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## **BY EMAIL ONLY**

Attn **Mr Robert Wordsworth**

Our Ref  
10238455

Your Ref  
APP/D3830/W/21/3266563

Date:  
15 March 2021

Dear Sirs

**Planning Application: DM/20/2877 ("the Application")**  
**Planning Appeal: APP/D3830/W/21/3266563 ("the Appeal")**  
**Property: Turners Hill Crematorium, RH10 4PB ("the Site")**  
**Proposed Development: Outline application for single chapel crematorium with a single abated cremator and natural burial site with associated access, car parking, landscaping and drainage ("the Proposed Development")**

We act on behalf of Dignity Funerals Ltd ("Dignity"), the owner and operator of the Surrey & Sussex Crematorium ("the Crematorium").

Dignity strongly objects to the Proposed Development.

On 29 September 2020, we submitted a letter of objection ("the Objection"), on behalf of our client, to Mid Sussex District Council ("the Council"), a copy of which is enclosed with this letter at **Appendix 1**.

For the avoidance of doubt, Dignity continues to rely upon the Objection but seeks to augment it as set out in this letter by way of a response to the Appeal. We rely upon the same defined terms as were set out in the Objection.

## 1 INTRODUCTION

1.1 We have had sight of the following documents submitted by Hartmires Investments Ltd ("the Appellant") in support of the Appeal:

- (a) Appellant's Statement of Case dated 6 January 2021 ("the Appellant's SoC");

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- (b) Updated report to Committee dated 17 December 2020 (“the Update Report”); and
  - (c) *Draft* Statement of Common Ground (undated) (“the Draft SoCG”).
- 1.2 We have not had sight of the Council’s Statement of Case nor have we been advised as to when it is required to be submitted. Whilst we do not anticipate that it would be necessary to do so, we do reserve Dignity’s right to submit further representations following receipt and review of the Council’s Statement of Case.
- 1.3 Related to this, it was not until 11 March 2021 that we were provided with a copy of the Council’s independent assessment of need (“the Council’s Need Assessment”) for the Proposed Development, as prepared by Beacon Dodsworth Ltd, even though it seems to have been prepared in November 2020. Given the limited time now available to meet your deadline for representations (by third parties), we have sought to provide some clarification below but reserve the right to supplement these representations as necessary.

## 2 **POLICY CONTEXT**

- 2.1 We do not reiterate the relevant policy background, which is set out in full in the Objection.

## 3 **GROUND OF OBJECTION**

- 3.1 As indicated above, Dignity maintains its grounds of objection as set out in the Objection.
- 3.2 In addition, Dignity would respond to a number of points arising out of the Appeal as follows.

### **Fall-back**

- 3.3 We note that the Appellant raise the following points under this head:
- (a) relevant case-law in respect of establishing a fall-back;
  - (b) the Site already has consent as a natural burial ground together with a chapel; and
  - (c) it is wrong to compare footprints between the permitted schemes and the Proposed Development,
- as to which we would respond as follows.
- 3.4 As to (a) above, it is trite that:
- (a) in principle, a fall-back position (properly understood) can amount to a material consideration in the determination of the Appeal;
  - (b) the Appellant need not prove that it is probably or likely that it would build out the Fall Back i.e. a possibility is sufficient;
  - (c) the existence of the Fall Back must be considered against the extent of the Proposed Development; and
  - (d) the weight then applied to the Fall Back is a matter for the decision-maker i.e. in this case, the Inspector,

as to which we rely upon the principles enunciated by the Court of Appeal in Mansell v Tonbridge and Malling Borough Council [2017] EWCA Civ 1314.

- 3.5 As to (b) and (c) above, the Fall Back is common ground i.e. there exists planning permission for a natural burial ground (reference number DM/15/1035) and a chapel (reference numbers DM/17/1167 and DM/18/0677). However, it is wholly appropriate (and, in our view, necessary) to consider the extent of the Fall Back against the extent of the Proposed Development in order properly to determine the weight to be attached to the Fall Back (per Mansell).
- 3.6 In this respect, and as set out in the Objection:
- (a) the Proposed Development comprises 1,600sqm of built development in stark contrast to the Chapel Consent that authorises a maximum of 240sqm (or 291sqm if the reception building is included although, given that the Chapel Consent includes its own reception area, it is highly unlikely that the reception building would be built out in addition to the Chapel Consent in any event);
  - (b) given the extensive difference in footprint between the Fall Back and the Proposed Development, the Appellant's assertion that the Fall Back should be given significant weight in the planning balance is misconceived because it is self-evident that the Proposed Development would cause considerably more harm (including the introduction of a new use) than the Fall Back in any event; and
  - (c) accordingly, the Appellant's *threat* to carry out a much less impactful scheme if the Proposed Development is not granted consent is wrongheaded.
- 3.7 These submissions, which were made to the Council, remain of equal force following submission of the Appeal.
- 3.8 It is, of course, understandable that the Appellant would prefer to omit any comparison of the relative footprints of the Proposed Development and the Fall Back because such an exercise highlights the clear and significant differences between them. At paragraph 5.4 of the Appellant's SoC, the Appellant asserts that if the natural burial ground, chapel, reception building and maintenance building with ancillary parking are all constructed, then this would amount to approximately half of the footprint of the Proposed Development.
- 3.9 Put another way, the Appellant concedes that – even in the most unlikely scenario pursuant to which every aspect of the consented development is built-out on the Site (which we would suggest is most unlikely given that it would, for instance, unnecessarily result in two reception areas) – then the Fall Back position would still only equate to *approximately half* of the footprint of the Proposed Development. This is important in considering the weight to be attached to the Fall Back.
- 3.10 Similarly, it is important to consider that the fully built-out Fall Back would comprise uses which would be significantly less harmful to the landscape and surrounding highway network. Therefore, even if the Fall Back is fully built-out, the Proposed Development would include at least a 50% larger development footprint for a significantly more intensive and harmful use. We note that the Officer's Report shares this view concluding that '*the proposed scheme is completely different from the permitted schemes (in totality and in relation to their associated activity)*'.
- 3.11 For all the above reasons, and as set out in the Objection, no material weight should be attached to the Fall Back in the determination of the Appeal.

- 3.12 In passing, we note that the Appellant repeatedly seeks to rely upon the following statement of a landscape consultant within the officer's report for the consented natural burial ground and subsequent Revised Chapel Consent:

*'While this is a rural area, the site is nevertheless adjacent to Tulleys Farm and its associated leisure/recreational facilities (maze, fun park, accesses, case parking etc.) to the west. Immediately opposite that is the cricket ground and pavilion. As such, it is considered that the proposal would be read in the context with the scattering of other buildings and uses in this area and hence would not be out of place.'*

- 3.13 This is misleading. This comment must be considered in the proper context of each individual application. For example, this comment was included in relation to the Revised Chapel Consent which authorised a maximum development footprint of 240sqm and was predicated upon precise details of the siting of the building etc. As such, this is a markedly different context to the Proposed Development, which would consent development with a footprint of nearly 7 times the Revised Chapel Consent (as well as significantly more harmful uses).

### **Conflict with Policy**

- 3.14 Generally, it is unclear which part of our assessment of planning policy in the Objection is disputed by the Appellant.

- 3.15 In any event, and for the avoidance of doubt, we continue to rely upon our policy assessment in the Objection. In particular, we would emphasise that (for the reasons set out in the Objection):

- (a) policies DP12 (Protection and Enhancement of Countryside) and DP13 (Preventing Coalescence) are consistent with the NPPF (including paragraph 84) and should be attributed significant weight in the planning balance;
- (b) policy THP8 and the 'strategic gaps' identified in the Neighbourhood Plan are not inconsistent with the NPPF;
- (c) the Proposed Development is clearly in conflict with policy DP12; and
- (d) the Proposed Development derives no support from policy DP25 because it would not *'contribute to creating sustainable communities'*.

### **Surrey & Sussex Crematorium**

- 3.16 Since submission of the Objection, we note that the Council's Need Assessment has been undertaken (and informed the Officer's Report).

- 3.17 In response, we would raise the following points.

- 3.18 First, Dignity is the operator of the Crematorium and we would respectfully invite the Inspector to attach greater weight to its evidence in relation to matters pertaining to the Crematorium.

- 3.19 Second, the Council's Need Assessment concludes that the Proposed Development would bring 38,847 people within a 30 minute (constrained) drive-time of a crematorium for the first time (as opposed to 43,532 people that is asserted by the Appellant). Dignity has concerns about the likely reliability of this figure given the very close proximity of the Site to the Crematorium. Even using the Appellant's own isochrones, the Proposed Development would barely be outside the catchment area of the Crematorium in a constrained 15 minute drive-time.

- 3.20 Moreover, using Figure C of the Council's Need Assessment (being the unconstrained 30 minute catchment area) as an example, it is clear that the catchment area of the Proposed Development is almost entirely subsumed within the catchment area of the Crematorium. Whilst it is accepted that a 30 minute constrained drive-time is the industry standard *rule of thumb*, it is clear from the close proximity of the Crematorium that the vast majority of those people '*brought into a 30 minute (constrained) drive time of a crematoria for the first time*' are likely to be only a few additional minutes away from the Crematorium e.g. 31/33/35 minutes away. It is well established that, whilst the 30 minute 'rule of thumb' is the starting point for assessing need, it is not binary i.e. it is plainly not the case that 29 minutes is acceptable but 31 minutes is not (as is also acknowledged in the Council's Need Assessment). This is an important consideration, to which weight should be attached when considering the merits of the Appellant's case in relation to need.
- 3.21 Third, paragraph 4.25 of the Council's Need Assessment undertakes an assessment of capacity at the Crematorium as at 2019 and concludes that: (i) technical capacity was at 57%; (ii) core capacity was at 81%; and (iii) core, peak month capacity was at 101%. However, this assessment was based on a number of inaccurate assumptions as below:
- (a) both chapels at the Crematorium have 8 core slots as opposed to the 7 that was assumed in the Council's Need Assessment i.e. 8 x 45 minute slots between 10.15am and 4.30pm daily, as to which we refer to **Appendix 2** that comprises a typical list of daily slots as provided to us by Dignity;
  - (b) there are 3 additional off-peak slots at 9am, 9.30am and 4.15pm in the Memorial Chapel and 9am, 9.45am and 4.30pm in the St. Richard's Chapel (again, please see **Appendix 2**). The Council's Need Assessment attributes the 9am slot in both chapels as direct cremation but, in fact, this is an attended off-peak service (albeit usually with restricted numbers); and
  - (c) the Council's Need Assessment does not take into account the first peak slot in the Memorial chapel or the last peak slot in the St Richard's chapel (see **Appendix 2**).
- 3.22 As a result of the above, there is, in fact, far greater capacity at the Crematorium than has been assessed.
- 3.23 Fourth, the Appellant's attempt to establish a qualitative need for the Proposed Development is misconceived. The Proposed Development is located just 3/4 miles from the Crematorium which already offers a high level of qualitative service including:
- (a) a modern facility of high-quality design which is fully DDA compliant, has air conditioning and good quality audio visual facilities;
  - (b) an attractive and well maintained setting and memorial garden;
  - (c) 45 minute service slots;
  - (d) good accessibility, in terms of parking and easy road access; and
  - (e) flexibility for religious faiths and cultures.
- 3.24 As such, the provision of an additional crematorium just 3/4 miles from the Crematorium would not result in any qualitative improvements. Accordingly, we do not agree with the Appellant that any qualitative case for the Proposed Development has been evidenced.

## 4 CONCLUSION

- 4.1 The Appeal must be determined in accordance with Section 38(6) of the 2004 Act, which requires that the Appeal should be determined in accordance with the development plan unless other material considerations indicate otherwise. For the reasons set out in the Objection, and supplemented above, the Proposed Development fails to comply with policies DP12, DP13, DP14 and DP25 of the Local Plan as well as policy THP8 of the Neighbourhood Plan. It is clearly contrary to the development plan as a whole and there is, therefore, a presumption against granting planning permission per Section 38(6) of the 2004 Act.
- 4.2 Further the Appellant has failed to show that there are any material considerations that would indicate that the Appeal should be determined otherwise than in accordance with the development plan. To the contrary, it is clear that (i) there is no need for the Proposed Development; (ii) the Proposed Development conflicts with paragraphs 84 and 170 of the NPPF; and (iii) the Appellant has failed to demonstrate that the Site represents the most sustainable location for the Proposed Development (albeit there is no need for it in any event).
- 4.3 For all these reasons, we respectfully submit that the Appeal should be dismissed.

Yours faithfully

Clyde & Co LLP  
*Enc. Appendix 1 & 2*

**Appendix 1**  
**Letter of Objection**

Community & Planning Services Dept.  
Mid Sussex District Council  
Oaklands  
Oaklands Road  
Haywards Heath  
West Sussex  
RH16 ISS

[planninginfo@midsussex.gov.uk](mailto:planninginfo@midsussex.gov.uk)

## **BY EMAIL ONLY**

Attn Andy Watt/Sally Blomfield

Our Ref  
10238455

Your Ref  
DM/20/2877

Date:  
29 September 2020

Dear Sirs,

### **Planning Application: DM/20/2877**

**Property: Turners Hill Crematorium, RH10 4PB (the "Site")**

**Application proposal: Outline application for single chapel crematorium with a single abated cremator and natural burial site with associated access, car parking, landscaping and drainage. All matters reserved apart from access (the "Proposed Development")**

We act on behalf of Dignity Funerals Ltd ("Dignity") and submit this letter of objection in relation to the above-referenced planning application ("the Application").

By way of background, Dignity is the largest operator of crematoria in the UK and has unparalleled experience in developing, building and operating new crematoria. Of particular relevance to the Application, Dignity operates: (i) the Surrey & Sussex crematorium which is just 3/4 miles from the Site; and (ii) the Downs crematorium.

For the reasons set out below, Dignity strongly objects to the Application.

## 1 **INTRODUCTION**

1.1 The Application was submitted to Mid Sussex District Council ("the Council") on 5 August 2020 by Hartmires Investments Ltd ("the Applicant") and seeks consent for the Proposed Development. The Application is supported by (amongst other things) a Planning Statement dated July 2020 which confirms the following maximum parameters for the built development: (i) crematorium building height: 168.5m AOD; (ii) flue/chimney height: 171m AOD; and (iii) crematorium building footprint: 1,600 sqm. The Application also seeks consent for more than 100 car parking spaces.

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- 1.2 From the outset, it is worth noting that the Site is located in open countryside immediately adjoining, and within the setting of, the High Weald Area of Outstanding Natural Beauty ("AONB").
- 1.3 As the Council will be aware, Section 38(6) of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act") provides that the Application should be determined in accordance with the development plan unless other material considerations indicate otherwise. The relevant parts of the development plan for the determination of the Application comprise the Mid-Sussex District Plan (2014 – 2031) as adopted by the Council in March 2018 ("the Local Plan") and the Turners Hill Neighbourhood Development Plan 2016 ("the Neighbourhood Plan"). Although the Local Plan and Neighbourhood Plan pre-date the most recent revision of the National Planning Policy Framework ("the NPPF"), it is up-to-date in all material respects. Accordingly, significant weight should be attached to it.
- 1.4 The Council is in the process of preparing a Site Allocations Document ("the Emerging SAD") to identify housing and employment land. However, this is still in the early stages of preparation and, as such, only limited weight should be attached to it.
- 1.5 The NPPF was revised in February 2019 and is a material consideration to which significant weight should be attached in the determination of the Application.

## 2 **PLANNING HISTORY**

- 2.1 The Site is subject to a miscellany of planning consents for significantly smaller built development, which the Applicant erroneously promotes as a 'Fall Back' position (as to which see further below). In particular, these include:
- (a) *'a change of use of the land to a natural burial ground and the erection of a reception building with associated access, parking and landscaping (ref: 11/09/2015)'*. The Applicant states that this consent has been implemented. We have not verified this proposition. We simply note that the consented reception building would – if constructed – extend to a maximum of circa 51 square metres.
- (b) *'Development of a new chapel building with associated landscaping within [the] existing burial ground (ref: DM/17/1167) ('the Chapel Consent)'*, which was allowed on appeal on 22 December 2017. The Chapel Consent authorises a new chapel building of circa 24m long, 10m wide and 11m high as well as an enlarged car park area for 37 cars. The Chapel Consent has not been implemented and would lapse on 22 December 2020.
- (c) *'Re-siting of [the] consented chapel building with excavation and construction of basement internal site access road and associated landscaping (ref: DM/18/0677)'* dated 29 May 2018 ("the Revised Chapel Consent"). The Revised Chapel Consent authorises the re-siting of the consented chapel to 25 metres north-east of the original site identified within the Chapel Consent. The Revised Chapel Consent also authorises an additional basement level to the consented chapel but, notably, does not alter or extend the consented chapel's footprint or ridge height. The Revised Chapel Consent has not been implemented and would lapse on 29 May 2021.

## 3 **POLICY CONTEXT**

### **A. Development Plan**

3.1 For the purposes of this objection, we rely upon the followings parts of the development plan:

- (a) The Local Plan; and
- (b) The Neighbourhood Plan.

Local Plan

3.2 Policy DP1, which should be read in conjunction with Policy DP14 below, states (amongst other things):

*'Provision for new employment land and premises will be made by... allowing new small-scale economic development, in the countryside... (in accordance with Development in the Countryside policies)'. [our emphasis]*

3.3 Policy DP1 is, therefore, subject to countryside policies, of which we place particular emphasis on Policy DP12 (Protection and Enhancement of Countryside) which states:

*'...The countryside will be protected in recognition of its intrinsic character and beauty. Development will be permitted in the countryside, defined as the area outside of built-up area boundaries on the Policies Map, provided it maintains or where possible enhances the quality of the rural and landscape character of the District, and:*

- *it is necessary for the purposes of agriculture; or*
- *it is supported by a specific policy reference either elsewhere in the Plan, a Development Plan Document or relevant Neighbourhood Plan...*

*The Mid Sussex Landscape Character Assessment, the West Sussex County Council Strategy for the West Sussex Landscape, the Capacity of Mid Sussex District to Accommodate Development Study and other available landscape evidence (including that gathered to support Neighbourhood Plans) will be used to assess the impact of development proposals on the quality of rural and landscape character...' [our emphasis]*

3.4 The supporting text to Policy DP12 emphasises that the objective of Policy DP12 is to protect the countryside from development which is not necessary to meet local needs:

*'The primary objective of the District Plan with respect to the countryside is to secure its protection by minimising the amount of land taken for development and preventing development that does not need to be there. At the same time, it seeks to enhance the countryside, support the rural economy by accommodating well-designed, appropriate new forms of development and changes in land use where a countryside location is required and where it does not adversely affect the rural environment. New development to meet local needs can be proposed through Neighbourhood Plans where this will support local services and is otherwise compatible with District Plan policies...' [our emphasis]*

3.5 Related to Policy DP12, Policy DP13 (Preventing Coalescence) states:

*'...The individual towns and villages in the District each have their own unique characteristics. It is important that their separate identity is maintained. When travelling between settlements people should have a sense that they have left one before arriving at the next.*

*Provided it is not in conflict with Policy DP12: Protection and Enhancement of the Countryside, development will be permitted if it does not result in the coalescence of settlements which harms the separate identity and amenity of settlements, and would not have an unacceptably urbanising effect on the area between settlements.*

*Local Gaps can be identified in Neighbourhood Plans or a Site Allocations Development Plan Document, produced by the District Council, where there is robust evidence that development within the Gap would individually or cumulatively result in coalescence and the loss of the separate identity and amenity of nearby settlements. Evidence must demonstrate that existing local and national policies cannot provide the necessary protection.' [our emphasis]*

3.6 Both the Neighbourhood Plan and the Emerging SAD identify the Site as being within such a 'Local Gap'. Notably, the supporting text to Policy DP13 also confirms, in respect of the previous version NPPF dated March 2012:

*"This policy conforms to the National Planning Policy Framework, where it relates to the development of a sustainable rural economy (paragraph 28). Small scale enterprises needed for the processing, distribution and local retailing of local produce should be positively supported to allow the District's rural economy to grow and improve the quality of life and environment for rural communities". [our emphasis]*

3.7 As such, it is clear that the Local Plan is cognisant of the need for a sustainable rural economy and the provision of some forms of appropriate development within the countryside boundaries (as per Paragraph 28 of the previous NPPF).

3.8 Policy DP14 (Sustainable Rural Development and the Rural Economy) reinforces Policy DP1 and states:

*"Provided it is not in conflict with Policy DP12: Protection and Enhancement of Countryside and DP13: Preventing Coalescence:*

- new small-scale economic development, including tourism-related development, within the countryside (defined as the area outside of built up area boundaries as per the Policies Map) will be permitted provided:
  - *it supports sustainable growth and the vitality of the rural economy; and*
  - *where possible, utilises previously developed sites...* [our emphasis]

3.9 Insofar as is relevant, Policy DP16 (High Weald Area of Outstanding Natural Beauty) states:

*'Development on land that contributes to the setting of the AONB will only be permitted where it does not detract from the visual qualities and essential characteristics of the AONB, and in particular should not adversely affect the views into and out of the AONB by virtue of its location or design' [our emphasis]*

3.10 We also refer to Policy DP25 (Community Facilities and Local Services) given that the Applicant seeks to rely upon it. This policy states:

*'The provision or improvement of community facilities and local services that contribute to creating sustainable communities will be supported...' [our emphasis]*

3.11 Policy DP26 (Character and Design) states:

'All development and surrounding spaces, including alterations and extensions to existing buildings and replacement dwellings, will be well designed and reflect the distinctive character of the towns and villages while being sensitive to the countryside. All applicants will be required to demonstrate that development:

- is of high quality design and layout and includes appropriate landscaping and greenspace
- ...
- creates a sense of place while addressing the character and scale of the surrounding buildings and landscape;
- protects open spaces, trees and gardens that contribute to the character of the area
- ...' [our emphasis]

3.12 Policy DP37 (Trees, Woodland and Hedgerows) states (amongst other things):

*'The District Council will support the protection and enhancement of trees, woodland and hedgerows, and encourage new planting...*

*Development that will damage or lead to the loss of trees, woodland or hedgerows that contribute, either individually or as part of a group, to the visual amenity value or character of an area, and/ or that have landscape, historic or wildlife importance, will not normally be permitted...' [our emphasis]*

## Neighbourhood Plan

3.13 The vision of the Neighbourhood Plan is '*...for Turners Hill to thrive as a modern and flourishing village which maintains the rural feel and setting of which we are rightly proud*'. To achieve this, some of the key objectives of the Neighbourhood Plan are '*To preserve and protect the countryside and open spaces of Turners Hill parish..., to retain the distinctiveness of the village and settlements and the gaps between them... [and to] protect the outstanding landscape setting of the village...*'

3.14 The principal policy of significance to the Application within the Neighbourhood Plan is Policy THP8 (Countryside Protection) which states:

*'Outside the Built up Area Boundary (which is shown on the proposals map on page 24), priority will be given to protecting and enhancing the countryside from inappropriate development. A proposal for development will only be permitted where:*

*a) It is allocated for development in Policy THP1 or would be in accordance with Policies THP7 and THP14 of this Plan or other relevant planning policies applying to the area; and:*

*b) It must not have a detrimental impact on, and would enhance, areas of substantial landscape value or sensitivity, and*

*c) It must not have an adverse impact on the landscape setting of Turners Hill and*

*d) It must maintain the distinctive views of the surrounding countryside from public vantage points within, and adjacent to, the built up area; and*

*e) Within the High Weald Area of Outstanding Natural Beauty it must conserve and enhance the natural beauty and would have regard to the High Weald AONB Management Plan.*

*f) It is essential to meet specific necessary utility infrastructure needs and no alternative feasible site is available.*

*Our Strategic Gaps are identified in MSDC Local Plan policy C2 and the High Weald Area of Outstanding Natural Beauty by Local Plan policy C4. Policies in the emerging District Plan will provide protection and enhancement in relation to trees, woodland and hedgerows as well as biodiversity.' [our emphasis]*

## **B. Other Material Considerations**

### The NPPF

3.15 The following paragraphs of the NPPF are of particular relevance to the Application:

(a) *Paragraph 84: 'Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.'*

(b) *Paragraph 170: 'Planning policies and decisions should contribute to and enhance the natural and local environment by: (a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan) (b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland...';*

(c) *Paragraph 172: 'Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be*

*given great weight in National Parks and the Broads. The scale and extent of development within these designated areas should be limited'. [our emphasis]*

- (d) *Paragraph 213: '... existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).'*

[our emphasis]

## 4 **GROUNDS OF OBJECTION**

- 4.1 We summarise below our client's key objections to the Application, but we reserve our client's position to augment them if it is considered necessary to submit further representations.

### **A. Consistency with the NPPF**

#### **Local Plan**

- 4.2 By way of preliminary observation, we note that throughout the Application it is suggested that various elements of the development plan, in particular Policy DP12 (Protection and Enhancement of Countryside) and Policy DP13 (Preventing Coalescence) of the Local Plan, are inconsistent with the NPPF. In terms of Policy DP12, the justification for this assertion appears to be two-fold, namely:

- (a) the NPPF was updated in 2019, after adoption of the Local Plan, and now includes a new Paragraph 84 which the Applicant states '*expresses support for community needs in rural areas adjacent or beyond settlement boundaries*'; and
- (b) the Local Plan '*did not contain an assessment as to whether a new crematorium was required*' and '*therefore DP12 does not contain an exception to that effect*'.

- 4.3 As to (b) above, this is misconceived. The fact that the Local Plan is silent on the provision of crematoria does not, of itself, evidence an inconsistency with the NPPF. It is revealing that the Applicant fails to support this assertion by reference to any applicable law or policy. Moreover, the Local Plan is hardly exceptional in its omission to specifically allocate a site(s) for a new crematorium. To the contrary, there are numerous examples of development plans that do not allocate or provide specific policy for the provision of crematoria. It is absurd to suggest that each of these plans would, as a consequence, be deemed to be inconsistent with the NPPF. As such, the absence of such policy should not, and cannot on any reasonable and proper interpretation, be taken as an indication of inconsistency with the NPPF (which notably, in itself, does not provide any specific policy in relation to crematoria).

- 4.4 As to (a) above, the Local Plan is consistent with Paragraph 84 in all material elements. Whilst Policy DP12 seeks to protect the countryside, it also recognises that certain development may be required to be undertaken within the countryside and allows such development where (amongst others) it is '*supported by a specific policy reference elsewhere*' in the Local Plan (provided it maintains or where possible enhances the landscape character of the area). Examples of such other 'specific policy references' can be found in: (i) Policies DP1 and DP14, which specifically permit new small-scale economic development within the countryside (provided, amongst other things, that such development is sustainable and supports the vitality of the rural economy); and (ii) potentially Policy DP25, which supports the provision of community facilities which contribute to creating sustainable communities. As such, the Local Plan clearly incorporates opportunities for development within rural areas, including the countryside, where it is properly justified e.g. it satisfies a need. This approach is markedly similar to, and wholly consistent with, Paragraph 84 which



recognises that consent may need to be granted for sites within the countryside to meet business and community needs. The Applicant's assertion to the contrary does not withstand scrutiny.

4.5 As for Policy DP13, the Applicant fails properly to articulate the basis on which this policy is said to be inconsistent with the NPPF. We surmise that this is limited to the inclusion of strategic gaps. We have addressed this further below in the context of the Neighbourhood Plan but, for the avoidance of doubt, we also disagree that Policy DP13 is inconsistent with the NPPF.

4.6 On any reasonable and proper reading of the relevant policies as a whole, it is plain they are consistent with the NPPF. As such, we would invite the Council to attribute them full weight in the planning balance.

### Neighbourhood Plan

4.7 The Applicant is wrong to assert that the 'strategic gaps' identified within the Neighbourhood Plan are out of date 'as they were not saved from [the] 2004 Local Plan'. Policy DP12 specifically states that 'Local Gaps can be identified in Neighbourhood Plans'. This approach is consistent with the Emerging SAD that also includes the Site within a strategic gap on the 'Turners Hill – Main Map'. As such, this approach to strategic gaps was clearly retained.

4.8 In terms of consistency with the NPPF, Paragraph 20 states that: '*strategic policies should...make provision for...conservation and enhancement of the natural built and historic environment, including landscape and green infrastructure*'. Likewise, provided that any such strategic gap policies include provision for exception sites and necessary development within such gaps (as is the case here, see for example Policy DP1, DP12 and DP14), then it is generally accepted that such policies accord with national policy. As such, we disagree that the concept of a strategic gap policy is de facto inconsistent with the NPPF.

## **B. Conflict with Policy**

### Development Plan

4.9 The Application is contrary to the statutory development plan in fundamental respects. As to Policy DP12, it is in stark conflict with both limbs:

- (i) it does not maintain, or where possible enhance, the quality of the rural and landscape character of the District; and
- (ii) it is not necessary for the purposes of agriculture nor is it supported by a specific policy reference elsewhere in the Local Plan (the Applicant's attempt to avail itself of the benefit of Policy DP25 (Community Facility) is hopeless).

(a) as to the first limb, even on the Applicant's own case, the Proposed Development does not maintain, nor enhance, the character of the countryside;

(b) this being so, the second limb of the Policy is not strictly engaged but, in any event, the Proposed Development fails this part of the Policy too.

4.10 Nor does the Application derive any benefit from Policy DP25. This does not provide unequivocal, unqualified support for community facilities but rather support for such facilities which '*contribute to creating sustainable communities*'. This policy requirement is reinforced elsewhere in the Local Plan, including by Policy DP14 which further emphasises the need for development, particularly within the countryside, to

support sustainable growth and the vitality of the rural economy. This is not the case here. The Proposed Development is plainly unsustainable as evidenced by:

- (a) its proximity to an existing crematorium facility (namely the Surrey & Sussex crematorium operated by our client) which – as evidenced further below – comfortably serves the needs of the community and has capacity to meet an increase in demand in the future; and
- (b) its heavy reliance on the private car (as accepted by the Applicant in paragraph 4.10 of its Transport Assessment dated August 2020) in circumstances where the relevant demand is satisfactorily met by existing facilities. Our client accepts that trips to crematoria are likely to be by private vehicle but this serves only to reinforce the need to exercise caution when considering a scheme which would introduce more trips by private car when there is clearly no need for such a facility. As such, the Proposed Development is also contrary to Policies DP25 and DP14 of the Local Plan.

4.11 It is plain, therefore, that the Application is contrary to the Local Plan in fundamental respects.

#### Neighbourhood Plan

4.12 The Application is also plainly contrary to Policy THP8 of the Neighbourhood Plan given that:

- (a) the Site is not allocated for development;
- (b) the Proposed Development would have a detrimental impact on an area of landscape sensitivity;
- (c) the impacts on the AONB remain unclear (as to which, see further below);
- (d) the Site is located within a Strategic Gap.

4.13 On the basis of the above, in accordance with Section 38(6) of the 2004 Act, there is a statutory presumption against permitting the Proposed Development. The Application should be refused unless material considerations indicate otherwise. In terms of material considerations, the Applicant promulgates the Fall Back position and need as being integral to its case for consent. We have addressed these separately below.

#### NPPF

4.14 Properly construed, paragraph 84 of the NPPF does not assist the Applicant. To gain support from Paragraph 84, the Applicant must evidence a need for the Proposed Development. It fails to do so as is demonstrated below.

4.15 The Proposed Development is also in conflict with Paragraphs 170(a) and (b) of the NPPF as: (a) it would cause harm to a highly sensitive landscape area identified within the development plan; and (b) it fails to recognise the intrinsic character and beauty of the countryside.

#### **C. Fall Back**

4.16 As we understand it, the Applicant selected the Site *'based primarily on the need for the facility but also on the established permissions for natural burial with supporting reception, chapel and maintenance building [i.e. the Fall Back]'*. As such, the Applicant places significant weight on the Fall Back position in its justification for the Proposed Development. This approach is misconceived.

- 4.17 The consented small built development on the Site cannot credibly be compared to the substantial development which is being proposed. Simply in terms of footprint, the Proposed Development would allow 1,600 square metres of built development. By contrast, the Chapel Consent authorises a maximum of 240 square metres. Even if the reception building is included within this count (circa 51 square metres), this would still only authorise a maximum of 291 square metres of built development (and, given that the Chapel Consent includes its own reception area, it is highly unlikely that the reception building would be built out in addition to the Chapel Consent in any event).
- 4.18 Given the extensive difference in footprint between the 'Fall Back' and the Proposed Development, we are surprised that the Applicant is seeking to assert that the Fall Back should be given significant (or indeed any) weight in the planning balance. It is an assertion without any force or meaning because it is evident that the Proposed Development would cause far more harm (including the introduction of a new use) than the Fall Back in any event. Therefore, the Applicant's 'threat' to carry out a much less impactful scheme if the Proposed Development is not granted consent is wrong-headed.
- 4.19 Accordingly, we respectfully suggest that the Fall Back should be attributed no material weight in the planning balance for the Application.

#### **D. Unsubstantiated Need Case**

- 4.20 The Applicant submitted two Need Assessments dated July 2020 and August 2020 in support of the Application. For the most part these are analogous but, for the avoidance of doubt, we refer below to the Need Assessment dated August 2020 ("the Need Assessment").
- 4.21 As noted above, our client operates the Surrey & Sussex crematorium (which is located just 3/4 miles from the Site) and the Downs crematorium (located in Brighton, immediately next to the local authority operated Woodvale crematorium). As such, our client has access to records which provide data in respect of the actual usage of those facilities (as opposed to the estimated usage relied upon by the Applicant within the Need Assessment).
- 4.22 As a preliminary point, we note that – even on the basis of the Applicant's own isochrones (see pages 27 – 29 of the Need Assessment) – the Site would be centrally located within the catchment area of the Surrey & Sussex crematorium (when considered as part of a constrained 30 minute or 45 minute drive time i.e. at 60% of normal drive times to reflect cortege speeds). In fact, the Site is so close to the Surrey & Sussex crematorium that, using the Applicant's own isochrones, it would barely be outside its catchment area in a constrained 15 minute drive time.
- 4.23 Related to this, our client disputes the Applicant's assertion that the Proposed Development would bring 43,532 people within a 30 minute drive time of a crematorium for the first time. Based on the obvious proximity to the Surrey & Sussex Crematorium any purported drive time saving has been greatly exaggerated by the Applicant and no material weight should be attached to it.
- 4.24 Notwithstanding the above (which is disputed by our client), it is fundamental to the Applicant's case on need that the Proposed Development would alleviate significant over-trading at neighbouring crematoria (including our client's own facilities). This assertion is both misleading and wholly inaccurate.
- 4.25 The Applicant's promoted capacity figures are considered below, against the data provided by our client in respect of actual use:-



- (a) **Surrey & Sussex crematorium:** The Surrey & Sussex crematorium has two chapels. We consider utilised capacity in respect of each chapel separately, whereas the Applicant has adopted a figure for the crematorium as a whole. The Applicant asserts that: (i) in 2018, the level of utilised practical capacity was 119%; and (ii) in 2019, the level of utilised practical capacity was 101%. Overall, the Applicant applies an average of 108% utilised practical capacity. However, the Applicant then goes further to assert that if the small memorial chapel is utilised for 60% of services (rather than 50%) then these figures would rise to an average of 130% utilised capacity (assuming 143% utilised capacity in 2018 and 122% utilised capacity in 2019). Not only does this adopt a wholly artificial approach to capacity (as, if there was demand for a service, the alternative chapel would still be available – notwithstanding any potential preference for the smaller chapel), but it is also inconsistent with the data held by our client in respect of use of the crematorium.

The actual usage of the crematorium evidences that: (i) in 2018, the chapels utilised just 48% and 57% of their capacity respectively; and (ii) in 2019, just 43% and 57% of their capacity respectively. As such, even if the figure were adjusted to meet the 'practical capacity' requirements, it is clear that the actual utilisation of the crematorium is *significantly* under the percentages promulgated by the Applicant. There is plenty of existing capacity remaining.

Our client also strongly disputes the Applicant's prediction that, by 2043, the crematorium would be operating at 128% of its practical capacity in peak months. This assertion is founded on inaccurate and significantly exaggerated data.

- (b) **Downs crematorium:** The Downs crematorium also has two chapels but, in this instance, we have provided a holistic figure for utilisation of the crematorium. The Applicant asserts that: (i) in 2018, the level of utilised practical capacity was 106%; and (ii) in 2019, the level of utilised practical capacity was 92%. Overall, the Applicant applies an average of 95% utilised practical capacity. However, once again the Applicant asserts that the main chapel is utilised for 60% of services (rather than 50%) and, as such, the figures are adjusted to produce an average of 125% utilised capacity (assuming 140% utilised capacity in 2018 and 122% utilised capacity in 2019). Again, these figures are strongly disputed by our client. In fact, our client can confirm that the actual usage of the crematorium was 56% in both 2018 and 2019. Once again, even adjusting to meet the 'practical capacity' requirements, it is plain that the actual usage of the crematorium is *significantly* below the percentages promulgated by the Applicant.

4.26 It is clear, therefore, that neither the Surrey & Sussex crematorium nor the Downs crematorium are 'over-trading' or operating at capacity. To the contrary, both have significant remaining capacity to accommodate an increase in demand. As such, there is no need for the Proposed Development by reason of 'over-trading' at neighbouring crematoria or otherwise.

4.27 The lack of any need for the Proposed Development further reinforces the case for rejecting the Application.

### **E. Alternative Sites**

4.28 The Applicant does not appear to have undertaken any alternative sites assessment as part of the Application. In our view, this represents a further flaw in the Application.

4.29 Even if (which is strongly denied by our client) there is a need for a new crematorium by reason of overtrading at other crematoria, it is incumbent on the Council to ensure such need is secured in a sustainable location (in accordance with policy). Whereas, given that the Site has a significantly overlapping catchment area with the Sussex & Surrey crematorium it is clearly the wrong site for a new crematorium. This is an important material consideration which the Applicant has failed to address.

**F. Landscape Impact**

4.30 The Applicant accepts:

- (a) that the Site is highly sensitive in landscape terms;
  - (b) that moderate adverse landscape impacts would occur in the short/medium term; and
  - (c) slight adverse landscape impacts would occur in the medium/long term,
- all of which equates to harm.

4.31 It is unnecessary, therefore, for our client to produce expert landscape advice because, even on the Applicant's own case, the Proposed Development fails to comply with policy (as above). Nevertheless, we would encourage the Council to independently review the landscape impact arising out of the Proposed Development (noting conclusions reached on previous appeals).

4.32 In addition, the Applicant asserts that the landscape and visual impacts would be 'similar' to that of the Fall Back position. Objectively, it is difficult to reconcile this assertion with the significant difference in footprint of the two schemes. In any event, insofar as we can tell, no detailed technical assessment has been undertaken to substantiate this assertion. As such, it would be wrong for the Council to attach any weight to this assertion.

4.33 As to the Applicant's reliance on the appeal decision in relation to the Chapel Consent, and the extent to which the Inspector's comments can be utilised to support the Proposed Development, we would advocate caution. The comments of the Inspector were strongly linked to the location and siting of the proposed chapel, in terms of its proximity to the road and location on the Site. Moreover, any such consideration should also factor in comments of the Inspectors who dismissed other appeals on the Site, including comments from the Inspector in respect of the dismissed appeal for 22 houses on the Site who concluded that the development of the Site *'would be completely out of character with the surrounding rural area'* and that *'the purpose of landscaping is not to hide otherwise unacceptable development'*.

4.34 We acknowledge the observation of the Council's landscape consultant that the visual impacts of the Proposed Development are difficult to assess as the Application has been submitted in outline only, along with their concerns that the proposed car parking, crematorium building and/or increased activity could all have a potential impact on the AONB.

**5 CONCLUSION**

5.1 The relevant policies of the Local Plan and the Neighbourhood Plan are consistent with the NPPF in all material respects.

5.2 The Application fails to comply with Policy DP12, DP13, DP14 and DP25 of the Local Plan as well as Policy TP8 of the Neighbourhood Plan. The Application is contrary to

the development plan as a whole and there is, therefore, a presumption against granting planning permission per Section 38(6) of the 2004 Act.

- 5.3 Further, the Applicant has failed to show that there are any material considerations that would indicate that the Application should be determined otherwise than in accordance with the plan. To the contrary, it is clear that (i) there is no need for the Proposed Development; (ii) the Proposed Development conflicts with Paragraphs 84 and 170 of the NPPF; and (iii) the Applicant has failed to demonstrate that the Site represents the most sustainable location for the Proposed Development (albeit, there is no need for it in any event).
- 5.4 Indeed, there is no policy basis upon which the Council would be permitted to grant consent.
- 5.5 For all these reasons the Application should be refused and we respectfully invite the Council to do so.

Yours faithfully

Clyde & Co LLP

## **Appendix 2**

**Dignity Crematoria 7520 Surrey and Sussex Two Chapel**

**Dignity Crematoria 7520 Surrey and Sussex Two Chapel****Memorial**

| <u>Crem Number</u> | <u>Chapel</u> | <u>COD Chapel</u> | <u>COD time</u> |                   |
|--------------------|---------------|-------------------|-----------------|-------------------|
| 07520              | 07520_MEM     | DRY_07520_MEM     | 08:15:00        |                   |
| 07520              | 07520_MEM     | DRY_07520_MEM     | 08:20:00        |                   |
| 07520              | 07520_MEM     | DRY_07520_MEM     | 08:30:00        |                   |
| 07520              | 07520_MEM     | DRY_07520_MEM     | 08:40:00        |                   |
| 07520              | 07520_MEM     | DRY_07520_MEM     | 09:00:00        | Attended Off Peak |
| 07520              | 07520_MEM     | DRY_07520_MEM     | 09:30:00        | Attended Off Peak |
| 07520              | 07520_MEM     | DRY_07520_MEM     | 10:15:00        | Attended Peak     |
| 07520              | 07520_MEM     | DRY_07520_MEM     | 11:00:00        | Attended Peak     |
| 07520              | 07520_MEM     | DRY_07520_MEM     | 11:45:00        | Attended Peak     |
| 07520              | 07520_MEM     | DRY_07520_MEM     | 12:30:00        | Attended Peak     |
| 07520              | 07520_MEM     | DRY_07520_MEM     | 13:15:00        | Attended Peak     |
| 07520              | 07520_MEM     | DRY_07520_MEM     | 14:00:00        | Attended Peak     |
| 07520              | 07520_MEM     | DRY_07520_MEM     | 14:45:00        | Attended Peak     |
| 07520              | 07520_MEM     | DRY_07520_MEM     | 15:30:00        | Attended Peak     |
| 07520              | 07520_MEM     | DRY_07520_MEM     | 16:15:00        | Attended Off Peak |

**St. Richard's**

| <u>Crem Number</u> | <u>Chapel</u> | <u>COD Chapel</u> | <u>COD time</u> |                   |
|--------------------|---------------|-------------------|-----------------|-------------------|
| 07520              | 07520_STR     | DRY_07520_STR     | 08:15:00        |                   |
| 07520              | 07520_STR     | DRY_07520_STR     | 08:20:00        |                   |
| 07520              | 07520_STR     | DRY_07520_STR     | 08:30:00        |                   |
| 07520              | 07520_STR     | DRY_07520_STR     | 08:40:00        |                   |
| 07520              | 07520_STR     | DRY_07520_STR     | 09:00:00        | Attended Off Peak |
| 07520              | 07520_STR     | DRY_07520_STR     | 09:45:00        | Attended Off Peak |
| 07520              | 07520_STR     | DRY_07520_STR     | 10:30:00        | Attended Peak     |
| 07520              | 07520_STR     | DRY_07520_STR     | 11:15:00        | Attended Peak     |
| 07520              | 07520_STR     | DRY_07520_STR     | 12:00:00        | Attended Peak     |
| 07520              | 07520_STR     | DRY_07520_STR     | 12:45:00        | Attended Peak     |
| 07520              | 07520_STR     | DRY_07520_STR     | 13:30:00        | Attended Peak     |
| 07520              | 07520_STR     | DRY_07520_STR     | 14:15:00        | Attended Peak     |
| 07520              | 07520_STR     | DRY_07520_STR     | 15:00:00        | Attended Peak     |
| 07520              | 07520_STR     | DRY_07520_STR     | 15:45:00        | Attended Peak     |
| 07520              | 07520_STR     | DRY_07520_STR     | 16:30:00        | Attended Off Peak |