



Late Observations Sheet
DEVELOPMENT CONTROL COMMITTEE
06 November 2013 at 7.00 pm

Late Observations

This page is intentionally left blank

Item 4.1 - SE/13/02415/FUL Land South of Orchard Barn, London Road, Halstead

The following consultations have been received since the report was drafted:

London Borough of Bromley

No objections.

Environmental Health

Air Quality

I am satisfied with the submitted impact assessment for the crematorium incinerator, and accept the conclusion that:

'In summary, for both the maximum modelled results and the modelled results at sensitive receptors, ground level pollutant concentrations as a result of emissions from the Cremator stack are not predicted to exceed Environmental Quality Standards, and therefore are not considered to be significant in terms of impact on human health.'

The assessment does not include the impact of the traffic sources, however the applicant has advised that there would only be an additional 0.8% increase in traffic flows, in which case I agree that this would not be significant."

The case officer subsequently clarified that the proposal was for less than a 2% daily increase in traffic and Environmental Health confirmed that this did not change the conclusions made above and this impact would not be significant.

Noise

"I am happy with the acoustic report, with the predominant noise source being traffic on London Road I recommend a condition requiring the applicant to provide details of an acoustic fence to be provided to protect relevant areas of the site from road traffic noise.

I discussed concerns over the impact of noise on the site with the acoustic consultant as it was unclear what equipment and plant were running at Oak Tree Farm. After a lengthy discussion with the consultant it was clear that the predominant noise source at the locality was London Road. I discussed possible solutions with Lesley and felt that a wooden fence of a density of 10 kg/m² or more and a height of no less than 1.6 metres but preferably of at least 1.8 metres behind the existing hedge adjacent to the road.

The height I stated was an acoustic fence is preferably a height of 2 metres but at least 1.8 metres or an engineered bund, however bunds are not always as effective but tend to be maintenance free."

KCC Highways

To clarify the issues on Air Quality and traffic impact referred to above, KCC Highways have advised:

Supplementary Information

“In para 4.15 of the applicants supporting TA there is a projection of the potential traffic impact at maximum capacity (i.e. at the maximum of 10no. daily services) with a subsequent projected average daily network impact (at a level of 5no. daily services).

The maximum projected impact amounts to a 1.6% projected increase in 2-way traffic movements to the north of the proposal site and a 0.9% projected increase to the south. The projected average daily network impact amounts to a 0.8% increase to the north (and less than 0.5% increase to the south) so the figure quoted by the applicant to James Fox below appears to represent the projected average daily network increase to the north of the site (i.e. in the direction of greatest projected increase in vehicle movements).

It is worth noting that the applicant considers this to be a robust projection as the survey sites from which the projected vehicle movements were obtained are larger sites with potentially higher numbers of daily staff and memorial garden related movements than what would be expected from this site.

From a highway impact perspective, none of these projected increases represent a significant increase in vehicle flow when compared to existing background levels and, in fact as a percentage are well within normal fluctuation levels which you would expect to see in background traffic flows on a day to day basis.”

Representations

3 representations that are not from rival companies are summarised below.

- Introduction of development into rural environment.
- Road has fast and heavy traffic which will be less safe with funeral traffic.
- Any proposal should be implemented safely.
- Location should be not be urbanised.
- Acknowledge there is a need for a crematorium to cover the District but not in this location.
- This Green Belt land is particularly important on the edge of London to separate Sevenoaks and Orpington.
- The crematorium will add to the congestion on an already busy road.
- Concerns about volume of existing cyclists and the speed and volume of traffic. Should be provision of cycle lanes.
- Crematorium must issue some fumes raising concerns about development on the edge of a smoke control area.
- Concerned that the proposal is a departure from the development plan and no reference is made in the report to the phrase ‘departure’.

In addition to the above 1 representation has been received from Dignity, a Funeral Care Service that operate other crematoria. Their comments are summarised below.

- The applicant has not established a need for the development sufficient to justify it in this Green Belt and AONB location.
- The site is less than 1.5 miles from an existing cemetery.
- The Needs Assessment is misleading in terms of longer term trends.
- There has been a 14% decline in cremations over the previous 11 years.

- The qualitative needs assessment relies on a survey of funeral directors which raises some concerns about the independence of the information.
- The length of waiting times does not necessarily indicate there are deficiencies with the existing service.
- Confirms they provide crematorium facilities at Beckenham and Surrey and Sussex and provide data about these facilities.
- Their data indicates a usage in 2012 in Beckenham, of 86% in the most popular time slots but overall a usage of 65% un 2012.
- Their data indicates a usage in 2012 in Surrey and Sussex of 74% in the most popular times. (Note: the usage % overall is not expressly stated.)
- Site selection not adequate and reference is made to an appeal decision in Hampshire.

A further response was also received on 4th November from Mercia Crematoria with a copy of a letter from their solicitors attached, dated 26.9.13. Mercia are a rival crematoria company that have submitted their own application for a crematorium to the Council. Their comments are summarised below.

- The Oak Tree farm crematorium site is available, subject to contract to Memoria or any other operator.
- Their application has already been submitted (on 25.10.13).
- This second application is a material consideration.
- This second application is on a better site involving previously developed land.
- Potential concerns about pollution sources from industrial uses have been addressed in the application submission.
- The first application is being recommended without the details in advance of any mitigation measures.
- Applicant did not consider the site to the south (site of second application) which is sequentially preferable and therefore there cannot be any very special circumstances to outweigh the harm to the Green Belt.
- Would agree that the need for a crematorium within this area is capable of overriding harm caused by inappropriate development.
- But consider that site to the south is preferable as it constitutes a previously developed site so that development has potential to be appropriate in the Green Belt.
- The LPA should first exhaust all opportunities for a crematorium to be appropriate development in the Green Belt.
- The representation sets out the why they consider the site for the second application is preferable.
- Recommendation for first application should be changed to reflect the existence of the preferable second application.
- Mercia are experienced Crematoria developers with 9 completed projects. 5 of these are let to Memoria who it is understood sold them to Dignity. 2 were developed directly for Dignity and 2 for the Co-operative.
- A delay in submitting the second application was due to Air Quality Assessments.
- There is no exclusivity agreement with any particular operator so that the Crematorium (on the second application site) could also be available to Memoria.

Supplementary Information

A response has also been received on behalf of another crematoria company, Westerleigh Group. Their comments, which object to this proposal, are summarised below.

- Slow-moving funeral corteges could lead to increased delays and frustration to other road users.
- Possible accidents from overtaking slow moving traffic.
- Concern about safety of right turn lane.
- Concerns about the brow of the hill and its impact on highway safety with the new access.
- The Landscape Visual Impact Assessment carried out on behalf of Memoria underestimates the extent of adverse visual impact on the Green Belt – an alternative assessment is submitted.
- Noise of passing traffic makes site unsuitable for a crematorium and cemetery.
- Proposal would not preserve the openness of the GB.
- Cites a number of appeal decisions (all pre-NPPF) that do not support development of crematoria in the Green Belt.
- cursory site selection and notes existence of another site being brought forward by Mercia.
- Could be better sites where there would be less harm.
- Considers that the Council should look for the 'optimum' site for a development.
- There are no very special circumstances to clearly outweigh the harm to the Green Belt.

Other matters

Since the report was drafted the applicant for the first application has confirmed the following:

- Services are for 45 minutes whether for a committal only or a full service. This time allows for there to be no overlap of mourners arriving and leaving the site.
- In order to further minimise the overlap of services when bookings are made staff will actively establish the likely number of cars per service.
- If there are likely to be more than 50 cars per service it is recommended that 2 slots are booked providing a service time of 1.5hrs.

They have also provided additional clarification on capacity and refer to paragraphs 5.12-5.15 of the planning statement where we deal with the issue of capacity at other crematoria. These paragraphs are summarised below:

- All crematoria in this country technically have spare capacity. This is to say that not every time slot is filled throughout the year.
- Traditionally, crematoria are busier during the winter months.
- 3-4 weeks delay for service times have been reported at 5 of the 7 competing crematoria in the area.
- The most popular service times for funerals are in the middle of the day. This allows families and friends the opportunity to travel to the funeral from outside the area but still be able to get home at a reasonable hour.

- Most crematoria have busy periods between the hours of 11.00 and 15.00 with some families choosing to change the date of the funeral dependent on the time slot that they are able to get.
- The shortage of 'popular slots' means that waiting times for a service can be up to 4 weeks during the busier winter months.
-
- Spare capacity exists during less busy times of the year. Crematoria experience seasonal variations in demand.
- At Beckenham, Kent & Sussex, Surrey & Sussex, Medway and especially Eltham crematoria, it is reported that service time delays of up to 3-4 weeks are possible between November and February, indicating that these facilities are operating close to capacity during these periods.
- There will also be significant sustainability benefits that will arise through the reduction in journey times and distance travelled currently by mourners accessing facilities outside the district.

They also advise that the issue of capacity is very closely allied to the availability of the most popular slots which tend to be during the middle of the day. They state that during winter months delays for services as long as 3-4 weeks have been reported because the main daytime slots are taken. They advise:

“As such a crematorium may have spare capacity but these are at slot times that the public do not want and their consideration is therefore irrelevant in the circumstances. Attempting to provide a % of spare capacity at each crematoria will therefore not give a true picture of the available capacity but is used by the operators to suggest that there is capacity! This does not remove the qualitative need that arises through the ability to deliver cremations in a timely manner and in relation to our client's proposal we have demonstrated that both a qualitative and quantitative need exists for the proposal.”

A second application for a crematorium has been submitted for the land to the south of this application site and north of Oak Tree Farm. This application was valid on 5th November and is application SE/13/03178. Consultations will be issued on 6th November. The target date for determination is 4th February 2014.

Chief Planning Officer's Comments

Comments on representations

The report addresses most of the issues set out above.

Comments on the additional issues raised are set out below.

Capacity and need

The capacity of existing crematoria and the need for a new facility is questioned, suggesting that there is no need that could justify this proposal in the Green Belt.

Dignity, who raised this issue in their latest letter, do not dispute that the applicant's figures that around 75% of deaths are dealt with by cremation. Nor do they dispute that

Supplementary Information

the Sevenoaks area has a relatively older population and significantly lower levels of ethnic minority groups within the local catchment that indicate that there is a lower population that would be restricted from cremations on a religious or cultural basis. Dignity provide crematoria services at two local facilities so also have a commercial interest in this matter.

The Cambourne appeal decision attached as Appendix 1 to the main report makes a number of references to the assessment of need. In allowing the appeal, the Inspector, in commenting on need makes the following statements:

Para 23 in part:

“...I do not consider that it is entirely realistic to suggest that every available time slot, especially those in the early mornings or late afternoon, could or would be utilised and consequently the practical capacity of the crematorium could be less...”

Para 29 in part:

“In previous crematorium cases an industry standard, or ‘rule of thumb’, has been applied at 30 minutes travel time for the funeral cortege. It has not been rigidly applied in all cases...Nonetheless it provides a starting point for the assessment of the quality of service to be provided to the bereaved.”

Mercia the second crematorium company have not disputed the information on the capacity of existing crematorium provided my Memoria. The representation on behalf of Westerleigh Group does not challenge the capacity and need evidence, although does comment on the weight to be attached to it.

For all of the above reasons, and those set out in the main report, it is considered that there is a need in for an additional crematorium in this local area.

Appeal decision in Hampshire

The appeal decision referred to by Dignity was determined in November 2008 before the NPPF. This appeal for a new crematorium in Southampton was allowed on appeal. This appeal site was not in the Green Belt. The Council did not dispute the principle of need for a crematorium although it was not accepted that that any facility would need to be in its District. The Inspector stated that it was reasonable for the appellants to seek a site as close as possible to the intended catchment area of the crematorium. The Inspector concluded that the proposal would not conflict with policies that seek to protect the countryside, that it would cause no material harm to the character or appearance of the surroundings or to the value and function of a strategic gap and would not have a significant impact on highway safety.

The above outline reflects some circumstances similar to those for this current application, but the key point in the appeal referred to by dignity was a reference to the ‘comprehensive supporting information’ submitted as part of the planning application, including site searches. As the methodology and findings of this supporting information were not disputed by those at appeal, there is no detailed report of this information in the appeal decision. The Inspector acknowledges that the siting of any crematoria poses

particular difficulties in terms of site selection due to the requirements of the Crematoria Act 1902 which tend towards sites outside urban areas. He also states that no suitable or alternative sites were found in a less sensitive area (within the urban edge) and not was there any confidence that such a site will come forward within a reasonable period of time.

This appeal decision is of interest, but assessment of the proposal and the conclusions within it do not conflict with the approach taken for this application as set out in the main report.

Previously Developed Land and site selection

The definition of Previously Developed Land (PDL) is in the NPPF. This definition excludes amongst other things, land that is or has been occupied by agricultural buildings and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time.

The NPPF states at para 89 that in the consideration of new buildings in the Green Belt, these are inappropriate unless one of the exceptions are met, which include:

- *Limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.*

As the second application was only made valid on 5th November, Officers have not had the opportunity to fully assess the proposal and nor have residents, the Parish and consultees. It is therefore too early in the process to determine if the assertions of the applicants for this second application and the status of any Previously Developed Land are reasonable and correct. It is not therefore possible to conclude at this stage whether the second application would be a 'preferable' scheme to the first application or not.

In any event, as set out below by the Council's Legal Services Manager, it is appropriate to determine the first application.

The applicant for the second application, Mercia, has also made representations on this scheme, which include claims about the planning history of their site to imply it is preferable. The planning history for this second application site does not appear to match the claims made by Mercia.

The current view is that the 'goods' on the field adjacent to the house at Oak Tree Farm are unlawful as they all appear to have been moved onto the land since 2008. There is no agricultural use for the silo so as far as we are aware and our enforcement section are investigating to see if it is being stored on the land. The second application site includes structures or uses that also include the demolition or removal of a shipping container, an outbuilding, storage shed and brick shed with missing roof. It is not clear whether all of these buildings or uses are lawful and if they are, whether they would fall within the definition of PDL. Some of these structures could be or have last been used for agriculture. There appears to be no planning history relating to equestrian use of the land.

Supplementary Information

Therefore it is very unclear whether the second application does involve previously developed land. Further research would be undertaken as part of the assessment of the second application. Therefore, very little weight can be given to the applicant's claims that their site is previously developed land at this stage.

In addition to the above, the second application has a number of other factors to be considered, such as the highway impact and the proximity of the proposed site to various lawful uses, which include a number of noise related industrial uses and the recycling, screening and crushing of waste.

As stated in paragraph 199 of the Officer's report: "Officers are not aware of any alternative site that can be clearly demonstrated to be available that offers a more suitable option to the application site." Accordingly, it has not been demonstrated that there is a preferable scheme or site that is likely to be less harmful to the Green Belt than the current proposal and it is therefore appropriate to determine the first application.

Other matters

The question raised by one representation about a 'departure' is referred to below, as are issues related to the possible deferral of the first application, with the submission of a second application.

A query was raised about the smoke control area. Environmental Health have confirmed that the proposed development is not within a smoke control area. If the development was within a smoke control area then any installation would be required to be compliant with the Clean Air Act.

A crematorium is a process that is required to be regulated under the Environmental Permitting Regulations (EPR) which ensures that emissions and products of combustion are within stringent environmental standards. Where an activity is regulated under the EPR regulatory framework the Clean Air Act does not apply.

For clarification:

The application site is not in an AONB although the boundary of the AONB runs along the eastern (far) side of London Road.

Inappropriate development in the Green Belt

Recent case law has shown different interpretations of how to apply the NPPF to Green Belt sites where there are changes of use. The most recent case indicates that changes of use in the Green Belt would be inappropriate development but that there may be very special circumstances that clearly outweigh the harm to the Green Belt in principle.

In this case whether or not the proposal is appropriate in the Green Belt is discussed at paras 78 to 83 of the main report.

Whilst it is not explicit in the report, the change of use of the land from agricultural would be inappropriate development, but as outlined in the report at para 80 and elsewhere,

the change of use of the land itself does not impact on the openness of the Green Belt, unlike the building for the crematorium itself, which does.

As summarised in para 197 of the main report, it is the proposed building that would cause harm to the openness of the Green Belt.

Departure from Development Plan

The Town and Country Planning (Development Management Procedure) (England) Order 2010 sets out the requirements for publicising planning applications. In accordance with those requirements, this proposal was advertised as a 'departure' as the proposal if granted permission would:

“not accord with the provisions of the development plan in force in the area in which the land to which the application relates is situated”.

The proposal has also been considered under the requirements of The Town and Country Planning (Consultation) (England) Direction 2009.

The proposal does not involve a building of 1,000 square metres or more and as set out in the report is not considered by reason of its scale or nature or location, to have a significant impact on the openness of the Green Belt. Accordingly, whilst the proposal has been advertised as a departure from the development plan, any resolution for planning permission would not need to be referred to the Secretary of State under this Direction.

Planning policies, including the National Planning Policy Framework, use the phrases of appropriate or inappropriate development in the Green Belt as explained in the report rather than the phrase 'departure'.

Screening Opinion

The proposal has been considered under The Town and Country Planning (Environmental Impact Assessment) Regulations 2011.

The proposal was considered to represent Schedule 2 development under the Town and Country Planning (Environmental Impact Assessment). When considered against the criteria in Schedule 3 of the Regulations, the potential impact of the development would not be considered 'significant'. This impact and any other impact would be limited and localised, and would not be significant in terms of nature, size and location, to the extent that an Environmental Impact Assessment would be required.

Second application for a crematorium

A second application for a crematorium on the land to the south of the current site is now valid.

Some may consider that deferral of the first application to allow the decisions on both applications to be considered together, as a choice between the two, would be appropriate.

Supplementary Information

The Council's Legal Services Manager has provided advice on this matter:

"The duty of the Council and through it the DCC is to be found in the NPPF The National Planning Policy Framework contains a presumption in favour of sustainable development.

For decision-taking this means:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - specific policies in this Framework indicate development should be restricted.

The development plan is silent on this type of application. The application site is Green Belt and as the report accepts the development would be inappropriate. But as Judge Pelling QC sitting as a High Court judge has said, "merely because a proposed development was inappropriate did not mean that there was a prohibition on it. The categories of what constituted very special circumstances were not closed."

The ability of DCC to defer a decision on a planning application is derived from the Local Government Act 1972, The Town and Country Planning Act 1990 and the Constitution. DCC are able to defer a decision where there is some good planning reason to do so. This will normally be to obtain some additional bit of information which is considered necessary for the DCC to reach its decision. The DCC has no power to defer a decision on a planning application, the statutory time limits contained in the Town and Country Planning (Development Management Procedure) (England) Order 2010 will continue to apply.

This is not an instance where it is necessary to consider applications side by side. If the DCC were to defer the application that will not result in a side by side consideration of planning applications, for the reasons I have explained earlier it is simply likely to result in the Council incurring additional costs. My considered view is that the Council's best interests are served by deciding the planning application, rather than abdicating its responsibility to do so and leaving the decision to the Secretary of State on appeal."

Other information on proposal

To clarify some of the background information on this proposal, further details are set out below about the burial ground capacity and information on other nearby crematoria.

Burial ground

- 2 acres are proposed – 1 acre each available for flat stone and natural burials.
- Flat stone burials – 800 internments per acre

- Natural burials – 500 internments per acre
- Demand for burials is expected to be 25 internments per year after 5 years – unlikely to rise due to other burial sites nearby.
- Site expected to have 50 – 55 years worth of burial capacity.

Other crematoria

Crematoriums offer different size crematoria that have an impact on whether those facilities are suitable. Older facilities can be 28 inches wide whereas now the need can regularly be for sizes over 33 inches.

The table below illustrates how this applies to existing facilities based on a survey undertaken on behalf of Memoria. In addition, details of parking facilities have been included to indicate the comparative provision and the distance from this proposed site.

	Service Times	Cremator Width	Car park capacity	Distance from application site
Current application	45 mins	41 inches	100	N/A
Kent & Sussex (Tun Wells)	30 mins	28 inches	73	19.3 miles
Beckenham	45 mins	28 inches	80	12.5 miles
Eltham	45 mins	41 inches	80	17.1 miles
Medway	40 mins	30 inches	100	25.1 miles
Maidstone	45 mins	41 inches	60	24.8 miles
Lewisham	45 mins	44 inches	60	16.1 miles
Surrey & Sussex	45 mins	40 inches	80	29.8 miles

Agricultural Land Classification

Para 112 of the NPPF states:

“Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality.”

The Kent Landscape Information System indicates that the application site is most likely to be poor or good agricultural land. The land classification includes very good and excellent categories. This site would not therefore be considered to be land of the highest quality and taking into account all of the guidance in the NPPF, the change of use of the site from agriculture would be considered acceptable.

Amendment to report

The word ‘not’ in the top line of page 23 should be deleted.

In paragraph 159 the word ‘copy’ should be amended to say ‘cope’.

Supplementary Information

Amendments to conditions

Condition 1: Inset 'three' after 'expiration of'.

Condition 2: Amend (as shown in italics) to state:

The *buildings and* crematorium hereby permitted shall not be *used or* operated outside the hours of 0900 - 1700 hours Mondays to Fridays and 0900 - 1200 hours on Saturday, and not at all on Sundays and public holidays. The *grounds and gardens* shall not be open outside the hours of 0900 - 1700 hours on any day.

Condition 2, amended reason: To minimise the impact of any noise and disturbance on the character and amenity of the area.

Condition 16: Amend to insert at the beginning: 'Prior to the commencement of the development hereby approved...'

Condition 17, amend reason to state: 'To protect the amenity of users of the Public Footpath'.

RECOMMENDATION:

The recommendation remains as set out in the original report, with the addition of the amendments to the conditions set out above.