

**OVERVIEW AND SCRUTINY  
21 MARCH 2017**

**PART 1**

**AGENDA ITEM No.**

**21**

**TITLE OF REPORT: PROPOSED CREMATORIUM AT WILBURY HILLS CEMETERY – INTERIM REPORT ON BUSINESS CASE**

REPORT OF THE HEAD OF LEISURE AND ENVIRONMENTAL SERVICES

EXECUTIVE MEMBERS: COUNCILLOR L. NEEDHAM AND COUNCILLOR T. HONE

**1. SUMMARY**

- 1.1 Wilbury Hills Cemetery was opened in 2008 in its current form with the intention of meeting the future needs for burials and remembrance for the residents of North Hertfordshire as a District Wide facility for many years to come.
- 1.2 As part of the District Council's work to progress continuous improvement, meet the strategic vision for the authority and to manage its financial resources the potential of developing a Crematorium has been investigated.
- 1.3 Since September 2014 a private sector company has submitted and gained planning approval for a crematorium at Holwell in North Herts. While the business model for this company is not known in detail it is likely to have an impact upon the degree of commercial success of any future development of a Crematorium at Wilbury Hills.
- 1.4 Officers have subsequently met with three separate potential private sector partners during August 2016 on site at Wilbury Hills. All three organisations have expressed interest for a project to develop a Crematorium at Wilbury Hills. All confirmed that the development of the Crematorium at Holwell would have an impact upon their business models but they considered that local demand is sufficient to support two facilities. Additionally the Wilbury Hills site is already an established cemetery and provides a more appropriate venue for remembrance than the site at Holwell.
- 1.5 Cabinet of the 23<sup>rd</sup> September 2014 identified concerns regarding the creation of a trading vehicle to deliver the then proposed scheme. The results of the discussions as highlighted in 1.4 now lead Officers to the belief that the market place would be able to deliver the proposal of developing a crematorium. The proposals we have heard would not require a trading company and would generate income whilst providing additional community benefits.
- 1.6 Cabinet of the 27<sup>th</sup> September 2016 authorised Officers to undertake a competitive process to identify a lessee that could deliver this project on behalf of NHDC and provide vest value under a lease.

## **2. RECOMMENDATIONS**

- 2.1 Recommendations to follow.

## **3. REASONS FOR RECOMMENDATIONS**

- 3.1 Reasons for recommendations to follow.

## **4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 There are no alternative options for the location of a new Crematorium within the land ownership of North Herts.
- 4.2 There is an option of obtaining planning permission and then retesting the market to see if there are further offers, however this runs the risk of losing the interested operator and would add a further stage and therefore delay progress of the project.
- 4.3 The Council could choose to pursue the development of the facility on its own and then seek an experienced operator to manage the facility. This remains a fall back option in the event that negotiations with the potential operator do not provide best value for the Council.
- 4.4 The only other alternative is to cease progress of this project.

## **5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS**

- 5.1 There has been consultation with the market place during August 2016 which was followed by a competitive process up to the end of January 2017 in order to determine which third party provides the best value for a land disposal.

## **6. FORWARD PLAN**

- 6.1 This item was first identified on the forward plan in April 2013 and more recently returned to the Council's forward plan on 17th October 2016.

## **7. BACKGROUND**

- 7.1 Cabinet considered a report on the possible establishment of a Crematorium at Wilbury Hills Cemetery on 18<sup>th</sup> June 2013 (minute 15 refers) and, in doing so, resolved:

*'That officer's be authorised to undertake the development of a Business Case to follow on from the completed feasibility study and report its conclusions to a future meeting of the Cabinet.'*

7.2 Overview & Scrutiny Committee also considered the report following this at its meeting on 27<sup>th</sup> July 2013 (minute 26 refers) and in doing so resolved:

*(1) That the decision made by Cabinet on 18 June 2013 “That officers be authorised to undertake the development of a Business Case to follow on from the completed feasibility study and report its conclusions to a future meeting of Cabinet” be endorsed;*

7.3 Cabinet subsequently considered a report regarding the development of a Crematorium at Wilbury Hills and the issue of how it would be delivered on the 23<sup>rd</sup> September 2014 (minute 52 refers) and in doing so resolved:

*That it be noted that the conclusion of the Crematorium Business Case may require the creation of a Local Authority owned or joint venture company, and that Officers be requested to fully research the implications as a component part of the Business Case to be presented to a future meeting of Cabinet.*

7.4 The commencement of the development of a Crematorium at Holwell has resulted in Officers reviewing the existing Business Case to ascertain if a facility at Wilbury Hills is still viable. The outcome of that review suggest that the market can sustain a facility and Holwell and Wilbury Hills however officers wanted to test that conclusion by seeking expressions of interest from potential operators. Consultation with potential operators confirms that such a proposal could be viable and would provide significant benefits to the community whilst ensuring that the Council achieves best value for the use of it land.

7.5 On the 27<sup>th</sup> September 2016 Cabinet resolved

7.5.1 *That Officers be authorised to consider options for collaboration with a private sector provider that could deliver a suitable crematorium, secure the future of Wilbury Hills as a site for burial and cremation, and achieves best value in respect of the use of Council land;*

7.5.2 *That Officers develop and conclude a selection process for the delivery of the project in collaboration with a private sector partner, the aim of this process being to receive and evaluate proposals from potential partners with a view to establishing which operator offers the Council the most beneficial model for collaboration; and*

7.5.3 *That Officers report further to Cabinet once the selection process has concluded, and in any event by no later than 31 March 2017, in order to obtain Cabinet’s approval to enter into collaboration with the selected partner and complete the necessary legal documents.*

## **8. SELECTION PROCESS RESULTS**

8.1 Consultation with the market place has given Officers feedback that the usual model would be for the service provider to finance and oversee the construction of the crematorium and then operate the Crematorium with a long lease. The long lease would provide the Council with a base level of rent and a percentage of turn over (income) to ensure that the Council benefits from performance of the facility and receive best consideration for the use of the land.

- 8.2 The Council has asked for a proposed base level of rent and turnover percentage and we have received an offer which is detailed within Part 2 of this report.
- 8.3 Over the medium term, the number of new homes projected to be built within North Hertfordshire would increase the catchment area, which together with a trend towards cremation, has the potential to generate a greater number of annual cremations.
- 8.4 Any proposal the Council decides to take forward will require the relevant operator to meet the Council's minimum qualifying criteria in relation to quality and financial standing in order to maximise the chance of success of the project and mitigate the risk of failure.

## **9. CONCLUSION**

- 9.1 An expression to propose a rent under a new lease has been received and requires further investigation to clarify a number of the elements detailed in the part 2 report. It is clear that there is a potential still remaining that would generate an income for the Council whilst offering a new service to the residents from our District wide cemetery. However the final level of income that could be realised still requires clarification and confirmation.
- 9.2 The operator currently pursuing a crematorium at Holwell has demonstrated significant resistance to the proposal of developing a crematorium at Wilbury Hills and the Council needs to be prepared for potential future legal challenges should the project progress. This is explained further in the part 2 report.
- 9.3 If Cabinet agrees to the recommendations, officers would undertake further negotiations to reach final agreement on heads of terms which Cabinet can choose whether to accept in due course.

## **10. LEGAL IMPLICATIONS**

- 10.1 Within Cabinet's terms of reference are "*to prepare and agree to implement policies and strategies other than those reserved to Council*" and "*to approve those major service developments or reductions which also constitute Key Decisions.*" This project has been noted on the Council's forward plan as a key decision.
- 10.2 As a burial authority under section 214 Local Government Act 1972 the District Council may provide and maintain cemeteries whether in or outside their area. Councils have a statutory duty to provide public health funerals (burial or cremation) under section 46 of the Public Health (Control of Disease) Act 1984. The role of public health funerals is to ensure that public health is protected when a person dies and no-one is able to make the funeral arrangements.
- 10.3 Section 4 of the Cremation Act 1902 confirms that the powers of the Council, as burial authority, to provide and maintain burial grounds or cemeteries also include the provision and maintenance of crematoria. A crematorium must also not be less than 200 yards from any dwelling house.
- 10.4 With respect to generating income, section 9 of the Cremation Act 1902 confirms that the Council may demand payment of charges or fees for providing a cremation service and such charges or fees, and any other expenses properly incurred in or in connection with the cremation, shall be part of the funeral expenses of the deceased.

- 10.5 The Council is required to keep a table of fees for cremation services and must make this table available for public inspection.
- 10.6 The Council has a legal obligation to secure best value in respect of any land disposal and this can be demonstrated by formal valuation or competition between potential operators.
- 10.7 The Council must secure best value in relation to any land disposal which form part of any long term collaboration in order to comply with rules on state aid. A level of rent which is below market value may be deemed an unlawful state subsidy.
- 10.8 The Council must comply with Part I (Land Transactions) of the Council's Contract Procurement Rules.
- 10.9 Planning permission will be required and officers have received pre application advice from Central Bedfordshire which was favourable to a proposal to develop a crematorium at Wilbury Hills.

## **11. FINANCIAL IMPLICATIONS**

- 11.1 The evolving Business Case and associated investigations lead Officers to the belief that the development of a Crematorium at Wilbury Hills could be viable. However the threat of challenge and proximity of the emerging development at Holwell has had a detrimental impact upon potential income compared to the original business case. In the event that negotiations with a potential operator are unsuccessful or are not sufficiently commercially attractive to the Council there is still the option of North Herts District Council undertaking the development on its own.
- 11.2 Any initial capital investment and preliminary expenditure must comply with the Council's Contract Procurement Rules and Financial Regulations and be considered as part of the Corporate Business Planning process for 2017/18.
- 11.3 If the proposal detailed in the part 2 report is accepted North Herts District Council would need to allocate resources to undertake the process of obtaining outline planning permission and any perceived challenge that may arise from this. Currently estimates for undertaking the planning application and associated ground survey's are approximately £20,000 – £30,000 in line with the proposals received to date and with the inclusion of contingencies.

## **12. RISK IMPLICATIONS**

- 12.1 As with all projects, there is a risk to the final cost of delivery, target completion date and the quality of the Crematorium should this be agreed.
- 12.2 Additionally there is a risk in not achieving the projected turnover rent. However the lessee will also have a significant interest in maximising turnover which ensures that ambitions of the Council and the lessee to maximise income are aligned.

## **13. EQUALITIES IMPLICATIONS**

- 13.1 The Equality Act 2010 came into force on the 1<sup>st</sup> October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5<sup>th</sup> April 2011. There is a General duty that public bodies must meet, underpinned by more specific duties which are designed to help meet them.

- 13.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of its functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 13.3 An additional crematorium would provide extra provision for those families in North Hertfordshire and beyond our borders. With these additional facilities the council could better support those bereaved families in a vulnerable circumstance. . As a major key council decision, a completed equality analysis will need to be carried out as part of the detailed documentation and report and prior to Cabinet's decision.

#### **14. SOCIAL VALUE IMPLICATIONS**

- 14.1 The proposal to construct a new Crematorium would not constitute a public contract because the arrangement would be land disposal. Therefore the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 will not need to be applied, although equalities implications and opportunities are identified in the relevant section at section 14.

#### **15. HUMAN RESOURCE IMPLICATIONS**

- 15.1 None that is apparent at this present stage. However depending upon the preferred delivery option consideration for employee's and their required skills might need some future consideration.

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**17. BACKGROUND PAPERS**

17.1 None