

LEISURE, ENVIRONMENT AND COMMUNITY COMMITTEE – 7 JULY 2021

PART I

6. BW FOUNDATION – WOODCOCK HILL CEMETERY

(DCES)

Introduction

1. At a meeting of the Leisure, Environment and Community Committee on 13 January 2021 an informative report on BW Foundation was requested. This report is for Member information only. It makes no recommendations.
2. This report deals with two particular issues:
 - (1) BW Foundation's policy of unrelated two tier burials during the early part of the coronavirus pandemic; and
 - (2) Grants of Deeds of Exclusive Rights of Burial in respect of the Muslim Section of Woodcock Hill Cemetery.

Minutes of Previous Meetings

3. The minutes of past Council and Committee Meetings at which questions relating to the issues mentioned above have been raised are appended to this report as follows:
 - (1) The minutes of the meeting of Extraordinary Council on 1 September 2020 appear at **Appendix 1**;
 - (2) The minutes of the meeting of the Leisure, Environment and Community Committee on 13 January 2021 appear at **Appendix 2**; and
 - (3) The minutes of the meeting of Extraordinary Council on 17 March 2021 appear at **Appendix 3**.

SICM and BW Foundation

4. The Shia Ithna'ashari Community of Middlesex ("SICM"), colloquially known as either Mahfil Ali or Mehfile Ali (as spelt phonetically), is a Muslim faith group with the declared

mission of “*building a community with values, spirituality and cultural awareness*”. A copy of SICM’s Constitution appears at **Appendix 4** to this report.

5. SICM’s website (www.sicm.org.uk) offers the following services:
 - Interfaith events;
 - Youth Services;
 - Sports;
 - Cemetery;
 - Tuition.

6. SICM currently meets at premises at 39 Gloucester Road, Harrow (a converted house) but have, for some years, been fundraising to build a new purpose-built community centre in Harrow to be known as The Salaam Centre. Further information about the project may be found at www.thesalaamcentre.com.

7. SICM has a registered charity which operates under the name BW Foundation (“BWF”). It previously had a second charity which operated under the name Battlers Well Foundation.

8. Battlers Well Foundation was registered with the Charities Commission in 1989. BW Foundation was registered with the Charities Commission in 2007 and also incorporated as a private limited company. Both charities then co-existed until 2015, when Battlers Well Foundation ceased to exist. BW Foundation remains active and is registered with Companies House under company number 6324340 and with the Charities Commission under charity number 1121549. Its charitable objects are declared to be:

“The relief of poverty and famine, the safeguarding of health and for the advancement of education, furtherance of religion and other purposes anywhere in the world which are charitable according to the laws of England and Wales.”

9. BWF’s trustees do not receive any remuneration, payments or benefits from the charity.

10. A copy of BWF’s articles of association appears at **Appendix 5**; a copy of their current entry on the Charities Commission’s website appears at **Appendix 6**; and a copy of their

Trustees' Report and Audited Financial Statements for the year ended 31 July 2020 appears at **Appendix 7**. These are all publically available documents.

11. The 'Cemetery' tab on the homepage of SICM's website advises the reader that: *"If you need any help with funeral arrangements following the death of a loved one, please contact us for more details. We primarily hold burials at Woodcock Hill Lawn Cemetery, Rickmansworth and can also offer a place for gatherings."* There then appears a link to 'Cemetery Information' which directs the reader to information about Woodcock Hill Cemetery and a copy of BWF's current Burials Policy: <https://sicm.org.uk/cemetery/>.

BW Foundation and Woodcock Hill Cemetery

12. Three Rivers District Council owns two cemeteries at Chorleywood Road and Woodcock Hill. Chorleywood Road is an old cemetery which is closed for new interments. New interments within the district are at Woodcock Hill Cemetery, which is situated on Harefield Road, Rickmansworth.
13. A copy of the Council's Cemetery Rules & Regulations and its Fees & Charges are published on the Council's website at www.threerivers.gov.uk/service/cemeteries.
14. BWF (and its linked organisations) have, since the late 1980s, bulk purchased burial rights in Woodcock Hill Cemetery for use for Muslim burials. Between 1988 and 2017, BWF (or its linked organisations) have purchased the exclusive rights of burial (EROB) in the following plots:

Plots	EROB Granted	Lease Granted	Purchaser	Amount Paid
H1 – H30	03.08.1988	-	Mehfile Ali	£1,170
H31 – H60	24.04.1989	-	Peter Cathcart ¹	£1,170
H61 - H150	25.07.1990	-	Mehfile Ali	£5,850
G1 – G150	27.07.1990	-	Mehfile Ali	£9,750

¹ The solicitor who was acting for the organisation at the time.

G151 - G351	12.12.2002	12.12.2002	Battlers Well Foundation	£41,200
H150 – H224	12.12.2002	12.12.2002	Battlers Well Foundation	
J1 – J200	07.08.2009	07.08.2009	Battlers Well Foundation	£79,200
J201 – J460	31.03.2017	31.03.2017	BW Foundation	£222,300

15. A map of Woodcock Hill Cemetery appears at **Appendix 8** to this report.
16. The Minutes of the Council Meetings at which the 1988, 1989 and 1990 purchases were agreed are no longer available.
17. An extract from the Minutes of the Executive Committee Meeting held on 10 December 2001 appears at **Appendix 9**.
18. The Report to and Minutes of the Executive Committee on 1st September 2008 appear at **Appendices 10** and **11**.
19. The Report to and Minutes of the Policy and Resources Committee on 6 July 2015 appear at **Appendices 12** and **13**.
20. The Report to and Minutes of the Policy and Resources Committee on 21 March 2016 appear at **Appendices 14** and **15**.
21. As can be seen from the Minutes of the Executive Committee Meeting on 10 December 2001, the Committee resolved to sell further plots to BWF on condition that, amongst other things, they continue to comply with the Council's policy.
22. Subsequently, in December 2002, the first of four leases was granted to BWF, each of which contained the following covenants:

Tenant's Covenants

3.(9)(b) *to use and occupy the Demised Premises in accordance with the Rules and Regulations of the Landlord.*

- 3 (28) *The Tenant covenants not to sell or grant option lease or dispose of any grave space for any profit but dispose of such interest only at cost and in accordance with the Rules and Regulations and Fees. The Tenant covenants not to pre-sell any grave space.*

Landlord's Covenants

- 4 (1) **Quiet enjoyment** *that the Tenant shall and may peaceably hold and enjoy the Demised Premises during the term without any lawful interruption by the Landlord or any person rightfully claiming through under or in trust of it.*
23. In each case, the duration of the lease is 120 years, except that the lease in respect of J201 – J460 is for a period co-terminous with the lease in respect of J1 – J200 (i.e. the 120-year term in respect of both runs from 07.08.2009).
24. The amount paid by BWF in respect of the leases was calculated by multiplying the fee charged by the Council for the grant of an EROB at the date of the lease x the number of plots subject of the lease.
25. A copy of the lease in respect of plots J1 – J200 appears at **Appendix 16** to this report.

Exclusive Rights of Burial

26. Three Rivers District Council are the Burial Authority for the district within the meaning of the *Local Government Act 1972* and *Local Authorities' Cemeteries Order 1977*.
27. Article 10 of the LACO 1977 deals with the grant of burial rights and provides as follows:
- “10 (1) A burial authority may grant, on such terms and subject to such conditions as they think proper—*
- (a) to any person—*
- (i) the exclusive right of burial in any grave space or grave ...; or*
- (ii) the right to one or more burials in any grave space or grave which is not subject to any exclusive right of burial;*
- ...

10 (2) ... A right under paragraph (1), other than a right described in (a)(ii), shall subsist for the period specified in the grant, being a period beginning with the date of the grant and not exceeding 100 years.

...

10 (6) No body shall be buried in any grave in which an exclusive right of burial for the time being subsists except by, or with the consent in writing of, the owner of the right.”

28. The grant of an exclusive right of burial in any grave space or grave is at the discretion of the burial authority. It is not an automatic legal right.
29. Where the Council grant the EROB in a grave space or grave to any person, it is for a period of 100 years, that is, the statutory maximum.
30. During the currency of a grant of EROB, the owner of the right is entitled to determine who is buried in that grave space or grave. Nothing more. It is not equivalent to a lease and it does not confer ownership of the land on the recipient.
31. In practice, most, but not all, burials in those parts of the cemetery not administered by BWF are accompanied by the purchase of an EROB, usually by the next of kin or other close family member.
32. In Sections G, H and J, it is the trustees of BWF who have purchased and currently hold the deeds of grant of EROB, rather than the families of the deceased.

Burials Managed by BWF

33. BWF Foundation administer burials in Sections G, H, J and N of Woodcock Hill Cemetery. Sections G and H are now full and Section J is the section currently in use by BWF for new interments. The area known as Section N is, in fact, an area within Section H which is used for smaller burials plots, including the burial of infant and foetal remains.
34. When an individual or family wishes to arrange a burial in Section J, they deal directly with BWF. If an individual approaches the Council requesting a burial in Section J, they are referred by the Council to BWF.

35. BWF make all arrangements for the burial with the family concerned and then contact the Council with the intended date and time of the burial, the name of the deceased and a request that the Council open a particular plot in Section J for the burial and then backfill it afterwards.
36. The Council charges BWF a fee for this service at exactly the same rate as it charges for interments in any other section of the cemetery, less the fee per plot that BWF pre-paid when they purchased the EROB in respect of that plot. BWF in turn charges the same amount to the individual or family purchasing a burial from them. Thus, a family pays no more or less for a burial administered by BWF than they would in any other part of the cemetery.
37. The advantages to a family seeking a Muslim burial in dealing with BWF include that: (1) the trustees of BWF are themselves members of the Muslim faith; (2) plots in Section J are, unlike other areas of the cemetery, laid out to face toward Mecca; (3) at least one plot in Section J is kept pre-dug which, coupled with the fact they are pre-purchased, allows for burials to take place as soon as possible after death in accordance with Muslim tradition; and (4) BWF offer a package of services, similar to those which a non-faith-based funeral director might offer but tailored to Muslim burials.
38. In addition to the burial fee, BWF charge families an administration fee (currently £300) and a fee for providing marshals (currently £100). Those fees do not include any element of profit and compare favourably with commercial funeral director fees.
39. In May 2015, BWF introduced a lawn cemetery policy with standardised headstones in Section J. The Council were informed of BWF's intention to introduce that policy in January 2015 prior to its implementation in November 2015. A copy of BWF's 2015 Burials Policy appears at **Appendix 17** to this report.
40. Pursuant to that policy, BWF arrange for the placing of a headstone of a standard design on each grave and charge the cost of the headstone to the deceased's family prior to burial. The fee charged for the headstone is currently £950, which, again, contains no element of profit and compares favourably with commercial rates.

41. At the time of making the burial arrangements, families are provided with a copy of BWF's burials policy and asked to sign a declaration on the rear of the document confirming their understanding and acceptance of the policy.
42. A Notice Board is displayed at the entrance to Section J explaining that it is a lawn cemetery with standardised headstones and directing individuals to SICM's website for further information and policy documents. A photograph of their noticeboard appears at **Appendix 18**.
43. BWF will bury anyone of the Muslim faith, regardless of their affiliation or otherwise to any particular mosque, sect or group of Islam. However, a notable proportion of requests for burials by BWF come from individuals who are members of the KSIMC of London (colloquially known as Hujjat Stanmore), which is a Shia Islamic Centre in Stanmore. KSIMC operate a Burial Fund Scheme into which participating households make contributions and then, in the event of the death of a member of that household, their burial expenses are met by the fund. Details of the scheme appear on KSIMC's website at: <https://hujjat.org/burial-fund-scheme>. The cost of burials funded by the scheme are charged at the same rate as any other burial.
44. Day to day issues relating the management of Sections G, H, J and N, including requests for burials, are dealt with by the Council's Cemeteries Officers and BWF's officers. In addition, the Council's Cemeteries Officers and Managers meet with the Trustees of BWF roughly quarterly to discuss wider issues relating to the management of the Muslim section.

BWF's Two Tier Burials Policy: Unrelated Burials

45. The Coronavirus Act 2020 was enacted on 25th March 2020 in response to the public health emergency. Schedule 28 to the Act makes provision for the disposal of dead bodies during the pandemic. When the Act was passed, the Government anticipated that local death management systems could become overwhelmed during the pandemic and a number of new powers were introduced to deal with this possibility. One of the powers in the Act enables a local or national authority to direct whether a deceased person must be buried or cremated.

46. During the first quarter of 2020, when death rates from COVID-19 were rising exponentially, the possibility that a situation may arise where demand for burial space outstripped availability, particularly in London and the surrounding areas, and cremations may be directed, was very much at the forefront of the minds of those involved in the administration of burials.
47. Cremation offends against the religious beliefs of most Muslims and the possibility that Muslim burial space would run out during the pandemic was of considerable concern to Muslim faith groups. A copy of the House of Commons Library Briefing Paper ‘*Coronavirus Bill: Managing the Deceased*’, published on 25th March 2020, appears at **Appendix 19** to this report and a copy of the House of Commons Library Insight publication ‘*Coronavirus: Powers to direct between burials and cremation*’, published on 27th March 2020, appears at **Appendix 20**.
48. Against that background, at a meeting on 11th March 2020, the trustees of BWF informed officers of the Council of BWF’s intention to introduce a two-tier burials policy.
49. On 16th March 2020, BWF introduced their policy of burials in two-tier graves pursuant to which two unrelated individuals could be buried in separate tiers of the same grave separated by a layer of earth. A copy of that policy appears at **Appendix 21** to this report. It stated, amongst other things, that:

“... The shortage of cemetery space in the London area is a known issue. The BW Foundation has a responsibility to ensure that the space available is used in the most efficient way according to Islamic jurisprudence. The emergence of the COVID-19 virus is expected to escalate demand for grave spaces significantly.

AS OF 16TH MARCH 2020, AND UNTIL FURTHER NOTICE ALL BURIALS IN SECTION J WILL BE TWO TIERS so that we can meet the demand. This means that each grave space will be used to bury two bodies ...

Burials in Section J, Woodcock Hill Cemetery

...

3) *Two bodies will be interred in each grave space, at different depths.*

...

10) Interments will be sequential with no spaces being left between graves and pre-selection of the grave space will not be possible.

...

THE DECLARATION ON THE BACK MUST BE COMPLETED AND SIGNED BEFORE BURIAL CAN PROCEED”

50. The declaration, which was required to be signed and witnessed, stated:

“I have received and read the BW Foundation policy for burials at Woodcock Hill Cemetery Section J. I have signed below to confirm my understanding and acceptance in full of this policy.”

51. BWF’s unrelated two-tier burials policy operated strictly between March and June 2020. During that time, four unrelated two-tier burials took place pursuant to the policy, in the upper and lower tiers of two plots in Section J. Those were plots J130 and J131.
52. Plot J130: The first burial under BWF’s two-tier policy took place on 27th March 2020 and a second burial took place in the upper tier of that plot on 8th April 2020. Both deceased were unrelated males.
53. Plot J131: On 17th April 2020, a further burial took place under the two tier policy, in a separate plot, and a second burial took place in the upper tier of that plot on 25th June 2020. Both deceased were again unrelated males.
54. A fifth burial, that of a deceased female, took place in the lower tier of a two-tier grave on 5th May 2020. However, the upper tier of that grave remained unfilled at the date upon which BWF ceased the operation of their two-tier policy and the family subsequently requested, and BWF agreed, that the upper tier of that grave be assigned to the family to use at their option.
55. Each of the families whose deceased relative was buried pursuant to BWF’s two-tier burials policy were provided with a copy of their policy document prior to burial and asked to sign, and have witnessed, the declaration of acceptance of the policy.

56. The Council were given advance notice of every burial pursuant to BWF's two-tier burials policy and provided grave-digging services to BWF as they would in any other circumstances.

High Court Challenge

57. A relative of the first individual buried pursuant to BWF's two-tier policy subsequently challenged the policy in the High Court. The Council were not party to those proceedings, which were brought without notice.
58. A copy of the judgment of Mr Justice Cavanagh in the case of Meghjee v BW Foundation [2020] EWHC 2970, handed down on 16th June 2020, appears at **Appendix 22** to this report. The following are extracts from that judgment:

"21. I move on to my conclusion on the strength of the arguments in relation to the agreement. In my judgment, it is clear that these allegations do not surmount the hurdle of showing a strong prima facie case. Even on the claimant's own evidence, his cousin, as his agent, signed the policy document which made clear that the defendant had the right to inter a second body above the claimant's father's body. There was no promise in that document to obtain the claimant's agreement before a second burial would take place in the plot, or that only a family member would be interred above. ...

22. As for the argument on duress, the contention that this agreement can be set aside on the basis of duress is, in my judgment, extremely thin. The fact that the claimant was upset by his father's death in the Covid-19 pandemic and that he wanted, for religious reasons, to avoid cremation does not come anywhere near justifying setting aside the agreement on grounds of duress. There was no threat made by the defendant's representatives. Nor does the fact that the claimant felt compelled to agree and signed the policy mean that there was duress. The fact remains that the claimant had a choice, even though, as a matter of practical reality, if he wanted his father to be buried speedily, he had to comply with the conditions imposed by the defendant. ... The Foundation is entitled to impose conditions on the grant of a burial plot.

[23 – 30]

31. *The next ground that is relied upon is breach of human rights. Once again, this does not give rise to a strong prima facie case. The obligations under section 6 of the Human Rights Act apply only to public authorities or to bodies that are performing the functions of public authorities. I do not think there is a strong prima facie case or even a readily arguable case that the defendant was performing the functions of public authorities. The fact that it is a charity performing a laudable public function and that it is leasing land from a public authority does not mean that it is governed by the Human Rights Act ... But, in any event, I do not think there is a strong prima facie case of a breach of Article 8 , Article 9 , or Article 1 of Protocol 1 , because if the preponderance of the evidence is that there was an agreement, even if reluctantly agreed to, there is no breach of anybody's human rights.*

32. *The next point I will deal with is the argument relating to the rules and regulations of Three Rivers District Council. ... The claimant refers to regulation 10(1)(a) of the Local Authorities' Cemeteries Order 1997 to assert that only a local authority, as a burial authority, can grant exclusive rights of burial in any grave space or grave, and that therefore the exclusive rights of burial for 100 years in an earthen grave as referred to in the fees and charges policy for Three Rivers District Council is the binding agreement that the defendant must comply with. The claimant also refers to the Three Rivers District Council's summary of fees and charges document, which refers to "exclusive rights of burial for 100 years in an earthen grave". Also, a document containing the rules applicable to all sections of the cemetery in section 6 again refers to the same exclusive right.*

33. *In my judgment, this does not give rise to a strong prima facie case. The main obstacle to this argument is that the Council's relationship was with the defendant Foundation, not directly with the claimant. Three Rivers District Council granted exclusive rights of burial to the Foundation in the section of the graveyard concerned, not to the family of the deceased. The*

defendant holds the relevant area of section J at Woodcock Hill Cemetery pursuant to the terms of a lease, and therefore it is the leasehold owner of the land in question. It is the defendant that pays the fees for the graves to the Council. ... The agreement that governs the relationship and the rights and responsibilities between the claimant and the defendant is the agreement between the claimant and the defendant as set out in the policy, and not any agreement between the claimant and Three Rivers District Council. If it were otherwise, then Three Rivers District Council would have been the appropriate defendant. In my judgment, it is clear that the terms that matter are the terms of the agreement between the claimant and the Foundation.

34. This is also, it seems to me, the answer to the suggestion that the defendant is in breach of its lease with the Council. Even if that were so, that does not affect the rights and responsibilities as between the claimant and the defendant. But, in any event, there was evidence before me that the Council had given its consent to the policy. I was provided with a witness statement from Mr Riazali Esmail, a trustee of the foundation, who said in the first of his two witness statements that he discussed the plan to change the policy to introduce two-tier burials with the Council on 18 March and that the Council consented to it. He said that the Council also advised that for operational reasons relating to the stability of the ground, there should be two-tier burials rather than burials in single plots until they were all full.² There is no direct evidence to contradict Mr Esmail's evidence in this respect. Next, it is worth observing the regulations to which the claimant refers - regulation 10(1)(a)(ii) - envisages that it is possible for burial authorities to authorise burial in several tiers. Third, though this may be just another way of putting the points I have already referred to, there is no contractual property right that was granted to the claimant in relation to the land above the body of his father. There may also be an issue that exclusive rights of burial for 100 years in an earthen grave means an exclusive right to be buried in a plot. That, I think, is more arguable, but it is beside the point because if the preponderance of the evidence is that

² This is correct. A row of unfilled double-depth graves would be liable to collapse and BWF were advised of this by the Council.

the claimant has given his consent, then this overrides any exclusive rights that might otherwise have potentially been granted. So, for all of those reasons, it seems to me that the argument, albeit not pleaded, relying upon Three Rivers District Council is misconceived.

35. The next point is that no approval was given by Three Rivers District Council to the change of policy by the defendant. As I have already said, there is evidence, which has not been controverted directly, from Mr Esmail to the effect that that change of policy was indeed agreed to by the Council. ... it seems to me highly likely at the time of this pandemic that the Council would have agreed to a course of action such as this, especially as the Council itself carries out double or even triple interments, and, as a matter of common sense, it would be close to inconceivable that a body such as the defendant would do this without the agreement of the burial authority.

36. The next ground relied upon by the claimant is the allegation of negligence or recklessness. ... in my judgment, and with respect, it is hopeless. ... The suggestion that, with the benefit of hindsight, the defendant has misjudged the amount of burial space that it would need as a result of Covid-19 cannot be a legal basis for finding that somehow this was unlawful.

[37 – 42]

43. ... there is no possible basis for granting the wider injunction to require the defendant to abandon the policy of having two-tier burials in the cemetery. This is of no interest to the claimant. More than that, it would potentially adversely affect third parties who may find that there is no space to bury their family members in a Muslim cemetery if, sadly, the cemetery is filled up with single-tier burials.

[44]

45. Before I leave this matter, however, it is appropriate to observe that, on the basis of the evidence that I have seen, the emotive and highly

critical language used by the claimant against the defendant such as 'inhumane, irrational, unethical and shameful', and 'blighted by their desires to commercialise and capitalise on the Covid-19 pandemic' is not merited. On the basis of the evidence before me, the Foundation and its officers have behaved properly and with sensitivity throughout and they do not deserve the opprobrium that has been heaped upon them. So my decision is that the injunction is refused."

59. The Claimant was ordered to pay BWF's legal costs in the sum of £28,336.80 and subsequently filed notice of discontinuance of the claim against them.
60. Following the outcome of that case, a relative of the claimant asked the Council to intervene to prevent further unrelated two tier burials in Section J. He also asked that the Council grant deeds of EROB to the families of the deceased buried in those parts of the cemetery managed by BWF and encouraged the relatives of a number of other families to also write to the Council requesting deeds of EROB.

BWF's Current Burials Policy: Single and Family Plots

61. During July 2020, BWF's unrelated two-tier burials policy was suspended and, on 11th August 2020, at a meeting between Council officers and BWF trustees, it was formally agreed that BWF would cease to operate their unrelated two-tier burials policy and replace it with a policy which offers families the choice of burial in either a single or double depth grave, with the upper tier of any double depth grave being reserved for the family of the first interred.
62. That decision was informed by the fact that death rates from COVID-19 had, by July 2020, fallen significantly from their peak in April 2020. UK Deaths from Coronavirus statistics appear at **Appendix 23**.
63. At the same meeting between Council officers and trustees of BWF on 11th August 2020, it was agreed that BWF would cooperate with the Council in securing the grant of EROB for 100 years to families purchasing burials from BWF.
64. BWF's new burials policy also makes provision for appeal/variation in the event of extenuating circumstances.

65. A copy of BWF's current Burials Policy appears at **Appendix 24** to this report.

Grant of Exclusive Rights of Burial to Family Members

66. As already indicated, the deeds of grant of EROB in respect of all of the burial plots in Sections G, H and J have previously been granted by the Council to BWF, and not to the individual families whose deceased relatives are buried in those sections. The Council has no contractual relationships with those families. Their agreements were with BWF.

67. That said, the Council has no objection to the grant of EROB in individual graves being transferred to the person(s) who purchased the burial(s) (or can otherwise demonstrate a sufficient degree of kinship to the deceased). Indeed, the Council consider it appropriate that anyone purchasing a burial in any part of the cemetery, whether from the Council or from BWF, be afforded equal opportunity to acquire a deed of grant of EROB if that is their wish.

68. The legal mechanism for achieving the grant of EROB to individual families is highly technical and has proved time-consuming, bearing in mind that the Council has no direct legal relationships with the families concerned and the land is in the leasehold ownership of BWF. The solicitors acting for both the Council and for BWF remain engaged in that work.

69. Whilst it is recognised that some individuals have been frustrated by the length of time that it has taken to finalise that legal work, accuracy and lawfulness must necessarily take precedence over speed.

70. Once that work is completed, deeds of grant of EROB will be offered to the families of the deceased in respect of all new burials in Section J. The Council will also consider applications from those families whose deceased relatives are buried in older graves on a case by case basis.

71. The Council recognises that some families are entirely content with the status quo that exists and do not seek a deed of grant of EROB in their own family name.

Public Sector Equality Duty

72. The Council must, in the exercise of its functions, have due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. Religion or belief is a protected characteristic.
73. BWF are not a public authority or a body performing the functions of a public authority. The public sector equality duty does not apply to them.
74. BWF is nevertheless collaborating with the Council to secure for Muslim families the equal opportunity to acquire a deed of grant of exclusive right of burial in their own family name if that is their wish.
75. However, the suggestion in the media that unrelated two-tier burials took place because families had not received a deed of grant of EROB is disingenuous. They took place because representatives of the families concerned consented to the policy prior to burial.

The 'Campaign for Deeds'

76. The Council are aware of a 'campaign for deeds' recently highlighted in the Press, which encourages families of the deceased buried in the sections of Woodcock Hill Cemetery administered by BWF to contact the Council for a deed of grant of EROB. Certain comments made in the media in the context of that campaign are legally inaccurate and suggest, amongst other things, a misunderstanding of what a grant of EROB actually is.
77. As already stated, an exclusive right of burial is just that; a burial right. It is not equivalent to a lease and it does not confer ownership of the land on the recipient. Nor does it supplant any other agreement a family may have entered into with BWF in respect of that grave space or grave, for example, in respect of the style in which the cemetery is laid out.
78. Where BWF are the leaseholder owners, they remain so regardless of whether or not an exclusive right of burial has been granted in any particular grave or graves; and they continue to be entitled to manage burials in those sections in accordance with the terms of their leases.

79. Whilst the Council fully respects the wishes of those families who have requested to hold the deed of EROB themselves, families should not be unduly alarmed by the fact that they do not currently hold those deeds. That document is of little or no practical consequence when the grave is already filled.
80. The practical effect of burying a body in a single depth grave is that those burials are, to all intents and purposes, 'exclusive'. Those graves are now full and no further burials may take place in them. BWF have exercised their exclusive right of burial in that grave (i.e. the right to determine who is buried there) in favour of the family of the deceased.
81. Families whose deceased relatives are buried in Sections G, H, J and N of Woodcock Hill Cemetery should be reassured that:
- (1) Prior to March 2020: All burials which took place prior to 16th March 2020 are in single depth graves. Those graves cannot be used for a second interment.
 - (2) March 2020 to June 2020: Between March and June 2020 unrelated burials took place in separate tiers of the same graves. The **only** graves that that policy applied to were J130 and J131 and the families concerned gave their signed consent to those burials.
 - (3) Since July 2020: From July 2020 onwards, BWF have offered a choice of burial in either a single or double depth grave. Where a double depth grave is chosen, both tiers are reserved for the family, i.e. they are family plots.
82. It is not recommended that officers of the Council should proactively contact families in relation to older single depth graves. As indicated above, those graves are full and the issue of a deed is of little or no practical consequence. Cemeteries officers will deal with enquiries from members of the public on a case by case basis.

Complaints and Compliments

83. The Council has received complaints from two of the four families affected by BWF's unrelated two-tier burials policy. Neither complaint was upheld for the reasons set out in the judgment of Mr Justice Cavanagh in the case of Meghjee v BW Foundation.

84. The Council have been in communication with a third family whose deceased relative was also buried pursuant to BWF's two-tier policy. That family are clear that they fully understood and consented to the policy and have complained that they feel harassed and distressed by unwanted attention and wish to be allowed to mourn in peace. They were particularly distressed recently to see images of their deceased relative's grave displayed in the media.
85. Following the recent media campaign, the Council has received a large number of letters of support for BWF and a similarly large number of complaints about the accuracy, tone and perceived bias of certain comments made.

Responses to Questions raised at the meeting of the Leisure, Environment and Communities Committee on 13 January 2021

86. *Why was Covid being made a notifiable disease a year after the issue?*
COVID-19 was added to the Health Protection (Notification) Regulations on 5 March 2020.
87. *If the Lawn Cemetery had been so for five years why was it now part of the report?*
It was not part of the officer report. It was raised by a member of the public speaking against the recommendation that the Cemeteries Rules and Regulations be updated.
88. *The report mentioned that this was a box ticking exercise but why did the terms and conditions not reflect that?*
The report recommended that the Cemeteries Rules and Regulations be updated:
(1) To modernise the language;
(2) To add COVID-19 to the list of notifiable diseases; and
(3) To reflect the fact that the Muslim Section of Woodcock Hill Cemetery is leased to and administered by BW Foundation.
The report did not mention a box ticking exercise.
89. *Did the Council have a break clause in the 125 year lease agreement?*
The leases are for a term of 120 years. There is no break clause.

Post Script

90. The contents of the report above describes the legal position.
91. Every family mentioned in this report have been bereaved and will have had their own experiences of the burial of their own family member. The coronavirus pandemic and restrictions will have made that experience very much more difficult for some families.
92. In the preparation of this report, the writer has found officers tasked with the management of burials - who have dug graves, managed grounds and dealt with the families of the deceased throughout the pandemic in sometimes extraordinarily difficult and restrictive circumstances - to have undertaken that task with unerring diligence.

Options and Reasons for Recommendations

93. This report is for information only. No recommendations are made.

Policy/Budget Reference and Implications

94. None.

Legal Implications

95. BW Foundation’s Two Tier Burials Policy has been considered by the High Court and found to be entirely lawful.
96. BW Foundation’s current Burials Policy has been developed in consultation with the Council’s Legal Department and is considered to be entirely lawful.

Equal Opportunities Implications

97. Relevance Test

Has a relevance test been completed for Equality Impact?	No
Did the relevance test conclude a full impact assessment was required?	N/A

98. Impact Assessment

98.1 BW Foundation are not a public authority or a body performing the functions of a public authority. The public sector equality duty does not apply to them.

98.2 BW Foundation is already collaborating with the Council to secure for Muslim families the equal opportunity to acquire a deed of grant of exclusive right of burial.

Staffing Implications

99. Within existing resources.

Environmental Implications

100. None.

Community Safety Implications

101. None.

Public Health implications

102. None.

Customer Services Centre Implications

103. None.

Communications and Website Implications

104. None.

Risk and Health & Safety Implications

105. The Council has agreed its risk management strategy which can be found on the website at <http://www.threerivers.gov.uk>. In addition, the risks of the proposals in the report have

also been assessed against the Council's duties under Health and Safety legislation relating to employees, visitors and persons affected by our operations. The risk management implications of this report are detailed below.

106. The subject of this report is covered by the Environmental Protection service plan(s). Any risks resulting from this report will be included in the risk register and, if necessary, managed within this/these plan(s).

Nature of Risk	Consequence	Suggested Control Measures	Response <i>(tolerate, treat, terminate, transfer)</i>	Risk Rating <i>(combination of likelihood and impact)</i>
No proposals are made in this report.	N/A	N/A	Tolerate	<1

107. The above risks are scored using the matrix below. The Council has determined its aversion to risk and is prepared to tolerate risks where the combination of impact and likelihood scores 6 or less.

Very Likely ----- Likelihood ----- ▼ Remote	Low	High	Very High	Very High
	4	8	12	16
	Low	Medium	High	Very High
	3	6	9	12
	Low	Low	Medium	High
	2	4	6	8
	Low	Low	Low	Low
	1	2	3	4
	Impact			
	Low -----► Unacceptable			
	Impact Score	Likelihood Score		

4 (Catastrophic)	4 (Very Likely (≥80%))
3 (Critical)	3 (Likely (21-79%))
2 (Significant)	2 (Unlikely (6-20%))
1 (Marginal)	1 (Remote (≤5%))

108. In the officers' opinion none of the new risks above, were they to come about, would seriously prejudice the achievement of the Strategic Plan and are therefore operational risks. The effectiveness of the management of operational risks is reviewed by the Audit Committee annually.

Recommendation

109. That public access to the report be immediate.

Report prepared by:

Jayne La Grua, Principal Lawyer

Data Quality

Data sources:

Deaths in the UK from Coronavirus: Office of National Statistics.

Data checked:

No.

Data rating:

1	Poor	
2	Sufficient	
3	High	x

Background Papers

Referred to within the body of the report.

APPENDICES / ATTACHMENTS

- (1) Minutes of Extraordinary Council Meeting, 1 September 2020;
- (2) Minutes of Leisure, Environment and Community Committee Meeting, 13 January 2021;
- (3) Minutes of Extraordinary Council Meeting, 17 March 2021;
- (4) SICM Constitution;
- (5) BW Foundation Articles of Association;
- (6) BW Foundation entry on The Charity Commission website;
- (7) BW Foundation Trustees' Report and Audited Financial Statements for the Year Ended 31 July 2020;
- (8) Map of Woodcock Hill Cemetery;
- (9) Minutes of Executive Committee Meeting, 10 December 2001;
- (10) Report to Executive Committee, 1 September 2008;
- (11) Minutes of Executive Committee Meeting, 1 September 2008;
- (12) Report to Policy and Resources Committee, 6 July 2015;
- (13) Minutes of Policy and Resources Committee Meeting, 6 July 2015;
- (14) Report to Policy and Resources Committee, 21 March 2016;
- (15) a) Minutes of Policy and Resources Committee, 21 March 2016;
b) Minutes of Policy and Resources Committee, 13 June 2016
- (16) Lease in respect of Plots J1 – J200 Woodcock Hill Cemetery;
- (17) BW Foundation's Burial Policy, 2015;
- (18) BW Foundation's Notice to Patrons;
- (19) House of Commons Library, Briefing Paper: "*Coronavirus Bill: Managing the Deceased*", 25 March 2020;
- (20) House of Commons Library, Insight: "*Coronavirus: Powers to direct between burials and cremation*", 27 March 2020;
- (21) BW Foundation's Policy for Burials in Two Tier Graves, March 2020;
- (22) *Abbas Meghjee v BW Foundation* [2020] EWHC 2970 (QB), 16 June 2020;
- (23) Office of National Statistics: Deaths in United Kingdom with 28 days of positive test for COVID-19; and
- (24) BW Foundation's current Burial Policy, 2021.