Case No: CO/3881/2015

Neutral Citation Number: [2016] EWHC 220 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT BIRMINGHAM

Birmingham Civil Justice Centre
Priory Courts, 33 Bull Street, Birmingham, B4 6DS

Date: 09/02/2016

Before:

THE HON. MRS JUSTICE PATTERSON DBE

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Between:

	THE QUEEN on the application of JEAN TIMMINS	**Claim**
	- and -	
	GEDLING BOROUGH COUNCIL **- and -** **WESTERLEIGH GROUP LIMITED**	**Defend** **Interested Pa**

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- -

Paul Brown QC (instructed by **Taylor & Emmet LLP**) for the **Claimant**
Richard Kimblin (instructed by **Gedling Borough Council**) for the **Defendant**
Paul Tucker QC (instructed by **TLT LLP**) for the **Interested Party**

Hearing dates: 2-3 February 2016

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Judgment **Mrs Justice Patterson:**

Introduction

1. 1. On 9 July 2015 the defendant granted planning permission to the interested party to develop land north of The Lighthouse, Catford Lane, Lambley, for a crematorium.

2. 2. This is an application for judicial review of that planning permission. Permission was granted on the papers by Lewis J.

3. 3. The claimant is a member of a local resident group opposed to the development, Catfoot Crematorium Opposition Group ("CCOG"). She lives at The Lighthouse. It is the closest residential property to the proposed development site.

4. 4. This is the second challenge by the claimant to the application made by the interested party to develop land north of The Lighthouse. The earlier challenge was when the application was first made in May 2012 for development of a crematorium and cemetery on the same site. I deal with that in greater detail later in this judgment.

5. 5. The application site is a greenfield site within the green belt.

6. 6. In June 2012 AW Lymn Limited ("Lymn") made an application for planning permission to build a crematorium on land at Orchard Farm, Catford Lane, Lambley, which is about 200 yards from the Westerleigh site.

7. 7. On 8 May 2013 the planning committee of the defendant considered both applications and resolved to grant planning permission to the interested party and to refuse the application made by Lymn.

8. 8. On 17 July 2013 Lymn challenged the planning permission granted to the interested party by way judicial review (CO/9276/2013). On 22 July 2013 the claimant challenged the planning permission (CO/9587/2013). Both applications were heard by Green J who quashed the planning permission: see **R (Timmins) v Gedling Borough Council** [2014] EWHC 654 (Admin). That decision was appealed to the Court of Appeal who upheld the decision of Green J: see [2015] EWCA Civ 10.

9. 9. The decision under challenge is the redetermination by the defendant of the application made in May 2012 by the interested party.

10. 10. After the refusal by the defendant to grant planning permission for the Lymn application, Lymn lodged an appeal. That was heard at a public inquiry in June 2014. On 4 August 2014 an inspector dismissed Lymn's appeal in a decision letter of that date.

11. 11. In October 2014 the interested party amended its planning application so as to remove the proposed cemetery.

12. 12. On 3 June 2015 the planning committee of the defendant considered the amended application and resolved to grant planning permission. That was duly issued, as set out, on 9 July 2015.

13. 13. The challenge was brought on five grounds. They are:

i. i) That the defendant misinterpreted or misapplied national policy as set out in paragraph 88 of the National Planning Policy Framework ("NPPF") on the approach to the determination of very special circumstances;

ii. ii) That the defendant erred in law in its reasons for reducing the weight to be attached to the decision letter on the appeal by Lymn;

iii. iii) That the defendant proceeded on a false and/or fundamentally erroneous understanding of the extent of the need for additional cremation facilities;

iv. iv) That the defendant reached a conclusion in relation to need for which there was no evidence;

v. v) That the defendant took into account irrelevant considerations and/or failed to take into account relevant considerations in its assessment of alternative sites.

The claimant contends that individually and cumulatively the errors resulted in an officer report which was seriously misleading in the advice that it gave to members of the committee.

Legal Framework

i. 14. This is not in dispute and so can be taken shortly.

ii. 15. Officer reports to committee are to be read as a whole and in a common sense manner bearing in mind that they are addressed to an informed readership. An application for judicial review based on criticisms in an officer report will not normally begin to merit consideration unless the overall effect of the report significantly misleads the committee about material matters which are then left uncorrected: see **R (Siraj) v Kirklees Metropolitan Borough Council** [2010] EWCA Civ 1286 at [19].

iii. 16. In **Morge v Hampshire County Council** [2011] UKSC 2 Baroness Hale said at [36]:

> "Some may think this an unusual and even unsatisfactory situation, but it comes about because in this country planning decisions are taken by democratically elected councillors, responsible to, and sensitive to the concerns of, their local communities. As Lord Hoffmann put it in *R (Alconbury Developments Ltd and others) v Secretary of State for the Environment, Transport and the Regions* [2001] UKHL 23, [2003] 2 AC 295, para 69, "In a democratic country, decisions about what the general interest requires are made by democratically elected bodies or persons accountable to them." Democratically elected bodies go about their decision-making in a different way from courts. They have professional advisers who investigate and report to them. Those reports obviously have to be clear and full enough to enable them to understand the issues and make up their minds within the limits that the law allows them. But the courts should not impose too demanding a standard upon such reports, for otherwise their whole purpose will be defeated: the councillors either will not read them or will not have a clear enough grasp of the issues to make a decision for themselves. It is their job, and not the court's, to weigh the competing public and private interests involved."

i. 17. Interpretation of planning policy is a question of law. A decision maker must proceed on a proper understanding of the relevant policies. A decision maker who materially misinterprets planning policy commits an error of law: see **Tesco Stores Limited v Dundee City Council** [2012] UKSC 13 at [17].

ii. 18. The test to be applied to establish very special circumstances in the green belt is whether the harm to the green belt and any other harm is clearly outweighed by other considerations. The case of **Secretary of State for Communities and Local Government v Redhill Aerodrome Limited** [2015] EWCA Civ 1386 confirmed that the approach under paragraph 88 of the NPPF was unchanged from previous policy: as set out in **R (River Club) v Secretary of State for Communities and Local Government** [2010] JPL 584.

Factual Background

i. 19. There had been three planning applications of particular relevance prior to the submission of the instant application in May 2012. The first was in September 2006 for the erection of the building and use of a crematorium and garden of remembrance on land at Oxton Road, Calverton. In October 2006 the defendant refused an application for planning permission for the conversion and extension of existing premises to form a new crematorium and cemetery on land at Dairy Farm, Mansfield Road, Arnold. In November 2007 the defendant refused planning permission for the erection of a building for use as a chapel and crematorium on land off Oxton Road, Calverton. All three applications were in the green belt. All were appealed. All were dismissed. All of those inspectors did not consider that any overriding need for additional crematorium in the area had been established.

ii. 20. When the instant application was submitted on 16 May 2012 on a site totalling 5.3 hectares it was for the construction of a crematorium together with the use of land as a cemetery. The new crematorium building was proposed to have maximum dimensions of 39.3 metres in length by 18.7 metres in width. It had a floor area of some 522 square metres, a ridge height of 6.8 metres and a maximum height to the top of the chimney stack of 9 metres.

iii. 21. The application was subject to objection by numerous local residents who had founded CCOG.

iv. 22. The application was reported to the planning committee on 8 May 2013 together with the Lymn application. The planning committee received three separate reports on the applications. There was an introductory report dealing with the issue of need which was common to both applications and two individual reports dealing with the particular details of each separate application. On 8 May 2013 the planning committee resolved that planning permission should be granted in respect of the interested party's application and that the Lymn application should be refused.

v. 23. Green J handed down judgment on 11 March 2014 in the judicial review to challenge that permission. He quashed the permission on the ground that the defendant had erred in law by regarding the cemetery component of the application as "not inappropriate". Before that decision was upheld in the Court of Appeal the planning appeal into the refusal of the Lymn application was heard. In the decision letter which dismissed the appeal the inspector was not satisfied on the evidence before him that a need for a new crematorium had been demonstrated. On alternative sites, Lymn's search had been led more by market opportunities than planning considerations. A methodical strategic view had not been taken to the preferred areas of search based on planning constraints and policies. There was a large potentially suitable non green belt site, namely, the Gedling Colliery which had never been properly evaluated.

vi. 24. In October 2014 the interested party submitted additional information to the defendant, including amendments to the proposed layout. The amendments removed the cemetery from the application together with the footpaths and the parking area that had been associated with the proposed cemetery use. Updates to the planning statement and need reports which sought to address the criticisms of the inspector in the Lymn appeal were submitted also.

vii. 25. The application was reported to the defendant's planning committee on 3 June 2015.

The Officer Report

i. 26. The report was long and detailed. Given the nature of the challenge it is necessary to go into the report in some detail. It began with the site description, set out the planning history, then described the development proposed, followed by additional information received after the High Court judgment. It summarised the consultation responses and then proceeded in section 6 to planning considerations.

ii. 27. The section commenced as follows:

> "6.1. The key planning consideration in the determination of this application is the location of the site within the Green Belt for Nottingham. The National Planning Policy Framework (NPPF) states that the Government attaches great importance to Green Belts. 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. One of the five purposes which Green Belt serves is to assist in safeguarding the countryside from encroachment.
>
> 6.2. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The NPPF advises that substantial weight should be given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations."

i. 28. It continued:

> "The proposal is for the construction of a crematorium and associated works. The site is located within the green belt and within a mature landscape area. As such the following national policies in the NPPF with regard to achieving sustainable development are most relevant to this planning application."

The report then referred to the various sections of the NPPF promoting sustainable transport, requiring good design, promoting healthy communities, protecting green belt land, meeting the challenge of climate change, flooding and coastal change, conserving and enhancing the natural environment and facilitating the sustainable use of minerals.

i. 29. The report said the proposal raised four policy issues: prematurity, green belt, provision of community facilities and landscape. The conclusion of that section of the report reads [6.42]:

> "The applicant should demonstrate the following:
>
> - The need for new crematoria provision in the Gedling area;
> - The lack of alternative less harmful sites to meet this need; and
> - The impact of the proposal on landscape character."

i. 30. The section on need and alternatives began as follows:

> "6.43. The need for new crematorium provision and the lack of alternative ways of meeting that need are the key very special circumstances for this proposal. Need is also an issue for policies on Mature Landscape Areas and the provision of new community facilities. This section summarises the evidence on Need and Alternatives submitted so far, presents a conclusion on these issues and gives guidance on whether these can be treated as part of the very special circumstances required. Westerleigh, Lymn and the Catfoot Crematorium Opposition Group (CCOG) separately provided information regarding Need and Alternatives during the original determination of the applications. This information was combined and assessed in an Introductory Report (May 2013) which was used in determining the two applications in May 2013. Additional information on these matters was provided during the appeal on the Orchard Farm site and has also been provided during the redetermination of this application.
>
> 6.44. The totality of this information has been used to produce this report. The Orchard Farm appeal decision and other appeal decisions, including those in Gedling Borough, have also been used. The Inspector at Orchard Farm found that the evidence submitted did not demonstrate a need for new crematoria provision (paragraph 70) and considered that further consideration should be given to an alternative site (paragraph 73).
>
> 6.45. However, given the uncertainty over what information submitted by Westerleigh was presented to the Inspector, the extent to which he engaged with this information and the new information provided since the appeal, it is not considered possible to simply rely on the appeal decision and conclude that there is no need or that an alternative site exists. It is recommended that substantial weight, however, be given to the views of the Inspector."

i. 31. The approach to the different elements of need was said to be structured addressing the following issues: relevant crematoria, level of demand, capacity at existing facilities, time between death and cremation, travel times and sustainability, qualitative issues, and alternative ways of meeting need.

ii. 32. Each was gone through in some considerable detail. The conclusions of the section are set out from paragraph 6.125. They read:

> "6.125. Overall it is considered that there is evidence showing that there is a need for a new crematorium to serve the eastern part of Greater Nottingham focussed on the Arnold and Carlton areas of Gedling Borough and the western part of Newark and Sherwood District. There is evidence that, within Greater Nottingham, there is currently capacity for 557 cremations per month (7320 per year). The requirement figure is based on a number of assumptions which include the average number of deaths between 2004 and 2010 and the national cremation rate; changes to these assumptions will result in changes to the conclusions on need.
>
> 6.126. Capacity exists when looking at both Nottinghamshire and Nottinghamshire plus Erewash. It is recommended that only capacity and need within Greater Nottingham is looked at as Greater Nottingham is the basis of planning for housing, employment and transport and should also be the basis for the planning of crematoria. There is isochronal evidence that a population of over 94,000 people to the east of Nottingham are not within 30 minutes cortege travel time of Bramcote or Wilford Hill.
>
> 6.127. Whilst acknowledging that 94,000 people is some way below the catchment figure for crematoria stated in several appeal decisions as a measure of viability, I note that a similar lower catchment figure was accepted for the Swanwick appeal decision (albeit not a Green Belt site). In addition, I also note that an additional 74,000 people would be closer to the proposed crematorium than an existing crematorium, so overall there is a population of 168,000 people who would benefit from the proposal. As a consequence, I am satisfied that the provision of a crematorium for 94,000 people should be given substantial weight in the overall planning balance, although the benefits to the additional 74,000 people should be given limited weight, as they already have satisfactory provision.
>
> 6.128. Both the lack of capacity and the lack of access within a reasonable period are evidence of need for a new crematorium to serve the eastern part of Greater Nottingham and it is recommended that this be given substantial weight when determining whether there are very special circumstances. It is recommended that limited weight, however, be given to the need for crematoria to be within the community it serves.
>
> 6.129. While there is evidence of delays beyond the target period of 7 to 10 days it is recommended that limited weight be given to this as a very special circumstance as it is unclear how much of the delay arises from the lack of capacity. It is recommended that moderate weight also be given to the qualitative benefits that would arise from providing a new crematorium. As they are not planning matters, it is recommended that no

weight be given to addressing the issues identified with the management of the existing crematoria.

6.130. There is also substantial and convincing evidence that there is no way of meeting this need other than the current proposal. Alternatives which do not provide capacity to serve the eastern part of Greater Nottingham should be discounted. A methodical search has been undertaken of the area around the urban area for opportunities and consideration given to the planning merits of locating a crematorium on the former Gedling Colliery site. It is recommended that this should be given substantial weight in determining the application.

6.131. There are, however, a number of previous appeals in Gedling Borough which have found there is no need, or at least insufficient need, to outweigh the harm caused. It is considered that the information presented in this report is the most up to date information available and is based on information and assumptions which have been independently verified, either by the Borough Council or through Planning Appeals. It is considered that the conclusion on need is robust.

6.132. Arguments have been put forward that the need for crematoria should not be seen as a very special circumstance. This is based on the National Planning Practice Guidance (NPPG) which sets out that the unmet need for housing is unlikely to outweigh the harm to the Green Belt. It is considered that this does not apply to the provision of crematoria; if the Government had intended this provision to apply more generally then it could have made this clear in the NPPG, or NPPF. Additionally, the Orchard Farm inspector considered at Paragraph 57 that the adequate provision of crematoria is an essential need and a planning consideration of the highest order; this suggests that he considered that it would be capable of being a very special circumstance.

6.133. During the determination of the original application, objections were made that the Local Plan process should be used to identify the best way to deliver new crematoria provision if any is needed. It was concluded at paragraph 113 of the Introductory Report (May 2013) that a developer led solution tested against planning criteria is the most appropriate way. The Orchard Farm appeal decision addresses this issue at paragraph 67. It suggests that the Inspector's view was that the provision of crematoria should be addressed in a Local Plan.

6.134. At the time that work commenced on the Part 2 Local Plan there was an extant planning permission for a new crematoria and it was not necessary to address the issue any further. As noted above, prematurity is not normally an issue prior to plans being formally submitted for examination. The Part 2 Local Plan has not yet been submitted and is not

at an advanced stage. We are, therefore, unable to refuse planning permission for this proposal on the grounds of prematurity.

6.135. Consideration is being given to whether to address the provision of crematoria within the Part 2 Local Plan. This would involve the assessment of whether there was a need for additional provision and alternative ways of making provision. It is highly unlikely that that process would result in different conclusions to those in this Report.

6.136. Overall it is considered that there is a need for a new crematorium to serve the area to the east of Greater Nottingham focused on Arnold and Carlton and the western part of Newark and Sherwood and no alternative ways of meeting this need which have less impact. It should be considered whether these, along with any other matters put forward, amount to the very special circumstances which outweigh the harm to the Green Belt and any other harm."

i. 33. The harm to the green belt was then considered as were landscape considerations.

ii. 34. The final section was called 'Conclusions and planning balance'. That reads:

"6.331. I would first advise Members that in his decision letter on the Orchard Farm appeal, the Inspector stated at paragraph 11 that:

> 'Any future planning decision relating to the Westerleigh site itself are, in the first instance at least, matters solely for the Council. For the avoidance of doubt, nothing in my decision is intended to fetter the Council's discretion in that regard'

After reviewing the evidence provided by the applicant and other consultees, including Lymn's, CCOG and Nottingham City Council it is concluded that:

a. 1. There is a need for the capacity to accommodate at least 610 cremations per month in Greater Nottingham compared to existing capacity to hold 557 cremations per month. The table below sets out the Borough Council's assessment of capacity across different spatial scales.

	Requirement	Capacity		
	Per Year	Per Month	Per Year	Per Month
Greater Nottinghan	7320	610	6684	557
Nottinghamshire	1068	890	11974	998

Nottinghamshire Erewash	11808	984	11974	998

a. 2. There are over 94,000 people to the east of Greater Nottingham who do not live within a 30 minute cortege travel time of existing crematoria.

b. 3. There is evidence that cremations are taking place beyond the target period of 7-10 days. The reasons for this are unclear and are likely to be the result of a number of factors.

c. 4. There are not considered to be any alternative locations or ways of meeting that need other than the current application.

6.332. Overall, it is considered that there is a need for a new crematorium to serve the Arnold and Carlton areas of Greater Nottingham and that there are no alternative ways of meeting that need to the current proposal.

6.333. There is clear evidence, therefore, to which substantial weight should be attached, showing that very special circumstances exist for allowing a new crematorium to serve the eastern part of Greater Nottingham, focussed on the Arnold and Carlton areas of Gedling Borough and the western part of Newark and Sherwood District.

6.334. After careful consideration of the Development Plan and the Green Belt policies of the Framework, I have attached substantial weight to the harm to the Green Belt, and the other harms. I consider that there are very special circumstances which clearly outweigh the harm to the Green Belt by reason of inappropriateness and any other harm, including its effect upon openness and the purposes of the Green Belt.

6.335. I consider that the impact of the proposed development on the intrinsic value of the local Landscape Character and Mature Landscape Area is outweighed by the very special circumstances necessary to support this proposal.

6.336. In my opinion the proposed development would not give rise to any undue impacts on highway safety and would provide reasonable accessibility and transport choice, bearing in mind that there are not considered to be any alternative locations or ways of meeting the need for a new crematorium.

6.337. I also consider that the proposed development would not give rise to any undue impacts with regard to pollution, the water environment, the amenity of nearby residential properties and businesses; ecology; the design of the proposed development; and its impact on the public footpath.

> 6.338. When taken in the round, I am satisfied that the proposed development would contribute to the achievement of sustainable development, making economic, environmental and social progress for this and future generations.
>
> 6.339. In reaching this conclusion, I have also attached substantial weight to the comments of the Orchard Farm Inspector, who considered that the adequate provision of crematoria is an essential need and a planning consideration of the highest order.
>
> 6.340. Having attached weight to the material planning considerations and assessed whether these are positive or negative factors in the overall planning balance, it is evident that the positive planning considerations clearly outweigh the negative planning considerations.
>
> 6.341. As such, the planning considerations set out and discussed above indicate that the proposed development would largely accord with the relevant national and local planning policies. Where the development conflicts with the Framework or Development Plan, it is my opinion that other material considerations indicate that permission should be granted. The benefits of granting the proposal outweigh any adverse impact of departing from the Development Plan and Framework.
>
> 6.342. In my opinion, therefore, that the proposal largely complies with the aims of Sections 4, 7, 8, 9, 10, 11 and 13 of the National Planning Policy Framework, Policies A, 1, 3, 10, 12, 16, 17, 18 and 19 of the Aligned Core Strategy for Gedling Borough (September 2014) and Policies C1, ENV1, ENV11, ENV37, ENV40, ENV43 and T10 of the Gedling Borough Replacement Local Plan (Certain Policies Saved 2014)."

Ground One: Interpretation of the NPPF and the Approach to Very Special Circumstances

i. 35. Paragraph 88 of the NPPF states:

> "When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations."

i. 36. "Any other harm" is not limited to harm to the green belt but includes all other harm caused by the development under consideration: see **Redhill Aerodrome** (supra).

ii. 37. To arrive at a conclusion that very special circumstances exist in accordance with paragraph 88 of the NPPF the decision maker must weigh the "other considerations" against the combined harm which is caused to the green belt by reason of inappropriateness, and any other harm (which may include but is not limited to other harm to the green belt).

iii. 38. The site lies also within an area designated a Mature Landscape Area ("MLA") to which policy EN37 of the defendant's Local Plan applied.

iv. 39. The officer report identified that additional harm applied to the MLA. It said at [6.197], [6.198] and [6.200]:

> "Although…the development has adopted a layout that would have least impact on the locality and where some appropriate mitigation can be implemented…this is outweighed by the impact of the greater volumes of traffic, noise and car parking, which can only represent creeping urbanisation and this is clearly in conflict with the local policy regarding landscape character and the protection of the openness of this locality.
>
> For the above reasons it is evident that the proposed development would not accord with the aims of paragraph 17 and section 11 of the NPPF, policies 10 and 16 of the ACS and policies ENV37 and ENV43 of the RLP, in that it would not enhance the value of landscape character of the area. However it would accord to a limited extent with the protection conservation elements of these policies, if the mitigation measures recommended by the County Council are fully implemented
>
> …in my opinion the landscape considerations are a negative factor in the overall planning balance."

i. 40. The claimant submits that there was harm also to the amenity of neighbouring properties which the officer report concluded was a "limited negative factor in the overall planning balance": see paragraph 6.251 of the report.

ii. 41. The claimant's submission is that contrary to paragraph 88 of the NPPF and the decision in **Redhill Aerodrome** the defendant's decision on very special circumstances focused entirely on harm to the green belt, and failed to take into account other harm such as that to the MLA or to the amenity of neighbours.

iii. 42. The claimant relies in particular on paragraph 6.146 which reads:

> "'Very special circumstances' need to be demonstrated in two regards:
>
> - • Firstly the applicant must demonstrate that there is a need for a new crematorium in the area;
>
> - • Secondly the applicant must demonstrate that there is no alternative non green belt location.
>
> In addition, it is necessary to consider whether there would be additional harm to the green belt by reason of loss of openness and any other harm with regard to the purposes of the green belt. Any additional harm must also be clearly outweighed by other considerations."

i. 43. The claimant submits that the planning committee was wrongly being directed to consider only the harm to the green belt and not all other harm such as harm to the MLA when considering whether very special circumstances existed.

ii. 44. Further, the claimant submits that the planning committee was wrongly encouraged to consider separately the harm to openness and permanence of the green belt and to consider whether those factors were outweighed by the need when paragraph 88 of the NPPF required the committee to consider all harm together. It is contended that the officer report only considered harm to the MLA or impact on amenity after having concluded that there were very special circumstances. There was no reference either in the section dealing specifically with green belt or in the overall conclusions of the officer report dealing with very special circumstances to the conclusions that the impact on the landscape and the impact on amenity were negative considerations in the assessment of very special circumstances.

iii. 45. That is said to be reinforced by paragraph 6.334 which I have set out above. Had the officer been considering the impact on the MLA he would have taken into account not only the green belt policies of the NPPF but also paragraph 17 and section 11 of the NPPF where conflict was found. The defendant has failed to take into account all harm (including that to interests other than green belt) when carrying out the paragraph 88 NPPF balancing exercise.

iv. 46. The defendant contends that the officer report considered the two principal elements of harm which in this case were green belt and landscape effects. The words of the report demonstrate that both were considered clearly, explicitly and entirely correctly.

v. 47. The members were repeatedly given an accurate summary of the test in paragraph 88 of the NPPF.

vi. 48. The report dealt with green belt considerations separately from landscape considerations as part of the report's structure. That was a necessary part of the appraisal to consider each discrete planning consideration to evaluate whether there was harm or policy conflict arising from each consideration.

vii. 49. It is plain from the officer conclusions that landscape harm was included within the harms in considering whether very special circumstances were established.

viii. 50. The interested party supports the defendant and maintains that the report correctly advised the committee in several places to consider not only harm to the green belt but also any other harm in deciding whether very special circumstances existed.

<u>Discussion and Conclusions</u>

i. 51. In the opening paragraphs to the planning considerations the report makes the approach that members had to follow clear. It says :

> "The NPPF advises that substantial weight should be given to any harm to the green belt. Very special circumstances will not exist unless the potential harm to the green belt by reason of inappropriateness, and other harm, is clearly outweighed by other considerations." (Paragraph 6.2).

i. 52. Section 6 then proceeds to draw conclusions on each of the planning considerations that had been discussed earlier with sub-headings on, by way of example, accessibility and sustainability considerations, amenity considerations, ecological considerations as well as need and alternative sites, green belt and landscape issues. There is then an overall conclusion section which seeks to draw the threads together.

ii. 53. The claimant submits that the officer report "salami sliced" different areas of harm and failed to consider the total harm. The overall approach was indicative of a mindset which looked at the component parts individually and tracked only part of the advice in paragraph 88 rather than the entirety. Although there were parts of the report where the advice was set out in whole the officer application of them was such that the committee were significantly misled.

iii. 54. I reject that submission.

iv. 55. First, in dealing with green belt policy issues paragraph 6.28 set out the approach as follows:

> "In conclusion, the construction of crematoria is considered to be inappropriate within the Green Belt. As such, the applicant is required to demonstrate that there are 'very special circumstances' which outweigh the harm to the Green Belt by reason of inappropriateness and any other harm. It is considered that the need for new crematoria provision in the area and the lack of available non-Green Belt sites to meet this need are the key 'very special circumstances'. Consideration will need to be given to any additional circumstances put forward by the applicant"

i. 56. That advice was repeated in 6.144.

ii. 57. It is quite clear that the advice to committee was correct: very special circumstances had to outweigh the harm to the green belt by reason of inappropriateness and any other harm. The crematorium was identified as being inappropriate development and, therefore, in itself harmful. To that harm had to be added any other harm. That was identified in the landscape section (in [6.200]) and to a limited extent in the amenity section (in [6.251]) of the report. Both of those harms were expressly identified.

iii. 58. In the overall conclusions and planning balance section, in particular [6.334] (above), it is clear that author was very much aware of the appropriate test, namely, that very special circumstances would exist if they clearly outweighed harm to the green belt and any other harm. That is directly consistent with paragraph 88 of the NPPF. The members were given entirely appropriate advice. There is nothing to suggest that the consideration of the other non-green belt harms came for consideration after the determination of very special circumstances; indeed the converse. The report was consistent in its advice which was interlaid within its contents in several locations as to the approach that members were to take. There is nothing within the report that could remotely be described as significantly misleading them in the approach to be taken the green belt.

iv. 59. This ground fails.

Ground Two: Consideration of the Inspector's Report on the Lymn Appeal at Orchard Farm

i. 60. The claimant submits that it is well established that previous inspectors' decisions are a material consideration from which a decision maker should not depart without considering them and giving reasons for any departure.

ii. 61. A key issue in the determination of the application was the extent of need for additional cremation facilities in Gedling. That had recently been considered in some detail by the inspector in his decision letter dated 4 August 2014 after the Lymn appeal. Whilst the defendant was not bound by that decision it is to be noted that the inspector heard evidence from the claimant, the defendant, the interested party and Lymn. He had the benefit of the evidence being tested through cross-examination.

iii. 62. In reporting the application to the planning committee the officer report said at paragraph 4.3:

> "A full revised Need Report has been submitted to address the Inspector's comments in relation to the need for a new crematorium in this location and in order to further justify the location of such a facility within the Green Belt. The applicant's agent considers that in his determination of the A W Lymn appeal, the Inspector did not read the Westerleigh Need Report as originally submitted to justify their proposed development, nor did he find the need argument put forward by A W Lymn compelling or persuasive. He concluded his comments on need by stating that 'it may be that there is such a need, but if so, it remains to be demonstrated'."

i. 63. The report continued at paragraph 6.44, 6.45 and 6.46 as follows:

> "6.44. The totality of this information has been used to produce this report. The Orchard Farm appeal decision and other appeal decisions, including those in Gedling Borough, have also been used. The Inspector at Orchard Farm found that the evidence submitted did not demonstrate a need for new crematoria provision (paragraph 70) and considered that further consideration should be given to an alternative site (paragraph 73).
>
> 6.45. However, given the uncertainty over what information submitted by Westerleigh was presented to the Inspector, the extent to which he engaged with this information and the new information provided since the appeal, it is not considered possible to simply rely on the appeal decision and conclude that there is no need or that an alternative site exists. It is recommended that substantial weight, however, be given to the views of the Inspector."
>
> 6.46. Equally, it is not possible to simply conclude that a need was identified originally and continues to exist. All the evidence presented to date needs to be assessed and regard had to the findings in the appeal decision before a conclusion can be reached. The Orchard Farm Inspector endorsed this approach at paragraph 95 by highlighting that, in dealing

with the remitted application for this site, the decision would 'Have to take account of all the current circumstances, at the time the decision is made'."

i. 64. The claimant submits that the officer report sought to limit the relevance of the inspector's decision by reference to the uncertainty over what information submitted by Westerleigh was presented to the inspector and the extent to which he engaged with this information. In fact, that there is no basis for impugning the inspector's decision in that manner. All the relevant information was specifically identified by the inspector and before him. The defendant erred in law by taking into account an immaterial consideration namely, the supposed uncertainty. There was no such uncertainty.

ii. 65. The defendant submits that this ground is unarguable. At [68] of the Lymn decision letter the inspector said:

> "Westerleigh also agrees that there is a need. But insofar as any of Westerleigh's evidence is before me, it does not appear to add significantly to that of the appellant's. And in any event, that evidence was introduced to the inquiry too late to be properly examined or challenged. I have therefore given it limited weight."

i. 66. The Westerleigh evidence referred to was submitted by Lymn on the penultimate date of the inquiry as the footnote to the decision letter makes clear. I was told that the evidence of the main parties was almost complete and the following day was closing submissions. The defendant submits that it was reasonable for the inspector not to give significant weight to a document which had been introduced after many, if not most, of the principal witnesses had given evidence and been cross-examined.

ii. 67. It is a ground that is unarguable because, whilst it was plainly open to the officer to have regard to the information upon which the inspector made his findings, the inspector expressly qualified the weight which he gave to the Westerleigh report. It would have been perverse for the officer to fail to have regard to that express qualification. The officer dealt with the evidential situation impeccably.

iii. 68. The interested party supports the defendant.

Discussions and Conclusions

i. 69. Consistency of decision making is a material consideration. Where a case gives rise to similar issues to an earlier decision that can be a material consideration. However, there is no obligation to follow the earlier decision As Mann LJ said in **North Wiltshire District Council v Secretary of State for the Environment** [1993] 65 P&CR 137 at [145]:

> "An inspector must always exercise his own judgment. He is therefore free upon consideration to disagree with the judgment of another but before doing so he ought to have regard to the importance of consistency and to give his reasons for departure from the previous decision."

i. 70. On the face of the Orchard Farm decision letter the inspector did not deal fully with Westerleigh's evidence on need. Although Westerleigh was a party to the inquiry it did not attempt to present any evidence on need. Nor did the appellant originally seek to rely upon any of Westerleigh's evidence, it was only on the fifth day that the appellant sought to introduce Westerleigh's original report on need. By that time, as the inspector said, it was "too late for Westerleigh's report to be properly examined or challenged". Accordingly, he gave it little weight in his decision. Given the circumstances in which it had been produced he was entitled to do so.

ii. 71. Furthermore, the inspector at the Orchard Farm inquiry made it clear that he was not saying there was no need for a crematorium. Rather, that if there was such a need, it remained to be demonstrated.

iii. 72. The evidence before the defendant was not the same as that put before the inspector. By the time of the Council's consideration, Westerleigh had prepared a supplementary report on need and an addendum to the planning statement which sought to address the issues raised by the inspector at the Orchard Farm decision.

iv. 73. Further, the inspector had been aware of the impact on his decision in relation to the Westerleigh reconsideration. He said:

> "Any future planning decisions relating to the Westerleigh site itself are, in the first instance at least, matters solely for the Council. For the avoidance of doubt nothing in my decision is intended to fetter the Council's discretion in that regard." (See paragraph 11 of the decision letter).

i. 74. In those circumstances it was perfectly proper for the officer report to advise that the committee should not simply conclude that there was no need as a result of the inspector's decision at Orchard Farm in August 2014. The guidance given at paragraph 6.45 of the report, set out above, was entirely proper in all of the circumstances. It was advising members that although they should give substantial weight to the report they could not simply rely upon it as definitive on need or alternative sites. That was entirely justified in the circumstances.

ii. 75. This ground fails.

<u>Grounds Three and Four: Whether the Officer Report Took the Correct Approach in Relation to Need and/or Reached a Conclusion for Which There Was No Evidence?</u>

i. 76. The claimant contends that the need case presented to the committee was legally flawed in four ways. First, the conclusion that there was any "shortfall" in existing capacity was entirely dependant on the 20% uplift. That was significantly dependent on future population growth. The claimant refers to the original introductory report which had concluded that there was no current deficiency in capacity in Greater Nottingham. It said that looking to the longer term population growth on its own was not sufficient to provide justification for additional facilities now but, in the event that need is not proven now, might provide some justification in the future.

ii. 77. The claimant does not contend that possible future growth was an immaterial consideration, rather that the committee needed to understand that at the date of their decision there was no current or immediate need. The need that was being relied upon was a future need.

iii. 78. Second, even if it was appropriate to add future need to the figures used in calculating the adequacy of the existing crematorium facilities it was the case, even on the defendant's own figures, that there was one month a year (January) in which the need for core cremation slots exceeded the existing supply. In every other month there was significantly more adequate capacity at the existing crematoria. It was fundamentally wrong and misleading to gross the peak demand of 610 for the month of January to an annual need of 7,320 a year.

iv. 79. Third, the defendant's analysis as to the extent that the application would result in an "oversupply" of core slots was fundamentally flawed. Of the additional capacity of 1,764 core slots, the only slots that would actually be needed to meet the needs of bereaved families were the shortfall of 53 in January. That meant that of the capacity to be provided only 3% was needed.

v. 80. Fourth, in rejecting an appeal against the defendant's decision at Oxton Road in November 2007 the inspector had concluded that there was no evidence of an overall shortage in capacity provided by existing facilities in the area, even though seasonal shortages might occur within the preferred core hours. The position in the current case was no different but that was not drawn to the committee's attention.

vi. 81. A further element of need relied upon by the interested party was the journey times for funeral goers in Gedling. To deal with that the interested party had produced the supplementary need report. The defendant concluded that there was evidence before it, which was not before the Lymn inspector, which enabled the defendant to conclude that the journeys were so long that they caused distress and hardship.

vii. 82. The claimant contends that the defendant erred in law in that conclusion in the following ways. First, most of the evidence was in fact in front of the Lymn inspector. In particular, the conclusion that around 94,000 people in the eastern part of Greater Nottingham did not live within 30 minutes travelling time of an existing crematoria was set out in the original need report. The evidence from the two local funeral directors, the church administrator and local residents was also available in the original need report. The interested party's argument that 30 minutes should be seen as a "definitive upper limit" in predominantly urban areas is, as paragraph 6.99 of the officer report notes, one which had been presented at the Lymn inquiry.

viii. 83. Second, in distinguishing the Camborne inspector's reasoning and concluding that 30 minutes should be treated as a rule of thumb the officer report failed to grapple with or give reasons for departing from the Lymn inspector's conclusions that the local circumstances to which regard must be had when deciding what was an acceptable level of provision include the fact that the site is in the green belt and that in an urban fringe area where the problems are partly about traffic congestion rather than distances it may well not be practical to think in terms of a specific maximum journey length (see paragraphs 57 and 59 of the Orchard Farm decision letter).

ix. 84. There is no reference to the Oxton Road decision letter in 2007 which established that there was no need for crematoria.

x. 85. Fourth, none of the supposedly new material referred to was evidence that long journeys were causing distress or hardship.

xi. 86. The defendant submits that the claimant is enticing the court into the planning merits.

xii. 87. The overall position was summarised under the conclusions and planning balance of the report where it said:

> "There is a need for the capacity to accommodate at least 610 cremations per month in Greater Nottingham compared to the existing capacity to hold 557 cremations per month."

i. 88. To determine the need by reference to peak demand is for the obvious reason that a crematorium has a fixed capacity and that capacity cannot vary from month to month. It is equally obvious that the need has to be met when it arises.

ii. 89. The officer report does not rely exclusively upon population growth for an uplift. Rather, it relies on flexibility for pandemics and double booking of slots as well as population growth.

iii. 90. It is appropriate to take the January average as that is the peak month in which a need has to be met. It has to be met by a facility with a known capacity.

iv. 91. The claimant's point on Oxton Road ignores the fact that the decision was expressly referred to and considered in the report where it says [5.43], "There is no difference now to the reasons for a previous application for a crematorium on land off Oxton Road being refused in November 2007."

v. 92. As to travel times the claimant misunderstands or misconstrues the officer report. On the basis of the evidence, including material in the introductory report, evidence at the Lymn appeal, the inspector's report and material produced after the inspector's report, the officer concluded that a 30 minute travel time was a reasonable upper limit. That was a matter of judgment. In coming to that conclusion he paid attention to the various views expressed by other inspectors and other decision letters on the topic of reasonable travel times for funerals. The reasons for his judgment were clear.

vi. 93. The interested party reminds the court that as a rationality challenge the threshold for a claimant to surmount is high. There was a vast amount of information before members so that they had all that was relevant to enable them to reach a decision.

vii. 94. On the question of numbers – the base figure of 535 was an average figure which meant that for 50% of the time it would be exceeded. 557 slots were identified as being currently available. The defendant had not taken, therefore, the peak of the peak. If a 20% uplift was applied to allow for population growth, pandemics, double booking and peak of peaks demand there was an undersupply of 53 slots. The real challenge was whether it was appropriate to work on a 20% uplift figure.

viii. 95. On the defendant's approach the need was for a capacity of 610 a month compared with the existing capacity of 557. There was nothing misleading about taking an annualised figure.

ix. 96. The fact was that there was a population of 94,000 outside the 30 minute isochrone from the existing facilities focussed in the Arnold and Carlton areas of Gedling borough and the western part of Newark and Sherwood District. The supplementary need report highlighted that, at the Orchard Farm appeal, no isochronal evidence had been produced on travel times from existing crematoria. As a result the inspector had concluded that the evidence as to how much of the district was beyond 30 minutes from a crematorium was limited. The inspector at the Oxton Road appeal in 2009 had also commented on the absence of travel isochronal analyses for the site before him and surrounding crematorium facilities which meant that he was dealing with an incomplete picture. This time there was more up to date information before the committee.

x. 97. The evidence that journeys of more than around 30 minutes caused distress to the bereaved was taken from the supplementary need report (paragraph 3.6). It referred to evidence from two funeral directors, an administrator of the East Midlands Synod, evidence given by AW Lymn, specific examples set out and a survey done for the original application. There was, therefore an evidential base for the content of [6.100] of the officer report which reads:

> "Overall, while it is accepted that no figure is set in planning policy and despite the comments of the Orchard Farm Inspector, it is considered that 30 minutes is a reasonable upper limit for cortege travel time in Greater Nottingham. There is sufficient evidence that journeys beyond this length are likely to cause distress to mourners and 30 minutes has been used in a number of other appeals. As noted above, the 30 minute figure should be treated as a 'rule of thumb'; it is considered that in areas with a large urban population, expected journey times are likely to be shorter than the 30 minute figure."

Discussion and Conclusions

i. 98. Whether or not there is a need for a given facility is quintessentially one of planning judgment for the decision maker having proper regard to all of the relevant surrounding circumstances and subject to considerations of rationality: see **R (Cherkley Campaign Limited) v Mole Valley District Council** [2014] EWCA Civ 567 at [25] to [35].

ii. 99. The claimant contends that the defendant erred in failing to recognise that the need identified for a new crematorium was only a future need based on population growth.

iii. 100. On a fair reading of the report it is perfectly clear that the defendant's conclusion on need was not based solely on capacity arising from future need. The report calculated the required capacity using average death rates from the period 2009 to 2014. An uplift of 20% was applied to take into account future population growth, pandemics, variations above the mean and the double booking of core slots. Evidence provided by local funeral directors was that there were significant delays before cremations were held. Apart from population growth each of the factors pointed to an existing and present need and not only one that would arise at some point in the future. The weight to be attached to the factors was entirely for the decision maker.

iv. 101. But there is no reason why the Council was not entitled to take into account future need and, indeed, the claimant did not seriously contend otherwise. Nor did it suggest any other uplift

figure. Whether an uplift needed to be taken into account, whether it needed to be 20% and what weight to be given to it was entirely a matter of planning judgment for the decision maker. As one of the roles of the planning system is to secure provision of infrastructure to meet future needs as well as current needs it would be surprising if the defendant did not take future needs into account. There is no guidance to be followed on the calculation of capacity for future crematoria. In my judgment, the defendant adopted a rational and reasoned approach to the calculation of capacity and cannot be criticised for carrying out the exercise in the way that it did.

v. 102. The claimant contends that it was fundamentally wrong and misleading for the report to use an annual need figure. The officer report says (at [6.84]) that annual cremation slots are 6,684 and the requirement for Greater Nottinghamshire is 7,320 showing that there is a demonstrable need to which substantial weight should be given in determining the application. If that is wrong then there is the potential to affect the planning balance which led to the conclusion of very special circumstances. Alternatively, if officers were to rely upon such a figure the report needed to be transparent so that members appreciated the degree of excess capacity over the current need that would result with the grant of a planning permission. The way the officer report was written significantly misled the members.

vi. 103. I reject those submissions. As the claimant recognises the capacity of a crematorium is fixed. To provide for sufficient capacity in the peak month or months the crematorium required will have the same capacity throughout the year. The use of an uplift figure was appropriate for the reasons set out above. If a figure for a month of lesser demand is used then there will be insufficient capacity for the peak month of January. Equally to meet the peak January figure will result in oversupply in July. Accordingly, the use of an annual figure makes no difference. The report was transparent and the members were aware that, in granting the permission, there would be an excess of capacity over need from the numbers supplied within the committee report.

vii. 104. But the question of need was not determined just by the mathematics. There were the material factors of those who lived outside the 30 minute isochrone of a crematorium facility which it was determined appropriate to use in the local circumstances of Gedling, the distress of such a longer journey to the bereaved and the days waiting for a cremation slot which all contributed to an overall conclusion of need and which the defendant was entitled to take into account. Evidence was available of isochrones from existing facilities to demonstrate the population outside a 30 minute drive time in the need update report. That was evidence that was not properly considered in the Orchard Farm appeal. The updated planning statement provided an evidence base for distress caused by longer journey times. It was a matter for the defendant as to whether it accepted the evidence but it provided a clear basis for the defendant's analysis and the conclusions that it reached. Some of the evidence had been available on the earlier consideration of the application but the members were entitled to look afresh at all of the evidence presented to it which in its totality was new and to come to a decision on it in its entirety.

viii. 105. The inspector in the Orchard Farm appeal agreed if there was evidence that deficiencies in existing provision were causing distress or hardship to bereaved families that was something that could merit substantial weight. In the instant case the defendant accepted that the evidence produced showed that long delays before cremations were held was causing distress to the bereaved and that at least one of the reasons for the delay was the lack of capacity in peak months.

ix. 106. The claimant contends that the Oxton Road decision ought to have been directly addressed. That argument is without merit. The Oxton Road decision was in 2009 and is clearly distinguishable: it relates to a different site and is based on very different evidence produced by a different party addressing a much earlier situation. In those circumstances it is impossible to infer what that inspector would have made of the evidence presented by Westerleigh at the time of the redetermination of the instant application.

x. 107. The defendant was not bound by the findings of the earlier appeal decisions, whether Oxton Road or Orchard Farm provided it had regard to them. It said expressly in the officer report that it did but made it clear that it was not appropriate to accept them uncritically. The situation had to be judged on the information before the committee. Additionally, the report referred to other appeal decisions where different inspectors had found that journey times in excess of 30 minutes were unacceptable. In those circumstances the defendant was entitled to take the conflicting findings of the different inspectors into account but come to its own judgment on the basis of the specific factors relevant to the application before it and within its own district with its own circumstances.

xi. 108. This ground has no merit.

Ground Five: Alternative Sites

i. 109. The claimant submits that the interested party's original application was supported by a site search report detailing the consideration it had given to alternative sites. The report set out criteria which guided the site search. They included a site area of between 6 to 10 acres but recognised that more land would be required to provide for burial land for the cemetery that was then proposed.

ii. 110. In the Lymn appeal decision the inspector had reviewed all the evidence before him on need and concluded that none of the arguments before him relating to need for the proposed development were compelling. It may be that there was such a need but, if so, it remained to be demonstrated (see paragraph 70).

iii. 111. Nevertheless, the inspector went on to consider whether any preferable alternative sites were available. He concluded in relation to the evidence before him that the search had been led more by market opportunities than by planning considerations. It did not appear that a methodical strategic view was taken as to the preferred areas of search based on planning constraints and priorities.

iv. 112. He remarked that the green belt was extensive within the borough and consequently few non green belt sites were likely to present themselves. One of those few was Gedling Colliery. On that he found, "The fact therefore remains that this is a large potentially suitable non green belt site adjacent to the urban area, and there is no evidence that its planning merits to incorporate a crematorium have ever been properly evaluated; especially in the light of the Council's acceptance of need. Neither has such a process yet been promoted through the development plan process" (paragraph 73).

v. 113. In the officer report the Gedling Colliery site was assessed. It said that it was not considered to be an alternative as it was allocated for alternative purposes; housing and a country

park. The requirements of the Cremation Act 1902 would limit the housing potential of the site. The report referred to the fact that the interested party had provided information from one of the land owners which considered there to be no room for a crematorium on site. It continued that the provision of a crematorium would reduce the number of houses that could be built on site and also affect the marketability of the site to prospective developers. Whilst the employment allocation was arguably less constrained a crematorium there could still impact on the marketability of the housing site.

vi. 114. The report continued at 6.122,

> "While permission has been granted for development that was not in accordance with the policy designating the country park it is not considered that a crematorium and a country park are compatible uses for co-location. The country park is now open and offers the opportunity for outdoor recreation and attracts a number of families and children to the site generating noise. Crematoriums on the other hand require a tranquil location. It is not considered possible to provide a crematorium on part of the country park in such a way as to meet the differing requirements of uses and still deliver both the country park and crematorium. Any crematorium would need to be located centrally in the country park due to the presence of residential properties on the surrounding roads. The solar farm, car footpaths and topography all limit the amount of space possible."

i. 115. The report concluded that there were no alternatives to the current proposal such that substantial weight should be given to the lack of alternative ways of addressing the need for a new crematorium.

ii. 116. The claimant makes three criticisms. First, of the scope of the work done: the original work involved a site search which was done for a crematorium and cemetery. Although that report has been updated the criteria of search have not been reset to reflect the fact that a smaller site is needed.

iii. 117. Second, Gedling Colliery. It is submitted that the owners said that there was no room within the colliery for a reason. The planning consultants instructed by CCOG had a discussion with Harworth Estates, the owner, who recognised that there was potential. That was something which was worth exploration. Second, subsequent to the grant of planning permission reports appeared in the local press about an agreement between the defendant and Harworth Estates that the defendant would purchase the area of the country park. That meant that the views of Harworth Estates were not so material. Third, the requirements of the Cremation Act applied to existing housing. They did not apply to future housing allocations. Potential existed within the park for sites to be found. Fourth, the country park was recently designated. Whatever its importance as a local designation it was to be placed in the balance against the national designation of green belt. The members should have considered their local aspirations for the local park against the strength of that national designation.

iv. 118. The claimant submits, finally, that its grounds are to be considered individually and cumulatively. The officer report was seriously flawed.

v. 119. The defendant submits that the site search report identified as possible alternatives, Gedling Colliery and the Country Park. The many other factors such as the 1902 Cremation Act and the presence of green belt meant that it was difficult to find sites in the urban area.

vi. 120. The officer report was clear on Gedling Colliery where it advised members that a country park was not compatible with a crematorium use. That provided the complete answer to the claimant's challenge.

vii. 121. Gedling Colliery had been raised by Dawn Edwards, on behalf of CCOG, with the Chief Executive of the defendant who, on 13 February 2013, had responded as follows:

> "As anticipated the initial reaction is not positive for the reasons I mentioned – clash of uses, impact on housing, loss of park land."

i. 122. That was entirely consistent with the officer report.

ii. 123. If any flaw was found in the defendant's decision making, whether on an individual ground or cumulatively, they were conceptually different so that either an error of law was made out which tainted the entire decision or it was not.

iii. 124. To the extent that the court finds any defect in the circumstances it would be appropriate for the court to exercise its discretion and not quash the decision.

iv. 125. The interested party points out that the original search criteria are set out within the design and access statement submitted with the application. That says that the site area should be at least 6 to 10 acres (2.4 to 4 hectares) and would need to be larger to provide new burial ground. The criteria did not, therefore, need revising as the site area for the crematorium remained the same without the need for a larger site to accommodate a cemetery.

v. 126. The site search report made it clear that once the area of need was established there were a number of unique restrictions including section 5 of the Cremation Act 1902 which prohibited the construction of crematorium nearer to a dwelling house than 200 yards. Effectively that dismissed urban areas and forced new crematoria to be located on the urban fringe close to population centres. The site needed to be close to a main road with access onto the site off a minor road of double carriageway width, on a site that was flat, close to main centres of population and well screened with existing landscape features. As a consequence the remaining space identified through the application of search criteria was within the green belt which was not an untypical situation given the need for crematoria to be in the urban fringe, close to population but with sufficient space for their facilities and to meet the requirements of the Cremation Act. The interested party submits that other green belt sites cannot be preferable to the site promoted.

vi. 127. The addendum to the planning statement provided an update on the interested party's proposal following the appeal decision by Inspector Felgate on 4 August 2014. That included reference to the Gedling Colliery site in response to the inspector's suggestion. It set out that the site was allocated for redevelopment in the Core Strategy and, as well as establishing a new country park on the major part of the site, the site was allocated to provide at least 600 new homes alongside the employment land provision, a solar park and the existing methane plant. Harworth Estates, who own the land, had confirmed that there was no room left within the overall site where

a crematorium could be developed. Attached to the addendum were two letters from agents, namely, Savills and Innes England, both of which said they were not aware of any suitable sites which met the search criteria. That was supplemented by an email from the planning and development manager of Harworth Estates which said simply, "There was a lot of development potential proposed at the former Gedling Colliery site which all links together but there is no room for a crematorium!"

vii. 128. In short the site was not a realistic alternative.

Discussion and Conclusions

i. 129. As Mr Tucker QC, for the interested party, pointed out there was no need to reset the search criteria given that, as originally formulated, they were to cover the building of the crematorium plus car park and landscaping with an additional requirement for further land for the cemetery. The latter was beyond, although there may be some overlap with, the area that was being searched for. In itself the deletion of the cemetery from the proposal did not mean that the exercise had to be rerun exploring the availability of a smaller site.

ii. 130. In any event the size of site was one of many factors to sieve the area to ascertain whether there were alternative sites. The other criteria have not been criticised. Inevitably, in a district such as Gedling the preponderance of sites thrown up will be sites within the green belt. They will not be preferable to and will be of the same planning status as the application site. The approach to the search exercise, in my judgment, taking all of the factors into account, cannot be criticised.

iii. 131. The site of Gedling Colliery needed further investigation as a possible alternative site after the comments by Inspector Felgate in the Lymn appeal. It has to be recalled that those comments were on the material before him and at the time of his consideration. The addendum to the planning statement specifically addressed his wish that the Gedling Colliery site be further explored. It was, and the information was before the committee. That revealed multiple allocations upon Gedling Colliery which resulted in no room within the site to accommodate a crematorium: see letter from Harworth Estates. That situation was corroborated by the advice from the two independent land search agents who both concluded that there were no other alternative sites which met the criteria used by the interested party as part of its search. The claimant contends that the local designation of a country park should yield to the national designation of the green belt. The committee was well aware of both designations; they were not materially misled.

iv. 132. No other site was identified. That means that there was no suitable or available site upon which the proposed development could be accommodated. It was a matter for the committee as to whether they were satisfied that that the evidence was satisfactory in establishing that there were no alternative sites suitable and available. It was. The claimant has not been able to demonstrate any flaw in the approach on the part of the defendant.

v. 133. In the circumstances there can be no issue of either an individual error of law or cumulative error of law. I agree with the submission on behalf of the defendant that the two are conceptually

distinct. However, in this case it matters not. In my judgment, there is no error of law in the decision making process on the part of the defendant.

vi. 134. Accordingly I dismiss this claim.