
Appeal Decision

Inquiry Held on 22 to 26 February 2021

Site visit made on 26 February 2021

by O S Woodward BA(Hons.) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 April 2021

Appeal Ref: APP/P0240/W/19/3230774

**Land adjacent to Wilbury Hills Cemetery, Stotfold Road, Letchworth
Garden City SG6 4EG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by North Hertfordshire District Council against the decision of Central Bedfordshire Council.
 - The application Ref CB/18/01615/OUT, dated 13 April 2018, was refused by notice dated 05 March 2019.
 - The development proposed is the erection of crematorium, including vehicular access to Arlesey New Road, internal access roads, car parking and service areas, alterations to levels, landscaping and memorial gardens and related works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with access applied for in full and all other matters reserved. Access to the site relies partially on works within North Hertfordshire District Council (NHDC). These works were granted planning permission¹ on 18 June 2018 and have recently been implemented.
3. There is an existing crematorium formally called North Hertfordshire Memorial Park and Crematorium but hereafter referred to as Holwell Crematorium, which is located around three miles away from the appeal site. This is run by a company called Memoria Ltd, who had Rule 6 status at the appeal.

Main Issues

4. The main issues are:
 - whether or not the appeal site is an appropriate location for a crematorium, having regard to local and national planning policy and guidance;
 - the effect of the proposed development on the character and appearance of the area, including landscape character; and
 - the need for the proposed development.

¹ Ref 18/01027/FP

Reasons

Planning policy

5. The development plan includes the Core Strategy and Development Management Policies, November 2009 (the CS). The Central Bedfordshire Landscape Character Assessment, January 2015 (the LCA) is also a material consideration.
6. The emerging Central Bedfordshire Pre-submission Local Plan 2015-2035, January 2018 (the emerging LP) is awaiting the release of the Inspector's Report. The policies it contains may need to be modified prior to adoption and have limited to moderate weight depending on the level of remaining objections. Emerging Policy HQ3 was the subject of only one objection during the consultation stage and this did not relate to the provision of community facilities. This policy therefore has moderate weight for the purposes of this appeal.

Location

7. There are obvious difficulties in providing a crematorium within or adjacent to a Settlement Envelope. This is because 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. The Act permits a crematorium to be closer only where the owner, lessee and occupier of the dwelling have given their consent in writing. These requirements have significant implications in terms of the likelihood of finding a suitable urban site.
8. The appeal site lies in the open countryside for the purposes of planning policy, outwith any settlement envelope as currently defined in the CS. In such areas, Policy DM4 of the CS is expressly permissive of limited extensions to gardens in rural areas. Whilst it is silent on all other types of development in areas such as this, the policy does not place a blanket ban on development in the countryside. Given its silence in relation to developments such as that proposed, and noting that it does not, of itself, prohibit development in the countryside, I find Policy DM4 to be of little, if any, relevance in this case, with regard to location of the proposed development. No other policies were referred to that go to the principle of the development proposed in this location. In this context, I am satisfied that a rural location for a crematorium could be acceptable in principle, subject to site specific considerations.

Character and appearance

9. The appeal site is an agricultural field, sitting partly on a plateau and partly on a westward facing downslope. It is prominent and visible over a wide area across a valley to the west. The appeal site has a rural character, typical of the landscape character area 'rolling chalk farmland' as identified in the LCA. It sits in the immediate context of further agricultural fields located immediately to the west along the valley. The area further westwards is largely rural in character, albeit with notable human interventions such as roads, buildings, and a water tower.
10. Although adjacent to the existing cemetery site to the east, the screening impact of the intervening hedgerow, and the location of the majority of the appeal site on a downslope running away from the cemetery, lessen the influence of the cemetery on the character of the appeal site. Beyond the

cemetery is the urban edge of Letchworth and a road junction. However, these also feel separated from the appeal site by the intervening cemetery and with their influence similarly lessened by the siting of the appeal site largely on a downslope facing away from these urban areas.

11. There are few public viewpoints close to the appeal site. The nearest Public Right of Way is on the other side of the valley, over a mile away. Wilbury Farm is the nearest dwelling, also at a significant distance. However, the site is located in a prominent location on a downslope clearly visible from numerous locations within and on the other side of the valley to the west. It is of a rural landscape character.
12. The planning permission² for the cemetery to the east was granted on 18 October 2005. The permission was for the cemetery, chapel and associated buildings and works now in place, and also for the future expansion of the facility to the west, including the appeal site. The permission has been implemented and remains extant. As such, the facility could be extended to the west at any point under that permission. I acknowledge that, in reality, any expansion is likely to be several decades away, not least because the existing cemetery land has approximately 4,000 unused plots and the current burial rates are only 40 – 60 plots per annum. However, it remains an established potential use for the land and I treat this as the baseline against which to assess the appeal proposal.
13. The proposed development would include extensive hard standing, a fairly substantial building, and prominent screening measures. It would comprise a separate site to the neighbouring cemetery, with its own access from a different road, its own crematorium building, and its own separate car park. The access has been partially constructed through the implementation of the NHDC access works permission. This access is not provided for in the planning permission for the existing cemetery. There would be an internal link road between the existing cemetery and the appeal site to enable the potential for joint management and maintenance of the two sites. Only access has been applied for in full in relation to the appeal scheme, relating to the construction of the first few metres of the main access road and linking into the already constructed access point to Arlesey New Road.
14. The area of the extant planning permission that relates to the appeal site is controlled, in part, by conditions 5 and 7, which explicitly limit any structures to be minor and prevent the erection of further chapels, mausoleum colonnades, or other non-minor structures. Any future implementation of this element of the planning permission would therefore be for low-key development comprising cemetery use and associated minor structures. In contrast, the appeal proposal would include a crematorium building of approximately 700 sq m, and approximately 6,000 sq m of hardstanding for access roads and car parking. I am firmly of the view that the proposal would comprise a much more intensive and visually intrusive form of development than is either currently the case, or would be the case if the extant permission were built out, with a significant and adverse impact of the appearance and character of this part of the countryside.
15. I recognise that it is intended that the development would be accompanied by a high quality landscaping scheme which might, over time, provide some

² Ref MB/05/01113/FULL

screening for the building and parking areas etc. I am not persuaded, however, given the nature of the development, that this would be wholly successful in preserving the rural character and appearance of the area, particularly because of the siting on a downslope overlooking a large valley and with the proposed buildings towards the higher end of the slope. Also, Arlesey New Road runs alongside the site and there are intermittent views from the road, where there are gaps in the hedgerow. This includes at the access point to the appeal site, where the access planning permission granted by NHDC has been implemented, resulting in the loss of hedgerow in this location. I acknowledge that views through the gap in the hedgerow could be controlled to a degree by the detail of the alignment of the internal road at reserved matters or conditions stages, but there would still be a gap in the hedgerow affording views of the site to passing drivers.

16. The harm to the character and appearance of the site and the area would therefore be perceived by a large number of receptors and would harm public views of the site.
17. As highlighted by the appellant, the position of the landscape officer at the Council in relation to the proposal has evolved over time. However, and importantly, at the time of determining the planning application the final position of the landscape officer, and the final corporate position of the Council, was clear, and that was to raise objection to the proposal on landscape grounds. This position has been adopted consistently through the appeal process as well.
18. Overall, the proposal would materially harm the character and appearance of the area including its landscape character, both in comparison to the existing situation and the baseline of the implementation of the western part of the cemetery planning permission. It therefore fails to comply with the relevant parts of Policies CS14 and CS16 of the CS which, amongst other criteria, require proposed development to respect local context and character, and to conserve and enhance countryside character and local distinctiveness. It fails to comply with Policy DM14 of the CS which, amongst other criteria, states that proposals that would have an unacceptable impact on the landscape quality of the area should be refused. It also fails to comply with paragraph 170(b) of the National Planning Policy Framework (the Framework) which states, amongst other criteria, that planning decisions should recognise the intrinsic character and beauty of the countryside.

Need

19. Memoria Ltd and the Council raised concerns that, if approved and built, the proposed crematorium would lead to the over-provision of crematoria in the area, which, in conjunction with the existing Holwell Crematorium, would likely result in one of the crematoria closing. Given the similarity of the offer of the two crematoria and the significant overlap of catchment areas this would be a possibility. However, detailed evidence was not provided to quantify this risk. In any event, the planning system does not exist to protect the private interests of one person against the activities of another, particularly in terms of potential financial loss as a consequence of a particular development.
20. Whilst it is agreed between the main parties that a crematorium can be regarded, for the purposes of planning policy, as a community facility, the appellant is of the view that demonstrating a need for community facilities is

not a requirement of policy. However, in relation to the rural economy, paragraph 84 of the Framework recognises, amongst other criteria, that sites to meet community *needs* may have to be found in rural areas. Under the hearing 'Promoting healthy and safe communities', paragraph 92 sets out, amongst other things, that the Council should plan positively to provide the cultural facilities and services the community *needs*. Although neither paragraph directly requires a formal needs assessment for community facilities, the link between need and the provision of community facilities is made clear. I acknowledge that these paragraphs are not directly referenced in the reason for refusal, but the Framework as a whole is a material consideration to which I am required to have regard.

21. I am also mindful that Policy DM4 of the CS establishes that the demonstration of need is required for the provision of community facilities within Settlement Envelopes. It remains silent on sites, such as the appeal site, that are outside of Settlement Envelopes. However, I see no reason why the requirement for need to be demonstrated should not apply equally to sites outside Settlement Envelopes. This is because sites outside of Settlement Envelopes are sequentially less favourable than sites within Settlement Envelopes, so if the sites within Settlement Envelopes require the demonstration of need then it must follow that the same applies to sites outside.
22. Policy DM4 is therefore consistent with the Framework in requiring that a need be established for the development proposed. Further to this, and as acknowledged by the appellant, the need for the proposal can be weighed in the overall planning balance, as a separate consideration to controlling market forces. For this to be undertaken, the need must first be established.
23. Despite not believing that demonstrating a need is a requirement, the appellant has nevertheless advanced arguments in relation to qualitative need in support of its case, albeit at the Inquiry this was downgraded to a description of these as 'qualitative considerations'. The appellant has not advanced a case of quantitative need and all needs assessments were withdrawn from the supporting documentation for the appeal. The qualitative considerations focussed on market choice and lower costs, quality of provision, linked visits to the existing cemetery and potential linked operation of facilities, and the Public Sector Equalities Duty.
24. The Competition & Markets Authority (CMA) Funerals Market Study (March 2019) and the CMA Funerals Market Investigation (December 2020) were both presented in evidence to the Inquiry and are particularly detailed, comprehensive and recent reports. They found that there is little evidence that more choice of crematoria equals a lower cost for the customer. Instead it is found that the location of the crematorium and family connections are factors that are more important to customers.
25. No evidence was provided to demonstrate that there would be a significant advantage to linked visits between users of the cemetery and the proposed crematorium. It may lead to a small reduction in journeys, but visits for funerals and crematorium related business do not often combine with regular visits to a grave. Nor was any evidence provided that if the proposed crematorium and the existing cemetery were to be under one operator that this would provide any significant benefits. It was also confirmed at the Inquiry that

the operator of the proposed crematorium has not been confirmed yet, so there would be no guarantee that the operator would be the same in any event.

26. The existing Holwell Crematorium is approximately three miles away by road and serves a very similar catchment to that of the proposed crematorium. The existing crematorium provides a range of facilities, including a viewing room and separate prayer rooms, and it is adaptable to the needs of different congregations by, for example, seating not being fixed. It can, and does offer, longer services, if required. No deficiencies in the offer of the Holwell Crematorium that the appeal scheme would remedy have been robustly demonstrated.
27. At the Inquiry, it was confirmed by the appellant that NHDC's statutory duty is in relation to providing care for the dead, but not specifics regarding the provision of crematorium facilities. It was also confirmed by the appellant that the lack of a crematorium provided by the Council does not place it in breach of the Public Sector Equalities Duty.
28. All in all, no robust evidence has been provided of a need for the proposed development. However, I place moderate weight on this in the absence of the explicit requirement for a need to be demonstrated on sites outside of Settlement Envelopes. That said, the proposal fails to comply with paragraphs 84 and 92 of the Framework. It also fails to comply with emerging Policy HQ3 of the emerging LP, which encourages community facilities to meet the needs of the local community, and emerging Policy SP7 which requires a need to be demonstrated in support of proposals for community facilities.

Other Matters

29. A number of objections have been received from neighbours. The concerns relate to the need for the crematorium particularly in light of the existing Holwell Crematorium, highway safety due to the use of the partially constructed new access onto Arlesey New Road and increased traffic, harm to character and appearance in particular the landscape, and pollution from operation of the crematorium.
30. I have taken all of these factors into consideration. I have assessed most of them above. The effect of the proposal on traffic and highway safety is not contested by the Council's Highways Officer and no robust, technical evidence was before me to support the concerns raised in this regard. The effect on air quality is not contested by the Council. An Air Quality Assessment was submitted with the original application and the Council's Pollution Officer raised no objection to the proposal in this regard. I have no reason to disagree with its conclusions.

Planning Balance and Conclusion

31. The proposal would materially harm the character and appearance of the area, including its landscape character. I assess the level of harm to be moderate. Neither quantitative nor qualitative need for the proposed facility has been demonstrated.
32. There would be some benefits to the proposal through employment generation during the construction period and then during the operational phase of the facility. These would be limited, though, because of the relatively small scale of the proposed facility.

33. Overall, the proposal fails to comply with the development plan and there are no material considerations to outweigh this conflict. I therefore conclude that the appeal be dismissed.

O S Woodward

INSPECTOR

Annex A: Appearances

For the appellant:

Martin Edwards, of Counsel. He called:

Andrew Mills	North Hertfordshire District Council
Shaun Greaves	Director - GC Planning Partnership
Malcolm Alsop	Managing Director - Alsop Verrill Planning Consultancy
Jon Etchells	Managing Director - Jon Etchells Consulting Limited

For the local planning authority:

Edward Grant, of Counsel. He called:

Kate Ahern	Director - Land Use Consultants
Phillip Hughes	Managing Director - PHD Planners

For Memoria Ltd (Rule 6 Party):

Ian Ponter, of Counsel. He called:

Jamieson Hodgson	Business Development Director - Memoria Ltd
Brian Duckett	Managing Director – Hankinson Duckett Associates

Annex B: Documents submitted during the inquiry

- DOC 1 Land at Bluebell Cemetery, Badgers Mount appeal decision
- DOC 2 Landscape evidence comparison table
- DOC 3 Statement of Common Ground Addendum, dated 22 February 2021
- DOC 4 Correspondence regarding Charnock Richards Crematorium
- DOC 5 *Timmins & Anor v Gedling Borough Council* [2016] EWHC 220 Admin
- DOC 6 *Girling v East Suffolk Council & Anors* [2020] EWHC 2579 Admin
- DOC 7 *Cherkley Campaign Ltd, R (on the application of) v Mole Valley DC & Anor* [2014] EWCA Civ 567