

CABINET – 16TH FEBRUARY 2017

Report of the Head of Strategic Support Lead Member: Councillor Poland

Part A

ITEM 12 COMPULSORY PURCHASE OF LAND FOR AN EXTENSION TO A CEMETERY ON BEHALF OF BARROW UPON SOAR PARISH COUNCIL

Purpose of Report

The purpose of this report is to seek approval for the Council to exercise its compulsory purchase order making powers (“CPO”) on behalf of Barrow upon Soar Parish Council (“the Parish Council”) to acquire land to extend an existing cemetery in Barrow upon Soar (“the Cemetery”).

Recommendations

1. To authorise the use of the Borough Council’s compulsory purchase making powers pursuant to section 121 Local Government Act 1972 to acquire land on behalf of the Parish Council to allow for an extension to the Cemetery.
2. To delegate authority to the Head of Strategic Support to:
 - (a) take all necessary steps to secure the making, confirmation and implementation of the CPO, including the publication and service of all relevant notices and to support the presentation of the Parish Council’s case at any local public inquiry;
 - (b) serve a requisition for information (in accordance with section 16 Local Government Act 1972) on the reputed owner and other parties that may have an interest in the land as part of the preparatory steps associated with the making and promotion of a CPO;
 - (c) approve terms for the acquisition of legal interests by agreement, either on behalf of the Council or in conjunction with the Parish Council, including for the purposes of resolving any objections to the CPO;
 - (d) take all necessary steps to resolve any compulsory purchase compensation claims, including, if necessary, by way of making (or responding to) a reference to the Upper Tribunal (Lands Chamber);

- (e) enter into a suitable agreement with the Parish Council regarding any costs incurred by the Borough Council assuming the CPO does not proceed to completion;
- (f) transfer the relevant land to the Parish Council if the CPO proceeds to completion, subject to reimbursement of purchase costs and all other relevant expenses.

Reasons

1. To support the Parish Council in the process to purchase the land required to extend the Cemetery.
2. To allow the CPO process to proceed expediently.

Policy Justification and Previous Decisions

The Parish Council has a power to acquire land by agreement for the purposes of a cemetery pursuant to section 214 Local Government Act 1972, but there is no compulsory purchase power associated with this power. The Parish Council has been attempting to negotiate the acquisition of the land they require for nearly 11 years, and needs to acquire the land because there are no other parcels adjacent to the Cemetery or other land within the Parish Council's area that is suitable for purpose. Government guidance advises that the Secretary of State for Communities and Local Government will only confirm a CPO where there is a compelling case in the public interest.

Implementation Timetable including Future Decisions and Scrutiny

If Cabinet authorise the use of the Borough Council's CPO powers then the process will proceed according to the requirements of the Parish Council, who have instructed a legal advisor. It may still be that the land in question can be purchased by agreement, in which case it would not be necessary to proceed with the CPO.

Report Implications

The following implications have been identified for this report.

Financial Implications

The total potential costs of the CPO, including the purchase of the land, legal fees and all other related expenditure are estimated to be around £70,000.

However, in accordance with section 125(5) Local Government Act 1972, the Borough Council may recover from the Parish Council all costs and expenses involved in making and promoting the CPO on their behalf, and there is therefore no financial impact on the Borough Council. A suitable agreement will also be entered into with the Parish Council concerning reimbursement of any costs incurred by the Borough Council if the CPO does not proceed to completion (eg. if there is a voluntary agreement to purchase the land).

Risk Management

The risks associated with the decision Cabinet is asked to make and proposed actions to mitigate those risks are set out in the table below:

Risk Identified	Likelihood	Impact	Risk Management Actions Planned
CPO is not confirmed leading to reputational harm and possible adverse publicity.	Unlikely	Moderate	If any objections are received to the CPO this will be reviewed at that point.
CPO does not proceed but the Borough Council has incurred costs which need to be recovered from the Parish Council.	Possible	Moderate	Agreement regarding costs to be put in place with the Parish Council before the Borough Council incurs any costs relating to the progression of the CPO.

Key Decision: No

Background Papers: None

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Part B

Background

1. The Borough Council has been requested by the Parish Council to use its CPO powers to acquire the land shown on the plan at Appendix A, marked as plots A and B, for an extension to the Barrow upon Soar cemetery (“the Cemetery”). The Parish Council has the power under section 214 Local Government Act 1972 to acquire land by agreement for use as a cemetery, but has no power to acquire land compulsorily for this purpose.
2. In these circumstances there are provisions contained in section 125 Local Government Act 1972 whereby a district council (in this instance Charnwood Borough Council) may be requested to acquire land compulsorily on a parish council’s behalf.

Government Guidance

3. In promoting a CPO councils are advised by Government Guidance “*Guidance on Compulsory purchase process and The Criche Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion*” (October 2015) (“the Guidance”) that the Secretary of State for Communities and Local Government will not confirm a CPO unless he is satisfied that there is a compelling case in the public interest.
4. In promoting a CPO a council should be sure that the purposes for which the CPO is made justify interfering with the human rights of those with an interest in the land affected. A council must also take into account its public sector equality duty contained in the Equality Act 2010.
5. In order to confirm a CPO the Secretary of State must be satisfied, in particular, that:
 - 5.1 the acquiring authority has a clear idea of how it intends to use the land that it is proposing to acquire;
 - 5.2 the acquiring authority can show that it has all of the necessary resources to achieve the objective of acquiring the land; and
 - 5.3 the reasons for acquiring the land will not be blocked by any physical or legal impediments to implementation.

6. The Borough Council is satisfied that the Parish Council intends to use the acquired land for the purpose of extending the Cemetery and that it has the necessary financial resources to do so. In terms of impediments to its proposed use of the land, planning permission allowing for the change of use of the land to cemetery purposes has been secured and to meet drainage requirements, new drains are to be installed.

Human Rights and the Public Sector Equality Duty

7. The Guidance makes it clear that an acquiring authority should be sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected. In making this assessment an acquiring authority should have regard, in particular, to the provisions of Article 1 of the First Protocol and Article 6 of the European Convention on Human Rights (“the Convention”), and Article 1 states that:

“...Every natural or legal person is entitled to peaceful enjoyment of his possessions... no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by the law and by the general principles of international law...”

8. Whilst the owner of the land will be deprived of their property if the CPO is confirmed, this will be in accordance with the law and appropriate financial recompense will be made. The CPO is being pursued in the public interest as required by Article 1 of the First Protocol. The Borough Council considers that the proposed CPO strikes a fair balance between the public interest underpinning the reasons for which it is being sought (i.e. securing more land for burial plots) and the private rights affected.

9. Article 6 of the Convention provides that:

“In determining his civil rights and obligations... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.” Case law makes clear that the opportunity of objecting, including attending at an inquiry into the CPO, means that this requirement is satisfied in this instance.

10. Government guidance also provides that acquiring authorities are expected to provide “...evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted”. The History section (from paragraph 16 onwards) of this report below demonstrates the extent to which the Parish Council has attempted to negotiate the acquisition of the land from the reputed owner.

The requirements of section 125 Local Government Act 1972

11. The process by which a parish council may request a district council to exercise their CPO powers on their behalf is set out in section 125 Local Government Act 1972 (“the Act”).
12. Section 125(1) of the Act permits parish councils, where they are unable to acquire land by agreement on reasonable terms for a purpose for which they are authorised, to request that the relevant district council acquire the land compulsorily on their behalf.
13. If the district council is satisfied that suitable land for the purpose cannot be acquired on reasonable terms by agreement they may be authorised by the Secretary of State to purchase the land.
14. The Borough Council, in making a CPO under these powers, is required to have regard to the extent of land held in the neighbourhood by an owner and to the convenience of other property belonging to the same owner and shall, as far as practicable, avoid taking undue or inconvenient quantity of land from any one owner.
15. The Parish Council are not aware of any other parcels of land owned by the reputed owner elsewhere in the village. Following the acquisition of the land, the owner will be left with a parcel of approximately 5.6 acres out of a total of up to 7 acres. The loss of part of their land will not impact on their ability to access the balance of their land.

History

16. In around 2005 the Parish Council identified a need for further land so as to extend the Cemetery. That need continues to this day. Although the number of burials varies each year, as a consequence of the population of the Parish increasing annually there is need to acquire more land for this purpose. This year alone the number of new burials has been greater than in previous years. At present there remain a total of 44 plots. On the assumption that approximately 6 new graves are needed in each year, the current site has the capacity to provide only between 6 and 7 years’ further supply. This problem is exacerbated due to water table issue which means it is not possible to use a plot for more than one grave, thereby increasing the areas of land required to meet the demand.
17. The Parish Council originally approached the reputed owner through their solicitor, and the owner agreed that they would be willing to sell the whole parcel of land within their ownership. To arrive at an agreed and objective valuation it was suggested by the owner’s solicitor that the District Valuer carry out a valuation. In

February 2006 it appeared that agreement had been reached to allow for the acquisition of the land shown on the plan at Appendix A to this report (the area marked as plot "A") and the further area (marked as plot "B").

18. On 5 July 2006 the Parish Council offered the sum of £25,000 per acre for the land.
19. In March 2009 a further offer was made of £35,000 per acre for plot A (0.52 acres).
20. In July 2014 a further offer was made of £14,000 for plot A. Since making that offer no further meaningful responses have been received from the owner.
21. In the circumstances the Borough Council is satisfied that the Parish Council has made reasonable attempts to acquire the land it requires by agreement.

Alternative options

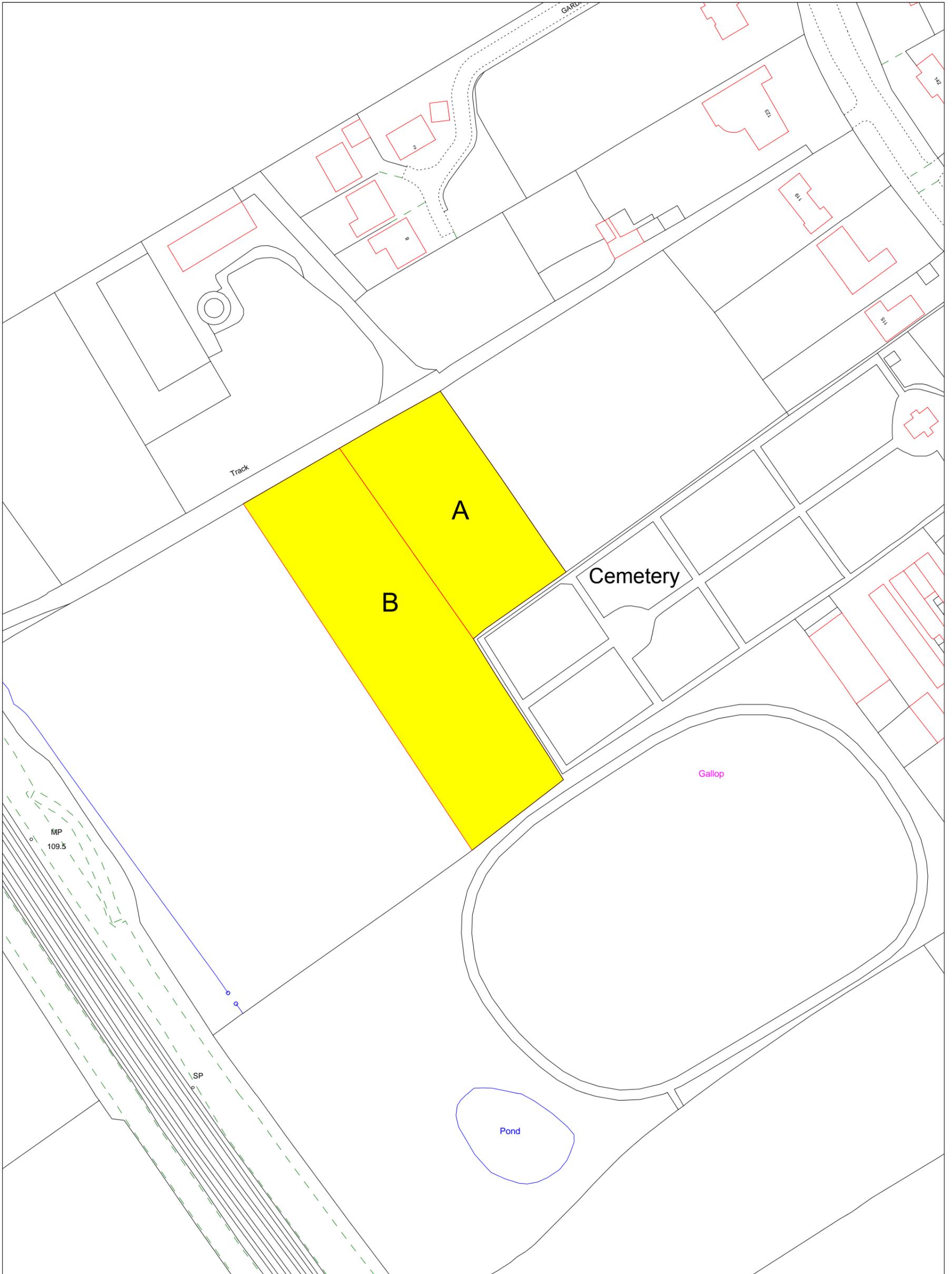
22. In terms of the scope for acquiring new land to extend the Cemetery, the obvious parcel of land in which to extend is located to the south and west of the Cemetery, and that land is the subject of this report. In terms of other land within the Parish, the Parish Council owns the King George V Playing Fields, Queen Elizabeth II Playing Fields, and Millennium Park and picnic area. None of these parcels of land are suitable for burial ground purposes. In terms of acquiring land by agreement, other land that falls within the village boundary and beyond is, in general, prime building land and is already the subject of options for its acquisition for house building purposes.

Costs

23. The legislation (section 125(5) Local Government Act 1972) provides a mechanism by which the Borough Council may recover from the Parish Council all of the costs and expenses it incurs connection with the acquisition of the land on behalf of the Parish Council in reliance on the CPO procedure.

Appendices

Appendix A: Plan showing the two plots of land in question (A and B).



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