



Department for  
Communities and  
Local Government

Our Ref: APP/B5480/W/15/3132860

Mr Niall Roberts  
NTR Planning  
Clareville House  
26-27 Oxendon Street  
London  
SW1Y 4EL

23 January 2017

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY GARDENS OF PEACE  
LAND AT OAK FARM, MAYLANDS FIELDS, ROMFORD RM3 OAW  
APPLICATION REF: P1742.14**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Siân Worden BA MCD DipLH MRTPI, who held a public local inquiry on 12-25 July and 1 August 2016 into your client's appeal against the decision of the London Borough of Havering Council ("the Council") to refuse planning permission for your client's application for planning permission for the change of use of land to burial grounds including removal of existing agricultural buildings and erection of two pavilion buildings for associated usage, hard and soft landscaping, new access to A12 and internal roads and paths, parking, and workshop area for storage of associated equipment, tools and materials, in accordance with application ref: P1742.14, dated 17 December 2014.
2. On 11 July 2016, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves proposals for significant development in the Green Belt.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be allowed and planning permission granted subject to conditions.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with her recommendation. He has decided to allow the appeal and grant planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

## **Matters arising since the close of the inquiry**

5. Following the close of the inquiry, the Secretary of State received representations from a local resident and several Members of Parliament as listed below at Annex A. The Secretary of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

## **Policy and statutory considerations**

6. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
7. In this case the development plan consists of the London Borough of Havering Core Strategy and Development Control Policies Development Plan Document (CS), adopted in 2008, along with the updated London Plan (adopted 2015). The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR13-19.
8. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').

## **Main issues**

9. The Secretary of State agrees with the Inspector that the main issues are those set out at IR202.

### *Green Belt*

10. For the reasons given at IR204-206, the Secretary of State agrees with the Inspector that, as accepted by the main parties, the proposed development would be inappropriate in the Green Belt (IR206). He notes that the change of use from agricultural to cemetery accords with CS Policy DC45, but he agrees with the Inspector's conclusion that this was based on guidance which has been superseded by the Framework.

### *Openness*

11. For the reasons given at IR207-210, the Secretary of State agrees with the Inspector that, overall, the volume of development on the site would be increased (IR210). Furthermore, for the reasons given at IR211-214, the Secretary of State agrees with the Inspector's conclusions at IR215 that the proposed development, including the hard surfaced areas, would diminish openness and that the two pavilions and wudu building would be more apparent from within the site than the existing barn (IR211). However, for the reasons given at IR216-217, the Secretary of State also agrees with the Inspector's conclusion at IR218 that there are other factors which would limit the harm caused to the openness of the site.

### *Purposes of Green Belt*

12. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR219-220 that the site would remain essentially rural in character and appearance (IR219); and that the proposed development would assist in safeguarding the countryside from encroachment and would not be in conflict with this or any other of the Green Belt purposes (IR220).

### *Character and appearance of site, visual amenity*

13. The Secretary of State agrees with the Inspector's assessment at IR221 that, although the proposed development would undoubtedly change the character of the appeal site, the change would be neutral rather than detrimental. He agrees with the Inspector's reasoning and conclusions at IR222-227 that the site's essentially rural character would not be harmed, while the proposal would complement the amenity and character of the area through its appearance, materials used, layout and integration with the surrounding land (IR227). Like the Inspector, the Secretary of State considers that, overall, it would maintain and enhance the character and appearance of the local area, complying with CS Policy DC61 (IR227). The Secretary of State also agrees with the Inspector's reasoning and conclusions at IR228-230 that, as the character and appearance of the local area would be preserved, there would be no harm to visual amenity.

### *Very special circumstances*

14. The Secretary of State agrees with the Inspector at IR232 that, as inappropriate development is by definition harmful to the Green Belt the appeal scheme cannot be approved except in very special circumstances.

### *Need*

15. The Secretary of State has considered the Inspector's assessment at IR233-242. He notes that the Islamic faith has specific burial requirements (IR233) and that the existing Gardens of Peace cemetery is currently the only one in NE London providing properly for Muslim burial, with remaining capacity put at between 2.5 and 5 years (IR235). The Secretary of State has carefully considered the arguments discussed by the Inspector at IR236-247 and, for the reasons which she gives, he agrees with her that an increased future population of Muslims in Havering strengthens the case for greater provision of uncompromised burial facilities in the borough (IR243). He also agrees with her that the plan-led approach advocated by the Council would not be sufficient to address the circumstances of this case (IR245); and that, although it is not an absolute right, the ability to be buried in full accordance with the requirements of one's faith is an important consideration (IR246). Therefore, like the Inspector, the Secretary of State attaches considerable weight to the consideration of need and agrees with her that LP Policy 7.23 includes an implicit need to take account of differing faith requirements, such as those material to this case (IR247).

### *Benefits of the proposal*

16. The Secretary of State agrees with the Inspector's assessment of the benefits of the proposal at IR248-253. He agrees that, while access would be restricted to the times the cemetery was open, the proposed development would provide an attractive and realistic destination for an occasional walk (IR249) and that the proposed enhancement measures would be benefits of the proposal (IR251). He sees no reason to disagree with the

conclusions of the ecological assessment that the proposed development would not have an adverse impact on the Site of Importance for Nature Conservation and that, through recognising and tackling the problems, the ecological value of the site will be enhanced (IR252). Overall, therefore, the Secretary of State agrees with the Inspector's conclusion at IR253 that moderate weight should be attached to the benefits of access and improvements to the site's ecology.

#### *Lack of alternative sites*

17. For the reasons given at IR257-272, the Secretary of State agrees with the Inspector that it is reasonable that the Gardens of Peace charity should wish to locate a new cemetery in NE London as the majority of people buried at its cemeteries come, and will continue to come, from the NE London boroughs (IR257); that a Muslim population of well over 500,000 lives within 30 minutes' drive of the site (IR259); and that, as the great majority of journeys to or from the proposed cemetery would take no longer than half an hour, it would be consistent with the proximity principle set out in London Plan Policy 7.23 (IR262). He also agrees with the Inspector that the availability of other Green Belt sites closer to the main area of Muslim population is not relevant (IR265); and he shares her views with regard to the potential use of recreational sites (IR266). He further agrees with the practical considerations identified by the Inspector in terms of the site being sufficiently close to the charity's existing cemeteries to allow the use of their facilities and that, for reasons of economy, viability and longevity of use it was reasonable for the alternative sites assessment to disregard sites below 5ha (IR269). Overall, the Secretary of State agrees with the Inspector's conclusion at IR272 that moderate weight should be attached to the appellant's alternative sites assessment showing that there is no possibility of meeting the need for the proposal elsewhere.

#### **Other matters**

##### *Flood risk*

18. For the reasons given at IR274-279, the Secretary agrees with the Inspector's conclusions at IR280-281 that the provision of floodplain compensation and the use of SuDS would ensure that flooding on the site and in the surrounding area would not be made worse by the proposed cemetery.

##### *Pollution*

19. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR282-284 that pollution resulting from the proposed use would not be likely to harm local residents or the surrounding environment.

##### *Ecology*

20. For the reasons given at IR285-290, the Secretary of State agrees with the Inspector that the measures outlined in the submitted ecological assessment would enhance the ecological value of the site; would not adversely affect priority species or habitats; and would protect and promote the linking of habitats via wildlife corridors as well as protecting and improving the amenity and biodiversity value afforded by trees and woodland. He therefore also agrees that the scheme would comply with CS Policies DC58 and DC60 and with London Plan Policy 7.19 (IR290).

### *Living conditions*

21. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR291 that the proposed development would not result in unacceptable overlooking or loss of privacy to adjoining occupiers or have other unreasonable adverse effects by reason of noise or its hours of operation.

### *Traffic*

22. For the reasons given at IR292-296, the Secretary of State agrees with the Inspector that the application proposals would have no significant impact on the adjacent highway network (IR294), nor would it result in any demonstrable increase in delays on the motorways or materially affect any resulting re-routing of traffic which might occur on the adjacent network (IR295). He also agrees that the proposed access way would not constitute a risk to highway safety (IR296).

### **Planning conditions**

23. The Secretary of State has given consideration to the Inspector's analysis at IR299-303, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework and that they should form part of his decision as set out at Annex B.

### **Planning balance and overall conclusion**

24. For the reasons given above, the Secretary of State considers that the appeal scheme is in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

25. CS Policy DC45 is based on superseded guidance and is inconsistent with the Green Belt policy in the Framework where change of use of land to use as a cemetery is considered inappropriate development. Paragraph 215 of the Framework requires due weight to be given to relevant policies according to their degree of consistency with the Framework and therefore the Secretary of State attributes Policy DC45 limited weight.

26. Inappropriate development in the Green Belt is harmful by definition and should not be approved except in very special circumstances. The Secretary of State gives substantial weight to this definitional harm to the Green Belt, but he considers that there would not be any harm to visual amenity and that the character and appearance of the local area would also be preserved.

27. The Secretary of State has gone on to consider whether very special circumstances exist. He recognises that there is a need in London for additional burial facilities for Muslims and attaches considerable weight to this need. In terms of the benefits of the proposed development, he attributes moderate weight to the improved access for the public and improvements to the site's ecology and landscape features. He also gives moderate weight to the lack of suitable alternative sites. He considers that the weight of these considerations in favour of the proposal is sufficient to clearly outweigh the harm to

the Green Belt and any other harm so that very special circumstances exist to justify the proposal.

28. The Secretary of State therefore concludes that the appeal should be allowed and planning permission granted subject to conditions.

### **Public Sector Equality Duty**

29. In accordance with section 149 of the Equality Act 2010, due regard has been given to the need to (a) eliminate discrimination, harassment, victimisation; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The Secretary of State has considered the protected characteristics of religion or belief, race, sex and disability. He considers that the main protected characteristic relevant to these appeals is that of religion or belief as the appeals relate to the use of the site as a cemetery for Muslims.
30. There would be some positive impacts arising from the provision of uncompromised burial for Muslims. Although graves for Muslim burials are available, the majority have fundamental shortcomings in that the facilities do not provide adequately for burial in accordance with the Islamic faith. Uncompromised burial for Muslims, as for most faiths, is very important. There may also be some positive impacts on protected groups in respect of race, with the BAME population projected to grow significantly (IR243).

### **Formal decision**

31. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission subject to the conditions set out at annex B to this decision letter for the change of use of land to burial grounds including removal of existing agricultural buildings and erection of two pavilion buildings for associated usage, hard and soft landscaping, new access to A12 and internal roads and paths, parking, and workshop area for storage of associated equipment, tools and materials, in accordance with application ref: P1742.14, dated 17 December 2014.
32. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

### **Right to challenge the decision**

33. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
34. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

35. A copy of this letter has been sent to London Borough of Havering and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Jean Nowak*

Authorised by Secretary of State to sign in that behalf

**SCHEDULE OF REPRESENTATIONS**

**General representations**

<b>Party</b>	<b>Date</b>
Mrs Jacqueline Pigram	4 August 2016
Rt Hon Dame Margaret Hodge MP	27 October 2016
Wes Streeting MP	27 October 2016
Mike Gapes MP	27 October 2016
Lyn Brown MP	12 December 2016



**LIST OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall not be carried out otherwise than in complete accordance with the approved plans, particulars and specifications as detailed below:
  - 3873\_101 Site location plan
  - 3873\_200A Masterplan
  - 3873\_201A Landscape proposals
  - 3873\_202C Landscape detail pavilions area
  - 3873\_203 Landscape sections
  - A-00-01 Proposed ground floor plan - pavilions
  - A-00-02 Proposed roof plan - pavilions
  - A-00-03 Proposed ground and roof plans – storage area
  - A-01-01 Proposed sections - pavilions
  - A-01-02 Proposed sections - pavilions
  - A-01-03 Proposed sections – pavilions
  - A-01-04 Proposed sections – storage area
  - A-02-01 Proposed elevations AA - pavilions
  - A-02-02 Proposed elevations BB - pavilions
  - A-02-03 Proposed elevations CC - pavilions
  - A-02-04 Proposed elevations DD - pavilions
  - A-02-05 Proposed elevations EE and FF - pavilions
  - A-02-06 Proposed elevations – storage area
  - A-02-07 Proposed elevations – storage area
- 3) a) No development shall take place until the applicant has secured the implementation of a programme of archaeological works in accordance with the Written Scheme of Investigation which has been submitted by the applicant and approved by the local planning authority.  
  
b) No development or demolition shall take place other than in accordance with the Written Scheme of Investigation approved under (a).  
  
c) The use hereby permitted shall not commence until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under (a), and the provision made for analysis, publication and dissemination of the results and archive deposition has been secured.
- 4) The development hereby approved shall be carried out in accordance with the Flood Risk Assessment, dated December 2014, reference: UK11-20217 and letter and email, dated 6 February, reference: GG/CD/LUK11-20217\_1\_Response to EA Letter 122074, specifically the compensatory flood storage measures detailed within. The use hereby permitted shall not commence until the above mitigation measures are fully implemented.
- 5) No development, with the exception of the formation of site access and demolition of the existing agricultural barn, shall take place until a detailed surface water drainage scheme for the site, based on the submitted Flood Risk Assessment, dated December 2014, reference: UK11-20217 and letter and email, dated 6 February, reference:

GG/CD/LUK11-20217\_1\_Response to EA Letter 122074 has been submitted to and approved in writing by the local planning authority. The drainage strategy shall include a restriction in run-off from the site to the greenfield rate and the provision of green roofs, French drains, swales and gravel paths and a timetable for its implementation. The development shall be carried out in accordance with the approved details and retained and maintained thereafter.

- 6) The use hereby permitted shall not commence until an approved scheme for the provision and management of an 8 metre wide buffer zone alongside the River Ingrebourne has been submitted to and approved in writing by the local planning authority. The buffer zone should be kept free from built development. The development shall be implemented in accordance with the approved details.
- 7) No development shall take place until a Section 278 agreement, with Transport for London, has been entered into in respect of the proposed access improvements.
- 8) No development shall take place until the site access as shown on drawing titled 'Proposed Deceleration Lane and Merging Taper', drawing number MBSK150731-2, has been constructed in accordance with the approved details.
- 9) No development, with the exception of the formation of the site access and demolition of the existing agricultural barn, shall take place until a scheme for improvements to the pedestrian environment, which shall seek to improve tactile paving provision at up to three locations, has been submitted to and approved in writing by the local planning authority. The applicant shall then enter into the necessary S278 with Transport for London and the London Borough of Havering and implement the scheme as approved.
- 10) No building shall be occupied or use commenced until the car and vehicle parking areas shown on the approved plans have been provided, and thereafter, the areas shall be kept free of obstruction and available for the parking of vehicles associated with the development.
- 11) No building shall be occupied or use commenced until details of the cycle storage have been submitted to and approved in writing by the local planning authority. The details shall include the design, location and number of spaces for cycle storage to be provided. The development shall be carried out in accordance with the approved details and retained and maintained thereafter.
- 12) No development shall take place until a Construction Method Statement to control any potential adverse impact of the development on the amenity of the public and nearby occupiers has been submitted to and approved in writing by the local planning authority. The Construction Method statement shall include details of:
  - Parking of vehicles of site personnel and visitors;
  - Storage of plant and materials;
  - Wheel scrubbing/wash down facilities;
  - Dust management controls;
  - Measures for minimising the impact of noise and, if appropriate, vibration arising from construction activities;
  - Predicted noise and, if appropriate, vibration levels for construction using methodologies and at points agreed with the local planning authority;
  - A scheme for monitoring noise and if appropriate, vibration levels using methodologies and at points agreed with the local planning authority

- Siting and design of temporary buildings;
- A scheme for security fencing/hoardings, depicting a readily visible 24-hour contact number for queries or emergencies; and
- Details of disposal of waste arising from the construction programme, including final disposal points. The burning of waste on the site at any time is specifically precluded.

The development shall be carried out in accordance with the approved scheme and statement.

- 13) Any construction works or associated activities audible beyond the boundary of the site should not be carried out other than between the hours of:
- 0800 – 1800 hours Monday to Friday, and  
0800 – 1300 hours on Saturdays
- and at no other times, including Sundays and Public/Bank Holidays, unless otherwise agreed in writing by the local planning authority.
- 14) No development, excluding demolition and provision of a site access, shall take place until samples of all materials to be used in the external construction of the buildings hereby approved are submitted to and approved in writing by the local planning authority. The development thereafter shall be constructed in accordance with the approved details.
- 15) The development hereby permitted shall be carried out in accordance with the landscape scheme, and scheme of hard and soft landscaping submitted as part of the application and referred in condition 2 of this decision. All works proposed to existing trees and vegetation on-site shall be undertaken in accordance with details referred on the drawing titled: 'Proposed Tree Works Plan', drawing no. 3873\_300, which illustrates tree sizes as planted. All new planting, seeding or turfing comprised within the proposed landscaping scheme shall be carried out in the first planting season following completion of the relevant phase of the development and any new trees or plants which within a period of 5 years from completion of landscaping in the relevant phase die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority.
- 16) The development shall be managed in accordance with the Landscape, Ecology and Cemetery Management Plan submitted as part of the planning application.
- 17) No development, excluding demolition, shall take place until details of the proposed boundary treatment on site and a timetable for its implementation have been submitted to and approved in writing by the local planning authority. The treatment proposed should follow the principles established in the landscape scheme and shall be permanently retained and maintained thereafter.
- 18) Prior to the use of the site hereby permitted commencing, details of the proposed location and design of the refuse and recycling facilities within the development shall be submitted to and approved in writing by the local planning authority. The refuse and recycling facilities shall be permanently retained thereafter.
- 19) The use hereby permitted shall not commence until details of any proposed CCTV and all external lighting shall be submitted to and approved in writing by the local planning authority. The scheme of lighting shall include details of the extent of illumination together with precise details of the height, location and design of the

lights. The installation of any such CCTV equipment and lighting shall be undertaken in accordance with the approved details.

- 20) The use of one of the workshops defined within the 'workshop and storage area', on the drawings hereby approved as part of this permission, shall cease within six months of the facility reaching burial capacity. Within a further six months of that date the workshop shall be removed from the site and the land restored in accordance with the landscaping and management plan, secured by condition to this permission.
- 21) Burials shall only take place in the areas identified as such on approved drawing titled 'Masterplan', drawing number: 3873\_200\_A, dated 29/01/15 and provision shall not be made for more than 10,000 burials to take place on-site.
- 22) The burial identification plaques referred to in the Landscape, Ecology and Cemetery Management Plan shall not exceed 30cm x 30cm in size and shall be of green granite or such other material as may be agreed in writing by the local planning authority.
- 23) The use hereby permitted shall not commence until details of a scheme permitting public access to the site during the opening hours of the burial ground shall be submitted to and approved in writing by the local planning authority. Such scheme may provide that there shall be no dogs taken onto the site (save for guide dogs) and for visitors to the burial ground to dress modestly. Access shall thereafter be maintained in accordance with the approved scheme unless otherwise agreed in writing by the local planning authority.

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# Report to the Secretary of State for Communities and Local Government

by Siân Worden BA MCD DipLH MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 18 October 2016

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Town and Country Planning Act 1990

Council of the London Borough of Havering

Appeal made by Gardens of Peace

Inquiry held on 12-25 July and 1 August 2016

Land at Oak Farm, Maylands Fields, Romford RM3 0AW

File Ref: APP/B5480/W/15/3132860

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## GLOSSARY

BAME	Black, Asian and Minority Ethnic
CD	Core document
CS	Core Strategy
DAS	Design and Access Statement
DPD	Development Plan Document
EA	Environment Agency
EIA	Environmental Impact Assessment
GLA	Greater London Authority
ID	Inquiry Document
LP	The London Plan [consolidated with alterations since 2011, March 2015]
LPA	Local Planning Authority
LVA	Landscape and Visual Assessment
NPPF or The Framework	National Planning Policy Framework
PoE	Proof of Evidence
POS	Public open space
PTAL	Public Transport Access Level
RfR	Reason for Refusal
SINC	Site of Importance for Nature Conservation
SoCG	Statement of Common Ground
SoS	Secretary of State
SuDS	Sustainable drainage systems
TPO	Tree Preservation Order

**File Ref: APP/B5480/W/15/3132860**

**Land at Oak Farm, Maylands Fields, Romford RM3 OAW**

- 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 Gardens of Peace against the decision of the Council of the London Borough of Havering.
- The application Ref P1742.14, dated 17 December 2014, was refused by notice dated 23 February 2015.
- The development proposed is the change of use of land to burial grounds including removal of the removal of existing agricultural buildings and erection of two pavilion buildings for associated usage, hard and soft landscaping, new access to A12 and internal roads and paths, parking, and workshop area for storage of associated equipment, tools and materials.

**Summary of Recommendation: The appeal be allowed, and planning permission granted subject to conditions set out in Appendix 5 of this report.**

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**Procedural Matters**

1. Determination of the appeal was recovered by the Secretary of State by way of a direction<sup>1</sup>. The reason given for the direction was that the appeal involves proposals for significant development in the Green Belt.
2. The Inquiry sat for 5 days on 12 -15 July and on 1 August 2016. I conducted an accompanied site visit on 1 August 2016 and carried out an unaccompanied site visit before the Inquiry. I also carried out unaccompanied visits to the Gardens of Peace cemetery in Hainault on 31 July and to Upminster cemetery on 1 August 2016.
3. The appellant requested a screening opinion under Regulation 5 of the Environmental Impact Assessment (EIA) Regulations. The Council considered this and found that the proposals did not constitute EIA development requiring an Environmental Statement.

**The Site and Surroundings**

4. The appeal site sits at the eastern edge of Romford, immediately adjacent to its outermost built area, Harold Park, and just inside the M25, junction 28 of which is less than 0.5km to the east. The site lies on the A12, a main route from the M25, Essex and further afield, which runs through Romford and on towards central London. The nearest settlement to the east on the outer side of the M25 is Brentwood. On the opposite side of the A12 is a golf course whilst to the south, beyond the railway line and sewage works, the built-up area recedes; here a substantial tract of countryside separates the eastern Romford suburbs and Upminster.
5. The site itself is a roughly triangular plot of slightly under 10ha bordered by the A12, Colchester Road, and, to its west, the backs of the properties in Maylands Way. The third side is marked by the meandering course of the Ingrebourne River which also identifies the Borough boundary. The site is enclosed within dense borders of vegetation such that, from most locations, it is not possible to see far into it. Once within, despite its proximity to the busy A12 and M25, the site is surprisingly tranquil and it is easy to appreciate why it is valued so highly by local people. It has a clear

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<sup>1</sup> made under Section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990

landscape structure. A band of oak woodland runs through the centre of the site, roughly parallel with the grassy river corridor to the east; to the west of the woodland is a swathe of meadow.

6. The site has clearly been neglected over recent years. Scrub is invading the meadow area particularly, the river has been sullied by dumping and the squatters have left much debris and some rough constructions.
7. The Havering (Land at Colchester Road) Tree Preservation Order (TPO), which was made in 2002, identifies the whole site as area A1; all trees of whatever species within this area are thus covered by the Order. The appeal site is designated as part of the Ingrebourne Valley Site of Importance for Nature Conservation (SINC).
8. Existing built development on the site is an agricultural barn and shed with a footprint of 517 sq.m and volume of 1,867 cu.m. This is located to the east of the site close to its boundary and is approached from the north via a roughly surfaced access way.
9. There is currently no public access to the site although, at the time of the site visit, a group of squatters was intermittently spending time there.
10. According to the Environment Agency's (EA) indicative flood map, the site is located within Flood Zone 3 from the River Ingrebourne. The area of Flood Zone 3 is, however, restricted to the southern boundary alongside the river. Flood Zone 2 also encroaches into the site but the majority of it is located within Flood Zone 1 and thus not at risk from flooding with a return period of 1 in 1,000 years.
11. Adjacent to the site at its north eastern tip is a site formerly occupied by petrol filling station which has temporary permission for the siting of caravans.

## **Planning Policy**

### ***Development plan***

12. The development plan for the area includes the London Borough of Havering Core Strategy and Development Control Policies Development Plan Document (CS) which was adopted in 2008. The extent of the Metropolitan Green Belt and the Metropolitan Site of Nature Conservation Importance are shown on the Proposals Map<sup>2</sup>. Importantly, the CS pre-dates the National Planning Policy Framework (the Framework) which was published in 2012.
13. CS Policy DC45 applies to land within the Green Belt. It states that planning permission for development in the Green Belt will only be granted for a limited range of purposes, including cemeteries, and for restricted types of new buildings including those essential for the permitted uses. The reasoned justification for the policy is that it is based on the former national planning policy in Planning Policy Guidance 2 (PPG2). The justification text also explains the general presumption against inappropriate development, which is harmful to the Green Belt, except in very special circumstances.
14. CS Policy DC31 states that the Council will ensure that sufficient land is retained to meet demand for burial space and cremated remains. The policy justification adds

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<sup>2</sup> ID 4



that burial space needs in Havering are forecast to increase by more than four acres every five years and that the CS will therefore have to plan for future burial space.

15. In addition, CS Policy CP8 is concerned with community facilities including cemeteries and crematoria. It specifies that the Council will work in partnership with other bodies to ensure that a suitable range of community facilities are provided to meet existing and forecast demand. Measures to achieve this include locating new community facilities in places that are accessible by a range of transport and ensuring that the development itself is accessible to all groups.
16. Criteria for ensuring that development would maintain, enhance or improve the character and appearance of the local area are set out in CS Policy DC61. These include that proposals should respond to distinctive local building forms and patterns of development, respecting the scale, massing and height of the surrounding physical context, and that they should complement or improve the amenity and character of the area through their appearance, materials, layout and integration with surrounding land and buildings. A further criterion is that development must be designed and oriented around the needs of pedestrians, cyclists and connectivity to the public transport network.
17. The Council considers that both Policy DC45 and Policy DC61 are relevant for the supply of housing in the context of the National Planning Policy Framework (the Framework)<sup>3</sup>. Since a five year supply of land for housing in Havering cannot be demonstrated the Council thus considers that they are out of date.
18. Other CS policies of particular relevance to this case are as follows:

*Policy DC48 Flood Risk*

Development must be located, designed and laid out to ensure minimal risk of harm to people or damage from flooding whilst not increasing the risk of flooding elsewhere. A Flood Risk Assessment (FRA) must be submitted with planning applications for major development in flood risk zone 1 and all development in zones 2 and 3.

*Policy DC53 Contaminated Land*

Planning permission will only be granted for development which does not lead to future contamination of the land in and around the site.

*Policy DC55 Noise*

Planning permission for development resulting in noise or vibrations above acceptable levels affecting noise sensitive development, such as residential accommodation, schools and hospitals will not be granted. Proposals locating noise sensitive development close to noise generating activity will be required to comply with national noise exposure categories.

*Policy DC58 Biodiversity and Geodiversity*

Protects and enhances biodiversity and geodiversity through various measures including protecting and enhancing identified sites such as

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<sup>3</sup> The Framework, paragraph 49

Metropolitan Sites of Importance for Nature Conservation. Planning permission will not be granted for development which would adversely affect such sites unless economic or social benefits clearly outweigh their nature conservation importance and then only if adequate mitigation is provided.

*Policy DC60 Trees and Woodlands*

Protects and improves the amenity and biodiversity value afforded by trees and woodland through various measures including retaining trees, protecting trees during construction works and not permitting development which would adversely affect ancient and secondary woodland.

19. The updated London Plan, adopted 2015, is also a constituent of the area's development plan. Policy 7.16 requires that the strongest protection should be given to London's Green Belt and that inappropriate development should be refused except in very special circumstances. Policy 7.23 concerns burial spaces. Its strategic position is that the Mayor will work with boroughs, cemetery providers and stakeholders to protect existing burial spaces and to promote their re-use or new provision. In respect of local development framework (LDF) preparation the policy states that provision should be made for London's burial needs, including the needs of those groups for whom burial is the only option. Provision should be based on the principle of proximity to local communities and reflect the different requirements for types of provision.

***National planning policy***

20. National guidance on protecting Green Belt land is set out in section 9 of the Framework. This was published in March 2012 and thus post-dates the Council's adopted CS. The Framework largely reflects its predecessor, PPG 2, which was the basis for the CS Green Belt policy, DC45. A significant alteration for this case is that the making of material changes in the use of land is no longer a form of development which may not be inappropriate, subject to preserving the openness of the Green Belt and not conflicting with the purposes of including land in it<sup>4</sup>. Under the Framework, therefore, material changes in the use of land can only be inappropriate development.
21. One of the core planning principles set out in the Framework is that planning should take account of the different roles and character of different areas, recognising the intrinsic character and beauty of the countryside<sup>5</sup>.

**Planning History**

22. The planning history for the site itself is as follows:

P0469.13	Change of use of redundant agricultural land to burial grounds with ancillary Memorial Hall, parking, landscaping (hard and soft) and altered access layout.	Withdrawn
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<sup>4</sup> The Framework, paragraph 90

<sup>5</sup> The Framework, paragraph 17

	Agricultural storage building	Approved 2004
P0240.03	Erection of barn and corral and creation of new driveway.	Approved

23. Relevant planning permissions off site include:

	Outbuilding and stationing of up to six caravans for a period of five years at site to NE of appeal site.	Allowed on appeal <sup>6</sup> 1 Feb 2011
P0071.13	Change of use of land to cemetery, erection of ancillary buildings and associated drainage works and yard area at Upminster Cemetery.	Approved 2013

### **The Proposals**

24. The appeal proposal includes three single storey pavilion located together in the central part of the site. These would accommodate prayer halls, wudu (washing) and toilet facilities, a staff office and a meeting room. At the eastern edge of the site there would be two timber workshop structures for the storage of tools and materials, approximately two thirds of which would become redundant and be removed once the burial areas reach capacity. The existing agricultural barn and shed would be demolished.
25. The infrastructure would comprise an access road, with separate pedestrian and vehicle gates, and a vehicle turning area together with internal roads and paths. There would be staff and visitor car parking with 120 spaces for cars (including 2 for electric vehicles), 2 coach spaces and 12 secure cycle parking spaces.
26. The principal proposed land use would be a cemetery for up to 10,000 burial plots. Each plot would be identical in form, consisting of a grassed earth mound with a small identification plaque lying flat at the head of each. The landscaping scheme would create two glades within the existing woodland. Otherwise existing woodland and hedgerows, including boundary hedgerows and trees, would be retained. The proposed burial areas would be seeded with a grass and wildflower mix. There would be additional tree planting and management and landscape treatment of the boundary and pathway.

### **Other Agreed Facts**

27. The appellant and the Council set out the main areas of agreement between them in the statement of common ground<sup>7</sup>. To avoid repetition, these matters are reported in the cases of the respective parties.
28. Both the Council and the appellant agreed that the proposal constitutes inappropriate development in the Green Belt and should only be approved if very special circumstances are demonstrated.

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<sup>6</sup> APP/B5480/C10/2135300/1 & APP/B5480/C10/2135302/3

<sup>7</sup> CD D1

## The Cases

29. The cases for the Council and the appellant are based on the closing submissions made at the Inquiry<sup>8</sup>. I have edited these and the substance of the cases is as follows.

### The Case for the Council

30. The development proposed in this appeal will harm the character and visual amenity of the appeal site and while there may be dispute as to the extent of that harm, it must be the case that a development which causes such harm conflicts with Core Strategy policy DC61. The starting point is therefore that, as indicated by the development plan, this appeal should be refused.
31. In addition to the conflict with the development plan, all parties agree that the development constitutes inappropriate development in the Green Belt and is therefore harmful to the Green Belt. It is the Council's case that the development also harms the openness of the Green belt and conflicts with the purposes of including land in the Green Belt. Substantial weight should be accorded to that harm.
32. The appellant seeks to overcome these weighty reasons for refusing the application by reference to the need for Muslim burial space without compromise. There is no quantitative need for additional Muslim burial capacity either in Havering or in North East London as a whole. Existing provision requires some compromises to be made, but the Council does not consider that the benefit to the Muslim community of burial without compromise (alone or in combination with the public access and ecological improvements to the site) clearly outweighs the harm to the Green Belt and other harm caused by this development so as to establish the very special circumstances necessary to justify the grant of planning permission. Furthermore the weight to be given to the benefit of without-compromise burial should be reduced if that benefit is capable of being realised elsewhere, which the Council considers to be the case.
33. The benefits associated with the development are not of sufficient weight to clearly outweigh the harm that it causes or to indicate that a decision should be made otherwise than in accordance with the development plan.

### *Landscape harm*

34. The NPPF<sup>9</sup> requires planning decisions to take account of the roles and character of different areas and to recognise the intrinsic character and beauty of the countryside, not solely designated landscapes but to all of the countryside. 'Recognising' the intrinsic character and beauty of the countryside must involve some response to that recognition which is inherently a protecting and safeguarding one (De Souza v SSCLG [2015] EWHC 2245 (Admin) at paragraph 32.).
35. At a local level, Havering's Core Strategy policy DC61 provides that planning permission will only be granted for development which maintains, enhances or improves the character and appearance of the local area. Everybody agrees that the

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<sup>8</sup> ID 10 and ID 11

<sup>9</sup> NPPF paragraph 17

appeal site has a countryside character, and that if that countryside character is harmed by the proposed development, it will be contrary to policy DC61.

36. The development will have a significant effect on the countryside character of the appeal site rather than a minimal effect. The existing grassland would assume a more manicured appearance, with 10,000 identical graves, and shorter mown paths between them. The extensive hardstanding —the access road, paths and car parks to accommodate 120 cars and 2 coaches which are typical of urban developments — will introduce a feature not typical of a countryside field. The presence of Furthermore, the buildings will be located in the central part of the site, visible from almost every vantage point in the meadow area, from within the woodland and surrounded by decking and a car park that will also be visible from the meadow and woodland parts of the site. That car park will have bollard lighting, CCTV cameras, benches and parked cars, all of which will result in the urbanisation of this site, causing significant harm to its countryside character.
37. While the oak belt through the middle of the site will remain, it would be viewed in the context of buildings, hardstanding, decking and all of the above-mentioned features rather than as part of an undeveloped countryside site. That woodland is described as a key characteristic of the site and while it will remain, from within it, the buildings, car park and parked cars will be visible and from outside it, the context in which it is set will be significantly changed and it will appear as a backdrop to an urbanised development.
38. As the Inspector found in the Greenlawn cemetery extension decision<sup>10</sup>, the change in the appeal site — apparent both from within and outside the site — will introduce a more 'suburban' look into an attractive rural location. The change will be so marked as to significantly detract from the character of the area.
39. In terms of the impact on visual amenity, views of the site from outside are limited as a result of the boundary vegetation, but there are views into the site from the residential properties on Maylands Way. Currently the views are of an open, entirely undeveloped field (the existing agricultural barn is not visible from these properties). The views into the appeal site, if developed, would reveal buildings, hardstanding, car parks and cars and significant numbers of people moving around the site.
40. Views from within the site are also a relevant consideration. If this development is allowed, from viewpoints 4 and (re-numbered) viewpoint 8, and all of the open meadow area, all aspects of the development will be visible: access roads, car parks, buildings, paths through the burial area, mounded graves, plaques, parked cars, light bollards and hundreds of people using the site. A number of trees and areas of scrub will be cleared from the meadow part of the site, which will further open up views of the development. While some planting is proposed, that will take time to establish and in any event, even with that planting in place, elements of the development will be visible from the meadow area and from within the woodland. The development cannot fail to have an adverse impact on the visual amenity of the site.
41. The appellant's LVA describes the visual impact as 'minimal', accepted in cross examination as an adverse visual impact, but that the adverse impact would be small. A development that has a harmful visual impact, even if the harm is small, does not 'maintain, enhance or improve' the site's appearance, and this development

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<sup>10</sup> APP/M3645/A/14/2224101

is clearly in conflict with policy DC61. The harm to the site's character and visual amenity as a result of the development would be significant and that harm, along with the conflict with policy DC61 should be accorded significant weight in the determination of this appeal.

*Green Belt harm - Inappropriate development*

42. Everybody agrees that the appeal proposal constitutes inappropriate development in the Green Belt, which is by definition harmful to the Green Belt. Substantial weight must be given to that harm.

*Green Belt harm - Harm to openness*

43. This proposal will also undoubtedly have an adverse impact on the openness of the Green Belt. The concept of the openness of the Green Belt is not narrowly limited to a volumetric approach. Lord Justice Sales has explained that "The word 'openness' is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs"<sup>11</sup>.
44. In considering whether there is an adverse impact on the openness of the Green Belt, it is necessary to consider both the spatial and visual aspects of the development<sup>12</sup>. The Council failed to consider the other elements of built form — in particular the significant areas of hardstanding<sup>13</sup>. The appellant accepted in cross examination that if the proposed buildings and hardstanding were considered, then the footprint of built-upon land would be greater after the development than at present. In spatial terms, therefore, the proposed development will cover more of the site with built form than at present. This will harm the openness of the Green Belt.
45. In terms of the visual aspect of the development, the site as it currently is should be compared to how it will look if the development goes ahead; views from both inside and outside the site are relevant. By contrast to the almost entirely undeveloped appearance of the existing site, the new buildings will be visible from a much greater part of the appeal site.
46. The appellant stated that the quality and design of the buildings influenced the assessment of openness, being well integrated they would not harm openness. This is contrary to the opinion expressed in the High Court<sup>14</sup> that "Any construction harms openness quite irrespective of its impact in terms of its obtrusiveness or its aesthetic attractions or qualities. A beautiful building is still an affront to openness, simply because it exists. The same applies to a building that is camouflaged or rendered unobtrusive by felicitous landscaping.
47. The intensification of the site's use will also have an adverse impact on its openness. Currently the site is an undeveloped agricultural field that is not in any active use. If the proposed development takes place, the site will be used for up to 5 burials per day, 7 days a week, with an average of 70 — 80 mourners attending each burial and each group remaining on the site for some 45 minutes. The vast majority of these

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<sup>11</sup> *Turner v SSCLG* [2016]

<sup>12</sup> *Turner v SSCLG* [2016] referring also to *R(Heath and Hampstead Society)v Camden LBC*

<sup>13</sup> *Privett v Gravesham Borough Council* [2016]

<sup>14</sup> *Timmins V SSCLG* [2014]

people will travel to the site by private car, and the provision of a car park for 120 vehicles and 2 coaches is indicative of the level of parking provision the appellant anticipates will be necessary. The presence of large numbers of people and cars in and around the site will adversely affect the openness of the Green Belt<sup>15 16</sup>.

#### *Encroachment*

48. Openness of aspect is a characteristic quality of the countryside and of the appeal site, and 'safeguarding the countryside from encroachment' includes preservation of that quality of openness<sup>17</sup>.
49. The appeal site represents the last piece of land in Havering's administrative boundary before Brentwood. The appellant's LVA recognises that the site performs a function in controlling the urban edge of Maylands Way, forming the last built edge of Romford on the south side of the A12<sup>18</sup>. It forms part of a tract of undeveloped and open land approximately 1.6km wide that straddles the M25 corridor between the North East edge of Romford and the south east edge of Brentwood. Currently it is of countryside character and forms a distinct break from the urban development along Maylands Way.
50. The Green Belt serves a number of purposes. One such purpose is to assist in safeguarding the countryside from encroachment. The way in which the Green Belt achieves this purpose is by remaining permanently open, and it is for that reason that openness and permanence are the essential characteristics of the Green Belt<sup>19</sup>.
51. The safeguarding of the countryside from encroachment is not achieved by limiting development in the Green Belt to that which is 'typical' in the countryside. If national policy treated development that was common in the countryside as something that did not conflict with the purpose of the Green Belt, then it would be recognised as an exception to the general rule that all development (other than that falling within the closed categories of exception in paragraphs 89 and 90 of the NPPF) constitutes inappropriate development which is, by definition, harmful to the Green Belt. There is no such exception.
52. There may be examples of cemeteries in the Green Belt, no doubt because under PPG2 they did not necessarily constitute inappropriate development in the Green Belt, but national policy has changed and under the NPPF they now do. In any event, cemeteries of this scale are not common in the countryside. This development will not preserve the site's openness but rather it will encroach into the countryside. It will result in the urbanisation of the site and the introduction of built form over a greater extent than is currently the case. This is contrary to the purposes of including land in the Green Belt.

#### *Very special circumstances*

53. In order to justify this development, the appellant must show that the harm to the Green Belt by reason of inappropriateness and the actual harm to the openness of the Green Belt and to the character and visual amenity of the site are clearly

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<sup>15</sup> *Privett v Gravesham Borough Council* [2016]

<sup>16</sup> *Newlyn Dean & Sons v SSCLG* [2014]

<sup>17</sup> *Turner v SSCLG* [2016]

<sup>18</sup> CD A9 paragraph 8.2.3

<sup>19</sup> NPPF, paragraph 79

outweighed by other considerations so as to establish very special circumstances justifying the development<sup>20</sup>.

*Muslim burial without compromise*

54. The provision of Muslim burial without compromise is a benefit of the appeal scheme. However, the weight attributed to that benefit must be tempered by the fact that there is no quantitative need for additional Muslim burial capacity either in Havering or in North East London. It must also be tempered by the fact that there is a realistic prospect of alternative sites that are closer to the highest concentrations of the Muslim population that have been excluded from consideration by the appellant.

*Quantitative need*

55. In 2001, 8% of London's population was Muslim. In Havering the Muslim population made up just 0.29% of the borough's total population. By 2011 the Muslim population of London was 12.4% but Havering's Muslim population made up just 0.47% of its population. After the geographically very small City of London, Havering is the London Borough with the smallest Muslim population of all of London's 33 boroughs<sup>16</sup>.
56. The appellant argues that the BAME population is projected to grow significantly up to 2041, and that may be so, but only 16% of Havering's BAME population was Muslim in 2011<sup>17</sup>. If Havering's BAME population grows as anticipated up to 2041 and the Muslim proportion of that population remains stable (and there is no evidence to indicate that the proportion of the Muslim population will significantly vary), then by 2041 Havering's Muslim population will only be 10,100. Even compared to the 2011 Muslim populations, that would place Havering in the bottom 7 London boroughs, and when regard is had to the fact that the BAME population is expected to grow by an average of 66% across London, it can safely be assumed that by 2041 Havering will remain at the very bottom of the 33 London boroughs in terms of the size of its Muslim population.
57. There are no precise ways of predicting the number of Muslim deaths over the coming years. The appellant used 2012 figures to calculate remaining capacity, in the absence of any data as to projected Muslim death rates in the future, and that is the approach set out in Tables 2 and 3 of his proof of evidence.
58. The appellant states<sup>21</sup> there will be 3,229 graves allocated for Muslims in North East London by mid-2021. As its Table 2 shows, however, Muslim burial rates in NE London in 2012 were 1,508 per year. By mid-2014 its estimate was that there would be 15,171 Muslim graves remaining, so at that rate, by mid-2021 there would be 4,615 Muslim graves remaining, which would be equivalent to over 3 more years of supply at 2012 rates (i.e. until late 2024).
59. The figures in Table 2 include Muslim deaths which occur outside NE London yet that figure is compared only to capacity for Muslim burials in NE London rather than including capacity from other London boroughs. A significant number of Muslims currently travel from outside the NE London boroughs to Redbridge to achieve burial without compromise at the existing Gardens of Peace cemetery on Elmbridge Road.

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<sup>20</sup> NPPF, paragraph 88

<sup>21</sup> Peter Mitchell amended PoE paragraph 7.23



Of the 1,098 people buried at the Elmbridge site, only 623 came from NE London and 475 came from elsewhere.

60. Of the 1,508 Muslim burials in NE London in 2012 shown in Table 2 it is not known how many were resident in NE London as there is no record of Muslim deaths by borough. All that is known is that 475 certainly did not come from NE London, because they relate to burials at Elmbridge Rd<sup>22</sup>. If it is accepted that the other Gardens of Peace sites will have no remaining capacity by mid-2021, notwithstanding the fact that growth from 2014-2015 was 0%, it can safely be assumed that the 475 people who travelled from outside NE London to Elmbridge Rd will not keep coming to Redbridge for burial.
61. To reflect the need arising in NE London in 2012, the figure of 1,508 should therefore be reduced by at least 475, giving a figure of 1,033 Muslim deaths in NE London in 2012. At that level, the supply of 15,171 Muslim graves in mid-2014 would be the equivalent of 14.7 years of supply (i.e. up to early 2029). The appellant's best estimate, using the age-related analysis, is that in 2012 there were 971 Muslim deaths in NE London. At that rate of deaths, the availability of 15,171 dedicated Muslim graves in NE London equates to 15.6 years of supply from mid-2014 (i.e. up until 2030).
62. That amounts to very significant provision in the individual boroughs as shown in Table 2. The revised Table 3 was produced to correct the errors in the original Table 3 which had included a column showing that there was a capacity of 0 years in NE London by mid-2021. In fact there would be capacity of some years even in mid-2021. The fact is that even five years from now, in mid-2021, there will be considerable capacity for Muslim burial in NE London.
63. There will also be provision for Muslim burial at the Kenmal cemetery in Tower Hamlets, and the potential allocation of additional space for Muslim burial at Havering's Upminster cemetery extension phases 2 and 3, which will come forward in 2019 and 2025. The principle of cemetery use at that site has already been accepted by the LPA and if the need arose to reconfigure graves to accommodate Muslim burials, then a minor amendment to the Upminster permission would be the logical way of meeting that need.
64. Even in respect of housing, local planning authorities are only required to demonstrate 5 years of supply. Here, in 2016 there are between 8 and 14 years of remaining Muslim burial capacity in North East London at 2012 rates. The appellant has failed to establish that there is any quantitative need — let alone any pressing need for additional Muslim burial capacity in either Havering or NE London as a whole.
65. It may be that Muslim deaths will increase over coming years but it is not known what the future rate is likely to be. The appellant's best estimates use the 2012 rates and assess the situation on the basis that those rates continue. Given the significant remaining capacity, even an increase in demand can be assimilated and there is no pressing need now for the provision of additional capacity.
66. If demand does increase, then it can reasonably be assumed that local planning authorities, cognisant of London Plan 2011 policy 7.23 and of the need to provide

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<sup>22</sup> where records of the borough of residence of the deceased are kept

burial space, will plan to meet that need. Newham, Waltham Forest and Tower Hamlets all have specific policies in their Local Plans dealing with the provision of burial space. The Core Strategies of the other NE London boroughs pre-date the 2011 London Plan, but local planning authorities in those boroughs will no doubt be aware of the need to plan to meet burial needs. The provision by London boroughs of sufficient burial space through the local development plan process is envisaged by London Plan policy 7.23 and accords with the first core planning principle in the NPPF: that planning should be genuinely plan-led<sup>20</sup>

67. In terms of meeting its own needs, Havering has taken steps to ensure that the needs of its Muslim population are catered for — and in mid-2014 Romford cemetery had 50 graves allocated for Muslim burials available.
68. Havering is willing to cooperate with other boroughs should they be unable to meet their need within their boundaries but no other London borough has asked Havering to accommodate its burial need. The Council cannot be accused of being uncooperative in such circumstances.
69. Other London Boroughs may not have approached Havering because they are able to meet their own Muslim burial needs, or because they do not consider that their needs would be well met by a poorly accessible Green Belt site on the very eastern extremity of London, in the borough with the second smallest Muslim population or all 33 London boroughs.
70. As to the need in London as a whole, the appellant has adduced no evidence about the quantitative need for additional Muslim burial space in London or the quantitative availability of Muslim burial sites in London as a whole. In this regard, it is important to look carefully at the Needs Assessment and at the concessions made by the Council in the Statement of Common Ground. It accepted that "There is a shortage of burial provision within London as a whole which has been well documented" and that "The specific requirements of the Muslim community are not addressed by any London cemeteries except those provided by the appellant". The needs of London as a whole include the Muslim population of London but there is no evidence as to the quantity of that need in London or the capacity to meet it in other parts of London.

#### *Qualitative Need*

71. The Council accepts that the only cemetery that offers Muslim burial without compromise in London is that operated by the appellant at Elmbridge Road. A second without compromise Muslim cemetery is due to be opened by the appellant in Redbridge in the near future. There are a number of other cemeteries which provide areas specifically designated for Muslim burials in NE London, all of which meet some of the requirements of the Muslim faith but require compromises of one sort or another.
72. The provision of without compromise burial is a benefit to which some weight should be accorded and it is certainly no part of the Council's case that the requirements of the Muslim faith are somehow less important than the requirements of any other faith. This application was not refused because of the particular faith group for whom it is intended. It was refused because it is harmful to the Green Belt and to the character and amenity of the site and because the Council does not consider that the benefits of the proposal clearly outweigh the harm that it causes. Decisions in respect of land use planning often require compromises of one sort or another.

73. The appellant argues that Muslims have a right to be buried in accordance with their faith. That may be the case, but it is not an absolute right. Members of the Jewish community have the 'right' to live together with their extended families' in accordance with their religious requirements, but that does not mean they will always be entitled to extend their houses in order to realise that requirement. Gypsies and travellers have the 'right' to access education and healthcare and to respect for their nomadic way of life, but that does not mean that local planning authorities must always facilitate those rights by allowing the stationing of mobile homes in sites they consider to be unsuitable<sup>23</sup>. These rights are qualified and must be seen in the context of competing rights.
74. The appellant argues that the need for additional burial space was found to constitute very special circumstances justifying the cemetery extension at Upminster and that the same approach should apply in this case. The officer's report in respect of that development, dated March 2013 explained that the existing burial space at Upminster Cemetery would be exhausted by September 2013 [within 6 months of the date of the report], meaning there was a clear need for additional burial spaces to be provided in the area. Policy DC31 of the LDF states that the Council will ensure sufficient land is retained to meet demand for burial spaces and thus the site had been specifically allocated for the provision of additional burial spaces<sup>24</sup>.
75. Three important factors distinguish that case from this: i) the Upminster site was allocated for cemetery use in Havering's Core Strategy which the appellant accepted would have weighed in its favour in establishing VSC; ii) there was an urgent quantitative need for additional burial land, with only 6 months of capacity remaining; and iii) the development was in accordance with policy DC31. Havering now has sufficient burial capacity to meet its needs — with existing spaces at Upminster and phases 2 and 3 of the extension planned for 2019 and 2025. There is no policy support in Havering's Core Strategy for the provision of burial land to meet the specific requirements of any particular group without compromise. The appellant's argument in this case is based on qualitative need and not quantitative need and this is an important point of distinction from the Upminster case.
76. The appellant has not drawn attention to a single decision in which the wishes of any particular group to be buried without compromise have been found to justify inappropriate development in the Green Belt. London Plan policy 7.23 does not require boroughs to ensure the provision of burial without compromise. It simply requires boroughs to ensure that provision is made for London's burial needs. Its reference to that provision reflecting the different requirements for types of provision relates to the different land use requirements of different sections of the community.
77. This is clear from the Social Infrastructure SPG which explains that the Muslim and Jewish populations have a high percentage of people choosing burial and who do not accept the re-use of graves which has implications for the amount of land required to meet those burial needs. Implementation Point 6 of the SPG explains that boroughs should "Consider the impact that different burial practices may have on the demand for new plots". When the London Plan and accompanying SPG discuss the different requirements for different types of burial provision, it is clearly in the context of ensuring sufficient land to meet, for example, the requirements of the Muslim and

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<sup>23</sup> *Hunter v Canary Wharf* [1997]

<sup>24</sup> Niall Roberts PoE Appendix NTR3 paragraph 7.8.2

Jewish communities for burial rather than cremation; there is no policy or guidance to suggest that boroughs must ensure burial without compromising the religious requirements of any particular group.

78. That is not to say that the benefits of burial without compromise are irrelevant: it is a factor to weigh in favour of the development, but there is no policy support for without compromise burial provision in Havering's Core Strategy or the London Plan. Nor is there any requirement at national level in the NPPF or PPG to ensure the provision of burial without compromise. The Council does not consider that the benefit of without compromise burial clearly outweighs the harm caused by this development to the Green Belt and to the character and visual amenity of the site.

#### *Alternative sites*

79. In balancing the benefits of Muslim burial without compromise against the harm to the Green Belt and to the character and appearance of the site, the weight to be accorded to that benefit of the development should be reduced if there is a realistic prospect of accommodating a Muslim cemetery on an alternative site that is preferable in land use planning terms to the appeal site.
80. The appellant argued that there was no policy requirement to demonstrate the absence of alternative sites. However, where planning objectives are sought to be overcome by reference to need, the courts have long recognised that the possibility of meeting that need elsewhere will be a material consideration<sup>25</sup>. The High Court explained that the greater the harmful effects or the more serious the breach of policy, the harder an applicant would have to work to show that there was no realistic alternative<sup>26</sup>. Where a proposal involved inappropriate development in the Green Belt, as is the case here, the harmful effects would be at the top end of the scale and the evidential and persuasive burden on the applicant to show an absence of alternatives would be very substantial.
81. The appellant has not discharged that burden because its assessment of alternative sites is inadequate: its search was artificially constrained to just nine of London's 33 boroughs and even in those nine boroughs numerous sites that should have been subject to further assessment were wrongly sieved out at the preliminary stage.
82. There has been no assessment of the availability of suitable land in London as a whole. The appellant would be willing to consider sites in all of London, and not just the North East boroughs. The search has only been conducted in NE London on the basis that the community which the appellant primarily seeks to serve is in NE London. The directors live in NE London, the charity was started by people in NE London and the majority of burials at the existing site may relate to NE London residents. That is because the site is in NE London, and not because that is the area of primary demand. Clearly people will be less willing to travel from west or south London for burial in Redbridge than people from Newham or Tower Hamlets or Redbridge.
83. The appellant's charitable objectives are to promote the Islamic religion by maintaining land for the purposes of the burial of Muslims according to the principles of Islam and to act on behalf of the Muslim community to meet their needs as

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<sup>25</sup> *Trusthouse Forte* [1987]

<sup>26</sup> *McCarthy v SSCLG* [2006]

regards the procedures and practices relating to the internment of the deceased<sup>27</sup>. The objectives do not relate to NE London and the appellant's evidence is that the charity serves the Muslim community at large, not just the NE London Muslim community<sup>28</sup>.

84. On the evidence it cannot be known if there are any non-Green Belt sites in any of the 24 London Boroughs that have not been considered that could accommodate a without compromise Muslim cemetery. In respect of the 9 boroughs considered in the appellant's alternative sites assessment, it is not known whether there is a Green Belt site that is better located to meet the burial needs of the Muslim community in accordance with the London Plan's proximity principle than the appeal site.
85. London Plan policy 7.23 provides that provision for London's burial needs should be based on the principle of proximity to local communities. Its explanatory text explains that "Some boroughs have either run out of, or are about to run out of burial space. For inner and central London boroughs this means requiring provision in outer London or beyond, and this can cause serious problems of access and cost. This tends to have a disproportionate effect on London's poorest communities. To ensure it is retained as a choice for Londoners, boroughs should continue to make provision for burial". The London Plan clearly considers the provision of burial space in outer London to meet the needs arising in central and inner London is a problem to be overcome. The appeal proposal would perpetuate the problem rather than help to resolve it. As the SPG explains, "London Plan policy 7.23 encourages local authorities to provide burial space in close proximity to their residents"<sup>29</sup>
86. Both parties accept that the need will arise in those parts of London with the greatest population of Muslims. According to the 2011 census data, that means in Newham, Tower Hamlets, Redbridge, Brent, Waltham Forest, Ealing and Enfield<sup>30</sup>. There are a number of potential sites in Haringey and Enfield which would be much better located than the appeal site to meet the needs of the Muslim community because they are closer to that community. Unfortunately there is no information about the accessibility of those sites, because the appellant has ruled them out in a pre-sieve stage on the basis that they lie in the Green Belt or are in recreational use. They are closer to the areas of demand and are likely to be more accessible to that population than a site on the eastern extremity of London.
87. The Council does not accept that the appeal site lies within a 30 minute drive of all the NE London boroughs. It is not possible to drive to the appeal site from parts of Tower Hamlets, Newham, Hackney or Waltham Forest within 30 minutes, and the Council disputes the evidence in this regard.
88. In any event, if there is a suitable alternative site that is closer/more accessible to the Muslim populations in London, then it is obvious that such a site would better satisfy the London Plan's proximity principle than the appeal site. It was for this reason that the Inspector, David Smith, refused permission for a cemetery extension on a Green Belt site in Tandridge in the Greenlawn Memorial decision<sup>31</sup>. In that case, Tandridge was listed in a BBC survey as having the lowest supply of burial space left,

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<sup>27</sup> CD D1 paragraph 2.1

<sup>28</sup> Mohammed Dedat PoE paragraphs 5.1 & 5.2

<sup>29</sup> CD E5 page 84

<sup>30</sup> Peter Mitchell PoE Appendices Figure 2

<sup>31</sup> APP/M3645/A/14/2224101

with a figure of nil and burial space in Croydon was becoming scarce. An alternative site assessment carried out by Croydon Council had ruled out 4 sites in Croydon that were in the Green Belt.

89. The Inspector pointed out that the appeal site was not easily accessible by public transport, with only a limited bus service and this deficiency countered the fact that the other alternative sites were all in the Green Belt. The appeal site in that case was in the north west of Tandridge, very close to its border with neighbouring Croydon whose residents it was intended to serve, but the Inspector rejected the site saying that "providing the facility in a fairly inaccessible location and away from the community that it primarily intends to serve [i.e. the population of neighbouring Croydon] would not adhere closely to the aims of the LP [London Plan] or CLP [Croydon Local Plan]....In order to comply fully with policies in the LP and CLP a site closer and more accessible to the population of Croydon would be desirable. So whilst the need for additional burial space in this part of the country is established the weight given to the proposal is reduced because there may be other sites that would be better located for the people of Croydon".
90. Equally in this case, the appeal site is in an inaccessible location — with a PTAL rating of 1a — the second lowest of nine possible categorisations, indicating that it has very poor connectivity to the public transport system. Its distance from the high Muslim populations of Newham, Tower Hamlets, Redbridge, Brent, Ealing and Enfield is greater than the distance between the Greenlawn Memorial site and the residents of Croydon. There are realistic alternative sites in Enfield which meet the appellant's requirements that are closer to the areas of greatest need and likely to be more accessible but have been rejected without assessment solely because they are in the Green Belt. There may also be realistic alternatives in Greenwich or Lewisham that are closer to both Tower Hamlets and Newham but there has been no assessment of those boroughs. These are serious flaws in the appellant's Alternative Sites Assessment.
91. Another flaw is that the appellant has excluded from consideration all sites that are public open space or are in recreational use without consulting Sports England or the relevant local authorities. In total, some 26 non-Green Belt/Metropolitan Open Land sites which are otherwise suitable for the development have been excluded for that reason alone (17 in the original ASA; 6 in Addendum 2 to the ASA; and 3 in Addendum 3 to the ASA). Again, a parallel can be drawn with the Greenlawn Memorial appeal decision. In that case Croydon Council had excluded sites in source protection zones without seeking the views of the Environment Agency and in the absence of further evidence the Inspector was not convinced that they should have been totally ruled out. In any event, the Green Belt is subject to greater policy protection than areas of public open space. Paragraph 79 of the NPPF explains that the government attaches great importance to Green Belts and policy 7.16 of the London Plan provides that the strongest protection should be given to London's Green Belt. There is no justification for the appellant's approach: it rules out all public open spaces but proposes the development of a Green Belt site which is subject to greater policy protection.
92. As a matter of law it is open to a decision-maker to conclude that an accepted need can and should be met elsewhere even if it cannot point to a specific alternative

site<sup>32</sup>. The less specific and exacting the requirements of a site to meet the need, the more likely it is that a decision-maker can reasonably conclude that such need could be met elsewhere without reference to some identifiable preferable alternative<sup>33</sup>. The appellant said in cross examination that there were very few requirements of a site to accommodate a Muslim cemetery — preferably it would be over 5ha, but not necessarily, and ideally it would be close to the existing Gardens of Peace cemeteries as this would be convenient to the appellant's directors and would reduce costs. It should be noted that the appellant's consultants only considered sites of over 5ha in size, despite the appellant's recognition that a smaller site might be suitable — a further flaw in the Alternative Sites Assessment.

93. Matters relating to the cost and convenience to the appellant are not material considerations in reaching a conclusion about the suitability of this site for this proposed use. Green Belt land will often be cheaper to buy but that is not a reason for allowing its development.
94. On the evidence and given the unexacting site requirements, it can be found that the need for a Muslim cemetery can and should be met elsewhere rather than on a poorly accessible, Green Belt site on the very eastern extremity of London, some considerable distance from the areas of greatest need and in a borough with the second lowest Muslim population in London. The weight attributed to the benefit of providing Muslim burial without compromise should be reduced to reflect that fact.

*Other benefits*

95. This development would allow public access to what is currently private land. This is a benefit to which some weight should be accorded<sup>34</sup>. However, it is important to bear in mind that the site will be locked outside operational hours; that it will not be open to dog-walkers or for any form of recreational activity that would be inconsistent with its cemetery use, and that its use as a cemetery means that it is unlikely to be an appealing site for many.
96. There will also be ecological benefits in terms of additional tree planting and increased management of the River Ingrebourne floodplain which weigh in favour of the scheme, and to which some weight should be attached.

*Planning balance*

97. In order to establish that there are very special circumstances, the appellant must demonstrate that the benefits of the development *clearly* outweigh the harm to the Green Belt by reason of inappropriateness and any other harm<sup>35</sup>. If it is considered the arguments are finely balanced, then the correct approach is to refuse this appeal because, as the inspector recognised in the Greenlawn appeal decision<sup>36</sup>, in order to allow this appeal the scales must tip decisively in favour *of* the proposed development.
98. In Greenlawn the fact that the development was inappropriate and harmed the local character of the site was enough to justify the refusal of permission, notwithstanding

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<sup>32</sup> *Trusthouse Forte v SSE* [1987] 53 P&CR 293

<sup>33</sup> *Trusthouse Forte*. p.301

<sup>34</sup> NPPF paragraph 81

<sup>35</sup> NPPF paragraph 88

<sup>36</sup> ID 8

the recognised quantitative need for additional burial space and the public access and biodiversity improvement.

99. In this case, there is no quantitative need for additional burial capacity either in Havering or in NE London. Substantial weight must be accorded to the harm to the Green Belt by reason of inappropriateness and to the harm this development will cause to the openness of the Green Belt. Significant weight should be accorded to the harm to the landscape character and visual amenity of the site and consequent conflict with development plan policy DC61.
100. Against that must be weighed the benefits to the Muslim community of an additional site providing burial without compromise and the ecological and public access improvements. However, as in Greenlawn the weight to be accorded to the benefit of the burial provision should be reduced because there may be other sites that would be better located to meet the needs of the Muslim community in accordance with the proximity principle and also because there is sufficient quantitative capacity to meet the needs of NE London's Muslim community until at least mid-2024<sup>37</sup> and more likely until 2030. Local planning authorities can reasonably be expected to make planned provision for further burial space as and when the need arises, in accordance with the requirements in London Plan policy 7.23. In respect of housing development, the PPG says that unmet housing need is unlikely to outweigh the harm to the GB and constitute very special circumstances<sup>38</sup>, notwithstanding the great emphasis the government places on the delivery of housing<sup>39</sup>. Unlike housing, the provision of without compromise Muslim burial is not addressed by national policy in the NPPF and is even less likely to clearly outweigh the harm to the Green Belt.
101. The Council does not consider that even when they are added together, the other considerations relied upon by the appellant clearly outweigh the harm to the Green Belt and to the character and visual amenity of the area that this development would cause. Even if, contrary to the Council's case, it is concluded that there is no realistic alternative site for the proposed use, the Council considers that the benefit to the Muslim community of burial without compromise is not sufficient (alone or in combination with the other benefits of this scheme) to clearly outweigh the harm to the Green Belt and other harm caused by the development or to justify the development of this Green Belt site.

### **The Case for Gardens of Peace**

102. Gardens of Peace is a registered charity based in the north east (NE) of London. It was established in 1998 to meet the burial needs of the Muslim Community in the NE of London, based initially in the borough of Redbridge. In 2002 the charity became the first such organisation within the UK to provide Muslim burial without compromise — that is, in a way which meets the religious requirements of the Muslim faith. It continues to be the only such provider in London. It has two burial facilities in Redbridge, but those facilities will run out of burial space in the very near future, between 3.5 and 5 years from now.

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<sup>37</sup> Peter Mitchell PoE Table 2

<sup>38</sup> Planning Practice Guidance, chapter 3, paragraph 34

<sup>39</sup> NPPF paragraph 47 for example



103. The reasons for refusal reflect the LPA's formal position. However, there are three submissions to make in relation to this. Each one is sufficient to doubt the soundness of the LPA's decision making process.
104. First, the LPA officers took a positive approach to the scheme and the case officer intended to recommend that planning permission should be granted<sup>40</sup> but that opinion was reversed shortly before the committee date for no apparent reason<sup>41</sup>. Discussions on the application were constructive since they informed the scheme design. The LPA's officers took a positive approach to the scheme<sup>42</sup>, and the appellant's consultants were led to believe that they would recommend that planning permission be granted.
105. When the appellant later enquired as to what circumstances had led to the change in officer opinion from a proposed favourable report to an unfavourable recommendation, there was no suggestion from the LPA that the position had been misunderstood. The LPA could shed no further light on the matter. The case officer's change of his professional opinion remains a mystery and a worrying one since the committee was not informed and there is no reason given for it now.
106. Secondly, in determining the application, the Council's Regulatory Services Committee, although it listened to brief, oral representations, resolved that permission be refused, without any debate<sup>43</sup>. In the circumstances of this case, and bearing in mind that the report to committee had accepted that the proposal would help to address an identified need for additional Muslim burial capacity, and evidently reached its overall conclusion against recommending approval "on balance"<sup>44</sup> the lack of any discussion between committee members during the meeting adds to the concern about the manner in which the application was dealt with by the LPA.
107. Thirdly, and to add yet further concern about the LPA's approach to the application, the decision notice included an informative which states that "Improvements were required to make the proposal acceptable and suitable amendments were suggested during the course of the application...The appellant declined to make the suggested revisions." As the appellant explained<sup>45</sup>, no such request was made.
108. During the Inquiry there were attempts by the LPA to depart from or alter its case. This indicates a confusion in the LPA's case which reflects the poverty of the arguments that are relied on. In addition, the LPA's case is largely unsupported by evidence; its proof of evidence is for the most part assertion.
109. The appellant has acknowledged concerns raised at the Inquiry by local residents in relation to flood risk and contamination. Whilst those concerns have not been supported by the LPA or by the relevant statutory authorities, the appellant produced expert evidence to address them.

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<sup>40</sup> CD D1 Appendix SCG1 email dated 4 February 2015

<sup>41</sup> Niall Roberts PoE, paragraphs 4.9-4.13, 5.6, oral evidence in chief, cross-examination and re-examination.

<sup>42</sup> Screening Opinion Niall Roberts PoE, paragraphs 4.3 to 4.5

<sup>43</sup> Niall Roberts PoE, paragraphs 4.14 to 4.16

<sup>44</sup> CD D1 App SCG4, page 111, penultimate para

<sup>45</sup> Niall Roberts PoE, paragraphs 4.12 to 4.13

### *Policy and approach*

110. The starting point for the consideration of the appeal proposal is the statutory development plan. The relevant parts of the statutory development plan are: the Core Strategy and Development Control Policies Development Plan Document 2008 (the "Local Plan 2008") and the London Plan (Further Alterations) 2015 (the "London Plan 2015"). The only policies referred to in the LPA's reasons for refusal are policy DC61 of the Local Plan 2008, relating to urban design, and policy 7.23 of the London Plan 2015 relating to burial space; the LPA does not assert any other conflict with the statutory development plan<sup>46</sup>.
111. Policy DC45 of the Local Plan 2008, relating to Green Belt matters, is out of date and inconsistent with the NPPF. Paragraph 14 of the Framework provides that in such a circumstance there is a presumption in favour of granting planning permission unless specific policies in the Framework indicate that development ought to be restricted. Green Belt policy is one such policy. Accordingly, the paragraph 14 presumption will not apply in this instance. It is clear that the Green Belt policy within the Framework is the appropriate one to consider in relation to the proposed development.
112. The LPA considers that policy DC61 is out of date, although consistent with the Framework. Whatever weight is to be attached to the policy, it does not presume against the appeal proposal. The LPA's case in relation to its third reason for refusal is based on policy 7.23 of the London Plan 2015.

### *The scheme design*

113. The design of the proposed development has been approached as a "landscape-led" process which responds to the countryside character of the site, and has sought to develop a sensitive proposal that fits within this countryside context embodying comprehensive mitigation as part of the design response. That approach, including its design principles, referred to by LPA officers as "a soft", low key one, was commended by the LPA<sup>47</sup>.
114. The design was informed by a sound and thorough assessment of the appeal site as it currently exists, its landscape and visual context. In particular, this took account of the key countryside characteristics of the site, namely the woodland, the meadow and the river corridor. The appeal scheme retains and improves the value of these three features. This work was also informed by the input of others in the appellant team, including arboriculture, ecology, architecture and flood risk expertise. The LPA officers had raised no concerns about the approach taken.
115. Each element of the proposal has been designed to minimise the development's overall impact on the open nature and countryside character of the site, and to enhance the site's key countryside characteristics.
116. The master-planning and design of the proposed development has been carried out in a fully comprehensive way with proper regard to the appeal site's countryside location in the Green Belt<sup>48</sup>. The approach has been endorsed by the LPA<sup>49</sup> and there has been no criticism of the approach or the methodology in the Design and Access

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<sup>46</sup> LPA's statement of case, CD D1, Tom McCarthy PoE, paragraph 4.3

<sup>47</sup> CD D1 paragraph 7.11(5) and (10)

<sup>48</sup> Alister Kratt PoE section 5

<sup>49</sup> Alister Kratt PoE paragraph 2.2.2 -2.3.3, 5.1.3, 5.2.2 -5.2.6

Statement (the "DAS"), the Landscape and Visual Appraisal (the "LVA") or the Landscape, Ecology and Cemetery Management Plan (the "LECMP"), all documents which accompanied the application.

117. All elements of the scheme are appropriate and necessary for the operation of the site as a cemetery. No more physical development is provided than is necessary for its operation. This is agreed by the LPA<sup>50</sup>. The design of the appeal scheme brings with it significant benefits relating to enhancement of landscape and biodiversity of the site, as well as the provision of public access.

*Green Belt policy and inappropriateness*

118. The appeal scheme comprises three main elements: cemetery open space, buildings and engineering operations (the access drive and parking). The proposed buildings are "appropriate facilities" for the proposed cemetery<sup>51</sup>, would preserve the openness of the Green Belt and not conflict with the purposes of including land within it. Accordingly, they would not be inappropriate development<sup>52</sup>. The engineering operations would also not be inappropriate because they would not detract from the openness of the Green Belt, nor conflict with its purposes<sup>53</sup>. Following changes to Green Belt policy in the Framework the proposed cemetery use is to be regarded as inappropriate development. The appeal scheme is therefore to be treated as a single development proposal for the purposes of Green Belt policy requiring justification in accordance with the Framework<sup>54</sup>.
119. Inappropriate development is by definition harmful and substantial weight must be given to that harm<sup>55</sup>. The proposal must be justified by very special circumstances, which will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. It is the applicant's case that this is the case here and that the appeal proposal is justified by very special circumstances. In this way, the appeal proposal is entirely consistent with Green Belt policy.

*The effect on the openness and permanence of the Green Belt*

- The careful design approach for the appeal scheme ensures that the open nature of the site, as well as its key countryside characteristics, being the woodland, the meadow and river corridor, will be retained. The appeal scheme would not adversely affect the openness of the appeal site, there would be some enhancements.
- The design of the burials area has responded directly to the countryside setting of the site by the use of sinuous paths, swathes of long grass and informal trees throughout the areas breaking up views across the meadow — the whole creating a naturalistic appearance which is completely in keeping.
- The access drive, car parking and hardstanding is kept to a minimum and designed to be recessive. They are at surface level and the materials to be used

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<sup>50</sup> Alister Kratt PoE paragraph 5.1.3, CD D1 paragraph 7.11(9)

<sup>51</sup> CD D1 paragraph 7.12(3)

<sup>52</sup> NPPF paragraph 89

<sup>53</sup> NPPF paragraph 90

<sup>54</sup> NPPF paragraphs 87 & 88

<sup>55</sup> NPPF paragraphs 87 & 88

will ensure an informal appearance, typical of materials used in countryside settings such as nature reserves.

- There will be a material net reduction in overall built form on the site. Thus, whilst it is relevant to take into account the fact that the buildings are no more than is required to serve the cemetery so that, following the logic of the Barfold Farm decision, it is reasonable to conclude that openness will at least be preserved<sup>56</sup>, there will be a de facto increase in openness on the site. The utilitarian metal barn building on site will be removed, the new pavilion buildings will be nestled into the edge of the woodland and, surrounded by existing and proposed trees would be well integrated with the landscape of the site and the modestly sized workshop buildings will be located discreetly beyond the woodland to the north of the river corridor. The proposal reduces the perception of built form on the site by separating the pavilion buildings and breaking up their mass. Furthermore, the pavilion buildings have been designed to complement the countryside character of the site which underscores their reduced impact. The workshop buildings will be reduced over time, thereby further reducing the built form on site.
- Whilst the presence of cars will be apparent on the site, the parking areas are visible only through filtered views. Their use will be quiet and unobtrusive and burials will take place predominantly in the afternoon, with limited or no activity for most of the day.
- The layout has sought to take advantage of the topography, woodland and proposed planting on the site and use existing landscape features in structuring views within the site.
- Cemeteries are commonplace and characteristic in the countryside.
- The perception of the openness of the site from outside the site will not change. No significant visual change will occur in views from outside the site due to the extensive screening on the boundaries of the site and to the scheme design itself.
- In about 10 years the level of activity on site will drop significantly as its burial capacity is reached. Bearing in the mind the permanent nature of burial grounds there could be no better way of maintaining openness and the permanence of the Green Belt.

120. The LPA's reasons for refusal are based on the officer's report to committee. The report to committee advised that the engineering works, including the parking areas and access routes, in the proposed scheme "are of a modest nature and relatively isolated, and would not be harmful to the openness of the Green Belt, or conflict with the purposes of including land within it"<sup>57</sup>. The LPA's statement of case does not refer to engineering works. The statement of common ground repeats the advice in the officer's report as an agreed point<sup>58</sup>.

121. Notwithstanding this, the LPA contended that the hardstanding included in the proposed development would have an adverse effect on the openness of the Green Belt and conflict with the Green Belt purpose of avoiding encroachment into the countryside. No explanation for this departure from the LPA's position on this

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<sup>56</sup> Niall Roberts PoE paragraph 6.4, 6.21

<sup>57</sup> CD D1, Appendix SCG4, penultimate paragraph

<sup>58</sup> CD D1 paragraph 7.12(7)

point, and from the clear agreement in the statement of common ground, is given in the LPA's McCarthy's proof of evidence. In its oral evidence in chief it was argued that the passage taken from the officer's report and included in the statement of common ground did not relate to hard-standings. That interpretation is untenable; an unauthorised, personal view was given in cross-examination which should be given no weight.

122. The LPA's proof of evidence is based not on any assessment or analysis, but on mere assertion<sup>59</sup>. It is agreed that there is an element of subjectivity in the LVA but this does not excuse the LPA for not providing any analysis and relying on mere assertion; subjective opinion must be underpinned by a professional understanding and informed by a robust methodological approach, such as that in the LVA.

123. The LPA's judgment is not sound since it was based on the understanding that the proposed development would be more visible from outside the site than it would be. The plans clearly show that there would be no views into the site from any public viewpoint<sup>60</sup>. Only limited, filtered views may be available from a few residential properties, but it is agreed that there will be no loss of outlook<sup>61</sup>. The proposed development will have no adverse effect in terms of the wider openness of the Green Belt.

124. The LPA asserted that "thousands of raised graves with identification plaques would create a formalised and rhythmic appearance harmful to the openness of the Green Belt". Not only is the number of graves that will be visible at any one time exaggerated but it was assumed that the look of the cemetery would be similar to Elmbridge Road with the graves covered with sedum.

125. The LPA considers the impact on openness in relation to the number of buildings, but does not consider floorspace or volume comparisons in the context of openness. The buildings will not be visible from any public view point outside the site. Within the site the change in location of the buildings does not lead to a reduction in openness. On the contrary, their location will have the effect of increasing the feeling of openness. The sympathetically designed pavilion buildings will be seen as within the woodland, and subservient to the landscape, and the small workshop buildings are discreetly located elsewhere beyond the woodland.

126. The LPA's comments about the effect of the burial use on Green Belt openness were also unsound. Car visitors will be in relatively small numbers and for very limited periods of the day<sup>62</sup>. The car parks are well integrated within and beyond the woodland, and the activity will be quiet and unobtrusive. Cemeteries are commonplace in and characteristic of the countryside. Moreover, Green Belt policy does not define activity of any level as being harmful to openness and by reference to the Framework's encouragement of access to the Green Belt the

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<sup>59</sup> Comprising just four pages in the PoE

<sup>60</sup> Eg landscape masterplan 3873-200-A, landscape proposals 3873-201-A, Alister Kratt Figure Appendix, Figure 10 cross-sections.

<sup>61</sup> CD D1 paragraph 13

<sup>62</sup> Up to 5 burials per day, only in the afternoons, mainly between 2.00pm-4.00pm, lasting only between 20-30 minutes (Mohammed Dedat PoE paragraph 4.14). See also tables 4.1 and 4.2 of the Transport Assessment in relation to car numbers.

Government plainly contemplates some level of activity. In this context, the modest level of activity associated with the proposed cemetery cannot reasonably be regarded as detracting from openness. It should also be noted that in time (say about 10 years) the level of activity on site will drop significantly as its burial capacity is reached.

*The effect on Green Belt purposes*

127. The LPA's case against the scheme is restricted to one such purpose, that of safeguarding the countryside from encroachment; checking the unrestricted sprawl of large built up areas is not part of its case. There is no reference to this purpose in the committee report, the reasons for refusal or the LPA's statement of case.
128. In interpreting this purpose, "encroachment" must mean something detrimental to the countryside. The LPA said in cross-examination that it should mean "something that one would not expect to see in the countryside". The appellant considers that encroachment "implies intrusion and advance that causes damage to the countryside"<sup>63</sup>
129. Cemeteries are commonplace and characteristic of the countryside. They play an important part of countryside character, often on the edges of towns and villages and sometimes even beyond in open countryside. The proposed cemetery use is a countryside form of development<sup>64</sup>. This is supported by the Warlingham decision<sup>65</sup> which concludes that the proposed cemetery would still be considered part of the countryside and therefore causing no harm in terms of encroachment or any other Green Belt purpose.
130. The essential conclusion is that the proposed cemetery will not intrude into the countryside — the countryside will remain. Indeed, the key countryside characteristics of the appeal site will be enhanced so that this Green Belt purpose is actually assisted rather than infringed. Thus, contrary to the LPA's reason for refusal, the appeal scheme would not adversely affect the Green Belt purpose relating to encroachment into the countryside. Nor will there be any adverse effect on any other Green Belt purpose.

*The effect on the beneficial uses of the Green Belt*

131. No harm would be caused by the proposed development to the beneficial uses of the Green Belt. Other than harm to visual amenity the LPA does not allege any harm to the beneficial uses of the Green Belt.

*The effect on character and visual amenity*

132. The appeal site is unmanaged farmland. Its countryside character is established essentially by three key main elements: the open meadow, the central woodland, and a river corridor to the east. There are no landscape policy designations affecting the site, nor any published local landscape character studies that cover it. The site has not been recognised for any special landscape interest. There is a TPO in place which extends across the site but the LPA has accepted that it should be revisited to remove its "area" basis<sup>66</sup>. There are no public footpaths across the site,

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<sup>63</sup> Niall Roberts PoE paragraph 6.34. Alister Kratt PoE paragraph 7.3.3

<sup>64</sup> Alister Kratt PoE paragraph 7.3.3

<sup>65</sup> ID 8 paragraph 7

<sup>66</sup> Alister Kratt PoE paragraph 3.1.9

nor public access of any sort. The site is very well screened by significant boundary vegetation.

133. Contrary to the LPA's reason for refusal, the appeal scheme will not adversely affect the countryside character or appearance of the site or area, nor adversely affect visual amenity. The intrinsic beauty of the countryside in this location will be respected in line with the Framework<sup>67</sup>.
134. The proposed development brings important benefits associated with the character and visual amenity of the site. In particular, the meadow land, the woodland and the biodiversity of the land will be enhanced. The visual effects on receptors within the vicinity of the site will be minimal, and for the vast majority of visual receptors within the study area there will be no effect at all.
135. The LPA's case is that the proposed development causes harm to the rural character of the site and visual amenities of the Green Belt on the basis of its "cumulative" effect. There is no contention that the individual elements of the proposal would cause significant harm in this regard. This is made clear in the report to committee<sup>68</sup> and the LPA's statement of case<sup>69</sup> although the LPA's proof of evidence once again departs from the original case by asserting that harm is caused individually and cumulatively. The proof of evidence is based on mere assertion and there is no substantive evidence to support those assertions.
136. The LVA makes clear that there are no long distance views into the site, there is no inter-visibility with the designated land to the north and no possible conflict with policy DC69<sup>70</sup>. The LPA's contention that the appeal proposal would conflict with policy DC61 is not supported by any clear explanation. The LPA's reason for refusal does not refer to any portion of the policy in justifying the reason for refusal, and merely refers to the presence of parked cars resulting in countryside intrusion, which does not form any part of the policy wording.
137. The LPA agreed in cross-examination that the three main features that characterise the appeal site, being the meadow area, the woodland and the river corridor will remain as dominant characteristics on the site following the development. This is an important concession, not only in this context but in the context of the Green Belt issue, because they form the basis for the open, countryside character of the site.

*Proximity and policy 7.23 of the London Plan*

138. Policy 7.23 of the London Plan is a strategic policy stating the Mayor's role in addressing the provision of sufficient burial space and aimed at local authorities and the preparation of their local plans. It is plainly not to be used as a development control policy. That is not to deny its relevance, but to recognise its intended role.
139. The policy states that the Mayor will work with others "to promote" re-use or new provision. The policy requires boroughs to "ensure provision" is "made for

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<sup>67</sup> NPPF paragraph 17

<sup>68</sup> CD D1 App SCG4 2<sup>nd</sup> paragraph page 110

<sup>69</sup> LPA Statement of case paragraph 5.14

<sup>70</sup> Alister Kratt PoE paragraph 3.3.2 and 4.1.12

London's burial needs" of all types. This imposes an obligation on local authorities not just to meet the needs arising in their own boroughs but to ensure that London-wide needs are met in suitable locations across London (having regard to the proximity principle). The reference to the needs of those for whom burial is the only option obviously includes Muslims.

140. The so-called "principle of proximity" in that part of the policy relating to LDF preparation is not explained, although there is a reference to problems of cost and access where provision for inner and central London boroughs is made in outer London or beyond.
141. Proximity is not limited by borough boundaries. The LPAC's Planning for Burial Space in London 1997 refers to proximity in this way: "As far as is practicable, people should have the choice of burial and/or commemoration broadly in the areas where they live, if they so desire. This would have practical benefit by minimising travel need and maintaining a sustainable pattern of land use." This explanation also makes clear that a London context is to be used for interpreting proximity rather than a borough bound one.
142. Many boroughs cannot provide for their own needs and many local authorities own or operate cemeteries outside their boundaries<sup>71</sup>. Moreover, as recognised in the Audit of London Burial Provision GLA 2011, Muslim burial grounds should not be seen as "specific" to a particular borough since it is probable that these sites have a wider catchment area than the borough in which they are located, as is the case for Gardens of Peace<sup>72</sup>. It is clear therefore that the policy contemplates provision beyond borough boundaries, and that the principle of London boroughs relying on burial provision outside their boundaries is well established. On this basis it is not necessary for proposed provision to be within the borough boundary of its main area of demand in order for it to comply with the proximity principle.
143. Gardens of Peace was established to serve the Muslim community in NE London. The charity is based in NE London, was established to meet the burial needs in accordance with the Muslim faith in NE London, and was based initially within the borough of Redbridge. Recognising the lack of provision for Muslim burials in Redbridge and the neighbouring authority areas, four members of the local community joined together to form the Charity and searched the local area for a site to provide a suitable cemetery to meet the identified need. The Elmbridge Road cemetery was founded on that basis. The Five Oaks site, which was later acquired, cemented the base for the Charity's work in NE London.
144. The Charity's records show that the geographical area which is primarily served has been and remains that of NE London. It does not restrict the facilities to those in Redbridge, or charge higher fees for non-resident burials. Some demand comes from elsewhere in London but the central aim is to serve the Muslim communities in the local area, the boroughs in NE London.
145. The intention for the appeal scheme is that it should continue the service that the Gardens of Peace provides when its existing facilities are full. There are also operational and management reasons for seeking a site in NE London. The appeal scheme does not include body washing facilities. Once the Five Oaks site, which is

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<sup>71</sup> Vera Lamont PoE paragraph 3.12

<sup>72</sup> Niall Roberts PoE paragraph 6.130



only a short drive away, becomes operational female body washing can take place there, and male body washing can take place at Elmbridge Road. Proximity to these facilities is therefore important.

146. The Need Assessment Report<sup>73</sup> contains a section specifically devoted to Muslim burial needs in NE London, which demonstrates that there is a serious shortfall in burial provision to meet the needs of the Muslim faith. The proof of evidence on that matter, which brings the report up to date, also demonstrates an urgent need for new provision to meet the needs of Muslims in NE London. In particular, it shows that 80% of the Muslim burials that took place in NE London in 2012 were catered for at Gardens of Peace. Moreover, the evidence shows clearly that the Muslim population in NE London, including Havering borough, will grow and that there will be an increased need for burial provision to meet the needs of Muslims.
147. The question therefore is whether or not the appeal site is sufficiently proximate for the Muslim community in NE London. The appellant's transport witness stated that, although there is no fixed standard for the drive time for burial grounds, a 30 minute drive time is a standard generally applied<sup>74</sup>. The GIS analysis<sup>75</sup> carried out identified that the main area of Muslim population to be served by the proposed cemetery is within a 25 minute drive time during typical day time driving conditions (and nearly half of that Muslim population within a 20 minute drive time). Therefore, the appeal scheme should be considered proximate to the community it seeks to serve, and compliant with the principle of proximity within policy 7.23 of the London Plan.
148. The vast majority of people visiting the cemetery will travel by private car and not by public transport, so public transport accessibility is not as important as it might be for other developments. Notwithstanding this, public transport accessibility had been considered. The PTAL model shows a score at the lower end of the scale, but notes that this is calculated for the hour 8.15am — 9.15am, outside the hours of burials at the proposed cemetery. The local context was also taken into account in terms of the good range and level of bus services (with connections to onward travel by train) and the short acceptable distances to the bus stops, and concludes that the site has a good level of access to public transport.
149. In respect of the third RfR the LPA has misunderstood and misapplied the proximity principle in policy 7.23. The policy and supporting text provide no test of "closer proximity"; there is no sequential test required to comply with the proximity principle.
150. The contention of the LPA is that notwithstanding a need in NE London, which area is the primary catchment for the proposed cemetery, there might be a site somewhere else in London that is more proximate to needs that exist across the whole of London. The applicant's argument is that there is no planning purpose in denying the Muslim community of the NE London the facility of non-compromised burial on the grounds that the facilities must be provided elsewhere in London. This fundamentally runs counter to the proximity principle.

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<sup>73</sup> CD A10

<sup>74</sup> As referred to in APP/D0840/A/09/2098108, Vera Lamont PoE Appendix VL3

<sup>75</sup> Vera Lamont PoE Figures, Figure VL1 A and VL1B

151. The LPA's proof of evidence<sup>76</sup> accepts the appellant's Needs Assessment Report<sup>77</sup>, taking no issue as to the identified need for additional Muslim burial provision in NE London. Although the LPA questions the way in which the appellant has chosen to look at the "relevant community", its evidence, correctly, continues to test the appeal site against the proximity principle on the basis of the area of need as defined by the appellant, NE London. It does not suggest any other area of need for assessment.
152. The LPA correctly applies a 30 minute drive time standard to the appeal site, although it incorrectly concludes that Newham and Tower Hamlets are outside of the drive time standard. Taken with its comments on public transport and Brook Street roundabout, it concludes that the proposal is not proximate.
153. The LPA produced no evidence for the assertion that the Newham and Tower Hamlets boroughs would be longer than 30 minutes from the appeal site<sup>78</sup>. In cross-examination the LPA stated it had focused on the hours between 8.00am and 9.00am and between 4.00pm and 5.00pm, which excludes the most frequent hours in which burials take place. The LPA did not criticise any aspect of the appellant's transport analysis and accepted in cross-examination that its GIS work showed that all of the main catchment area of the appeal site is within a 30 minute drive time. At the Inquiry the appellant's transport witness stated that Google Maps and driving various routes confirmed that the GIS findings were reliable. The LPA suggested that the figures were wrong or unreliable but produced nothing by way of evidence to show that this is so.
154. The appellant also pointed out that there are alternative routes to choose when driving from west to east (eg via the M11 and M25 or A13 and M25) which avoided driving past the site, circumnavigating the Brook Street roundabout and returning along the A12. In any event, the congestion resulting in delays is most likely to occur at peak traffic flows, and not co-incident with the burial times at the proposed cemetery, and that otherwise delays do not materially affect journey times<sup>79</sup>. The appeal site also has the advantage of being able to utilise transport infrastructure in the opposite direction to the transport patterns of morning and afternoon traffic into and out of central London.

*Other considerations and very special circumstances*

*Need*

155. There is a widely recognised and documented shortage of burial space provision across London. That has been made clear in the LPAC Planning for Burial Space for London 1997<sup>80</sup> and the more recent GLA Audit of London Burial Provision 2011<sup>81</sup>. The need to provide for religion-specific burial needs was expressly recognised in the LPAC report, as was the potential for the Muslim community to become an increasingly important part of the population demanding burial<sup>82</sup>. Similarly, the differing burial requirements for different religions were recognised in the GLA report, as was the increasing demand for Muslim burial space<sup>83</sup>.

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<sup>76</sup> Tom McCarthy PoE

<sup>77</sup> CD A10

<sup>78</sup> Tom McCarthy PoE paragraph 5.64

<sup>79</sup> Vera Lamont PoE paragraphs 5.35 – 5.38, 5.48 – 5.54

<sup>80</sup> CD F2

<sup>81</sup> CD F1

<sup>82</sup> CD F1 pp 6,7

<sup>83</sup> CD F1 eg paragraphs 2.7, 2.17, 2.33

156. Policy 7.23 of the London Plan 2015 provides the strategic policy basis for increasing burial provision in London, by reference to the GLA Audit 2011. It seeks to make new provision and refers to the needs of those for whom burial is the only option, which reference obviously includes Muslims.
157. The Social Infrastructure SPG 2015<sup>84</sup> also uses the findings of the GLA Audit, and after noting the absence or short supply in capacity in many London boroughs, states "boroughs with large populations of faiths that require burial such as Muslims and Jewish faiths are going to face increasing pressure to provide burial spaces".
158. Muslim burials have a number of essential requirements<sup>85</sup>. As well as involving specific burial procedures, such as the need for haste, shroud burials, single burials in virgin ground, the mounding of graves and their facing Makkah, Muslim cemetery facilities must make provision for daily prayers and ablutions. Most cemeteries in England are geared towards meeting the Christian religion, and the Jewish community has developed its own cemeteries, but the Muslim community is a relative new comer and, in terms of provision of suitable cemeteries, a poor relation. Uncompromised burial for Muslims, as for all faiths, is very important. The LPA disputed none of this. The LPA's reference to the Chapman case rightly points to a balance needing to be struck, but the facts of the case are significantly different<sup>86</sup>.
159. Gardens of Peace is the only cemetery in NE London, or the whole of London, that provides uncompromised burial facilities for Muslims<sup>87</sup>, and it is due to close for burials within 2 to 5 years. There is no prospect of additional burial capacity in NE London to meet the needs that are currently being met by Gardens of Peace. Policy has so far failed to improve the position. NE London authorities have so far failed to improve the position. Indeed, there is no evidence whatsoever of local authorities in NE London even discussing the issue between them.
160. The appellant explained that the Charity has liaised with local authorities in NE London to encourage them to make land available for Muslim burial but nothing has come of it. All avenues with Redbridge and Barking & Dagenham had been exhausted and it was well known that there were no sites in Tower Hamlets. Nothing productive appears to be happening and the matter is now urgent, especially having regard to the lead in and site preparation time for a new cemetery.
161. The appellant's Needs Assessment Report demonstrates that there remains an overall shortage of burial space within London and that there is a lack of suitable burial provision for Muslims within London, particularly in NE London. It shows that there is an "apparent" capacity of only 10 years of burial space that purports to be for Muslims. However, this is a false picture since, not only does it assume demand is constant at 2012 level, which will not be the case, but it also assumes that this

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<sup>84</sup> CD E5

<sup>85</sup> Mohammed Dedat PoE section 4

<sup>86</sup> Apart from other differences between the cases, the rights here are Article 9 rights, in brief the right to freedom of religion including the right manifest that religion in worship, practice and observance. That right is by definition a fundamental one, and accordingly in this case the need for burial space for Muslims to be buried in accordance with their religious requirements are not to be relegated to mere "wishes" or "desires"; they must carry great weight in the balance to be struck

<sup>87</sup> CD D1 paragraph 7.4(2)

capacity provides for the needs of the Muslim community, which it does not — other than Gardens of Peace, there is no cemetery that does this<sup>88</sup>.

162. The appellant shows that there is a core area of demand for Gardens of Peace within NE London<sup>89</sup> with a quantitative need for at least 970 adult Muslim burials per annum, even assuming 2012 levels, based on the number of Muslim deaths in NE London. That need will grow dramatically for the reasons given<sup>90</sup>. It also shows that of the 1508 Muslim burials recorded as having taken place in NE London in 2012, 1202 or 80% of those took place at Gardens of Peace. Gardens of Peace will run out of burial space in between 3.5 to 5 years. The figures suggest that even taking the longer period, by 2021, there will remain only 3229 graves in NE London purporting to cater for Muslim burials.
163. The calculations took no account of the predicted increase in the level of Muslim deaths in NE London between 2012 and 2021 and the 3229 graves might be regarded as an overestimate. In any event, this "apparent" capacity is misleading. The vast majority of the 1743 graves in Newham are already reserved and the 1250 graves in Waltham Forest are not available to residents from outside the borough. There is undoubtedly an urgent quantitative need for new Muslim burial space in NE London as the remaining 236 graves in local authority cemeteries elsewhere would only last a matter of weeks.
164. None of the facilities provide adequately for burial in accordance with the Muslim faith<sup>91</sup>; by 2021, without Gardens of Peace, there will be no cemetery which can provide burial space to meet the religious requirements of the Muslim community in NE London. The Council's opening statement drew a distinction between "the need for additional burial space" and "the benefit to the Muslim population in not having to compromise on their burial requirements". If there is inadequate provision for Muslims to be buried in accordance with their religious requirements, that is a need which the planning system should address. The need will not automatically trump national policy, which is not the appellant's case — the need must be weighed in the balance.
165. The Council accepts the Needs Assessment. Its case is not that there is no identified need for additional burial space to meet the needs of the Muslim community in NE London. It is that it "does not consider that adequate justification has been provided to explain why the need should be met on a Green Belt site in Havering"<sup>92</sup>. The Council says that Havering has sufficient burial space to meet its own needs, and other nearby London Authorities are planning for provision even if there are no identified sites to meet the projected needs; the LPA does not consider the harm to the Green Belt is outweighed by the need<sup>93</sup>.
166. In relation to the LPA's case, unreasonably little weight is applied to the accepted need for Muslim burial sites without religious compromise. No indication is given as to the weight attached to the need; in cross-examination it was stated that "limited" weight was applied but there is no explanation for this.

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<sup>88</sup> CD A10 section 6

<sup>89</sup> Peter Mitchell PoE paragraph 6.15, figure 6

<sup>90</sup> See also CD E5 page 87 and CDF1

<sup>91</sup> CD A10 paragraph 6.6 and Appendix 1

<sup>92</sup> Tom McCarthy PoE paragraph 5.25

<sup>93</sup> Tom McCarthy PoE paragraphs 5.25, 5.27, 5.28, 5.62, 5.63

167. The LPA's approach is inconsistent with strategic policy. The London Plan 2015 requires London authorities not only to plan for their own needs but to ensure that the needs of London (of all faiths) are met. Policy DC31 of the Core Strategy 2008 states that the LPA will ensure that sufficient land is retained to meet demand for burial space. That policy pre-dates policy 7.23 of the London Plan 2015 and must now be applied in a way which is consistent with it. To apply the policy only in relation to Havering's needs is inconsistent with London Plan policy 7.23 (and the SPG 2015), and with the statutory duty to co-operate and the Framework.
168. The LPA accepted in cross-examination that burial provision is a strategic matter and there had been no co-operation with other authorities on the subject of burial needs. The reason given was that there had been no request to do so by any other authority. The duty does not, however, depend on requests being made by other authorities; it is an obligation to co-operate on strategic matters without any such qualification.
169. The LPA's analysis of provision in Havering was flawed. It not only wrongly assumed that the Muslim population and death rate in Havering will not grow, but the projections for capacity at Romford, the only cemetery in Havering which purports to make provision for Muslim burial, were wrong too. Romford cemetery provides a "very poor" facility for Muslims, with a tiny area set aside, no mounded graves and no facilities for prayer and ablution and it has a high water table (which is made clear in the Local Plan 2008). Moreover, the calculation of capacity at Romford is wrong since it takes no account of the true demand that would arise without Gardens of Peace.
170. The LPA did not rely on any future capacity for Muslim burials at the Upminster cemetery and conceded that there could be no certainty of such in the future. There is little likelihood of the Rainham cemetery being a viable option for the provision of Muslim burials.
171. The LPA's reference to the policies in other NE London boroughs did not support its case but rather the appellant's proposition that there is no potential. The table submitted at the Inquiry<sup>94</sup> together with the Needs Assessment Report and proof of evidence<sup>95</sup> sets out the position. It gives no confidence that the planning policy system will produce further new provision for Muslim burial provision.
172. Despite the LPA having accepted the Needs Assessment Report without question, the LPA's advocate questioned the witness on matters not previously raised by the LPA, for example, the merit of inferring the growth of the Muslim population from that of the BAME population. The forecast of available grave space in 2012 was criticised and attention was drawn to the relatively high number of Muslim burials in Ealing, Barnet, Richmond and Merton.

#### *Benefits*

173. There are a number of benefits arising from the scheme<sup>96</sup>. They relate to community benefits, ecological benefits, landscape benefits, benefits to the Green Belt, as well as flood risk betterment. Individually they are significant. Cumulatively they amount to a very significant package of benefits that must carry

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<sup>94</sup> ID 7

<sup>95</sup> CD A10, section 6, Appendix 1, Peter Mitchell PoE paragraph 7.23, tables 2 & 3

<sup>96</sup> Niall Roberts PoE paragraph 6.101

very significant weight in support of the scheme. The LPA has ignored some of them and placed too little weight on others.

*Lack of suitable sites*

174. It is agreed that there is no policy requirement for an alternative sites assessment, but this can support a case for very special circumstances. An assessment of potential alternative sites was therefore submitted with the application. The LPA has two concerns about the assessment. In the statement of common ground it states that it "accepts the Assessment of Potential Alternative Sites submitted"<sup>97</sup>, but is concerned about the area of search. In its statement of case, and despite accepting the submitted Assessment of Potential Alternative Sites, it makes criticism of it for not considering Green Belt sites and for sieving out developed sites and sites in use as amenity, sport or recreation.
175. The appellant's original assessment was based on the charity's operational area with Redbridge as its centre but, at the request of the LPA, it extended the zone of search to include potential alternative sites which had come forward as part of an earlier application and, secondly, a wider area including Hackney, Tower Hamlets, Hackney Marshes and Wanstead Flats. As a result of the third reason for refusal the appellant extended the zone of search wider still, to include Camden, Islington, Enfield and Haringey. In the statement of common ground the LPA alleges that the appellant should have looked not just in NE London but in the rest of London.
176. The LPA's contention that the zone of search should have included the whole of London is unreasonable and results from confusion in respect of application of the proximity principle and policy 7.23 of the London Plan 2015. The GLA response to the Maylands Golf Club application makes clear that the GLA (who are responsible for the Mayor's policy objectives) had no objection to that proposal on proximity grounds or policy 7.23 of the London Plan, and were content with the alternative sites search carried out by the applicant<sup>98</sup>.
177. Green Belt land is excluded from the appellant's assessment because the central objective is to seek to avoid the use of Green Belt sites; the absence of non-Green Belt sites helps support the use of a Green Belt site. Green Belt policy does not require the need to demonstrate the lack of suitable sites either within or outside the Green Belt. None of the previously developed sites identified by the appellant are considered as alternatives because they will be inherently unsuitable and unaffordable for cemetery use and more suitably used for commercially viable urban forms of built development. Sport and recreation sites were excluded since they are in important community use already and protected by strong national and local policy. Any such a hypothetical site would be unaffordable. In any event, no such sites are available but, had they been, they would have been likely to have come to the charity's knowledge.
178. No one has identified an alternative site at any stage of the process. Of the 2 sites in Haringey and one in Enfield, one of those in Haringey is in use as a cemetery, the other is a wood, and both are Metropolitan Open Land. The site in Enfield is in allotments use and also Metropolitan Open Land. None of the sites is available.

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<sup>97</sup> CD D1 paragraph 7.14

<sup>98</sup> Niall Roberts PoE Appendix NTR2

179. The LPA referred to the Warlingham appeal decision letter. The circumstances in that case were very different. The appeal was made by a local planning authority, its case was supported by a report that was to inform the local plan process, the appeal concerned 4 specific Green Belt sites in local authority ownership and therefore available (the assessment was also undertaken in the context of PPG2 — the inspector recognised that a different weight would have been applied to these sites under the Framework). It was the level of investigation into these sites that was of concern to the Inspector. There is nothing in this case to assist the LPA's contention that the appellant should have considered all Green Belt land in NE London.

*Conclusions and overall planning balance*

180. The appeal proposal is in accordance with the statutory development plan. Other material considerations reinforce the case for planning permission to be granted. The appeal proposal complies with the Government's Green Belt policy. The harm caused by reason of inappropriateness is to be given substantial weight, but there is no additional harm caused to the Green Belt. Indeed, the proposal brings with it significant benefits in this regard. More than this there are other considerations that are to be weighed in the balance. Those other considerations, in particular the evident and important needs case, the various benefits of the scheme and the lack of any alternative site to accommodate the proposal, clearly and far outweigh the identified Green Belt harm. They provide a compelling case of very special circumstances to justify the development in accordance with Green Belt policy.

**The Case for the local residents**

181. Several local residents made statements at the Inquiry objecting to the proposal. Their cases are as follows.

***David Stovold on behalf of Maylands Green Belt Action Group***

182. The position of the Group was a very simple one: to safeguard Maylands Fields from development. It wanted it to be preserved as semi-natural Green Belt. The Fields had been described by the Council as 'a key strategic piece of land at one of the entrances to the borough'. It is a small area which represents the last scrap of Metropolitan Green Belt between London and Essex. Despite its small size it was accorded status as a Metropolitan Site of Importance for Nature Conservation. It serves as a vital green lung in an increasingly congested area. It is also flood plain. It is not credible that this last remaining area of undeveloped Green Belt can be the only site in London available for a cemetery. With the qualifications mentioned plus its poor transport links it should be the last site that should be considered.

183. The Action Group could not understand how it can be argued that a development consisting of 10,000 graves, with buildings, roads and a large car park, bringing traffic all the way from inner London, will not impact adversely on a site of semi-natural Green Belt. The point was made that cemeteries are commonplace in the countryside but there is a world of difference between a country churchyard and a site for 10,000 graves which is burial on an industrial scale. The many reasons for opposing this application, and others before it, had been detailed in submissions to the Inspectorate and the Planning Authority.

184. By way of background, prior to its sale in December 2002 Maylands Fields had been a valuable amenity for generations of local people. Subsequent destructive activity on the Fields led to a storm of protest and the formation of the Maylands

Green Belt Action Group in January 2003. Support from local residents for the preservation of the Fields over the years could be gauged from attendance figures at various events.

185. In January 2003, 450 people attended our first meeting. All in attendance, including councillors, were opposed to the development and loss of this prized community asset. A second meeting was held shortly afterwards attended by around 200 people who could not be accommodated at the first meeting. Between February and July 2003 Havering Council received over 200 letters objecting to development.
186. In April 2003 a petition of 779 signatures opposing the site's development and loss as a public open space was presented to the Council. A large demonstration was widely reported in the local press. In 2007 an application for registration of Maylands Fields as a Town Green was supported by 200 witness statements and 300 questionnaires confirming continuous use of the Fields by the public were submitted.
187. It was emphasised that these figures represented residents living in the immediate locality, not in other London boroughs. It is a strange argument that, because other boroughs have no policies in place, Havering must shoulder their burdens on its own. Havering, unlike inner London boroughs, has the additional responsibility of maintaining and protecting the Metropolitan Green Belt and this additional responsibility should be taken into account when interpreting its decisions.
188. Throughout the Action Group's 13 year campaign it had been encouraged by the Planning Inspectorate's stance. When reviewing previous legal and illegal activities in and immediately around Maylands Fields, it had always emphasised the value of the site, the use previously enjoyed by local people and the need to preserve the semi natural environment and the open aspect. It was hoped that the Inspectorate would continue to support this viewpoint. In respect of the open aspect referred to by previous Inspectors, while the A12 runs at a low level below the M25, the slip roads follow the lie of the land rising towards the M25 and afford good views of the Fields. The visibility of the Fields is also greatly increased in winter as the peripheral vegetation is largely deciduous.
189. Two particular matters were currently causing concern locally. The first was traffic. It is a fact that, whichever route is taken from London, to gain access to the Fields and then return, visitors would, at some point, be obliged to use the Brook Street roundabout. The Action Group had noted nine postings on the Brentwood Gazette website<sup>99</sup> concerning major delays affecting Brook Street roundabout during the period between April and early July this year alone. It is important to note that a record of traffic incidents actually on the roundabout will not tell the whole story. Incidents on the M25 and the A12 as far away as eight miles can bring the roundabout to a standstill. There are also photographs taken recently of traffic at a standstill tailing back to Harold Court Road<sup>100</sup>.
190. The other matter was flooding. There was photographic evidence<sup>101</sup> showing the serious flooding following recent rainstorms which affected properties at the bottom of Maylands Way, many properties on the south side of Ingreway and a number in Harold Court Road and Church Road. These photographs told a story which was in

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<sup>99</sup> ID5

<sup>100</sup> ID5

<sup>101</sup> ID5 and ID6



marked contrast to the official indifference shown to this problem and to the opinions of experts. There is now no public access to the Fields but if there was flooding over a large area in Church Road, which must be at least half a mile away from the western edge of the Fields, then there must have been extensive flooding on the Fields themselves. Residents are particularly concerned that any more development on the Fields will reduce their flood plain effect even further. They are also concerned about the possibility of leaching from graves into the River Ingreboume and ending up at their back door. This flooding was by no means the first. Residents can confirm that it is a long term problem.

191. This application is the wrong application in the wrong place. The Action Group asked that the appeal be refused.

***David Godwin***

192. Mr Godwin is a member of Maylands Golf Club and has been for twelve years. His main concerns arising from the proposed development were that he thought it would increase congestion on an already very busy road network, especially at the Brook Street roundabout. He mentioned the tunnel running under the M25 which is used by lots of wildlife, particularly deer. He had also witnessed many incidents of flooding at the golf course from the brook which overflowed regularly. He considered that the same would be true to the south of the A12 and questioned how a cemetery could be developed in such conditions.

***Andrew Sutton***

193. Mr Sutton had used the land for 60 years and remembered several incidents of severe flooding in the 1950s and 1960s. These resulted in the railway line being washed away, with the tracks left in mid-air, and three farms badly affected. The flood waters half covered Maylands Fields. He considered that since such flooding had happened before it could happen again, especially as nearby gardens get flooded now three or four times a year. He also pointed out that the appeal site was important for wildlife. In view of his own long connection with, and experience of, the area Mr Sutton questioned whether the appellant's witness on flooding could be as knowledgeable.

***Terry Andrews***

194. Mr Andrews had lived in the area all of his life and, from the age of three years, used the appeal site for camping, fishing and swimming. He said how beautiful the river was with its ducks and plenty of fish. His particular concern was with flooding which occurred now and again but which would be more severe if the cemetery went ahead because of the development and hardstanding. The main problem was with sewage which caused a terrible smell and mess. Mr Andrews' daughter and son live locally and have five children between them; following flooding incidents the children could not play in their gardens until they had been cleared up. Mr Andrews also reported that there had been a recent leak from a sewage works which wiped out all the fish in the affected river.

***Jean Cobb***

195. Mrs Cobb, who had lived locally for 45 years, had walked in the field every day when it was possible to gain access into it and knew every inch of it. She and many others had worked hard in London and, on moving to the area, found a little piece of countryside. This was now being taken away, however, including by the pollution

from the A12. Every last bit of remaining open land and trees should be preserved. The large cemetery at Hainault was now running out of burial space but it was important to stand up for the environment.

### **Written Representations**

196. Eighty eight objections were made to the appeal, mainly from the postcode area around the appeal site. Eighty six representations were made in support of the proposal, generally from the wider Muslim community and from further afield. A list of all those who objected to or supported the scheme is at Appendix 4 of this document.
197. The MP for Hornchurch and Upminster, Dame Angela Watkinson DBE, wrote in support of the residents who had objected. She considered that the Metropolitan Green Belt was a 'lung' between London and Brentwood and should be retained. She also thought that the additional traffic on a very busy road would have an impact on the residential area which was already coping with noise and pollution from the motorway, A12 and rail.
198. At the time the officer's report to committee<sup>102</sup> was written 1884 expressions of support had been received, mostly from addresses outside Havering. The majority simply voiced support for the proposal with a few adding that it was needed to address demand and that it would improve landscaping at the site.
199. 91 objections were made on the grounds of:
- Detriment to the Green Belt
  - Noise impact on neighbouring dwellings
  - Intensified use of nearby residential roads
  - Insufficient parking
  - Loss of protected trees
  - Not suitable near to a residential area
  - Loss of local recreation attraction
  - Highway safety on A12
  - Other, more suitable sites
  - Harmful to wildlife
  - Would not serve local people
  - Possible contamination of watercourse
  - Loss of privacy at neighbouring dwellings
  - Flooding
  - Site should be open to the public

### **Conditions**

200. A list of suggested conditions was discussed at the Inquiry and is attached at Appendix 5. They are agreed by the Council and appellant. I discuss the conditions in my Conclusions<sup>103</sup>.

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<sup>102</sup> CD C2

<sup>103</sup> Paragraph 299 of this document

## Conclusions

201. In this section of my report, numbers in square parentheses thus [ ] refer to paragraphs in the preceding sections of the report from which these conclusions are drawn.
202. The reason given by the Secretary of State for calling in this application for his decision is that it involves proposals for significant development in the Green Belt. In that light the main considerations are:
- Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;
  - The effect on the openness of the Green Belt;
  - The effect of the proposal on the character and appearance of the site and the visual amenity of the Green Belt; and
  - Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations? If so, would this amount to the very special circumstances required to justify the proposal?
203. The Council's third reason for refusal was that insufficient information had been submitted to demonstrate that the proposal could not be provided in closer proximity to those communities that it would serve. This matter is tied up with the question of need and potential alternative sites which the appellant advances as other considerations contributing to very special circumstances. I therefore address the matter in my discussion of those considerations.

### *Green Belt*

204. Taken as a whole the development proposed would be the change of use from agricultural to cemetery. The provision of appropriate facilities for cemeteries is listed<sup>104</sup> as a possible exception to the general inappropriateness of new buildings in the Green Belt, subject to such facilities preserving openness and not conflicting with its purposes. Certain other forms of development may also be not inappropriate but no changes of use fall within this category<sup>105</sup>. [20]
205. CS Policy DC45 is based on the guidance set out in now superseded Planning Policy Guidance note 2: *Green Belts* (PPG2). A significant difference between Policy DC45 and the Framework is that 'development' for the purpose of cemeteries will be permitted in the Green Belt, as opposed to the more restrictive 'new buildings' allowed by the Framework. [13]
206. Applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Policies in the Local Plan, here the CS, should not be considered out-of-date simply because they were adopted prior to the publication of the Framework. The Framework's policies are, however, material considerations which local planning authorities should take into account<sup>106</sup>. In this case, where the CS policy is inconsistent by reason of being based on a superseded PPG, the policy in the Framework is the most relevant

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<sup>104</sup> The Framework paragraph 89

<sup>105</sup> The Framework paragraph 90

<sup>106</sup> The Framework paragraph 212

consideration. As accepted by both main parties<sup>107 108</sup>, the proposed development would therefore be inappropriate in the Green Belt. [20, 42, 118]

### *Openness*

207. Openness, which is generally defined as the absence of development, is one of two essential characteristics of the Green Belt, the other being their permanence<sup>109</sup>. At the moment the appeal site is a large undeveloped plot, well screened by hedges and trees around its boundaries and characterised by swathes of meadow, oak woodland and riverside grassland. The only development on the site is a large barn, which has a modern, functional appearance, and the access way to it. The new buildings proposed would be two pavilions along with a separate building with wudu facilities and two workshops at the edge of the site. In volume these new buildings would not be as large as the existing barn. Purely in arithmetic terms they would not, therefore, reduce the openness of the site. [5, 23, 119,125]
208. There are, however, further considerations in assessing openness. In that respect the Council has drawn my attention to several judgements. These state that: openness is not limited to a volumetric approach and a comparison should be made between the existing site and how it would be if the scheme was implemented<sup>110</sup>; that other elements of built form such as hardstanding should be quantified<sup>111</sup>; any construction harms openness irrespective of its obtrusiveness or attractiveness<sup>112</sup>; and, an intensification of use<sup>113</sup> and/or the presence of parked cars<sup>114</sup> could harm openness. [43, 44, 46, 47]
209. In addition to the buildings there would be an access road which, some distance inside the gate, would split with one arm running around the edge of the site to give access to roadside parking and, eventually, the workshop and storage area. The other arm would turn and lead up to the main parking area and pavilion buildings. As well as this a network of hard-surfaced paths would wind amongst the grave areas and through the woodland<sup>115</sup>.
210. Apart from the roads and paths the single largest area of hard surfacing would probably be the central car park merging into the paved space in front of the buildings. Within the site as a whole there would be spaces for 120 cars, two coaches, six motorbikes and twelve cycles<sup>116</sup>. The total size of the hard surfaced areas has not been quantified but is clearly significantly greater than is on the site at present. New buildings which provide appropriate facilities for cemeteries are listed in the Framework<sup>117</sup> as exceptions to inappropriate development, subject to their preserving openness and not conflicting with Green Belt purposes. In that respect, the proposed buildings could be argued to have a neutral effect on openness.

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<sup>107</sup> CD D1 paragraph 7.12

<sup>108</sup> Niall Roberts PoE paragraph 7.16

<sup>109</sup> The Framework paragraph 79

<sup>110</sup> Turner v SSCLG [2016]

<sup>111</sup> Privett v Gravesham Borough Council [2016]

<sup>112</sup> Timmins v SSCLG [2014]

<sup>113</sup> Privett v Gravesham Borough Council [2016]

<sup>114</sup> Newlyn Dean and Sons v SSCLG [2014]

<sup>115</sup> DWG NO 3873\_200\_A

<sup>116</sup> CD A4 section 7.4, page 37

<sup>117</sup> The Framework paragraph 89

Overall, however, development on the site would be increased. [44, 46, 47, 120, 121]

211. The existing barn is located close to the eastern boundary of the site, is partially screened by vegetation and is set at a slightly lower level. As such it is not clearly visible from the majority of the site. The two pavilions and wudu building would be located fairly centrally. They would be carefully sited, adjacent to and shielded by the main area of woodland, and with existing and additional trees to their north west filtering views of them. They would, however, be more apparent from within the site than the existing barn is and as such would indicate its more developed nature. I do not agree that separating the pavilions and breaking up their mass would reduce their effect on openness. [45, 123, 125]
212. The surfaces of the road, paths, car parking and other paved areas would be flush with the surrounding ground. To my mind, and unless fairly close to, there would be little indication that they were there except when being used by vehicles and people. Around the buildings would be margins of raised decking with wooden balustrades; these would not be extensive and would be read as parts of the pavilion buildings. [44]
213. Funerals could take place on any day, including at weekends and on Bank Holidays, and would usually be held between 9.00 and 17.00<sup>118</sup>. The average adult Muslim burial is attended by between 70 and 80 people but attendance can range from a handful to as many as 300 people on rare occasions. Usually mourners would be at the cemetery for no longer than 45 minutes in total. Visits to the cemetery by family and friends can occur at all times during the year and are particularly frequent during the two Eid festivals. Fridays are typically busier days for visitors<sup>119</sup>. [47, 126]
214. Data on vehicle movements to inform the appellant's Transport Statement<sup>120</sup> was recorded at the existing cemetery in Elmbridge Road, Hainault. It is anticipated that the proposed cemetery would generally accommodate five burials a day; flows from the days where five funerals took place at Hainault were thus used as a reasonable reflection of the activity at the proposed site. The peak time, with around 120 vehicle movements per hour, was a two hour period between 14.00 and 16.00. Outside of this period average flows were considerably lower, for example 30 movements or fewer each hour between 9.00 and 13.00<sup>121</sup>. There is currently almost no authorised access to the site. The proposed development would result in daily movements to, from and within the site by vehicles as described. Those vehicles would invariably park in one of the areas designed for that purpose. [47, 126]
215. The proposed development, including the hard surfaced areas and taking account of the existing barn's removal, would therefore diminish openness. Although the road, paths and car park would not be significant structures, the movement of people and vehicles on them, and parking, would signal their existence. The intensified use of the site would also draw attention to its more developed nature. [47, 126]

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<sup>118</sup> Mohammed Dedat PoE paragraphs 4.2, 4.8, 4.14 & 4.18

<sup>119</sup> CD 15 paragraph 4.13

<sup>120</sup> CD A15

<sup>121</sup> CD A15 paragraphs 4.11, 4.14 and Table 4.2

216. On the other hand, the proportion of the whole site which would be developed would remain very small and the majority of movements would be concentrated into a fairly short period. Once the cemetery had reached capacity, probably in about 10 years' time, the level of activity there would decrease greatly; no further funerals would take place and the majority of people on site would be those visiting the graves of their family members and friends. [126]
217. When openness is reduced, the harm takes place regardless of whether or not it is visible or witnessed. To my mind, however, the extent to which it is visible has some effect on the level of harm. In this case visitors to the site, who could number several hundred every day, would be well aware that it contained development. Due to the screening hedge and other vegetation around the boundary, which would be largely retained, the majority of people beyond that boundary would notice little change from the site as it is now. [123]
218. All in all, the openness of the site would be harmed but there are factors, listed above, which temper that harm. My conclusion is, therefore, that the harm to openness would be limited.

*Purposes of Green Belt*

219. The western boundary of the site marks clearly the outermost edge of the built up part of Romford. The appeal site itself is part of a narrow strip of Green Belt between Romford and Brentwood. As explained above the proposal would result in more development on the site and intensification in its use. The density of development would, however, be very low and with the retained meadow, woodland and river margin it would remain essentially rural in character and appearance. [48, 49, 130]
220. Cemeteries are commonly found in urban, urban fringe and countryside settings. I do not consider, therefore, that the use in itself would constitute an intrusion into the rural area. In addition, the important boundary to the rear of Maylands Way would not be breached or otherwise altered. The proposed development would assist in safeguarding the countryside from encroachment and would not be in conflict with this or any other of the Green Belt purposes. [50, 51, 52, 128, 129]

*Character and appearance of site, visual amenity of Green Belt*

221. The proposed development would undoubtedly change the character of the appeal site. The proposed buildings, ancillary development and most particularly the graves would identify it as a cemetery in contrast to its existing status as underused agricultural land. In my view that change would be neutral rather than detrimental. As the largely undeveloped nature of the site would continue; as its characteristic natural features would be retained; and as the majority of the site would remain largely hidden from view for those outside its boundaries; I do not consider that the character of the surrounding, local area would be considerably altered. [134]
222. The proposed buildings would be single storey and largely timber-clad, although with substantial areas of glazing, and topped by shallow-pitched green roofs. They would have a modern, functional and unfussy appearance. To my mind this low-key style would be pleasing and appropriate to the rural character of the location. [119]
223. The graves would all be the same size with a low mounded top. Arranged side by side in ranks, with identical plaques and no other memorials they would be uniform. At Hainault the graves are covered with sedum; its pinky-bronze colour and rough

texture contrasts with the grass between the graves producing a ridged effect which, whilst not unattractive, is noticeable and unnatural. It is proposed here that the graves would be turfed<sup>122</sup>. As well as maintaining the meadow character, the differentiation between the graves and the land between would be less marked; there would still be a corrugated effect but it would not be unduly conspicuous. I noticed at Hainault that the plaques are not clearly apparent except on the nearest graves. I see no reason why that would not be the case here too, especially as the design of the plaques has been reconsidered. [36, 124, 134]

224. Around the buildings and main parking area would be located necessary street furniture such as seats, bollard and other low-level lighting, signage, charging points for electric vehicles and CCTV cameras. It seems to me that these items would be kept to a minimum and would not be unduly obtrusive in themselves. Taking account of the hard standing of the car park and area between and around the new buildings, this would be the most developed part of the site. Nonetheless it would be only a small part of the whole site. Much of the remainder, for example the woodland and river corridor, although improved and managed, would look very similar and cover much the same area as now. The meadow area where most of the graves would be located would be apparent as managed grassland, albeit that the graves closest to the viewer would be distinguishable. The new buildings and surrounds would be discreetly located at the edge of the woodland, partially screened by retained trees and supplemental planting in front and, by reason also of its sympathetic design and materials, integrated into the landscape. [36, 37, 40, 119, 124, 134, 137]
225. The increased level of activity at the site, which at some times would result in a significant number of people and vehicles being there, would emphasise the change in the use and character of the site. It would not, however, be detrimental to its character or appearance or those of the surrounding area. [40, 119]
226. Buildings are not in themselves an urban feature; it is generally their number and density which, amongst other characteristics, distinguishes an urban from a rural location. Similarly, whilst items of street furniture of the type proposed here are commonly seen in urban areas they are not exclusive to them. Roads and paths are necessary in all locations but in the countryside they tend to be more narrow and winding as would be the case in the proposed development. [36]
227. There would be very few buildings on the site, the existing, significant landscape features would be retained and the changes in the meadow would not be obtrusive. All in all I do not consider that the site would be significantly urbanised or that its essentially rural character would be harmed. The proposed development would harness the topography and ecological character of the site, including the retention of existing trees and landscape features whilst providing appropriate landscaping. It would complement the amenity and character of the area through its appearance, materials used, layout and integration with the surrounding land. Overall it would maintain and enhance the character and appearance of the local area, complying with CS Policy DC61. The Council considers this policy to be out-of-date but, due to its consistency with the Framework, it can be given significant weight<sup>123</sup>. [17, 35, 37, 39, 132, 134]

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<sup>122</sup>, CD A4

<sup>123</sup> The Framework paragraph 215

228. As the character and appearance of the local area would be preserved there would be no harm either to the visual amenity of the Green Belt. The proposed development would recognise the intrinsic character and beauty of the countryside, and contribute to and enhance the natural and local environment by protecting and enhancing a valued landscape, in line with the Framework<sup>124</sup>. [34, 133]
229. The area immediately to the north of the A12 is designated as a Countryside Conservation Area and Area of Special Landscape Character. Views into it and from it are thus protected by CS policies. The only discernible change in the view resulting from the proposed development would be an opening in the hedge for a new access point and access road. Since these would be screened by a new hedge planted immediately within the site, with the entrance gates set a few metres along the access road and out of sight from the highway, views into the site would be very limited. There would be no detrimental effect on views from the designated landscape area and its amenity would not otherwise be affected by the proposed development. [136]
230. I have noted the deciduous nature of much of the enclosing vegetation and that new planting will take some time to provide an effective screen. The most developed part of the site would be some distance from the boundary, however, and as the existing vegetation is thick and well-established it would effectively filter views even when bare of leaves. The planting of larger specimens would also provide some cover early on. All things considered, views into the site would not be significantly clearer during the winter months or in the early stages of the proposed development. [40, 188]
231. The Council has drawn my attention to an appeal against the refusal of an extension to the existing golf course north of the A12<sup>125</sup>. That proposal entailed the shaping of the land through tipping. Although two thirds of the site would be unchanged, other parts would be raised by four to seven metres; the Council's third reason for refusal refers to the extensive physical remodelling of the site<sup>126</sup>. No such works are proposed in this case and I can draw no helpful comparisons with that decision.

*Other considerations*

232. Inappropriate development is by definition harmful to the Green Belt. In this case harm by reason of inappropriateness is compounded by harm to the openness; substantial weight must be given to any harm to the Green Belt<sup>127</sup>. Inappropriate development such as the proposal here cannot be approved except in very special circumstances. The appellant has advanced three considerations which it considers amount to very special circumstances;
- Need
  - Benefits
  - Lack of suitable sites

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<sup>124</sup> The Framework paragraph 109

<sup>125</sup> APP/B5480/A/08/2082118

<sup>126</sup> Tom McCarthy PoE, Appendix D

<sup>127</sup> The Framework paragraphs 17 & 88



*Need*

233. The Islamic faith has specific burial requirements as follows:
- A need for haste – burial should take place within 24 hours of death;
  - Shroud burial – the body is wrapped in a cotton shroud and covered by wooden boards in the grave;
  - Grave orientation – the deceased is placed on the right shoulder facing Makkah;
  - Single burial in virgin ground – burial should also take place within an area set aside for Muslim burials, a concept similar to consecrated ground;
  - Burial of all body tissue – including foetal remains, stillborn babies and amputated body parts;
  - Mounding – graves should not be level but slightly mounded to enable them to be clearly seen and not trespassed upon;
  - Memorials – simple and plain, no elaborate headstones or other artefacts [158].
234. In addition other religious practices require specific provision to be made at Muslim cemeteries. These include facilities for funeral and daily prayers, and ablution provision so that those attending funerals may wash as required before prayers.
235. The appellant submitted a Need Assessment Report<sup>128</sup> which included details of burial space capacity in London, existing Muslim burial provision, and data in respect of the demand for Muslim burial. It found that when compromised burial provision, that is provision which does not meet the requirements set out above, is removed from existing cemetery provision, the existing Gardens of Peace cemetery remains the only one providing properly for Muslim burial. Remaining capacity there was put at between 2.5 and 5 years<sup>129</sup>. [159]
236. In his report to planning committee<sup>130</sup> the then case officer summarised the Need Assessment Report. It explained, he said, that in London as a whole there was an increasing shortage of burial space capacity. It was particularly acute for the Muslim community where there are special requirements not addressed by most London cemeteries; where there is a high rate of population growth; and where capacity at the most suitable burial facility is limited. The case officer added that he considered those aspects of the submitted report to be reasonable and that it adequately demonstrated that increased burial capacity including that which caters for Muslims would be likely to be required in London within the foreseeable future. [165, 172]
237. The Statement of Common Ground<sup>131</sup> takes a similar line. The planning committee report<sup>132</sup> is quoted, the special requirements are listed and it is acknowledged that the proposal would bring benefits in meeting the need for Muslim burial space in accordance with the faith requirements. In addition the Council accepts the evidence base submitted with the Need Assessment Report; that there is shortage of burial provision within London as a whole, as has been well-documented including by *An*

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<sup>128</sup> CD A10

<sup>129</sup> CD A10 paragraph 6.6

<sup>130</sup> CD C2 page 11

<sup>131</sup> CD D1 paragraphs 7.4 - 7.7

<sup>132</sup> CD C2

*Audit of London Burial Provision*<sup>133</sup> and *Planning for Burial Space in London*<sup>134</sup>; and that there is a growing need for increased burial capacity including that which adequately caters for Muslims. [165]

238. At the Inquiry, however, dispute emerged over some of the supplementary figures and methodology used in the appellant's proof of evidence on need<sup>135</sup>. It seems to me that the Council might be correct in some of its criticisms and that estimates of the number of Muslim graves remaining in 2021 might have been under calculated. In the Council's assessment, at 2012 rates, there would be an additional three more years of supply up until 2024<sup>136</sup>. It also calculated that, focussing on the estimated deaths in NE London only, there would be a supply equal to 14.7 years so up to 2029. In addition, the Council pointed to the appellant's own calculation of 971 Muslim deaths in NE London leading to a 15.6 year supply, that is, until 2030<sup>137</sup>. [57, 58, 61, 161, 162]
239. The absence of data, for example on death or population growth by religious belief<sup>138</sup>, makes such calculations less reliable, as does the need to use 2012 rates of burial. The appellant has made reasonable assumptions including taking account of the younger structure of the Muslim population in estimating death rates<sup>139</sup>. In reality, however, the figures are likely to underestimate the number of Muslim burials and thus overestimate the remaining capacity in future years. The estimates also disguise constraints on the availability of graves. In Newham the majority of those in private cemeteries are reserved and not available for general use; in Waltham Forest graves are restricted to residents of that borough only. [57, 62, 161, 163]
240. On the face of it, therefore, the overall supply of graves for Muslim burial does not appear unduly limited. This is to ignore, however, the fundamental shortcoming with the majority of provision, namely that it does not fully meet the requirements of the Islamic faith. In the NE London boroughs Folly Lane Muslim Cemetery has the best facilities, albeit no dedicated provision for prayer or ablutions, but is available only to residents of Waltham Forest. In theory Romford Cemetery is better than many, the main drawbacks being that it does not allow for mounded or children's graves and has no dedicated prayer facilities or ablutions. In practice, however, land at that cemetery has a high water table and cannot be used, a feature of sufficient severity to be recorded in the reasoned justification to CS Policy DC31. The Council also states that there is the potential to use Upminster Cemetery where the first phase of planning permission for an extension is currently being implemented. It was stated that a minor amendment to the permission would enable the reconfiguration of graves<sup>140</sup> but there was no clarification as to whether other Muslim requirements would be met. [62, 64, 65, 67, 164, 169]
241. The existing Gardens of Peace cemetery is the exception making provision for all burial requirements as well as prayer and ablution facilities for those attending funerals or otherwise visiting. The value to the Muslim community of this provision is

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<sup>133</sup> CD F1

<sup>134</sup> CD F2

<sup>135</sup> Peter Mitchell PoE

<sup>136</sup> ID 10 paragraph 47

<sup>137</sup> ID 10 paragraphs 50 and 51

<sup>138</sup> CD A10 paragraphs 5.1 and 5.10

<sup>139</sup> CD A10 paragraphs 5.14-5.19

<sup>140</sup> ID 10 paragraph 53

evident from the numbers buried there. Of all Muslim burials in London in 2012 over half, 1,203, were in Redbridge where the existing cemetery is located; Redbridge was at the top of the table of all London boroughs with the second borough being Waltham Forest with just 250 Muslim burials<sup>141</sup>. [60, 162]

242. Demand for burial at the existing Gardens of Peace cemetery has fluctuated over the years, decreasing by 1% between 2007 and 2008 and with no change between 2014 and 2015. The overall trend is for demand to increase; from 2006 to 2015 it rose by 14% and from 2010 to 2015 by 9%. If those trends continued capacity at both the existing Gardens of Peace cemetery and the new one at Five Oaks Lane<sup>142</sup> would be exhausted in between 3.5 and five years from now. [56, 67, 165, 167]
243. The Council's case at the Inquiry included whether it was necessary or appropriate to make such provision in Havering. Next to the very small borough of City of London, which has a Muslim population of just 409, at 4,829 Havering has the smallest population of Muslims in London<sup>143</sup>. The Council estimates that, by 2041, it will have grown to 10,100 but that Havering will still have the lowest Muslim population of all London boroughs. To my mind that ranking is immaterial. An increased future population of Muslims in Havering strengthens the case for there to be greater provision of uncompromised burial facilities in the borough.
244. The Council also considers that additional burial space is best provided through the local development plan process [64]. Information in connection with this matter was collated into a table, entitled *Allocation of Land for Burial Facilities*, during the Inquiry<sup>144</sup>. This indicates that the local plan policies of some boroughs, including Newham, Tower Hamlets and Waltham Forest, acknowledge the particular burial needs of many of their residents. In Newham<sup>145</sup> it was considered that there was no need for additional burial space in the short term; additional sites would be identified through the sites and policies development plan document (DPD). A draft version of that document has now been published but there are no burial sites in it. The same process was identified as the most appropriate in Tower Hamlets although the relevant DPD has not yet been produced. Waltham Forest's Policy CS5 considered the current provision of burial space to be adequate but that there was a strong need for new plots. [66, 160, 168, 171]
245. The first core planning principle set out in the Framework is that planning should be genuinely plan-led; plans should be kept up-to-date and should be based on joint working and co-operation to address larger than local issues<sup>146</sup>. Even so, that approach will not be sufficient to address the circumstances of the case before me here whereby the Muslim burial facilities provided by Garden of Peace will be exhausted in, it is likely, no more than five years. [66]
246. The Council's view is that the right to burial without compromise is not an absolute right. [77] To be buried in full accordance with the requirements of one's faith is, however, of great importance, not only for those contemplating their death but also

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<sup>141</sup> Peter Mitchell, App to PoE Figure 7

<sup>142</sup> This was granted planning permission in 2014 and development is currently in progress. It is expected to be ready for burials by January 2018. Mohammed Dedad PoE paragraph 3.7

<sup>143</sup> 2011 Census, Peter Mitchell, App to PoE Figure 2

<sup>144</sup> ID 7

<sup>145</sup> CS 2012

<sup>146</sup> The Framework paragraph 17

for their families. It seems to me that the certainty that, at death, one would be treated in accordance with one's faith would bring a peace of mind which would enhance general well-being and quality of life. An indication of the high value placed on uncompromised burial facilities by the Muslim community is illustrated by the numbers choosing to be buried at the existing Gardens of Peace cemetery. I thus attach considerable weight to the consideration of need. [73, 77, 78, 166]

247. LP Policy 7.23 states that provision should include for the needs of those groups for whom burial is the only option. It should also reflect the different requirements for types of provision. Whilst this part of the policy applies to LDF preparation it would be inconsistent for it not to have bearing on planning decisions also. To my mind, as well as referring to the difference in land requirement between cremation and burial, it includes an implicit need to take account of differing faith requirements, such as those material to this case.

*Benefits of the proposal*

248. There would be some public access to the site. This would be restricted to the times the cemetery was open, although the opening hours would be lengthy throughout the year, and there would be some rules for visitors to adhere to. To my mind these would be no more onerous than the respectful behaviour expected in any cemetery; the main requirement of the dress code is that men and women should wear trousers or long skirts so as not to reveal bare legs. I visited the Gardens of Peace cemetery in Hainault, unannounced, on a sunny Sunday afternoon. My experience was that a non-Muslim woman could wander round, enjoying the pleasant surroundings and without attracting attention or feeling out-of-place and unwelcome. [95, 173]
249. With its retained oak woodland and riverside meadow, through which the existing grass track would be retained<sup>147</sup>, the proposed development would provide an attractive and realistic destination for an occasional walk. The layout proposed and amount of land to be kept largely in its existing form would enable visitors to spend part of the time away from the immediate vicinity of graves if they chose. [95, 173]
250. I understand that the proposed access would be small compensation for those living nearby who have previously experienced unrestricted entry to the site. In addition, it would not be possible to walk dogs in the cemetery and it would probably not be appropriate to let children play boisterously or noisily there. Nonetheless, as there is currently no legitimate access for local people, I consider this would be a benefit of some weight. [95]
251. The site as existing is very pleasant but has suffered from neglect. It is covered by a TPO and the broadleaved woodland is a priority (Biodiversity Action Plan) habitat at the local and national level. The appeal proposals would keep the loss of trees to a minimum and no mature trees would be felled. Generally, woodland blocks would be retained and enhanced and there would be a greater number of trees on the site. The scheme would include new woodland edge planting, thinning and the creation of glades which would encourage a more diverse ground flora. Furthermore, a long term management plan would increase the ecological value of the woodland over time. All the enhancement measures are set out in the

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<sup>147</sup> DWG NO 3873\_200\_A

Landscape, Ecology, Cemetery Management Plan<sup>148</sup> which would be implemented through a condition. [5, 6, 7, 96, 134].

252. The habitats within the SINC have become degraded. There has been a loss in the extent and quality of grassland habitat, most notably through scrub encroachment, the woodland ground flora is species-poor, and the river corridor which contains invasive Himalayan Balsam, is shaded and choked. The submitted ecological assessment<sup>149</sup> concludes that the proposed development would not have an adverse impact on the SINC and that, through recognising and tackling problems such as these, the ecological value of the site will be enhanced. The presence of the TPO and SINC designation demonstrate the ecological value of the site. [7, 96]
253. The benefit of access and improvements to the site's ecology as proposed would, to my mind, attract at least moderate weight. My conclusion as to the weight to accord to public access and to the ecological improvements has been influenced by the Framework's guidance that local planning authorities should plan to enhance the beneficial use of the Green Belt. Providing access and retaining and enhancing landscapes, visual amenity and biodiversity are examples quoted of such enhancement<sup>150</sup>. [96]

*Lack of alternative sites*

254. The third consideration put forward by the appellant is that there are no suitable alternative sites. It submitted an assessment of potential alternative sites with the planning application<sup>151</sup> which was supplemented by two addenda. Following a request from the Council the first of these took account of sites that had been assessed as part of an earlier application for a burial ground adjacent to Maylands Golf Course<sup>152</sup>. The second<sup>153</sup> resulted from the officer's report to planning committee<sup>154</sup> which criticised the assessment for not including sites in Hackney and Tower Hamlets. It considers sites in these areas specifically Hackney Marshes and Wansted Flats. [174, 175]
255. The first stage of the assessment methodology<sup>155</sup> is the identification of sites, a map-based exercise which overlaid data to exclude sites which would not be appropriate. These included 'leisure, including golf courses, playgrounds and parks.' The second stage was to filter out sites within the Green Belt or Metropolitan Open Ground as they would not provide an alternative site unconstrained by Green Belt policy. The Council accepted the methodology of the alternative sites assessment but disagreed over the geographical extent of the search for alternative sites undertaken<sup>156</sup>. [174]
256. The Council considered that the appellant should have considered potential sites not just in NE London but in the rest of London as well<sup>157</sup>. Despite not having

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<sup>148</sup> CD A8

<sup>149</sup> CD A5

<sup>150</sup> The Framework paragraph 81

<sup>151</sup> CD A2 Appendix NTR4

<sup>152</sup> CD B3

<sup>153</sup> CD D3

<sup>154</sup> CD C2 Appendix NTR4 paragraphs 3.1 & 3.5

<sup>155</sup> CD A2

<sup>156</sup> CD D1 paragraph 7.14

<sup>157</sup> CD D1 paragraphs 7.14 and 7.15 c)

previously appeared to have concerns as to the methodology, in its statement of case and at the Inquiry the Council also advanced that Green Belt sites should have been considered and took issue with the exclusion of recreation sites. [82, 83, 174, 176]

257. The appellant's evidence on need indicates that a significant number of those buried at the existing Gardens of Peace cemetery lived outside of the nine NE London boroughs. Nonetheless there remains a high demand for uncompromised Muslim burial facilities in NE London. The Muslim population of NE London has increased significantly previously<sup>158</sup> and is likely to continue to do so in coming years<sup>159</sup>; the demand will therefore rise. In such circumstances I see no inconsistency in restricting the alternative sites search to NE London. The Gardens of Peace charity originated in NE London, its original and forthcoming cemeteries are there, the majority of people buried at its cemeteries come and will continue to come from the NE London boroughs. To my mind it is entirely reasonable for the charity to wish to locate a new cemetery, which will cater for the unfulfilled demand arising when the other cemeteries are full, in NE London. [82, 83, 84, 176]

258. The location of the search for alternative sites is related to London Plan Policy 7.23 on Burial Spaces<sup>160</sup> which establishes a principle of proximity to local communities. The London Planning Advisory Committee (LPAC) document, Planning for Burial Space in London (1997)<sup>161</sup> provides the following definition:

*"Proximity – The bereaved – particularly those who are elderly – should generally be able to visit graves or places of memorial without having to travel unduly long distances or incur great financial cost. The gradual filling of London's cemeteries means that for some, this is already impossible and is most likely to get worse. Also travel between areas relatively close to each other can be difficult where there is severance caused by transport or other infrastructure. As far as is practicable, people should have the choice of burial and/or commemoration broadly in the areas where they lived, if they so desire. This would have practical benefit by minimising travel needs and maintaining a sustainable pattern of land use."* [85, 140]

259. There is no standard for drive time catchment for burial grounds but 30 minutes is a generally-adopted standard<sup>162</sup>. The Council has accepted this. The appellant's transport witness explained at the Inquiry that the software used to map drive times includes drive speeds provided by the Department of Transport, is informed by Trafficmaster and TomTom data, and used by major organisations such as the NHS, Heathrow, Crossrail and London Boroughs as well as widely in the industry. The analysis indicated that a Muslim population of well over 500,000 lives within 30 minutes' drive of the site and that all of the NE London area is within a 25 minute drive time<sup>163</sup>. [87, 147]

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<sup>158</sup> CD A10 Table 4

<sup>159</sup> CD A10 Table 7

<sup>160</sup> CD E2

<sup>161</sup> CD F3

<sup>162</sup> As quoted in Vera Lamont PoE, the inspector in appeal decision APP/D0840/A/09/2098108 noted that in previous appeal crematoria cases an industry standard, or 'rule of thumb', had been applied at 30 minutes travel time for the funeral cortege.

<sup>163</sup> Vera Lamont PoE Figure,s Figure VL 1A

260. Information gleaned from Google Maps and some driving of various routes had been used to confirm the appellant's drive time results although at the Inquiry the Council disputed these and offered some contradictory evidence from similar sources. I note that the appellant's results are based on journeys made during uncongested periods. Although the majority of burials do not take place at times when there is most likely to be congestion, in reality there are times when the journey from parts of the catchment area would take longer than 30 minutes. The 30 minute travel time is, however, a guideline not an absolute. [87, 147]
261. Transport for London's (TfL) Public Transport Access Level (PTAL) mapping gives the appeal site a rating of 1a which is at the bottom of the scale. Compared with other locations within TfL's area, access to public transport from the appeal site is poor. In actual terms, however, the position is not as bleak. There is a westbound bus stop immediately adjacent to the site's northern boundary with the eastbound bus stop further away, some 840m from the proposed site access. The overall walking distance for those travelling to and from the site by bus would thus be approximately 900m. According to classifications set out by the Institution of Highways and Transportation (IHT)<sup>164</sup> this distance would be greater than the 'acceptable' walking distance of 800m but well within the 'preferred' distance (1,200m). From those bus stops services run to Brentwood and Romford at a peak frequency of mainly 15-20 minutes. [90, 148]
262. The evidence is, therefore, that the great majority of journeys to or from the proposed cemetery would take no longer than half an hour. It would therefore be consistent with the proximity principle set out in London Plan Policy 7.23. [87, 147]
263. In 2014 a planning application was made for a multi-faith burial ground at land adjoining Maylands Golf Course which is on the opposite side of the A12 from this appeal site. In its consultation response on the proposal<sup>165</sup> the Greater London Authority (GLA) confirmed that, although the burial ground was considered inappropriate development in the Green Belt, the applicant had demonstrated the pressing need as a very special circumstance to justify the proposal which was acceptable. The response did not refer to any conflict with the proximity principle and the conclusion was that the application complied with the London Plan. [174]
264. The GLA response also mentioned the assessment of other potential sites which had been carried out. In particular, playing fields had been discounted due to Sport England's wish to retain all sporting facilities. It was also noted that there were no other suitable sites on land outside of the Green Belt. The GLA response<sup>166</sup> did not raise any concerns with the methodology of that assessment. [86, 177]
265. The alternative sites process was intended to demonstrate that there were no suitable non-Green Belt sites available for the scheme. If there had been, the very special circumstances case put forward by the appellant to justify the development proposed for this particular Green Belt site would have been severely undermined. The exercise was not a general search for sites whereby it would have been necessary to treat all Green Belt sites equally, that is, either all included in the assessment or all sieved out. The Council states that it is not known whether there is a Green Belt site in NE London better located to meet the burial needs of the

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<sup>164</sup> IHT *Guidelines for Providing for Journeys on Foot*, 2000, Vera Lamont PoE Appendix VL2

<sup>165</sup> Niall Roberts PoE Appendix NTR2

<sup>166</sup> Niall Roberts PoE Appendix NTR2

Muslim community in accordance with the proximity principle. In the terms of LP Policy 7.23 burial provision should be proximate to local communities but there are no degrees of proximity. I have found that the appeal site would accord with the proximity principle. Thus it is not relevant if other Green Belt sites, and no evidence has been provided of any, are closer to the main area of Muslim population. [84]

266. The Council argues that there is no justification for excluding recreational sites from consideration when the development of a Green Belt site, which should be subject to strong protection, is being proposed. Recreational land is also well-protected. The Framework states that such sites, and buildings, should not be built on unless surplus to requirements, replaced elsewhere or developed for alternative sports and recreational provision<sup>167</sup>. No evidence has been provided indicating that either of the first two exceptions would apply to any recreational sites. Were recreation sites to be available in central, urban locations it would be a more efficient use of land for them to be developed with regenerative uses such as housing or employment. [86, 91, 177]
267. The Council asserts that there are potential sites in Haringey and Enfield which have been ruled out by the appellant because they are in the Green Belt or recreational use. [84, 88]. It does not, however, provide evidence of any which would be realistic alternatives. In fact, the appellant's information is that one of the sites in Haringey is in use as a cemetery, the other is a wood, and both are Metropolitan Open Land. The site in Enfield is in allotments use and also Metropolitan Open Land. None of the sites is available. [86, 177]
268. The appellant's need evidence drew attention to the fact that London boroughs often meet their residents' burial needs in other boroughs further from central London<sup>168</sup>; fourteen boroughs have twenty cemeteries outside of their administrative boundaries. The Audit of London Burial Provision<sup>169</sup> notes that it would be misleading to include burial grounds owned and managed by the Jewish and Muslim communities as specific to particular boroughs. It added that it was probable that such cemeteries had a wider catchment area than the borough in which they were located. [142]
269. Some of the practical circumstances which would apply in this case are not irrelevant. The distance of the site to the existing cemetery in Hainault and the new Five Oaks cemetery would allow the body washing facilities at those to be used, allowing the amount of development at the appeal site to be kept to a minimum. A site of 5ha or greater was preferable for reasons of economy, viability and longevity of use; it was thus reasonable for the alternative sites assessment to disregard sites below that size. [140]
270. An appeal decision from in January 2015<sup>170</sup>, which was brought to my attention by the Council, concerned an extension to an existing cemetery near Warlingham. The potential alternative sites, four of which were in the Green Belt, had come forward as part of a report into burial land prepared in 2010 to inform the Local Development Framework. At that time, under PPG2, cemeteries could be appropriate development in the Green Belt whereas since the publication of the Framework that position has

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<sup>167</sup> The Framework paragraph 74

<sup>168</sup> Peter Mitchel PoE paragraphs 4.5 & 4.6, Appendix Figure 1

<sup>169</sup> CD F1 paragraph 2.17

<sup>170</sup> APP/M3645/A/14/2224101



changed. To my mind there is no implication that Green Belt sites should be included in all searches for alternative sites. [20, 88, 89, 174, 177, 179]

271. The inspector in that case noted that the appeal site was not easily accessible by public transport with only a limited bus service; that deficiency thus countered the fact that the other candidate sites were in the Green Belt. Details of public transport to the Warlingham appeal site are not given in the decision. It appears to me from the location maps provided at the Inquiry<sup>171</sup> that the site was in a more rural location, on a B road and some distance away from the nearest residential area. It is, therefore, a reasonable assumption that bus services to that site will be more limited than those to this appeal site. Overall I do not consider that the circumstances of the Warlingham case are sufficiently similar for me to be able to draw any helpful comparisons with it. [88, 89]
272. There is no policy requirement to carry out a search for alternative sites when proposing development in the Green Belt. The Council has pointed to High Court cases, however, which recognise that the possibility of meeting need elsewhere is a material consideration<sup>172</sup> and that, the greater the harmful effects or the more serious the breach of policy, the harder an applicant has to work to show that there is no realistic alternative<sup>173</sup>. In providing the alternative sites assessment the appellant has shown that there is no possibility of meeting the need for the proposal elsewhere. As explained above the assessment is methodologically sound, covers an appropriate area and is otherwise robust. It thus indicates that there are not any suitable alternative sites, a consideration to which I attach moderate weight. [80, 174]
273. To conclude on the other considerations, the need for additional Muslim burial facilities attracts considerable weight. In addition, I attach moderate weight to both the benefits of the proposed development and the lack of alternative sites. My overall conclusion on Green Belt and other considerations is set out in the Planning Balance section at the end of this report.

### ***Other matters***

#### *Flood risk*

274. The EA originally objected to the scheme on the grounds that the submitted flood risk assessment<sup>174</sup> was not satisfactory. Its main concern was that development within the 100-year flood extent could increase ground levels and consequently reduce the available flood storage capacity. This matter was the basis of the Council's fourth reason for refusing the proposal<sup>175</sup>.
275. Following calculations balancing the loss of floodplain storage from burial mounds with the floodplain compensation provided by removing the existing barn, it was concluded that there would be a net gain in floodplain storage. The appellant

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<sup>171</sup> ID 8

<sup>172</sup> *Trusthouse Forte* [1987]

<sup>173</sup> *McCarthy v SSCLG* [2007]

<sup>174</sup> CD D1 Appendix SCG1

<sup>175</sup> CD C1

provided this information to the EA<sup>176</sup>; on receipt the EA withdrew its objection subject to conditions<sup>177</sup>.

276. Further calculations have been made based on generous assumptions, including as to the overall height of the grave mounds and the number of graves which would be located in the affected area, which result in an ample margin of error. The methodology was agreed by the EA and resulted in approximately 117m<sup>3</sup> of floodplain compensation compared with 87m<sup>3</sup> previously calculated.
277. In the light of the EA's objection, clarification<sup>178</sup> has also been provided on surface water drainage. This explains that, subject to a condition, there would be no increase in flood risk downstream as a result of the implementation of a SuDS and attenuation which would limit runoff to greenfield rates.
278. The Statement of Common Ground<sup>179</sup> states that the additional information on flooding submitted by the appellant has resolved the fourth RfR to the satisfaction of the local planning authority and the EA. The Council and appellant agree, therefore, that, subject to the imposition of conditions covering proposed compensatory flood storage measures, the development would not result in an unacceptable loss of floodplain storage and, furthermore, would be able to achieve acceptable runoff rates as part of a surface water drainage scheme. I have no reason to disagree with that position.
279. Several of those who appeared at the Inquiry were particularly concerned with the matter of flooding as they had witnessed flood events going back over many years. Such incidents must be worrying, unpleasant and upsetting especially when, as in Mr Andrews experience, sewage pollution is so bad that it must be cleared away before your grandchildren can play in the garden. We heard at the Inquiry, from the appellant's flooding witness, that the sewage problem is unfortunately common in South East England; it occurs as a result of surface water entering the foul sewer. Water companies are well aware of the issue and working to resolve it. [190, 193, 194]
280. These are, however, pre-existing problems. The floodplain compensation which would be provided within the scheme, and which is agreed by the EA, would ensure that flooding on the site and in the surrounding area would not be made worse by the proposed cemetery. Although the lower edge of the site is located within flood zones 2 and 3, the appellant has satisfactorily demonstrated that the site can be developed without increasing flood risk elsewhere. In addition the use of SuDS would reduce the rate of runoff from the developed surfaces and buildings on the site.
281. The incidents of flooding reported on the site itself are probably related to the impermeable nature of London Clay which can cause ponding during heavy rainfall. This occurrence will not be exacerbated by the proposed development. I am satisfied, therefore, that the proposed development would not cause further incidents of flooding either on the site or in the surrounding area.

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<sup>176</sup> CD B2

<sup>177</sup> Matthew Travis Proof of Evidence Appendix A.1

<sup>178</sup> CD D1 Appendix SCG1

<sup>179</sup> CD D1 paragraph 5.17

### *Pollution*

282. Muslim burials, in which the body is placed in a shroud only and not a coffin, are akin to green burials; the biodegradable nature of shrouds and absence of embalming fluids makes them less polluting. The rate of decay also tends to be faster which further reduces the pollution risk<sup>180</sup>.
283. The great majority of the application site is underlain by London Clay, an impermeable material which would prevent the by-products of decomposition from travelling in the ground and reaching sensitive receptors such as the river and nearby residents. Approximately 97% of the proposed graves would be on London Clay. The remaining graves would be on alluvium or head deposits. On-site surveys have shown that neither of these soils is sufficiently permeable to provide a pollution migration pathway.
284. Further protection from pollution would result from natural processes whereby pollutants, including pathogens, stick to the soil, break down into less harmful substances such as water, and are diluted. All in all I do not consider it likely that pollution resulting from the proposed use would harm local residents or the surrounding environment.

### *Ecology*

285. The appeal site is within a designated SINC. An ecological assessment<sup>181</sup> was submitted by the appellant and the Council had no objection to the proposal on ecological grounds, subject to the imposition of appropriate conditions. These would cover ecological mitigation and enhancement measures. The Council also concluded that the proposal would bring ecological enhancements to the site. Its position on ecology is clear from the SoCG<sup>182</sup>. Improvements to the site's ecology, which are described above, would be benefits of the proposal. [7]
286. With regard to the concerns of third parties the appellant's ecology witness explained that not all species are protected. Therefore, whilst the presence of animals such as deer, foxes or rabbits may be valued by members of the public, their presence has no weight in planning terms. Deer, for example, may be hunted and neither they nor their habitat are protected. He added, however, that the woodland habitat which is of greatest value to deer would be enhanced by the proposal and it would be expected that deer would continue to use the site. The tunnel under the M25 referred to by Mr Godwin would not be affected by the proposed development. [192]
287. Safeguards would also be put in place to prevent adverse impacts on nesting birds. Works would be timed to avoid potential impacts or checks for nesting birds would be made in advance of potentially damaging work taking place. If nesting birds were subsequently identified, the nest would be subject to a cordon, protecting it and immediately surrounding vegetation from damage until the young had fledged.
288. Water voles have not been recorded within the site. In any event, measures are proposed which would enhance the site for this species, encouraging colonisation in the future. Even were they to be present at this stage, the proposal would not have

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<sup>180</sup> Matthew Pannett PoE

<sup>181</sup> CD A5

<sup>182</sup> CD D1 paragraph 7.9

any adverse impact on the species as the riparian habitat on which it depends would not be harmed.

289. Lack of management over recent years has resulted in the site's habitats deteriorating. The measures outlined in the submitted ecological assessment<sup>183</sup> would reverse this decline and enhance the ecological value of the site. As a consequence its function as a wildlife corridor would be enhanced.
290. The proposed development would not adversely affect priority species or habitats and would protect and promote the linking of habitats via wildlife corridors. The amenity and biodiversity value afforded by trees and woodland would also be protected and improved. The scheme would thus comply with CS Policy DC58 and Policy DC60. In making a positive contribution to the protection, enhancement, creation and management of biodiversity it would also be consistent with London Plan Policy 7.19.

*Living conditions*

291. The proposed cemetery would be visible from the first floor windows of some of the surrounding houses. The gardens of those adjoining the site are, in the main, a reasonable length and provide a suitable degree of separation. In addition, the existing hedge and trees inside the boundary would be retained to provide screening. In particular, this would protect the privacy of those whose houses and gardens are side-on to the site. I do not consider that the proposed development would result in unacceptable overlooking or loss of privacy to adjoining occupiers or have other unreasonable adverse effects by reason of noise or its hours of operation.

*Traffic*

292. Many objectors were concerned about the impact of the proposed development on an already very busy road network. At the site visit my attention was drawn to the speed of traffic, despite restrictions, and the number of vehicles. Evidence was also provided as to the frequent holdups on the A12 and M25; the Brook Street roundabout is regularly congested. [189]
293. Additional traffic would, of course, be generated by the proposed development. The peak increase, however, would correspond to only two additional vehicles every minute, with the increase in traffic during the rest of the day being considerably less. Traffic flows would largely avoid the highway network peak periods. Overall, the application will represent approximately a 1% increase in the Average Annual Daily Flow figure for the A12<sup>184</sup>.
294. Given the limited daily impact and that trip generation largely occurs during the afternoon and does not coincide with the typical weekday morning and evening peak periods, it is reasonable to conclude that the application proposals would have no significant impact on the adjacent highway network, including the Brook Street roundabout.
295. Delays on motorway networks are not an uncommon occurrence and can result in unusual congestion or delays occurring on the surrounding highway. The appeal proposals would not result in any demonstrable increase in delays on the motorways

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<sup>183</sup> CD A5

<sup>184</sup> Vera Lamont PoE

and, given the traffic volumes in question, would not materially affect the resulting re-routing of traffic which might occur on the adjacent network.

296. During the site visit a resident drew my attention to the potential for conflict between the proposed access point and buses pulling into the bus stop. The position of the bus stop will have been taken into account by the appellant in designing the access and, during the consultation process, by the Highways Authority in considering its suitability and safety. There have been no objections from the latter and I am satisfied that the proposed access way would not constitute a risk to highway safety.
297. I am aware of the high level of objection from local residents to the development of the site which has continued for many years and which has included an application for it to be registered as a Town Green. I have also noted that there is much support for the proposal from the wider Muslim community. [186]
298. The appellant has expressed concern with regard to the way the application was dealt with by the Council, particularly the lack of an explanation for the apparent reversal in the officer's recommendation to the planning committee. The Council also changed its case in certain respects during the Inquiry causing me to have some doubt as to the strength of those sections. Nonetheless, I have taken all the evidence which has been put before the Inquiry into consideration. [105, 106, 107, 108]

### **Conditions**

299. The conditions set out in Appendix 5 will make the development acceptable. They meet the tests set out in the Framework<sup>185</sup> in that they are necessary, directly related to the proposed development and fairly and reasonably related in scale and kind to it.
300. In the light of its proximity to the route of a Roman road and previously undeveloped nature, an archaeological works' programme is necessary to investigate the site and record any findings. The conditions in respect of compensatory flood storage, surface water drainage scheme and buffer zone along the river are essential to manage the effects of the site's flood zone location satisfactorily.
301. The Section 278 agreements will ensure that the work to be carried out on the highway is completed to the standards and satisfaction of the Local Highway Authority; together with conditions providing the site access and improving the pedestrian environment they are in the interests of highway safety.
302. The provision of the car parking areas will protect the appearance of the site and public safety whilst storage facilities for cycles will enable and encourage the use of modes of transport other than the private car. The implementation of an approved construction method statement is necessary to protect the living conditions of those living close to the site, as are the restricted hours of construction work, and highway safety. The submission of materials samples, boundary treatment details, CCTV and lighting scheme, and refuse and recycling facility details, for approval; the implementation of the landscaping scheme; and the specification of the burial identification plaques are all necessary to protect the appearance of the site and surrounding area, and the openness and visual amenity of the Green Belt. The

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<sup>185</sup> The Framework paragraph 204

eventual removal of one of the workshops is also in the interests of Green Belt openness.

303. Limiting the number of graves and their location as shown on the masterplan drawing is necessary for clarity as this is the basis on which my recommendation is made. The conditions in respect of the Landscape, Ecology and Cemetery Management Plan and a scheme to permit public access are also necessary to implement benefits of the proposed development to which I have given weight in formulating my recommendation.

### ***Planning Balance and Conclusion***

304. The proposed development would be inappropriate in the Green Belt and thus harmful by definition. There would also be some harm to openness but no conflict with Green Belt purposes or damage to the visual amenity of the Green Belt. Neither would there be any detriment to the character and appearance of the site or surrounding area.
305. The appellant has advanced three other considerations. These are the need for burial facilities for Muslims; the benefits of the proposed development in terms of access for the public and improvements to the site's ecology and landscape features; and the lack of suitable alternative sites. In my opinion, the first consideration, that of need, carries considerable weight such that it is sufficient in itself to clearly outweigh the substantial weight which must be attached to Green Belt harm. In any event, the other two considerations each carry at least moderate weight. Very special circumstances justifying the proposal therefore exist.
306. The proposed development would be consistent with Policy 7.23 of the London Plan, adopted March 2015, which states that, in LDF preparation, boroughs should ensure provision is made for London's burial needs, including the need of those groups for whom burial is the only option. In addition it requires that provision should be based on the principle of proximity to local communities and should reflect the different requirements for types of provision.

### **Recommendation**

307. I recommend that the appeal be allowed and planning permission be granted subject to the conditions in Appendix 5 of this report.

*Sian Worden*

Inspector

## Appendix 1 Appearances

### FOR THE LOCAL PLANNING AUTHORITY:

Isabella Tafur of counsel She called Tom McCarthy BSc(Hons) PG Dip, MRTPI	Instructed by the London Borough of Havering  Mineral and Projects (Principal) Planning Officer, London Borough of Havering
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### FOR THE APPELLANT:

Craig Howell Williams QC  He called Matthew Travis BSc (Hons) MSc C.WEM M.CIWEM CSci C.Env Matthew Pannett BSc MSc Karl Goodbun BSc (Hons) MCIEEM Alister Kratt BA (Hons) CMLI Vera Lamont BEng MICE MCIHT MCMI Peter Mitchell FICCM Dip ICCM Mohammed Dedat Niall Roberts BSc (Hons) DipTP MRTPI MIOd CMILT MCMI	Instructed by Mrs Sue Iron, Laytons Solicitors LLP  Director Enzygo Ltd  Principal, Ramboll Environ UK Ltd  Director Ecology Solutions Ltd  Director LDA Design  Director Mayer Brown Ltd  Principal, Peter Mitchell Associates  Management Board Member, Gardens of Peace Managing Director NTR Planning
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### INTERESTED PERSONS:

David Godwin	Local resident and golf club member
David Stovold	Local resident and on behalf of Maylands Fields Green Belt Action Group
Andrew Sutton	Local resident
Terry Andrews	Local resident
Jean Cobb	Local resident

## **Appendix 2 Documents submitted at the Inquiry (ID)**

- 1 Opening statement on behalf of the Appellant
- 2 Opening statement on behalf of Havering Council
- 3 Erratum to Mr Mitchel's proof of evidence
- 4 Proposals Map, London Borough of Havering Local Development Framework
- 5 Statement made by Mr Stovold
- 6 Photographs submitted by Mr Andrews
- 7 Table showing allocation of land for burial facilities
- 8 Appeal decision APP/M3645/A/14/2224101 inc. location plans
- 9 Closing statement by Mr D Stovold
- 10 Closing submissions on behalf of Havering Council
- 11 Closing statement on behalf of the Appellant

## **Appendix 3 Core Documents (CD)**

### **Application Submission Documents**

- |     |   |        |
|-----|---|--------|
| A1  | Application covering letter, application form and ownership certificate | File 1 |
| A2  | Planning Statement  |        |
| A3  | Air Quality Statement   |        |
| A4  | Design and Access Statement   |        |
| A5  | Ecological Assessment   |        |
| A6  | Flood Risk Assessment   |        |
| A7  | Historic Environment Assessment   |        |
| A8  | Landscape, Ecology, Cemetery Management Plan                            |        |
| A9  | Landscape and Visual Appraisal  |        |
| A10 | Need Assessment Report  |        |
| A11 | Noise Assessment  |        |
| A12 | Pollution Risk Assessment   |        |
| A13 | Statement of Community Involvement                                      |        |
| A14 | Sustainability Statement  |        |
| A15 | Transport Statement   |        |
| A16 | Tree Survey and Arboricultural Impact Assessment                        |        |

### **Post-Application Submission Documents**

- |    |   |        |
|----|---|--------|
| B1 | Appellant's Response to Recommendation for Refusal dated 16 <sup>th</sup> February 2015 | File 2 |
| B2 | Letter from Environ to the Environment Agency dated 6 <sup>th</sup> February 2015       |        |



B3 Alternative Sites Assessment Addendum

**Local Authority Decision Process**

C1	Decision notice dated 23rd February 2015	File 3
C2	Officer's report to Committee	
C3	Committee Meeting Minutes	
C4	EIA Screening Opinion dated 24th September 2014	

**Appeal Submission Documents**

D1	Statement of Common Ground	File 4
D2	Appellant Statement of Case	
D3	Assessment of Potential Alternative Sites Addendum 2	
D4	London Borough of Havering Statement of Case	
D5	London Borough of Havering Suggested Draft Conditions	

**Relevant Planning Policy Documents**

E1	The National Planning Policy Framework 2012	File 5
E2	The London Plan (FALP)	
E3	Havering Core Strategy and Development Control Policies Development Plan Document 2008 (inclusive of adopted Proposals Map)	File 6
E4	Havering Sustainable Design and Construction SPD, 2009	
E5	Social Infrastructure Supplementary Planning Guidance, 2015	
E6	Havering Landscaping SPD, 2011	
E7	Havering Protecting and Enhancing the Borough's Biodiversity SPD, 2009	
E8	Connecting with London's Nature: The Mayor's Biodiversity Strategy, 2002	

**Reference Documents for Public Inquiry Appeal**

F1	An Audit of London Burial Provision: A Report for the Greater London Authority by Julie Rugg and Nicholas Pleach, Cemetery Research Group, University of York, 2011	File 7
F2	Planning for Burial Space in London: Policies for Sustainable Cemeteries in the New Millennium prepared by London Planning Advisory Committee, 1997	

#### Appendix 4 List of those making representations in respect of the planning appeal.

Name	Postcode
P Webster	RM3
P Thompson	RM3
R Henry	RM3
S Henry	RM3
P Nicholson	RM3
D Peters	RM3
J Monksfield	RM3
J & Y Mills	RM3
G Mills	RM3
G Taylor	RM3
S Fraser	RM3
R Brown	CM14
J Cobb	RM3
Mr & Mrs E Watts	RM3
E Savill	RM3
G Dempsey & I Chappell	RM3
D Stovold for Maylands GB Action Group	RM3
A Clayden	RM3
M Huckstep	RM3
J Ayling	RM3

Name	Postcode
K Wood	RM3
J Gillingham	RM3
A Armstrong	RM3
Mr & Mrs Worrell	RM3
N Stanes	RM3
L Boddy	RM3
E Campbell	RM3
G Cook	?
W Lai	RM3
D Butler	RM3
C & Y Hunt on behalf also of J & B McCall, M Lerner, P Thomas	RM3
C Savidge	RM3
M Pudney	RM3
N Iacovou	?
R & J Brookes	RM3
A J Zetter	RM3
T & M Loveland	RM3
S Panter	RM3
Mr & Mrs W Gould	RM3
Mr & Mrs J Sharpe	RM3

Name	Postcode
I Blackburn	RM14
R Hancock	RM3
Mr & Mrs PP Cooke	RM3
AP & C Wright	RM3
M & A Matthews	RM3
Mr & Mrs D Stovold	RM3
T, C, R & G Swallow	RM3
S Harding & family	RM3
S Proud	RM3
Mr & Mrs M Thorogood	RM3
F Kent	RM3
N Fraser	RM3
D Field	RM3
R Buckfield	RM3
B & J Pudney	RM3
B Fairbairn	RM3
J Matthews	RM3
V Wright	RM3
K Wharnsby	RM3
I M Thomas	RM3
M Johnson	RM3
B Cannon	RM3
H Williams	RM3

Name	Postcode
K Stewart	RM3
J Lynch	RM3
A Zenonos	?
G & P Piper	?
C Leverett	RM3
K Clapham	RM3
Mr & Mrs J Lydell	RM3
A Hutton	RM3
K Howard	RM3
V Tzannatos	RM3
S Beney	RM3
M Beney	RM3
Sam Beney	RM3
S Wylde	RM3
G Edwards	RM3
R Bearpark	RM3
R Beech	RM3
W Redmond	RM3
G Piggott	RM3
Cllrs D Wise, B Eagling & A Donald on behalf of Harold Wood, Hill, Park Residents' Assoc.	RM3
A Goodman	RM3
A Sawyer	?
D Field	RM3

Mr & Mrs Lynch	?
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J Brookes	RM3
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### Support

Name	Postcode
R ZZaman	IG4
M Ali	RM10
L Ladipo	IG11
S Haq	IG7
J El-Murad	SE6
R Newitt	RM3
F Miah	IG11
Z Ahmed	IG2
A Alam	IG2
M Rafiq	E7
Z Ahmed	IG2
M Bellevue	RM10
M Mahmud	E7
N Collinson	RM13
S Majid	?
S Bosca on behalf of Qur'ani Murkuz Trust	E2

Name	Postcode
S Alam	E14
N Ahmed	IG1
M Javed	IG1
E Ismail	E18
Mehmud Patel on behalf of Masjid & Madrasha Al Tawhid	E15
Z Nadat	?
A Raja on behalf of Al-Ansar Islamic Education Centre	IG3
N Khan	?
Z Motin	E4
M Akhter	Havering
A Nawaz on behalf of Ilford Islamic Centre	IG1
Y Hansa on behalf of Noor Ul Islam Trust	E10
Y Zamakda	E13
A Zamakda	E13
M Zamakda	E13
S Zamakda	E13

Name	Postcode
Z Ali on behalf of Alliance of Muslims Assocs. in Newham	E7
F Patel	RM6
S Haq	IG7
H Qamar	IG7
A Khayer on behalf of Redbridge Islamic Centre	IG2
G Nadat	IG1
T Ahmed	?
K Zaman	?
Y Jasat	?
R Huq	?
S Janjua	?
T Chaudhri on behalf of EIC Almasjid	N18
R Soopee on behalf of Al Birr Islamic Trust	SE18
I Rajput on behalf of IR Muslim Funeral Service	N8
A Ali on behalf of Alnoor Cultural & Educational Trust	IG11

Name	Postcode
F Ismail on behalf of the Federation of Muslim Organisation in Redbridge	IG1
F Ismail	IG1
F Patel on behalf of the Seven Kings Muslim Educational Trust	IG3
M Akhtaruzzaman	IG5
A Nadat	IG1
M Nakhuda	?
S Ravat	E7
R Khan	?
S Shaikh	?
M Khan	Havering
S Yousaf	?
Anjuman-e-Islamia Jami Mosque	E12
A Mumin on behalf of 13 Rivers Trust – Eden Care UK	E1
M Fahim on behalf of Qur'ani Murkuz Trust	E18
T Morris on behalf of Institute of Cemetery and Crematorium Management	

Name	Postcode
M Palfreman on behalf of Haven House Children's Hospice.	IG8
A Badat	E13
N Malik	IG2
M Miah	
P Badruddin on behalf of Havering Islamic Cultural Centre	RM7
A Akhtar	Emerson Park
M Akhtar	Emerson Park
M Boumaraf	?
A Chaudhary	IG7
F Ismailjee	Emerson Park
A Rajbee	Hornchurch
M R Akhtar	Emerson Park

Name	Postcode
Cemeteries Manager, St Albans City and District Council.	AL1
M Rafiq	E7
M Hazan	IG2
A Ali	Dagenham
I Nabeela	Emerson Park
S Ouafa	?
A Izmeth	Tower Hamlets
N Mahmood	E7
K Abdallah on behalf of Al-Bayan Welfare Centre	IG
J Akhtar	?
F Maruf	E12
D Khan on behalf of East London Mosque and London Muslim Centre	E1

## Appendix 5 Schedule of suggested conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall not be carried out otherwise than in complete accordance with the approved plans, particulars and specifications as detailed below:
  - 3873\_101 Site location plan
  - 3873\_200A Masterplan
  - 3873\_201A Landscape proposals
  - 3873\_202C Landscape detail pavilions area
  - 3873\_203 Landscape sections
  - A-00-01 Proposed ground floor plan - pavilions
  - A-00-02 Proposed roof plan - pavilions
  - A-00-03 Proposed ground and roof plans – storage area
  - A-01-01 Proposed sections - pavilions
  - A-01-02 Proposed sections - pavilions
  - A-01-03 Proposed sections – pavilions
  - A-01-04 Proposed sections – storage area
  - A-02-01 Proposed elevations AA - pavilions
  - A-02-02 Proposed elevations BB - pavilions
  - A-02-03 Proposed elevations CC - pavilions
  - A-02-04 Proposed elevations DD - pavilions
  - A-02-05 Proposed elevations EE and FF - pavilions
  - A-02-06 Proposed elevations – storage area
  - A-02-07 Proposed elevations – storage area
- 3)
  - a) No development shall take place until the applicant has secured the implementation of a programme of archaeological works in accordance with the Written Scheme of Investigation which has been submitted by the applicant and approved by the local planning authority.
  - b) No development or demolition shall take place other than in accordance with the Written Scheme of Investigation approved under (a).
  - c) The use hereby permitted shall not commence until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under (a), and the provision made for analysis, publication and dissemination of the results and archive deposition has been secured.
- 4) The development hereby approved shall be carried out in accordance with the Flood Risk Assessment, dated December 2014, reference: UK11-20217 and letter and email, dated 6 February, reference: GG/CD/LUK11-20217\_1\_Response to EA Letter 122074, specifically the compensatory flood storage measures detailed within. The use hereby permitted shall not commence until the above mitigation measures are fully implemented.
- 5) No development, with the exception of the formation of site access and demolition of the existing agricultural barn, shall take place until a detailed surface water drainage scheme for the site, based on the submitted Flood Risk Assessment, dated December 2014, reference: UK11-20217 and letter

and email, dated 6 February, reference: GG/CD/LUK11-20217\_1\_Response to EA Letter 122074 has been submitted to and approved in writing by the local planning authority. The drainage strategy shall include a restriction in run-off from the site to the greenfield rate and the provision of green roofs, French drains, swales and gravel paths and a timetable for its implementation. The development shall be carried out in accordance with the approved details and retained and maintained thereafter.

- 6) The use hereby permitted shall not commence until an approved scheme for the provision and management of an 8 metre wide buffer zone alongside the River Ingrebourne has been submitted to and approved in writing by the local planning authority. The buffer zone should be kept free from built development. The development shall be implemented in accordance with the approved details.
- 7) No development shall take place until a Section 278 agreement, with Transport for London, has been entered into in respect of the proposed access improvements.
- 8) No development shall take place until the site access as shown on drawing titled 'Proposed Deceleration Lane and Merging Taper', drawing number MBSK150731-2, has been constructed in accordance with the approved details.
- 9) No development, with the exception of the formation of the site access and demolition of the existing agricultural barn, shall take place until a scheme for improvements to the pedestrian environment, which shall seek to improve tactile paving provision at up to three locations, has been submitted to and approved in writing by the local planning authority. The applicant shall then enter into the necessary S278 with Transport for London and the London Borough of Havering and implement the scheme as approved.
- 10) No building shall be occupied or use commenced until the car and vehicle parking areas shown on the approved plans have been provided, and thereafter, the areas shall be kept free of obstruction and available for the parking of vehicles associated with the development.
- 11) No building shall be occupied or use commenced until details of the cycle storage have been submitted to and approved in writing by the local planning authority. The details shall include the design, location and number of spaces for cycle storage to be provided. The development shall be carried out in accordance with the approved details and retained and maintained thereafter.
- 12) No development shall take place until a Construction Method Statement to control any potential adverse impact of the development on the amenity of the public and nearby occupiers has been submitted to and approved in writing by the local planning authority. The Construction Method statement shall include details of:
  - Parking of vehicles of site personnel and visitors;
  - Storage of plant and materials;
  - Wheel scrubbing/wash down facilities;
  - Dust management controls;
  - Measures for minimising the impact of noise and, if appropriate, vibration arising from construction activities;



- Predicted noise and, if appropriate, vibration levels for construction using methodologies and at points agreed with the local planning authority;
- A scheme for monitoring noise and if appropriate, vibration levels using methodologies and at points agreed with the local planning authority
- Siting and design of temporary buildings;
- A scheme for security fencing/hoardings, depicting a readily visible 24-hour contact number for queries or emergencies; and
- Details of disposal of waste arising from the construction programme, including final disposal points. The burning of waste on the site at any time is specifically precluded.

The development shall be carried out in accordance with the approved scheme and statement.

- 13) Any construction works or associated activities audible beyond the boundary of the site should not be carried out other than between the hours of:  
0800 – 1800 hours Monday to Friday, and  
0800 – 1300 hours on Saturdays  
and at no other times, including Sundays and Public/Bank Holidays, unless otherwise agreed in writing by the local planning authority.
- 14) No development, excluding demolition and provision of a site access, shall take place until samples of all materials to be used in the external construction of the buildings hereby approved are submitted to and approved in writing by the local planning authority. The development thereafter shall be constructed in accordance with the approved details.
- 15) The development hereby permitted shall be carried out in accordance with the landscape scheme, and scheme of hard and soft landscaping submitted as part of the application and referred in condition 2 of this decision. All works proposed to existing trees and vegetation on-site shall be undertaken in accordance with details referred on the drawing titled: 'Proposed Tree Works Plan', drawing no. 3873\_300, which illustrates tree sizes as planted. All new planting, seeding or turfing comprised within the proposed landscaping scheme shall be carried out in the first planting season following completion of the relevant phase of the development and any new trees or plants which within a period of 5 years from completion of landscaping in the relevant phase die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority.
- 16) The development shall be managed in accordance with the Landscape, Ecology and Cemetery Management Plan submitted as part of the planning application.
- 17) No development, excluding demolition, shall take place until details of the proposed boundary treatment on site and a timetable for its implementation have been submitted to and approved in writing by the local planning authority. The treatment proposed should follow the principles established in the landscape scheme and shall be permanently retained and maintained thereafter.

- 18) Prior to the use of the site hereby permitted commencing, details of the proposed location and design of the refuse and recycling facilities within the development shall be submitted to and approved in writing by the local planning authority. The refuse and recycling facilities shall be permanently retained thereafter.
- 19) The use hereby permitted shall not commence until details of any proposed CCTV and all external lighting shall be submitted to and approved in writing by the local planning authority. The scheme of lighting shall include details of the extent of illumination together with precise details of the height, location and design of the lights. The installation of any such CCTV equipment and lighting shall be undertaken in accordance with the approved details.
- 20) The use of one of the workshops defined within the 'workshop and storage area', on the drawings hereby approved as part of this permission, shall cease within six months of the facility reaching burial capacity. Within a further six months of that date the workshop shall be removed from the site and the land restored in accordance with the landscaping and management plan, secured by condition to this permission.
- 21) Burials shall only take place in the areas identified as such on approved drawing titled 'Masterplan', drawing number: 3873\_200\_A, dated 29/01/15 and provision shall not be made for more than 10,000 burials to take place on-site.
- 22) The burial identification plaques referred to in the Landscape, Ecology and Cemetery Management Plan shall not exceed 30cm x 30cm in size and shall be of green granite or such other material as may be agreed in writing by the local planning authority.
- 23) The use hereby permitted shall not commence until details of a scheme permitting public access to the site during the opening hours of the burial ground shall be submitted to and approved in writing by the local planning authority. Such scheme may provide that there shall be no dogs taken onto the site (save for guide dogs) and for visitors to the burial ground to dress modestly. Access shall thereafter be maintained in accordance with the approved scheme unless otherwise agreed in writing by the local planning authority.

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## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.