

Statement of Case- Appendix E
Detailed Policy Considerations

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/Appendix E

LPA Ref: DM/20/2877

Office Address: Fox Barn, Lower Chute, Andover, SPI I 9DU

Telephone 01264 730286 0755 400 6494

Date of Issue: 7 January 2021

I. Detailed Policy Considerations

- I.1 This Appendix sets out the detailed policy considerations at local and national level in this case. The policy considerations are also set out in full in the supporting planning statement.

Adopted Plans

Mid Sussex District Plan (MSDP) 2014-2031

- I.2 The Mid Sussex District Plan (MSDP) 2014-2031 was adopted by Full Council on 28 March 2018. Whilst this is a recent plan, it is post-dated by both the July 2018 and Feb 2019 updated policies in the NPPF. The policies in the MSDP are therefore only considered up to date to the extent that they are consistent with the revised NPPF. Those policies that are inconsistent with the NPPF should be given less weight in the planning balance. In addition, a policy may be accorded reduced weight if it is apparent that it has not been crafted to cover new circumstances. In the present case, it is admitted in the Council's pre-application response that the District Plan was prepared without any assessment of the need for a new crematorium. Whilst a Local Plan may not be able to consider and test all potential land uses and allow for them all in the plan, given that the new evidence of need for the proposal as presented as part of this application is now known, this is a new event which must limit the weight that can be attached to policy DPI2 when considering this proposal to meet that proven need. This assessment is supported by [2014] EWHC 754 (Admin) Bloor Homes before Mr Justice Lindblom (at paragraph 45).
- I.3 The most important policies relevant to the determination of this appeal are DPI2, and DP25 of the Mid Sussex District Plan.

DPI2 – Protection and Enhancement of the Countryside

- I.4 This policy also has inconsistencies with the revised NPPF and in particular NPPF84. The policy caveats the possible reasons to permit development in the countryside in the following two circumstances:
- *it is necessary for the purposes of agriculture; or*
 - *it is supported by a specific policy reference either elsewhere in the Plan, a Development Plan Document or relevant Neighbourhood Plan.*
- I.5 These two caveats do not represent the full range of possible locations for development expressed in the revised NPPF in 2018 and 2019 and therefore the

inconsistency would reduce the weight that policy DPI2 can be given. The revision to the NPPF added paragraph 84 which gives express support for community needs in rural areas adjacent or beyond existing settlements. This positive support for the proposal is not addressed in the current development plan. Furthermore, because (as the Council admits) the District Plan did not contain an assessment as to whether a new crematorium was required therefore DPI2 does not include an exception to that effect (or indeed, in respect of any other community facility supported by DP25 for which a countryside location is required). Accordingly, the weight to be given DPI2 must be substantially reduced where (as here) the need for a new crematorium has been demonstrated and as such this is a new event that renders the policy 'out of date' as explained in the planning statement.

DP25: Community Facilities and Local Services

- 1.6 This policy is the key policy in the plan in support of the proposal. The clear direction in policy is the support for community facilities and local services. There are no limiting criteria, save that they need to contribute to sustainable communities. As this policy is consistent with NPPF84 and NPPF 92 a) and does not limit location this policy is the most consistent with national guidance, especially given the presumption in favour of sustainable development, and therefore has considerable weight in favour of the proposal. The express policy support is stated as follows:
- 1.7 *"The provision or improvement of community facilities and local services that contribute to creating sustainable communities will be supported."*
- 1.8 Whilst the policy demonstrates clear support for the proposal it does not include an express exception against policy DPI2 for development within the countryside and to be entirely consistent with the two key requirements in NPPF 84 and NPPF 92a) it should do, but the absence of locational criteria might be considered consistent with the NPPF in this case, as the countryside policy DPI2 is in itself inconsistent with the NPPF. In so far as it is necessary to weigh DP25 against DPI2 for purposes of this application when assessing accordance with the development plan (applying the requirement explained in the Rochdale case to consider the matter as a whole), it is overwhelmingly the position that the interests of DP25 should prevail. DPI2 is undermined by the absence of any assessment of crematorium need when the District Plan was prepared as discussed above.

Turners Hill Neighbourhood Development Plan (THNDP) 2016

- I.9 The Turners Hill Neighbourhood Development Plan (THNDP) must be considered in the light of its adoption date and its consistency with both the MSDP and the NPPF2019. Mid Sussex District Council formally 'made' the Turners Hill Neighbourhood Plan part of the Local Development Plan for the Parish of Turners Hill as of 24 March 2016. Certain policies of the THNDP are time expired as it is tied to the out-of-date 2004 Local Plan and much of the plan is inconsistent with the NPPF.
- I.10 A detailed assessment of the 'basket' of relevant policies and their relative weight is set out in the application supporting statement. In addition, as explained below, policy THP8 is out of date because, as well as being inconsistent with the NPPF, it is inconsistent with the 2018 District Plan, and (like the District Plan) did not involve any assessment of the need for a new crematorium, which, whilst not the duty of the Neighbourhood Plan, means that, when assessing an application for a scheme proposing to meet that proven need, it must be given limited weight (for purposes of this application) - in the same way as the District Plan as set out above.

THP8 Countryside Protection

- I.11 This policy has a cross reference to THPI limits development to allocated sites, THP7 refers to Extensions and Infill development and THPI4 refers to renewable energy proposals. The Policy THP8 is therefore inconsistent with the NPPF which has a presumption in favour of sustainable development consistent with the NPPF. The policy THP8 can only be given very limited weight due to the significant inconsistency with the NPPF.
- I.12 THP8 seeks to protect the countryside for its own sake (save for very limited exceptions), which is wholly inconsistent with paragraph 170(b) of the NPPF. In addition, THP8 purports to maintain the "strategic gap" with Crawley identified in (subsequently superseded) policy in the 2004 Local Plan. The "strategic gap" is inconsistent with the NPPF, and also with the requirements of the (later) policy DPI3 of the District Plan. DPI3 provides: "*Local gaps can be identified in neighbourhood plans ... where there is robust evidence that development within the Gap would individually or cumulatively result in coalescence and loss of the separate identity and amenity of nearby settlements. Evidence must demonstrate that existing local and national policies cannot provide the necessary protection*". THP8's "strategic gap" fails on both counts. There is no evidence (and certainly no "robust evidence") justifying a

blanket gap policy, and the fact that this application would not result in coalescence or loss of separate identity/amenity of nearby settlements demonstrates the point. Further, policy THP8's "strategic gap" was not supported by any analysis demonstrating (or attempting to do so) that "existing local and national policies cannot provide the necessary protection".

Plans in Preparation

- I.13 Following the adoption of the Mid Sussex District Plan in March 2018, work has commenced on the preparation of the Site Allocations Development Plan Document. Work is at an early stage with the preparation of this plan.
- I.14 The policies map in the emerging site allocation plan has replicated the strategic gap policy from the THNDP. There is no strategic gap policy in the draft DPD or the adopted plan, and the policy in the NDP is time expired as it relates to the 2004 NDP therefore this annotation on the policy map has no weight in the determination of this application. The appellant has objected to this in the current consultation on this plan, in addition, this annotation is unjustified, because THP8's "strategic gap" is not consistent with the provisions of DPI3, as explained above.

National Planning Framework

- I.15 The environmental policies of both plans continue to be consistent with the NPPF, but this must be balanced against the more proactive stance of NPPF84.
- I.16 In NPPF84 there is express support: "*decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport.*" **The policy goes on to say:** "*in the circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploit any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well related to existing settlements should be encouraged where suitable opportunities exist*".
- I.17 This is important in terms of material considerations in relation to developments in rural areas that serve a community need. This updated guidance is a significant material consideration that must weigh heavily in support of the proposal. It is a material consideration for development management that must be taken into account now (NPPF212). In particular the appellant has improved access on foot to

the local settlement on land within his control and provides an off-road permissive pedestrian route to the west bound bus stop. Furthermore, the site is partly previously developed land. All these should encourage the Council that this is a scheme that should enjoy the support of NPPF84.

1.18 In addition, in terms of location the key policy considerations are that this development should be considered a sustainable location. The main reason for this is because given there is a demonstrable need for the proposal and:

1. The pattern of use of a Crematorium does not fit ordinary patterns of travel demand
2. The location of the proposal is governed by other legislation. The Cremation Act 1902 s.5 stipulates that a crematorium should not be built within 182.88m (200 yards) of a dwelling house nor within 45.72m (50 yards) of a public highway. This legislation is critical in terms of determining a suitable and sustainable location.