
COMPULSORY PURCHASE OF LAND AT LODE ROAD BOTTISHAM

Committee: Finance & Assets Committee

Date: 4 October 2022

Author: Director Legal & Monitoring Officer

[X68]

1.0 ISSUE

- 1.1 To seek approval for the Council to exercise its compulsory purchase order (“CPO”) powers on behalf of Bottisham Parish Council (“the Parish Council”) to acquire land to construct a new cemetery at Lode Road, Bottisham.

2.0 RECOMMENDATION(S)

- 2.1 That Council be recommended to authorise the use of the District Council’s compulsory purchase making powers pursuant to section 125 Local Government Act 1972 to acquire land on behalf of the Parish Council to allow for a new cemetery to be constructed; and

- 2.2 To delegate authority to the Director Legal 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 making (or responding to) a reference to the Upper Tribunals (Lands Chamber);
- (e) enter into a suitable agreement with the Parish Council regarding reimbursement of all costs incurred by the District Council regardless of whether or not the CPO proceeds to completion;

- (f) transfer the relevant land to the Parish Council if the CPO proceeds to completion via a back-back sale, subject to reimbursement of purchase costs and all other relevant expenses and the inclusion of a restrictive covenant in the transfer to prohibit development or uses other than as a burial ground.

3.0 BACKGROUND/OPTIONS

Introduction

- 3.1 The Parish Council have requested the District Council to compulsorily purchase some land at Lode Road, Bottisham for the purposes of a new cemetery. This follows a formal resolution by Bottisham Parish Council on 3rd December 2018 to request the District Council to take forward the compulsory purchase of the land. This matter has taken some time to bring all the elements together and these are now in place for the compulsory purchase to be taken forward.

Background

- 3.2 The Parish Council has a power to acquire land by agreement for the purposes of a cemetery under s214 Local Government Act 1972, but there is no compulsory purchase power associated with this power.
- 3.3 The Compulsory Purchase Act 1965 and the Acquisition of Land Act 1981 do not permit a parish council to compulsorily purchase land; however, under section 125 Local Government Act 1972, a parish council may request the relevant “principal authority” to compulsorily purchase land on its behalf if it is otherwise unable to acquire it by agreement on reasonable terms. The District Council is the relevant “principal authority” in relation to the Parish Council.
- 3.4 The District Council must be satisfied that the land cannot be acquired on reasonable terms by agreement. If the District Council refuses the Parish Council’s request, the legislation states that the Parish Council can then approach the Secretary of State to request compulsory purchase of the land.
- 3.5 The land which the Parish Council wish to have compulsorily purchased is agricultural land and is currently owned by the National Trust for Places of Historic Interest or Natural Beauty under Title Number CB 340760 and is let to the Fairhaven estate.
- 3.6 The land is held by the National Trust as “inalienable” land under s21 National Trust Act 1907 or s8 National Trust Act 1939. The effect of being held as “inalienable” land means that the National Trust cannot voluntarily part with the land by agreement and transfer in the ordinary way to the Parish Council.

- 3.7 As stated above, the land is currently let to the Fairhaven family as farmland. The Parish Council currently have a licence for access to the land with the Fairhaven family to allow the Parish Council to carry out environmental assessments in connection with the proposed cemetery. The Fairhaven family are fully supportive of the proposals and are unlikely to make any objections to an application for compulsory purchase of the land.
- 3.8 As set out more fully in 3.21, the Parish Council have negotiated with the National Trust for a long lease but National Trust will not agree and therefore the Parish Council would prefer to obtain the freehold interest in the land in the long term.
- 3.9 The National Trust are fully supportive of the Parish Council's plans to acquire the land as the Parish Council had early engagement with them, the National Trust have allowed the Parish Council to access the land and have provided formal approval of the Parish's plans. The National Trust commissioned a valuation report of the land from Carter Jonas and the National Trust is working with the Fairhaven family to obtain a surrender of their current tenancy agreement for the land.
- 3.10 It is understood that the project to obtain land for a new cemetery commenced in 2013 when a formal residents' survey was carried out, examining the future needs of the village of Bottisham for interments. The Parish Council identified only one area of land within walking distance of the village that is suitable as all other land identified was too low lying or close to a watercourse; both matters are critical for a cemetery.
- 3.11 The project was communicated on numerous occasions to the village, both through the Parish magazine and at Parish Annual meetings. Throughout the process, the Parish Council state that they have only experienced support and no residents have raised any objections as to the choice of location, as residents understand that the chosen location is the only choice.
- 3.12 In promoting a CPO, Councils are advised by Government Guidance "*Guidance on Compulsory Purchase and the Criche Down Rules*" (July 2019) ("the Guidance") that the Secretary of State will not confirm a CPO unless he is satisfied that there is a compelling case in the public interest.
- 3.13 In order to confirm a CPO, the Secretary of State must be satisfied that the District Council has a clear idea of how it intends to use the land it is proposing to acquire, that the District Council can show that it has all the necessary resources to achieve the objective of acquiring the land and the reason for acquiring the land will not be blocked by any physical or legal impediments to implementation.
- 3.14 The District Council would be seeking to compulsorily purchase the land and then transfer the land to the Parish Council for the purpose of a new

cemetery and therefore there is a clear idea of how the land is intended to be used.

3.15 In terms of resources, the District Council can recover from the Parish Council any expenses incurred, which would include administrative expenses, the cost of any inquiry that may be required, legal costs awarded, etc. In the first instance, the District Council would be responsible for costs but these would be recoverable from the Parish Council under a written agreement. The Parish Council have confirmed that they have a budget in the region of £250,000 which would meet those costs.

3.16 In terms of impediments, the Parish Council obtained pre-application planning advice from the District Council in 2015. The enquiry was in respect of the principle of the construction of a cemetery, parking area and additional space for recreation/planting. The Parish Council submitted a planning application on 9th June 2022 for the new cemetery under planning reference 22/00703/FUM and this is expected to go to Planning committee in the next few months with a recommendation for approval. If planning permission is granted, this would further support an application for compulsory purchase.

3.17 The Guidance makes it clear that in promoting a CPO, Councils should be sure that the purposes for which the CPO is made sufficiently justify interfering with the human rights of those with an interest in the land affected. Councils must also consider their public sector equality duty contained in the Equality Act 2010. In making this assessment, the Council 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”). 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...”

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

3.19 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”. It is clear from case law that any

person affected by the proposals will have the opportunity to object, including attending at an inquiry into the CPO and therefore this requirement is satisfied in this instance.

- 3.20 Government guidance also provides that the Council is expected to provide “*evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted*”. Due to the land being “inalienable” land, voluntary transfer of the land has not been possible.
- 3.21 The Parish Council have attempted to negotiate a long lease of the land but the National Trust were not supportive of this as they are of the view that the land would effectively be unusable for any other purpose after interments. The Parish Council had sought a 999-year lease, but as the National Trust could seek compensation for lost rental to the Fairhaven family, the Parish Council consider that the cost of compensation over 999 years would far exceed the cost of purchase. Therefore, the Parish Council would prefer to obtain the freehold interest in the long term.
- 3.22 The District Council is also required to have regard to the extent of land held in the neighbourhood by the current owner and to the convenience of other property belonging to the same owner and shall, as far as practicable, avoid taking an undue, or an inconvenient, quantity of land from any one owner. The land sought is part of a much larger parcel of land in the same ownership and the amount sought represents a very small percentage of the agricultural land held within that parcel of land. Following the acquisition of the land, the owner will be left with a large parcel and the loss of part of their land will not impact on their ability to access the balance of their land.
- 3.23 The District Council must consider whether the disposal to the Parish Council is compliant with statutory restrictions and its own policy requirements.
- 3.24 In accordance with section 123 of the Local Government Act 1972 the District Council must obtain best consideration for disposals. Therefore, it must consider if a back to back transfer to the Parish Council is permissible.
- 3.25 A local authority is able to sell a site for less than its market value, but the general rule it must seek consent to do so from the Secretary of State. However specific consent is not needed where a council can demonstrate the sale will help to secure the improvement of the economic, social or environmental wellbeing of the local area, and the undervalue is only up to £2m less than market value. In these limited circumstances socio and economic benefits can be relevant rather than monetary value alone. The undervalue itself still needs to comply with normal and prudent commercial practices, including obtaining the view of a professionally qualified valuer as set out in the Technical Appendix attached to Government Circular 06/03.

3.26 It is considered that the provision of the land for a cemetery will improve the social well-being of the area and therefore the transfer of the land to the Parish Council without going to the open market is appropriate.

3.27 The District Council has two options, which are: -

(A) Support the Parish Council and approve the recommendations at 2.1 and 2.2 of this report; or

(B) Refuse the Parish Council's request, giving full reasons, and the Parish Council may then approach the Secretary of State directly.

4.0 ARGUMENT/CONCLUSIONS

4.1 Arguments in support of option (A) above are that the current cemetery at Bottisham is reaching capacity due to increased interments (including some arising from the Covid 19 pandemic) and the Parish Council are in danger of not being able to offer residents burial in the village without the additional land.

4.2 Arguments for (B) are that the District Council would initially be liable for the costs of obtaining the CPO, which could be as much as £120,000 (including compensation to the National Trust). Although the District Council would be able to seek these costs from the Parish Council, there is currently no budget for this matter.

5.0 FINANCIAL IMPLICATIONS/EQUALITY IMPACT ASSESSMENT/CARBON IMPACT ASSESSMENT

5.1 The legislation (s125(5) Local Government Act 1972) provides a mechanism by which the District Council may recover from the Parish Council all the costs and expenses it incurs in connection with the acquisition of the land on behalf of the Parish Council in reliance on the CPO procedure. If approval is given, the District Council will enter into an agreement with the Parish Council in respect of recovery of all costs, regardless of whether or not the CPO proceeds to completion.

5.2 External legal advice sought has indicated that the costs are likely to have a ceiling of £40,000 if the matter proceeds to an inquiry. A further sum of £65,000 to £80,000 will be payable in respect of compensation to the National Trust in addition to these costs.

5.3 Equality Impact Assessment (EIA) not required. The District Council has had due regard to its Equalities Duties as specified under section 149 of the Equality Act 2010 to date and will continue to do so throughout this matter. In taking the decision to make a CPO, the Council considers that the proposal is fully compliant with the Equality Act and compatible with the Public Sector Equality Duty

The District Council considers that CPO action will be compatible with the Public Sector Equality Duty and as it will not have a significant negative impact upon protected groups. The land is not used disproportionately by any group with protected characteristics as it is currently used for agricultural purposes.

5.4 Carbon Impact Assessment (CIA) completed. In summary, the CIA concluded as follows:

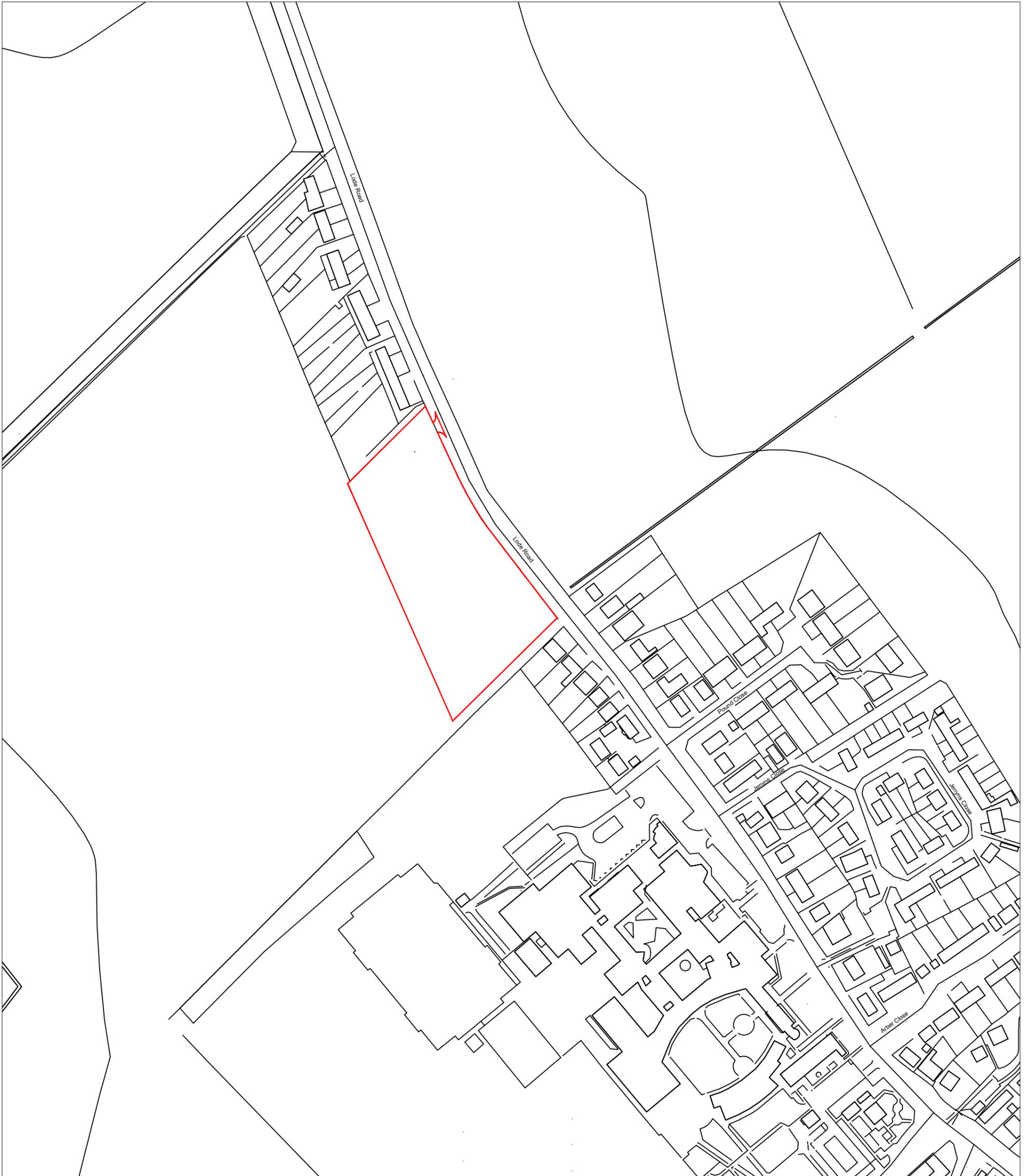
For the Council, the overall impact is neutral as the Council's role is simply that of a purchaser/transferor of land and that action in itself has no meaningful carbon impact arising.

However, from a District wide perspective, the Council's role is directly facilitating the activity to proceed and as a consequence, albeit indirectly, the Council is facilitating the District wide impacts that may arise from the proposal. The overall District wide carbon impact is likely to be negative due to construction stage and the materials used on site. There is only likely to be a very minor carbon offset by planning tree planting, planting of shrubs on site and the addition of rich meadow grassland seed mix used for the proposed amenity area. Biodiversity has the potential to be a positive net gain, compared with "do nothing" subject to detailed planning consent.

6.0 APPENDICES

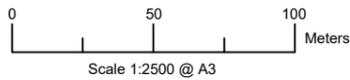
6.1 Appendix 1 – Location plan

<u>Background Documents</u>	<u>Location</u>	<u>Contact Officer</u>
Legal file Ref: 1625 Government Guidance on Compulsory purchase process and the Crichel Down Rules	Room 112 The Grange, Ely	Maggie Camp Director Legal & Monitoring Officer (01353) 616277 E-mail: maggie.camp@eastcambs.gov.uk



LEGEND

Development Area



TGMS, 4 Doolittle Mill,
Froggall Road, Amptill,
Bedfordshire, MK45 2ND
Tel: 01525 307060
Web: www.tgms.co.uk
Email: enquires@tgms.co.uk

Drawing Title

Site Location Plan



Project : Lode Road Cemetery

Client : Bottisham PC

Consultant : Richard Earl

Date : 06/01/2022

Drawing Status : Planning

Scale : 1:2500

Paper Size : A3

Drawn by : OM

Checked by : RE

Approved by : RE

Drawing Number

TGMS1053.6-5

Revision

1

Notes:

1) Site Mid Point
Easting: 553916
Northing: 261222

2) Background mapping OS Vector Map Local
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Revisions					
Rev	Date	Description	Drawn By	Checked By	
1	12/05/2022	Development area amended to reflect revised access road location.	OM	RE	