



Appeal Decision

Hearing Held on 11 February 2020

Unaccompanied site visit made on 10 February 2020

by K Savage BA MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 April 2020

Appeal Ref: APP/R2520/W/19/3236497

Land to the West of Haddington Lane, Thurlby, Lincoln, Lincolnshire

- 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 South Lincolnshire Estates Limited against the decision of North Kesteven District Council.
 - The application Ref 18/1525/FUL, dated 1 November 2018, was refused by notice dated 27 March 2019.
 - The development proposed is a crematorium (Use Class Sui Generis) with associated car parking, access, landscaping and boundary treatments.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by North Kesteven District Council against South Lincolnshire Estates Limited. This application is the subject of a separate Decision.

Preliminary and Procedural Matters

3. The appeal site address above is taken from the appeal form as the application form erroneously refers to Thurlby Road instead of Haddington Lane.
4. The appellant submitted a revised landscaping masterplan at the appeal stage. This differs from that previously considered by the Council only in respect of the positions and layout of trees, **intended to show a more 'informal'** arrangement. Having regard to the principles of *Wheatcroft*¹, I am satisfied this is not a significant change to the proposal and there would be no injustice caused to any party by my taking this revised drawing into account.
5. I undertook an unaccompanied site visit the day before the opening of the Hearing, and the main parties were in agreement following the discussion that a further accompanied visit was not necessary. I gave consideration to the need for a further unaccompanied visit following the Hearing, but ultimately determined one was not necessary as my earlier visit was sufficient for the purposes of the appeal.

¹ *Wheatcroft (Bernard) Ltd v Secretary of State for the Environment (1982) JLP 37*

Main Issue

6. The main issue is whether the proposal would represent an acceptable location for a crematorium, having regard to relevant local and national policy on development in the countryside, the effect on the character and appearance of the area and other material considerations, including evidence of need for a crematorium in the area.

Reasons

7. The appeal site is an agricultural field located in open countryside to the north of the village of Thurlby and around eight miles south-west of Lincoln. The site is relatively flat in profile with low hedgerows to the roadside and other boundaries, interspersed with single trees, except for the northern boundary where a larger copse of trees screens the site on this side. The low hedgerows permit clear views across and beyond the site from Haddington Lane.

Development in the countryside

8. The development plan for the district is the Central Lincolnshire Local Plan (April 2017) (the CLLP). Policy LP1 sets out the desire to deliver sustainable growth that brings benefits for all sectors of the community. Policy LP2 sets out the spatial strategy and settlement hierarchy for the district. Part 8 of the policy restricts development in the countryside unless certain exceptions apply, none of which would apply to the appeal scheme. The only support to be gained under Policy LP2 would be where the proposal accords with Policy LP55.
9. Policy LP55 specifically addresses development in the countryside. Part E supports non-residential development where four criteria are met. The first is where the rural location of the enterprise is justifiable to maintain or enhance the rural economy or the location is justified by means of proximity to existing established businesses or natural features. The crematorium would provide some employment in a rural location, but it would not be directly connected with the rural economy, nor would it be proximate to any existing businesses.
10. The appellant argues that a crematorium requires a countryside location due to the need to provide a tranquil atmosphere and attractive setting for cremation services. A number of appeal decisions² have been referred to me where Inspectors have accepted the location of a crematorium in the countryside. I recognise that tranquil and attractive surroundings are important factors in the selection of a crematorium, and that the Crematorium Act 1902 requires that new crematoria must be located 200 yards (183m) from the nearest residential dwelling and 50 yards (46m) from a road. I also recognise that the National Planning Policy Framework (the Framework)³ supports sustainable growth and expansion of all types of business in rural areas.⁴ However, these considerations do not mandate that a countryside location, moreover one located in open countryside some distance from the nearest settlement, is the only possible location for a crematorium, as many existing facilities, including the nearest crematorium at Lincoln, operate within urban or urban fringe areas. Whilst the appeal site benefits from some screening to the northern boundary from the copse of trees it is otherwise an open, agricultural field common to

² Listed at Footnote 2 of the Appellant's Statement of Case and variously provided within the appendices to the Appellant's Updated Needs Assessment

³ February 2019

⁴ Paragraph 82

the surrounding landscape. As such, the immediate natural features are not unique to the appeal site and its location is not, in my view, justified by means of proximity to natural features. As such, there would be conflict with the first criterion of Policy LP55.

11. The second criterion is that location of the enterprise is suitable in terms of accessibility. The site is located within the open countryside and accessed by a rural road with no lighting or footpaths. Visitors to the crematorium would inevitably rely heavily on the private car to access the facility. The Council does not argue conflict with this criterion, and I note the conclusions reached in other appeals that the nature of crematoria is such that visitors will very often travel by car in any event. However, the perceived inaccessibility of the site was raised by interested parties in representations and at the Hearing, and the Framework states that significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes, whilst recognising that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.⁵ **Therefore, notwithstanding the Council's position, I find this to be a relevant matter meriting further consideration.**
12. I accept that the proposal is unlikely to fully accommodate all modes of transport, but **the site's location and distance** from the nearest settlements would preclude walking, cycling and public transport almost entirely and exacerbate reliance on the private car. The evidence before me does not indicate that such a detached location is necessary or that tranquil and natural surroundings could not be found in a location more proximate to larger settlements or transport nodes such that reliance on the private car, or the length of journey necessary by private car, would be lessened.
13. The appellant has provided a signed unilateral undertaking (UU) relating to the provision of a shuttle bus service to the crematorium. The service would collect passengers from several nearby pick-up points and bring them to services at the crematorium. The UU is offered by the appellant as a form of mitigation for the lack of public transport or other alternative means of travel to the private car, though the appellant accepted at the Hearing that this was a small offer which would not wholly overcome the lack of accessibility to the site.
14. The proposed service would be reliant on mourners first arriving at the pick-up points by another means of public transport. Given the limited frequency of service which exists within this largely rural environment, I am unconvinced that mourners would be willing to embark on such multi-part journeys, much less rely on them to reach the crematorium for a service at a specific time. As such, I am not persuaded that the service would have a material effect in reducing the numbers of cars visiting the site. Therefore, whilst I have taken the UU into account, I find that it would provide very little benefit and would not overcome my concerns with the location and accessibility of the site in principle. Therefore, I find that the lack of viable alternatives to the private car means that there are shortcomings in respect of the accessibility of the site, in conflict with the second criterion of Policy LP55.
15. The third criterion is that the location of the enterprise would not result in conflict with neighbouring uses. The proposal would satisfy the requirements of the Cremation Act in respect of minimum distances, and would be surrounded

⁵ Paragraph 103

by agricultural fields on all sides. There is no evidence before me to indicate that the proposed use would be incompatible with the ongoing agricultural use of the surrounding fields, and so I find no conflict with this criterion.

16. The final criterion is that the development is of a size and scale commensurate with the proposed use and with the rural character of the location. The Council argues that the proposal would be an urbanising influence. I shall turn to this matter next. Notwithstanding this, there would be conflict with Policy LP55, and by extension the spatial strategy set out in Policy LP2, for the reasons set out above.
17. The Council argues that the proposal does not fall within the definition of a community facility and thus Policy LP15, which supports such uses subject to certain criteria, is not applicable to the proposal. I am not persuaded by the **Council's arguments** that a community facility must be one visited regularly, such as a public house or leisure centre. A crematorium is a facility which, though not usually visited repeatedly, will be visited by a significant proportion of the community at some point. Moreover, it is evident from the statistics before me that crematoria provide several services each and every day. I share the sentiments of colleague Inspectors in decisions referred to me who have identified the importance of crematoria in serving the needs of the community. Thus, I regard the crematorium as a community facility engaging Policy LP15. However, whilst this policy supports the use in principle, my findings above with respect to the location and accessibility of the site means there would be conflict with the policy requirement for the facility to prioritise and promote access by walking, cycling and public transport.

Character and appearance

18. The site is located within the Witham and Brant Vales Landscape Character Sub-Area (LCSA) as described in the North Kesteven Landscape Character Assessment (2007). The defining features of the LCSA include the low lying, generally flat valley of twin rivers Witham and Brant, an absence of landform or topographical variation and limited tree cover, but level terrain which allows hedgerow and copse trees to foreshorten views, increasing the influence of trees and hedgerows on the landscape. There is uniformity in terms of land use, being mainly arable fields. I saw the appeal site to be typical of this description, sitting in an open, tranquil countryside setting accessed by narrow country roads linking small, rural settlements.
19. The proposed crematorium itself would be a single storey building with shallow pitched roof and a single protruding chimney stack. There would also be areas of landscaping, a car park, service yard, entrance drive and a new bellmouth access on Haddington Lane, at which signage would be expected. The accumulation of such features would add to the presence of the development and lend it a formality which would be inconsistent with the rural and natural character of the surroundings.
20. **I have had regard to the appellant's Landscape and Visual Impact Assessment** which considers the landscape not to be highly sensitive to the proposals with **'limited' impacts on** its rural nature. However, the proposal would result in development well away from the nearest villages in a detached and conspicuous position within an expansive, open landscape. The development would interrupt the continuity of the landscape, and cause the loss of an open

field which contributes modestly but nonetheless positively to the prevailing characteristics of the area.

21. I accept that the position of the main building within the interior of the site would reduce its visibility in some longer views, such as from dwellings and footpaths in Witham St Hughs to the west, given the screening provided by boundary hedgerows. Proposed informal landscaping to the western and southern boundaries would help to screen the development from these sides over time, but it would remain clearly visible from Haddington Lane and landscaping would not sufficiently mitigate the visual impact of the proposal.
22. Moreover, the proposal would introduce a use which would draw considerable additional traffic into the area. I accept that there are no objections raised from a highway safety perspective, but such activity would otherwise not occur and would draw further undue attention to the presence of the facility within the open countryside.
23. Overall, I conclude that the proposed crematorium, due to its detached position within an expansive, open landscape and the loss of a characteristic arable field would be harmful to the character and appearance of the area. Accordingly, there would be conflict with Policies LP17 and LP26 of the CLLP which require proposals to have particular regard to maintaining and responding positively to any natural and man-made features within the landscape, and to achieve high quality sustainable design that contributes positively to local character, landscape and townscape. Given my findings on this main issue, there would be further consequential conflict with the fourth criterion of Part E of Policy LP55, and by not recognising the intrinsic character and beauty of the countryside, there would be conflict with the Framework.

Other Material Considerations

Need for a crematorium

24. Crematoria are essential facilities, required at some stage by a majority of society. Moreover, they are required by bereaved relatives at a very difficult time and, in light of this, it is not unreasonable to expect that a crematorium should be available within a reasonable distance and that services should be available without undue delay.
25. The **appellant's case is based upon a perceived 'triangulation of need' within the area**, deriving firstly from significant overtrading at the nearest crematorium to the appeal site at Lincoln, resulting in both quantitative and qualitative shortcomings; secondly from a lack of a crematorium serving Newark-on-Trent; and thirdly from a lack of a crematorium serving Sleaford and the wider district of North Kesteven. The appellant argues that the location of the proposed crematorium is the most suitable to address these needs to the greatest extent. The Council accepts certain needs exist, but its case is that the proposed crematorium either would not meet those needs due to its location or, in the case of Lincoln, other proposals would address the needs.
26. Alongside the evidence I heard orally at the Hearing, I have paid careful attention to the extensive, detailed evidence of both parties, including several appeal decisions relating to crematoria, **which have informed the parties' cases**.

Need at Lincoln

27. In a number of appeal decisions put before me it has been accepted that a crematorium operating at over 80% of practical capacity⁶ (PC) is likely to be under stress and lead to qualitative issues, identified by the appellant in the case of Lincoln as including delays in the bereaved securing a date for a cremation service, overcrowding at the crematorium and short services. However, this 80% measurement is not set down in policy, but acts more as a **'rule of thumb'** which seeks to measure the typically busiest periods of the day for services. Impact Planning Services (IPS), acting for the Council, argues that operating in excess of 80% of PC does not automatically result in qualitative issues, whilst Lincoln City Council (LCC), the operator of the crematorium, submits that there are no qualitative issues, and that traditional **'non-core'** slots are increasingly taken up by choice. I note that at Lincoln, the PC equals some 63% of the total or theoretical capacity (TC)⁷ and 80% of PC equates to just under 51% of TC. Given almost half of all service times are available at 80% of PC, I am not convinced that exceedances of this measurement automatically translate to qualitative issues, but whether they do must be considered on the specific evidence in each case.
28. However, it is common ground that Lincoln Crematorium undertook 2088 cremations in 2018, equal to 118% of its PC, an increase of some 9.4% from 2017. In effect, this means that most of the preferred service times between 1030 and 1500 hours are being taken up, and demand is such that bereaved families must either choose to take non-core slots (before 1030 and after 1500 hours) or wait longer to secure a preferred timeslot. The evidence before me indicates such patterns are exacerbated during the busiest winter periods, when numbers of deaths are higher.
29. The Council accepts that there is a qualitative need arising at Lincoln due to the length of time it is taking for cremations to be held following deaths, which the main parties have agreed is averaging around 28 days. I am cognisant of the findings of Inspectors in other appeals where delays of 14 days were considered unacceptable. Indeed, the parties agree in the Statement of Common Ground that delays of more than 14 days are injurious to the well-being of the bereaved. However, the evidence before me indicates that the delay is a product of several factors, many outside the control of the crematorium. Whilst I agree that it is undesirable for delays of such length to exist, the evidence suggests that only a small amount of this time period is caused directly by capacity issues, the others being down to matters such as the time taken to book a funeral director, registering the death, involvement of the coroner, or personal or cultural preferences of the bereaved. As such, it would seem that even if capacity issues were resolved, this timeframe would still be unlikely to fall below 14 days. Nonetheless, I accept that it would be advantageous to bereaved families to reduce average delays, and that the current level of trading at Lincoln means delays are longer than they could be.
30. I note comments submitted by the appellant from members of the public in respect of service quality; however, these are anecdotal in nature and limited in number. Similarly, the survey undertaken by the appellant contains a small sample size and the questions shed no light on the reasons why respondents may be dissatisfied with services at Lincoln. As such, they are of limited value

⁶ Practical capacity is the number of 'core slots', in this case those between 1030 and 1500 hours.

⁷ PC of 1764, Theoretical capacity of 2772

in demonstrating widespread qualitative issues. This is also countered by customer feedback supplied by LCC indicating generally positive experiences, **and LCC's own comment of just one** complaint in 2019. I have also had regard to comments submitted by local clergy and funeral operators who point to delays causing distress for bereaved families. However, overall, this evidence is inconclusive to demonstrate that, aside from the acknowledged time delays in services taking place, there are serious qualitative issues with the actual experience for mourners at the venue.

31. The appellant further argues that traffic delays, parking problems and overcrowding at Lincoln add to the qualitative problems. However, the evidence in these respects comprises general data on traffic in Lincoln, an isolated traffic analysis on a single day in May 2018, and unverified photographs of queuing traffic and cars parked in overflow areas of the crematorium. On the parking point, LCC indicates the overflow is used only a handful of times each year when particularly large services take place. All in all, this evidence is not sufficient to indicate a persistent or acute problem.
32. It is common ground that a new crematorium at Lea⁸, north of Lincoln near Gainsborough, will reduce demand at Lincoln by around 7.4%, which would be around 154 cremations annually, based on the 2018 figures. On this basis, Lincoln would still be operating at approximately 110% of PC. Therefore, whilst the Council is critical of the appellant for failing to take account of Lea in its original submission, I find that Lincoln would continue to experience demand well in excess of its PC with Lea operational.
33. Taking the evidence together, I find that the level of trading at Lincoln, accounting for Lea, and the overall timescales which persist for securing a booking, demonstrate a significant quantitative need and moderate qualitative need for additional crematorium facilities.
34. The Council argues that any issues at Lincoln would be addressed by the recent grant of planning permissions by LCC for refurbishment of the existing chapel and construction of a second chapel at Lincoln, alongside a permission for the erection of a temporary crematorium facility during construction works to maintain capacity levels. The appellant casts doubt on whether the second chapel at Lincoln would be built; however, it has secured planning permission and the evidence indicates the first tranche of funding for the wider project, including enabling works for the second chapel, has been made available, and the temporary crematorium sourced. On the evidence before me, I am satisfied that there is a strong likelihood of the second chapel being built and that it is an important material consideration.
35. I have carefully considered the evidence provided by the parties in respect of the effect of a second chapel at Lincoln. **I have had regard to the appellant's arguments about the extended facility operating at 1 hour intervals reflecting an industry 'direction of travel' towards longer services. However,** reference is also made to the guidance of the Institute of Cemetery and Crematorium Management (ICCM) 'Charter for the Bereaved' which recommends a minimum funeral service time of 40-45 minutes. Therefore, whilst 1 hour services may be aspirational, they are not required. LCC operates at 40 minute intervals and indicates that it intends to operate the expanded facility at 45 minute intervals, which accords with the industry guidance. Given LCC is in control of this as the

⁸ Opened in January 2020, trading as Lea Fields Crematorium

operator of the facility, I have based my considerations on the extended facility having a PC of 3,276 cremations per annum based on 13 core service times at 45 minute intervals, and an agreed catchment of 224,453.

36. The main parties differ on the natural catchment population of the proposed **crematorium. The Council's figure of 106,181** derives from an objective and well understood methodology which IPS sets out in detail. Whilst I understand **the appellant's 'blending and fading' approach seeks to build a more nuanced picture**, it takes into account a number of variables which are not supported by substantive evidence but rather assumptions based on experiences at the **appellant's facility at Surfleet⁹, all of which weigh in favour of the appellant's proposal**, but which the Council not unreasonably points out could be **contradicted by other factors not considered. As such, I find the Council's methodology and resulting catchment figure more robust.**
37. The evidence indicates a rising and aging population in the Lincoln area in future years. Based on ONS¹⁰ forecasts using 2018 death statistics, the Council estimates that the extended crematorium at Lincoln would be operating at 72% of PC by 2036 and 75% by 2040, below the 80% measurement by the end of the current local plan period and that of the ongoing local plan review. On this basis, the extended crematorium would be capable of resolving the quantitative needs at Lincoln in the long term. In turn, the additional capacity would contribute to shorter waiting times for bereaved families, addressing qualitative issues. Conversely, the appellant accepts that the proposed crematorium would only reduce trade at Lincoln to some 85% of PC¹¹ and would not be able, by itself, to address existing quantitative issues.
38. This notwithstanding, I accept that by offering an alternative facility, the proposed crematorium would assist in addressing the established needs arising at Lincoln. However, the contribution of the proposed crematorium would be limited in comparison to the proposed second chapel at Lincoln, which would serve a significantly larger catchment, and would directly address the needs arising within the Lincoln catchment up to and possibly beyond 2040.

Need at Newark, Sleaford and North Kesteven

39. It is common ground that there is a quantitative need arising from the fact that Newark has no crematorium within a 30 minute cortege drive time (CDT). This measure, in a similar vein to the practical capacity test, is not set out in policy, but has been adopted at appeal as a reasonable means of assessing the area which a crematorium would likely serve. However, the evidence indicates that Newark is only marginally beyond the 30 min CDT to crematoria at Sherwood Forest and Grantham, and a planned crematorium at Cotgrave. Journeys from Newark to these crematoria may take between 30-45 minutes at cortege speed but, to my mind, this would not be excessive or a clear cause of distress for mourners, particularly given the rural nature of much of the wider area and distances between larger towns means local residents are likely to be used to longer journey times. Moreover, despite the calculations showing Newark beyond a 30 minute CDT, there is little in the evidence to indicate that this is a source of particular distress for Newark residents.

⁹ South Lincolnshire Crematorium

¹⁰ Office of National Statistics

¹¹ UNA, para 10.47

40. Even if it were the case, the location of appeal site means that Newark would be at the very edge of the 30 minute CDT to the proposed crematorium and part of the town would be outside of it. Moreover, if avoiding the A46, the crematorium would be reached from Newark mostly by way of smaller, rural roads which would increase journey times for larger corteges. The proposed crematorium would only be marginally closer to Newark than those at Sherwood Forest and Grantham which, as the closest existing facilities, serve Newark residents at present despite their distance, and would be expected to retain some of the demand from Newark were the proposed crematorium to open, though I acknowledge that competitive pricing, if adopted at the proposed crematorium, may draw additional trade.
41. It is common ground that the crematorium would newly serve some 44,000 people within the northern parts of North Kesteven. This principally includes residents of Newark, along with villages and largely rural areas either side of the A46. I note that in other appeals, Inspectors have found in favour of proposals where similar or fewer numbers of people would be newly served, but I must consider the appeal on the evidence before me.
42. **As I have found, people in Newark would be technically 'newly served', but only marginally more conveniently than they are served by existing crematoria.** Moreover, given the largely rural nature of the rest of the catchment, and the location of Lincoln crematorium to the southern side of the city, some of these 44,000 newly served people are also likely to be within acceptable driving times of Lincoln. The figures also indicate that a majority of the population which would be within a 30 minute CDT of the new crematorium would also be within 30 minutes CDT of Lincoln.¹² Therefore, for a significant number of people, the proposed crematorium would provide additional choice more so than meet a deficiency in provision. Accordingly, I am not persuaded that the proposal would wholly address need arising from Newark and its surroundings in either quantitative or qualitative terms, but I accept that it would provide an alternative facility which would increase choice, if not necessarily convenience, for residents in and around Newark, meriting weight in favour of the proposal.
43. Sleaford would be located further from the appeal site than Newark, well beyond a practical drive time, particularly given the routes which would have to be taken to reach it, and it would not appear substantively more accessible than existing facilities at **Grantham, Boston or the appellant's own facility at South Lincolnshire**. As such, I find the proposal would not address need arising from Sleaford.
44. In this respect, the Council has undertaken an exercise which suggests that a site located between Newark and Sleaford would more directly serve both towns, would newly serve a population of 79,000 and would generate some 938 cremations¹³ per annum, compared to estimates for the proposed crematorium of 857 (Council) or 910 (appellant). The appellant indicates that such a location was ruled out as unviable; however, the evidence suggests a detailed site selection process was only undertaken once a narrow search area between Lincoln and Newark was identified, and that the sites were considered primarily in respect of physical characteristics as opposed to addressing need. I appreciate that, at the time the proposal was first planned, a second chapel at Lincoln was not in the offing, and that addressing need at Lincoln was a

¹² IPS Second Updated Method Statement – Table 7

¹³ IPS Second Updated Method Statement – Table 6

primary factor in site selection. However, the appellant provides only brief commentary on other potential locations with little to indicate the extent to which other sites within a wider area were considered and ruled out. Statements that other locations would not be commercially viable are not substantiated by evidence.

45. I accept that there is not an alternative proposal before me, but as the appellant argues that there are needs arising in multiple locations, it is reasonable to consider whether the proposed location would best meet those needs. Whilst the evidence suggests the projected numbers of cremations at the appeal site and the alternative site would not be significantly different, the alternative site is indicated to newly serve significantly more people. I have no reason to doubt the figures put forward by the Council in this respect and in the absence of substantive evidence from the appellant to rebut the possibility of a more suitable site, I am not satisfied that the location of the proposed crematorium would be the most suitable to best address the needs identified. However, I accept that by newly serving 44,000 people, the crematorium would contribute in part to meeting existing needs.
46. In reaching a view, I have also had regard to arguments about the viability of the proposed facility. Various thresholds are identified; by the appellant in its Statement of Need¹⁴ that a minimum of 900 cremations a year are required, and within the guidance¹⁵ of the Federation of Burial and Cremation Authorities (FBCA) that **'crematoria undertaking 1000 or more cremations per annum are most likely to be viable.'** Ultimately, the appellant's best estimate of 910 cremations per annum is a marginal position when considered against these thresholds, but in the absence of detailed viability evidence, I am unable to draw firm conclusions that the project would be unviable, and this is not a determinative factor.

Conclusions on Need

47. It is common ground that there are geographic deficiencies in crematorium provision around Newark and Sleaford, along with quantitative issues at Lincoln contributing to delays for mourners. The proposal seeks to address these needs, though the appellant accepts that the proposal cannot meet all of them and that those arising in and around Sleaford would not be substantively met. However, in seeking to address several geographically spread needs, the ability of the proposal to meet each area of need is diluted. It is understandable that the appellant initially sought to address need at Lincoln; however, I have found that this need would be resolved by the proposed second chapel.
48. In addition, whilst the location of the site would technically serve Newark, it would still be at some distance and not significantly more accessible to residents than other crematoria. There is also evidence to suggest that an alternative site between Newark and Sleaford would be potentially viable, would be more accessible to both towns and would newly serve some 35,000 more people than the proposed site.
49. Overall, I find that the proposal would contribute to meeting existing needs at Lincoln, Newark and parts of North Kesteven, but other factors, principally the proposed expansion of Lincoln and the location of the site relative to Newark

¹⁴ October 2018

¹⁵ A Guide to Cremation and Crematoria (2016)

and Sleaford, would either separately address the need or would reduce the extent to which the proposal would address the need. Therefore, drawing these considerations together, I find the proposal would deliver benefits towards meeting existing needs for crematorium facilities in the area meriting moderate weight in favour of the proposal.

Other Matters

50. The Council did not refuse permission in respect of any other matter, subject in certain cases to recommended conditions. I have had regard to the **Council's** comments in these other matters, and those of interested parties on these and other issues not already addressed, including concerns regarding highway safety. However, the evidence before me does not lead me to findings of harm in any of these respects, nor additional benefits to be weighed in the planning balance, and it is not necessary for me to address them in further detail.

Planning Balance

51. The proposal would deliver the social benefit of an additional crematorium facility which would help to address identified needs within the area, albeit other considerations I have identified would reduce the extent to which the proposal would meet those needs, such that I afford moderate weight overall **to the proposal's resolution of need for a crematorium.**
52. In addition, there would be economic benefits from the construction of the facility, though these would be temporary, alongside the creation of 5 full time jobs and additional business for local contractors and pubs. However, there is limited information before me to quantify the extent of additional trade which may be expected, but taking into account the scale of the development, I afford limited weight to these benefits overall.
53. Set against this, the proposed crematorium would result in environmental harm through conflict with the spatial strategy given its location within the open countryside, lack of accessibility by means other than the private car, and harm to the character and appearance of the area. Consequently, the proposal would not achieve the three objectives of sustainable development set out in the Framework.
54. Planning law states that decisions must be made in accordance with the development plan unless material considerations indicate otherwise. I conclude that the identified harm arising from the proposal results in conflict with the development plan taken as a whole, to which I afford significant weight. The other material considerations in this case, including the need for a crematorium, do not indicate that permission should be forthcoming.

Conclusion

55. For these reasons, and having regard to all relevant matters raised, the appeal is dismissed.

K. Savage

INSPECTOR

APPEARANCES:

For the appellant:

Andrew Butt	South East Lincolnshire Estates Limited
Andy Bowser	South East Lincolnshire Estates Limited
Paul Brailsford	Freeths LLP
Mark Bassett	Freeths LLP
Tim Jackson	FCRP
David Dernley	Head of Funeral Services, Lincolnshire Co-op

For the Local Planning Authority:

Nick Feltham	Principal Planning Officer
Nicola Maplethorpe	Area Planning Officer
Stephen Bucknell BSc(Hons) MRICS	Associate, Impact Planning Services
Ben Seward BSc(Hons) MSc AIEMA	Impact Planning Services
Robert Gillespie BA(Hons) MRTPI	Managing Director, Impact Planning Services

Interested Parties

Roy Martin	Thurlby Parish Council
Marianne Overton MBE	Elected Member, North Kesteven District Council and Lincolnshire County Council
Mary Green	Elected Member, North Kesteven District Council
Michael Campbell	Local Resident
Chris Spray	Local Resident

Documents submitted at the Hearing

1. Copy of **Officer's Report for planning application 136962** (West Lindsey District Council) **dated 14 June 2018 ('Lea Crematorium')**



Costs Decision

Hearing Held on 11 February 2020

Site visit made on 10 February 2020

by K Savage BA MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 April 2020

Costs application in relation to Appeal Ref: APP/R2520/W/19/3236497
Land to the West of Haddington Lane, Thurlby, Lincoln, Lincolnshire

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by North Kesteven District Council for a full award of costs against South Lincolnshire Estates Limited.
 - The hearing was in connection with an appeal against the refusal of planning permission for a crematorium (Use Class Sui Generis) with associated car parking, access, landscaping and boundary treatments.
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Decision

1. The application for an award of costs is refused.

Procedural Matters

2. The Council submitted an application for costs in writing the day before the opening of the Hearing and added briefly to the application in oral submissions at the Hearing. **In recognition of the timing of the Council's** costs application, I allowed South Lincolnshire Estates Limited (SLEL), as the respondent, to provide a written response to the costs claim following the close of the Hearing, and an opportunity for final comments was afforded the Council.
3. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. The PPG states that the circumstances when the behaviour of a local planning authority might lead to an award of costs can either be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal.

The submissions for North Kesteven District Council

5. **The Council's case refers both to procedural and substantive matters.** In respect of the former, the Council argues that SLEL submitted late evidence in the form of a rebuttal statement, beyond the deadline for submission of written statements. This rebuttal statement introduced further argument in response **to the Council's statement of case under the guise of updating the evidence to** reflect the latest ONS statistics, but went beyond this to further argue the case with respect to need, including the appropriateness of a second chapel at

Lincoln. **It is the Council's case that updated figures could have readily been** submitted as part of the Statement of Common Ground (SOCG). Moreover, the rebuttal made comment on other matters including revised plans, the planning balance and overall conclusions.

6. The Council contends that this submission was unreasonable as it did not meet the criteria set out at Paragraph E.9.4 of the Procedural Guide Planning Appeals – England (now February 2020) for acceptance of late evidence. Moreover, it required the Council to reappoint its consultants to consider and respond to the additional evidence, adding to its costs. The Council added to this claim at the Hearing in response to the submission by SLEL on the day of a copy of the committee report for the planning application for the crematorium at Lea.
7. On the substantive grounds, the Council argues that SLEL, through submission of its Updated Needs Assessment (UNA) at the appeal stage, substantively recast its case through submission of significant new evidence addressing several areas of dispute. Whilst the Council accepts that additional evidence was warranted to respond to the planning permissions granted at Lincoln, it argues that SLEL should have addressed this via a significantly reduced brief rather than recasting the overall needs assessment. The Council argues that this was unreasonable behaviour which required it to test the evidence again by reappointing its consultant at additional cost.

The response by South Lincolnshire Estates Limited

8. SLEL submits that the rebuttal statement was submitted to provide clarification on the differences **between the main parties' assumptions in respect of need**. This updated evidence allowed for an enhanced SOCG and a more focused discussion at the Hearing.
9. **Moreover, SLEL argues that the Council's case changed from its refusal of the** planning application to its Statement of Case, principally by accepting evidence of a quantitative need at Lincoln and by placing weight on the planning permissions granted at Lincoln as an alternative reason for concluding that need had not been proven. SLEL contends it would have been deeply disadvantageous to the Appellant and prejudicial to a fair Hearing if they had not been given an opportunity to respond to this new position.
10. With respect to the rebuttal document, SLEL points to an accompanying email dated 13 November 2019 which addressed the criteria of paragraph E.9.4 of the Procedural Guidance. SLEL argues that the evidence was submitted promptly, did not lead to an adjournment, led to better use of Hearing time and that the Council only responded to the technical nature of the issues raised.
11. On the substantive claim, SLEL responds that Paragraph E.3.4 of the Procedural Guide permits the appellant to add to their case from that submitted at the original application. **The claim that SLEL 'recast' its case is** misrepresentative. SLEL argues the issue of need has always been central to its case from the outset, and those matters highlighted by the Council as being subject to significant new evidence are explicitly or implicitly referenced in the reason for refusal. The UNA, and **SLEL's case generally, sought simply to** address the reason for refusal. SLEL argues that, if anything, it was the Council who recast their case by shifting the emphasis from a lack of need to the effects of a second chapel at Lincoln in meeting that need.

12. SLEL further refers to unsuccessful efforts it made prior to the determination of the application to discuss the issue of need with the Council. It adds that none of the examples of behaviour set out in the PPG which may justify a **substantive award of costs apply. The Council's claim is** therefore unjustified.
13. SLEL accepts that the Lea committee report should have been submitted earlier, but was not a deliberate omission and its purpose was solely to aid discussion at the Hearing. The submission did not warrant an adjournment of the Hearing and was dealt with promptly with no cost to any party.

Reasons

14. Taking the substantive claim first, it is apparent from the chronology of need evidence from SLEL and responses by Impact Planning Services (IPS) acting for the Council that the parties were some distance apart on several issues and both sought to add to **their positions or correct the other party's evidence over** the course of the appeal, with the disparity in position still evident in the areas '**not agreed**' in the SOCG, and in the discussions at the Hearing.
15. However, the Procedural Guide makes it clear that the appellant may add to their case from that submitted at the original application. **Given the Council's** reason for refusal specifically referred to perceived failures by SLEL to take relevant matters into account, such as the effect of Lea Crematorium opening, and in view of the technical nature of the matters at issue, it is entirely reasonable that SLEL would seek to augment its case to respond to the reason for refusal. Indeed, the Council accepts that the issue of a second chapel at Lincoln was a new material consideration which SLEL could not reasonably have addressed earlier.
16. I am satisfied that SLEL **sought to respond directly to the Council's reason for** refusal through its UNA and I do not agree that the appellant '**recast**' its case substantially, but sought to present its updated case comprehensively. Whilst the reproduction of a fully updated document and multiple appendices made for a voluminous body of evidence overall, and required time and care to digest its content, an appellant is entitled to submit the evidence it considers necessary to make its case in full, and there was nothing unreasonable in this approach. Moreover, given the nature of the reason for refusal, it should not have come as a surprise to the Council that SLEL would seek to address these matters, or that IPS may need to be **re-engaged to update the Council's position on need** as part of its overall case. On this ground, therefore, I find that unreasonable behaviour has not been demonstrated.
17. **Turning to the procedural claim, it is not in dispute that SLEL's rebuttal was** submitted outside of the relevant timescales. Both SLEL and the Council put their views to me as to whether to accept it, having regard to the Procedural Guide. The evidence was submitted in good time ahead of the original Hearing date. **Having regard to the evolution of the Council's position in its statement of** case, I can understand SLEL wishing to address this prior to the Hearing, and it was duly indicated to me that this evidence would otherwise have been introduced at the event. Given its technical nature, its submission then would have raised a strong likelihood of a significant adjournment of the event. I also noted the intention that the additional evidence would assist towards further agreement within the SOCG. Whilst the Council had to re-engage IPS, it was given sufficient time to respond with evidence which allowed me to consider the most up-to-date position of both parties and did not result in a delay to the

appeal overall. Ultimately, I considered that acceptance of the evidence at that time would not result in procedural unfairness and my view has not changed.

18. In respect of SLEL including comments on matters other than need in its rebuttal, these were brief in nature and did not raise substantive new evidence, such that the Council was satisfied that it did not need to devote additional time to respond to these matters. Similarly, the Lea Crematorium committee report submitted on the day of the Hearing did not lead to a significant adjournment, nor did it unreasonably prolong matters, given its purpose was to illuminate a specific policy point. Therefore, I do not find unreasonable behaviour in these respects.

Conclusion

19. I find that in respect of both the procedural and substantive claims made by the Council, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is not therefore made.

K Savage

INSPECTOR