

CABINET
27 MARCH 2018

***PART 1 – PUBLIC DOCUMENT**

AGENDA ITEM No.

15

TITLE OF REPORT: PROPOSED CREMATORIUM AT WILBURY HILLS - PROGRESS UPDATE

REPORT OF THE HEAD OF LEISURE AND ENVIRONMENTAL SERVICES

EXECUTIVE MEMBER: COUNCILLOR MICHAEL WEEKS

COUNCIL PRIORITY: ATTRACTIVE AND THRIVING / PROSPER AND PROTECT

1. EXECUTIVE SUMMARY

- 1.1 To provide Cabinet with an update regarding progress to lease land at Wilbury Hills for the development and operation of a crematorium and to request approval of the heads of terms with a view to submitting an application for outline planning permission.

2. RECOMMENDATIONS

- 2.1 To note progress made to date and approve the heads of terms for the proposed lease, option agreement and agreement for lease as set out in section 8 of this report and section 8 of the Part 2 report.
- 2.2 Subject to Cabinet approval under paragraph 2.1, to authorise the Head of Leisure and Environmental Services in consultation with the Council's Contracts Lawyer and Head of Finance, Performance and Asset Management.
- 2.2.1 to complete the option agreement to reflect the heads of terms in this report; and
- 2.2.2 to complete the agreement for lease and lease in due course in the event that the prospective tenant exercises the option.

3. REASONS FOR RECOMMENDATIONS

- 3.1 Following the previous report to Cabinet on the 28th March 2017, officers have progressed negotiations with the prospective tenant for the development of a Crematorium at Wilbury Hills.
- 3.2 Heads of Terms have now been negotiated to develop and operate a crematorium on behalf of the Council and, as part of this process, the Council will apply for outline planning permission. Officers are satisfied that the heads of terms present the best return for the Council in the circumstances, particularly as the prospective tenant was selected following a competitive process and the likely effect of competition from existing facilities.
- 3.3 Cabinet approval of the heads of terms will allow officers to complete the option agreement and apply for outline planning permission. If outline planning permission is granted, the prospective tenant may exercise the option to take the lease and then progress the development through to final design, construction and operation.

- 3.4 A new crematorium at Wilbury Hills would serve both North Herts and Central Bedfordshire residents and would benefit both communities as populations grow. It is important for the Council to ensure that new infrastructure is planned in order to meet the demands of future population growth. Strong housing growth is projected for Central Bedfordshire in particular.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 At this time, there are no alternative options for the location of a new Crematorium within the land ownership of North Herts. Therefore the only other alternative is to cease progress of this project.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 As part of the preparation for applying for outline planning permission, the Council consulted with the public and local funeral directors. Consultation involved questions within the District Wide Survey 2017, a specific survey of Central Bedfordshire residents using an online survey in 2017 and also a telephone survey of local funeral directors. The results from these consultations have informed the recommendations of this report and the Needs Analysis supporting the application for outline planning permission. See section 8.4 for details of the results.

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 13th December 2017.

7. BACKGROUND

- 7.1 On the 27th September 2016 Cabinet resolved

7.1.1 *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;*

7.1.2 *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*

7.1.3 *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.*

- 7.2 On the 28th March 2017 Cabinet resolved as follows and in particular resolved to grant authority to officers to progress and submit outline planning permission. From March 2017, officers have been negotiating heads of terms, developing legal documents and progressing the necessary reports, drawings and assessments to submit outline planning permission. Given the specific risks as set out in the part 2 report and additional work around establishing need for the purposes of planning, officers have been seeking to maximise the prospects of success for outline planning permission.

- 7.2.1 *That officers be authorised to progress and submit an outline planning application for the development of a crematorium at Wilbury Hills, such authorisation to include taking all steps required for a successful grant of permission;*
- 7.2.2 *That the project be allocated a budget of up to £50,000 to cover external consultants and other costs associated with the planning application;*
- 7.2.3 *That the Head of Leisure and Environmental Services, in consultation with the Leader of the Council, be authorised to carry out further negotiations to finalise the structure and detail of any potential agreement with the Proposed Operator, subject to Cabinet providing final approval in due course. In any event, the Head of Leisure and Environmental Services is requested to report back to Cabinet once the outcome of the outline planning application is known; and*
- 7.2.4 *That the cost of Officer time spent on this project moving forward be included in the Business Case, and that the latest Business Case and financial information be reviewed before deciding whether to proceed with this project.*

8. RELEVANT CONSIDERATIONS

Heads of terms and progress update

8.1 Lease

See section 8 (heads of terms for the lease) of the part 2 report.

8.2 Option agreement

- If outline planning permission is granted, the prospective tenant has the option to enter into an agreement to take a lease in accordance with the heads of terms.
- The option period is three years.
- The Council will apply for outline planning permission before 30th June 2018.
- If outline planning permission is granted and the tenant does not exercise the option, the tenant will meet the Council's costs to a maximum of £50,000.
- The Tenant will pay the Council an option fee of £5,000 on signing the option agreement.

8.3 Agreement for lease

- The prospective tenant will apply for detailed planning permission.
- The prospective tenant will take a lease in accordance with the heads of terms following the grant of detailed planning permission.
- Upon entering into the agreement for lease, the prospective tenant would have no liability for the Council's costs to obtain outline planning permission

8.4 Progress update

The Council has made considerable progress since this matter was last reported to Cabinet in March 2017. Brief details are set out below.

- A consultant has been appointed to progress the application for outline planning permission and all reports and assessments have been commissioned. Officers are ready to apply for outline planning permission if Cabinet approves the heads of terms. Officers

will aim to make the application at the earliest possible time as all parties are keen to progress this development.

- Residents of North Herts and Central Bedfordshire have been consulted on their views regarding a new crematorium at Wilbury Hills. Overall the response was positive. Within North Herts, 59.85% of respondents confirmed that they are very likely or fairly likely to use the facility. Within Central Bedfordshire, 55.91% of respondents confirmed that they are very likely or fairly likely to use the facility.
- Funeral Directors within the District have been consulted, by telephone interview, on their views regarding a new crematorium at Wilbury Hills. Overall the response was positive. 60% indicated that they would use the facility.
- Legal documents have been developed in-house to reflect the heads of terms. This ensures that officers can complete the option agreement with the prospective tenant at the earliest possible time if Cabinet approves the heads of terms.
- Officers have responded to all the prospective tenant's pre-contract enquiries relating to the site.
- The proposal is for the new crematorium to have its own access via Arleseey New Road. This will allow cremations and burials to take place simultaneously and therefore allow the booking systems for cremations and burials to be managed independently.
- A timetable has been received from the prospective tenant showing practical completion in November 2020.

9. LEGAL IMPLICATIONS

- 9.1 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.
- 9.2 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.
- 9.3 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. This has been taken into account in the planning and design process.
- 9.4 Under section 3 of The Cremation (England and Wales) Regulations 2008 the Council must give the Secretary of State at least 1 month's notice before opening the Crematorium.
- 9.5 With respect to fees, 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.
- 9.6 The Council is required to keep a table of fees for cremation services and must make this table available for public inspection.
- 9.7 The disposal of land by the Council is governed by Section 123 of the Local Government Act 1972. The power of the Council to dispose of land is subject to the proviso that, except

with the consent of the Secretary of State, a council may not dispose of land (otherwise than by way of a short tenancy) for a consideration less than the best that can reasonably be obtained. A short tenancy for the purpose of this section is a tenancy for a term not exceeding 7 years.

- 9.8 The option agreement is only legally binding when both the Council and the prospective tenant have signed the agreement.

10. FINANCIAL IMPLICATIONS

- 10.1 See the financial implications section of the part 2 report for details on the rental income and indicative turnover rent.
- 10.2 Over time, the Cremation fees are likely to increase and the Council's income will, in turn, increase because the majority of the Council's income is projected to be a percentage of turnover.

11. RISK IMPLICATIONS

- 11.1 As with all projects, there is a risk to the target completion date should Cabinet decide to proceed. For example, the construction period may be longer than anticipated.
- 11.2 Additionally there is a risk in not achieving the projected turnover rent. However both parties are keen to develop a new community facility and work together to make it a success.
- 11.3 An application for outline planning permission may be refused. In this event, officers will consider the reasons for refusal and evaluate the viability of potential solutions.
- 11.4 Competition from existing facilities may have a detrimental effect on cremation fees. If cremation fees decrease, the Council's income may decrease because the majority of the Council's income is projected to be a percentage of turnover.
- 11.5 See the risk section of the part 2 report for further details of risks in connection with the application for outline planning permission.

12. EQUALITIES IMPLICATIONS

- 12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their 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.
- 12.2 There are no adverse impacts generated by the actions contained within this report.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 The proposal to construct a new Crematorium would not constitute a public contract because the arrangement would be land disposal. Therefore the consideration of 'social value' as required by the Public Services (Social Value) Act 2012 will not need to be applied.
- 13.2 Although the Public Services (Social Value) Act 2012 does not apply to the proposals in this report, officers consider that the development of a new crematorium would be welcomed by the community and boost economic activity within North Hertfordshire and

Central Bedfordshire. Strong housing growth is projected for both areas and a new crematorium would help with the demands of a growing and more diverse population.

14. HUMAN RESOURCE IMPLICATIONS

14.1 None.

15. APPENDICES

15.1 None.

16. CONTACT OFFICERS

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17. BACKGROUND PAPERS

17.1 None.