner London boroughs, this means that provision is often made outside of London. This can cause serious problems for access, maintenance and exceptional costs and can have a disproportionate impact on people in London's poorest boroughs and on some of London's poorest communities who rely on access to burial facilities.
- 3.5 In 2008, Tower Hamlets established the burial subsidy which provides the families of deceased residents with a £225 contribution towards burial costs; this subsidy represents the difference between resident and non-resident charges levied by out of borough sites. The Registrar's Office reports that this is a very successful and popular scheme.
- 3.6 The council's Local Development Framework Core Strategy (adopted in September 2010) states that the council will proactively plan for the needs and requirements of a multi faith burial ground. It sets out the criteria for the identification of the most appropriate site and confirms the site identification process will be undertaken as part of the Managing Development DPD.
- 3.7 In light of the above, officers were requested to consider short, medium and long term options and proposals for burial provision for residents of the Borough.
 - **Short Term Options**
Continue with the burial subsidy scheme for eligible residents
 - **Medium Term Options**
Partner or purchase a plot within an existing burial ground, eg, City of London.
 - **Longer Term Options**
Purchase land for development in to a burial ground for the sole use of Tower Hamlets residents. £3 million of resource was set aside as a contribution towards the funding of a multi burial facility.
- 3.8 In exploring the longer term options, a consultant was appointed to undertake a comprehensive site search within Tower Hamlets to see if an appropriate site could be found for new burial ground within the borough. This did not identify any sites for such a use. As a result, a further search was instigated to

the north east of Tower Hamlets on the premise that the site should be easy to travel to. The revised search identified 51 possible sites, of which 41 were worthy of further investigation. Ultimately the possibilities were whittled down to two suitable sites. Of the two sites, discussions were held with the respective owners and one site was felt to offer a potential solution to the lack of burial provision for the residents of Tower Hamlets.

- 3.9 As a result of that search, officers recommended to the Mayor that the council enter into an Agreement to Lease for the acquisition of three acres of land on a 125 year long lease basis and to enter into a Management Agreement for the management of the site, provision of graves and long term maintenance.
- 3.10 As part of the Agreement to Lease, the vendor was expected to secure planning permission for use of the land as burial provision. However, this was not forthcoming, despite the extension of long stop dates for the vendor to secure the permission. Commercial intelligence suggests that the vendor will not meet the current deadline for securing planning permission due to a number of difficulties.
- 3.11 The council could allow the agreement to run its course. However, when the planning long stop date is reached, the owner/operator will be able to terminate the agreement, leaving the council without burial provision and with no viable alternative. In the meantime, officers have identified a viable alternative site elsewhere which is not subject to the same time delay in being implemented and is not subject to any degree of planning risk. The new site is already developed out and is ready to start accepting burials on completion of the necessary agreements. It is also a cheaper long term option for the council.
- 3.12 In order to terminate the agreement, and in line with the requirements in the agreement, the council will be required to pay reasonable legal costs incurred by the vendor. These would be subject to commercial negotiation, however, these costs would be offset by the savings that will be made due to the new, cheaper deal that has been secured.
- 3.13 An alternative site has been identified within the M25 which can be accessed by car in approximately 25 minutes from the centre of the borough. The site is a purpose built and thoughtfully designed cemetery.
- 3.14 The cemetery has on-site management facilities and a large multi faith prayer facility.
- 3.15 Following extensive negotiations it has been established that the owner and operator are prepared to lease a three acre plot of land, within the site, to the council for the sole and exclusive use of Tower Hamlets residents.
- 3.16 The council would acquire the land on the basis of a 125 year long lease paying a one off land premium and an annual peppercorn rent.

- 3.17 It is proposed that the operator would lease the land to the council on a serviced plot basis. They will arrange preparation of graves for burial, manage bookings and provide on-going long term site maintenance. This would be controlled through a Management Agreement. Whilst the council would effectively own the land, the day to day operational aspects would be managed on its behalf by the operator.
- 3.18 It is estimated that the 3 acre plot of land would be capable of taking 3,000 grave plots.
- 3.19 The council would pay the operator a capital sum (a premium) for the long leasehold interest in the land. The financial details are contained within the accompanying part 2 report.
- 3.20 The day-to-day operation of the site would be managed by the operator on behalf of the council through a Management Agreement, the broad terms of which and the services provided are outlined below:
- Provide multi-faith burial plots exclusively for the residents of Tower Hamlets
 - Remain open for 365 days a year between the minimum hours of 0800 and 1900 during the summer months and 0800 and 1600 in winter months;
 - To inter bodies of persons on the demised land;
 - To manage the LBTH site to no lesser standard than the remainder of the whole site;
 - To carry out verification checks, as specified by the council, to ensure that only bona fide residents of the borough are interred on the LBTH burial grounds, and to charge them tariffs that will be reviewed and agreed annually by the council;
 - To provide quarterly accounts showing all revenue received from residents, and fully audited accounts within 6 months of the financial year ending;
 - To maintain landscaping and grounds in accordance with reasonable levels of standards as evidenced by the industry practice but to include regular cutting of grass during the summer months of intervals of no less than two months;
 - To maintain the burial register;
 - To provide a long term maintenance plan for the demised premises when more than 85% of the maximum number of graves have been used, subject to the recycling of graves; and
 - To offer multi-faith services in the Chapel of Rest, subject to additional cost.
- 3.21 Details of fees payable by the council to the operator for the provision of the services outlined above are to be found in the accompanying part 2 report.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1. As part of the 2013-14 budget process, Council approved a growth bid to set aside £3 million of funding for the provision of a multi-faith burial ground. An Executive Mayoral decision (on 17 June 2013) subsequently authorised officers to enter into an agreement to acquire a site on a 125 year lease and to establish a management agreement for the site.
- 4.2. Due to difficulties encountered in the planning process, it is now considered unlikely the original option will be able to progress (see paragraphs 3.9 to 3.12), and rather than delay the process, it is proposed that the Agreement to Lease is terminated and alternative arrangements entered into at another existing cemetery.
- 4.3. This report is accompanied by a 'restricted' report elsewhere on this agenda which contains the commercial arrangements proposed for the alternative site acquisition and management agreement. The 'restricted' report contains a financial analysis of the costs of the initiative and an assessment of the likely income generated.
- 4.4. In order to terminate the existing arrangements, the Council will be liable to pay reasonable legal costs incurred by the vendor (see paragraph 3.12). As abortive costs these will be revenue expenditure and will be financed from within existing resources.
- 4.5. As outlined in previous reports, the lease and management agreement will represent a significant long term financial commitment for the Council, the likely whole life costs of which are set out in the associated restricted report. These net costs must continue to be considered in the context of the significantly reduced General Fund resources that are available in future years.
- 4.6. In recognition of the lack of facilities within the Borough, the Council currently operates a burial subsidy scheme which provides the families of deceased residents with a £225 contribution towards the cost of burial – this subsidy represents the difference between the resident and non-resident charges levied by the out of Borough sites. A budget of £30,000 per annum is currently managed by the Registrar's department to operate the scheme.

5. LEGAL COMMENTS

- 5.1. The Council is a burial authority by virtue of section 214 of the Local Government Act 1972 and may:
 - provide and maintain cemeteries either in or outside of Tower Hamlets;
 - contribute towards expenses incurred by another person in providing or maintaining a cemetery in which the inhabitants of Tower Hamlets may be buried.

- 5.2. For the purposes of these powers, “cemetery” includes a burial ground or any other place for the interment of the dead, including any such place set aside for the interment of a dead person’s ashes.
- 5.3. The Council is empowered by section 120 of the Local Government Act 1972 to acquire land by agreement if it is for the purposes of any of the Council’s functions or the benefit, improvement or development of Tower Hamlets. The power extends to the acquisition by agreement of a leasehold interest.
- 5.4. The Council proposes to take a lease of property for the purposes of providing a convenient burial ground for residents of Tower Hamlets. The provision of a burial ground would appear to fall within the Council’s powers as a burial authority. A view may be taken, based on material in the report, that the purchase would be for the benefit of Tower Hamlets. Accordingly, the purchase would appear to be supported by the powers outlined in paragraphs 5.1 to 5.2 above.
- 5.5. It is proposed that the Council enter into a management agreement for the burial ground, including the provision of graves and long term maintenance. As set out in paragraph 5.1 above, the Council may contribute towards expenses incurred by another person in maintaining a cemetery.
- 5.6. The Local Authorities’ Cemeteries Order 1977 gives the Council power to do all things necessary or desirable for the proper management, regulation and control of a cemetery. The Order sets out a number of related powers and responsibilities which the Council has as a burial authority and which must be reflected in any proposed management agreement to ensure that the Council meets its statutory obligations. The Council’s obligations include the following:
- Keeping the cemetery in good order and repair, together with all buildings, walls and fences on the cemetery and other buildings provided for use with it.
 - Maintaining a plan showing and allocating distinctive numbers to all graves or vaults in which burials are made and all grave spaces subject to specified rights.
 - Maintaining records by reference to plan numbers of burials and rights existing in graves, vaults or grave spaces.
 - Maintaining a register of all burials.
 - Storing specified records so as to preserve them from loss or damage.
- 5.7. The management agreement will provide for the holding of multi-faith services in the Chapel of Rest. The Council has power under the Local Authorities’ Cemeteries Order 1977 to enter into such agreements as it thinks fit for use of chapels, mortuaries, biers and other things provided by another person for use in connection with burials taking place in a cemetery.
- 5.8. It is proposed that the burial ground will provide multi-faith burial plots. It is not clear how this will be laid out. The Council may apply to the bishop of the relevant diocese for consecration of any part of the burial ground and may set

apart for use by a particular denomination or religious body any part which has not been consecrated. In exercising these powers, the Council must be satisfied that a sufficient part remains un-consecrated and not set apart for the use of particular denominations or religious bodies. This will need to be addressed in any management agreement entered into by the Council.

- 5.9. The Mayor is asked to agree to terminate the existing agreement for lease. On 24 October 2013, the Council entered into an agreement to take a lease of a burial ground outside of Tower Hamlets. This agreement was conditional upon the owner obtaining planning permission. The longstop date in the agreement for obtaining planning permission was 1 June 2014. On 6 June 2014 the agreement for lease was varied by the execution of a deed of variation extending the longstop date to 1 June 2015. Any termination of the agreement for lease prior to this date will have to be by agreement with the other party.
- 5.10. The main purpose of this arrangement is the acquisition of an interest in land. Whilst there are services purchased also, the main part of the expenditure is a lease premium and therefore, as principally a land based deal, this purchase is not subject to the Public Contract Regulations 2006. This means that the relevant purchase of neither the interest in land nor the associated grounds maintenance services need to be subjected to a competitive tendered exercise.
- 5.11. However, the Council has an obligation as a best value authority under section 3 of the Local Government Act 1999 to “make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness”. In practice this means that the Council must secure appropriate measures with the vendor to satisfy its duty. The management contract should include performance indicators and other measures to ensure continuous improvement in the level of service received by the Council. Before agreeing the recommendations in the report, Cabinet should consider the information provided in the report, particularly the finance comments, with a view to whether they proposals relevantly reflect value for money.
- 5.12. When considering whether to enter into the lease and management agreement for the burial ground and whether to terminate the existing scheme for contribution to out-of-borough burials, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't (the public sector equality duty). An equality analysis is required which is proportionate to the proposals and their potential impacts. Information is set out in section 6 of the report and in Appendix 1 which is relevant to the consideration of equality impacts.
- 5.13. Consideration should be given to whether consultation is required with the public to assess the equality impacts. Any consultation carried out for the purposes of assessing the impact of the proposals should comply with the

following criteria: (1) it should be at a time when proposals are still at a formative stage; (2) the Council must give sufficient reasons for any proposal to permit intelligent consideration and response; (3) adequate time must be given for consideration and response; and (4) the product of consultation must be conscientiously taken into account. The duty to act fairly applies and this may require a greater deal of specificity when consulting people who are economically disadvantaged. It may require inviting and considering views about possible alternatives

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1. Securing a burial site exclusively for the residents of Tower Hamlets that is accessible by car and public transport will help minimise economic disadvantage of those needing to bury family members.
- 6.2. The proposal will satisfy a recognised need for a burial site open to for the interment of residents of the borough irrespective of their gender, ethnicity, faith or belief or any other protected characteristic.
- 6.3. The burial provision will be sensitive to the religious and cultural requirements in relation to interment and, as far as reasonably practicable, ensure those requirements are met.
- 6.4. The Tower Hamlets Burial Subsidy Scheme was established by Cabinet in January 2008, as part of a report on multi faith burial provision for the borough's residents. The level of subsidy, at £225 per burial, was established to bring down the cost of burial, in City of London Cemetery or Gardens of Peace Cemetery, to that which a Newham resident would pay for an equivalent burial at West Ham Cemetery – the municipal cemetery within the London Borough of Newham. The multi-faith, privately-run Woodgrange Park Cemetery was added to the scheme in September 2009. It is intended that the existing Burial Subsidy Scheme will continue to operate.
- 6.5. An equality analysis checklist is set out in Appendix 1 to this report.

7. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 7.1 There are no immediate sustainable actions for a greener environment implications arising from this report. The site is managed in a sustainable manner.

8. RISK MANAGEMENT IMPLICATIONS

- 8.1. If the council chooses not to purchase a burial site, then residents will continue to rely on either private cemeteries, or cemeteries run by other local authorities for which a non-resident premium is payable. However, while the council is currently able to net off this non-resident premium through the burial

subsidy scheme, it may not be able to do so if the non-resident premium increases. Any such increase would be beyond the council's control.

9. CRIME AND DISORDER REDUCTION IMPLICATIONS

9.1 There are no immediate crime and disorder implications arising from this report.

10. EFFICIENCY STATEMENT

10.1 This report envisages a change in how the council supports residents who require burial provision. At the moment, support is given in the form of a subsidy towards burial provision in either private cemeteries, or cemeteries run by other local authorities. The former have high fees while the latter charge a non-resident premium to Tower Hamlets residents. It is felt that the service proposed in this report will complement the existing arrangements and will deliver a better and more affordable burial provision for residents, while also allowing the council to exercise more control over the service that is provided to residents and their loved ones.

Linked Reports, Appendices and Background Documents

Linked Report

- Tower Hamlets Multi-Faith Burial Ground Restricted Report

Appendices

- Equality analysis checklist

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- None.

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