

**Statement of Case**

Appeal against refusal by Mid Sussex District Council.

**Outline Planning Application for single chapel Crematorium with a single abated cremator and Natural Burial Site with associated access, car parking, landscaping and drainage. All matters reserved apart from access. Turners Hill Burial Ground, Turners Hill Road, Turners Hill RH10 4PB.**

**Reference: DM/20/2877**

Hartmires Investments Ltd

JPL Ref: 21/12/ 6/1 S of C

LPA Ref: DM/20/2877

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## **I. Introduction**

- I.1 This statement of case supports this appeal against the refusal of application DM/20/2877 by Mid Sussex District Council. This statement sets out in full why, when considered on balance against National and Local policies, the appeal proposal complies with the requirements of the adopted development plan and the National Planning Policy Framework and is acceptable in all other regards.
- I.2 This appeal statement of case has been prepared by Lisa Jackson MA BSc MRTPI of Jackson Planning Ltd who acted as planning agent throughout the processing of the planning application.
- I.3 The appeal proposal is for an outline application for a single chapel crematorium with a single abated cremator and natural burial site with associated access, car parking landscaping and drainage. All matters are reserved apart from access.
- I.4 The preparation of the application, and this appeal, has been supported by a professional team of experts who are specialists in their fields and also have experience of delivering consents and implementing proposals for crematoria.
- I.5 The two main issues in dispute are:
- Whether there is a need for a crematorium to serve the local community
  - Extent and duration of any harm to the countryside and the setting of the High Weald AONB
- I.6 The appellant believes that these two issues are connected because policy support for community facilities does not preclude location of these types of proposals outside settlements. In addition, the limitations imposed by the Cremation Act 1902 mean that if need is to be met a countryside location is almost always necessary (as it is in this case), and some localised harm that is the consequence of a development in meeting this need is inevitable.
- I.7 The purported analysis of the need for the proposed facility set out in the officer's report fails to reflect either the Council's own consultant's advice or our expert evidence. There is a significant disagreement between the appellant and the Council's officers on the complex question of need for the proposal. That, and the variance of the evidence in relation to landscape impact, merit proper investigation

under cross examination. The appellant has therefore requested the appeal be heard at 3-4 day public inquiry and has submitted the appropriate notification for the inquiry procedure.

## 2. Determination of the Planning Application

- 2.1 The application was refused at the District Planning Committee on 17/12/2020 and decision issued on 21 December 2020 for the following reason:

*The proposed development would have an adverse impact on the intrinsic character and beauty of the local countryside, including the setting of the High Weald area of outstanding natural beauty, which would be further harmed by the necessary woodland mitigation screen planting. This harm is not considered to be outweighed by an overriding need for this development and is therefore contrary to policies DPI 2, DP 16, DP 25, DP 26 and DP 37 of the mid Sussex district plan, policies THP8 and THP 13 of the neighbourhood plan, the provisions of the NPPF, in particular paragraph 8, 11, 124, 127, 130 and 170, objective FH2 and FH3 of the high Weald AONB management plan 2019 to 2024 and design principles DG3, DG7 and DGI 1 of the Mid Sussex Design Guide SPD.*

### INFORMATIVES

*In accordance with Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, the Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal, approval has not been possible.*

- 2.2 In reaching this decision it is clear that the Council did not give sufficient weight to the positive policies in favour of the proposal namely DP25 of the Local Plan and support in NPPF 84, or the supporting evidence produced by the Appellant. They also did not properly consider the significant fallback consents and the material similarity of this proposal to the consented use for the site as they were not considered in the planning balance in the officer's report (OR).
- 2.3 The Council failed to obtain appropriate evidence on the critical question of the need for the facility. The Council chose to divert from expert advice from the applicant and their own advisor who recognised the need for more crematorium capacity in Mid Sussex but could not and did not comment authoritatively on the critical qualitative component of the need case.
- 2.4 The Council did not properly consider the controls available to them though the subsequent reserved matters applications, through the imposition of planning

conditions and appropriate mitigation that was available to them to reach a positive conclusion to the application.

- 2.5 The method of processing of the application and lack of proactive and timely engagement, and lack of direct access to some of the critical consultees advising the Council has exacerbated the problems which ultimately led to the refusal and prompted the appeal.
- 2.6 Six different versions of the County Landscape Officer's response along with a further email from the case officer in conjunction with the County Landscape Architect show the lack of consistency of assessment and muddled thinking. The failure to report agreed common ground on landscape matters to the planning committee demonstrates the lack of proper balance and incorrect weight applied to issues of landscape impact that were overstated, especially when considering the highly localised impacts and fallback consents.
- 2.7 This statement of case sets out why this whole appeal was unnecessary because the Council failed to judge the proposal correctly in accordance with the adopted development plan policy as they are required to do so by virtue of planning legislation. Local Plan policy DP25 gives express support for a sustainable community facility proposal.
- 2.8 Had the officer applied the correct balance to the issues and relied on the correct wording of the policy and weight to be afforded to the relevant policies and material considerations he would have recommended approval given the support in policy DP25 and a different outcome to the application would have followed.

### 3. Site Context

#### Site Description

- 3.1 The site description and context are set out in the supporting planning statement in detail, but the key considerations are as follows:
- 3.2 The proposed site is located to the immediate north of Turners Hill Road, a public highway. The Site is located within the countryside but has no special landscape designation, and is in part previously developed land.
- 3.3 The Site is within an agricultural context and lies outside the village of Turners Hill, in an attractive setting with the mixed broadleaf Butcher's Wood to the eastern boundary, Miswell Wood to the north and further woodland further west. The application Site is directly bounded to the west by Tully's Farm Events Fields, an existing, large scale family entertainment complex (leisure and recreation activities).
- 3.4 The Council have acknowledged the character of the area, in their report on application DM/15/1035 and in DM/18/0677 for the now consented natural burial site and the application for re-siting the chapel building, the site was characterised as follows: *"While this is a rural area, the site is nevertheless adjacent to Tulleys Farm and its associated leisure/recreational facilities (maze, fun park, accesses, car parking, etc.) to the west. Immediately opposite that is the cricket ground and pavilion. As such, it is considered that the proposal would be read in context with the scattering of other buildings and uses in this area and hence would not be out of place"*.
- 3.5 It is notable that this previously described character assessment (above) was not attributed to the site in the officer's report for this appeal proposal, despite reliance on it in relation to previous assessments in officer reports in relation to at least two other decisions on the site.
- 3.6 The High Weald AONB boundary is located along Turners Hill Road beyond the Site's southern boundary.
- 3.7 The nearest dwelling, east of St Leonard's church is nearly 300m distant from the closest boundary of the site.
- 3.8 An off-road footpath in the control of the appellant has already been provided to allow direct, safe access to St Leonard's church.

## **4. The Appeal Proposal**

### **The Proposal**

- 4.1 The proposal is in outline for a single ‘chapel’ crematorium with a single abated cremator with abated cremator and natural burial site with associated access, car parking, landscaping and drainage. The details of the access are provided, all other matters are reserved.
- 4.2 The facility is designed as a secular building to cater for those of any faith or those with no faith. The crematorium is proposed to be set within generous grounds with a garden of remembrance and an area for floral tributes, a car park with overspill area in addition to a servicing area to serve functions associated with cremation and natural burial.
- 4.3 The Cremation Act 1902 s.5 stipulates that a crematorium should not be built within 182.88m (200yards) of a dwelling house nor within 45.72m (50 yards) of a public highway. This legislation is critical in terms of determining a suitable location.
- 4.4 The illustrative layout has been prepared carefully to demonstrate in detail that the proposal sits comfortably within the site. It is also the basis for the technical assessments in the LVA, Flood Risk Assessment (FRA) and Transport Statement (TS). The circulation and car parking are commensurate with the capacity of the ceremony hall with parking for 82 cars with an overspill area catering for 26 vehicles. Car parking for the staff and business visitors to the site are catered for in the service area, 4 spaces are shown. The layout also envisages a garden of remembrance separated from the main Chapel building.
- 4.5 In addition, the comprehensive approach to this application is seeking to improve significantly on the fall-back position of the approved and part implemented consent for natural burial and supporting buildings with a more considered approach to overall site design and landscape impact. The comprehensive consolidated solution offers further opportunity for a sustainable scheme with sustainable drainage, biodiversity gain, similar (limited) effects on landscape character, and an overall improvement in visual impact in the medium term over the fall-back position.

### **Parameters**

- 4.6 The parameter plans submitted as part of the application drawings give the necessary controls to the Council to ensure that the impacts of the development is as tested

in the application and that mitigation proposed will indeed be effective. The parameters for the application are shown on plan 917-GA-02. For the sake of clarity, the parameters for which outline consent is sought is as follows:

- Maximum Crematorium Building height 168.5m AOD
- Maximum Flue/ Chimney Height 171m AOD
- Maximum Crematorium building footprint – 40 x 40 metres

4.7 Hours of service are likely to be 0900 to 1700 and it is expected that the crematorium would offer one-hour 'slots' within which services would take place. Whilst these are the opening hours, the vast majority of services take place through the core hours, considered to be 10am - 3.30pm. This means that there could be a theoretical maximum of eight services each day, on weekdays, or maximum of forty services each week. Again, this can be controlled by planning condition.

4.8 Appendix A to this statement contains summaries of all the technical consultation responses to the application. None of the responses, apart from that of the County Landscape Architect, (see section 6) made any complaint about the nature or impact of the proposals.



## 5. Planning History

- 5.1 The Site, subject of this application, has a long and complex planning history which is set out in the application documents.
- 5.2 Of the 11 planning applications on the site 6 have been granted either by the LPA or on appeal. The approvals include three independent buildings: a chapel (and re-sited chapel with basement), a reception building and a maintenance barn with a maximum of 45 car parking spaces. Some of the approvals have already been part implemented. Lawful implementation of the change of use to natural burial ground has been confirmed by the Council.
- 5.3 The consented and part implemented proposals on the site amount to a significant ‘fall-back’ position in terms of an assessment against the current proposal.
- 5.4 The express grant of planning permissions accumulated on this site for: natural burial, a chapel, a reception building and maintenance building with ancillary parking necessary for those proposals to function amounts to approximately half of the developed footprint of the current outline proposal. Taken with the natural burial proposal, a material part of the appeal proposal is comparable to previously consented uses on the site. The consented use of the site for natural burial would result in the remaining part of the site that is not built upon becoming completely wooded over time to the extent that it would completely assimilate with the surrounding landscape.
- 5.5 The Council and previous Inspectors’ assessment of the acceptability of the cumulative impacts of the history of previous proposals are material to the assessment of this current proposal.
- 5.6 It has been confirmed by the Courts that ‘fall-back’ can be a material consideration in the determination of a planning application. The 2017 Court of Appeal Judgement (Mansell v. Tonbridge & Malling Council [2017] EWCA Civ 1314) Appendix B clarifies when a fall-back development may be a material consideration for an alternative development. In the Court of Appeal judgement, Lindblom LJ confirmed the legal considerations and determine the materiality of the fallback position for a planning judgement. The basic principle is that for the prospect to be a real prospect it does not have to be probable or likely, a possibility will suffice. Given part implementation, the

**Environmental Impact Assessment (EIA) Screening**

- 5.7 This proposal was subject to a formal EIA screening to MSDC. A submission was made on 1 July 2020 and a response under reference DM/ 20/2267 confirmed on 21 July 2020 *“In the opinion of the Local Planning Authority, having taken into account the criteria in Schedule 3 of the 2017 Regulations, the proposed development, while constituting a Schedule 2 development, would not be likely to have a significant effect on the environment by virtue of the factors such as its characteristics, location and characteristics of potential impacts”*.

## **6. Landscape Consultations**

- 6.1 The provision of a response on landscape issues to the appeal proposal by the Council has been muddled and confusing. There are six consultation letters from the County Landscape Architect and further correspondence on agreed common ground (see 6.4 below).
- 6.2 It appears (unusually) to be the case from the correspondence in emails that the case officer was advising on amending and changing the comments of the County Landscape Architect. This might account for six confusing versions of the letter. It is not clear if the changes requested were in response to letters from the appellant's landscape expert or were to reflect the views of the case officer.
- 6.3 The appellants have consistently provided evidence and argument that the significance of effect on overall Landscape Character has been judged to be a moderate adverse effect in the short-term falling to a slight adverse effect in the medium to longer term.
- 6.4 After the first two attempts to provide a landscape consultation response the case officer agreed, following intervention from the Head of Planning, that a video meeting could be held, although the landscape officer did not join the meeting. At the meeting it was agreed that points of common ground on landscape matters would be helpful. After two further responses from the County Landscape Architect the case officer confirmed by email (13 November 2020) (Appendix C) that the vast majority of points set out by the appellant's landscape expert in a letter of 12<sup>th</sup> October 2020 (Appendix D) following the video meeting were agreed.
- 6.5 The three critical agreed points were as follows:
- 1) The only significant impacts on views are those on that the footpath that crosses the site, and viewpoint 6 at the site entrance. (The appellant contends that this is similar, albeit, slightly different to the approved and part implemented cumulative development approvals on the site).
  - 2) Secondly, whilst there would be some effects on the site itself, including on topography and tranquillity, effects on wider landscape character will be restricted to a very small area of the surrounding landscape.

- 3) Thirdly, that Effects on the setting of the High Weald AONB would be minimal

- 6.6 The appellant's expert assessment confirms that impacts on landscape character of this proposal have been compared to the fall-back position and found to be very similar. Both proposals would result in some short to mid-term adverse effects on both visual receptors and on landscape character, they would both have negligible effects on the adjacent AONB, and in the long term these effects would be largely dissipated as the proposed planting matures.
- 6.7 Whilst there has purportedly been agreed common ground on matters of landscape impact this is not reflected in the formal landscape advice presented to Members in the officer report. This mismatch between what is agreed common ground and the extent of the harm of the effects of development would be one of the main areas of examination of the landscape expert witnesses at inquiry.
- 6.8 In particular the lack of balance and reasonable assessment in the summary of the committee report is evidence of the materially misleading impact of the advice given to Members, that does not reflect the very local and inevitable nature of the impact, if you accept the site will be developed to meet a community need and in accordance with the extant permissions.
- 6.9 The lack of a rational understanding of the landscape effects of the part-implemented approval on the site and the importance of fallback is a significant cause for concern that needs cross examination to clarify the Council's understanding of this. Inclusion of a misleading assessment of impact of the development, with no remark or mention of the fallback position, in the critical summary in the officer report, rather than a balanced assessment that considers impacts against the cumulative effects of the fallback permissions and the very limited local impacts needs full cross examination. The appellant's case is that this points to the Council's unjustified, assessment of landscape effects. The significant departure in the officer report from the agreed common ground (Appendices B and C) on landscape impacts (localised and limited) needs explanation.
- 6.10 Furthermore, many of the issues raised by the County Landscape Architect can be dealt with at the reserved matters stage (such as the detail (and even amount of) woodland planting). This is an apparent fundamental misunderstanding of the

outline planning process and the controls the Council have available to them as a result of the agreed parameters and further detail to be considered at the reserved matters stage.

## **7. Crematorium Need Assessment**

7.1 The Appellant produced a comprehensive need report that demonstrated a quantitative and qualitative need for a crematorium to serve Mid Sussex.

7.2 The Appellant's need evidence was set out in:

- The detailed report by Peter Mitchell Associates submitted on or about 5 August 2020 (with minor corrections by Errata report submitted on or about 13 August 2020)
- A 7 October 2020 letter drawing the Council's attention to the recent CMA provisional report concluding that the relevant market is not functioning well (in part because there is limited locational competition between crematoria), and responding to the anti-competitive and misconceived objection letter by the operators of the Surrey and Sussex Crematorium (with which the Appeal Site will compete).
- A 19 November 2020 letter commenting on the Beacon Dodsworth critique commissioned by the Council

7.3 In summary, the Appellant's need evidence concludes:

- Evidence from the Office for National Statistics (ONS) indicates a significant and sustained growth in the population and numbers of deaths within the local authority areas served by the existing crematoria
- There is a clear and compelling quantitative need for addition crematoria provision and the location of the proposed Turners Hill Crematorium will enable it to meet the current and future needs of a significant and growing population
- The proposed new Turners Hill Crematorium will bring about qualitative improvements by reducing delays between death and funeral through offering new additional capacity; reducing the funeral journey time for many thousands of people; improve mourners' experience through the design and quality of its facilities; and provide greater choice for local people wishing to arrange a cremation which

is not based on a largely Christian model, but instead reflects the increasing secularisation in society.

- The crematorium in closest proximity to the appeal site is Surrey and Sussex Crematorium at Crawley. Surrey & Sussex Crematorium is already over-trading on accepted measures based on an assessment of core capacity, a position which is bound to worsen with increasing numbers of deaths in years to come.

7.4 The provision for conducting of funerals by means of natural burial on the site has been established by the previous extensive planning permissions referred to in section 5 of this statement. The Appeal Site is therefore an evidently appropriate location for the proposed use.

### **The Council's Expert Need Assessment**

7.5 The Council appointed a transport/ data consultant: Beacon Dodsworth (BD) to 'critique' the appellant's need report. BD's assessment was entirely statistical. BD's critique did not support the objection made by the operators of the Surrey and Sussex Crematorium (see section 8 below). BD's critique did not consider qualitative assessment, as was confirmed in a response to a rebuttal by the appellant's agent.

7.6 The Appellant's case is that, when the evidence is assessed critically and objectively, they have firmly established that there is a compelling quantitative and qualitative need for a new crematorium, located at Turners Hill in Mid Sussex District

7.7 The Council have no reliable counter evidence against the need case. At the public inquiry, considering this appeal, the Council would need to be examined on their position in relation to crematorium need, as it is not justified by evidence or the metrics produced on their behalf. In particular the Council would need to be examined on their assertions about the acceptability of journey times, the evidence and basis for this, the impacts on qualitative experience of mourners and the experiences with delays and operational difficulties where core capacity is exceeded. None of this is satisfactorily explained or justified in the officer report and the Appellants were given no opportunity to discuss this with the Council's officers or their experts despite repeated requests.

## **8. Third Party Objections**

- 8.1 The application attracted objections from the two Parish Councils in the vicinity of the site and from local residents.
- 8.2 Turners Hill Parish Council are the Parish in which the application falls. They objected on numerous grounds but none of the reasons can be sustained.
- 8.3 The Parish Council at Worth also objected but they have misunderstood the process. Mid Sussex District Council have determined that the environmental impact assessment is not required for this proposal.

### **Local comments**

- 8.4 There was a mixed local response. 62 individual representations were received from residents, faith groups and businesses. 46% were in favour and 54% objected. There was also a petition from the local community.
- 8.5 Faith groups wrote in support of the proposal as it provides opportunities for funeral wishes of all faiths.
- 8.6 These local issues will be fully examined in evidence.

### **Objection from Clyde & Co on behalf of Dignity Funeral Ltd**

- 8.7 A third-party objection from Clyde & Co, lawyers acting on behalf of Dignity Funerals Limited, was submitted on 29 September 2020 notably beyond the formal consultation date.
- 8.8 It is important to understand that Dignity Funerals Ltd operate the Surrey and Sussex crematorium at Crawley and stand to lose some of their business should appeal be allowed and implemented. It is very clear that their interest is to suppress the supply of alternative providers within their local market.
- 8.9 There was a fundamental misunderstanding by Clyde & Co and manipulation of their stated case by using total (technical) capacity rather than practical/ core capacity, something their client Dignity Ltd have criticised at other planning appeals when this is in their favour. In addition, the objectors are entirely silent on the qualitative elements to the need case. This was pointed out by the Appellant in a 7 October 2020 letter, and it is understood that the Council has concluded that the Dignity objection is not well-founded.



## **9. Grounds of Appeal**

- 9.1 The grounds of appeal against refusal of the application DM/ 20/2877 are as follows:
- 9.2 The Council refused the application as set out above at 2.1 when they had every opportunity to grant approval for a policy compliant sustainable development proposal as required by planning law.
- 9.3 The Council failed to make a fair and balanced assessment of the appeal proposal. In refusing the application, they ignored the legal requirements of the s.38(6) of the Planning and Compulsory Purchase Act 2004 and para 84 of the NPPF which supported the proposal. They failed to consider the significant material considerations of the fallback position of various planning consents (some part implemented).
- 9.4 The Council failed to take the opportunity to weigh in the balance the significant benefits of the sustainable development proposal against the minor localised potential harms.

### **Need**

- 9.5 The appellants provided a comprehensive independent, expert need report in support of the planning application. The appellant is not aligned to any particular operator for the proposal. The Appellant's need case evidence was reliable and thorough and should have been accepted by the Council.

### **Landscape Impact**

- 9.6 Other than minor issues of highly localised landscape effects (which mean that overall, the effects on landscape character would be materially comparable to the fall-back scheme) there were no other complaints about the nature of the scheme whatsoever that would have led to any other conclusion than that the development was acceptable.
- 9.7 The clear confusion with six muddled versions of the landscape comments demonstrated how little substance there was to the landscape objection. The suggestion that mitigation planting in the form of woodland is uncharacteristic, in this location and given the approved use, and eventual character of the site as a result of the ongoing use for natural burial is wholly without merit. In addition, the purported harm to the countryside and the High Weald AONB was overstated,

especially in the summary of the officer's report and particularly in light of agreed common ground.

- 9.8 Taken together none of these so-called 'adverse' impacts to the countryside amount to any serious harms, especially considering the inevitable consequence of developing the site when there is a need for the proposal and the approved fall back and partially implemented consents.

## **10. Policy Considerations**

### **Local Development Framework**

- 10.1 Section 38(6) PCPA 2004 and section 70(2) of TCPA 1990 require that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.
- 10.2 In this case there are four adopted plans that make up the development plan, some with significantly more relevance than others, these are the Mid Sussex District Plan 2018 and the Turners Hill Neighbourhood Development Plan 2016 and the Small Scale Housing Allocations DPD and 2004 Local Plan. These are the 'basket' of policies that apply in the consideration of this application, however, their relative weight in the decision-making process is governed by their consistency with the NPPF 2019; this is set out in detail in Appendix E.

### **Policy Summary**

- 10.3 The planning application included a detailed assessment of policy considering how the proposal is in compliance with all the relevant and up-to date development plan policies. In summary, the most important policies relevant to the determination of this appeal are DP12, and DP25 of the Mid Sussex District Plan and THP8 of the Turners Hill Neighbourhood Plan.
- 10.4 The assessment in the supporting statement in the planning application by the appellant considered why the tilted balance in NPPF 11d) was engaged as overall the key policies that would otherwise prevent the development were all out of date. Whilst DP25 supports the proposal, this policy should have included an express exception to DP12, however as DP12 is itself out of date the support from policy DP25 should prevail.
- 10.5 Given the policy framework (with the detailed policy analysis in the supporting planning statement and the appendix) and that the NPPF must be read as a whole and that in part it has more weight than some of the out-of-date policies in the District Plan and all of the policies in the NDP, the proposal must be considered in accordance with the tilted balance in favour of the proposal when considering as a whole those policies, in so far as they have weight in the determination, where they are consistent with the NPPF.

## 11. Planning Balance

- 11.1 The appellant believes the planning balance considering the development plan and all other material considerations is firmly in favour of this proposal for sustainable development on this part-brownfield site with significant cumulative planning consents.
- 11.2 The proposal has express policy support in the form of Local Plan policy DP25 that supports the sustainable development of community facilities (with no locational limits). Policy DPI2, that normally prevents development in the countryside, is out of date as it lacks consistency with NPPF84, and/or outweighed on the facts of this case, and must therefore have less weight.
- 11.3 The site has various consents for chapel and natural burial use, together with other buildings and parking. Some earlier consents have been implemented. This significant cumulative fallback has not been properly assessed as part of the material considerations in favour of the application.
- 11.4 The appellant has proved a quantitative and qualitative need case for a crematorium and nothing in the Council's assessment of the application coherently disputes this.
- 11.5 The landscape assessment by the appellant is correct. Impacts are entirely localised and limited. The Council has significantly overstated the landscape impact in the report, especially in the summary of the report and in the reason for refusal.

### Officer's Report

- 11.6 The officer's report was not a fair or balanced assessment of the application. If the application had been properly assessed against all the facts of the case and with the correct weight afforded to the various parts of the balancing exercise the outcome would have been different.
- 11.7 Mrs Justice Lang has commented in the case of [R \(Wyeth-Price\) v Guildford Borough Council](#) (Lang J, 8 December 2020) (Appendix F) on the issue of misleading Members. Whilst this case was about the need to consider heritage impacts and an underplaying by the case officer Mrs Justice Lang usefully revisited the key cases that inform the correct interpretation of the Officer's report. Of importance here is if the officer had not materially misled the committee would a different decision have been made?

*The principles are not complicated. Planning officers' reports to committee are not to be read with undue rigour, but with reasonable benevolence, and bearing in mind that they are written for councillors with local knowledge (see the judgment of Baroness Hale of Richmond in R. (on the application of Morge) v Hampshire County Council [2011] UKSC 2, at paragraph 36, and the judgment of Sullivan J., as he then was, in R. v Mendip District Council, ex parte Fabre (2000) 80 P. & C.R. 500, at p.509). Unless there is evidence to suggest otherwise, it may reasonably be assumed that, if the members followed the officer's recommendation, they did so on the basis of the advice that he or she gave (see the judgment of Lewison L.J. in Palmer v Herefordshire Council [2016] EWCA Civ 1061, at paragraph 7). The question for the court will always be whether, on a fair reading of the report as a whole, the officer has materially misled the members on a matter bearing upon their decision, and the error has gone uncorrected before the decision was made. Minor or inconsequential errors may be excused. It is only if the advice in the officer's report is such as to misdirect the members in a material way – so that, but for the flawed advice it was given, the committee's decision would or might have been different – that the court will be able to conclude that the decision itself was rendered unlawful by that advice.*

- 11.8 The Council were given two significant opportunities to correct the errors in the officer report, which has an unfair assessment of the application, and had it been considered properly as the appellant suggest there would have been a different outcome. The first opportunity came following the publication of the committee report in the District Planning Committee Agenda. An email was sent to the Head of Planning on 8/12/20 highlighting five errors and asking for a solution to correct these errors. The response by email on 09/12/20 acknowledged only one error of fact that would be corrected by means of a written up-date to the committee. The four other issues of interpretation and presentation of the report were dismissed. The Head of planning claimed the report was fair and balanced. The second opportunity was at the committee meeting, this is discussed below at 11.10.

### **Committee Consideration**

- 11.9 The application was determined by the virtual meeting of the Mid Sussex District Planning Committee on 17th December 2020.
- 11.10 A second opportunity to address errors in the officer's assessment was presented at the 3-minute speaking slot at the meeting, conducted over a zoom video call, where the agent complained that the assessment was not balanced, and that the four issues raised with the Head of Planning had not been satisfactorily addressed. The agent asked the committee to establish these points of interpretation before making a decision, to avoid a mistake and potential cost claim following an appeal. The speech to committee (submitted in advance) is part of the appeal documents.
- 11.11 The commitment made by the Head of Planning to correct the error in an update sheet was not followed though. In addition, a further significant error was made by

the case officer at the committee. In answer to a question by a Committee member as to whether the status of the land was ‘brownfield’, the officer replied that it was not, this was despite the committee presentation that had included photos of the recently constructed maintenance building that is intended to support the natural burial use.

- 11.12 The planning agent challenged the Council’s Business Unit Leader, Development Management (Nick Rogers) on this error of fact by email after the committee meeting. The response received on 18 December 2020 was as follows: *“I don’t necessarily agree with your view on the ‘previously developed land’ point but it seems to me that this issue had no effect of the decision to refuse the planning application.*
- 11.13 *The reason for refusal, in general terms, related to the harm to the landscape not being outweighed by the need for the proposed development and the ‘previously developed land’ point did not form any part of that discussion”.*
- 11.14 The answer given to Committee by the case officer on the status of the land was materially misleading, as it was factually incorrect. This compounded the unfair assessment of the application (set out above) and could have affected the outcome and may well have had a bearing on the decision. This is especially so, given the specific advice in NPPF84 that confirms that sites to meet community needs in rural areas may have to be found beyond existing settlements and in so doing encourages the use of previously developed land where those suitable opportunities exist. This site is such an opportunity, and this clear positive national policy in support of the proposal was not presented to the committee.
- 11.15 The planning balance made by the Council was wrong, it gave the wrong weight to out-of-date policies that were key to determining the application, and in the reason for refusal gave weight to other policies in error when considering any adverse impacts of the development.

## **12. Conclusion**

- 12.1 Mid Sussex District Council's refusal of application DM/20/2877 is unreasonable and wrong, and this appeal should be allowed. The following are the reasons in summary why the application should have been approved.
- 12.2 The Council had all the supporting expert evidence to approve this application with appropriate conditions and to properly deal with issues of detail arising later (mitigation planting, car park design for example). The Council should have approved the application given the presumption in favour of sustainable development, the adopted development plan, the tilted balance and the safeguards in the reserved matters and planning conditions to provide appropriate mitigation.
- 12.3 The whole appeal has been entirely unnecessary.
- 12.4 The Council claim in their informative in the decision notice that they have engaged with the appellant by identifying matters of concern. On the matter of the need for the Crematorium they did not engage with the appellant's agent despite a number of requests to hold a video meeting. At no point in the processing of the application was the appellant informed that he had not demonstrated need for the Crematorium until the point that the resolution to committee to refuse the application was revealed. If the Council had engaged, as requested, this matter could have been agreed and would have changed the outcome of the application.
- 12.5 On behalf of the appellants, given the case set out above, we respectfully request that you allow a public inquiry so that evidence of the experts can be examined, and this would unravel the Council's muddled landscape evidence, and examine why the Council concluded that a need for the proposal had not been demonstrated given what the evidence clearly establishes.
- 12.6 The appellant invites the Inspector to correct this mistake of the Council in refusing an acceptable, policy compliant scheme of development and support the delivery of a much needed sustainable social and community development proposal which serves as an improvement of the already consented and part implemented development on this site which will help to meet the clear market demand for more competition in this broken market.