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## Appeal Decision

Site visit made on 20 August 2019

**by Thomas Hatfield BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 24<sup>th</sup> September 2019**

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### **Appeal Ref: APP/P3040/W/19/3229908**

#### **Land to the east of Main Road, Cotgrave, Rushcliffe**

- 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 Mr Andy Marshall of Mercia Crematoria Ltd against the decision of Rushcliffe Borough Council.
  - The application Ref 18/02821/FUL, dated 10 December 2018, was refused by notice dated 19 March 2019.
  - The development proposed is a crematorium with associated parking and landscaping.
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### **Decision**

1. The appeal is allowed, and planning permission is granted for a crematorium with associated parking and landscaping at land to the east of Main Road, Cotgrave, Rushcliffe in accordance with the terms of the application, Ref 18/02821/FUL, dated 10 December 2018, subject to the conditions set out in the attached schedule.

### **Procedural Matters**

2. A completed s106 agreement has been submitted that includes a contribution towards bus stop improvements on Main Road. This contribution is necessary in order to make the development accessible, and it is reasonable in scale. I have therefore taken it into account in reaching my Decision.
3. Pre-commencement conditions are attached to this Decision. As required by Section 100ZA(5) of the Town and Country Planning Act 1990, the appellant has agreed to these conditions in writing.

### **Main Issues**

4. It is common ground that the proposal would not meet any of the exceptions identified at Paragraphs 145-146 of the National Planning Policy Framework ('the Framework') and would therefore be inappropriate development in the Green Belt. In this context, the main issues are:
  - (a) The effect of the proposal on the openness and purposes of the Green Belt, and;
  - (b) Whether the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the proposal.

## **Reasons**

### ***Openness and Green Belt purposes***

5. The proposal would introduce a new building and associated structures onto land that is currently open. In addition, large areas of car parking would be provided that would result in vehicles being stationed on the site for prolonged periods. It would also be visible in views from along the adjoining roads and from the path that runs along the site's eastern boundary. The development would therefore fail to preserve the openness of the Green Belt. The Framework advises at Paragraph 133 that openness is an essential characteristic of Green Belts, and the appeal proposal would cause harm in this regard.
6. Paragraph 134 of the Framework states that Green Belts serve 5 purposes. In this case, the extent of the proposal would clearly result in an encroachment into the open countryside, which would be contrary to one of those purposes. Separately, the proposal is away from the edges of existing settlements, and the majority of the site would be landscaped. Accordingly, it would not significantly narrow the gap between settlements.
7. For the above reasons, I conclude that the proposal would fail to preserve the openness of the Green Belt and would be contrary one of its purposes. I return to this matter in my Overall Balance and Conclusion, below.

### ***Other considerations***

#### *Quantative and qualitative need for a new crematorium*

8. It is not disputed that the provision of adequate cremation facilities is an essential societal need. In this regard, bereaved relatives organising a funeral should be able to access suitable facilities within a reasonable distance, without significant delay. The adequate provision of cremation facilities is therefore clearly a weighty planning consideration.
9. Prior to the application being submitted, the Council produced a Cabinet Report (dated 13 November 2018) which recommended that support be given to the identification of a new crematorium in the Borough. This recommendation was informed by an assessment produced by independent experts in the bereavement services sector. The report further recommended that the current appeal site be identified as the location for a new crematorium, subject to planning permission being secured.
10. In addition, the appellant has submitted a Crematorium Need Assessment (Peter Mitchell Associates, May 2019). This identifies a catchment population of 124,803 people within a 45 minute drive-time of the proposed facility. Of these, 119,619 people would find the proposed crematorium to be their nearest. In this regard, I note that the Federation of Burial and Cremation Authorities (FBCA) advise<sup>1</sup> that a population of around 120,000 is sufficient to provide and manage a crematorium with a reasonable expectation of operating on a sound financial basis. This is a reduction from the figure of 150,000 set out in previous FBCA guidance (published in 2006), which is quoted in a number of the appeal Decisions that are before me. However, those Decisions were issued before the current iteration of the FBCA guidance was published in

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<sup>1</sup> A Guide to Cremation and Crematoria (FBCA, 2016)

2016. The figure of 120,000 represents current industry guidelines and is therefore the most appropriate basis on which to assess the proposed catchment in this case.

11. If approved, the appellant states that the proposed crematorium could be expected to be operational in 2021, although it would take a number of years to reach maturity. In this regard, several large housing allocations are within the identified catchment area that will significantly increase its population in the years ahead. Accordingly, the catchment population would be significantly higher than 120,000 by the time the proposal reached maturity. In addition, the ONS 2016-based population projections indicate that the number of residents in Rushcliffe aged 65 or over will rise from 24,600 in 2018 to 35,700 in 2041. Over the same period, it is projected that the number of annual deaths in Rushcliffe will rise from 1,100 to 1,400, an increase of 27.3%.
12. The wider area is currently served by Wilford Hill Crematorium, which is within Rushcliffe close to the boundary with Nottingham City, and Gedling Crematorium at Lambley. At present Wilford Hill has further 'technical capacity' to conduct additional cremations over the course of a year. However, that does not take into account seasonal fluctuations in mortality, particularly during the winter months, which affect levels of demand. In this regard, the appellant has provided recent statistics for the monthly death rate in Nottingham and Rushcliffe which shows significant variations across the year. The 'technical capacity' at Wilford Hill also does not take into account the capacity to conduct cremations during the most requested times, typically in the middle of the day, which allow for friends and relatives who live outside of the immediate area to attend. Once those factors are accounted for, the level of 'practical capacity' at Wilford Hill in a peak month reduces very significantly.
13. In addition, the appellant states that Wilford Hill is moving towards hourly funeral intervals in order to improve the quality of services (previously these were every 45 minutes). This will reduce the practical capacity at that facility even further. In this regard, Wilford Hill would have operated at over 90% capacity during the peak month in 2017 and 2018 had hourly funeral intervals been implemented then. Whilst a move to hourly intervals may represent an operational preference rather than any specific requirement, it will have the effect of further reducing availability. Data has also been provided on the average number of days between deaths and funerals at Wilford Hill, Gedling, and Bramcote crematoria in January 2019. This indicates that Wilford Hill had an average wait time of 24 days during that month, which was higher than either of the 2 neighbouring facilities. Whilst this wait time may partly reflect other factors, it provides a further indication of limited availability during times of peak demand. Furthermore, I note that these figures represent the current position, which could be expected to deteriorate as both the population and number of deaths increase in the years ahead.
14. There are other constraints that apply to the facility at Wilford Hill. Its 2 chapels can accommodate up to 60 and 80 mourners respectively, and so are unable to accommodate larger funerals. This may particularly disadvantage some minority groups. The limited availability of parking and the particular religious symbolism surrounding that facility may also deter some potential users. In addition, letters have been submitted by 2 local funeral directors in support of the proposal. These letters describe the limitations of the Wilford Hill and endorse the need for a new facility to meet the needs of the area. It

has been suggested that the facilities at Wilford Hill could be upgraded to overcome these limitations. However, there is no information before me to suggest that any such improvements are proposed. In the absence of further details about that facility and its surroundings, it is also unclear whether it would be possible to significantly extend or upgrade it.

15. It is asserted that in the 2 weeks prior to the Planning Committee meeting on 14 March 2019 there were 85 spare cremation slots available at Wilford Hill. However, it is unclear whether those slots were available during core times in the middle of the day, or whether Wilford Hill was operating hourly slots at that time. It is also unclear how representative those 2 weeks are of availability at Wilford Hill. I therefore attach limited weight to this.
16. Separately, Gedling Crematorium is a modern facility but is located some distance away from the appeal site. In this regard, it is more than a 30 minute cortege journey from most of the identified catchment area for the current proposal. It's ability to meet need in the identified catchment is therefore more limited. In addition, whilst that facility has drawn some cremations away from Wilford Hill since opening, I note that only 23 fewer cremations took place at Wilford Hill in 2018 compared to in 2017.
17. In light of the above, I am satisfied that there is a clear need for a new crematorium in this area, in both quantitative and qualitative terms. This matter attracts considerable weight in favour of the appeal proposal.

#### *Alternative locations*

18. The siting of new crematoria is subject to the requirements of the Cremation Act 1902. Section 5 of Chapter 8 of the Act states that; "*No crematorium shall be constructed nearer to any dwelling house than two hundred yards [182 metres] except with the consent in writing, of the owner, lessee and occupier of such house, nor within 50 yards of any public highway*". In practice, this restriction is likely to mean that any proposal for a new crematorium will require a countryside location away from existing settlements.
19. In the case of Rushcliffe, the countryside around the main centres of population to the west of the Borough consists almost entirely of Green Belt land. Accordingly, any new crematorium in the Borough is likely to require a Green Belt location. Moreover, a detailed site search has been undertaken that identified the appeal site for a new crematorium. In this regard, no specific alternative site has been drawn to my attention that is more suitable.
20. I note that the appeal site is not identified as an allocation for a new crematorium in the Local Plan. However, the Local Plan also does not identify any other site for this purpose.

#### *Viability of other crematoria*

21. The appellant's Crematorium Need Assessment assumes that the proposal would draw around 25% of the cremations that would otherwise take place at Wilford Hill during its first year. However, Wilford Hill would retain well in excess of 1,000 cremations per annum, which is the figure the FBCA identify as being necessary for viability. In addition, Wilford Hill's 45-minute catchment would reduce to 162,053, which again is above the minimum catchment advised by the FBCA. Gedling Crematorium would also have reached maturity by that time. In comparison, the estimated draw from other crematoria would

be more limited. I therefore do not consider that the viability of any nearby crematorium would be harmed by the proposal.

### **Other Matters**

22. A number of the surrounding roads are busy through routes that experience congestion during peak times. However, the proposed opening hours (which could be secured by condition) would exclude both the morning and evening rush hours. Accordingly, the proposal would not contribute to traffic at nearby junctions between Main Road and Stragglethorpe Road, and Stragglethorpe Road and the A52, during peak times. In addition, the proposed access and egress points off Main Road would have good visibility in both directions and would be a safe distance from the entrance to The Nottinghamshire Golf and Country Club. I further note that neither Highways England nor the Highway Authority objected to the proposal on highway safety grounds.
23. The site is bound to the east by a former railway line that is now a multi-user footpath leading to Cotgrave Country Park. This is clearly an important facility that is well-used by local residents and visitors to the area. There would be some visibility of the proposal from this path, albeit any views would be filtered by existing trees and bushes along the eastern site boundary. This could be supplemented with additional planting to further screen the proposal, which could be secured by condition. Moreover, the proposed crematorium building would be low in height and most of the wider site would be occupied by planting or open areas. It would also be largely surrounded by non-agricultural uses including a solar farm, a golf course, a public house, and a temporary traveller's site, and it would be seen in the context of this pattern of development. In my view, the proposal would not significantly harm the surrounding landscape or the enjoyment of the multi-user footpath. I further note that the Council's Landscape Officer has not raised any objections to the proposal in this regard.
24. During my site visit, I viewed Thornton's Holt Camping Park which is an attractive and well-maintained facility to the north of the appeal site. There is no direct intervisibility between the appeal site and Thornton's Holt, which are separated by a raised former railway embankment and Stragglethorpe Road. The proposed access to the appeal site would also be some distance from the entrance to Thornton's Holt, and via a circuitous route. The entrance to The Nottinghamshire Golf and Country Club is closer to the appeal proposal, however, I do not accept that a well-designed and landscaped crematorium would have a significant adverse impact on the perception of either business.
25. It is asserted that a crematorium would create air pollution and odours in the surrounding area. However, emissions from the proposal would be subject to other legislation outside of the planning regime. Moreover, a condition could be attached in relation to the proposed flue stacks to ensure that emissions are dispersed safely.
26. The area of the site that is able to be developed for a crematorium is relatively small given the requirements of the 1902 Cremation Act. In this regard, much of the site is within either 50 yards of a public highway or 200 yards of the nearest dwelling (above The Shepherds public house). This would limit future expansion opportunities. However, the necessity for any future expansion is uncertain at this stage and beyond the scope of this appeal.

27. The Officer Report states that the site consists of Grade 3 agricultural land. It is unclear from the information before me if it is Grade 3a or Grade 3b, and whether the site therefore consists of 'best and most versatile' agricultural land. However, any loss of 'best and most versatile' land would be relatively small in this case. Nevertheless, any such loss would add, albeit modestly, to the weight against the proposal.
28. It is contended that the development would prevent the future use of the site as a solar farm. However, there is no indication before me that there is any shortfall of available land for that use, nor any intention to develop the site for that purpose should the appeal fail.
29. The proposal would introduce large areas of additional planting and would be capable of delivering a significant net biodiversity gain. This could be secured by condition and would be an additional benefit of the scheme.
30. The proposal would provide 100 parking spaces, cycle parking, and a contribution towards bus stop improvements in the vicinity. It would therefore be unlikely to result in any significant nuisance car parking in the nearby park and ride facility.
31. In addition to the proposed bus stop improvements, the development would introduce pedestrian footways along the north-eastern kerb line of Main Road to facilitate safe access to those stops. The installation of these footways could be secured by condition.
32. Concerns have been raised about the site's proximity to a day nursery and the upset that may be caused to children who see funeral corteges passing by. However, the nursery and its outdoor play area would not have a direct view of the development. In any case, this situation is not uncommon on the approach roads to crematoria and it is unclear that any harm would arise in this regard. In terms of the impact on visitors to Thornton's Holt, the proposal would only be visible from certain approaches to the campsite and from the adjacent path. In any case, once the proposed landscaping had matured, the crematorium would be well screened and less noticeable in the surrounding area.
33. It is a long-established principle that the planning system does not exist to protect private interests such as the value of land and property.

### **Conditions**

34. The Council suggested a number of conditions, some of which I have edited for clarity and enforceability. In addition to the standard time limit condition, I have imposed a condition that requires the development to accord with the approved plans. This is necessary in the interest of certainty. A condition relating to surface water drainage is also necessary in order to ensure that the site is appropriately drained without increasing flood risk elsewhere. A further condition relating to the protection of retained trees and hedgerows is necessary to ensure that these are not damaged during the construction phase. Additional conditions relating to contamination and archaeology are necessary in order to ensure that any contamination at the site is remediated and that any archaeological remains are documented. These conditions are pre-commencement in nature as any site works could disturb contaminants within the ground, affect the site's archaeology, or harm hedges and trees that are to



- be retained. Similarly, all site works will be informed by the proposed drainage arrangements.
35. Conditions relating to hard and soft landscaping and external materials are necessary in order to protect the character and appearance of the area. A further condition relating to the proposed chimneys is necessary in the interests of character and appearance and pollution control. Conditions relating to signage and cycle storage are necessary in order to make the development accessible and easy to locate. A condition requiring that the site access, driveways, parking, and footways be provided prior to the first occupation of the development is also necessary in order to ensure that these facilities are provided. Finally, conditions restricting the opening hours of the crematorium and requiring that the access gates be inward opening are necessary in the interest of highway safety.
36. The nearest residential property is some distance away and no demolition works are proposed. I therefore do not consider it necessary to impose conditions relating to the control of noise or requiring the submission of a Construction Method Statement. A condition requiring the submission and approval of ground and finished floor levels is also unnecessary as these details have already been provided. A further suggested condition that would have required all external lighting to be switched off when the premises is closed to the public is also unnecessary and could be harmful to site security. I further note that such a condition is not requested by the Council's Environmental Sustainability Officer. Another condition that would have restricted the burning of waste on the site is unnecessary as no demolition is proposed, and in any event, this matter is covered by other legislation. A condition that would have required the submission and approval of an air quality screening assessment report was also suggested. However, the nearest Air Quality Management Area (AQMA) is some distance away at the junction between Stragglethorpe Road and the A52. Whilst traffic associated with the development will pass this AQMA, it is unclear what mitigation measures could be provided onsite. Such a condition is therefore unreasonable in this case. Finally, it is suggested that permitted development rights be removed in relation to access gates and barriers. However, this is unnecessary as a condition requiring that the access gates be inward opening would be sufficient to address highway safety concerns.

### **Overall Balance and Conclusion**

37. The proposal would be inappropriate development in the Green Belt and would reduce openness in this location. It would also represent an encroachment into the countryside and so would offend one of the 5 purposes that Green Belts serve. The Framework states that substantial weight should be given to any harm to the Green Belt. In addition, the potential loss of 'best and most versatile' agricultural land must be added to this harm.
38. Set against this are the clear quantitative and qualitative need for a new crematorium, which attracts considerable weight in favour of the proposal. As set out above, any new crematorium in this area is likely to require a Green Belt location, with similar implications for openness and encroachment into the countryside. The appeal site is not subject to any significant constraints other than its Green Belt designation and is well located to serve the needs of the proposed catchment. It has also been identified as being the most suitable

location for such a development and would also offer the opportunity for biodiversity gains. Together, these considerations carry substantial weight in favour of the proposal.

39. Overall, I find that the other considerations in this case clearly outweigh the harm that I have identified. Accordingly, I consider that very special circumstances exist which justify the development. It would therefore accord with saved Policy ENV15 of the Rushcliffe Replacement Local Plan (2006), Policies CS1 and CS4 of the Rushcliffe Local Plan Part 1: Core Strategy (2014), and guidance in the Framework relating to Green Belts.
40. For the reasons given above I conclude that the appeal should be allowed.

*Thomas Hatfield*

INSPECTOR



### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1589-14 NOV.18; 1589-15 DEC 18; 1589-16 DEC 18; 1589-17 DEC 18; 1589-18 DEC 18; 1589-19 DEC 18; 1589-20 DEC 18; 1589-21 DEC 18; J1014 full access fig 1 Rev A; 035407/IF/A.

#### *Pre-commencement conditions*

- 3) Prior to the commencement of the development a detailed surface water drainage scheme based on the principles set out in the submitted Flood Risk Assessment (Rutter Johnson Ltd, Ref18052-FRA, November 2018), shall be submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall:
  - i) Demonstrate that the development will use SuDS throughout the site as a primary means of surface water management in accordance with CIRIA C753;
  - ii) Limit the discharge rate generated by all rainfall events up to the 100 year plus 40% (for climate change) critical storm to 5 l/s for the developable area;
  - iii) Provide detailed design (plans, network details and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements. Calculations should demonstrate the performance of the designed system for a range of return periods and storm durations inclusive of the 1 in 1 year, 1 in 2 year, 1 in 30 year, 1 in 100 year and 1 in 100 year plus climate change return periods;
  - iv) Demonstrate that all exceedance resulting from the development to be contained within the site boundary without flooding buildings in a 100year+40% storm; and
  - v) Details of how on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development.

The approved scheme shall thereafter be implemented prior to the first occupation of the development hereby approved.

- 4) Prior to commencement of the development a scheme for the protection of retained trees and hedgerows (in accordance with BS5837/2012) shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be installed prior to the commencement of any construction works on site and shall thereafter be retained throughout the construction programme.
- 5) Prior to commencement of the development a programme of archaeological work by geophysical survey shall be submitted to and approved in writing by the Local Planning Authority. Should the results of that survey indicate the presence of archaeological features, a written scheme of investigation covering appropriate further archaeological evaluation, and a timescale, shall be submitted to and approved in

writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the agreed scheme of investigation and timescale.

- 6) Prior to commencement of the development an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall be submitted to and approved in writing by the Local Planning Authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the Local Planning Authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the Local Planning Authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the Local Planning Authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the Local Planning Authority within 30 days of the report being completed and approved in writing by the Local Planning Authority.

*Pre-slab level conditions*

- 7) No above ground construction works shall take place until details of a scheme for the provision of hard and soft landscaping of the site has been submitted to and approved by the Local Planning Authority. The submitted scheme shall be in general accordance with the submitted Landscape Masterplan (Ian Stemp Landscape Associates) and include details of timing/phasing of the implementation works. It shall also include the early provision of structural planting to the boundaries of the site, hedgerow enhancement, and provide for native species appropriate to the local area. The approved scheme shall thereafter be implemented in accordance with the approved timing/phasing of implementation works. Any trees or plants which within a period of 5 years from the completion of the development die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.
- 8) Notwithstanding the details of the chimneys shown in the approved plans, no above ground construction works shall take place until details of the proposed chimney heights and their associated D1 chimney height calculations have been submitted to and approved in writing by the Local Planning Authority. The chimneys shall thereafter be installed and maintained in accordance with the approved details.
- 9) No above ground construction works shall take place until an ecological enhancement scheme and management plan, including a programme of implementation, has been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall incorporate the

recommendations of the Preliminary Ecological Appraisal (Middlemarch Environmental, September 2018) and include:

- i) The provision of a 10m vegetated margin to the boundary of the Cotgrave Wildlife Site;
- ii) Habitats to support Grizzled and Dingy Skipper butterflies;
- iii) Provision of permanent artificial wild bird nests and bat roosts; and
- iv) Management/maintenance arrangements for the retained and newly created habitats on the site.

The approved scheme shall be implemented in accordance with the approved programme of implementation.

- 10) Notwithstanding any description of materials in the application, no above ground construction works shall take place until details of all proposed facing and roofing materials have been submitted to and approved in writing by the Local Planning Authority. The development shall be thereafter be implemented in accordance with the approved details.

*Pre-occupation conditions*

- 11) Prior to the first occupation of the development, the following highway infrastructure shall be provided in accordance with the approved plans:
  - i) the site access junctions from Main Road;
  - ii) the access driveway and car parking areas;
  - iii) the proposed pedestrian footway along the north-eastern kerb line of Main Road to the north of the entry junction, including associated uncontrolled pedestrian crossings; and
  - iv) proposed pedestrian footway along the north-eastern kerb line of Main Road to the south of the exit junction, including associated uncontrolled pedestrian crossings.
- 12) Prior to the first occupation of the development, a detailed signage scheme to direct visitors to the site from all directions shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to the first occupation of the development.
- 13) Prior to the first occupation of the development, details of cycle stands for both staff and visitors shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented prior to the first occupation of the development and shall thereafter be retained.

*Other conditions*

- 14) The site shall not be open to the public outside the hours of 08:00 to 20:00. No burials or cremation services shall take place outside the hours of 09:30 to 16:30 Monday to Friday, 09:30 to 13:30 on Saturdays, and at no time on Sundays and Bank Holidays.
- 15) The access gates to the site shown on the approved plans, and any subsequent replacement gates, shall only open inwards and shall be kept open at all times when the crematorium building or memorial gardens are in use.