

London Borough of Enfield

The Leader

Meeting Date: TBC

Subject: Acquisition of Tottenham Park Cemetery

Leader: Cllr Nesil Caliskan

Director: Doug Wilkinson; Director of Environment and Operational Services

Key Decision: KD5368

Purpose of Report

1. To agree that the Council should proceed with seeking to acquire the burial grounds of Tottenham Park Cemetery, Dodsley Place, Montagu Road, Edmonton.

Proposal(s)

2. It is proposed that the Council enter a negotiation phase with the current owner to complete its due diligence with a view to acquiring the cemetery. The question of acquisition has arisen due to longstanding and historic complaints about the mismanagement and poor operation of this private cemetery and alleged practices; older graves disappearing, human remains being found, poor maintenance practices and health and safety issues.
3. The report outlines five options to be considered before we proceed with the acquisition.
4. It is proposed that the decision to acquire the cemetery should negotiations be successful is delegated to the Executive Director of Place in consultation with the Leader and
 - to negotiate and to acquire, in accordance with the Property Procedural Rules in consultation with the Director of Law and Governance.
 - the decision on whether to continue to offer burials (for reserved plots or otherwise) or to close the cemetery completely to be delegated to the Director of Environment and Operational Services in consultation with the Cabinet Member.
 - the decision on the procurement and expenditure relating to other capital expenditure items (e.g. works to the chapel) is made by the Director for Property and Economy in consultation with the Director of Environment and Operational Services.

Reason for Proposal(s)

5. Tottenham Park Cemetery is a private cemetery which falls outside the regulatory control under which Councils operate namely the Local Government Act 1972 and Local Authorities' Cemeteries Order 1977. Over many years, and particularly in recent years, concerns have been raised by the families with deceased buried in the cemetery and by the Tottenham Park Cemetery Action Group about the finding of human remains and alleged re-use of graves. There are also concerns for health and safety of users due to poor maintenance of the cemetery.

Relevance to the Council Plan

6. Sustain Strong Healthy Communities - Acquisition of the cemetery by the Council would resolve longstanding and historic complaints and issues. It would also address the concerns about unacceptable practices that have operated in the cemetery and public safety concerns. Additionally, the acquisition would help to preserve the cultural history of the cemetery (some of which is feared already lost) and promote the conservation value of the cemetery and chapel (further details under Conservation Value). The cemetery and chapel are also listed as Assets of Community Value (further details under Cultural Value).
7. The acquisition would support the community and local organisations to improve this important space and remove the distressing impact on families who have reported that graves are mis-used. The acquisition would provide opportunities for local people to get involved in maintaining this additional open space in their neighbourhood. The Tottenham Park Cemetery Action Group have been instrumental in highlighting the concerns and seeking remedies to address the ongoing poor operations.
8. If the cemetery were to be maintained as a closed graveyard there is still the potential to revamp the old chapel as a community space serving all faiths which would be of benefit for communities; and create more quality community spaces which is much needed in this part of the borough.

Background

9. Tottenham Park Cemetery is located at Dodsley Place in Montagu Road, Edmonton having over 6000 graves with some graves having up to seven interments. The cemetery is privately owned and with the current owner since January 2019. Prior to this the cemetery was owned by a private company called Badgehurst Limited which changed name more recently into Tottenham Park Cemetery Limited. Tottenham Park Cemetery Limited liquidated in 2018 and was purchased by the current owner in January 2019. The Tottenham Park Islamic Cemetery Association (TPICA) also has 'rights of burial' in a section of the cemetery.
10. As a private cemetery, Tottenham Park Cemetery is largely unregulated as there is no private 'Act of Parliament' which specifies how it should be operated and maintained. Over recent years concerns were raised by families with deceased buried in the cemetery and by the Tottenham Park Cemetery Action Group about the finding of human remains within the cemetery, possible illegal re-use of graves as well as issues about poor maintenance of the cemetery. Enfield Council has taken what action it could, which was limited to controlling removal of trees and escalating other issues to the Ministry of Justice.
11. The current owner has introduced a procedure to deal with any bones visible at the surface of the cemetery. Bones discovered will be placed in a vault which the owner has advised the council he is currently creating. The current owner has informed the

council that he intends to ensure that they have the correct burial procedure and the vault will be marked with a verse or prayer for all denominations and identify “The souls that were lost but never forgotten”.

12. Should any human remains (due to misuse of the grave) be found in the event that new graves or graves with ‘Burial Rights’ are reopened, then those remains must remain within that grave, the grave resealed and no further burial to take place.
13. Within the cemetery there is also a section controlled by Tottenham Park Islamic Cemetery Association (TPICA) which is a grassy stretch of land in the south west corner of ‘Block G’ that remains available to them for new burials. See site plan at Appendix 1, section G.

Conservation Value

14. Tottenham Park Cemetery is one of three privately owned cemeteries that sit between Montagu Road and Edmonton Green. The other two are the adjoining Western Synagogue Cemetery and the Federation of Synagogues Cemetery. Together they form the Montagu Road Cemeteries Conservation Area.
15. The Council has a duty under Sections 69(1), 69(2) and 71(6) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to review its conservation areas and prepare proposals for their preservation and enhancement. Conservation Area Character Appraisals and Management Proposals have been put in place for all the borough’s twenty-two conservation areas. They are a key part of the ‘evidence base’ for the Local Plan and support and uphold the conservation planning policy framework within it. The [Montagu Road Cemeteries Conservation Area Character Appraisal \(the ‘Appraisal’\)](#) and [Management Proposals](#) were last approved in 2016.
16. The special interest of the Montagu Road Cemeteries Conservation Area is described in the [Appraisal](#) and the accompanying [Management Proposals](#). This cultural heritage significance is both architectural and historic. The key characteristics of the whole Conservation Area and Tottenham Park Cemetery (specifically) are summarised below:
 - Large open spaces created by the three cemeteries which act as ‘green lungs’ (an area of natural parkland within an urban region, which replenishes the air with oxygen)
 - Focus for religious groups
 - Valuable historic resource
 - The chapel at Tottenham Park Cemetery is a focal point worthy of repair or reinstatement
 - A complement to Salmon’s Brook Walk trail (with potential for a closer link through the construction of a new bridge from the chapel and across the Brook to the footpath)
 - Tottenham Park Cemetery is in such poor condition as to warrant an early Appraisal review
 - Strong visual contrasts resulting from the different cultural traditions of the Jewish and Muslim communities (this also applies to the Christian community).
17. Since the Appraisal was written the Local Studies Officer has established that there is also a war grave in Tottenham Park Cemetery. It is understood that approximately 100 soldiers from World War II were buried in the cemetery.

18. This is a fragile conservation area under considerable strain. The condition of the heritage assets at Tottenham Park Cemetery has deteriorated further since the [Appraisal](#) and [Management Proposals](#) were approved in 2016. There is significant cumulative harm to Tottenham Park Cemetery from the long-term lack of maintenance and security.
19. The former chapel; a key focal point of the cemetery, is of particular concern. In 2018 it was the subject of a Dangerous Structures notice. The spire was dismantled, tiles removed and the area made safe and fenced off. A long-term solution has not been identified to date. Trees have also been felled and the formal tree avenue and paths have been significantly degraded.
20. There are also other areas identified for enhancement in the [Appraisal](#) and [Management Proposals](#). As well as remedial works to the chapel, all three cemeteries within the conservation area would benefit from significant and co-ordinated boundary improvements and from improved planting. In the case of the Tottenham Park Cemetery there may be potential to provide a connection to the Salmon's Brook Walk.

Cultural value

21. Tottenham Park Cemetery was opened in 1912 and originally used as a paupers' cemetery.
22. Tottenham Park Cemetery is unique, and a very important cultural burial place for the Turkish Cypriot community in Enfield and beyond. The cemetery was the only Muslim cemetery in London for many decades. As well as the graves of those with Turkish/Turkish Cypriot background, the cemetery is also the final resting place for those of Asian background and the location for older local Christian graves.
23. The earliest Turkish Cypriot grave is probably from the 1960's although the original graves were those of paupers from the 1900's. The cemetery has a historic value as well as being a valuable part of the present community. It tells the rich story of Enfield's population.
24. Failure to protect the cemetery would have a serious negative effect on the social and cultural, health, well-being and spiritual awareness for the families and wider community, as well as destroying a cultural heritage site of many of our BAME communities in Enfield.
25. It is visited by large numbers of families on a regular basis especially at weekends and on special religious occasions. As with many religions it is incumbent for Muslims to visit family graves on religious occasions.

Asset of Community Value

26. Tottenham Park Cemetery and the chapel are listed as an Asset of Community Value (ACV). They were listed as an ACV in May 2018 on the basis that the use of the site as a cemetery provided social value under the heading of 'culture'. The ability of the local community to visit the cemetery to pay respects and pray for their deceased relatives and friends was felt to be a clear demonstration that the land is of social value.
27. In the event that the cemetery and chapel are put up for sale, the fact that the site is an ACV means that a six-week period needs to be observed for any other party to

come forward to express an alternative interest in purchasing. If that does happen, then that party has up to six months to assemble a competitive bid during which time the asset cannot be sold.

Graves - Current Position

28. As of March 2021, there were 217 known reserved grave spaces noted in the records for the cemetery. This does not take into account any reserved graves within the TPICA section and does not take account of missing information when the current owner obtained the burial registers of the Cemetery. The owner is in the process of mapping the cemetery to locate positions of all graves and constructing a database incorporating all historical information. Initially they are mapping approximately 50% of the cemetery to gauge how many 'spare plots' can be found. These are not obvious grave plots as the adjacent memorials may have been oversized. It was expected that this process would be completed by the end of September 2021 but there were issues with overlaying the digital mapping and we do not have a completion date from the owner. It is hoped that the mapping and grave information will be matched with the digital register to provide a uniform and comprehensive record of every grave at the Cemetery.
29. There is little information available at this time about the number of grave spaces in the land controlled by the TPICA. One reason is that the Burial Right Deeds granted by the previous owners, Badgehurst Ltd, only required for the minimum information to be provided by TPICA. Due to this, the exact number of reserved spaces for the entire Cemetery may never be known.
30. The current owner is issuing 'Rights of Burial Documents' to families who wish to extend their rights for up to 50 years to be buried in previously purchased plots. These are not title documents but rather simply licenses entitling the Licensee to the right to bury one or two deceased at a specified grave space for a fixed period of time. Only those names listed on the document can be interred in a grave.

Main Considerations for the Council

31. Section 9 of the Open Spaces Act 1906 permits local authorities to acquire burial grounds. Section 10 of the Act requires the local authority to maintain the burial ground and to administer it in trust to allow the enjoyment of it by the public. Section 13 of the Act provides for compensation to persons whose interest or rights at the cemetery would be affected.
32. Section 10 of the Act would impose a duty on the Authority to maintain the cemetery in a safe and usable manner for visitors. There would be ongoing maintenance costs but should the cemetery be operated under a trust there is an opportunity to seek funding to maintain and enhance the cemetery and chapel.
33. Section 13 of the act provides that no one should suffer financial loss, so the Authority would need to compensate all those affected. The estimated financial impacts are set out in option 3.
34. In relation to the closure of burial grounds, Section 1 of the Burial Act 1853 provides for the Secretary of State to make representations to the Privy Council for an Order in Privy Council to discontinue burials in any burial ground, with or without exceptions. These provisions are regularly invoked for the purposes of closing Church of England churchyards (in order to avoid a conflict when they are full with the Church's obligation to bury anyone with a right to burial there).

35. Section 1 of the Burial Act 1853 can also be used when there might be a need to prevent the continued use of a burial ground which appears to be unsuitable, or no longer suitable (for example, on the grounds of public health). There is no provision for such Orders in Privy Council, once made, to be rescinded. Once closed, the responsibility for the cemetery passes to the local authority. There does not appear to be any provisions for compensation payable to the cemetery owner or to the local authority for funding future maintenance. It appears that this process could take up to 12 months but could possibly be shorter. It should be noted however that local authorities are unable to affect this power and may only lobby the Secretary of State to take such steps with no guarantee of success.

Safeguarding Implications

36. Removing the burial rights for reserved graves would have an emotional and financial impact on families and particularly the elderly. If a couple have purchased a plot and one partner is already interred in that grave they would have 'Rights of Burial' for the other partner (if they have recently reserved or extended the right). If we close the cemetery the surviving partner would not be able to be interred in that plot. This will no doubt cause emotional distress to the family. The family will then need to purchase a new grave elsewhere and may not be able to complete a dying wish of their parents to be buried together. The family may seek an exhumation to allow a re-burial together, but there is no guarantee that this exhumation licence will be granted by the Ministry of Justice.

37. Bringing the cemetery into regulatory control would ensure we can manage the health and safety risks, such as the safety of the memorials and deal sensitively with any public health concerns as they arise.

Public Health Implications

38. The proposal to close the cemetery while having a direct impact on the immediate family of a deceased person there would be a potential positive impact on the general public's mental health and wellbeing. Maintaining the site as public open space and a place of historical interest will benefit the larger community. It will also give reassurance to families who have loved ones interred at the cemetery that no further disturbance of human remains would take place. The transfer of the cemetery to an interest group to operate it; such as the Tottenham Park Cemetery Action Group, would allow them to seek grant funding for restoration.

Equalities Impact of the Proposal

39. The EQIA (attachments) indicates that removing the 'Rights of Burial' is likely to have a negative impact; particularly on the elderly who may not be in a financial position to purchase a new grave. Families who have reserved graves will need to consider altering their funeral plans and choosing a new cemetery. To negate this impact, we could offer the affected families a new plot within our existing cemeteries; or provide compensation. The primary aim is to prevent further burials to prevent mis-use and disturbance of remains which has been the main issues raised by local residents and community groups.

40. However, if a family wishes to remove (exhume) their family member from Tottenham Park cemetery (so that family members can be buried elsewhere together) the family would need to apply for an exhumation licence to the Ministry of

Justice. This may also have cultural implications for families as exhumation could be considered as disturbing the dead who 'rest in peace'. The cemetery would remain open for family to visit their loved one's graves without disturbance which would also be the case if it were maintained as an operational cemetery.

41. Should the cemetery be closed it would remove the distress of old family graves being disturbed and knowing that these plots would not be re-used.

Environmental and Climate Change Considerations

42. Maintaining the cemetery as a public open space would reduce operations onsite such as grave digging and lead to greater diversity of plants and flora on site. As there is no operational compound on site all operational equipment currently has to be brought on site and removed each day, so this travel element would be removed if the cemetery were to be closed. Not using any spare ground for graves that may be found during the mapping exercise, will enable these areas to remain as soft landscape rather than being covered by memorials, reducing runoff and absorbing more water during rainy periods.

Risks that may arise if the proposed decision and related work is not taken

43. This is a private cemetery and as such there is no private Act of Parliament which specifies how it should be operated and maintained. The consequence is that the cemetery has been unregulated.
44. The Council continues to receive complaints about the cemetery. We are aware that the current owner is completing a full mapping exercise to find any spare plots for 'new' burials and is extending the 'Rights of Burial' for reserved graves for future burials in graves which means the distress caused by mis-use of graves could be perpetuated. In addition, the disused chapel in the cemetery is in a very poor condition and is deteriorating further each year. It has an inherent heritage value in the conservation area which is not being met in its current condition.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

45. The main risk if we acquire and close the cemetery is causing emotional and financial distress to families who have a 'Right of Burial' and wish to be buried with a relative within the cemetery. This could lead to families seeking to exhume a family member to be interred elsewhere. While exhumations need to be granted by the Ministry of Justice and each case would be considered separately, it would appear that applications would be successful to allow family members to be buried together as that would have been their intention when they purchased the grave and extended the 'rights of burial'. In these cases, we would need to consider compensation or facilitating the exhumation by using our own burial teams and compensating for a new plot elsewhere.
46. If the option is considered to acquire and operate the cemetery to allow burials in the reserved plots only where 'rights of burial' exist, then the impacts would be much reduced and managed. There needs to be an acknowledgment that there are a number of liabilities that we would be taking on due the condition of the cemetery and the on-going maintenance required in addition to any investment required to make safe and memorialise.

Financial Implications

47. Contained in Part 2.

Legal Implications

48. The legal implications affecting this proposed acquisition are as set out in this report. In addition, the Local Authorities' Cemeteries Order 1977 gives local authorities wide ranging powers and article 3 of the Order provides that authorities "may do all such things as they consider necessary or desirable for the proper management, regulation and control of a cemetery". This could include implementing a strategy for management and maintenance of a cemetery that is at capacity in respect of burial space.
49. Acquisitions of freehold property will need to comply with the requirements for acquisitions as set out in the Council's Property Procedure Rules.
50. Documentation prepared in connection with the acquisition of the cemetery should it proceed shall be in a form approved by the Director of Law and Governance.
51. The recommendations set out in this report are within the Council's powers and duties.

Workforce Implications

52. There will be some impact on jobs as both the current owner and the Council has its own in-house burial teams. It is likely that if we proceed to purchase the cemetery we will need to increase the workforce to cope with the extra workload for maintenance and any further operations; which may create employment opportunities.

Property Implications

53. The proposal to acquire an asset will need to conform to the requirements of both the Property Procedural Rules and the Local Government Act 1972 in terms of requiring an external valuation of the asset to be purchased, including that the purchase price passes the 'best consideration' test. Given the basis of asset valuation of cemeteries revolves around the number of available burial plots, a robust valuation may not be possible, given the disputed/uncertain position on plot availability for this cemetery. Careful consideration will be needed on the outcome of the valuation in comparison to the sale price that the owner may seek.
54. Thorough due diligence will be needed on the state and condition of the built structures on the site and the responsibilities relating to boundary fences/walls in order to understand the size and scale of any liability that will be taken on by the Council. It should be noted that no proper or detailed assessment of liabilities has been carried out in preparation of this report and so the financial implications and the funding requested are purely estimated/ assumptions. The repair of the chapel (one of the largest cost headings) may not be ameliorated through a decision to demolish it, as a previous planning application to do so was rejected by the Local Planning Authority.
55. Due diligence will also need to be made on Title, and the various Deeds that have been agreed with TPICA.
56. As the site is designated as an Asset of Community Value (ACV), when or if the owner decides to sell the asset, this decision will need to be publicised and a six-

week period will need to be observed for any other party to come forward to express an alternative interest in purchasing. If that does happen, then a further period totalling six months needs to be allowed for during which that party to assemble a competitive bid. During this period the asset cannot be sold. However, the vendor is not compelled to transact with the alternative party.

Other Implications

57. The cemetery has CCTV and outside working hours access is gained using a swipe-card. This swipe card is issued to families who have relatives interred at the cemetery and also provides access to some newly refurbished toilet facilities. This functionality would need to link into the Council's CCTV to ensure safety of users.

Options Considered

58. The following are the options for consideration for the future of the cemetery if acquired by the Council:

Option 1:

59. Do Nothing - Do not purchase - this would lead to the continuance of the cemetery to remain outside regulatory control with no powers to deal with the ongoing concerns as set out in this report. Doing nothing is no longer acceptable as concerns over alleged disturbance of graves and exposure of bones continues. **Not recommended.**

Option 2:

60. Acquire and full operation - The Council could operate the cemetery - In addition to reserved plots there may be up to 100 'new' plots which the current owner is in dispute with TPICA. Income would be derived from rights of burial and re-opening graves for interments. However, whilst the continued use of reserved graves might negate emotional distress to families that would occur if we ceased these burials, there is likely to be unease within the community with allowing continuing burials in the cemetery (both reserved and 'new' plots) given the mis-use of graves that have perpetuated over decades and given that it was the MOJ Inspector's view that the cemetery is full the MOJ are likely to oppose this option. **Not recommended.**

Option 3:

61. Acquire and close - The Council closes the cemetery and maintains it as a public open space with the potential to engage with local community groups such as Tottenham Park Cemetery Action Group to manage the cemetery and restore the chapel as a community hub. This would ensure that safety issues and public health concerns could be managed on site. This option would generate no income and there would be ongoing maintenance costs. There is a significant risk of claims for compensation for those who have the rights of burial. If the 220 families with burial rights were compensated this could potentially be a significant cost to the Council there may also be exhumation costs which could also be significant. There is a risk that local groups will not take on the running of the cemetery or secure sufficient funding to restore the chapel or run it as a going concern. **Not recommended.**

Option 4:

62. In addition to option 3, we could seek permission to demolish the old chapel saving on refurbishment and maintenance costs but this is unlikely to be an acceptable

option (a previous planning application to demolish the chapel was refused by Planning). **Not recommended.**

Option 5:

22. That the Council closes the cemetery but allows burials in the reserved graves. Does not permit any further extension of existing rights of burial of reserved graves. This would allow for families who have a reserved grave to inter another family member as well as negating any distress, complaints. This would also mitigate against any compensation payments we would consider paying to families due to loss of burial rights. All rights of burial would then cease in a maximum of 50 years' time. **Recommended.**

Option No.	Option Name	Ownership	Route to LBE control	Timing	Future Burials	Operating model	Main cost items	Income	Comments
1	Do nothing	Remain in private hands	n/a	n/a	To continue in an undesired manner	Remain with current owner/operator	Nil	Nil	Attempt to limit undesirable practices through dialogue with no regulatory control.
2	Acquire and full operation	LBE	Purchase via negotiation	Several months from now, dependent on negotiations and whether a challenge bid is triggered under ACV procedure	Continue to offer all reasonable unused and reserved plots but without engaging in undesirable practices	LBE controlled and operated	<ul style="list-style-type: none"> • Purchase of property • Restore chapel • Memorial testing and making safe • Grounds maintenance 	Greatest income potential	<p>Site would be operated under full regulatory control.</p> <p>Concerns could still remain that the is being over-used.</p> <p>Families would retain their 'Rights of Burial'.</p> <p>Chapel could be transferred to a Trust who may be able to secure funding for restoration</p>

3	Acquire and close	LBE	Purchase via negotiation Lobby SoS for Privy Council order close cemetery so that it passes to LBE by operation of law.	Several months from now, dependent on negotiations and whether a challenge bid is triggered under ACV procedure. Unknown - maybe 18 months	To cease all future burials through LBE own decision rather than by operation of law The Cemetery would be closed to all further burials	LBE controlled Or Transferred to a specially created Trust	<ul style="list-style-type: none"> • Purchase of property • Restore chapel • Memorial testing and making safe • Grounds maintenance • Compensation • Exhumation and provision of alternative grave 	No significant income potential	<p>If the cemetery were to be operated by a Trust then that might open up the small possibility of some grant funding for chapel restoration.</p> <p>Compensation would remain mandatory for some situations but exhumations and alternative graves would be at the Council's own discretion.</p>
4	Acquire and close	As option 3	As option 3	As option 3	As option 3	As option 3	<ul style="list-style-type: none"> • Seek to demolish the chapel 		<p>Has conservational value and unsightly to be agreed.</p> <p>Work would be required to ensure safety and prevent its total deterioration.</p>

5	Acquire and limited operation	LBE	Purchase via negotiation	Several months from now, dependent on negotiations and whether a challenge bid is triggered under ACV procedure	Continue to offer only reserved plots but without engaging in undesirable practices	LBE controlled and operated	<ul style="list-style-type: none"> • Purchase of property • Restore chapel • Memorial testing and making safe • Grounds maintenance 	Limited income potential	<p>Families would retain their 'Rights of Burial' No compensation to consider.</p> <p>Transfer of the chapel to a Trust who may be able acquire funding to restore.</p> <p>No further Rights of Burial to be issued and when the current rights are exhausted the cemetery could be closed.</p>
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Conclusions

63. There are five options to consider all bearing both emotional and financial risks to address the concerns about the cemetery. In light of the current allegations of misuse and that the current owners plan to maximise any spare burial space which could lead to further disturbance of graves, the Council should acquire the cemetery and operate limiting the burial as set out in option 5.

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Appendix 1: Plan of Tottenham Park Cemetery

