



CO/5793/2017
& CO/5794/2017

IN THE HIGH COURT OF JUSTICE
(QBD, PLANNING COURT)
BETWEEN

DIGNITY FUNERALS LIMITED

Claimant

and

(1) SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL
GOVERNMENT

(2) SOUTH STAFFORDSHIRE DISTRICT COUNCIL

(3) WESTERLEIGH GROUP LIMITED

Defendants

DRAFT ORDER

Upon the Claimant and the First and Third Defendants having agreed the terms of this Order for the reasons set out in the attached Schedule, and the Second Defendant not actively participating in the Claims,

BY CONSENT IT IS ORDERED:

1. Permission be granted;
2. The Claims are allowed;
3. The challenged decisions of the First Defendant dated 6 November 2017 are quashed;
4. The First Defendant pay the Claimant's reasonable costs of these Claims to be assessed if not agreed.

Dated:

23 March 2018 David Holgate

I approve¹ the order on the
basis of the attached schedule
D.H.

SCHEDULE

1. By these claims, the Claimant challenges two decisions of the First Defendant arising out of appeals by the Claimant and the Third Defendant against the refusal by the Second Defendant of their respective applications for planning permission for the development of a crematorium in the Green Belt. The appeals were conjoined and were the subject of a public inquiry before an Inspector appointed by the First Defendant. The First Defendant recovered the appeals for his own determination.
2. Both appeal schemes amounted to inappropriate development within the Green Belt and therefore in accordance with local and national policy "*very special circumstances*" were needed to be demonstrated for planning permission to be granted.
3. The Inspector recommended that the Claimant's appeal be allowed and that the Third Defendant's appeal be dismissed. In disagreement with that recommendation, the First Defendant purported to allow the Third Defendant's appeal and purported to dismiss the Claimant's appeal.
4. Ground 1 of both of the Claimant's claims contends that the First Defendant failed to have regard to the issue of "rebalancing", a material consideration identified by the Inspector in paragraphs 236 to 237 of the Inspector's Report, and failed to provide proper, adequate and intelligible reasons on this issue in light of the First Defendant's preference for the Third Defendant's scheme.
5. Ground 5 of both of the Claimant's claims contends that the First Defendant reached his decisions on the erroneous basis that the parties to the appeals had agreed that there was a need for only one new crematorium in the Second Defendant's district. This ground is founded on paragraph 232 of the Inspector's Report which states that "*it was*

accepted by all parties" that very special circumstances would not exist for a second crematorium within the green belt. Relying on this, paragraph 13 of the First Defendant's decision letter dismissing the Claimant's appeal and paragraph 12 of his decision letter allowing the Third Defendant's appeal expressly proceeded on the basis that *"it is agreed by the main parties that there is a compelling need for only one new crematorium"* and as a consequence the First Defendant's decisions proceeded on the basis that it was common ground that no more than one scheme should be permitted. Through Ground 5 of both claims, the Claimant contends that this was incorrect since both the Claimant and the Third Defendant in fact made submissions to the Inspector to the effect that even if their scheme was not the decision-maker's first choice, there was nonetheless a need for two crematoria and therefore their scheme should still be permitted.

6. The First and Third Defendants agree that these grounds are well founded, with the Second Defendant not expressing a view. Specifically, the former agree that:

- a. In relation to Ground 1:

- i. The issue of "rebalancing" was deemed a material consideration in the overall assessment of the planning balance by the Inspector, as identified in paragraphs 236 and 237 of his Report, and should have been grappled with by the First Defendant; and/or
- ii. The First Defendant failed to consider and failed to give any, or any proper, adequate or intelligible, reasons in relation to the Issue of "rebalancing".

- b. In relation to Ground 5:

- i. the Inspector's suggestion at paragraph 232 of his report

that all parties agreed that there was a need for only one crematorium was wrong;

ii. the First Defendant was misled by paragraph 232 of the Inspector's report and proceeded on the incorrect basis that there was a need for only one crematorium;

iii. as a consequence of the above, neither the Inspector nor the First Defendant grappled with the submissions on 'the need for two'.

c. Accordingly, the First Defendant's decisions failed to take into account material considerations (namely the parties' submissions on "rebalancing" and "the need for two") and/or failed to give proper, adequate and intelligible reasons on the issue of "rebalancing"; and/or proceeded on the basis of a material error of fact as to the way the parties' cases had been advanced at the inquiry.

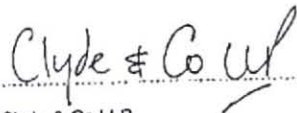
d. It cannot be said to be inevitable or highly likely that the First Defendant's decisions would have been the same but for the above.

7. Accordingly, it is agreed that both of the First Defendant's decisions under reference APP/C3430/W/15/3039163 and APP/C3430/W/15/3039129 should be quashed and the matter remitted for reconsideration by the First Defendant, with the benefit of a fresh Inspector's report following a further public inquiry before a new Inspector.


8. It is further agreed between the Claimant and all Defendants, and expressly accepted by the Court (in order to safeguard the Claimant's position having regard to the principle of issue estoppel and/or abuse of process and/or the rule in *Henderson v Henderson* [1843-1860] All ER

378), that in relation to the other grounds of the Claims CO/5793/2017 & CO/5794/201, namely grounds 2, 3, 4, 6, 7 and 8, on the redetermination of the appeal, in the event that the First Defendant makes the same or any similar determination or alleged error as relating to the aforesaid grounds 2, 3, 4, 6, 7 and/or 8 the Claimant will not be barred from challenging the First Defendant's reasoning and/or decision in relation to any such new determination, in any fresh proceedings. Furthermore, neither the Claimant nor any other party will be barred from raising arguments which form the basis of any or all of these grounds at the redetermination of the appeal.

We confirm agreement to an Order in the above terms.



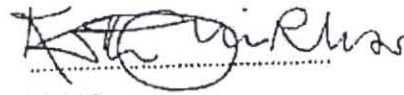
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By the Court

Approved
David Hedges

23.3.15