



Appeal Decision

Hearing Held on 11 June 2019

Accompanied Site visit made on 11 June 2019

Unaccompanied Site Visit made on 10 June 2019

by Zoe Raygen, Dip URP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st July 2019

Appeal Ref: APP/P1805/W/18/3211026

Land adjacent to New Inns Lane, Rubery, Bromsgrove

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by h2land against the decision of Bromsgrove District Council.
 - The application Ref: 17/01429/FUL dated 12 December 2017, was refused by notice dated 12 March 2018.
 - The development proposed is described as change of use of maintenance/chapel building approved under planning permission 12/0448 to allow for cremations to take place, reduction in scale of building and hard standing and reduced operating times.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of maintenance/chapel building approved under planning permission 12/0448 (but not yet built) to allow for cremations to take place, reduction in scale of building and hard standing and reduced operating times at land adjacent to New Inns Road, Rubery, Bromsgrove in accordance with the terms of the application Ref: 17/01429/FUL dated 12 December 2017 subject to the conditions set out in the schedule to this decision notice.

Application for Costs

2. An application for costs was made by h2land against Bromsgrove District Council. That application is the subject of a separate Decision.

Background and Main Issues

3. Planning permission was granted at the appeal site for a change of use of pasture land to a cemetery development including a chapel and maintenance building¹. There is no dispute between the parties that development has commenced to implement this permission, and all the pre-commencement conditions have been discharged. I saw at my site visit that the access has been partly laid out and constructed, and part of the foundations of the proposed building have been implemented. I therefore see no reason to disagree with the agreed position that the permission remains extant.
4. Subsequently, three planning applications have been submitted to seek permission to undertake cremations within the appeal site, all of which have

¹ 12/0448 (the extant planning permission)

been refused by the Council². The 2016 planning application was the subject of an appeal by the appellant³. The appeal was dismissed as the Inspector was of the view that the very special circumstances required to allow development within the Green Belt had not been demonstrated at that time. The appellant has submitted this appeal in relation to the latest refusal.

5. Although the development has been described as the change of use of the maintenance/chapel building, it has not yet been completed on site. Therefore, this proposal would involve the construction of new building within the Green Belt which would not fall within any exception within Policy BDP4.4 of the Bromsgrove District Plan 2011-30 adopted January 2017 (the BDP) or paragraph 145 of the National Planning Policy Framework (the Framework). It is agreed therefore that the proposal would be inappropriate development in the Green Belt. I concur with this view.
6. As the building has not yet been completed, I have, with the agreement of both parties, slightly amended the description of the development so that this is clear.
7. Within that context the main issues are:
 - The effect on the openness and purposes of the Green Belt;
 - The effect of the proposal on highway safety and
 - whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Openness and purposes

8. The appeal site is formed from three fields which are mainly grassland and enclosed by mature trees and hedges. As such its open, undeveloped form contributes positively to the West Midlands Green Belt.
9. The Framework notes that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
10. Consequently, the introduction of a new building, together with roads and car parking spaces where there is currently no development, would be harmful to both the visual and spatial openness of the Green Belt. Furthermore, the provision of a large amount of parking spaces would lead to vehicles being parked, further reducing openness, albeit on a temporary basis. Although sited in the centre of the field, it is likely that the building would be visible through the gap in the green cover created by the access road.
11. The extent of the proposal would mean that it would result in the encroachment of development into the open countryside from the surrounding residential areas. This would be contrary to one of the five purposes of the Green Belt included within paragraph 134 of the Framework.

² 14/0575, 16/0581 (the 2016 planning application) & 17/01429/FUL

³ APP/P1805/W/17/3168297 (the previous appeal decision)

12. I saw at my site visit that, even with the proposed development, there would still be a substantial area of Green Belt between Rubery and surrounding settlements. Therefore, I am satisfied that the proposal would not result in the merging of neighbouring towns, contrary to one of the purposes of the Green Belt.
13. For the reasons above, I conclude that the proposal would cause harm to the openness of the Green Belt and be contrary to one of its purposes resulting in conflict with the Framework.

Highway safety

14. The Council's fundamental concern with the proposal relates to the increase in traffic movements involving slow moving vehicles, which may result in drivers becoming frustrated, and attempting to overtake the cortege, leading to unsafe manoeuvres within the highway. In addition, local interested parties point to parking on the highway along New Inns Road, including outside Reaside Academy School, which reduces the width of the carriageway on one of the routes to the appeal site, the narrow width of roads accessing the site from the west, and the ability of emergency vehicles to safely reach their destinations bearing in mind an increase in slow moving traffic.
15. The appellant's traffic data from the extant planning permission, together with information regarding the likely traffic generation from a cremation service, informed the consideration of the application the subject of this appeal by the Council. It demonstrated that at that time there were relatively low traffic flows on New Inns Road and the 85th percentile traffic speeds were above the 30mph national speed limit. Furthermore, there had been no record of accidents in the vicinity of the appeal site. On that basis there is no objection from Worcestershire County Council Highway Authority. In addition, given that it is likely that journeys to the site would originate from further afield, no objection is received from Birmingham City Council Transportation Department.
16. For the hearing the appellant has updated the traffic figures via a Technical Note dated 3 June 2019 (TN). These show that traffic flows have increased since 2012, however are still well within the guidance contained within Design Manual for Roads and Bridges TA 79/99 for the traffic capacity of urban roads. The 85th percentile traffic speed has decreased slightly, and there are still no reported traffic incidents. There is no challenge from the Council to this evidence.
17. I found this to be a reasonable assessment based on my observations at both of my site visits, one of which was undertaken within the evening peak period. While I acknowledge the comments of local residents regarding the existing level of traffic using New Inns Road, the only substantive evidence before me, combined with my own observations during the site visits leads me to the view that New Inns Road is not heavily trafficked.
18. According to the appellant, the average number of cars per cremation service is 15 and this has not been disputed by the Council. This would lead to an additional 30 car movements per service. The appellant's Assessment of Need Report 2017 (ANR) states that there would be in the region of 850 cremations per year. Based on the number of days that the crematorium would be open each year this would equate to about three or four services per day, or an extra 120 vehicle movements on the network. Clearly there may be occasions

when more services would take place in a day, particularly in peak months of demand. Even if I were to take a worse-case scenario, based on the proposed hours of opening and service intervals, there would be eight services in a day or 240 car movements. This very small increase in traffic movements would not, in my view, lead to any material harm to the capacity of the highway. As a result, I am satisfied that the proposal would not generate significant levels of traffic, in the context of existing traffic flows, that would have a severe impact on existing highway conditions along New Inns Road. I am also mindful that burial services could take place at the appeal site seven days a week under the terms of the extant planning permission as opposed to the five days a week proposed in the current scheme.

19. A hearse, although longer than ordinary vehicles, is no wider. Consequently, although narrow, the roads to the west are of sufficient width to allow two way traffic. Furthermore, although cars would be parked near to the local school at drop off and pick up times, this would be for a short time only.
20. Turning to the speed of the proposed traffic that would be using the network, while I accept that the TN demonstrates that traffic is generally travelling above the 30mph speed limit, I have seen no particular evidence to demonstrate that this would lead to the problems alleged by the Council and interested parties. It would be little different to any slow moving vehicle using the highway and indeed at one of my site visits I saw a tractor moving at a slow speed along the local roads, without any apparent problem. While there is an ambulance station on the estate to the north-east of the appeal site, emergency service vehicles have access to methods to ensure their priority within the highway.
21. Reference was made to a service road at 29-81 New Inns Road which, it is stated, is often used as a short cut by traffic to avoid the use of a nearby junction, despite the presence of signs erected to stop drivers using the road for such purposes. Although it was alleged that the increase in slow moving traffic due to the proposal would increase the use of the road for this purpose, I have seen no substantive evidence to suggest that this would be inherently harmful.
22. I have also seen no substantive evidence to lead me to the view that the level of car parking that would be provided would not be sufficient for the proposed use and result in additional parking on New Inns Road.
23. It was suggested that parking associated with football matches at the weekend may cause further obstruction in the highway. However, it is not proposed that funeral services would take place at the weekend within the current scheme.
24. For the reasons above, I conclude that the proposal would not be harmful to highway safety and would comply with Policies BDP1.4 and BDP16.1 of the BDP which requires that development incorporates safe and convenient access and be well related to the wider transport network and local and strategic road networks have the ability to accommodate additional traffic.

Other considerations

25. The extant planning permission could be completed without further recourse to the Council, and therefore is a consideration to be taken into account in this appeal.

26. There is no dispute between the parties of the differences between the two schemes. While a chimney would be introduced within the proposal, there would be a reduction in the scale of the proposed building by about 10%. In addition, the amount of hard standing on the site would be reduced by about 24%. Therefore, it is likely that the built form of the development, even considering the addition of the chimney, would have a lesser impact on the Green Belt than that included within the extant planning permission. I have reached a slightly different conclusion to the Inspector on the previous appeal decision regarding the level of encroachment resulting from the current proposal. While I accept that the appeal site would remain the same, the modest reduction in the amount of it covered by development would result in a commensurate reduction in encroachment of built development, given that the remainder of the site would remain open. The reduction in the scale of the building and the amount of hardstanding would both be benefits of the current proposal.
27. The Council considers that the use of the building for cremations would generate an increased level of traffic movements above those resulting from the extant planning permission for a cemetery only. As a result, there would be an increased number of cars on the site which would have an urbanising effect and detract from the openness of the Green Belt. The Council's Bereavement Services Manager (BSM) estimates that there would only be about 200 burials per year based on the number currently carried out at Redditch Crematorium, while acknowledging that that facility was a mature site.
28. I acknowledge that it is likely that, based on current preferences, there would be more cremations than burials that would occur on the site. Indeed, the appellant's documents refer to about an 80:20 split between cremations and burials respectively, whereas the BSM puts it at 70:30. It follows therefore that the use of the site for cremations and burials is likely to be more frequent than if used for burials only.
29. Nevertheless, I heard at the hearing it was highly unlikely that a burial and cremation would happen at the same time. It was also confirmed that the extent of the cortege and the traffic movements generated by a burial and a cremation service would be similar. Therefore, based on the evidence before me, I am satisfied that the number of cars parked at any one time would not be materially different whether a cremation or a burial service would be taking place. Therefore, levels of car parking are likely to be similar to that which would occur under the extant planning permission, albeit happening more frequently in any given day. Furthermore, services would not be occurring at the weekend unlike under the extant planning permission. Moreover, I am mindful that the overall amount of hardstanding would be reduced.
30. Overall therefore, I am 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. Furthermore, the current proposals would have a reduced impact on the openness and purpose of the Green Belt. I attach significant weight to these benefits.
31. The ANR accompanied the planning application the subject of this appeal. This has been supplemented by an Assessment of Need Update for Planning Appeal 2018 and a Needs Assessment Update 2019 (NAU) submitted prior to the

- hearing. Together the documents demonstrate both a quantitative and qualitative need for a new crematorium with reference to thresholds and a calculation of peak month used within an appeal decision⁴. In the Essington appeal decision, it was established that compelling need for a new crematorium is demonstrated when peak month usage is above 80% of the monthly core slots. While there were two ways of establishing peak month usage applied in the Essington appeal decision, the method used by the appellant in this appeal gives a lower number of peak month cremations than the alternative method.
32. I accept that in the Essington appeal decision there was no dispute from the Council that there was an unmet need for a new crematorium, and each case should be treated on its own merits. Nevertheless, in relation to the current appeal, there was no convincing challenge from the Council regarding the methodology adopted to demonstrate a compelling need for a new crematorium in the Essington appeal decision. I therefore see no reason to depart from such methodology, which has received the support of the Secretary of State.
33. The ANR demonstrates that if the crematorium were in place most of the residents within a 45 minute driving distance would be those, that would currently use either Redditch or Lodge Hill Crematorium. The figures in the NAU show both are operating at levels significantly above 80%.
34. The Council relies on information provided by the BSM in relation to services carried out at Redditch Crematorium. No evidence or challenge was presented by the Council to the appellants figures in relation to Lodge Hill Crematorium. Interested parties reported individual circumstances of having little difficulty securing funeral services. Furthermore, they reported that Lodge Hill had accommodated a change in service time from 30 minutes to 45 minutes without any acknowledged problems. Moreover, when one crematorium was out of use and Redditch was being renovated then there appeared to be no capacity problems.
35. However, the BSM confirmed that the renovations and closure of one crematorium had been within the months of June to September outside of peak times. While I appreciate individual circumstances and the changing service times at Lodge Hill, such anecdotal information does not present substantive challenge to the figures presented by the appellant, which consider factors such as demand due to seasonal fluctuations, and the availability of core slots.
36. The BSM reported that Redditch Crematorium had never used all of its core slots in any one month, and therefore, he considered that capacity was available. However, it has already been established that a compelling need is demonstrated by a crematorium operating at above 80% core capacity and is not when at 100%.
37. I appreciate the comments of the BSM that services could be added at busy times such as at weekends and bank holidays. The BSM also suggests that the capacity figure for Redditch in the ANR takes no account of the funerals conducted in the early service times and when the 259 services that were conducted before 1015 are removed the figure for capacity drops to 74%. Furthermore, the BSM considers that the 100-200 services that would allegedly be taken from Redditch Crematorium would make little difference to its overall

⁴ APP/C3440/W/15/3039163 (the Essington appeal decision)

operation. It was also raised by local residents that if the new facility would only be providing three or four services per day then how would such a limited number of services address what is alleged to be a compelling need for a new crematorium. However, these comments do not take account of the analysis of core funeral times between 10:30 and 15:30, which it is accepted most suit the needs of the bereaved and used to calculate the compelling need.

Furthermore, the three/four services a day is an average based on the 850 projected to be undertaken per year. On some days there would be more, especially at times of peak demand. On some days there would be less.

38. I heard that there were many factors which affected the delay between the date of death and the funeral service, including delays in getting the death certificate, without which a funeral can be arranged, availability of funeral directors and officials and service times to suit individual requirements. In terms of waiting times the Council only supply two weeks of data with an average wait time in the first week in August of 11 days and the first week in November of 17 days. Although in the first week in August the service was operating at a reduced service level, this is not at a time of peak demand. In any case data covering just two weeks is not in my view conclusive.
39. The appellant used an analysis of local obituary notices from September to November 2017 to survey actual periods of time between death and cremation which resulted in an average waiting time of 3 weeks. However, I am mindful that not every death is reported in the newspaper. Given the high number of variables associated with any delay in the time between death and funeral, I am not convinced that either methodology used here are useful indicators of waiting times. I am also mindful that in the Essington appeal, independent evidence on this issue was available from funeral directors.
40. The BSM stated that on searching Google, he had ascertained that the death rate had decreased in 2015/2016, and then increased in 2016/2017. However, no proven challenge was presented to the contents of the appellant's ANR regarding the projected significant increase in the population and number of deaths in Bromsgrove that would consequently increase demand for cremation services.
41. All in all, based on the evidence before me, although that regarding waiting times is not persuasive on either side, I am satisfied, that an overall compelling need for a new crematorium has been demonstrated by the appellant, to which I attach substantial weight.

Other matters

42. Matters of air pollution resulting from the cremation process were raised by interested parties who reported that consideration was being given to the designation of an Air Quality Management Area due to high levels of pollution, but this could not be verified by the Council. The appellant's Air Quality Assessment Report 2016 (AQAR) states that the building would be designed to comply with current guidance, namely the Process Guidance Note 5/2 (12) (Statutory Guidance for Crematoria) which details the Best Available Techniques for the cremation process. The outputs from the building would be continuously monitored at source and would also be subject to an annual independent check. Worcestershire Regulatory Services has raised no objection to the contents of the report. Given that this is a highly regulated process, that all crematoriums have to abide by, I have seen no substantive

- evidence to suggest that the operation of the building itself would cause material harm to air quality. As I have already found that levels of traffic generation are unlikely to be significant, then I am satisfied that any pollution from additional traffic would also not be materially harmful. There would therefore be no conflict with Policy BDP1.4 of the BDP in this respect.
43. Objections are raised regarding the parking spaces proposed to the south east of the appeal site within the area to be provided for burials, and their proximity to the neighbouring houses at Romsley Close. However, there would be a significant gap between the small number of car parking spaces and the houses which I saw contains a fairly dense area of vegetation. Furthermore, given the distance of the car parking spaces from the main crematorium building, it is not likely that they would be used on a regular basis. These factors, together with the proposed opening hours of the facility from 09:00-18:00 leads me to the view that the use of the spaces would not cause unacceptable levels of noise and disturbance. Outside of those hours the appellant confirmed that the appeal site would be secured to avoid any issues of crime and anti-social behaviour.
44. Concerns regarding the involvement of Birmingham City Council (BCC) given the proximity of the proposal to the administrative boundary are raised. The Council confirmed that BCC had been consulted on the planning application and advised that the appeal and hearing was taking place. Furthermore, the appellant stated that BCC had been involved in the transport discussions. No objections have been received from BCC either on highways grounds, or with regard to surface water drainage issues. If the appeal were to be allowed, then it would be necessary to impose a condition regarding the submission of details of surface water drainage to ensure that it was dealt with adequately, and the erection of the building did not lead to drainage problems elsewhere. There would therefore be further opportunity for BCC to be involved at that stage. Accordingly, I am satisfied, based on the evidence before me that BCC has had adequate opportunity to comment on the proposals.
45. Interested parties reported that planning applications were being considered within the local area for, amongst other things, large numbers of houses, which would generate a substantial number of traffic movements. However, I am not advised that the developments have the benefit of planning permission. In any case even if they have, I have seen no substantive evidence to demonstrate that if they were to be implemented, with the proposed crematorium, that the residual cumulative impacts on the road network would be severe.
46. The proposed building would be sited about central within the appeal site near to existing trees. The periphery of the site is also well landscaped with mature trees and hedgerows. The building would be single storey. While it would contain a chimney, it would not project significantly above the height of the main part of the building, and would be sensitively designed to avoid a utilitarian, industrial appearance. Given the extent and height of surrounding trees, I saw at my site visit that it is unlikely that the building would be particularly prominent within the wider landscape, including the nearby Waseley Hills Country Park. In addition, I have already found that the proposal would have a lesser impact on the openness of the Green Belt than the proposals under the extant planning permission. It follows therefore that any effect on the character and appearance of the area would also be reduced.

47. The local school playing field is also near to the appeal site. Reference is made to the emotional impact on the children of frequently seeing hearses and mourners. However, the appeal site already has planning permission to be used as a cemetery which would be visited by hearses and mourners.
48. Both the Environment Agency and the Council's Drainage Engineers have raised no objection to the proposal. The appellant confirmed at the hearing that a Sustainable Drainage System had been approved by the Council in discharging the pre-commencement conditions for the extant planning permission. Subject to the imposition of a condition which secured such a submission in respect of the current scheme, I am satisfied that the proposal would not have a materially harmful effect on the drainage of both the appeal site and the surrounding area.
49. The appellant submitted an Ecological Appraisal Update 2019 prior to the hearing which found that there had been no material change in circumstances since the Ecological Appraisal dated December 2017. The 2017 report has been considered by the Worcestershire Wildlife Trust who has raised no objections subject to the inclusion of a number of ecological conditions.
50. Concerns were raised at the hearing regarding hedgehogs, linnets, skylarks and a particular species of orchid. The appellants ecological expert was of the view that they would not be harmed by the development which would retain a vast amount of the existing trees and hedges. Having viewed the site, I would concur. Conditions could be attached to any permission to secure the protection and enhancement of habitats.

Conclusion

51. The proposal is inappropriate development within the Green Belt. It would also be harmful to the openness and one purpose of the Green Belt. The Framework states that substantial weight should be given to any harm to the Green Belt. It is likely that the harm to the openness and purpose, would be lessened in this proposal as proposed in the extant planning permission. This, together with the compelling need that has been demonstrated for a new crematorium, means that other considerations in this case clearly outweigh the harm that I have identified. Looking at the case as a whole, I am satisfied that very special circumstances exist which justify the development and the scheme should be determined other than in accordance with the development plan.
52. For the reasons set out above, having had regard to all other matters raised, I conclude that the appeal should be allowed.

Conditions

53. I have had regard to an agreed list of conditions submitted prior to the hearing and considered them against the tests in the Framework and the advice in the Planning Practice Guidance and have made such amendments as necessary to comply with those documents. To provide certainty it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans.
54. Conditions regarding landscaping, its implementation and retention, together with a restriction on removing trees on the site are necessary to protect the character and appearance of the area and existing habitats. A condition requiring measures to be submitted to protect the existing trees and

- hedgerows on the site, prior to the commencement of works, is necessary in the interests of the character and appearance of the site, and to avoid damage to the existing landscaping.
55. A Construction Method Statement is required prior to work commencing on site to protect the living conditions of existing residents, existing hedgerows and highway safety. The submission of details of lighting is necessary to ensure that habitats of birds and bats are protected.
56. A condition regarding foul and surface water drainage is required to reduce the risk of surface water flooding to the development and surrounding properties and roads for the lifetime of the development, and secure appropriate disposal of foul water.
57. Conditions regarding ecology are needed to protect existing ecology on site during construction, to provide enhanced ecological habitats and to provide for the long term management of ecology and landscape. The submission of a construction environmental management plan is required prior to work commencing on site to ensure that existing ecology is protected.
58. Details of highway works are required prior to works commencing on site to ensure highway safety. A pre-commencement condition regarding archaeology is needed to protect and record heritage assets. Details of materials are required in the interests of the character and appearance of the area. A restriction on opening hours and when services can take place is necessary to guard resident's living conditions.
59. I have carefully considered the suggested condition regarding the removal of permitted development in the light of advice in the PPG. However, in this instance, given the sensitive location of the appeal site in the Green Belt and the amount of boundary landscaping, particularly adjacent to New Inns Road, I am satisfied that it is important for the Council to retain some control over proposed boundary walls and fences and any new means of access to the site.
60. Following discussion at the hearing I have not imposed the condition requiring gravestones to be no more than 1 metre high. The reason for the suggestion was thought to be in order to retain the openness of the Green Belt. However, I am of the view that such structures would be likely to have a very limited impact on openness.

Zoe Raygen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Neil Pearce BA (Hons) DipTp MRTPI	Avon Planning Services
Mr Mark Donald	Director H2Land
Mr Chris Hughes	Commercial Director H2Land
Mr Peter Mitchell ICCM	Peter Mitchell Associates
Mr Nigel Millington BA (Hons) MSc MRTPI MCIHT	Phil Jones Associates
Dr Peter Webb	Clarke Webb Ecology Limited

FOR THE LOCAL PLANNING AUTHORITY:

Mr Anthony Young	Principal Planning Officer Bromsgrove District Council
Mr Michael Birkinshaw	Bereavement Services Manager Redditch Borough Council

INTERESTED PARTIES

Ms Sandra Smith	Resident
Councillor Simon Morrall	Frankley Great Park Ward Councillor
Roger Goode	Resident
Mr William Murray	Resident
Councillor Peter MacDonald	Ward Councillor
Paul Pearsall	Resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 – Redditch and Lodge Hill Crematorium opening hours.
- 2 - Plan of wider area showing roads referred to by Interested Parties.

SCHEDULE OF CONDITIONS

- 1) The development to which this permission relates must be commenced not later than the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 810c 11B, 812c 06C, 2016 Main Entrance Plan, 812c 14B, 812c 07C, 812c 15B, 812c 08C, 812c 18, 812c 04 C, 812c 17B, 812c 10C, 812c 16B, 812c 09C, 812c 08B, 812c 12B, 812c 20B, 812c 203C
- 3) No development shall take place (including demolition, ground works, vegetation clearance) until a construction environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP (Biodiversity) shall include the following.
 - i) Risk assessment of potentially damaging construction activities.
 - ii) Identification of "biodiversity protection zones".
 - iii) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
 - iv) The location and timing of sensitive works to avoid harm to biodiversity features.
 - v) The times during construction when specialist ecologists need to be present on site to oversee works.
 - vi) Responsible persons and lines of communication.
 - vii) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
 - viii) Use of protective fences, exclusion barriers and warning signs. The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.
- 4) A landscape and ecological management plan (LEMP) shall be submitted to, and approved in writing by, the Local Planning Authority prior to the first occupation of the development. The content of the LEMP shall include the following.
 - i) Description and evaluation of features to be managed.
 - ii) Ecological trends and constraints on site that might influence management.
 - iii) Aims and objectives of management.
 - iv) Appropriate management options for achieving aims and objectives.
 - v) Prescriptions for management actions.

- vi) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
- vii) Details of the body or organization responsible for implementation of the plan.
- viii) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanisms by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (*where the results from monitoring show that conservation aims and objectives of the LEMP are not being met*) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.

- 5) No development shall commence until a scheme of surface water and foul water disposal, which shall follow the principles of sustainable drainage as far as practicable, has first been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with such approved details prior the first use or occupation of the building hereby permitted and shall be retained thereafter.
- 6) Prior to the erection, installation, fixing, placement and/or operation of any external lighting on the site (including on the building itself), details of such external lighting shall be submitted to and approved in writing by the Local Planning Authority. Such details shall include the equipment and supporting structures, positions, sizes, heights, type, luminance/light intensity, direction and cowling of all external lights to the buildings and other parts of the application site and the hours at which such lighting is to be operated.

The work shall thereafter be carried out in accordance with the approved details and shall thereafter be retained in that form and under no circumstances shall it cause light pollution.

- 7) Notwithstanding the plans hereby approved, no development shall take place until a package of highway measures have been submitted to and approved in writing by the Local Planning Authority. The package of measures shall include the formation of the vehicular and pedestrian access to the site, turning areas and parking facilities. The development shall not be first brought into use until all such highway measures have been completed in accordance with the approved details. The approved access visibility splays shall thereafter be kept free of obstacles.
- 8) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction period. The statement shall provide for:
 - i) The parking of vehicles of site operatives and visitors
 - ii) Loading and unloading of plant and materials

- iii) Storage of plant/machinery and materials used in construction of the development
 - iv) Construction hours restricted to between 08:30 and 18:00 Monday to Friday and 08:30 and 15:30 on Saturdays. No working shall take place on Sundays or Public or Bank Holidays
 - v) Noise control devices (silencers, SMART reversing alarms etc.)
 - vi) Wheel washing facilities
 - vii) Measures to control emissions of dust and dirt during construction
 - viii) A scheme for the recycling/disposing of waste resulting from demolition and construction works
- 9) No development shall take place until the implementation of a programme of archaeological works has been secured in accordance with a written scheme of investigation, including a timetable for the investigation, which has been submitted to and approved in writing by the Local Planning Authority. The works shall be undertaken in accordance with the approved details. A written record of any archaeological works undertaken shall be submitted to the Local Planning Authority within 3 months of the completion of any archaeological investigation.
- 10) Other than shown on the approved plans, no trees or hedges on the application site, or the branches or roots of trees growing onto the site from adjacent land, shall be topped, lopped, felled or uprooted.
- 11) Measures for the protection of trees and hedgerows during the construction phase of the development shall be carried in accordance with the Harper Tree Consulting Report: Arboricultural Impact Assessment Arboricultural Method Statement Tree Constraints and Tree Protection Plan (2015055.3 2/12/2017).
- 12) Prior to the occupation or use of any part of the development hereby permitted, a landscaping scheme of tree and hedge planting and wildlife habitat creation or enhancement shall be submitted to and approved in writing by the Local Planning Authority. This landscaping scheme shall include:
- i) planting plans (to a recognized scale) and schedules indicating the location, number, species, density, form and size of proposed tree, hedge and shrub planting;
 - ii) the method and specifications for operations associated with planting establishment, protection, management and maintenance of all retained and new tree, hedge and shrub planting;
 - iii) written specifications including cultivation and other operations associated with tree, plant and grass establishment;
 - iv) existing landscape features such as trees, hedges, shrubs and ponds which are to be retained and/or removed, accurately plotted (where appropriate);
 - v) existing and proposed finished levels (to include details of grading and contouring of earthworks and details showing the relationship of proposed mounding to existing vegetation and surrounding landform where appropriate);

- vi) the means of accommodating change in level (e.g. retaining walls, steps, railings, walls, gates or other supporting structures, ramps);
- vii) location, type and materials to be used for hard surfacing where applicable for permeable paving, tree pit design, underground modular systems, sustainable urban drainage integration and use within tree Root Protection Areas (RPAs), including specifications and details of manufacturer, type and design, colour and bonding pattern where appropriate. Samples may be required to be submitted and approved;
- viii) the position, design, materials, means of construction of all site enclosures and boundary treatments (e.g. fences, walls, railings, hedge(banks)), where appropriate;
- ix) a timetable for the implementation of the soft and hard landscaping scheme.

There shall be no excavation or raising or lowering of levels within the prescribed root protection areas of retained trees.

The approved soft and hard landscaping scheme shall be carried out strictly in accordance with the approved timetable of implementation and shall thereafter be protected, maintained and managed in accordance with the approved details.

- 13) Except for any trees, hedges or shrubs that may be identified for removal on the approved landscaping plans and schedule, approved pursuant to condition 12, if within a period of five years from the date of the completion of the building works OR completion of the landscaping scheme pursuant to condition 12 (whichever is later), any retained tree, hedge or shrubs are felled, removed, uprooted, destroyed or dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged, diseased or defective, it/they shall be replaced by planting as originally approved. This replacement planting shall be undertaken before the end of the first available planting season (October to March inclusive for bare root plants), following the removal, uprooting, destruction or death of the original trees or plants.
- 14) Prior to construction of any buildings, which forms part of the development hereby permitted, a schedule of materials and finishes (including samples and trade descriptions/brochure details where appropriate) of materials to be used in the construction of the external surfaces of the development shall be submitted to and approved in writing by the Local Planning Authority.

The development shall be constructed in accordance with the approved details and completed before the development is first occupied or used and thereafter shall be retained and maintained in that form.
- 15) The cemetery and chapel / reception building shall not be open to the public outside the hours of 09:00 to 18:00.

- 16) No burials or cremation services shall take place outside the hours of 09:00 to 17:00 Monday to Friday and at no time on Saturdays, Sundays and Bank Holidays.
- 17) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking, re-enacting or modifying that Order), no works set out in Class A and B, Part 2 of Schedule 2 to the Order shall be carried out.



Costs Decision

Hearing Held on 11 June 2019

Accompanied Site visit made on 11 June 2019

Unaccompanied Site Visit made on 10 June 2019

by Zoe Raygen, Dip URP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st July 2019

Costs application in relation to Appeal Ref: APP/P1805/W/18/3211026 Land adjacent to New Inns Road, Rubery, Bromsgrove

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by h2land for a full award of costs against Bromsgrove District Council.
 - The hearing was in connection with an appeal against the refusal of the Council to grant planning permission for the change of use of maintenance/chapel building approved under planning permission 12/0448 to allow for cremations to take place, reduction in scale of building and hard standing and reduced operating times.
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Decision

1. The application for an award of costs is partially allowed in the terms set out below.

The submissions for h2land

2. A costs submission was made in writing prior to the Hearing. At the Hearing the applicant confirmed that their application still stands, and no new points were made.
3. The applicant seeks a full award of costs. In essence, it is submitted that the Council has behaved unreasonably by refusing the application against its professional officer's recommendation without robust evidence to support the different aspects referred to in the Council's one reason for refusal.

The response by Bromsgrove District Council

4. The response from the Council was made in writing prior to the Hearing. The Council is of the view that it has adequately substantiated its reason for refusal, including reference to evidence from Redditch Borough Council's Bereavement Services Manager (BSM).

Reasons

5. The Council's decision notice includes one reason for refusal which includes reference to a number of different aspects.
6. The Council alleges that the proposal would be harmful to highway safety due to the type of traffic using the highway, in particular slow moving hearses. It

states that repeatedly slowing traffic in an area where there is a tendency to drive at or exceed the speed limit could have deleterious consequences with regard to highway safety. However, while I accept that the applicants traffic data shows that the 85th percentile traffic speed is above the local speed limit, and that a funeral cortege may proceed at speeds less than 30mph the Council submits no substantiated evidence to support its claim.

7. The Inspector in a previous appeal decision¹ for a similar proposal on the appeal site considered that it was likely that by offering both cremation and burial services, the number of services would be likely to be greater than if there were only a cemetery at the appeal site. I have reached a similar conclusion. However, I have found that it is also likely that there would only be one service at any one time. As the number of traffic movements for a cremation would be similar to that for a burial then the amount of traffic accessing the appeal site at any one time is unlikely to change from that able to visit the site under the terms of the agreed extant planning permission².
8. Both Worcestershire County Council and Birmingham City Council raised no objections to the proposal. Although the Council can decide not to accept the advice of these authorities, or that of its professional officers, it must offer some evidence to support its view. In this case none has been submitted and in that respect the Council has acted unreasonably.
9. Within its reason for refusal the Council also allege that the need for the development has not been demonstrated. Although this aspect was not included as a reason for refusal on a previous identical application for planning permission (16/0581/FUL), the Council advise that the advice from the BSM was not available at the time of the assessment of that application.
10. Although the evidence was mainly presented by the BSM who manages Redditch Crematorium, it was mostly limited to factual information regarding the number and frequency of services. Therefore, I am satisfied that the BSM was not acting in an impartial or conflicted manner.
11. The applicant also alleges that the Council is withholding information pertinent to the appeal regarding the need for a new Crematorium and I have had sight of relevant Freedom of Information (FoI) requests made by the appellant and responses from the Council. I was advised at the hearing that there is an ongoing internal process being undertaken by the Council in response to the latest correspondence from the applicant. However, these are separate processes being undertaken by the Council under the FoI legislation. It is for the Council to decide on the sensitivity of the information requested. In the absence of any substantive evidence to the contrary, I am also not convinced that the claim that the Council's persistent rejection of the proposal against its professional officer's recommendations on changing reasons is a clear indication that it has a vested commercial interest in preventing the development of competing crematoria.
12. The Councils assessment that, based on its limited evidence, the need for the development has not been demonstrated, led to its conclusion that Very Special Circumstances did not exist to justify the proposed development within the Green Belt. I am satisfied that although the evidence is limited and I have

¹ APP/P1805/W/17/3168297

² 12/0448

reached a different conclusion to the Council, it advanced a case that, in its opinion, indicated that the proposal was contrary to the development plan and the National Planning Policy Framework.

13. The applicant would have had to submit an appeal as the application was refused on matters rather than that relating to highway safety. However, they have been put to the unnecessary and wasted expense of providing further evidence to address the Council's part of the reason for refusal relating to highway safety.
14. I therefore conclude that unreasonable behaviour resulting in wasted expense, as described in the PPG has been demonstrated and that a partial award of costs is justified in respect of the work undertaken by the applicant with regard to the Council's part of the reason for refusal relating to highway safety.

Costs Order

15. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Bromsgrove District Council shall pay to h2land, the costs of the appeal proceedings relating to the reason for refusal in respect of highway safety only.
16. The applicant is now invited to submit to Bromsgrove District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Zoe Raygen

INSPECTOR