

**Document CD7.4  
Proof of Evidence of  
Lisa Jackson MA BSc MRTPI  
of Jackson Planning Ltd**

Land north of Turners Hill Road, Turners Hill,  
RH10 4PB

Hartmires Investments Ltd

PINS Ref: APP/3266563

LPA ref: DM/20/2877

April 2021

**JACKSON PLANNING**

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# I. Introduction

## Qualifications and Experience

- I.1 My name is Lisa Jackson I am a chartered member of the Royal Town Planning Institute (since 1990). I hold a Master of Arts Degree in Urban Design from Oxford Brookes University (1992) and a Bachelor of Science Degree in Town and Regional Planning from the University of Dundee (1988).
- I.2 I am the managing director of Jackson Planning Ltd, an independent town planning and urban design consultancy, which I established in 2010. Previous to this I was in practice with Turley Associates from 2003 to 2009 and was appointed as Director of Urban Design in 2006. This followed experience as a planning officer and urban designer, at various levels, in both local government and other multidisciplinary consultancies.
- I.3 In relation to specific experience with regard to the planning and development of Crematoria I have the following relevant experience.
- New Forest Crematorium (New Forest District Council I6/0780). I led the project for a private landowner securing outline planning permission in October 2016 for a site located in the Green Belt following a design competition, and community engagement, both of which I led. I commissioned Peter Mitchell Associates who provided the need case in partnership with Montagu Evans. Indigo Landscape Architects provided the landscape assessment and landscape masterplan for the proposal. The Site has now been disposed to Westerleigh (one of the four main UK crematorium operators) following a tendering process. Westerleigh have obtained reserved matters approval following some minor design changes to reflect their operating model.
  - Bognor Regis Crematorium (Arun District Council Y/10/18/PL) Again in this case I acted for a private landowner working with Peter Mitchell Associates who researched and presented the need case. The detailed application was refused by Arun District Council (against officer recommendation). The refusal was based on the impact of the proposal on highway safety. The proposal was allowed on appeal (PINS Reference W/4000394) on 14 October 2020. The appellant was also granted a full cost award. The landowner had hoped to dispose of the site to Dignity Funerals Ltd and they provided evidence of their intentions at the application stage. However, following the appeal decision Dignity Funerals withdrew and terms for disposal are now agreed with Westerleigh.
  - I was recently employed by Westerleigh to secure changes to Bognor Regis Crematoria (ref Y/12/21/NMA) this was secured through a non-material amendment granted on 1<sup>st</sup> March 2021.

- Further information concerning my personal details and qualifications are set out in Appendix I to my evidence.

1.4 I appear at this inquiry on behalf of Hartmires Investments Ltd (the Appellant) in respect of the planning appeal lodged against the refusal of the planning application DM/20/2877 by Mid Sussex District Council (MSDC- 'the Council') for development at land north of Turners Hill Road, Turners Hill West Sussex RH10 4PB (the 'Appeal Site').

## **Overview and Scope of My Evidence**

### **Scope**

- 1.5 My evidence is concerned with the planning balance and the relative weight to be afforded to planning Policy as it relates to this proposal, and by considering the fallback position in relation to schemes of development permitted and part implemented on the Appeal Site.
- 1.6 The evidence I have presented represents my professional opinion on the aspects of planning policy relating to the appeal scheme and the Council's reason for refusal as it relates to the adopted policy framework. Based on my knowledge and understanding of the issues I believe the facts stated in this evidence are true and accurate.
- 1.7 I set out the relevant policy and guidance contained in the National Planning Policy Framework (NPPF) and the Planning Practice Guidance (PPG) and in local policy and supplementary guidance.
- 1.8 In my evidence I explain the design rationale flowing from the approach the team took for the appeal proposal. I explain the development team approach and how the design solution was landscape-led but specifically tailored to respond to site characteristics locally and take cognisance from the local context.
- 1.9 This proof of evidence must be read in conjunction with the evidence given by Mr Last of Ardent Consulting regarding highway safety, Mr Gibbins of Indigo Landscape Architects in relation to landscape matters and Mr Mitchell of Peter Mitchell Associates in relation to the need for the appeal proposal.

### **Structure of Evidence**

- 1.10 My evidence is structured as follows:
- 1.11 Section 2 – Introduction covering the Appeal scheme, the design rationale that guided the design team using their crematoria market experience. This section also sets out the benefits of the appeal proposal.

- I.12 Section 3 - Explains the context including the nature of the Appeal Site, surroundings and planning history in brief terms where it is necessary to expand upon what is already agreed in the statement of common ground.
- I.13 Section 4 – This section explores the consideration by the Council of the Appeal proposal including the reason for refusal, and what they consider to be the complaints against the proposal and whether any of those complaints can be sustained. This section also looks at consideration of the appeal proposal by third parties.
- I.14 Section 5 - Policy Framework – I set out the relevant development plan and wider planning policy context to the appeal proposal and the relevant weight to be attributed to the policies that are determinative in this case.
- I.15 Section 6 – This sets out the case for the Appellant and why on a proper consideration of the proposal including the policy framework locally and nationally, the fall-back position, the demonstrable need for the development, the lack of any significant harms, and the mitigation available, the proposal should have been approved by the Council. This section provides an analysis of the key issues in dispute.
- I.16 Section 7 – This section deals briefly with Conditions and mitigation secured by the unilateral undertaking.
- I.17 Section 8 - is the conclusion but in brief I conclude that, in my professional view, the proposed development at the natural burial site in Turners Hill is entirely contextually appropriate for the character of the site’s surroundings, and given fallback, policy support and need. I say this because the proposal has been developed on a thorough understanding of the need for the development, the limitation of the 1902 Cremation Act, as acknowledged by NPPF84, its highly localised impact on the landscape and the overall benefit to the bereaved of Mid Sussex and beyond that the Appeal Proposal will bring.

## **Declaration**

- I.18 The evidence that I have prepared and provided for this appeal (ref: APP/3266563) is true and has been prepared and is given in accordance with the guidance of the Royal Town Planning Institute. I confirm that the opinions given are my true professional opinions.

## **2. Background**

### **The Appeal Scheme**

- 2.1 Topic One of the SOCG (CD 6.1) sets out the key elements of the appeal scheme which I do not repeat here. The following provides additional context to the appeal proposal.
- 2.2 The appeal proposal is for a single chapel crematorium with single abated cremator alongside the facility for natural burial on the site on a scale previously approved on this site. The site is already established through the historic consents and partial implementation of those permissions, as a site for funeral services and final committal of the deceased by natural burial.
- 2.3 In order to secure a comprehensive scheme, the appeal proposal seeks to partly repeat approval for the natural burials but proposes an exchange of the permission for the Chapel building (recently renewed under consent DM/21/0014 issued 08/03/21) for the Crematorium building which could hold services for either cremation or natural burial. This 'exchange' of consents is secured through the Unilateral Undertaking (CD6.5) to prevent an overdevelopment of the site.
- 2.4 The 'chapel' 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 a car park with overspill area in addition to a servicing area to serve functions associated with cremation and natural burial.

### **Design Rationale**

- 2.5 An important component of the overall design approach of the appeal proposal was to take the opportunity to improve upon and rationalise the rather piecemeal number of approvals established on the site to date. The design approach took the well-established 'development team' approach but was primarily landscape-led given the context.
- 2.6 Whilst only in outline, the appeal proposal was supported by high quality illustrative material that demonstrated how a framework masterplan, reflecting best practice placemaking in the National Design Guide could help to create the quality environment. The external environment at the Crematorium coupled with ease of use (in conjunction with the services of the staff) is necessary to create good and lasting positive memory for the bereaved when using the site. Indigo Landscape Architects, working with Jackson Planning were commissioned to consider how best to rationalise consents and create a comprehensive high-quality scheme that would provide the qualitative benefits over other local facilities and provide a fitting development for this most sensitive of uses.

## **Crematoria Market Experience/ Operator input**

- 2.7 The whole approach to the design of the site was to ensure a workable and achievable scheme that would be attractive to the private crematorium market sector. Both Indigo Landscape Architects and Jackson Planning have recent experience in the layout, function and design of crematorium sites and were able to bring to bear the experience of industry standards. Peter Mitchell Associates, who has significant experience also advised on layout and functioning of the proposal, given in depth industry knowledge. The team worked together to develop the sketch masterplans submitted as illustrative material to the application (AP2.5).
- 2.8 The experience of the Team using well established industry standards would allow the market leading operators to have confidence that this is a workable and suitable scheme for implementation.
- 2.9 Whilst the information must remain confidential for commercial reasons, I have a copy of an exchange between the appellant and a market leading operator of Crematoriums setting out commercial terms for the site if planning permission is granted.

## **Appeal Scheme Benefits**

- 2.10 The appeal scheme directly leads to the following benefits:
- I. Improving choice and raising the standard of care to the bereaved – this community facility provides a critical ‘one chance’ life event. There is no opportunity to repeat a funeral and a poor experience at a funeral aggravates grief (CD 11.10),
  - II. Offering the bereaved a choice of committal in a high-quality, attractive, calm and comforting secular setting to cater for those of any faith or none.
  - III. Additional quality and choice in the polarised, costly and broken Funeral Market (CMA report CD 11.10) to avoid the unacceptably long waits for congested and high price services and the chronic pressure of the existing facility at Surrey and Sussex Crematorium
  - IV. Providing a community benefit in terms of DP25 to cater for the inevitable increase in deaths as a result of planned population growth in the District and surrounding area to counter the poor quality and quantity of provision available to residents
  - V. The appeal scheme recognises the benefits set out in the Framework paragraph NPPF84 in meeting a community need beyond an existing settlement whilst exploiting the opportunity for more sustainable means of travel by securing the pedestrian access to St Leonards and Turners Hill, and providing a footpath on the site frontage to avoid the use of the road by pedestrians from the western bus stop.



- VI. The proposal represents the most effective use of land set out in the Framework in Chapter 11 to ensure a wide range of benefits to the community in terms of choices for the bereaved by making better use of the site than the fallback consents (where a site is not allocated for a specific purpose in a development plan as set out in NPFF 121b).
  - VII. I consider that the appeal proposal as a solution to the design scheme of the site is comprehensive and has benefits over the existing composite consents on the site. Mr Gibbins explores the relative impacts of the fallback proposal- especially the visual effects from AONB (see MG proof CD7.2).
  - VIII. The proposal will secure an average biodiversity net gain of 30% ahead of any formal requirement to do so.
  - IX. Economic Benefit – the proposal (although not an employment site) will result in construction jobs and in the long-term local jobs at the site, for the site’s maintenance and in the local supply chain for example funeral directors, florists and hospitality venues in the vicinity.
  - X. The proposal provides an immediately workable design solution for a Crematorium operator within the parameters plan 917-GA-02A (AP2.2) secured by condition 2.
- 2.11 I consider that taken together these are significant benefits for the community, and in particular for the bereaved who would be able to have a better experience as they will have more choice, availability and potentially a more competitive price for funeral services. This proposal would help to fix what the Competition and Markets Authority (CMA) set out in their final report (CD11.10) and recognise is a broken funerals market within the UK. The benefits of the design approach of the Appeal Proposal are also significant over the fall-back consents and part implemented permissions on the Appeal Site.

### 3. The Appeal Site, Surroundings and Planning History

#### The Appeal Site

3.1 Topic Two of the agreed statement of common ground SOCG (CD6.1) confirms the appeal site and its surroundings as follows:

- I. The Site is located within the countryside outside the built-up area of Turners Hill.
- II. The Site is not located within the High Weald Area of Outstanding Natural Beauty. The site is adjacent to and within the setting of the AONB.
- III. There are no landscape designations on the site.
- IV. The site is not located in a valued landscape in terms of Paragraph 170a of the NPPF.
- V. There are no biodiversity designations on the site, it was confirmed by the Council that there would be no impact on the Ashdown Forest SPA and ecology issues can be satisfactorily mitigated.
- VI. The site is not within a flood zone and can there are no drainage concerns arising from the development of the site.
- VII. The site is within a Minerals Resource Safeguarding Zone for Ardingly Sandstone; however, WSCC, as Minerals Planning authority, are satisfied that viability for stone extraction is low and there is no objection to the application in this regard.
- VIII. The site can be satisfactorily accessed from the highway network, and there are no highways safety concerns relating to the appeal proposal from either the Council or the Highway Authority (WSCC).
- IX. The site is part bounded and part traversed by a public footpath 68W. The footpath links to the village of Turners Hill through Butcher's Wood. The footpath links to a route 69W that travels south from the site to Paddockhurst Road.
- X. The site is not within an Air Quality Management Area, and whilst the Council did not object on air quality issues to the proposal, they correctly identified that an application for an environmental permit would be required to fulfil the pollution prevention and control legislative requirements.
- XI. The Council confirmed that there was no impact on heritage interests in the area; and any potential below ground archaeology would be protected through planning conditions.

3.2 Whilst not specifically agreed by the Council the following are matters of fact:

- I. The site is not in the Green Belt.
- II. The site is in part previously developed land as the maintenance building has now been largely constructed; and the site is within the context of Tulleys Farm and its associated

leisure/recreational facilities (maze, fun park, accesses, car parking et cetera) to the west. Within the AONB to the southwest of the Site is the cricket ground and pavilion. As such the Site would be read in context with the scattering of other buildings and uses in the immediate vicinity.

- III. The nearest dwelling is east of St Leonard's Church and is nearly 300m distant from the closest boundary of the site.
- IV. An off-road footpath in the control of the appellant has already been provided to allow direct, safe access to St Leonard's Church, its use in association with the Appeal Proposal would be secured through the s106 agreement (CD6.5).

### **Planning History**

- 3.3 This is set out in tabular form in Appendix C in the agreed SOCG (CD6.1).
- 3.4 There is one update on the planning history since the SOCG was agreed, a non-material amendment approval granted in respect of the maintenance workshop; the decision letter DM/21/1172 dated 15 April 2021 this is included as core document reference M3.10.
- 3.5 The composite plan 917-GA-04-A (AP2.4) is helpful in setting out the extent of approved development on the site.
- 3.6 As part of previous permissions on the site a chapel for the provision of funeral services has approval (recently renewed under consent DM/21/0014 issued 08/03/21 (core document reference M3.9)) and would cater for services of up to 40-60 people. There are 45 car parking spaces provided with the previous approvals that would serve both mourners and staff.
- 3.7 The approval under DM/15/1035 has been confirmed as lawfully implemented. This fallback consent anticipated 2 services a day associated with Natural Burial. However, neither this application nor the subsequent approval of the Chapel (CD 12.1) (or revision or renewal) had any limit imposed on the number of burials or services that could be undertaken. There are no limits on the hours of operation on any of the relevant consents. This unfettered consent is a significant fallback consideration in relation to the Appeal Proposal. I am not aware of any reason why the fallback scheme would not be implemented in full, were the appeal scheme not consented.

## **4. Consideration by the Council and third parties**

### **Environmental Impact Assessment (EIA) screening**

- 4.1 The appeal 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”*. The decision letter is AD1.1c.

### **The Council’s Assessment of the Appeal Proposal**

- 4.2 The Council’s assessment of the proposal is set out in the Officer’s report (OR)(M3.1).
- 4.3 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 and 121(b), or the supporting evidence produced by the Appellant. They also did not properly consider the significant fallback consents and the material similarity of impacts of this proposal to the consented use for the site.

### **Third Parties**

#### **Parish Councils**

##### **Turners Hill Parish Council**

- 4.4 The Appellant’s agent attended the Parish Council meeting that considered the planning application on 1<sup>st</sup> September 2020. The Appellant spoke to the Parish Council and invited questions. However, it became apparent during the meeting that the Parish Council had already considered the application at another meeting, as they referred to notes that were circulated in advance, and they had already made a recommendation to Councillors. In effect the decision of the Parish Council had been pre-determined by some of the members of the Parish Council before the formal Parish Council meeting had a chance to consider comments from the Appellant’s agent. A contemporaneous note of the meeting is Core Document N7.2.
- 4.5 The Parish objected to the proposal principally as they felt it did not comply with the Turners Hill Neighbourhood Plan, they disagreed with the County Council on highways data, they disagreed with the District Council that an environmental impact assessment was not required and they disagreed that the Neighbourhood Plan is out of date.
- 4.6 Turners Hill Parish Council have also made a submission to the Inspector as part of this appeal. They raise the same concerns but also suggest there was no attempt to discuss the site with them.

That is incorrect. As set out above, I attended the virtual Parish Council meeting on 1<sup>st</sup> September 2020 (see N7.2). The Parish Council incorrectly assert that another crematorium is not required due to the proximity of Surrey and Sussex Crematorium. No evidence is provided to support this claim. The Parish Council also suggest an alternative location more central to the District. They do not identify a suitable site or consider potential constraints. As the Inspector will appreciate, identifying a suitably sized site in the relevant part of Sussex would be extremely difficult if not impossible. It is therefore not surprising that neither the Council nor any other person has done so.

- 4.7 Whilst not strictly necessary, I have considered the alternative general (but unparticularised) location suggested by the Parish Council and concluded that it would offer very little relief to the chronic pressure experienced at the Surrey and Sussex Crematorium.
- 4.8 The proximity to the Primary School has been assessed by the Council's Environmental Protection Officer. This issue will have been considered when she commented on the application and repeated the assessment that the impact on air quality from the development would be negligible. An update letter from the Air Quality Consultant is appended to this proof (Appendix B)(CD7.4b & CD7.4c). This confirms that the impact will be insignificant and there has been no alternative evidence to suggest otherwise.
- 4.9 Concerns from the Parish Council over additional traffic generated by the Appeal Proposal were considered by the Highway Authority, the latter confirmed no objection to the proposal and that traffic generated would not be noticeable in the context of daily variations in traffic along the road. The proof of evidence of Mr Last also considers concerns raised over traffic issues.

#### **Worth Parish Council**

- 4.10 Worth Parish Council also objected to the application. The Appellant's agent had not been made aware that the neighbouring Parish Council would be consulted and therefore was unable to attend the parish council meeting to answer questions and present the scheme. The objection from Worth Parish believed an Environmental Impact Assessment was necessary as they raised concerns that emissions could affect the residents of Crawley Down. The response from the Air quality consultant is attached as Appendix B (CD7.4b & CD7.4c). to this proof. In addition, it is important to note the regulation of emissions is controlled by separate legislation as recognised by the Council's Environmental Protection Officer, and a reason for refusal cannot therefore be sustained on that basis.

### **Individual Comments – Planning application**

- 4.11 There were comments both in support and against the proposal by third parties at the planning application stage and as a response to the appeal. Twenty-Seven letters of support were submitted. These included support from some faith groups who welcomed a new facility. Other letters of support included comments that existing waiting times for funerals are excessive and that the additional community facility in addition to the natural burials would be welcomed. One commentator thought the proposal would be better than the Chapel previously approved on the site as it was of a lower scale. In addition, the monopoly position of Dignity Funerals Ltd was cited as a reason to support the proposal. No detailed evidence was provided by any supporters of the proposal at the planning stage.
- 4.12 At the application stage there were thirty-six letters of objection, these covered a wide range of topics from harm to the AONB, high levels of traffic on a congested road, noise and pollution (smoking chimney), too close to Surrey and Sussex Crematorium, inappropriate site next to Tully's Farm activities, Fallback approach is misconceived. There was also a letter signed by 68 residents who objected to destruction of the High Weald AONB. No alternative evidence that would support the objections was forthcoming at the planning application stage.
- 4.13 The assessment from the environmental consultants Entran included at Appendix B (CD7.4b & CD7.4c) of this proof considers the matters raised by third parties in respect of noise and concludes: *"We therefore conclude that noise from traffic noise, the Chapel, fixed plant or Gatwick Airport will not be a material issue for this Appeal"*. Likewise with air quality the assessment submitted with the application showed that impact will be insignificant and there has been no alternative evidence. Issues about proximity to Surrey and Sussex Crematorium are dealt with in Mr Mitchell's evidence.
- 4.14 At the planning application stage, a number of objectors made representations about the motives of the appellant that are not a planning matter.

### **Individual Comments – Planning Appeal**

- 4.15 Comments in support of the appeal proposal cited the following reasons in addition to those made at the planning application stage. The need case for the proposal is indisputable, fallback ignored, confused landscape objection. NHS professional stated *"It's very clear from my experience that this facility was needed before COVID to provide choice and to reduce waiting times. However, with the current situation it is vital to have more facilities."* (TPI4.7) Another local health professional comments that some of their clients have been distressed with the time taken to arrange funerals due to the lack of capacity and choice, Covid has made this worse. (TPI4.9)
- 4.16 Comments against the appeal have been submitted by individuals. The following additional points have been made that rare plants and animals will be destroyed, two funeral corteges could arrive

from different directions and there were comparisons to Balcombe Oil drilling proposals. Appendix B (CD7.4d) to this proof includes an update from the Ecologist who prepared the reports for the site updating the Inspector on issues raised by since the surveys were completed.

#### **Clyde & Co on behalf of Dignity Funerals Ltd**

- 4.17 The response from Clyde & Co has no special status in the planning considerations of the application or with this Appeal decision. They represent a rival business who are the operators of Surrey and Sussex Crematorium at Crawley. Their responses must be considered in this light, they are not impartial commentators, they are attempting to protect their own business interests.
- 4.18 There were two letters submitted on behalf of Dignity Funerals Ltd in response to the application and they have again submitted an objection in respect of this appeal. The complaints they make against the application are essentially that they do not want further competition. It is not the role of the planning system to restrict competition between different commercial interests. The impact of the fallback is extensively considered by Mr Gibbins in his proof. I agree and adopt his analysis which states that overall, the effects on landscape character would be very similar, but in respect of scale of built form associated with the fallback would in fact have greater effects on the surrounding landscape character.
- 4.19 Clyde & Co's selective statements on the issue of over-trading at Surrey and Sussex are addressed fully in Mr Mitchell's proof. Mr Mitchell also explains the significant extent to which Clyde & Co's letters are inconsistent with the positions their client (Dignity) has publicly expressed elsewhere. Most striking is Dignity's promotion elsewhere of an hourly service interval as essential to respecting the needs of the bereaved, which contrasts clearly with the 45 minute service interval operated at Surrey and Sussex.

#### **Consistency of Approach to decision making by the Council**

- 4.20 In the determination of this appeal proposal the Council have proved to be entirely inconsistent with two previous decisions for related development they made on the site. Firstly, application DM/15/1035, (officer report is document M3.8) for the natural burial ground. Secondly, the application for the Chapel renewal made this year DM/21/0014, officer report is document MD3.7.
- 4.21 In addition, the previous appeal decision for the chapel for funeral services on this site will be a material consideration in determining the application. The Inspector, in that appeal decision, set out the main issue as the effect on the character and appearance of the area. Whilst the development plan and NPPF have been updated since the decision, the assessment and planning balance still apply to this current appeal proposal. Since that decision the only substantive change to the site and surrounding area has been the completion of the maintenance building on the Site.

- 4.22 The Council have not demonstrated why it is necessary to depart from the same balance of this assessment, albeit that impacts of this scheme (and revised Chapel proposal) are similar whilst there are some differences to the Appeal Scheme (more car parking for example). Mr Gibbins, in his proof, examines the relative impacts of the two schemes.
- 4.23 In concluding about the impact of the Chapel proposal the Inspector disagreed with the Council about their assessment of the scale of the proposal as excessive. The Inspector was clear in his findings that the appeal proposal was proportionate to the scale of the site and that the design of the Chapel is acceptable in this context. The balance of assessment and this decision is material to this current appeal, the Council have once again overstated the impact of the development. Mr Gibbins compares the impact of the now revised Chapel fallback permission and the appeal proposal in his proof.



## **5. The Planning Policy Framework**

- 5.1 This Appeal will be determined in line with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990, that requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise

### **National Planning Policy Framework (NPPF or ‘the Framework’)**

- 5.2 The National Planning Policy Framework (‘the Framework’) was introduced in March 2012 and updated in 2019 as a key output resulting from the Government’s Plan for Growth agenda. It sets out national planning policies for England and how these are expected to be applied proactively to drive sustainable development and growth and to boost significantly the supply and delivery of new housing.
- 5.3 The NPPF was updated in 2018 and 2019 and it remains the primary expression of the government’s planning policy for England. The status of the NPPF is a matter of some complexity.
- 5.4 The emphasis within the revised NPPF (albeit strengthened) remains on reading the Framework as a whole in deciding whether or not development is sustainable as set out in paragraph 11 where the presumption in favour of sustainable development is explained

### **Planning Practice Guidance**

- 5.5 The national planning policy framework is also supported by the live online guidance in the form of the National Planning Policy Guidance (NPPG). This helps with detailed interpretation of the NPPF.

### **Mid Sussex District Local Plan**

- 5.6 The Mid Sussex District Plan (MSDP) (CD4.1) 2014-2031 was adopted by Full Council on 28 March 2018. Whilst this is a recent plan, it is post-dated by the July 2018 and 2019 updates to the 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.

### **Small Scale Housing Allocations DPD 2008**

- 5.7 The Small Scale Housing Allocations DPD allocates small-scale sites for housing development. It was adopted in April 2008 and forms part of the Development Plan for the district.

- 5.8 This DPD allocates a number of small-scale greenfield sites, which together are intended to meet the requirement for the provision of 1,576 dwellings over the period from 2007-2016. It also allocated a smaller number of sites located on previously developed land. This can best be described as an interim site-specific development plan which only deals with specific proposals and has no relevant policies for the purposes of this application.

#### **Mid Sussex Local Plan 2004**

- 5.9 The 2004 Local Plan has been superseded by the 2014 Local Plan however, there are a few saved policies. The saved policies of the Mid Sussex Local Plan 2004 are all site proposal policies. None of the saved policies has any relevance to the determination of this application.

#### **West Sussex Joint Minerals Plan July 2018**

- 5.10 The one relevant policy is Policy M9 – Minerals Safeguarding Resources

#### **West Sussex Waste Local Plan April 2014**

- 5.11 The one relevant policy in this plan is Policy W23 – Waste Management.

#### **Turners Hill Neighbourhood Development Plan (THNDP) 2016**

- 5.12 The Turners Hill Neighbourhood Development Plan (THNDP) (CD4.2) must be considered in the light of its adoption date and its consistency with both the MSDP(CD4.1) 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.

#### **Emerging Plan – MSDC Sites Allocation DPD**

- 5.13 This plan (CD4.5) is due to be considered at Examination and has reached Regulation 19 stage. The plan contains little in relation to the Appeal Proposal; however, the Appellant has made a valid objection to the plan (CD4.5a), this was submitted and accepted as a duly made objection in relation to the annotations on the policies map. This appears to be a drafting error.
- 5.14 The policies map for this emerging plan has replicated the strategic gap policy from the THNDP (CD4.2). 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 Local Plan. Therefore, this annotation on the policy map has no weight in the determination of this application. In addition, this annotation is unjustified, because THP8's "strategic gap" is not consistent with the provisions of policy DPI3.

## **Detailed Assessment of the Relevant Policies**

- 5.15 At point 16 of the SOCG (CD6.1) a number of policies that are relevant to this Appeal are listed. Those that the Council have specifically identified that the Appeal Scheme is in conflict with are on the LPA's decision notice. However, they have now withdrawn the allegation that the proposal is in conflict with either policy DP25 or DP37.
- 5.16 There is no dispute between the parties that the Appeal Proposal meets the requirements of the following policies:

### **West Sussex Joint Minerals Plan July 2018**

Policy M9 – Minerals Safeguarding Resources

### **West Sussex Waste Local Plan April 2014**

Policy W23 – Waste Management

### **Mid Sussex District Plan 2018**

Policy DPI: Sustainable Economic Development  
Policy DPI4: Sustainable Rural Development and the Rural Economy  
Policy DPI7: Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation  
Policy DP21: Transport  
Policy DP22: Rights of Way and other Recreational Routes  
Policy DP25: Community Facilities and Local Services  
Policy DP29: Noise, Air and Light Pollution  
Policy DP37: Trees, Woodland and Hedgerows  
Policy DP38: Biodiversity  
Policy DP41: Flood Risk and Drainage

- 5.17 The Council has not suggested any conflict with either Policy DPI3 of the MSDP or Neighbourhood Plan Policy THPI0. In the supporting planning statement, I considered both policies, however, both are totally inconsistent with NPPF so should not be given any significant weight at all in the determination of this appeal.
- 5.18 The following detailed assessment of the relevant policies considers whether the policies are out of date.

### **Mid Sussex District Plan 2018**

#### **DPI -Sustainable Economic Development**

- 5.19 The adopted development plan for the district does not have a specific general policy presumption in favour of sustainable development and the only policy in this theme predates the latest version of the NPPF. The policy DPI is directed to sustainable economic development; this was

consistent with NPPF 2012 where paragraph 15 required the sustainable development policy to contain clear guidance how this presumption was applied locally.

- 5.20 This local sustainable policy expressed in Policy DPI is interpreted by Mid Sussex as sustainable economic development and this is now inconsistent with the revised NPPF which does not specify a local definition of sustainable development and therefore this key policy consideration is significantly different from the Framework, and in this application must be attributed limited weight. The whole policy was centered around employment floorspace and job creation and in relation to local communities looked to Neighbourhood Plans to allocate employment sites. It is not an appropriate development management policy for the consideration of this proposal. Its inconsistency with the NPPF further reduces its value and weight.
- 5.21 Furthermore, there is an internal inconsistency in the plan as the preamble to the Adopted District plan suggests that for Mid Sussex Sustainable development means that which (amongst other things) “*contributes to the creation of balanced communities that meet the needs of all residents with appropriate infrastructure and public facilities that are accessible to all*” However, there is no supporting sustainability policy to secure this aim. The applicant believes the development proposal does constitute sustainable development as it meets a very specific social need based on the qualitative experience for the bereaved and access to suitable services in their community. The NPPF requires reading of the whole to consider whether development is sustainable.

### **DPI2 – Protection and Enhancement of the Countryside**

- 5.22 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.*
- 5.23 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, the District Plan at DPI2 does not include an exception in respect of any community facility supported by DP25 for which a countryside location is required as set out in NPPF84. Accordingly, the weight to be given DPI2 must therefore be limited. I accept, however, that if the words “supported by a specific policy reference ... elsewhere in the Plan” were interpreted as applying to a community facility (such as the appeal scheme) which is in compliance

with and supported by DP25, the extent and materiality of this conflict would reduce for present purposes.

#### **DPI6 - High Weald Area of Outstanding Natural Beauty**

- 5.24 This policy seeks to protect the AONB and its setting and remains up to date. This policy is consistent with the NPPF.

#### **DP25: Community Facilities and Local Services**

- 5.25 This policy is the key policy in the plan in support of the proposal. The clear direction in policy is the support for appropriate 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 NPPF 84 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:

*“The provision or improvement of community facilities and local services that contribute to creating sustainable communities will be supported.”*

- 5.26 Whilst the policy demonstrates clear support for the proposal (which is, of course, an “improvement” of the community facilities consented in the fallback schemes) 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, although 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.
- 5.27 DP25 also needs to be considered against NPPF 121, as this is an entirely new section of the Framework that post-dates the adopted policy. In this paragraph local planning authorities are advised to take a positive approach to applications for alternative uses of land which is currently developed but not allocated for a specific purpose in plans, where this would help to meet identified development needs. Given the approval for funeral services and burials together with the identified need for further cremation services the emphasis from the Framework gives more positive support to this policy. At 121b) the Framework also identifies that local planning authorities should make more effective use of sites that provide community services. Whilst the specific example in the NPPF goes on to talk about schools and hospitals it does not exclude sites for funeral services.
- 5.28 In so far as it is necessary to weigh DP25 against DPI2, for the purposes of this application when assessing accordance with the development plan (applying the requirement explained in the Rochdale case (CD12.16) to consider the matter as a whole), it is overwhelmingly the position

that the interests of DP25 should prevail. DP12 is undermined by the absence of any specific criterion allowing community uses consistent with NPPF84 and 92a), subject to the argument about DP12's interpretation which I have canvassed above.

- 5.29 Therefore, overall policy DP25 has support from the National Planning Policy Framework for its positive stance on community development and is largely consistent, but it could be more proactive and positive to truly reflect the updated 2019 version of the Framework. The policy should be given very substantial weight in the ultimate planning balance.

#### **Policy DP29 Noise, Air Quality and Light Pollution.**

- 5.30 Whilst the Council made no complaint in respect of this policy, third parties have raised such issues. In so far as it is necessary to consider this policy, it is consistent with the Framework. The assessment from the Environmental Consultants Entran included at Appendix B of this proof considers the matters raised and conclude there are no significant adverse impacts. The appeal proposal has no conflict with policy DP29.

### **Neighbourhood Plan**

#### **Turners Hill Neighbourhood Development**

- 5.31 As set out above the THNDP (CD4.2) predates the current Mid Sussex Local Plan and is tied to the expired 2004 Local Plan. That plan predates the revised NPPF (2019) and there is a significant lack of consistency with the NPPF which reduces the weight that can be given to the relevant policies of this development plan

#### **THP8 Countryside Protection**

- 5.32 Policy THP8 requires that:

*Outside the Built-up Area Boundary, priority will be given to protecting and enhancing the countryside from inappropriate development. A proposal for development will only be permitted where:*

*a) It is allocated for development in Policy THP1 or would be in accordance with Policies THP7 and THP14 of this Plan or other relevant planning policies applying to the area and:*

*b) It must not have a detrimental impact on, and would enhance, areas of substantial landscape value or sensitivity, and*

*c) It must not have an adverse impact on the landscape setting of Turners Hill and*

*d) It must maintain the distinctive views of the surrounding countryside from public vantage points within, and adjacent to, the built-up area; and*

e) Within the High Weald Area of Outstanding Natural Beauty it must conserve and enhance the natural beauty and would have regard to the High Weald AONB Management Plan.

f) It is essential to meet specific necessary utility infrastructure needs and no alternative feasible site is available.

- 5.33 The cross reference to THPI limits development to allocated sites, THP7 refers to Extensions and Infill development and THPI4 refers to renewable energy proposals. Policy THP8 is therefore inconsistent with the NPPF which has a presumption in favour of sustainable development consistent with the NPPF. Policy THP8 can only be given very limited weight due to the significant inconsistency with the NPPF.
- 5.34 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. (In respect of this latter conflict, with DPI3, the provisions of s38(5) of the 2004 Act are applicable, the inconsistency being resolved in favour of the later-adopted policy.) 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 Appeal Proposal 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, so far as I am aware, by any analysis demonstrating (or attempting to do so) that “existing local and national policies cannot provide the necessary protection”.
- 5.35 Policy THPI3 refers to extension of existing employment businesses, and is supportive of small-scale expansion of existing employment provision, subject to impact. This policy might be considered to have weight as it is consistent with the NPPF. However, it is not relevant, as this proposal is not for employment development (any more so than would be, say, a school, even though some jobs are created).

## **Policy Conclusion**

- 5.36 Whilst it is not proportionate or necessary to argue about application of the tilted balance, I believe some of the most important policies are out of date. Policy DPI and DPI2 and THP8 are all out of date as explained above and must attract limited weight. Of those policies that do attract full weight, DP25 is in favour of the proposal, whose relevance is examined in section 6 at

length and with policies DPI6 and D26, that both attract full weight, the appeal scheme does not contravene either of them and will comply at the reserved matters stage.

- 5.37 In addition to considering whether the range of policies and the weight to be attached in this case, the Inspector must consider whether the proposal contravenes the development plan policies individually and whether the proposal accords with or is contrary to the development plan as a whole (the fundamental Rochdale test CD12.16). The Appellant is clear that the proposal accords with the development plan overall. This is reinforced by the overwhelming need for the proposal, and the very limited (both in time and extent) and localised harms that are consistent with the previous decision making both by Inspectors and the Council in relation to this site, and the significant fallback position in terms of extant permissions and part implemented consents.

### **Other Material Considerations**

- 5.38 The Appellant has considered other material considerations in the National Design Guide and Mid Sussex Design Guide (CD5.2) and these are considered below in section 6.
- 5.39 The Council cite the High Weald AONB management plan (CD9.1) as a material consideration. This is examined below in section 6, and by Mr Gibbins in his proof.
- 5.40 The limits of the 1902 Cremation Act are material in terms of the location of the appeal proposal, again this is discussed in detail in Section 6.
- 5.41 The fallback is a significant material consideration and this is examined throughout this proof and in that of Mr Gibbins.



## 6. Case for the Appellant

### Reason for Refusal

- 6.1 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 DP12, 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 DG11 of the Mid Sussex Design Guide SPD.*

### Alleged Policy Contraventions

- 6.2 The Council have subsequently confirmed that neither Policy DP25 or DP37 of Mid Sussex District Plan are relied upon as advanced in the reason for refusal.

### Support from Policy DP25

- 6.3 This is the most important policy in the plan as it supports the provision or improvement of community facilities and local services that contribute to sustainable communities and as the policy is largely compliant with NPPF as set out above, so it should be given significant weight in the planning balance.
- 6.4 There is express support from policy DP25 of MSDP (CD4.1). The supporting text to this policy identifies a list of community facilities and local services referred to in the policy. The list includes, amongst other things “Cemeteries and Burial Grounds”. The appeal proposal can be considered as provision/ improvement of community facilities. The natural burial ground is (although not yet operational) a community facility as identified in the supporting list. The appeal proposal adds/ and improves a further community facility the Crematorium, which adds choice of committal and in terms of layout and design overall the proposal improves significantly on the existing consents.
- 6.5 The Council no longer rely on DP25 but they do not suggest it supports the appeal proposal. The Council is rightly therefore not suggesting that the fact that the appeal proposals have not been identified in a Neighbourhood Plan or a Site Allocations DPD so does not result in any conflict with DP25. This may be envisaged for many community facilities (hence the last sentence of DP25), but the Council properly accepts that it is not a reasonable expectation here.

- 6.6 In the Council's statement of case at 6.27 the Council assert that neither the THNDP (CD4.2) or the Site Allocation DPD (CD4.5) has identified a need for a Crematorium. There is no evidence that in the preparation of either document that they considered the need for such a facility. I have reviewed the evidence base of both plans and I find that neither plan considered the possibility. The lack of assessment does not demonstrate a lack of need. A development plan cannot consider all types of potential development. Indeed, this position was confirmed in the pre-application response of the Council. (N7.6) The District Plan was prepared without any assessment of the need for a new crematorium. I am not aware of the preparation of any development plan anywhere having carried out an assessment of need for a Crematorium, and even when LPAs are promoting their own Crematoriums they are rarely, if ever, identified in development plans.
- 6.7 I have also reviewed whether the need for community facilities to deal with an increase in deaths is considered in the supporting Infrastructure Plans that reinforce the evidence and implementation of the Council's development plans. The Council cite the evidence base for Policy DP25 as Mid Sussex Infrastructure Delivery Plan (IDP) August 2016 (CD4.7) as setting out the community infrastructure required to support growth in the District. The only reference to cemeteries in the whole of the IDP is in terms of identifying types of infrastructure. Furthermore, the supporting text to DP25 identifies that "*New community facilities and improvements to existing facilities form an important part of these requirements and Town and Parish Councils have provided this information, supplemented by infrastructure providers and other consultees.*" I have asked the programme officer for the relevant evidence on this in relation to the forthcoming Examination into the Sites Allocation Plan so I can understand if the Council consulted the Funeral Industry about needs in the plan area. I have not yet had a response, but I have no reason to suppose that the Council did conduct such a consultation exercise. It cannot be expected that Parish or Town Councils would identify the need for a crematorium, as they would not generate enough deaths in each Parish to warrant this. This is all the more so when it is recognised that the urgent need for additional crematorium facilities in the area arises from the over-trading of an existing facility located in the neighbouring Crawley District.
- 6.8 The Council identified in the IDP (CD4.7), as part of the duty to co-operate, the extent of cross-boundary infrastructure needs. They consulted with West Sussex County Council and neighbouring authorities. The District Council report that they already work co-operatively with these authorities on areas of common interest and cross-boundary issues to ensure that these are effectively dealt with and opportunities are taken to work together where it is beneficial to do so. This includes work on transport, flood risk, green infrastructure, mitigation strategies in relation to Ashdown Forest, sub-regional economic priorities, and Gatwick Airport. This list does not include community infrastructure. Although it is assumed this is not a closed list, it is clear this is not a priority.

- 6.9 The IDP(CD4.7) considered cross-boundary infrastructure needs and Appendix B of the IDP provides details of cross-boundary infrastructure needs where known. No needs relating to final committal of the deceased are included. The Council remark that *“Further work will need to be undertaken to determine if these infrastructure schemes require funding and the potential implementation details”*.
- 6.10 It is clear that neither the District Council, nor the Parish Council (the latter understandably so) had considered the possibility of the need for a crematorium in preparing their development plan. Indeed, this is confirmed in the pre-application response by the Council. In simple terms if you do not consider the issue of need, you will not know if need is either met or not.
- 6.11 A more recent MSDC Infrastructure Delivery Plan has been developed with the Site Allocations DPD. This was produced in December 2020 (CD 4.8). The only mention of cemeteries is in the description of types of infrastructure. The document confirms: *“The IDP forms a key part of the evidence and identifies the future infrastructure requirements as a result of anticipated future growth.”* It is clear the Council does not consider the need to cater for additional deaths in the District that are an inevitable consequence of population growth. This is unfortunate.
- 6.12 Furthermore, even if the Council had consulted the Funeral industry, it is my experience that as a rule the operators do not promote sites in the development plan process. The reason for this is industry confidentiality. If an operator identified the need for a new facility in a plan area it would start a bidding war/ race to achieve planning permission and would pre-empt the long process of site allocation. My recent experience at Bognor Regis Crematorium referred to in sections 1 and 2 above is a case in point. A rival planning application was submitted only 500 metres away from the consented scheme, just weeks after the submission of my planning application. The latter failed on flooding issues, but had it been successful it would have inevitably met the same need that the approved scheme met.
- 6.13 It is common that rival applications are often submitted in similar time periods and often considered at the same planning committee, as was the case at Bognor Regis, therefore, the industry will not actively promote sites through DPDs and this means they are not identified as requirements in infrastructure plans. It is clear that absence of facilities to support the needs for funerals in an IDP/ site allocations plan or NDP is not a rationale that supports the Council's objection to the support that policy DP25 offers this proposal.
- 6.14 It is also the case that the Council, had they considered it, would have concluded that some of the need for funeral services had been met by the permission for natural burial and a chapel for funeral services at the site (M3.8). The general rule with Site Allocation Documents is that they do not allocate all permitted schemes in the plan, strategic housing and employment permissions may be included but rarely are individual infrastructure permissions reflected in a site allocations DPD. In addition, this is supported by the Framework, Paragraph 121 refers to the direction that

local planning authorities should take a positive approach to applications for alternative uses of land which is currently developed but not allocated for a specific purpose in plans, where this would help to meet identified development needs. In particular they should support proposals to and under criterion b) to make more effective use of sites that provide community uses. This appeal proposal is such a case.

- 6.15 Criticism of a lack compliance with policy DP 25 cannot be laid at the foot of the appellant as a result of lack of a need assessment that the Council did not undertake in the plan making stage of the planning process, and the failure to identify facilities and sites for the inevitable increase in deaths in the District that follow from growth; NPPF121 is clear that absence of a formal allocation for a community facility is not a reason to refuse planning permission.

### **DPI2 and DPI6, THP8 and THP13**

- 6.16 Section 5 above has discussed the weight to be afforded to the two District Plan policies of restraint that the Council rely upon in the reason for refusal. The assessment confirms that DPI2 is not fully compliant with NPPF2019 and must be calibrated to reflect this. DPI6 enjoys the full support of NPPF. Whilst both policies seek to restrain the harm to development they cannot be considered in isolation. The Appellant is clear that there are other material considerations that must be taken into account. These are considered below.

### **1902 Cremation Act**

- 6.17 The Council have accepted in SOCG (CD6.1) Topic I (5) that the 1902 Cremation Act will “*The Act significantly constrains the potential location of the crematorium building within the appeal site*”. Whilst this of course is true, there are wider implications for this Act. It means that the development must generally be located in the countryside outside built up settlement boundaries, which for policy reasons are always tightly drawn around buildings and their immediate curtilages.
- 6.18 It has been accepted in other appeal decisions that the constraints of the legislation in the 1902 Cremation Act acquire new crematoria to have a rural or countryside location. This is well rehearsed in the DL for Appeal 2211858 (Great Glen) (CD12.3) paragraphs 10-11 which usefully considers other appeal decisions too. The Inspector in this case confirmed:

*“10. I do not consider the policy is fundamentally at odds with national objectives for the rural economy although I agree with the Council that its restrictive approach is not entirely consistent with the NPPF. In particular, it does not reflect the positive approach advocated in paragraph 28 of the NPPF which supports the sustainable growth of all types of business in rural areas. This is an important consideration when restrictions on the location of crematorium imposed by the Cremation Act 1902 are taken into account. Sites should be at least 200 yards (183 metres) from any dwelling and at least 50 yards (46m) from a public highway. Finding a suitable site in an urban area would*

*be difficult, especially one as large as that proposed in this case, while a location immediately adjacent to a rural settlement presents similar problems.*

*11. Advice on the siting and planning of crematoria is set out in guidance published in 1978. This says sufficient land should be available to enable a crematorium to operate effectively and to provide appropriate facilities. It also refers to the desirability of sites having good views. While not precluding urban sites, I agree with the appellant that it appears to 'steer' crematoriums away from developed areas.*

- 6.19 The Inspector, in that case, also had his attention drawn to a number of appeal decisions where inspectors have found the factors involved in the siting of crematoria make rural locations a more likely option.
- 6.20 In this respect the force of policy DPI2 must be limited as it is a type of use that requires a rural location and as set out in NPPF84, updating the earlier development plan policy that gives express support for proposals beyond existing settlements. In addition, the final sentence qualifier to NPPF84 gives encouragement to suitable opportunities for the use of previously developed land, and sites that are physically well related to existing settlements, as is the case with the appeal site. The additional support from NPPF112b) further bolsters the support in favour of the site, despite its location in the countryside.
- 6.21 The Neighbourhood Plan policies in relation to countryside restraint are entirely inconsistent with the NPPF as set out in section 5 and can therefore be given no material weight. THPI3 is a policy with regard to employment use and is not relevant to the application for a community use. Even if some very limited weight is attributed to these policies they are unable to counteract the overwhelming weight of the 1902 Act and NPPF84 and 121(b) which are explained above (let alone the comparison with the fallback position).

### **Harm to the setting of the AONB and its management objectives?**

- 6.22 Whilst the full force of policy DPI6 is accepted as compliant with the NPPF its role in the consideration of the appeal proposal must be considered against the evidence of harm to the setting of the AONB. Since the agreement of the SOCG(CD6.1) the Council have considered that the proposal will have minimal impact on the setting of the AONB (Topic 4 point 6). The particular emphasis on this policy is that the proposal should not adversely affect the views into and out of the AONB by virtue of its location or design. Mr Gibbins in his proof (and using the photomontage prepared), has shown that the fallback proposal for the Chapel is more prominent in views in and out of the AONB than the appeal proposal. In this regard it can be legitimately claimed that development of the appeal proposal will contribute to the setting of the AONB by removing (through the s106 Unilateral Undertaking)(CD6.5) a more prominent proposal that would affect views into and out of the AONB by virtue of their location and design. The appeal proposal therefore has a net gain to the setting of the AONB.

- 6.23 The Council appear to make a complaint in the reason for refusal regarding the visual qualities and essential characteristics of the AONB by quoting policy DP 16 and citing the objectives FH2, and FH3 of the High Weald Management Plan 2019-24 (CD9.1). Mr Gibbins considers this in his proof.
- 6.24 It must be noted that Objective FH2 and FH3 of High Weald Management Plan are not planning policies, they are other material considerations, in this respect they have more limited weight in the balance of considerations on the site. In addition, they are not directly applicable as the appeal site is not within allocated AONB, although it is within its setting.
- 6.25 The second balance that must act counter to this alleged contravention is the fallback position. The site has planning permission and part implemented consent for an acceptable community use that will result in change to the site. The extant permissions allow the site to become completely wooded over time with the development of the site for natural burials and the permissions for the Chapel, reception and maintenance buildings and car parking. The Council have already accepted a change to the setting of the AONB, and it therefore seems entirely inconsistent to be objecting to the current proposals on this basis.
- 6.26 The change over and above the approved development is minor, especially in terms of landscape scale aspirations, so therefore cannot be characterised as so harmful to outweigh the obvious and demonstrable need for the development. Mr Gibbins directly compares impacts on a variety of receptors but in particular footpath 68W in the short, medium and long term. He concludes that the approved schemes and the appeal scheme are essentially the same in landscape/visual impact terms. He also concludes that overall, the effects along Turners Hill Road would be similar (and states that he considers neither to be significant), but in the short term at least the approved Chapel would be more visible from the road.
- 6.27 When considered in the round (and in this regard improved upon by swap of Crematorium for Chapel) it is not possible to support the contention that impacts of the appeal proposal are so great that it would harm the intrinsic beauty of the countryside and setting of the AONB to the extent the Council claim. The alleged harms are completely overstated when considered rationally and with the proper full balance of all considerations including the important fallback considerations.

### **DP26 and Design Guidance**

- 6.28 The Council cite DP26 as being contravened by the proposal. This policy seeks good design practice and has a list of criteria that a proposal must meet. The Council have not indicated which of the design criterion that the proposal does not meet or would not be capable of being met in a reserved matters application.

- 6.29 The only notion of any complaint on design has come from 6.14 of the Council's statement of case where they suggest that the Appeal Proposal includes an "unbroken developable area of 170 m across the southern field and 120 m in depth". This will simply not be representative or characteristic of the indicative plans. The built development will not occupy this entire area. The gardens of remembrance occupy at least a third of that dimensioned area, and with interspersed landscaping this further reduces the built extent.
- 6.30 The Appellant acknowledges that the appeal proposal includes an increase in car parking areas over previously consented schemes. There are 66 additional spaces possible over the approved number of spaces (limited by condition). It would appear the Council have not considered the impact of intervening planting around and between carparking bays or the effects of the significant level changes across the site (which are one of its defining characteristics). The misunderstanding of the proposed development form and its impact are considered in Mr Gibbins' proof. In any event the layout is illustrative, and the Council will have full control at the reserved matters stage to secure appropriate mitigation should the appeal be allowed.
- 6.31 Mr Gibbins' proof has explained how the design approach was to ensure a building of lower scale by expressing absolute maximum height parameters in terms of AOD m, and a fixed location parameter to ensure it is located at the optimal point in terms of visual impact in respect of the AONB and the surrounding landscape context. In order to assuage any concerns about the potential scale of the building the Appellant proposes a condition limiting the size of the crematorium building to 600msq GIA, within the location shown on the parameters plan 917-GA-02A<sup>1</sup>. (This represents an additional 34sqm over floorspace already approved in detail for the chapel and reception buildings). This is consistent with operators' requirements<sup>2</sup> for a single chapel facility, and will provide more than sufficient internal floorspace comfortably to accommodate the largest events, as well as accommodating the necessary infrastructure.
- 6.32 There is no complaint about impacts on amenity of residents, there is no complaint about impact on trees or biodiversity. Matters of sustainability of the building design are a reserved matter and therefore are not a barrier to approval. The proposal achieves the last criterion in particular by optimising the use for funerals by offering a choice of burial or cremation. This is consistent with NPPF 121b) which urges the more effective use of sites that provide community services.
- 6.33 The Council also claim the appeal proposal contravenes the Mid Sussex Design Guide SPD and in particular DG3, DG7 and DG11. As Mr Gibbins has explained in his proof at 7.2.7, he approached the design as wholly landscape led as can be witnessed in the supporting planning application documents. The design (albeit) illustrative has been developed by the landscape architects, not by the commercial operator. The very design rationale was based upon, and

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<sup>1</sup> Note this now supercedes the Appellant's Statement of Case where footprint was not at that point limited by proposed condition

<sup>2</sup> Westerleigh at Bognor Regis have recently secured permission for a crematorium of 580.77sqm GIA (ref Y/12/21/NMA 01/03/21)

designed to improve upon, the disparate consents and to provide a landscape framework that addressed and enhanced the setting. It is evident from the constraints led approach that the design considered off-sets to woodland and considered the topography of the site. It is also evident from the consideration of the comparative impacts of the Chapel and Crematorium made by Mr Gibbins in section 10 of the Landscape and Visual Appraisal submitted with the application. I completely fail to see what part of DG3 is not met by the proposal. This does not support the refusal when considered properly in detail.

- 6.34 Likewise with Mid Sussex Design Guide SPD DG7. This guidance principle requires the proposals to respond to topography and strategic views. In particular it looks to protect views across open countryside especially in the High Weald Area. At 7.2.8 in Mr Gibbins' proof he explains how the building was deliberately sited to protect the skyline (unlike the Chapel). Mr Gibbins explains the views he is seeking to enhance for users of the site, he confirms he sees no conflict with principle DG7, and as he rightly points out any particular concern could be resolved at the Reserved Matters stage. This design principle cannot sustain the reason for refusal, nor could it, given the outline nature of the proposal.
- 6.35 The third design principle quoted from the mid Sussex design guide SPD is DG 11 which refers to townscape and heritage considerations of a site in establishing the structure of development. There is no objection with regard to impact on heritage assets as considered by the Council's consultant on heritage matters (The Heritage Conservation Team, Surrey County Council). They confirm: "*Cartographic research undertaken as part of the Assessment has identified a potential historic hedgerow within the site. I am pleased to note that the proposal submitted, largely retains and minimises impact to this feature. With the exception of this, no known Heritage Assets have been identified which are likely to be impacted by these proposals*". It therefore is unclear how there can be any contravention of the design principle. This is not set out in the Council's officer report (M3.6) or Statement of Case (CD6.3) Furthermore, if the complaint is against the historic landscape, this alleged harm is misplaced as the fallback consents set a benchmark of accepted change on the site.

### **NPPF in support of the Council's Reason for Refusal?**

- 6.36 The Council claim the NPPF supports their reason for refusal. I can find no such support in the parts of the NPPF relied upon by the Council. As with development plans the NPPF must be considered as a whole. Therefore, the support the Council rely on must be read against those parts of the NPPF that support the proposal in particular NPPF 83, 84, 92 and NPPF121b).
- 6.37 The Council suggest the appeal proposal does not comply with NPPF 8,11, 124,127, 130 and 170.
- 6.38 With regard to sustainable objectives and NPPF8 this is considered below in section 6.56-6.59. The Appellant completely disagrees that this sustains the Council's reason for refusal and explains why the reverse is true.



- 6.39 With NPPF124 NPPF127 and NPPF130 the Council are alleging poor design. This is not supported by any expert assessment of the design rationale or approach to the appeal proposal. There is no consideration of the design improvements over and above the fallback consents. In my professional opinion, as a qualified and experienced urban designer, the potential of the proposal (given the parameters fixed at this outline stage) are a vast improvement on the composite consents on the site. Indeed NPPF 130 supports the appeal proposal because it says where the design of the development accords with clear expectations and plan policies, design should not be used by the decision maker as a valid reason to object to the development. The Council has not and cannot demonstrate where the appeal proposal fails to meet the design expectations of the plan. The proposal has not been considered by an Architects' Panel or independent Design Review Panel as required by NPPF129. At no point during the determination of the application did the Council raise any issues on design quality or seek any amendments to the scheme to overcome any alleged concerns that they had, neither did the Parish Council when I attended the virtual meeting. No concerns regarding the design of the proposal were ever communicated to the appellant. Furthermore, the Council have a significant degree of control over the design details of the proposal at the Reserved Matters stage. The reliance on NPPF 124, 127 and 130 cannot reasonably be sustained.
- 6.40 When considering NPPF 170 it is very difficult to understand the Council's objection to any part of this list of criteria. At 7.2.15-16 of his proof Mr Gibbins confirms in his opinion that the proposal protects and enhances the value of this landscape (criterion a) and does recognise the intrinsic character and beauty of the countryside (criterion b). Criteria c) e) and f) do not apply to this site and with criterion d) the proposal includes an average 30% biodiversity net gain that be secured through the agreed condition 5. Therefore, there is no conflict.
- 6.41 Overall, the Council have failed to evidence any conflict with the Framework that sustains the reasons for refusal, especially when considering the particular positive support from NPPF 83, 84, 92 and 121b).

### **Fallback**

- 6.42 The strength of the fallback position was set out in the planning supporting statement, was highlighted at planning committee and set out in the Appellant's statement of case. The development proposals for the appeal site include a repeat of the approved natural burials in the northern field parcel, the car park to the west of the entrance and the maintenance building. There can be no complaints about the acceptability of all of those parts of the proposal given they have either been approved or part implemented. This is a significant material consideration in favour of much of the appeal proposal.
- 6.43 In addition to this there exist the important consideration of the approval of the chapel, recently renewed so that the permission is extended until March 2024. This consent allows the use for

funeral services associated with natural burials at the site. There is no limit on the number of services, the hours of operation, or the days of operation. This is also material.

6.44 The appeal decision at Bromsgrove (appeal reference 3211026(CD12.2)) has similarities to this appeal proposal, the proposal was to extend and change the use of a chapel building to allow for cremations to take place. In that decision the Inspector accepted that there was a fallback position of services for natural burial and that these were not restricted. At paragraph 18 of the decision letter the Inspector concluded that they were mindful that the burials could take place seven days a week, which was more than the appeal proposal they were considering. The Inspector took into account in the consideration of that appeal decision that the extant permission could be completed. The same is the case here, the hours of operation (suggested by the conditions in the SOCG (CD6.1)) could result in a potentially less intense use of the site.

6.45 At paragraph 30 of the Bromsgrove decision (CD12.2), the Inspector also considered the level of parking associated with burials as opposed to cremation and confirmed that she was not persuaded that the level of parking at the appeal site would be significantly different to that occurring under the extant planning permission at any one time. The suggestions by the Council in respect of this appeal proposal in the Officer Report and in the statement of case (para 6.16) that the fallback position will represent a less intensive development of the site is not supported by the Bromsgrove appeal decision or by any evidence that the Council have put forward. Whilst there are more car parking spaces proposed in the Appeal Proposal (a maximum of 66) this is only to cater for occasional large events. The car parking associated with permitted natural burial services or for cremations would be very similar (except in the event of direct cremation which would be less).

### **Issues in Dispute**

6.46 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

6.47 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 impact that is the consequence of a development in meeting this need is inevitable.

6.48 The assessment against policy both locally and nationally has shown the Council's case is not supported by the policy framework. Instead, the Council's case rests largely on there being no 'overriding' or perhaps 'no need' for the development. It is not clear which is the case from the

Council's Statement of Case. At the planning application stage, the alleged issue was that there was no overriding need for the development, however there was an acceptance that the proposal would meet need for residents within Mid Sussex District.

- 6.49 Mr Mitchell deals with the case for need in his proof.
- 6.50 The appellant is clear that the weight to be afforded the need for the development should be substantial. This position has been shown to be the case in numerous appeal decisions, and in particular is one of the few types of development in Green Belt where very special circumstances are demonstrated by the need for the facility. However, this is not a Green Belt site, this is a partly previously developed site with a significant range of fallback permissions that establish funeral uses and services.

### **Other Issues**

- 6.51 The application is supported by an air quality assessment; it considers both emissions from the use of an abated cremator on the site and those from additional journeys and their impact on the sensitive Ashdown Forest SAC/ SPA to determine if there is a significant effect. Emissions from the Crematorium will be controlled by an Environmental Permit. Regard must be had to paragraph 183 of the Framework, which requires local planning authorities to assume that where the control of processes or emissions themselves are subject to approval under pollution control regimes, that those regimes will operate effectively.
- 6.52 The Competition and Market Authority report (CD11.10) confirms that the market for funeral service is broken and muted. The report identified Planning as a significant barrier to entry into this difficult market. The protectionist stance by the dominant operators is evident in the Clyde & Co objection to this proposal on behalf of Dignity Funerals. But it should be noted that the Bluebell Cemetery Appeal decision (PINS Ref) 3243177 raised issues about competition, the Inspector remarked in the DL:

*"35. There is an extant planning permission for a crematorium at another site, Oak Tree Farm, just over a mile south of the appeal site. The need for a second crematorium has been raised by a number of interested parties. However, it is not the role of the planning system to restrict competition between different commercial interests."*

### **Balance**

- 6.53 The Council's assessment is wrong. The Council has over-stated landscape / visual impact and under-stated the need for, and benefits of, the appeal scheme.
- 6.54 Moreover, the fact that the site is already consented for use for final committal by burial and funeral services in the chapel has been completely overlooked by the Council.

6.55 Overall, the Council has not applied a proper balance of considerations in this case. This proof and the proofs of Mr Gibbins and Mr Mitchell explain why that is the case. The whole appeal could have been avoided if the Council had engaged on the critical issues especially the need case which is so compelling and so central to the decision on this site.

## **Is the proposal sustainable development?**

### **6.56 Sustainable Location?**

1. The pattern of use of a Crematorium does not fit ordinary patterns of travel demand. The facility will not draw the same users from the same areas on a consistent basis save for 6 staff employed. There are public transport and cycling options for potential employees. Local mourners who return to pay respects at the site can also use public transport and cycle access. Therefore, in terms of location (and given restrictions set out in 2 below) this is a sustainable site for this particular development.
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.

6.57 The components of sustainable development are set out in NPPF8; the test is three pronged, and considers economic, social and environmental objectives. It is clear that the proposal would support economic objectives as this is a necessary part of community infrastructure that supports sustainable communities, it would have economic benefits in construction and the local supply chain in terms of funeral directors, florists and hospitality venues for wakes. This has been accepted in other appeal decisions on Crematoria<sup>3</sup> and given moderate weight in support of the proposal.

6.58 It is clear also that the proposal meets the social objective in providing a very necessary component of social infrastructure. This component also seeks to ensure accessible services that reflect current and future needs and support communities, health, social and cultural well-being. Future growth within the district will result in additional deaths which must be catered for in appropriate and well-designed funeral services. The social component of good services at the point of a funeral is an essential part of social support for bereavement. Evidence has shown that poor quality/ poor experience of funeral services can exacerbate and prolong the grieving process, which may have a significant social cost. The need for the facility has been accepted in other appeal decisions on Crematoria<sup>4</sup> as having substantial weight in support of the proposal.

6.59 The environmental objective of sustainability is also met by the proposal, the assessment above of the location shows that normal considerations regarding access by public transport are not

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<sup>3</sup> APP/C3430/W/15/3039129 (Appeal A) and 3039163(Appeal B) Essington S of S Decision 31 March 2021

<sup>4</sup> APP/C3430/W/15/3039129 (Appeal A) and 3039163(Appeal B) Essington S of S Decision 31 March 2021

directly relevant to this type of proposal. NPPF84 also acknowledges this. In terms of the natural built and historic environment the scheme enhances the situation over the existing consents and fallback approvals it proposes making more effective use of the site and includes a 30% net biodiversity gain on average. Sustainable urban drainage system will ensure prudent use of surface water and issues over the sustainability of the building can be secured at the reserved matters stage.

### **Conclusion –The Proposal**

- 6.60 The Appellant's case is that overall, taken as a whole, the Appeal proposal is in compliance with development plan, especially DP25 and with express support in NPPF84. None of the reasons for the refusal the Council rely on can be properly sustained by objective analysis as will be shown in the proofs of Mr Gibbins and Mr Mitchell.
- 6.61 In addition, with the other significant material considerations that weigh significantly in favour of the Appeal the proposal will deliver a high-quality scheme of development that would lead to significant benefits as set out in this proof at section 2 of this proof, these far outweigh any minor residual and inevitable harms of the proposal. This is a sustainable proposal for a development that must rely on a location outside the settlement boundaries. There are collectively sufficient public benefits to outbalance any minor, short lived and inevitable impacts to landscape, especially given those already approved at this site.

## **7. Section 106 / conditions**

### **Mitigation by Condition/ s106**

- 7.1 Draft Conditions are included in Appendix A of the SOCG. These are agreed between the parties. Two additional conditions are proposed by the Appellant to ensure the quality of the proposed development on the site. These are included in Appendix D to this proof. They have been provided to the Council for its consideration five working days in advance of exchange of proofs.
- 7.2 The Unilateral Undertaking has been prepared in draft (CD6.5) and is submitted alongside this proof of evidence. The UU secures that the Chapel approval would be swapped for the Crematorium approval should the appeal be allowed. It also secures access for the users of the appeal site to the footpath to St Leonard's Church and the village of Turners Hill. The additional mitigation to add a further benefit in respect of proposed improvements of road markings leading to the crossroads junction of B2110 and B2028, if deemed acceptable to the Highway Authority, can also be captured in the Unilateral Undertaking.

## 8. Conclusion

### Conclusion

- 8.1 Mid Sussex District Council's refusal of application DM/20/2877 is clearly wrong, and this appeal should be allowed. The appeal proposal has a significant number of benefits listed in section 2 above, these significantly outweigh the inevitable minor and short-term landscape impacts.
- 8.2 The Council should have approved the application given the overwhelming need for it, the compliance with the development plan, and the safeguards in the reserved matters and planning conditions to provide appropriate mitigation. The Council have attributed the wrong weight to out of date policies and material considerations that do not carry the weight the Council purport.
- 8.3 The harm to the countryside, the setting of the AONB from the appeal proposal has been overstated, the assessments of other applications on this site have shown just how inconsistent decision making is in the Council. Moreover, the fallback considerations have been given insufficient weight by the Council in considering the planning balance. The opportunity to achieve an attractive comprehensive development scheme (that is less harmful to the AONB than extant permissions) has been missed.
- 8.4 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.
- 8.5 The Appellant's case is that the Appeal Scheme accords with the development plan taken as a whole, and the basket of policies in so far as they are not out of date, expressly support the proposal. The Appellant's case considers the proposals against the economic, social and environmental objectives of sustainable development. The Appellant's evidence also addresses matters such as the adverse impacts alleged by the LPA and third parties. It is clear that planning permission should be granted as the benefits of the Appeal Scheme significantly outweigh any perceived adverse impacts.
- 8.6 On this basis, I respectfully request that the Appeal is allowed.

## Appendices



# Appendix A -Qualifications and Experience

- a. My name is Lisa Jackson I am a chartered member of the Royal Town Planning Institute (since 1990).
- b. I hold a Master of Arts Degree in Urban Design and Planning from Oxford Brookes University (1992) and a Bachelor of Science degree in Town and Regional Planning from the University of Dundee (1988).
- c. I am the managing director of Jackson Planning Ltd, an independent town planning and urban design consultancy, which I established in 2010. Previous to this I was in practice with Turley Associates from 2003 to 2009 and was appointed as Director of Urban Design in 2006.
- d. My experience as Town Planner and Urban Designer is over 33 years with positions held in both local authorities and private consultancy. I specialise in contextual design solutions based on an assessment of character and have been responsible for a number of significant planning consents including two crematoria.
- e. I have appeared as expert witness, both as a town planner and urban designer, at a full range of planning related events including in the High Court, Local Plan Examinations, Community Infrastructure Levy Examinations, Neighbourhood Plan Examinations and s78 appeals.
- f. I am the author of numerous character studies including Bath, Falmouth, Wokingham District, Petersfield, Bishop's Waltham and various Village Design Statements. I was the main author of the Chilterns Design Guide. I have assisted with three neighbourhood plans, two of which have been 'made'.
- g. I am registered Code Assessor for the Code for Sustainable Homes. I also have direct and in-depth hands-on experience of zero carbon housing. I completed (2013) the construction of my own zero carbon certified PassivHaus; which I designed, procured and project managed as a self-build home within the Wessex Downs Area of Outstanding Natural Beauty (AONB).
- h. I have been a judge on the RTPI regional design awards and on the Solent Design Awards scheme a biennial design award programme. I am a member of the South West Design Review Panel.
- i. I have worked on an extensive range of residential, commercial and mixed-use developments in my career both as a planner, designer and design advisor to local

authorities. I developed the masterplan for Sandleford Park, Newbury (2000+ homes). I advised Bath and North East Somerset Council on the design codes for Bath Riverside and negotiated with the developer to secure a 2000+ scheme on a sensitive site within the world heritage site.

- j. I have authored over 20 development briefs for local authorities and drafted conservation area statements. I am currently updating the village design statement for my village within the North Wessex Downs AONB to align with the National Design Guide.



# Appendix B

Core Documents CD7.4b & CD7.4c

# Appendix C

Core Document CD7.4d

## Appendix D Additional Draft Conditions

A. Notwithstanding the details on the approved parameters plan 917-GA- 02A the floorspace of the crematorium building shall not exceed 600 square metres gross internal area.

B. Prior to the use of the crematorium commencing a management plan securing the maintenance of the footpath from the site to St Leonard's Church shall be submitted to and approved by the local planning authority and thereafter maintained in accordance with that schedule.