

Date Published: 11 November 2024



## **CABINET**

**12 NOVEMBER 2024**

### **SUPPLEMENTARY PAPERS**

**TO: ALL MEMBERS OF THE CABINET**

The following papers have been added to the agenda for the above meeting.

These were not available for publication with the rest of the agenda.

Kevin Gibbs  
Executive Director: Delivery

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<b>11. APPROPRIATION OF LAND AT DOWNSHIRE GOLF COURSE</b>	<b>3 - 14</b>
To seek approval for the appropriation of land at Downshire Golf Course for planning purposes in line with an associated planning application	

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To: **CABINET**  
**12 NOVEMBER 2024**

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## **Appropriation of land at Downshire Golf Course**

### **Executive Director of Communities**

#### **1. Purpose of report**

- 1.1. This report seeks the decision of Cabinet to appropriate the land at Downshire Golf Course comprising of the 9 hole 'pitch & putt' (P&P Land) for planning purposes (as shown on the plan in Appendix 1) under section 122 of the Local Government Act 1972 once planning permission is obtained.

#### **2. Cabinet member for Leisure, Culture, Public Protection and Democracy Introduction**

- 2.1. The council is seeking approval to appropriate land for use as a cemetery to extend the ability to provide burial options for residents within the borough

#### **3. Recommendations**

- 3.1. Accept that the area of land at Downshire Golf Course and being the P & P Land referred to in this report, is no longer required for the purpose for which it is currently held.
- 3.2. Approve the appropriation of the P & P Land for planning purposes in order to facilitate redevelopment for use as additional space for the adjoining cemetery once planning consent is in place.
- 3.3. Agree to give delegated authority to the Assistant Director; Contract Services in consultation with the Cabinet Member for Leisure, Culture, Public Protection and Democracy, the Borough Solicitor and the Assistant Director: Property to agree the settlement and documentation of any statutory claims, together with any associated fees; to document any associated agreements or deeds of release etc that may be required and to note that any costs will come from the previously agreed budget.

#### **4. Reasons for recommendations**

The key reasons for the decision are:

- 4.1. Securing social, economic and well-being benefits to the residents of the borough by ensuring that all residents have the opportunity to be buried in the borough and are not disadvantaged by having to choose more expensive out of borough burials
- 4.2. Reducing the economic impact that will fall on the Council to maintain the current cemetery without the revenue stream generated by new burials

## OFFICIAL SENSITIVE (COMMERICAL)/OFFICIAL SENSITIVE (PERSONAL)

- 4.3. In order to ensure that the redevelopment can come forward and its benefits be realised it is proposed that Bracknell Forest Council appropriates the P & P Land for planning purposes. This would be done under S122 Local Government Act 1972 and engages the provisions of S203 Housing & Planning Act 2016 so as to override third party rights, the existence of which would otherwise prevent the implementation of the proposed development, and to facilitate the works without risk of injunction once planning permission has been obtained.

**5. Alternative options considered**

- 5.1. The Council looked to purchase land situated away from Easthampstead Park Cemetery & Crematorium. No suitable land was identified. Other sites within the Council's ownership were also considered but found not to be viable.
- 5.2. Not to approve that the P & P Land be appropriated for planning purposes. However, the consequence would be that the P & P Land would continue to be used as a pitch and putt course and the development to expand the crematorium does not take place which would mean that burials within the Borough would cease in 2025

**6. Relevance to the Council Plan**

- 6.1. The appropriation of the P & P Land will continue to advance the Council's ambition for a "Green and sustainable environment" by providing an open, public space that will foster biodiversity as well as provide a place of sacred and social meaning.

**7. Background**

- 7.1. The Council anticipates having no further burial space at Easthampstead Park Cemetery & Crematorium (EPC&C) from mid-2025.
- 7.2. There are certain faiths, for whom burial is the only permitted option. There are also individuals who specifically choose burial over cremation. Such people will be negatively impacted were the borough no longer able to offer burial provision.
- 7.3. Once the existing burial space runs out the cemetery will lose all 'new' burials income, whilst retaining the necessity (cost) to continue to maintain the grounds. The Council have a legal obligation to maintain all closed burial sites for a minimum of 75 years after the final interment (burial) has taken place. The current cost of grounds maintenance at EPC&C stands at circa £220k p.a. The loss of income equates to circa £200k p.a.
- 7.4. In 2019 the Environment and Communities O&S panel considered a report on potential action to be taken to address the dwindling supply of burial plots at EPC&C. Following a panel review and several site visits, the 2-hectare pitch and putt land at Downshire Golf Course, adjacent to the existing cemetery, was the site selected. O&S accepted that this site was the only viable option, provided that a number of issues could be addressed.
- 7.5. The proposed draft layout of the chosen site has shown that the P & P Land could accommodate 1,173 full plots, 150 Muslim burial plots and 1,168 cremated remains plots. Current burial levels per annum are 40-50 new full plots, 5 Muslim plots and

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20 cremated remains plots. We therefore anticipate the P & P Land would provide burials for residents for a further 25 years.

- 7.6. The title to the Downshire Golf Course of which the P & P Land is part is complex and there are restrictive covenants and clawback provisions which bind it. A significant amount of legal work has had to be undertaken to consider the title issues and Counsel's opinion was also obtained. Wokingham Borough Council, initially identified as a potential beneficiary of clawback, is now in agreement with the project in principle and has approved a process with this Council which will allow the title issues to be addressed, and the use lawfully changed.
- 7.7. Converting the P&P Land to a cemetery requires both a planning permission to be obtained and a change of use to be authorised through the process of Appropriation. A planning application (PP-13326868) has been submitted and will be considered by the Planning Committee in due course.
- 7.8. Appropriation for planning purposes provides a way for local authorities to develop land, if the land is no longer required for the purposes for which it is currently held. In reaching this decision, a local authority must consider the public need within the area for the existing, and they must be satisfied that the land is not now required for that existing use. It may be that the development interferes with third party rights, such as a right to light or other forms of easement, or restrictive covenants. Those factors together with any objections that may be put forward either now or at the planning stage should inform whether it is indeed proper for a local authority to utilize the appropriation route.
- 7.9. Potential beneficiaries who have the benefit of the restrictive covenants that bind the P & P Land have been identified, and Wokingham Borough Council is the beneficiary of the clawback arising from a 1999 transfer to the Council. Independent professional valuations have been obtained in respect of both of these potential heads of compensation. In respect of the former, the restrictive covenants, the report indicates that there should be no compensatory figure payable. However, the potential claimants may wish to take their own legal advice for which the Council has set aside an allowance for professional fees as the Council would be liable for 'reasonable' legal fees for these potential claimants. In respect of the clawback figure for Wokingham Borough Council, this has been agreed at nil.
- 7.10. Letters have been sent to the potential beneficiaries identified in the independent report as having a property right or interest that may be affected by the development proposals to advise them of the council's intention to appropriate the land. The letter reminds beneficiaries of their legal right to claim statutory compensation. To date none of the potential claimants have come forward to suggest that they consider compensation would be due to them. A notice of the intended appropriation has been put up at several places around the P & P Land.
- 7.11. Additionally, an advertisement has been placed in a local newspaper for two consecutive weeks in accordance with Section 122(2) of the Local Government Act 1972 and 1 objection was received which has been detailed in Appendix 4.
- 7.12. The P&P Land is part of the Downshire Golf Course which is owned Freehold by Bracknell Forest Council and leased and then subunderlet pursuant to a lease between Bracknell Forest Borough Council and Everyone Active, and a sublease between Everyone Active and its charitable operational arm, the term of which lease and sublease run from 1st March 2018 for 15 years and 1 month.

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- 7.13. Agreement has already been reached with Everyone Active that they will surrender the P&P from the lease, sublease and service level agreement for the remainder of their terms. A fee has already been paid to Everyone Active in this respect as part of the covid funding measures agreed in 2020. Everyone active have stated that “We respect the council's decision-making process and their responsibility to address the needs of the entire community.”

## 8. Legal Considerations for the Council

- 8.1. Under section 122 of the Local Government Act 1972, the Council can “*appropriate for any purpose for which the council is authorised ...to acquire land... any land which belongs to the council and is no longer required for the purpose for which it is held immediately before the appropriation*”.

8.1.1. In respect of the first of these requirements, when contemplating appropriation, a local authority must give specific consideration to the question of whether the land continues to be required for its existing purpose and in doing so, it must consider the comparative needs in the public interest for the existing use and the proposed new use. It is not necessary that the land should be surplus or unused.

8.1.2. In respect of the second requirement for the application of section 122, in this case the new purposes are planning purposes. The Council has power to acquire land by agreement for planning purposes under section 227 of the Town and Country Planning Act 1990 to facilitate redevelopment if it is satisfied that the redevelopment would contribute to the achievement of the promotion of economic, social and/or environmental well-being of its area. The well-being benefits of the redevelopment are described in paragraph 8.6 (f).

- 8.2. The appropriation of the P & P Land (which is currently designated as open space and used as a golf course) once planning permission has been obtained for the cemetery expansion, is necessary and in the public interest to secure the benefits of local burial for the residents of Bracknell Forest and appropriation will facilitate redevelopment of the P & P Land in order to deliver an important public service to the community. Appropriation will enable the development to proceed without the risk of an injunction from adjoining and neighbouring landowners on the basis of the change of use of the P & P Land's current designated purpose as open space/golf course.

- 8.3. Accordingly in order for the land to be appropriated for use for planning purposes the Council must:

8.3.1. be satisfied that the P & P Land is not required to be used as open space/golf course

8.3.2. have the statutory power to acquire land by agreement or for planning purposes

8.3.3. decide that it would be fitting to make the proposed appropriation, paying particular regard to any issues raised by objections and the interference with private rights which will be consequent upon the appropriation

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- 8.4. Section 203 of the Housing and Planning Act 2016 is to provide that where land has been appropriated for planning purposes, then existing rights, which could prevent the development of that land from proceeding in accordance with the planning permission, can be overridden. The rights will be overridden whether the Council or a party deriving title from the Council undertakes the development.
- 8.5. The power contained in Section 203 of the Housing and Planning Act 2016 does not remove the legitimate rights of parties to compensation, which may arise from the interference with their rights, but it does remove the potential for excessive claims, and it also removes the potential for such parties to frustrate the development by obtaining an injunction to prevent the interference with their rights.
- 8.6. The powers contained within the two aforementioned Acts are very useful in allowing beneficial development to proceed, but it is recognised that use of the powers will have an impact on the private rights of third parties. It is therefore necessary to ensure that proper consideration and justification is undertaken prior to the decision to appropriate land and to override third party rights. As part of this, the Council needs to consider a number of matters and to comply with best practice and government guidance. The following considerations have been reviewed in respect of the proposed appropriation of the P & P Land:

**a) Is the use of powers required?**

The use of powers is required. Potential beneficiaries have been contacted and independent valuations conclude that no compensation will be payable to those parties as they have not suffered any depreciation in their property value due to the intended change of use.

**b) Will the use of powers facilitate carrying out of development?**

The use of these powers will facilitate the carrying out of the planned development of the P & P Land for extended burial.

**c) Will the use of these powers deliver economic, social or environmental wellbeing benefits?**

The MHCLG 2019 guidance on use of compulsory purchase and the Crichel Down rules provides useful guidance. Officers are satisfied that the use of these powers will deliver economic, social or environmental wellbeing benefits as set out in para f below.

**d) Is it possible to achieve the benefits without infringement?**

It is not possible to redevelop the P & P Land as an extended burial area without infringing the Restrictive Covenants and clawback.

**e) Is it in the public interest for the underlying development to proceed?**

Officers have carefully considered whether it is in the public interest for the underlying development to proceed, and are satisfied that it is, as we are facing a critical shortage of burial space within the borough's municipal cemeteries and could completely run out of burial plots by early next year. The lack of burial space is an issue that affects the entire community, especially for those whose cultural and religious beliefs require a burial. Without this extension, many residents would have to seek burial plots outside the borough, often at a significantly higher cost.

The proposed extension has been planned with great care to make sure it complements the natural environment. The existing trees and landscaping will be

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retained, and additional planting will be carried out, including the creation of a natural burial area. This will enhance the space while respecting the tranquillity and dignity that the cemetery provides for bereaved families.

The plans do not impact any of the other facilities at Downshire Golf Complex, which will remain open for residents and visitors to enjoy. The recent introduction of Trackman, which provides a fully interactive experience, has also greatly enhanced the existing driving range. This innovative technology will help to mitigate the loss of the pitch & putt course. In addition, there are multiple alternative facilities nearby for P&P, which provide similar or other short course experiences suited for novice players.

- Wokingham Family Golf (4.1 miles)
- Golfplex (4.3 miles)
- Lavender Park (5.4 miles)
- Billingbear Park Golf Course (5.4 miles)
- Blackwater Valley (5.8 miles)

These facilities have each confirmed that they would have ample capacity to meet the average weekly unplaced demand.

Furthermore, there are existing short course adaptations that could be used in a pitch and putt capacity on the main course.

**f) Do the public benefits proportional to the outweigh on private rights of the affected third party?**

Officers consider that the public benefits are substantial and outweigh the impact on the beneficiaries of the interference with their private rights. This is because the proposed expansion of the cemetery onto the subject land will not interfere or physically impact the rights benefitting the third party interests we have identified. The accessways and permitted rights as listed in the Golf course title remain in good and reasonable condition.

The use of these powers will deliver economic value through revenue generation via the sale of burial plots, headstone permits, memorials and related services such as memorial events. The cemetery will offer free access to all who wish to visit the space. It's current use as a P&P requires payment for access.

Social value will be delivered through providing a space for commemoration and reflection whilst preserving the cultural heritage and history of a community. Visting family graves can create a powerful link to past generations, helping individuals understand their roots and reinforcing their connection to their heritage. Easthampstead Park Cemetery and Crematorium brings communities together through memorial services and other events.

Environmental benefits as cemetery's are an important part of the urban ecosystem, providing semi-natural habitats for many plant and animal species as well as a wide range of ecosystem services. The vegetation in the cemetery, including trees and shrubs, helps improve air quality by absorbing pollutants and producing oxygen.

In summary the key wellbeing benefits delivered by the change of use to a burial ground include:



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- Emotional Wellbeing: Cemeteries offer peaceful spaces for reflection and healing, helping reduce stress and anxiety.
- Social Wellbeing: They foster community engagement through events and preserve cultural heritage.
- Mental Wellbeing: Cemeteries encourage mindfulness and contemplation, promoting a greater appreciation of life.
- Physical Wellbeing: They provide green spaces for walking and improve air quality, benefiting overall health.

8.7. Consideration must be given to the interference with rights protected by the Human Rights Act 1998. In this case a decision to override restrictive covenants and other rights represents an interference with rights protected under Article 1 of the Protocol to the European Convention on Human Rights. (the right to peaceful enjoyment of possessions) and Article 8 of the European Convention on Human Rights (right to respect for private and family life, home and correspondence). Any decision to interfere with such rights must strike a fair balance between the public interest associated with the development proposals referred to above and the interference with private rights. Given the clear public benefit associated with the development proposals referred to in the body of the report, the fact that there is no feasible alternative means of achieving that public benefit, and a compelling case in the public interest for the use of the powers to override rights and the availability of compensation to those whose rights are overridden calculated on a diminution in value basis, it is considered that the interference with the private rights of those affected would be lawful, justified and proportionate.

8.8. It is therefore recommended that the significant public benefits to be derived from the proposed change of use at the P & P Land is of sufficient magnitude to justify the appropriation of the site under S122 Local Government Act 1972 and the subsequent use of the powers under S203 Housing and Planning Act 2016 to clear the site of third-party rights.

8.9. Any decision of the Council can be judicially reviewed. Any judicial review must be lodged as soon as possible after the decision is made and, in any event, not later than three months after the date of the decision. The anticipated earliest date for redevelopment of the site will therefore be three months after this decision to appropriate it.

## 9. Consultation and other considerations

### Legal Advice

9.1. The legal issues are dealt with within the body of the report regarding the Council having the statutory powers of appropriation under S122 Local Government Act 1972; and under S203 Housing and Planning Act 2016, to override existing third party rights; and by Section 204 of the Housing and Planning Act 2016, the Council is liable to pay compensation in accordance with the statutory provisions in respect of the interference with rights affected by the carrying out of the development. In this regard, a broad view of local need (taking account of the interests of all residents in the locality), will need to be considered and the scheme should contribute to the promotion of the economic, social and/or environmental well-being of the area.

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Furthermore, the Council is required to act in accordance with the Human Rights Act 1998 and the European Convention on Human Rights in deciding whether or not to implement such an arrangement.

Pursuant to Section 122 (2A) of the 1972 Act the Council will need to advertise its intention to appropriate the P & P land in a local newspaper for two consecutive weeks and take any consultation responses into account before formally deciding to appropriate the land.

### **Financial Advice**

9.2. The financial cost implications associated with this specific aspect of the project are two-fold; the purchase of the land from Everyone Active and contributions to 'reasonable' legal fees for any possible compensation claims. The purchase of the land has already taken place, and should there be any claims for compensation, an amount has been set aside within the budget to cover 'reasonable' legal fees for possible claimants. Should this project not go ahead, the Council will lose income of approximately £0.200m per annum through loss of burial related income, which would become a significant pressure for the Council in the coming years.

### **Property Advice**

9.3. In exercising its statutory powers to appropriate the Property, the Council may incur compensation costs. An independent estimate of statutory compensation payable following appropriation of the land was carried out on behalf of the Council. This concluded that, the compensation for breach of restrictive covenants and the clawback payable to residents of Bracknell Forest and to Wokingham Borough Council would be £0. They did however identify a number of potential claimants who may wish to take their own legal advice for which the Council has set aside an allowance for professional fees. The Council would be liable for 'reasonable' legal fees for these potential claimants.

### **Equalities impact assessment**

9.4. An Initial Equalities Impact Assessment has been carried out that demonstrates any negative impact of appropriating the land for re-use as a cemetery can be mitigated. Whereas not appropriating the land for re-use as a cemetery would result in a negative impact for certain protected characteristics that cannot be mitigated.

### **Strategic risk management issues**

9.5. A financial risk exists if the development does not go ahead as there will be no income from new burials. Currently this revenue stream is used to offset the costs of maintaining the current cemetery.

A further reputational risk exists if the council do not proceed with the development as we would be one of few councils not offering burial services to their residents.

### **Climate Change Implications**

9.6. The recommendations are expected to:

Have no impact on emissions of CO<sub>2</sub>.

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Appropriation of the land will have no impact on emissions. However, the development on the site will have regard to reducing the impact of the development through mitigation of build quality and design.

**Background Papers**

Appendix 1 – Boundary plan

Appendix 2 - Avison Young: FINAL DRAFT Bracknell Downshire Golf Course Summary Note (Confidential)

Appendix 3 - Avison Young: Estimate of compensation under s.203 appropriation (Confidential)

Appendix 4 – Objection received

**Contacts for further information**

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Objector	Verbatim Objection	Objection Summary	BFC Response
<p>REDACTED</p>	<p>This is to putting in writing my objection to expanding the cemetery to take in the pitch and putt at Downshire golf club. Planning application reference <a href="#">24/00560/3</a>.</p> <p>While I understand the need for more burial space, I believe there is other land that could be acquired and consecration for this use. That the need for continued proximity to the current is not required. Wherever the burial service is held, the coffin requires transport to the grave, therefore the burial ground could be in a different location. There is precedent of moving the main town burial site when full, as per the move from Larges Lane cemetery.</p> <p>I think the merits of maintaining the land as a golf course, as Downshire pitch and putt, is more important than a resting place for the departed.</p> <p>England Golf via local clubs, have done a lot to improve the accessibility of golf - to a diverse range of people by gender, race, age, ethnicity, religion and ability. This is backed by the stats that show growing numbers.</p> <p>Golf is an individual sport yet played as a team in a social setting and provides a thrill and</p>	<p>Objection 1 – There is other land that could be used for burial and proximity to the current cemetery is not required.</p> <p>Objection 2 - merits of maintaining the land as a golf course is more important than a resting place for the departed.</p>	<p>In 2019 the Environment and Communities Overview &amp; Scrutiny (O&amp;S) panel considered a report on potential action to be taken to address the dwindling supply of burial plots at Easthampstead Park Cemetery &amp; Crematorium (EPC&amp;C). Following a panel review of several sites and visits to those sites, the 2-hectare pitch and putt land at Downshire Golf Course, adjacent to the existing cemetery, was the site selected from those considered. O&amp;S accepted that this site was the only viable option.</p> <p>The merits of whether a Pitch &amp; Putt Golf Course is more important than a cemetery is subjective. There is continued availability of other golfing facilities such as the 18-hole course, the driving range which has further benefitted from the recent installation of Trackman which provides a fully interactive golfing experience and putting green. Alongside this are several other local short course options. There is no other site that can be used for further burial space after 2025 within the Borough at an affordable cost to the taxpayer.</p>

APPENDIX 4

	<p>challenge different to other sports. It allows people of different abilities to play together and still be individually challenged. Possibly unique in the world of sport.</p> <p>Golfing facilities are being removed in the wider area. Blue Mountain, has gone to housing, Maidenhead and Mill Ride are destined to follow, as Developers have more capital to win in the political game of house building. This will put more pressure on what's left.</p> <p>The pitch and putt is very accessible to young people and a great warmup for adults alike. It makes good possible a game after work on a summer evening, or in the shorter winter days.</p> <p>Let the council make the right choice to maintain a high quality offering of golf, giving all the opportunity of an outdoor sport.</p>	<p>Objection 3 - Golfing facilities are being removed in the wider area with others to follow.</p>	<p>Bracknell Forest is well served by several golfing facilities and the council's plan has an emphasis on green spaces and a healthy environment for its residents.</p>