



Department for  
Communities and  
Local Government

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Our ref: APP/C3430/W/15/3039163  
Your ref: PH/005/15

06 November 2017

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY WESTERLEIGH GROUP  
LAND OFF BROAD LANE, ESSINGTON, SOUTH STAFFORDSHIRE  
APPLICATION REF: 14/00906/FUL**

1. I am directed by the Secretary of State to say that consideration has been given to the report of John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI, who held a conjoined public local inquiry opening on 7 March 2017 for six days into your client's appeal against the decision of South Staffordshire District Council ("the Council") to refuse planning permission for the construction of a crematorium with ancillary book of remembrance building, floral tribute area, memorial areas, garden of remembrance and associated parking and infrastructure, at land off Broad Lane, Essington ("the appeal scheme"), South Staffordshire, in accordance with application ref: 14/00906/FUL, dated 4 November 2014. The inquiry also considered an appeal against the decision of the Council to refuse planning permission for a proposed crematorium at land off Holyhead Road, Wergs ("the Wergs appeal"), Codsall, South Staffordshire, in accordance with application ref: 14/00838/FUL, dated 14 October 2014.
2. On 22 March 2017, these appeals were 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 both proposals represent significant development in the Green Belt.

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

3. The Inspector recommended that the appeal scheme should be dismissed and planning permission refused.
4. For the reasons given below, the Secretary of State disagrees with the Inspector's conclusions, and with his recommendation. He has decided to 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.

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## **Policy and statutory considerations**

5. 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.
6. In this case the development plan consists of the South Staffordshire Core Strategy (CS), adopted in 2012. The appeal site is located in the West Midlands Green Belt (IR5), and the Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR11, including policy GB1 which sets out the types of development which are not appropriate in the Green Belt.
7. 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') and the Cremation Act 1902, as amended.

### *Emerging plan*

8. The Council submitted its Site Allocations Plan to the Secretary of State on 15 September 2017. In view of the current status of that Plan, the Secretary of State gives it little weight but, in any case, is satisfied that it does not affect the Green Belt status of the appeal site.

## **Main issues**

9. The Secretary of State considers that the main issue is whether the benefits of the proposed crematorium clearly outweigh the harm to the Green Belt and any other harm, so as to amount to the very special circumstances necessary to justify the proposal.

### *Green Belt Policy*

10. The Secretary of State agrees with the Inspector and the parties that the appeal proposal would not fall within one of the exceptions set out in CS Policy GB1 and paragraph 89 of the Framework, and would therefore constitute inappropriate development in the Green Belt (IR13). He also agrees that, although the proposal represents inappropriate development in the Green Belt which, by definition, would be harmful to the Green Belt, for the reasons given at IR14 there would be no material harm other than that caused by inappropriateness. The Secretary of State has therefore gone on to consider whether there are any material considerations which would justify a decision other than in accordance with the development plan and the Framework.

### *Need for a new crematorium in the Green Belt in South Staffordshire*

11. For the reasons given at IR215-219, the Secretary of State agrees with the Inspector's conclusion at IR218-219 that there is no reason to doubt the need for a new crematorium in the Green Belt in South Staffordshire.

### *Comparison of the appeal scheme and the Wergs scheme*

12. The Secretary of State has carefully considered the Inspector's reasoning at IR220-229 and, as set out in paragraphs 13-17 below, he agrees with the conclusions which the Inspector reaches except where specified. He agrees with the Inspector that, as it is agreed by the three main parties that there is a compelling need for only one new

crematorium (IR231), planning judgment between the two proposals needs to be exercised (IR230).

13. In exercising this judgment, the Secretary of State disagrees with the Inspector's contention at IR221 that no weight should be attributed to the catchment areas of the two crematoria. The appeal scheme would potentially provide a facility for 51,695 people within a 30 minute drive time compared with 22,726 people for the Wergs scheme (IR 221). This would relieve significantly the pressure on the Bushbury Crematorium, currently operating above practical capacity at certain times of the year (IR215). The Secretary of State therefore attributes significant weight to this factor in determining the appeals and considers that this weighs heavily in favour of the appeal scheme.
14. The Secretary of State agrees with the Inspector (IR222-223) that the relative public transport accessibility credentials of the two schemes is a neutral consideration.
15. Turning to landscape, heritage and bio-diversity benefits, the Secretary of State agrees with the Inspector's assessment of the impact of the Wergs proposal on the landscape and the historic environment at IR224-225 and with his conclusion at IR226 that the character of the landscape and the historic environment would be enhanced by that scheme in accordance with CS policies EQ3 and EQ4. However, although the Secretary of State agrees that that would have provided a significant benefit to the historic parkland setting of Wergs Hall, he does not consider that the construction of the Wergs scheme is the only way in which this benefit could be achieved; whereas the provision of the increased capacity resulting from the construction of the appeal scheme would provide a direct public benefit which could not be achieved in any other way.
16. Accordingly, while acknowledging that the landscape and heritage benefits of the Wergs scheme were largely uncontested at the appeal inquiry (IR225), the Secretary of State gives them only moderate weight against the appeal scheme, while giving significant weight in favour of the fact that the appeal scheme will provide increased capacity serving a wider area.
17. The Secretary of State notes the arguments put forward concerning the possible relief which the appeal scheme would provide to Streetly Crematorium (IR227-228), but he agrees with the Inspector's reasoning and conclusion that these carry very little weight. The Secretary of State agrees with the Inspector that, for the reasons given at IR229, no weight should be given to the proposed provision of a viewing gallery in the appeal scheme; and that the different service periods offered by the two operators result from their commercial decisions and do not affect the overall conclusions reached on the planning applications.

### **Planning conditions**

18. The Secretary of State has given consideration to the Inspector's analysis at IR214, 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 the conditions set out at Annex A should form part of his decision.

## **Planning balance and overall conclusion**

19. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policy GB1 of the CS and so is not in accordance with the development plan overall. He has therefore gone on to consider whether there are the very special circumstances necessary to justify the proposal being determined other than in accordance with the development plan.
20. The Secretary of State agrees with the Inspector that there is a need for a new crematorium to augment the provision at the Bushbury Crematorium and that any new crematorium would have to be located no less than 200 yards from any dwellings, so that a countryside location would be required.
21. Within that context, the Secretary of State has considered carefully the merits and disadvantages of both the appeal scheme and that at Wergs. The very special circumstances necessary to justify either scheme exist in terms of relieving pressure on the Bushbury crematorium, and both schemes would be equally well served by public transport. However, the appeal scheme would potentially serve a significantly larger number of people than the Wergs scheme and could also provide some relief to the Streetly Crematorium. While the character of the landscape and historic environment of the Wergs site would be enhanced by the proposed scheme, this could potentially be achieved without that scheme whereas the benefits of the appeal scheme are entirely dependent on it. Accordingly, the Secretary of State concludes that, in the context of the need for a new crematorium, the sustainability benefits associated with the appeal scheme in terms of accessibility provide the very special circumstances necessary to justify inappropriate development in the Green Belt.

## **Formal decision**

22. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby upholds your client's appeal and grants planning permission for construction of a crematorium with ancillary book of remembrance building, floral tribute area, memorial areas, garden of remembrance and associated parking and infrastructure associated car parking, memorial gardens and access off Broad Lane, Essington, South Staffordshire, in accordance with application ref: 14/00909/FUL, subject to the conditions set out in Annex A to this decision letter.
23. 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**

24. 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.
25. 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.

26. A copy of this letter has been sent to South Staffordshire District Council 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

**CONDITIONS**

1. The development hereby permitted shall begin not later than three years from the date of this decision.

2. The development hereby permitted shall be carried out in accordance with the following approved drawings:

SSF01\_P(0)000 Rev A Location plan  
SSF01\_P(0)002 Rev D Site area proposed  
SSF01\_P(0)003 Rev B Site roof plan proposed  
SSF01\_P(0)005 Rev B Ground floor and surrounds proposed  
SSF01\_P(0)008 Site sections  
SSF01\_P(0)011 Rev A Roof plan  
SSF01\_P(0)012 Rev B North and west elevations  
SSF01\_P(0)013 Rev B South and east elevations  
SSF01\_P(0)016 Crematorium sections A-A & B-B Rev A  
SSF01\_P(0)017 Crematorium sections C-C, D-D, E-E & F-F Rev A  
SSF01\_P(0)018 Rev B Ground floor plan  
SSF01\_P(0)020 Rev A Floral Tribute – Plan and elevations  
SSF01\_P(0)021 Rev A Floral Tribute details  
SSF01\_P(0)024 Gas Compound

3. The building hereby permitted shall not be constructed above damp proof course level until samples of the materials to be used in the construction of the external surfaces of the building have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

4. Before the access drives, car parking areas and footways are constructed, samples of the materials to be used for their surfacing shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

5. The crematorium hereby permitted shall not be operated for services outside the hours of 0900 to 1700 on Monday to Saturday and 0900 to 1300 on Sunday, and shall remain closed on Public Holidays.

6. Before the development hereby permitted is commenced a landscape scheme, including a timetable for its implementation and provision for the replacement of any failed planting, shall be submitted to and approved in writing by the local planning authority. The landscape scheme shall be implemented in accordance with the approved details and the local planning authority shall be notified when the scheme has been completed.

7. Before the development hereby permitted is commenced a landscape management plan shall be submitted to and approved in writing by the Local Planning Authority. The plan shall include measures for the management of all areas of existing and proposed woodland and grassland, along with other areas of tree and shrub planting. The landscape management plan shall be implemented in accordance with the approved details.

8. Before the development hereby permitted is commenced details of the entrance gates and fencing, together with details as to the timing of their erection, shall be submitted to and approved in writing by the local planning authority. The gates and fencing shall be erected in accordance with the approved details.
9. No existing trees, shrubs or hedges on the site or its boundaries shall be lopped, topped or cut down without the prior written approval of the Local Planning Authority. If any existing trees, shrubs and hedges are cut down or die, they shall be replaced with the same species in the next available planting season and shall thereafter be maintained.
10. Any gates at the access to the site shall be located a minimum of 6.0m from the vehicular carriageway and shall open away from the highway.
11. The development hereby permitted shall not be brought into use until the access drive, parking, servicing and turning areas have been provided in accordance with the approved plans.
12. Before the development hereby permitted is commenced details of the off-site highway works shown in principle on Drawing SCP/14207/F03 Rev B, contained within the Transport Assessment, shall be submitted to and approved in writing by the local planning authority. The highway works shall include the provision of a ghost right turn facility. The off-site highway works shall be provided in accordance with the approved details before the development is brought into use.
13. Before the development hereby permitted is commenced a scheme to dispose of foul sewerage shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved.
14. Before the development hereby permitted is commenced a surface water drainage scheme including attenuation for storm events up to the 1 in 100 year plus 20% climate change, discharging at an equivalent drained area greenfield run-off, shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented and subsequently maintained, in accordance with the timing/phasing arrangements contained within the scheme.
15. Before the development hereby permitted is commenced details of mitigation strategies, to include timescales for the implementation of mitigation measures, in respect of all protected species on the site, including bats, great crested newts and breeding birds, shall be submitted to and approved in writing by the local planning authority. The strategies shall be carried out in accordance with the approved details.
16. No trees shall be felled until:
  - a) Further inspections for the presence of bats have been undertaken in accordance with a methodology which has been submitted to and approved in writing by the local planning authority;
  - b) A report on the outcome of the inspection has been submitted to the local planning authority;

c) If the presence of bats is found, a scheme and programme of mitigation measures, to be included in the inspection report, has been submitted to and approved in writing by the local planning authority.

The mitigation measures shall be implemented in accordance with the approved scheme and programme.

17. Details of external lighting shall be submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details before the development is brought into use.

18. Before the development hereby permitted is commenced an intrusive site investigation in the form of borehole drilling shall be undertaken and the results of the investigation shall be submitted to and approved in writing by the local planning authority. If the site investigations confirm the need for site remedial works the works shall be undertaken before development commences.



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

**by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI**

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

**Date 27 June 2017**

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**SOUTH STAFFORDSHIRE COUNCIL**

**APPEALS**

**by**

**DIGNITY FUNERALS LTD and WESTERLEIGH GROUP LTD**

Inquiry held on 7-10, 14-16 and 22 March 2017

File Refs: APP/C3430/W/15/3039129 and APP/C3430/W/15/3039163

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### **Appeal A Ref: APP/C3430/W/15/3039163**

#### **Land adjacent to Holyhead Road, Wergs, Codsall, South Staffordshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Dignity Funerals Limited against the decision of South Staffordshire Council.
- The application Ref 14/00838/FUL, dated 14 October 2014, was refused by notice dated 18 March 2015.
- The development proposed is the construction of a new crematorium with associated car parking, memorial gardens and access off Holyhead Road.

**Summary of Recommendation: The appeal be allowed.**

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### **Appeal B Ref: APP/C3430/W/15/3039129**

#### **Land off Broad Lane, Essington, South Staffordshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Westerleigh Group Limited against the decision of South Staffordshire Council.
- The application Ref 14/00906/FUL, dated 4 November 2014, was refused by notice dated 20 March 2015.
- The development proposed is a crematorium with ancillary book of remembrance building, floral tribute area, memorial areas, garden of remembrance and associated parking and infrastructure.

**Summary of Recommendation: The appeal be dismissed.**

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### **Procedural Matters**

1. For the purposes of this report the development that is the subject of appeal A is referred to as 'the Wergs scheme' and the development that is the subject of appeal B is referred to as 'the Essington scheme'.
2. An Inquiry into the Essington scheme commenced on Tuesday 17 May 2016 (the Inquiry was to have been followed by an Inquiry into the Wergs scheme). The Council's position at that Inquiry was that neither appeal scheme should be allowed and that, if there was found to be a need for a new crematorium, only one of the schemes should be granted planning permission. The Inquiry was adjourned on day three because it became clear, and this was agreed by the Council and the two Appellants, that the appeals should be considered together at a conjoined Inquiry, which was subsequently arranged and which commenced on Tuesday 7 March 2017.

### **Application and Appeal History**

3. Both Appellants submitted second applications and on the basis of information submitted with those applications the Council resolved, after the close of the Inquiry that commenced in March 2016, that there is a need for a new crematorium in South Staffordshire to relieve pressure on the existing Bushbury Crematorium in Wolverhampton. Consequently, in his proof of evidence for the Wergs appeal scheme Mr Johnson, for the Council, stated that, "...this appeal scheme for a new crematorium at Codsall (Wergs) should be allowed".
4. After exchange of proofs of evidence the Council changed their position and in his rebuttal proof of evidence Mr Johnson stated that "...the proposed crematorium at Essington should be granted planning permission and the appeal proposal at Codsall

(Wergs) should be dismissed”.

## **The Sites and their Surroundings**

### **Appeal A – The Wergs Scheme – Land at Holyhead Road, Wergs, Codsall**

5. The site is irregular in shape, is slightly more than five hectares, and is located in the West Midlands Green Belt. The main part of the site is a large, almost flat, field that is used for the production of turf. The east part of the site is an area of woodland, Brick Kiln Covert, and within the site and alongside the north boundary is an avenue of trees that terminates, at its west end, at an unused entrance off Holyhead Road. The site has a long south-west frontage to Holyhead Road and a short north boundary to Heath House Lane. Along both boundaries are stone boundary walls. Access into the site is in the south-west frontage about 200 metres from the cross-roads junction of Holyhead Road, Heath House Lane and Wrottesley Park Road.

6. The immediate surrounding area is open and predominantly agricultural though the farmland is interspersed by blocks of woodland, tree belts and farmsteads and other buildings. To the east of the site, beyond Brick Kiln Covert, is Wergs Hall, a Grade II listed building; the site was once part of the grounds of Wergs Hall. The site is between 700 and 900 metres to the south of Codsall and between 600 and 700 metres to the north-west of the administrative boundary of Wolverhampton.

### **Appeal B – The Essington Scheme – Land off Broad Lane, Essington**

7. The roughly rectangular site is about 4.8 hectares, has a north-east frontage to Broad Lane, and is located in the West Midlands Green Belt. The site was previously colliery land but is now woodland that was planted in the 1990's and is beginning to mature. Along the road frontage are a number of older mature trees. About 150 metres to the south-east of the site is the boundary of the Borough of Walsall and immediately beyond the boundary is housing development of Bloxwich. On the opposite side of Broad Lane and to the north-west and south-west of the site, beyond Abbey Primary School, is generally flat farmland.

## **The Proposals**

### **Appeal A – The Wergs Scheme**

8. The proposed crematorium would comprise, principally, a single storey building of about 500 square metres, which would include a lobby, a chapel to seat about 100 mourners, a minister's office and toilets. A smaller building of about 60 square metres, providing a waiting area and toilets, would be linked to the main building by a porte cochere, under which funeral corteges would arrive at the crematorium. To the north of the linked buildings would be a parking area for 80 vehicles.

9. The scheme includes the restoration of elements of the historic parkland setting of Wergs Hall. This work would include remedial work to the frontage boundary walls, the restoration of the historic entrance gates at the north-west corner of the site, and the improvement of the tree lined avenue. Brick Kiln Covert would be improved and would become part of the publicly accessible grounds. The vehicular entrance into the site would be improved and a ghost right turn lane for vehicles approaching from the south-east would be provided.

### **Appeal B – The Essington Scheme**

10. The proposed crematorium would comprise, principally, a single storey building

of about 1000 square metres situated towards the south corner of the site. The building would include a chapel to seat 112 mourners, a manager's suite, a lobby, a vestry, toilets and a waiting room. In front of the building would be a porte cochere where funeral corteges would arrive at the crematorium. A new access into the site would be created off Broad Lane which would lead to a parking area of 40 spaces and 37 over-flow spaces. On Broad Lane a ghost right turn lane would be provided for vehicles approaching from the north-west.

### **Planning Policy**

11. The Development Plan, for the purposes of the determination of the two appeals, is the Core Strategy (CS) for South Staffordshire Council, which was adopted on 11 December 2012. CS policy GB1 sets out types of development that are not inappropriate in the Green Belt. CS policy EQ3 seeks to conserve and enhance South Staffordshire's historic environment and CS policy EQ4 seeks to maintain and where possible enhance the intrinsic rural character and local distinctiveness of the area.

12. Section 9 of the National Planning Policy Framework (NPPF) sets out national policy on Green Belts. Paragraph 89 states that the construction of new buildings in the Green Belt is inappropriate unless it is for one of several exceptions, and paragraph 87 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 states that, with regard to the determination of planning applications and in these cases appeals, "...substantial weight is given to any harm to the Green Belt. Very special circumstances 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".

### **Matters Agreed by the Council and the Appellants**

13. Each Appellant accepts that their proposed crematorium would not be for one of the exceptions set out in CS policy GB1 and NPPF paragraph 89, and that the scheme constitutes inappropriate development in the Green Belt.

14. The Council maintains that each proposed development would, with regard to NPPF paragraph 79, undermine the openness of the Green Belt and would, with regard to paragraph 80, not assist in safeguarding the countryside from encroachment. Mr Johnson, for the Council, accepted at the Inquiry that these two factors, for the purposes of applying paragraph 88 of the NPPF, do not add any harm to that caused by reason of inappropriateness. The Council does not, in either case, allege that any material harm would be caused other than by reason of inappropriateness.

15. The Council and the Appellants agree, in both cases, that other considerations must be demonstrated and must clearly outweigh the harm caused by reason of inappropriateness such that very special circumstances exist.

16. The Council and the Appellants agree that the principal other consideration is the need, both quantitative and qualitative, for a crematorium to relieve pressure on Bushbury Crematorium.

## **The Case for South Staffordshire Council**

The material points of the case made by South Staffordshire Council are:

### **Introduction**

17. The broad framework in which these appeals are to be determined is not in dispute. Both schemes comprise inappropriate development in the Green Belt, and both generate harm through inappropriateness, loss of openness and conflict with a Green Belt purpose (namely, the safeguarding of the countryside from encroachment). It is agreed, furthermore, that harm to the Green Belt attracts substantial weight and that neither scheme should be allowed unless the harm to the Green Belt has been shown by the Appellant to be clearly outweighed by other factors (i.e. in the absence of very special circumstances it is accepted that an appeal should be dismissed).

18. The central factor relied upon by each of the Appellants in seeking to demonstrate very special circumstances is the relief of capacity issues faced by the crematorium at Bushbury.

### **The Compelling Need**

19. When the inquiry into Westerleigh's scheme opened in May 2016, the Council was unconvinced that the evidence, as it then stood, demonstrated need sufficient to generate the very special circumstances required to justify the grant of planning permission for a new crematorium in the Green Belt.

20. The evidence has moved on. In particular, Bushbury's performance in 2015 confirms that it is under considerable strain. Westerleigh's evidence (adopting their core slots approach to practical capacity) shows Bushbury operating in 2015 at 87.8% of practical capacity on average, and at 115.5% of practical capacity in a peak month (defined as a single month in which 11% of all deaths for the year take place). Dignity's evidence (adopting their 75% of all slots approach to practical capacity) shows Bushbury operating in 2015 at 96% of practical capacity in a peak month (defined as a month in which the number of cremations is 24% above the average number of monthly cremations for the year).

21. Ms Hawkins' conclusion is that it has been established that there is a significant need to relieve the capacity issues facing Bushbury. Mr Johnson's conclusion is that the need is compelling. It is that component of need which is capable of generating the very special circumstances required to justify the release of a site in the Green Belt for a new crematorium.

### **Meeting the Compelling Need**

22. In seeking to show how their schemes meet that need each of the Appellants has adopted a different method for predicting likely levels of diversion away from Bushbury.

23. The Council's position in respect of the methodologies applied by the Appellants has been clear throughout. It does not seek to go behind them. Instead, it has examined the outputs and assessed the level of need (and contribution made to meeting it) generated by that evidence.

24. Both Appellants have provided markedly different predicted levels of their own anticipated level of diversion from Bushbury during the currency of these appeals. Each of them now seeks to rely on the evidence contained in their proofs as representing the most up to date position. On Westerleigh's evidence, its scheme would divert 910 cremations per annum from Bushbury. On Dignity's evidence, their scheme would divert 926 cremations.

25. The result of diverting in the order of 900 cremations per year from Bushbury is significant. On Westerleigh's analysis (using their approach to practical capacity and peak month) the diversion of 910 cremations per year means that average and peak levels of operation at Bushbury would fall to 57.6% and 75.7% respectively. On Dignity's analysis, the diversion of 926 cremations per year means that peak levels of operation at Bushbury would fall to 62%.

26. The Appellants each maintain that such an effect would address Bushbury's capacity issue. The Council agrees. In short, on the basis of the diversion figures advanced by each of the Appellants, the compelling need associated with Bushbury's operation will have been met.

#### Council's Position if Each Scheme Meets the Compelling Need

27. Accordingly, if it is accepted that each of the appeal schemes would divert about 900 cremations from Bushbury then each of the appeal schemes would address (in equal measure) that aspect of need which the Council considers to be compelling (sufficient to generate very special circumstances), and, that aspect of need will have been addressed by one new crematorium, leaving no residual need associated with capacity constraints at Bushbury.

28. Whilst we return to that second point below, it is important to note that both Mr Hubbard (for Westerleigh) and Mr Downes (for Dignity) expressly confirmed that their evidence does not address the existence of very special circumstances on the assumption that the other Appellant's scheme is allowed and that it would divert about 900 cremations from Bushbury. The Inquiry has been presented with no evidence from any party showing the existence of very special circumstances for a second crematorium in that scenario.

29. In circumstances where the compelling need justifies the release of only one new crematorium site in the Green Belt, there is a choice to be made between the two appeal schemes. If each of the Appellants' own diversion figures from Bushbury are accepted (910 and 926) that choice is determined by a comparison of the overall planning balance for each scheme. If those figures are not accepted and it is concluded that one or both of the schemes would not address the compelling need, then no such comparison falls to be made. A scheme which does not address the compelling need would not generate the very special circumstances required to justify its consent.

30. Both schemes generate harm to the Green Belt by reason of inappropriateness, loss of openness, and infringement of one of the five purposes of including land in the Green Belt (safeguarding the countryside from encroachment). However, both schemes generate other positive considerations.

31. As set out above, the central positive factor advanced by each of the Appellants is that their proposal addresses the compelling need associated with Bushbury's capacity issues. It is the Council's view that that factor alone is sufficient to clearly outweigh the harm caused to the Green Belt by each of the schemes. Thereafter the list of other considerations advanced in support of each of the appeal schemes differ.

32. Dignity relies on its scheme delivering a range of environmental improvements (in terms of heritage, landscape, biodiversity, and public access to the site). Westerleigh relies on its scheme addressing quantitative and qualitative issues at Streetly Crematorium, and allowing some people to access a crematorium within 30 minutes for the first time.

33. As for that second point it is noted that Dignity seek to place no reliance on identifying people said to be first-served by a crematorium within 30 minutes. In this regard the 30 minute threshold (at cortege speed) appears nowhere in policy or legislation. It is no more than an industry-applied rule of thumb, and a starting point for analysis in some appeal decisions. There is no appeal decision which states that it is unacceptable for anyone to have to travel more than 30 minutes at funeral cortege speed in order to gain access to a crematorium.

34. Whether or not an assessment of those first served within 30 minutes generates evidence of significant need depends not only on the number first served, but also the degree of excess beyond 30 minutes that they currently face to access a crematorium. Whilst Westerleigh advance a number for those first served (now 51,695 as opposed to 121,886 previously advanced), there is no evidence at all of the degree to which those people currently face journeys beyond 30 minutes to an existing crematorium. Accordingly, in a comparison of the outcome of the planning balance between the two schemes, the number first served within 30 minutes carries no material weight.

35. Mr Johnson's position is that there is little to choose between the two schemes. Each causes harm to the Green Belt, each meets the identified compelling need (on the basis of the 910 and 926 diversion figures), each delivers other benefits which attract significant weight (albeit, insufficient, by themselves, to clearly outweigh harm to the Green Belt). His conclusion is that the Westerleigh scheme fares slightly more favourably against the Dignity scheme in the comparison of very special circumstances.

#### Council's Position if the Appellants' Diversion Figures are Not Accepted

36. The Council has not sought to challenge either of the Appellants' methodologies used for identifying their schemes' catchments and likely diversion figures from existing crematoria. Similarly, the Council does not advance evidence that goes to the mechanics of identifying catchments and diversion figures. Whilst very considerable inquiry time has been spent on examining those mechanics (demonstrating, along the way, the technical and occasionally opaque nature of the process) the Council has proceeded throughout on the basis of the output of the Appellants' assessments.

37. That same approach applies with regard to the operation of the Appellants' schemes. Westerleigh's anticipated level of diversion of 910 cremations per annum from Bushbury assumes a level of operation at its new facility of some 1,778 cremations per annum. At that level, all core slots at the new crematorium would be occupied. It is Westerleigh's position that, as a new facility, it would be able to cope

with that level of operation whilst providing a service of an acceptable quality. The Council accepts Westerleigh's position given that the Council is not a crematorium operator and, there may be some 're-balancing' following the construction of Westerleigh's scheme (whereby, services at the new facility, Bushbury and Streetly settle into levels of operation that whilst not precisely matching the projected figures, mean that each is operating at an acceptable level).

38. If there is a significant doubt that an appeal scheme would generate a level of diversion from Bushbury sufficient to address its capacity issues, then the factors in favour of that scheme will have been seriously diminished. In the absence of meeting that compelling need, any remaining benefits of the scheme (whether the environmental improvements associated with the Dignity proposal or the relief provided to Streetly by the Westerleigh scheme) will not clearly outweigh Green Belt harm. Very special circumstances will not have been generated and that appeal scheme should be refused. There will be no comparison to perform in that scenario.

#### Residual Need and Whether two Crematoria are Justified

39. Neither Appellants' planning witnesses has sought to conduct a balancing exercise that proceeds on the basis of the other scheme having addressed Bushbury's capacity issues by diverting about 900 cremations (thereby meeting the compelling need) and having been granted planning permission. Accordingly, there is no evidence showing the existence of very special circumstances in that scenario.

40. Mr Downes very fairly went further, accepting that in such a scenario (where Westerleigh's scheme is accepted to divert 910 cremations from Bushbury and is granted permission) there would be no very special circumstances justifying the grant of permission for the Dignity scheme.

41. He was clearly right to do so. Dignity's need case is aimed squarely at addressing the capacity issues at Bushbury. Diversions from other crematoria (in particular Gornal Wood (Dudley) and Telford) are anticipated to be small (30 and 83 cremations per year respectively) and would generate nothing more than a minimal impact on those facilities. If Bushbury's capacity issues are addressed by Westerleigh's scheme (on the basis of the 910 diversion figure) then Dignity point to no significant residual need for its scheme. In those circumstances, the positive factors (to weigh against Green Belt harm) are limited to the on-site environmental improvements. Dignity accepts that, whilst significant, they are insufficient to clearly outweigh Green Belt harm and generate very special circumstances.

42. The outcome is no different for Westerleigh if planning permission is granted for the Dignity scheme (again, on the basis that its diversion figure of 926 from Bushbury is accepted). In those circumstances, the central component of its need case will have been addressed by the permitted Dignity proposal. As set out above, the other factors advanced by Westerleigh in favour of its scheme are addressing quantitative and qualitative issues at Streetly and, allowing some people to access a crematorium within 30 minutes for the first time. But the second of those factors can be discounted.

43. As for the first, the position is, in quantitative terms, and according to Westerleigh's up to date assessment, Streetly is operating at 64.1% (average) and 84.2% (peak) of its practical capacity, and if Dignity's scheme was permitted, diverting some 926 cremations per year, then (on Westerleigh's own analysis)



Bushbury would be operating at around 57% of practical capacity in an average month and at 75% of practical capacity in the single peak month. Clearly, there would be some re-balancing between Streetly and Bushbury (as well as a newly-permitted scheme at Wergs). Whilst there is conflicting data in respect of likely levels of deaths within the sub-region in 2025, it is clear that Streetly's capacity issues are not so pressing that, by themselves, they could clearly outweigh the harm caused to the Green Belt,

44. The qualitative arguments advanced by Westerleigh in respect of Streetly's operation largely focus on its contention that some people will be first served by a crematorium within 30 minutes. For the reasons already set out that contention carries no significant weight. Their other qualitative arguments are directed at car parking arrangements and provision for faith communities at Streetly. Those two arguments add little force to Westerleigh's case. Car parking is not shown to be inadequate and parking on the one-way internal roads within Streetly's site represents acceptable provision. Similarly, there is no evidence from any representative of either the local Hindu or Sikh communities that they are dissatisfied with the provision of facilities at Streetly.

45. Mr Hubbard, for Westerleigh, has not sought to establish whether or not very special circumstances can be shown in the event that the Dignity scheme proceeds (and diverts 926 cremations per year from Bushbury). Had he done so, the result would have been that the substantial harm to the Green Belt is not clearly outweighed by factors in favour of the proposal, and accordingly, in that scenario, Westerleigh would be unable to demonstrate very special circumstances.

## Conclusion

46. The Council accepts that there is a compelling need for a new crematorium in order to relieve the capacity issues faced by Bushbury. That compelling need would be met by either appeal scheme on the basis of their own projected diversion figures. Meeting the compelling need is sufficient to clearly outweigh the harm to the Green Belt caused by each of the schemes, and, once met (by one of the schemes being permitted), the remaining factors in favour of the other scheme would not clearly outweigh harm to the Green Belt. In the absence of very special circumstances, that other scheme should be refused permission.

47. On the basis that each scheme meets the compelling need the Council considers that the Westerleigh scheme performs slightly more favourably in the overall planning balance and has concluded that, for those reasons, its appeal should be allowed whilst the Dignity appeal should be dismissed.

## **The Case for Westerleigh UK Ltd**

The material points of the case made by Westerleigh UK Ltd are:

### **Introduction**

48. The background to this matter is lengthy and has involved a far from straightforward course since the need for a new crematorium in the district was identified in 2012.

### **The Council's position of the Inquiry**

49. The Council's position has changed over time. Having identified the need for a new crematorium in its District and, having chosen Westerleigh to provide for that need on a site owned by the Council and the County Council, the Council ultimately came to refuse permission for Westerleigh's proposed scheme. This was notwithstanding having received an earlier report from GVA that identified Essington as being the preferred Green Belt site among the three sites being considered. That was an opinion from which the Council subsequently resiled and the only two sites the subject of live applications (and appeals) are the Essington and Wergs schemes.

### **The need for a crematorium**

50. The issue of "need" arises specifically because this is a proposal in the Green Belt. It is accepted by the Council that when assessing the extent of need it is irrelevant whether or not a proposal lies within or outside the Green Belt. The extent of need (and the weight it attracts) will be relevant in deciding whether or not the scheme is justified on the basis of very special circumstances.

51. As to how very special circumstances should be approached there is no recent authority following the advent of the NPPF but the earlier case of *Wychavon DC v The Secretary of State* [2008] EWCA Civ 692 provides, via the judgment of Carnwath LJ (as he then was) at paragraphs 21 to 26, does provide some guidance. In particular, "very special" is not simply the converse of "commonplace". It will involve judgements for the decision maker and there may be some overlap between factors which justify holding that Green Belt considerations are clearly outweighed with the same factors that make very special circumstances. Ultimately, that is a judgement for the decision-maker.

52. Those judgements fall to be made in this case and arise in circumstances where the Council is content with the Essington proposal. Beyond this, there are very particular features of need which arise for this form of development which may not arise in respect of others (such as retail or other proposals).

53. As paragraph 57 of the Lambley appeal decision notes:

*57. It is not disputed by any of the parties that, in a sustainable and humane society, adequate provision of cremation facilities is an essential need. To my mind, this is a planning consideration of the highest order. Bereaved relatives, organising a funeral, should be able to expect to find a suitable crematorium within a reasonable distance. There should also be sufficient capacity for funerals to be arranged, at times convenient to the mourners, without undue delay. However there is no guidance in*

*planning policy, at either national or local level, as to what constitutes an acceptable level of provision. Each case must therefore be judged on its merits, in the light of local circumstances. In the present case, those circumstances include the appeal site's designation as Green Belt, and the question of need must be judged in the context of the strict planning policies applying in such areas.*

54. In short, these are real needs of bereaved residents who can quite properly look to ensure that appropriate and proximate provision is made to meet their needs in facilities which have the capacity to meet those needs in an appropriately timely fashion.

55. The Council has drawn a specific distinction between quantitative and qualitative need. However, it is fair to observe that the distinction between these two factors is not a hard and fast one albeit the consideration of quantitative needs tends to focus on the capacity of facilities to meet the demand for cremations whilst qualitative factors tend to focus on the experience of mourners. However, the absence of a hard and fast distinction becomes more evident in circumstances when one examines how the absence of deficiency in availability of suitable time slots for cremations leads to either delay in funerals being held or displacement to materially less proximate facilities. However, such displacement may also occur by reason of the existing facilities simply being woefully inadequate in being able to meet the needs of mourners.

56. The two particular existing facilities of relevance for consideration in this appeal: those at Bushbury (in Wolverhampton's administrative area) and Streetly (in Walsall's area). The Council's case is that there is a demonstrated quantitative need for a new crematorium in its area. Westerleigh's case is that there is a clear need for the crematorium which it proposes and which would meet the existing need at Bushbury and the potentially forecast quantitative need at Streetly.

57. The Council is content that: -

- There is a need, indeed a compelling need, for a new crematorium to be located in its administrative area;
- A site for a new crematorium would have to be located within the Green Belt;
- Whilst a crematorium is by definition inappropriate development in the Green Belt (and that there would be harm by reason of inappropriateness and harm by reason of encroachment into the countryside) the material considerations advanced by Westerleigh, in respect of its site, outweighs that harm such that very special circumstances exist to justify the grant of planning permission for the Westerleigh development.

58. Having had the opportunity to see and consider the updated need evidence provided on behalf of Westerleigh the Council has concluded that the very special circumstances put forward by the Appellant have been demonstrated by Westerleigh and that these justify the need for the development proposed at the Essington site. That evidence demonstrates that the Essington scheme would have a catchment population of 261,541, from which it may be deduced that there would be some 2,250 deaths per annum with an estimated number of cremations served by that catchment area of 1,778, and that the population newly served, within a 30 minute drive time, is 51,695.

59. This assessment is based upon the CACI model. Compared with any other evidence submitted this is the most detailed, fine-textured and rigorous. It is also up to date and the use of this detailed CACI material for the purposes of ascertaining both the catchment area and, as a distinct feature, those first served within 30 minutes, has only arisen in the context of evidence submitted to this appeal. CACI was used in the context of the comparative evaluation of the Wergs proposal in 2016 but not to arrive at (in respect of Essington) a catchment population.

60. As one of the factors for consideration, Mr Evans' evidence quite properly assesses the current operation of both Bushbury and Streetly on the basis of both peak and average months. It is clearly evident that even in an average month Bushbury is operating at 87.8% of its practical capacity. If allowance is made for the likely incidence of peak months being in excess of that capacity, then Bushbury is operating at 115.5% of its capacity. Self-evidently, all of these exceed by some margin the 80% figure of practical capacity acknowledged by Ms Hawkins. In respect of Streetly, whilst its practical capacity is at 64.1%, when looking at even the average peak figure its practical capacity rises to 84.2%, well in excess of Ms Hawkins' view in respect of reasonable margin.

61. Purely in dealing with quantitative issue, it is clear that Bushbury is operating, on all bases, well above its practical capacity. So too is Streetly on the basis of the consideration of peak months (both the highest peak month and the 5 year average peak month, over the last 5 years). Indeed, there is good evidence that death rates will rise.

62. As identified elsewhere in these submissions the exercise undertaken by Mr Budd at the time of the May 2016 inquiry has been subject to significant critical questioning. Whilst that evidence was intended, at the time, to be helpful (in providing a more emulated real drive time experience) as became apparent it perhaps provoked more questions than it answered. As also became apparent Mr Budd's assumed process did not accurately reflect what funeral directors, in fact, experienced in terms of cortege drive time duration.

63. Whilst funeral directors do conventionally walk for approximately one minute in front of a hearse, as it departs from the deceased's property, there is no formulaic process of stopping for particular periods of time in order to allow the remainder of the cortege to catch up. Hence, Mr Budd's approach is not in any way relied upon by Westerleigh for the purposes of providing any form of real life or real time justification for its catchment.

64. As Mr Evans made clear Westerleigh's case is based exclusively upon the operation of the CACI model together with its assumed characteristics. Further, Mr Evans does not place any reliance upon the exercise undertaken by Mr Roberts in order to support the quantification of his catchment pursuant to the CACI evidence. The purpose of commissioning the exercise was in order to "sense check" the CACI generated material in order to see whether it was being unduly optimistic as to the quantification of catchment or the quantification of those people who would be first served within 30 minutes. It was, in short, a robustness or model verification exercise. That was to meet any nascent argument to the effect that the CACI model was no more than that (a model) or was said to be unsupported by any empirical exercise. Far from it, as Mr Roberts showed in his evidence his exercise would give rise to an increased population that might be met within 30 minutes.

65. As Mr Ponter pointed out Mr Roberts' exercise is based upon 3 journeys carried out by him and it gives rise to a factor of 0.53 (as opposed to a factor of 0.6, assumed by CACI and derived from a number of appeal decisions) to reflect slower cortège speeds.

66. For comparison, the Budd exercise, based upon Mr Ponter's arithmetic, would give rise to a factor of 0.43. As Mr Roberts also fairly acknowledged, no appeal decision endorses any reduced cortège speed factor of less than 0.6. Westerleigh do not contend for anything different here than the 0.6 figure contained within CACI. Somewhat surprisingly Mr Burley sought to utilise and rely upon Mr Budd's methodology from the previous appeal. As noted above, Westerleigh do not place any reliance upon that methodology nor do they advance it now.

67. The Dignity need evidence was explicitly stated to be derived from the use of "Gravity Model Principles". These gravity model principles, as set out in the evidence of both Mr Burley and Mr Lathbury, are explicitly only referable to that of proximity of any population to the nearest crematorium. They make reference to nothing else. However, for the first time during the Inquiry it was asserted by Mr Village that the exercise undertaken by Mr Burley was one that involved the application of some "judgement factors" beyond anything derived from gravity model assessment. However, neither Mr Burley's proof of evidence nor his previous proof, nor indeed his previous need report, made any reference to the application of any judgement factors in arriving at his proposed catchment area.

68. At the conclusion of Mr Burley's evidence there was no quantified figure for the application of any judgement and it appeared to rely upon two elements; the inhibition of journeys east-west across Wolverhampton due to the presence of the city's ring road, and some figure attributed to knowledge gleaned from Dignity itself particularly arising out of its Telford operation. That apparently showed some 209 cremations taking place at Telford in respect of people who would otherwise be closer to Bushbury, although Mr Burley himself only makes reference to a figure of some 83 cremations. This inconsistency was never satisfactorily explained at any stage of the Inquiry.

69. It is clearly unsatisfactory to place much reliance upon Mr Burley's evidence given his absence of a clear and transparent methodology together with a properly based enumerated justification. Certainly, it simply does not favourably compare with that provided by Mr Evans.

70. The CACI approach utilises output areas (OAs) which are the smallest population areas utilised by ONS and comprising between 100 and 625 people. This is to be compared with the Middle level Super Output Areas (MSOAs) utilised by Dignity which are very much larger, comprising areas with a population substantially larger, between 5,500 and 13,000.

71. Inevitably that means that the CACI approach is much more fine-grained and detailed. Surprisingly, this was then the subject of criticism by reference to what Mr Village described as the "house rule". This is understood to relate to the assumption that in respect of the centroid of population within the OA, if the catchment area extended to include the centroid then the population within the relevant OA was

included. Similarly, if the catchment area did not extend to the centroid then it was not included within the catchment.

72. This alleged problem would give rise to what the Inspector characterised as “swings and roundabouts”. With respect, that is a realistic and pragmatic way of looking at an exercise that utilises time data but by reference to very detailed maps comprising small bundles of population comprised within the OA. That may be compared with Mr Burley’s rather more rudimentary exercise involving looking at Google aerial maps so as to make an assessment of where populations may exist and then carrying out a judgement based adjustment attributing notional numbers of population derived from looking at such aerial maps. Regrettably, despite trying to get some intelligible assessment as to how that exercise was undertaken Mr Burley was unable to provide the Inquiry with any worked examples of how precisely that judgement was made.

73. Irrespective of that, it is clear that the CACI approach has a materially finer level of detail by which any assessment can be undertaken and does not need to rely upon the sort of unparticularised judgements undertaken by Mr Burley. This once again favours the CACI approach.

74. The CACI approach provides for direct modelling of proximity between crematoria and potential catchment populations. It is, of course, not deterministic such that all those who are close to a particular crematorium will necessarily use it. Indeed, without providing any particular breakdown, Mr Lathbury suggested that something over 200 cremations are held in respect of deceased who are closer to Bushbury than Telford but who nonetheless opt for Telford. That is perhaps a function of the urban circumstances in which these particular crematoria are found. Hence, to that extent there may be some prospect of some “rebalancing” that may occur in the event that the Essington proposal is permitted and commences to operate. It may well prove highly successful but as Mr Evans acknowledged that may involve thereafter a market response to that level of success.

75. The one thing which is clear beyond doubt is that there are inadequate facilities for cremation at Bushbury and at Streetly and that both would be significantly relieved if the Essington proposal were to be permitted. In contrast, the Wergs proposal would provide a measure of relief which is (on Dignity’s own figures) essentially comparable to that of the Essington proposal (with respect of Bushbury) but would have a minimal consequence in respect of any other existing crematoria.

76. Hence, the suggestion advanced by Mr Village that granting permission for the Essington proposal would be unhelpful (as it would simply give rise to shifting the problem somewhere else) is as palpably false as it is self-evidently counter intuitive. The provision of a crematorium at Essington that would be anticipated to undertake in excess of 1,770 cremations per year in the current circumstances, as opposed to that identified at Wergs of only some 869 cremations per annum or (on Dignity’s own figures, 1,039 cremations per annum) would self-evidently give rise to a supply side benefit to which substantial weight can be accorded and, to the extent necessary, in clear preference to the Dignity proposal.

77. The idea that the Essington proposal should be rejected for being too successful (which was the clear thrust of the Dignity approach on this point) is with respect to be roundly rejected.

#### CACI based assessment -v- Mr Burley's assessment

78. The Council itself has not sought to differentiate between the two approaches to the establishment of quantitative need undertaken by Westerleigh and Dignity. However, it is submitted the more sophisticated and fine-grained exercise undertaken by Westerleigh is one which gives confidence to the conclusions formed based upon the application of its CACI model. Given the superior capabilities of that exercise it is unsurprising that the beneficial consequence in terms of diversion from Bushbury is some 910 cremations per annum as compared with Wergs which only achieves a diversion of some 518 cremations out of a net number of 864.

79. However, in response to Mr Turner's further note and the "blue folder" (ID13) Mr Evans produced a series of compelling responses (ID15&16), including a revised CACI catchment analysis. It would appear that Dignity had not used a consistent postcode during the course of the application and on the basis of using postcode WV8 2HE for the Wergs site Mr Evans proceeded to recalculate the size of the Wergs catchment, again using CACI (from 99,117 to 107,739). It also recalculated the number of cremations that would be held at Wergs. This gave rise to an increase of 5 on the number shown at Mr Evan's appendix 19, up to 869 cremations. As a result, there would be 13 less cremations diverted from Telford whilst 6 more will be diverted from Gornal Wood and 12 from Bushbury. As ID15e relates, the differences are "very slight". As also identified, the newly served population for the Wergs site within the 30 minute drive time would increase by 1,433 from 21,293 to 22,726.

80. When compared to the estimate of newly served for Essington of 51,695 (and a catchment for Essington of 261,541) the improvement at Wergs (whilst entirely correct to note) are relatively insignificant and do not fundamentally alter the comparative judgements.

81. Indeed, even based upon Dignity's rudimentary assessment based upon Mr Budd's drive time exercise, the best that it achieves on the basis of its 2017 evidence is 1,039 cremations of which 926 would apparently be diverted from Bushbury. That was a difference that neither Mr Johnson or Ms Hawkins considered material.

82. As noted earlier, Mr Burley's increase in potential cremations from 797 (utilising an 80% cremation rate) to 1,039 (similarly based upon an 80% cremation rate in his 2017 proof of evidence) is simply not satisfactorily explained.

83. Hence, the reliance that may be placed upon Mr Burley's assessment of quantitative need must clearly be attributed less weight than that of Westerleigh.

84. Self-evidently, the principal factors which bear upon the question of demonstration of very special circumstances are those relating to need and particularly quantitative need. However, it is to be anticipated that reference will be made to other material considerations for the purposes of establishing any planning balance.

#### The need case relating to Streetly Crematorium

85. As part of the written evidence submitted in advance of the inquiry there appeared to be little dispute between the parties that in future there would be an

increasing number of deaths and an increasing number of cremations within the relevant administrative areas from which the populations utilising crematoria in the locality would be found.

86. Mr Burley expressed understandable and considerable caution in respect of the 2014 ONS projections. However, perhaps in some mistaken attempt to try and undermine Westerleigh's case Dignity sought to contend that rather than increasing there would be a decrease in deaths and thereby cremations at Streetly over the next 10 years to 2025. That depended upon the use of ONS projections from 2014 based upon the 2011 census (ID14).

87. However, that projection is problematic for a number of reasons. Firstly, the 2015 figures for deaths are substantially higher than those contained in ID14. There was an identified flu outbreak during that year and that was the attributed cause for the 2015 spike in increased deaths beyond those anticipated by ONS. However, Mr Burley was simply unable to point to any relevant factor that would justify the elevated levels of death that were also experienced for 2016. Certainly, he was unable to point to any rationale put forward by ONS or indeed whether the purported projection is one to which significant weight should be attributed, save that it was derived from the ONS. However, as Mr Evans explained there was a marked reduction in deaths in this country, the onset for which commenced some 20 years ago. That increased longevity somewhat caught out the ONS at that time and in respect of the period thereafter. However, that particular trough must be anticipated to come to an end and hence the elevated figures for 2015 and 2016 cannot simply be discounted as a blip.

88. Certainly, Ms Hawkins followed the same approach pursued by Mr Evans that did anticipate there would be a probable increase in deaths over the next 10 years such that both the average and the peak demand upon Streetly would exceed the 80% threshold which she considered demonstrated need.

89. In short, whether or not the quantitative need (on an average month basis) is considered to exist now in respect of Streetly it is anticipated to rise within the next 10 years. Indeed, so far as the peak months are concerned (however calculated) the relevant 80% threshold has already been met.

#### The 30 minute drive time criterion

90. So far as Dignity is concerned, it is clear from the evidence submitted by both Mr Lathbury and Mr Burley that Dignity do not advance any case based on reliance upon the 30 minute drive time criterion.

91. However, Westerleigh do contend that there will be a significant population, 51,695, that would be served for the first time by its proposal within 30 minutes of the crematorium. That compares with the recalculated exercise undertaken by Mr Evans which showed, for Wergs, a population of 22,726 newly served within a 30 minute drive time.

#### Time between death and funeral

92. There is substantial anecdotal evidence of unacceptable delays between dates of death and funerals for both Bushbury and Streetly. However, the processes of seeking



to obtain information from both Wolverhampton and Walsall councils in respect of their facilities have not proved fruitful. The Inquiry does have the benefit of Mr Poole's evidence which attests to those delays and that the cause of those delays is, for the most part, the inability of those two facilities to offer appropriate core slots. Only rarely is it the case that it is due to difficulties with other relevant parties such as the coroner, doctors, funeral directors or the families of the bereaved.

93. There is a noted benefit in having the informed observations of a funeral director who can speak to his professional experience at dealing with cremations at both Bushbury and Streetly (among other places) and the evidence of Mr Poole should be accepted in the absence of compelling contrary evidence.

#### Making provision for Sikh and Hindu communities

94. Meeting the needs of these and other faith and non-faith communities appears to be an important aspect of the Government's approach to the consideration of new crematoria.

95. It is evident that there is an elevated proportion of the community that would be served by the Essington proposal which are of Sikh or Hindu faith. The proposed crematorium would have a bespoke viewing gallery; a facility that would meet the needs of specific communities, which was an issue recognised by the Government in carrying out its review of crematoria provision and facilities in March 2016. This extends not only to the likely number of mourners who would attend such services which can involve 300 or more friends and family but also the provision of appropriate space in order to be able to undertake various religious rituals and the committal of the coffin to the cremator being witnessed. In contrast, Mr Lathbury confirmed that no specific or bespoke provision is intended for the Wergs facility. This is another material advantage for the Essington proposal.

#### 45 minute or 1 hour time slots for cremation services

96. There was a suggestion from Mr Lathbury that there was a qualitative advantage of their proposed 1 hour slots for services. Westerleigh propose 45 minute slots and anticipate that there would be 7 core slots commencing at 1030 hours. Dignity's position is slightly more opaque. Although they contend that there would be 6 core slots per day in fact it appears from Mr Lathbury's evidence that "there is a distinct and consistent preference for the slots across the middle of the day, i.e. 11am to 2pm, followed by shoulder slots of 10am, 3pm and 4pm...". Further, as Mr Lathbury accepted, a substantial number of Dignity's existing sites operate on the basis of 45 minute slots rather than 1 hour slots.

97. Hence, it is difficult to say that there is some specific qualitative aspiration to achieve 1 hour slots. Indeed, the ICCM Charter for the Bereaved (November 14) provides as a charter target a minimum service time of 45 minutes. There is no nationally identified objective within the industry or otherwise to achieve 1 hour slots. Hence, Mr Lathbury's purported aspiration to achieve this level of service time for each service appears to be a freestanding commercial practice and not one driven by recognised, identified, qualitative need.

#### Other Appeal Decisions

98. There are a number of Inspectors' decision letters that deal with schemes for crematoria elsewhere, including in the Green Belt. As Ms Hawkins accepted, it is relevant to take account of non-Green Belt cases when looking at the issue of need. Those decisions need not be subject to detailed and forensic analysis but some of the principles addressed are worthy of note.

- The relevance of an increase in death rate.
- A benchmark catchment population of around 150,000 people was recognised in the Halstead decision.
- The rule of thumb journey time of 30 minutes has been recognised in a number of decisions. A number of those decisions have also specifically utilised the 0.6 journey time factor to take account of the slower speed of the cortège. It is that journey time factor that has been utilised by Westerleigh in arriving at its assessment.
- The relevance of core times has been recognised at numerous appeals.

#### Development Plan and national policy

99. In respect of both the Westerleigh and the Dignity proposals one development plan policy is cited against each; conflict with CS policy GB1. The development proposed in each case will inevitably fall to be treated in the same manner.

100. Mr Hubbard considers that the proposal is contrary to CS policy GB1 and, given the significance of green belt policy, that this gives rise to the proposal being contrary to the development plan as a whole. The proposal is also contrary to the NPPF in that the proposed development is similarly not within any of the exceptions laid out in paragraph 89 and thereby is again to be considered as inappropriate development needing to demonstrate very special circumstances.

101. In either instance, if material considerations outweigh the harm to the Green Belt by reason of inappropriateness and the harm arising from encroachment then very special circumstances will be demonstrated and, irrespective of the conflict of the proposed development with CS policy GB1 or the NPPF, the proposed development may be granted permission. The same analysis applies to both proposals.

102. Similarly, in neither instance are any other material considerations (beyond need) sufficient in themselves to demonstrate very special circumstances unless the need for the development has also been demonstrated. Hence, in each instance the policy test both under the development plan and national policy is essentially the same. Whilst each proposal comes to be considered on its own merits the preference weighs in favour of the proposal at Essington.

103. Essington would not only give rise to a higher level of relief to that of Wergs (so far as the Bushbury site is concerned), but it would also give rise to a substantial level of relief in respect of Streetly which is under strain presently albeit the level of need may not exceed Ms Hawkin's "average" threshold until some future point in time. The Wergs proposal would have only a minimal beneficial impact on any other crematorium.

## Other matters in the planning balance

104. It would appear that Mr Johnson approached the issue of balance having regard to questions of landscape and heritage benefits together with benefits associated with public access. Whilst he was minded to give these matters material weight he was clear that none in themselves would represent very special circumstances in the absence of demonstrated need. Self-evidently that must be correct.

105. With regard to accessibility Mr Roberts fairly recognised that it is unlikely that a significant number of mourners attending a cremation would access either site by public transport. However, the ready availability of public transport (that would provide a realistic choice to the private motorcar) is clearly to be favoured in any planning balance.

106. Mr Roberts has noted the proximity of bus stops serving the Essington site and that the most frequent service stops at a bus stop located within 400 metres of the site. All of the bus services involved are ones that provide a good level of accessibility throughout the week including Sunday. That in itself compares favourably with the site at Wergs. As for travel by train the services, whether to Codsall (in the case of Wergs) or Bloxwich North (for Essington), both benefit from an hourly service, the former serving Wolverhampton, the latter serving Walsall. More significantly Bloxwich North is only around 500m from the Essington site whereas Codsall railway station is over 2km distant from the Wergs scheme. The 1978 guidance on the siting and planning of crematoria and the FBCA recommendations on the establishment of crematoria stress the need for crematorium sites to be reasonably accessible by public transport. As Mr Roberts explained, that accessibility extends beyond simply mourners attending a service but also extend to those who wish to visit memorial gardens or plaques and the albeit limited number of workers at the crematoria.

107. Put simply, on any basis having regard to relative accessibility by public transport the balance weighs in favour of the Essington proposal on this issue.

## One crematorium or two crematoria ?

108. Westerleigh's case is squarely directed to demonstrating that its proposal is appropriate having advanced material considerations which demonstrate very special circumstances to justify the grant of permission. The Council shares that view.

109. Westerleigh does not seek to positively assert that there is necessarily the need for a second crematorium. However, it is fair to observe that the two proposals will cover different and distinct catchment areas.

110. It is established that there are clear qualitative deficiencies at both crematoria (Bushbury and Streetly), partly arising due to location in context of the populations which they currently serve and other qualitative deficiencies which also indicate the need for a new facility.

111. Indeed, whilst it is not Westerleigh's primary case, it may be that having regard to the residual quantitative need and in order to meet remaining qualitative deficiencies there may be a need for a further crematorium. In that instance the evaluation of such needs and whether such needs constitute material considerations of such significance as to constitute very special circumstances is for the Secretary of

State to determine. If he does then the Wergs scheme may have merit in also being permitted at this time.

### Conclusions

112. The proposed development of the Essington site would meet the clear need in both quantitative and qualitative terms which have been identified by all of the principal parties. So far as the Council is concerned the appeal site at Essington not only meets the quantitative need arising from the deficiencies at the Bushbury crematorium, it will also assist in meeting the quantitative need that will arrive in due course at Streetly, together with the qualitative benefits which have been identified by the Appellant.

113. It is respectfully submitted that a need, which the Council describes as a "compelling need", has been made out, and whatever benefits may be said to accrue with regard to landscape or heritage or relative accessibility it is only the demonstrated need for the crematorium facility which constitutes material considerations demonstrating very special circumstances. That judgement is specifically made out in context of the Essington proposal.

114. Insofar as there is a need to express a preference for one proposed crematorium the weight of evidence is in favour of the Essington proposal.

## **The Case for Dignity Funerals Ltd**

The material points of the case made by Dignity Funerals UK Ltd are:

### **Introduction**

115. Central to these appeals is the agreed need for at least one new crematorium in South Staffordshire. This need arises out of the significant pressure being experienced at Bushbury Crematorium which is leading to unacceptable delays and other qualitative issues.

### **The Council's position at the Inquiry**

116. In their proofs of evidence the Council accepted there was a need for a new crematorium to relieve Bushbury and took the view that it should be Dignity's scheme at Wergs. This was based upon the needs assessments submitted with the 2016 planning applications made for each proposal. These showed that Essington would divert 479 cremations per year from Bushbury and that Wergs would divert 665 per year.

117. Following exchange of proofs, the Council reversed its position and decided to support the Essington proposal. This was based on the fact that the proofs of evidence submitted by Dignity estimated that 926 cremations would be diverted from Bushbury and Westerleigh's evidence estimated that 910 would be diverted from Bushbury to Essington. The matter which tipped the balance in favour of Essington was said to be to relieve pressure on Streetly Crematorium in Walsall which the Council accepted only to be a problem in the future.

118. In reaching its conclusions, the Council has accepted at face value the evidence of each Appellant. It did not seek to interrogate the methodology of either party. Indeed, as became evident from the cross-examination of Ms Hawkins, she didn't in fact understand Westerleigh's methodology.

119. Crucially, and contrary to the evidence of Ms Hawkins, the Council's planning witness, Mr Johnson, was unaware (because he was not made aware) that Essington's figures demonstrated that it would be overtrading to a greater degree than Bushbury. Mr Johnson also accepted that he had not received any professional advice as to the weight to be given to Office of National Statistics (ONS) death projections in the areas forming the catchment of Streetly crematorium. He accepted that if, in fact, Streetly was shown not to be under pressure in the future this would tip the planning balance back in favour of Wergs.

120. The significance of Essington's overtrading and the overestimation of death projections for Streetly's catchment are dealt with below. It is suffice to note at this point that the Council's acceptance of Mr Evans' data at face value and the complete lack of interrogation of the evidence means that Council officers' change of stance should be given no weight.

### **The need for a crematorium**

121. At the heart of this case is a demonstrable need to address the quantitative and qualitative deficiencies arising from Bushbury's overtrading. That is a need which is

accepted by the Council. Each of the three main parties accept that there is a need for at least one new crematorium in order to relieve Bushbury.

122. A key part of the assessment of need and whether a facility is overtrading is the measurement of its practical capacity. Although a different method was at one stage advanced by Mr Burley in his proof of evidence a joint methodology was agreed by the three parties at the inquiry. This methodology is based on actual core slot times at the relevant facility and then taking the percentage of these which are filled on an average month and at a peak month. Mr Evans' table at appendix 24 of his evidence shows that Bushbury is operating at 87.8% of capacity in an average month and 115.5% capacity at a peak month (based on 11% of annual deaths occurring in one month).

123. No other source of current need has been identified by either Appellant. Mr Evans confirmed in cross examination that his position was that 'Streetly will be an issue for the future' there being no suggestion that Streetly is under pressure now. This is a position with which the Council agrees. Ms Hawkins stated in her proof of evidence: 'Whilst Streetly is under some pressure, this is significantly less than the pressure on Wolverhampton (Bushbury), and at times of average demand does not begin to impact until 2025'. There is no suggestion from any party that relieving Bushbury now would not constitute a material consideration to be taken into account in determining whether very special circumstances exist.

124. Further, no party now relies upon need being demonstrated by reason of numbers of population 'first served' by a crematorium. There is a question as to whether this is in fact would ever form a weighty material planning consideration, but in any event, the numbers which have been provided by Westerleigh are low.

125. The need therefore arises solely from the overtrading at Bushbury. It is this which gives rise to the agreed position that there is a need for at least one new crematorium in order to relieve that situation.

126. It is important to note that the need is not simply demonstrated by a blackletter calculation which demonstrates that Bushbury is trading at over 80% of its practical capacity. Rather, the need is also demonstrated by the unsatisfactory (to put it mildly) qualitative situation at Bushbury, which demonstrates that qualitative issues are a manifestation of quantitative deficiencies. The existing problems at that crematorium have been a common feature of both Dignity and Westerleigh's evidence. Bushbury was developed in the 1950's to cater for a primarily Christian population. It was designed as a single chapel scheme with a second chapel being grafted on in 1970. Given that slot times are 45 minutes it is likely that there will often be four funeral parties on site at any given time. This results in a conveyor-belt experience for mourners. This is clearly deficient given the sensitivities which surround the grieving process.

127. The lack of adequate parking at Bushbury further increases the qualitative deficiencies on site. As Mr Lathbury stated in evidence the constraints at the site means that this isn't simply an operational issue which can be dealt with.

128. Further, the overtrading has led to unacceptable delays between the date of death and date of cremation. Analysis undertaken by Dignity (and unchallenged by any party to the inquiry) shows that average waiting times between date of death and

date of cremation are materially longer than either Telford or other crematoria in the area. This is a very clear qualitative deficiency which has resulted from the quantitative overtrading.

Why grant planning permission for the Wergs scheme?

129. The Appeal proposal at Wergs will offer a very high quality of service. Unlike any crematorium in the vicinity (other than Telford) and unlike the Essington proposal, the Wergs proposal includes service intervals of one hour length. This includes an overall minimum chapel time of 45 minutes. As Mr Lathbury puts it 'the importance of 1 hour service slots should not be understated in providing bereaved families with the time and space needed to ensure a dignified and respectful service for their loved ones'. The Wergs proposal would therefore meet a qualitative need which is not being met at Bushbury and would not be met at Essington.

130. In terms of need more generally, the simple answer is that of the two options a new crematorium at Wergs best relieves Bushbury.

131. Dignity instructed an independent consultant, Mr Paul Burley of Montagu Evans, to conduct a need assessment into the provision of a new crematorium on the Wergs site. In order to gain some consistency with Westerleigh's previous approach (and following a request from the Council) Mr Burley commenced his assessment by applying a drivetime which used a factor of 0.43 to the 30 minute catchment. This represented what had been understood to be the agreed approach at the Inquiry in May 2016.

132. The major criticism of the Council in cross examination of Mr Burley and his methodology was the use of a 0.43 factor as opposed to a pure cortege drive time (without stops) as applied by Westerleigh. Clearly this criticism is misplaced as the application of a factor of 0.43 as opposed to 0.6 serves only to reduce the extent of the catchment area and thus in fact results in a conservative estimate of the extent of the use of Wergs. Whilst it is accepted that this could potentially be relevant in circumstances where a case is being advanced based on "% of population first served", as noted above, that does not form part of the case as advanced by Dignity. Consequently, the selection of this drive time factor merely serves to emphasise the conservative nature of Mr Burley's assessment.

133. Second, having established the extent of the drivetime area, Mr Burley applied a gravity model to the catchment. This involved applying judgement as to factors such as 'ease of route', attractiveness of facilities and utilising data which was available to Dignity from their operation of Telford Crematorium, and also their ownership of Jennings Funeral Directors. Mr Lathbury's evidence was that of the 1,450 cremations conducted by Telford in 2015, 209 would have been closer to the appeal site. A further 72 were closer to Bushbury. In fact only 66% of the total cremations conducted at Telford in 2015 came from locations which were closer to Telford than any other crematorium.

134. Further, as Mr Lathbury explained in cross examination, it is not the case that one can simply apply the same sort of diversion rates to every crematorium across the country. He explained that it 'depends on the context' and the quantitative and qualitative offering of surrounding crematoria. The main reason for these diversion figures was the quantitative and qualitative offering at Bushbury. This 'local

knowledge' was therefore essential to establishing a realistic catchment area for the Wergs crematorium, and indeed any crematorium which is seeking to relieve Bushbury.

135. One criticism which was levelled at Mr Burley and Mr Lathbury during cross examination on behalf of Westerleigh was that the data from Telford Crematorium and from Jennings Funerals was unavailable due to it being commercially sensitive. However, there was no allegation that Mr Lathbury or Mr Burley had manipulated that data or that it was otherwise improper for them to use it. Further, notwithstanding the long availability of proofs of evidence prior to the inquiry, we can confirm that there has never (before cross-examination) been any request of Dignity or its witnesses for details of the data.

136. It is important to note that in his assessment, Mr Burley has used the death rate projections as provided by the ONS. Although he stated that these were likely to be conservative he has not made any adjustments to these. This supports the robustness of his approach. Further, Mr Burley has not included an allowance for annual peaks in death rates due to their 'inherent unpredictability'. Again, this supports the conservative and therefore robust nature of his approach.

137. The criticism made by Mr Evans of the figures produced by Mr Burley is demonstrably wrong and misplaced and in fact merely serves to underline the robustness of the approach taken by Mr Burley. In fact, what Mr Evans showed is that his assessment of the population within Mr Burley's catchment area and his own assessment were remarkably similar (only a matter of about 3,000 difference).

138. Mr Evans then sought to reduce Dignity's catchment further. There was simply no good reason for doing so, and the effect would be to reduce the catchment which was already reduced by application of the 0.43 factor. Rather, Mr Burley's assessment of the likely throughput of Wergs crematorium and the estimated diversion from Bushbury is robust for the reasons outlined above.

139. Mr Burley estimates that a new crematorium at Wergs would divert 926 services per annum away from Bushbury. This would have reduced the services conducted at Bushbury in 2015 from 2655 to 1719. Based upon the core slot calculations by Mr Evans this would clearly meet the need and relieve Bushbury to an extent whereby it is trading within its capacity (57% within an average month and 66% in a peak month).

140. As Mr Lathbury confirmed in cross examination, this would fully meet the need at Bushbury and would address the delays which are being experienced by those wishing to arrange a cremation at that facility.

141. Finally, the diversion and operating figures arrived at by Dignity clearly demonstrate that there would not be any rebalancing from Wergs back to Bushbury or to other crematoria as a consequence of 'overtrading' at Wergs. As Mr Lathbury explained in his evidence in chief, the Wergs site would have six core slots (services starting between 10am and 3pm). When multiplied by 251 days, this results in a practical capacity of 1,506 slots per annum. Mr Burley has estimated that the Wergs crematorium would conduct 1,039 services per annum. This represents a utilisation rate of 69% in an average month and 79% in a busy month. There has been no suggestion from any party that Wergs would not operate within its practical capacity.



142. In addition to the obvious benefit of relieving Bushbury, the Wergs proposal offers a number of additional material considerations which strongly weigh in favour of the proposal.

#### Landscape and Historic Environment

143. The Heritage and Landscape evidence produced on behalf of Dignity took up only a small portion of the Inquiry (just over an hour). This was not due to the diminished importance of the material considerations but rather due to the fact that these benefits which attach to Dignity's scheme have not been disputed by any party.

144. The Council's position on these benefits was set out early on in the enthusiastic responses from their Conservation and Landscape officers. Some choice quotations state:

*'Therefore, two advantages of the current proposals are that the site's denuded landscape will be restored; and both the repair and maintenance of the boundary wall would become the responsibility of its new owners and operators'.*

*'In conservation terms there is nothing to be lost in the present scheme going ahead, and much to be gained'.*

*'I consider that the proposals represent an excellent response to the site and its historic context. There are very major benefits of the scheme that, in my view make a compelling case for the development to receive planning approval. Indeed, the proposals present are [sic] rare opportunities to restore and enhance a large part of a Historic Landscape Area, bringing it up to scratch with the remaining intact areas of parkland. Taking a pragmatic view, without some form of enabling development, the site will further deteriorate and its associated historic features will ultimately be lost. Consequently, I strongly support this application and do not raise any objections.'*

145. Mr Johnson, on behalf of the Council, confirmed in cross examination that he attached significant weight to the landscape and heritage benefits of the Wergs scheme. He did not demur at all from the views of the Council's consultees.

146. Although Westerleigh made an initial attempt to mount a challenge to the heritage and landscape benefits of Dignity's scheme, Mr Hubbard stated in cross examination that the two pejorative and tendentious reports appended to his proof of evidence should be given 'no material weight'. That position was maintained by Westerleigh throughout the inquiry, and there was no cross-examination from any party of Dignity's witnesses on these issues.

147. Mr Hubbard's stated position was clearly correct. It appears that the authors of the reports appended to his evidence had not visited the site. They were not called to speak to the reports and the reports were supported by no party to the Inquiry. By contrast, the Inquiry has had the benefit of the oral evidence of Mr Kirkpatrick and Mr White each of whom has over 20 years of experience in their fields of expertise. The professional input of each has informed the design process behind the proposal.

148. As explained in Mr White's evidence, the proposal allows for the restoration and maintenance of three key features of the Historic Landscape Area. These are the boundary wall, brick kiln covert and the tree avenue. As stated by Mr White: '[T]he positive management of the individual heritage assets within the Historic Landscape Area, which would enhance and conserve, is beneficial to the historic landscape character and appearance of the Historic Landscape Area which is in accordance with Policy EQ4'.

149. Further, the scheme sits within the setting of Wergs Hall, a grade II listed building. Mr White's unchallenged evidence is that:

*'The scheme has been designed to respect the surrounding landscape and preserve those elements within the setting of Wergs Hall which contribute to its historic interest as the principal estate building. Moreover, the Scheme takes the opportunity to restore those heritage assets (i.e. the boundary wall, tree avenue and woodland) which contribute to the setting of the listed Hall. For these reasons the Scheme would, in fact, enhance the setting of Wergs Hall and better reveal the significance of the designated and non-designated heritage assets'.*

150. The enhancement of the setting of a listed building is a material consideration which must, in law, attract 'considerable importance and weight'. In any event, there is no dispute between the parties that the heritage benefits should attract 'significant weight'.

151. It goes without saying that of the two proposals before this Inquiry, only Wergs is able to demonstrate heritage and landscape benefits which merit such weight. This necessarily weighs heavily in favour of the Wergs scheme over that at Essington if there is a case for the grant of permission only in respect of one.

#### Other environmental benefits

152. The conclusions contained within the Note of Evidence prepared by Mr Christopher John at appendix B to Mr Downes' proof went unchallenged at the Inquiry. Mr John's evidence was that the existing ecological value of the site is low and would be likely to reduce with the continued use of the site for turf production. He further stated that the woodland habitats were likely to further deteriorate in the absence of management and the great-crested newt population was unlikely to be sustained in the long term due to the continuing deterioration of the breeding ponds.

153. Mr John concluded that the scheme would be of significant benefit to the local great crested newt populations (a European protected species) and would contribute towards the delivery of a local Biodiversity Action Plan to 'maintain the current range, distribution and viability of existing great crested newt populations; restore degraded areas of important native woodland by promoting appropriate management; and maintain the extent and condition of ancient and non-ancient native woodlands'.

154. Mr Downes concluded that significant weight should be given to this biodiversity benefit. This was not challenged by any party.

155. The Wergs proposal also delivers a new area of public open space for community use. As Mr Kirkpatrick detailed in his evidence, a series of meandering

paths would be provided within Brick Kiln Covert which would be used not only by mourners but also the general public for informal recreation. This was recognised by the Council's Landscape officer who stated 'Public access will also be encouraged within other areas of the site. Essentially, this will result in the creation of a new public open space of landscape and ecological interest'.

156. The provision of public open space aligns with Development Plan and national policy objectives and should also be given significant weight in the planning balance.

The Essington scheme

157. The need case prayed in aid of the Essington proposal was entirely without merit and the approach to assessing throughput and diversion was not merely untested and novel but manifestly absurd.

158. The appellant relied entirely and to the exclusion of all else upon the use of 'CACI computer software' and in doing so abandoned: (a) any use of a thirty minute drive time and (b) any exercise of judgement as to who will be diverted to the Essington proposal from Bushbury and other crematoria. It is now clear that this computer software claims to do nothing more than allocate populations to their nearest crematorium. It is necessary to consider: (1) whether it does do this and (2) if it does accurately allocate populations, what use this is in projecting the number of cremations which will be diverted from existing facilities.

*Does CACI allocate populations to their nearest crematorium?*

159. As with any 'software tool' there is a risk that it is treated as a magic "black box" whose output is blindly accepted and by default effectively goes un-interrogated. It goes without saying that any software program is only as good as the data which is fed into it and the assumptions it is programmed to make. There has been little evidence of this at this Inquiry.

160. Mr Evans for Westerleigh attempted to give some detail of the information which was fed into the program. He stated that ONS population data was built into the program together with the cremation rate from the Cremation Society. He then stated that he would put in the postcode of a crematorium and then CACI could give an estimate of the population and cremations.

161. The ONS does in fact provide actual death data for output areas. This is the data which has been used by Dignity in their needs assessment. There is no reason for not using it and no valid reason has been given by Westerleigh.

162. More importantly, it is not known what other data and assumptions are contained in the CACI program. Most glaring are the assumptions in relation to drivetimes. No information is given as to the assumptions which have been built in. For example, what time of day the model assumes people are driving between any given points and whether the same time of day is used for measuring the extent of each catchment. The 'Method Statement' at Mr Evans' Appendix 8 simply states that CACI uses 'drive time technology' but nothing more is said about it.

163. The testing of CACI's outputs by Dignity's expert witnesses has cast some doubt on whether CACI does indeed allocate Output Areas (OA) to their nearest

crematorium. The CACI catchment for Essington is at Mr Evans' Appendix 10. Even without testing one can see that the catchment pushes right up against the Bushbury site and it should be noted that Westcroft and Featherstone, which are very short distances from Bushbury, are said to be a closer drive time to the Essington site.

164. In light of this, Mr Tucker tested journey times from points within the purported Essington catchment. One part of this exercise can be seen on the first page at tab 2 of Mr Tucker and Mr Burley's additional material (ID13). The journey times were measured at 4pm on a Wednesday and screenshots of the Google Maps measurements can be found behind the first page.

165. Taking one example for the purposes of these submissions, one can see that the point at 'Blackhalve Lane' sits comfortably within Mr Evans' Essington Catchment map. However it is 1.5 miles from Bushbury Crematorium and 3.5 miles from the Essington site (more than double the distance). Unsurprisingly, Google Maps estimated the drive time to Bushbury to be about two thirds of that to Essington. In order to assist in coming to a conclusion as to whether CACI really does allocate OA populations to their nearest crematorium, careful attention should be given to these four examples. They amply demonstrate that the CACI "house rule" exaggerates the population which is closest to the Essington site.

166. As Mr Tucker explained in the 'Explanatory Note' circulated on 8 March 2017 (ID12) the Google Map analysis explained above 'raised concern that Mr Evans' watershed runs close to Bushbury which Mr Tucker considered was 'counter-intuitive'. In response Mr Tucker undertook his own analysis using ESRI's ArcGIS software. He then overlaid his results with Mr Evans' red-line - albeit roughly due to the different modelling packages. He found that this analysis corroborated the Google Maps exercise and demonstrated that significant parts of the purported Essington catchments should properly fall within Bushbury's catchment if one is using a purely 'watershed' approach.

167. Having not been provided with the data which has been fed into CACI or a full exposition of its outputs, the reason for this error is unclear. One explanation may be that CACI has incorrectly plotted the Essington site (together with the Wergs site). Each of them is just under a mile from where they ought to be. This can be seen from tabs 4 and 5 of the additional material (ID13). As Mr Roberts confirmed in cross-examination it is essential to ensure that one plots the correct location for a crematorium and by getting a point wrong by ½ mile or a mile can have quite a dramatic effect.

168. It appears that this is CACI's first exposure to an Inquiry relating to a crematorium. Mr Evans confirmed that he would know if it had been used or endorsed at such an Inquiry and was unaware of any instance when it had been so endorsed. The oddities and fundamental errors which we have identified merely serve to reduce the weight which may be accorded to the CACI exercise.

169. Although CACI is used by various retailers there is no suggestion that it has been used by any other organisation to predict the catchment for a given crematorium and more importantly the number of cremations which that crematorium will divert from existing crematoria.

170. It goes without saying that Westerleigh could have, but did not, call someone who was involved in creating the CACI software. Further, whilst they could have produced the data inputs which were used in the model and the assumptions it was programmed to make, they did not. Given the lack of corroborating data, and the simple exercises of Mr Tucker which demonstrate that CACI's conclusions are unsafe, no confidence can be attributed to the assertion that CACI does in fact allocate OA populations to their nearest crematorium.

*Even if CACI did allocate populations to their nearest crematorium, what use is this in projecting diversions?*

171. During the course of his evidence, Mr Evans confirmed that the catchment map relied upon has nothing to do with a thirty minute drivetime and that he was not relying upon any evidence apart from the CACI figures in establishing their catchment and diversions.

172. The sole basis, therefore, for Westerleigh's diversion assumptions are the CACI outputs which are said to appear in the 'Diversion table' at Mr Evans' Appendix 19. These are based solely on the presumption that a person will choose the crematorium closest to them, no matter how marginal the time difference. Astonishingly, the Westerleigh approach does not allow (or even permit) for judgments to be made consequential upon whether a particular time slot is available or whether a bereaved relative or friend has a preference for a particular crematorium given the differing quality of the local choice of crematoria.

173. That these factors are key in judging whether a person is likely to use a particular crematorium is borne out by the evidence of Mr Poole who states in his proof: 'Often I have to advise families wishing to use either Bushbury or Streetly that those crematoria will not be available on the date or time they require and recommend they use Stafford instead'. These factors are also borne out by the Telford data used by Dignity in their needs assessment.

174. When asked by the Inspector for evidence from CACI in relation to the diversions, Mr Evans pointed to evidence of population numbers at his Appendix 11. This table purports to list those OAs which are included within the proposed catchment for Essington, their population and 'estimated number of deaths'. Those tables tell the Inquiry nothing as to which of these are considered to be diverted from existing crematoria and, importantly, from which existing crematorium.

175. Mr Evans submitted plans at the Inquiry which purport to show the 'Sutton Coldfield catchment before & after Essington Diversion'. Significantly, this does not show any of the controversial areas of diversion. Particularly it does not show the diversion which Mr Evans states Essington and Wergs would each take from Bushbury.

176. It is telling that in relation to Westerleigh's 2016 application, Mr Evans decided not to use CACI to calculate diversions in relation to the Essington site, but chose to do so in relation to Wergs. Having the necessary depth of data for his own proposal he used his 'judgement' to assess whether populations would travel across to the proposed crematorium at Essington. As noted above, the exercise he adopted for his site at Essington and Wergs was markedly contrasting. His approach to Wergs was based on a drive time with a 0.43 factor (not 0.6 which he used for his own assessment of % first time served within 30 minutes), and the application of judgment

he made with respect to Wergs was simply not undertaken as it was of his own assessment of the Essington catchment area.

177. It is notable therefore that the CACI figures differ in the following manner from the judgment used by Mr Evans in his 2016 application:

Crematorium	2016 Application Estimate	CACI 'calculation'	Percentage shift
Bushbury	479	910	+ 90%
Stafford	544	145	-73%
Streetly	444	548	+ 23%
Total Cremations	1466	1778	+ 22%

178. The fact is that this 90% jump in the cremations to be diverted by Bushbury which is said to flow from the output of the CACI software remains unexplained and unsupported by any data which was fed into CACI and the diversion tables which it is said could be printed off from the system. As such these figures simply cannot be accepted at face value.

179. Moreover, it speaks volumes that these figures conflict so fundamentally with the better judgement of Mr Evans which was exercised as recently as September 2016 as part of his need statement. As has been stated above, whether a person will use one crematorium over another is unlikely to be dictated simply by whether it is a second, minute or five minutes closer. The CACI system does not allow for the application of judgment to be exercised and in doing so it omits the consideration of real world factors like ease or quality of journey, slot availability and qualitative factors such as length of service time.

#### Overtrading and Rebalancing

180. Casting further doubt on the accuracy of CACI's forecast is the assertion that the Essington crematorium would conduct 1778 cremations per year, being the total number of services which it purports to divert from pre-existing crematoria. Under cross examination, Mr Evans confirmed that the practical capacity of Essington would be 1,757 (based on 7 core slots). If 1,757 is correct, then Essington would be trading at more than 100% of its practical capacity on an average month. This pressure would increase in a peak month to 133%.

181. It is a fundamental plank of Mr Evans' need evidence that the fact that a crematorium has insufficient capacity leads to delays in the bereaved being able to arrange a funeral. He states that the impact of these delays 'on the grieving process should not be underestimated. It is clear then, on his own CACI figures, that Essington would be trading in excess of its practical capacity in an average month. This would necessarily lead to the delays which are currently experienced at Bushbury and would potentially be even more acute. It may even lead to a requirement to shorten the length of services.

182. Notably, these figures run contrary to Mr Evans' claim that the Essington crematorium will provide 'a local service for the first time in a peaceful setting free from the pressure and strain that neighbouring crematoria face'.

183. The fact that the CACI figures result in a calculation which shows that Essington would be seriously 'overtrading' can lead to only one of three conclusions. First, the figures can be accepted and demonstrate that the 'Bushbury problem' would simply be transferred to the Essington site which is predicted to overtrade to an even greater extent. Second, the figures cannot be relied upon to show a real world estimate of the numbers which are likely to be diverted to Essington. In other words, they are wrong and they are an over-estimate of the likely diversion. Or, third, there would be a 'rebalancing' in which some of the cremations said to be diverted to Essington would in fact remain at their 'existing' crematoria. The second and third of these conclusions leads to the same end point, namely that the diversions which Essington claims (including the 910 from Bushbury) are likely to be materially lower than asserted. The first conclusion undermines the entirety of the need case for Westerleigh as it would merely be transferring an existing problem rather than solving it.

184. Mr Lathbury highlighted that if rebalancing is to occur then as the majority of the Essington volume is coming from Bushbury, the biggest rebalancing would be likely to go back to Bushbury. During Mr Lathbury's re-examination, the Inspector indicated that he may have to consider the extent of rebalancing back to the various crematoria as part of his decision. Consequently, Mr Burley has produced a table and calculations which seek to allocate the 'rebalancing' on a 'pro-rata' basis.

185. Appendix 19 to Mr Evans' Proof includes the following table:

Appendix 19 - Diversion table for Essington

ID	Crematorium	Actual Cremations 2015	Net Change in Cremations	Estimated Number of Cremations
5088	Essington		1,778	1,778
30	Birmingham (Sutton Coldfield) Crematorium	2,008	- 134	1,874
84	Gornal Wood Crematorium	1,934	- 3	1,931
153	Lichfield Crematorium	494	- 3	491
245	Stafford Crematorium	1,819	- 145	1,674
254	Telford Crematorium	1,450	-	1,450
263	Streety Crematorium	2,090	- 548	1,542
269	West Bromwich Crematorium	2,201	- 34	2,167
284	Bushbury Crematorium	2,645	- 910	1,735

186. This claims that the annual turnover of Essington would be 1,778 cremations per year. As stated above, this is above 100% practical capacity in an average month and 133% in a peak month.

The diversion figures given as a percentage of 1,778 are as follows:

Sutton Coldfield = 7.5%

Gornal Wood = *negligible so not counted*

Lichfield = *negligible so not counted*

Stafford = 8.2%

Streetly = 30.8%

West Brom = 1.9%

Bushbury = 51.2%

The practical capacity calculation of Essington, based on 7 core slots, is as follows:

251 days x 7 core slots = 1,757 per annum

80% of 'practical' capacity = 1,404 per annum

The calculation of 'overcapacity' services at Essington is as follows:

$1,778 - 1,404 = 374$

The redistribution of 'overcapacity' services back to existing crematoria in proportion with the diversion estimates would be as follows, based on an overcapacity of 374:

Sutton Coldfield = 7.5% = 28

Stafford = 8.2% = 31

Streetly = 30.8% = 115

West Brom = 1.9% = 7

Bushbury = 51.2% = 192

The resulting trading at existing facilities, once re-distribution had taken place would be as follows:

Sutton Coldfield =  $28 + 1,874 = 1,902$

Stafford =  $31 + 1,674 = 1,705$

Streetly =  $115 + 1,542 = 1,657$

West Brom =  $7 + 2,167 = 2,174$

Bushbury =  $192 + 1,735 = 1,927$

187. Once re-balancing is taken into account, it is clear that the 910 claimed to be diverted by Essington from Bushbury would in fact be materially less. It would be  $910 - 192 = 728$  (based on 7 core slots). This diversion figure is materially lower than the 926 which Mr Burley has assessed would be diverted from Bushbury to Wergs. It is also clear then, once diversion has been taken into account, Wergs is the crematorium which would provide materially more relief to Bushbury.

188. In the event that there would not be any rebalancing and either: (a) the CACI figures are simply wrong, or (b) Essington would overtrade to the extent claimed, then the Wergs proposal is clearly preferable over Essington. The first of these scenarios reveals that no confidence can be given to the assertion that Essington would divert about 910 cremations per year from Bushbury. This figure is likely to be materially lower. The second reveals that the overtrading problem will continue to exist albeit at a different location. This is a problem which does not arise at Wergs.

189. In our submission, it would be the height of folly and perverse to seek to meet a quantitative and qualitative deficiency at one crematorium by bringing forward a new facility which would perpetuate precisely the problems which have been the whole basis for allowing the new facility.



## Streetly Crematorium

190. In the Council's opinion the evidence which emerged in Westerleigh's proofs of evidence showed that it would relieve Streetly. Although the Council has stated: 'Whilst Streetly is under some pressure, this is significantly less than the pressure on Wolverhampton (Bushbury), and at times of average demand does not begin to impact until 2025'. It has concluded that this should tip the balance towards the grant of a planning permission at Essington rather than at Wergs.

191. As noted above, the Council in reaching its conclusions did not interrogate the evidence presented by the parties but instead accepted it at face value and indeed Ms Hawkins admitted that she didn't even understand it. This is significant because when one begins to assess the purported future pressure on Streetly as presented by Westerleigh, one can see that the pressure has been inappropriately overinflated and can be given no weight.

192. Mr Evans confirmed in cross examination that his position was that 'Streetly will be an issue for the future'. Appendix 28 of Mr Evans' proof includes a table entitled 'Impact on capacity of projected rise in deaths and cremation rate over the next ten years'. It claims that the cremations at Streetly will increase from 2090 in 2015 to 2548 in 2025. This is an increase of 22%. In cross examination, Mr Evans confirmed that the justification for that increase can be found at his Appendix 27 where he purports to have set out the number of deaths per local authority (three authorities identified by Mr Evans, South Staffs, Cannock Chase and Walsall) in the years 2011-2015. He has then calculated the 'average annual rise' in each of these areas and projected it forward by ten years resulting in the 22% increase.

193. This exercise has completely ignored ONS's death projections. The table introduced to the Inquiry by Dignity shows the predicted deaths in South Staffs, Cannock Chase and Walsall between 2015 and 2025. These are exactly the local authority areas chosen by Mr Evans. The figures were released on 25 May 2016. Overall there is a projected decrease in the death rate of 0.9%. This tells a polar opposite picture to that presented by Mr Evans who relies upon the extrapolation of recent peaks which, according to the ONS are due to 'excess deaths' rather than being indicative of a likely future growth rate. Given that these figures were produced by the national statistics body on the basis of information available to them it is difficult to understand why they should be afforded no weight, unless of course no weight is to be given to the exercise conducted by Mr Evans.

194. Leaving aside Mr Burley's further work, he produced national death rate projections for England at Table 4.4 of his main proof of evidence. Starting with a base year of 2013-14, the increase over a 25 year period is 3%. If one starts at 2014-15 the projections show a decrease of 2%. As Mr Burley explained it depends on where you take the starting point for measuring your projection. However, on any view, the ONS projections are nowhere near the 22% claimed by Mr Evans. If one was to take an increase of 4% (the increase between 2013-14 and 2025-26) this would increase the 2090 cremations being performed at Streetly in 2015 to 2174 cremations in 2025. That represents 67% of realistic capacity in an average month and 77% capacity in a peak month. On any basis, therefore, the issue of Streetly is a non-issue and certainly not one which can contribute to tipping the balance in favour of Essington.

195. Mr Evans and Westerleigh already state that pressure at Streetly does not represent a problem now. It is clear that when one applies more realistic death projections to the figures, it will continue to trade within 80% of capacity within both an average and peak month up until at least 2025. Need at Streetly cannot and does not weigh in the balance in favour of Essington.

196. Finally, and in any event, as explained by Mr Lathbury Streetly's offering is (as it exists now) 'far superior' to the qualitative offering at Bushbury. He explained that not only was Streetly performing around 2000 cremations per year as compared with Bushbury's 2,600 but also that Streetly was designed as a two chapel crematorium (by contrast to Bushbury) and that given the land available, it would be possible to address issues on site (including any inadequate parking). The constrained nature of the Bushbury site means that the same cannot be said for Bushbury.

### Sustainability

197. Other than relieving what can now be seen to be an overstated future pressure at Streetly, Westerleigh claims that it should be preferred in the planning balance due to the locational sustainability of its site as compared with Wergs.

198. It is accepted that Essington is better served, in terms of frequency, by buses than Wergs. However, this needs to be viewed in the context of the nature of the proposals and the catchment areas.

199. Mr Roberts stated in his main proof of evidence that 'Whilst it is acknowledged that few people attending a cremation service will travel by public transport or cycle to the site, it is important for the site to be accessible for those wishing to visit the memorial facilities and for staff who regularly access the site'.

200. As Mr Tucker explained, the number of staff at a crematorium is minimal. It is notable that Westerleigh have not provided any evidence as to the number of staff who use public transport to travel to their existing sites. Further, the nature of memorial visits are that they are not time critical. Therefore, if a person wished to use the bus to access the Wergs site then arrangements could be made around the bus timetables. Further, Mr Lathbury confirmed that only 10% of customers would choose an onsite memorial within the remembrance garden. These would usually be visited on occasions such as Christmas or birthdays. Though no estimates have been given for the number of memorial visits to either proposal, they are likely to be far fewer than the number of cremations projected to take place.

201. It is clearly relevant that the bus service which serves Essington covers a relatively limited catchment area (principally running from Walsall) and therefore not actually substantially serving the area from where Essington will draw its users. It is also clear that the relatively closer railway station in fact is on a line which would take in excess of an hour from Wolverhampton, whereas the Codsall rail station is a mere 8 minutes from Wolverhampton.

202. It is therefore clear that the more frequent bus service and relatively closer rail station to Essington has no material weight in the planning balance.

### Overall Planning Balance

203. If there is to be only one crematorium to be permitted then the clear choice is Wergs.

204. Both crematoria would relieve Bushbury to an extent but as can be seen from the analysis, it is Wergs which would provide materially more relief. Wergs is estimated to relieve Bushbury of 926 cremations per year. This would be without overtrading at Wergs and would fully relieve the need arising from Bushbury's overtrading. Conversely, on any view, the number claimed to be diverted by Essington (910 pa) has been exaggerated. This is clear from the overtrading which would be experienced at Essington which leads to one of three conclusions: (a) the overtrading problem would be transferred from Bushbury to Essington, (b) the figures are wrong or (c) rebalancing would occur and the claimed relief to Bushbury would be significantly less than Westerleigh claim.

205. It has been demonstrated that the future pressure at Streetly as relied upon by Westerleigh in their evidence has also been exaggerated. As such, any relief claimed from this crematorium cannot weigh in favour of that proposal.

206. The claimed better public transport accessibility of Essington over Wergs should be afforded little if any weight. Public transport accessibility is only a facet of sustainability. Of much greater importance are the significant heritage, landscape and other environmental benefits of the Wergs scheme. Statute mandates that the heritage benefits must be given 'considerable importance and weight'. In any event, no party has disagreed with the significant weight which Mr White and Mr Kirkpatrick stated, in their professional opinions, should be given to these factors. On top of this is the public access and ecological benefits offered by the Wergs proposal. Again, no party challenged the fact that significant weight should also be given to these material considerations.

207. The balance is therefore clear. If there is to be only one crematorium this should, on any view, be the Wergs proposal.

Is there a need to grant planning permission for both schemes ?

208. If it is concluded that Essington ought to be preferred in the first instance over Wergs, then Dignity is of the view that there is a need for a second crematorium as Essington would not fully meet the need arising out of Bushbury.

209. Even on the basis of the flawed CACI calculations, and on the incorrect assumption that Essington would divert 910 cremations per annum from Bushbury, Mr Evans expressed in cross examination only that the proposal 'would come very close to meeting [the Bushbury] need'. He declined to agree that Essington would fully meet the Bushbury need. On Westerleigh's case therefore, there remains a need for Wergs even if Essington is granted permission.

210. In any event, it is now clear that the 910 figure has been materially exaggerated as our submissions above have shown. Clearly, a significantly lower figure is a much more realistic estimate of the cremations which Essington can be expected to divert from Bushbury. In 2016, Westerleigh, through its needs evidence written by Mr Evans, asserted that the Essington scheme would divert about 500 cremations per annum from Bushbury. This was a figure arrived at using the tried and

tested judgement of Mr Evans. This is clearly a more reliable figure than the CACI estimate now advanced by Westerleigh.

211. In 2016 Westerleigh recognised that it would not by itself meet the need. In their 2016 need statement, Westerleigh asserted that: 'The analysis shows that Bushbury crematorium remains too busy to cope with busy and peak months even after Essington is built'. Dignity agrees with this. In circumstances where Essington would divert about 500 cremations per annum, there would clearly be a residual need for the Wergs proposal even after the Essington crematorium is built out and operational.

### **Third Party Written and Verbal Representations**

The material points of the cases made by third parties at the Inquiry and in writing are:

212. Councillor Cope and Mr Hubbard spoke at the Inquiry in favour of the Wergs scheme with Councillor Cope concluding that there is no need for the Essington scheme.

213. The Rt Hon Gavin Williamson, MP for South Staffordshire, wrote in opposition to the Wergs scheme. He stated that "...it would be a gross breach of the greenbelt..." and "...this development constitutes nothing more than urban sprawl and will damage an important piece of greenbelt...and (would) effectively go a long way in effectively urbanising the area completely".

### **Conditions**

214. Recommended conditions for both schemes are included in Schedules attached to this report. The reason for each condition appears after the condition. They are in line with conditions agreed by the Council and the Appellants (ID18 and ID19). The agreed conditions have been amended, where necessary, to meet the tests set out in the National Planning Practice Guidance (NPPG) and in the interests of clarity and precision. Phrases such as 'unless otherwise agreed in writing by the Local Planning Authority' have been deleted.

## Conclusions

*Numbers in square brackets at the end of each paragraph refer to earlier paragraphs in this Report.*

The need for a new crematorium in the Green Belt in South Staffordshire

215. All parties agree that Bushbury Crematorium in north Wolverhampton, on any assessment, is under significant pressure. The parties agree that the best measure for assessing whether a crematorium is meeting a quantitative standard is its practical capacity in a peak month. In 2015 Bushbury operated at about 115% of practical capacity in a peak month. The Council accepts that operating above 80% of practical capacity places a crematorium under pressure to offer a cremation service that meets an acceptable quantitative standard. Anecdotal evidence from funeral directors who use the cremation service offered at Bushbury indicates that an acceptable qualitative standard is also not being met. In this regard funeral services are taking longer than is acceptable to arrange at times to suit bereaved families and funeral directors are advising some families that earlier services could be arranged at crematoria further away than is generally regarded to be acceptable. The substandard quantitative offer at Bushbury is adversely affecting the crematorium's ability to offer a quality service to bereaved families. [16, 21, 55, 110, 115]

216. There is therefore a need for a new crematorium to relieve pressure at Bushbury Crematorium; the operators of the crematorium, City of Wolverhampton Council, have not sought to challenge the need. Given the compelling and essential need for a new crematorium all evidence submitted by both Appellants on drive times of funeral corteges to both proposed crematoria is inconsequential. [24-25, 46, 57]

217. To meet the requirements of the Cremation Act 1902 as amended any new crematorium must be located no less than 200 yards from any dwelling. Consequently, a countryside location is required for a new crematorium. All countryside to the north of Wolverhampton is designated Green Belt so a new crematorium in a location to relieve pressure at Bushbury Crematorium must be in the Green Belt. [17]

218. The need for a new crematorium is accepted by the Council and no evidence has been brought forward by the Council to challenge the evidence put forward by each Appellant. Consequently, there is no reason to doubt the need for a new crematorium in the Green Belt in South Staffordshire.

219. The need for a new crematorium in South Staffordshire was identified by a number of crematorium operators several years ago and several schemes were put forward for consideration by the Council. Until recently the Council did not accept that there is a need but now accepts that the need is compelling. Bushbury Crematorium is operating under severe pressure, and has done so for a number of years, and this pressure is not going to diminish until a new crematorium is developed and brought into use. There is therefore a compelling need for one of the two crematoria considered in this report to be granted planning permission. Not to grant such a permission would add further delay to the relief of pressure at Bushbury Crematorium and would preserve, for an unacceptable period, the substandard service being provided to bereaved families in the Bushbury catchment area.

Comparison of the Wergs and Essington schemes

220. Both schemes would divert, setting aside the possible consequences of

rebalancing addressed below, in the order of 900 cremations per year from Bushbury and the number of cremations per year at that crematorium would thus be at an acceptable level. The Council therefore accepts that both proposed schemes would relieve pressure at Bushbury Crematorium and that the need for a new crematorium is a material consideration that clearly outweighs the harm that would be caused to the Green Belt such that very special circumstances exist. Assuming that only one new crematorium is required to relieve pressure at Bushbury Crematorium other aspects of the two schemes must be compared to reach a conclusion on which should be granted planning permission. [26]

221. Both Appellants have submitted evidence on the catchment areas that would be served by their proposed schemes, arrived at using a variety of assessment methods. This evidence, which is primarily aimed at demonstrating need, is rendered superfluous given the agreed position that there is a need for a new crematorium to relieve pressure at Bushbury Crematorium. For residents of the District and of nearby urban areas both schemes would result in a crematorium being within a 30 minute drive time for the first time; 51,695 for the Essington scheme and 22,726 for the Wergs scheme. But the 30 minute drive time criteria is only a rule of thumb method of assessing need and, again, the agreed position renders this evidence superfluous. As the Council maintains, this evidence carries no material weight. [33, 58, 91]

222. Both Appellants have submitted evidence on the accessibility of their schemes by the public. This evidence applies only to bereaved relatives visiting memorial facilities and to staff, because it is unlikely that mourners at a funeral would attend other than by using private transport or in the cortege. There are no statistics, based on experiences at existing crematoria, on the possible number of bereaved relatives that might wish to visit memorial facilities at either crematorium but it is likely to be a very low percentage of those who attended for a funeral, and of these the number that would need to visit by public transport is likely not to be significant. Furthermore, staffing at a crematorium is not significant, the management of funerals being the responsibility of funeral directors. [105, 201]

223. Essington is better served by public transport, in terms of the proximity of bus stops and a railway station and frequency of services, but Wergs is better served in relation to the areas from which public transport access is available. However, against the background of the possible number of staff and bereaved relatives using public transport to visit either proposed crematorium, the public transport accessibility credentials of the two schemes is a neutral consideration.

224. The Wergs scheme would provide landscape, heritage and bio-diversity benefits. The scheme would include the restoration of the avenue of trees along the north boundary of the site, the enhancement of Brick Kiln Covert, and the restoration of stone frontage boundary walls, all within the historic parkland setting of Wergs Hall. The scheme was assessed by Council Officers who concluded, amongst other things, that "...the site's denuded landscape will be restored...", that "...the proposals represent an excellent response to the site and its historic context", and that "...without some form of enabling development, the site will further deteriorate and its associated historic features will ultimately be lost". [143-151, 206]

225. Brick Kiln Covert is currently unmanaged and the turf business operating from the main part of the site does not contribute to biodiversity. The proposed development would include replacement planting and the management of the woodland, its incorporation in a landscaped memorial garden, the management of

ponds, and public access to the site. These aspects of the proposed development have been unchallenged by the Council and Westerleigh, and though reports by Consultants engaged by Westerleigh have sought to discredit the landscape and heritage benefits of the Wergs scheme the Consultants did not present evidence at the Inquiry and the claimed benefits were largely uncontested at the event. [149, 206]

226. The character of the landscape and the historic environment would be enhanced by the proposed development in accordance with CS policies EQ3 and EQ4. The environmental benefits of the Wergs scheme are afforded significant weight, as they were by Officers of the Council at application stage.

227. The principal material consideration put forward in support of the Essington scheme is the relief it would provide to Streetly Crematorium, which is within the administrative area of, and is operated by, Walsall Council. Westerleigh maintain that "...so far as the peak months are concerned (however calculated) the relevant 80% threshold has already been met" and that Streetly is therefore currently under some pressure. Whilst they make no claim that the current pressure at Streetly is material at present they maintain that this pressure will increase due to an increasing number of deaths and cremations in the area served by the crematorium. Westerleigh, in fact, claim that deaths in the three Council areas principally served by Streetly will increase by 22% by 2025. [192, 194]

228. The percentage increase in deaths claimed by Westerleigh does not take account of statistics published by the ONS. In any event, it might well be that Walsall Council are able to address an increasing demand for cremation services at Streetly by implementing on-site changes. Unlike at Bushbury, which is in an urban area and is confined for space, there are open spaces around the designed double crematorium at Streetly and ample space, for instance, to increase car parking capacity. No evidence on this possibility has been presented by any party to the Inquiry and Walsall Council did not submit a representation at Inquiry stage. They did, however, state in a representation to the Council at application stage that "The expansion of existing facilities represents a sustainable approach towards satisfying future need...". The possibility that the Westerleigh scheme would relieve pressure at Streetly in the near or distant future therefore carries very little weight. [44]

229. The provision of a viewing gallery to meet the specific religious needs of the Hindu and Sikh communities is an advantage afforded by the Essington scheme but there is no reason to suppose that these specific needs could not be met at the Wergs scheme if required. This factor is not afforded any weight. The Essington scheme would offer 45 minute service periods whilst the Wergs scheme would offer 60 minute service periods. The different service periods result from commercial decisions of the respective operators and do not affect the overall conclusions reached. [96]

#### The planning balance and overall conclusions

230. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. This requirement of planning law is at the heart of the balancing exercise. The planning balance requires planning judgement to be exercised.

231. On the evidence submitted, and as agreed by the three main parties, there is a compelling need for a new crematorium to relieve pressure at Bushbury Crematorium. The new crematorium must be in the Green Belt and the Council has accepted that the

need for the new facility, in itself, is a material consideration that clearly outweighs the harm that would be caused to the Green Belt such that very special circumstances exist. The same material consideration indicates that determination of one appeal, where the development conflicts with CS policy GB1, must be made other than in accordance with the development plan. [27, 58, 108, 124]

232. The main parties agree that there is no justification for granting planning permission for both crematorium schemes because there is only a need for one crematorium to relieve pressure at Bushbury Crematorium. In this regard, it is accepted by all parties that, with the need met by one crematorium, very special circumstances would not exist for a second crematorium and determination of the relevant planning appeal must be made in accordance with the Development Plan.

233. Either proposed crematorium would satisfy the need for a new facility. The Essington scheme would not benefit the Green Belt and its claimed benefit, the relief of pressure at Streetly Crematorium, is afforded very little weight. Conversely, the character of the landscape and the historic environment of the Green Belt would be enhanced by the Wergs scheme, in accordance with CS policies, and the environmental benefit of the Wergs scheme is afforded significant weight.

234. The fundamental reason for the applications that resulted in the appeals being submitted is the unacceptable pressure to meet cremation demand at Bushbury Crematorium. In this unusual case where very special circumstances exist for allowing one new crematorium to be built in the Green Belt two similar schemes, having been considered on their individual merits, must be compared against each other. As a matter of planning judgement it is the Wergs scheme, for the aforementioned reasons, rather than the Essington scheme, that should be granted planning permission.

235. Very special circumstances exist for the Wergs scheme and the planning appeal for this scheme should be determined other than in accordance with the Development Plan. Consequently, very special circumstances do not exist for the Essington scheme and the planning appeal for this scheme should be determined in accordance with the Development Plan.

#### Other matter

236. If the recommendations set out below are not accepted and consideration is given to granting planning permission for the Essington scheme, then a matter also for consideration would be the possibility, or even likelihood, that the new facility would come under pressure to meet demand and therefore for rebalancing to occur. Rebalancing between the crematoria in the area would be a consequence of various factors such as travel times, availability of core slots and the recommendations of funeral directors. This would be a natural consequence of the addition of a new crematorium in the area. However, if this was to occur the Essington scheme would not relieve pressure at Bushbury to the extent claimed by the Appellant; the scheme would, potentially, only reduce the number of cremations at Bushbury by about 728 rather than 910 as claimed by the Appellant. [141, 184, 204]

237. If the Wergs scheme is granted planning permission and is brought into use, rebalancing would have only a minimal effect on the reduction in the number of cremations at Bushbury. Given that the sole reason for pursuing a new crematorium in the Green Belt is reducing demand for cremations at Bushbury, the rebalancing factor weighs in favour of the Wergs scheme being granted planning permission.



## **Recommendations**

Appeal A Ref: APP/C3430/W/15/3039163

238. The appeal be allowed and planning permission granted, subject to conditions set out in a schedule attached to this Report.

Appeal B Ref: APP/C3430/W/15/3039129

239. The appeal be dismissed.

***John Braithwaite***

Inspector

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mr I Ponter	Of Counsel instructed by Ms M Dhillon, Solicitor at South Staffordshire District Council
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He called

Ms S Hawkins BSocSc(Hons) MPhil MSc MRTPI	Associate at GVA Planning, Development and Regeneration Unit
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Mr A Johnson BSc(Hons) DipTP MBA MRTPI	Director (Planning and Strategic Services) at South Staffordshire District Council
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### FOR WESTERLEIGH GROUP LIMITED:

Mr P Goatley	Of Counsel instructed by TLT Solicitors LLP
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He called

Mr D Roberts IEng FCIHT FIHT	Director of SCP Transportation Planners and Infrastructure Designers
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Mr R Evans BSc(Hons)	Managing Director of Westerleigh Group Ltd
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Mr M Hubbard DipTP MRTPI	Director of The Planning Hub Ltd
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Mr E Poole	Commercial Director of A J Sellman Family Funeral Directors
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### FOR DIGNITY UK:

Mr P Village (assisted by Ms V Hutton)	Queens Counsel instructed by Clyde and Co.
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He called

Mr S Kirkpatrick BSc BLD CMLI	Director of Scarp Landscape Architecture Ltd
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Mr P White BA(Hons) MPhil MCIfA PIEMA	
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Mr P Burley BA(Hons) MPhil MRTPI	Partner at Montagu Evans LLP
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Mr A Lathbury ACMA MBA	Senior Manager for Corporate Development at Dignity UK Ltd
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Mr P Downes BSc(Hons) MRICS	Director and Head of Planning Team at Harris Lamb Property Consultancy
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## INTERESTED PERSONS:

Mr R Cope	South Staffordshire Ward Councillor
Mr E Barker	Resident of Codsall

## DOCUMENTS

- 1 List of Appearances on behalf of Dignity UK.
- 2 Appearances on behalf of the Westerleigh Group Ltd.
- 3 Local Planning Authority's list of Appearances.
- 4 Council's letter of notification of the Inquiry (3039129) and list of those notified.
- 5 Council's letter of notification of the Inquiry (3039163) and list of those notified.
- 6 Opening Statement on behalf of Dignity UK.
- 7 Outline Opening Submissions on behalf of Westerleigh Group Ltd.
- 8 Opening Submissions on behalf of the Local Planning Authority.
- 9 Statement of Common Ground (3039129).
- 10 Statement of Common Ground (3039163).
- 11 Codsall Parish Council comments on Wergs proposed crematorium.
- 12 Explanatory Note prepared by Mr Tucker on Essington proposed crematorium.
- 13 Bundle of documents relating to Essington proposed crematorium.
- 14 Extract from Subnational Population Projections.
- 15 Bundle of responses to Mr Tucker's Explanatory Note (Doc 12).
- 16 Sutton Coldfield catchment before and after Essington diversion.
- 17 Newly served population for Wergs and Essington proposed crematoria.
- 18 Draft Conditions for Essington proposed crematorium.
- 19 Draft Conditions for Wergs proposed crematorium.
- 20 Train maps for Wergs and Essington proposed crematoria.
- 21 Wychavon D C v SoSCLG & K and L Butler [2008] EWCA Civ 692.
- 22 Closing Submissions on behalf of the Local Planning Authority.
- 23 Outline Closing Submissions on behalf of Westerleigh Group Ltd.
- 24 Closing Submissions on behalf of Dignity UK Ltd.
- 25 Addendum to Dignity'

## **RECOMMENDED CONDITIONS FOR APPEAL A (Application No. 14/00838/FUL)**

1. The development hereby permitted shall begin not later than three years from the date of this decision.

Reason: to comply with the requirements of Section 91 of the Town and Country Planning Act 1990.

2. The development hereby permitted shall be carried out in accordance with the following approved drawings and supporting statements:

Site Location Plan (12.07.20 C)  
Existing Site Plan (12.07.26 A)  
Proposed Site Plan (12.07.25 H)  
Proposed Building Plan (12.07.27 B)  
Proposed West and South Elevations (12.07.29)  
Proposed North and East Elevations (12.07.30)  
Illustrative Site Elevations (dated September 2014)  
Design and Access Statement (September 2014)  
Ecological Appraisal (October 2014)

Reason: for the avoidance of doubt and in the interests of proper planning.

3. The crematorium hereby permitted shall not be operated for services outside 0900 to 1700 hours on Monday to Saturday and 0900 to 1300 hours on Sunday, and shall remain closed on Public Holidays.

Reason: to safeguard the amenity of the area.

4. Before the development hereby permitted is brought into use details of an area for the scattering of ashes together with a method statement for its future management and maintenance shall be submitted to and approved in writing by the local planning authority.

Reason: to safeguard the amenity of the area.

5. The development hereby permitted shall not begin until a scheme to dispose of surface water and foul sewerage has been submitted to and approved in writing by the local planning authority. The scheme shall include a viability assessment of a connection to the public main sewer and shall be a sustainable drainage scheme (SuDS). The scheme shall be implemented as approved before the development is brought into use.

Reason: to ensure the development is provided with a satisfactory means of drainage and to prevent flooding and the risk of pollution.

6. None of the 19 trees that are identified to have potential to support bat roosts in Figure 2 and Appendix 4 of the Ecological Appraisal dated October 2014 shall be removed until it has been inspected by a licensed bat surveyor and the results of that inspection have been submitted to the local planning authority. Any mitigation works that are identified as a result of the inspection shall be carried out in accordance with a scheme which shall be submitted to and approved in writing by the local planning authority before the development is brought into use.

Reason: to safeguard the habitat of a protected species.

7. Details of external lighting shall be submitted to and approved in writing by the local planning authority. Any such lighting shall be designed so as to minimise impact on bats. The works shall be carried out in accordance with the approved details before the development is brought into use.

Reason: to safeguard the amenity of the area.

8. Before the development hereby permitted is commenced a landscape and ecology management plan shall be submitted to and approved in writing by the local planning authority. The plan shall include proposals for:

- (a) woodland management and replacement planting;
- (b) woodland understorey planting;
- (c) wildflower and grassland seeding;
- (d) pond management and aquatic planting;
- (e) a programme for implementation; and
- (f) public access.

The approved landscape proposals shall be implemented concurrently with the development and completed within 12 months of the completion of the development. The development shall not be carried out otherwise than in accordance with the approved plan. If any existing trees, shrubs and hedges are cut down or die, they shall be replaced with the same species in the next available planting season and shall thereafter be maintained.

Reason: to safeguard the amenity of the area.

9. Removal of vegetation and any tree works shall only be undertaken between September and February i.e. outside of the bird breeding season. Should this not be possible vegetation should be checked for nesting birds by an experienced ecologist no more than 72 hours prior to works being undertaken.

Reason: to safeguard the ecology of the site.

10. Before the development hereby permitted is commenced details of all boundary treatment shall be submitted to and approved in writing by the local planning authority. The approved boundary treatment shall be erected concurrently with the development and shall thereafter be retained in the approved form and position throughout the life of the development.

Reason: to safeguard the amenity of the area.

11. Before the development is brought into use the rebuilding of the boundary walls fronting Holyhead Road and Heath House Lane shall be completed in accordance with

a scheme that shall have been submitted to and approved in writing by the local planning authority.

Reason: to safeguard the amenity of the area.

12. Before the development hereby permitted is commenced details of a no-dig design for the construction of the proposed footpaths located within the Root Protection Area(s) of existing trees to be retained shall be submitted to and approved in writing by the local planning authority. The details shall include a plan, details of the no-dig system to be used, and a method statement all in accordance with the recommendations made in BS 5837: 2005 'Trees in relation to construction - Recommendations'. All subsequent works shall be carried out in accordance with approved details and shall be completed before the development is brought into use.

Reason: to safeguard the amenity of the area.

13. Before the development hereby permitted is commenced details of any alterations to the natural ground levels shall be submitted to and approved in writing by the local planning authority. There shall be no re-contouring of the land except for minor and clearly specified earth moving required for the construction of access routes, car parking areas and building works.

Reason: to safeguard the amenity of the area.

14. The development hereby permitted shall not be brought into use until the existing Holyhead Road vehicle access has been completed and is open to the public.

Reason: in the interests of highway safety.

15. Any gates at the vehicle access off Holyhead Road shall be located a minimum of 8.0m from the vehicular carriageway and shall open away from the highway.

Reason: in the interests of highway safety.

16. The development hereby permitted shall not be brought into use until the access drive, parking, servicing and turning areas have been provided in accordance with the approved plans.

Reason: in the interests of highway safety.

17. Before the development hereby permitted is commenced details for the provision of a ghost right turn facility on the A41 shall be submitted to and approved in writing by the Local Planning Authority. The off-site highway works shall be provided in accordance with the approved details before the development is brought into use.

Reason: in the interests of highway safety.

## **RECOMMENDED CONDITIONS FOR APPEAL B (Application No. 14/00906/FUL)**

1. The development hereby permitted shall begin not later than three years from the date of this decision.

Reason: to comply with the requirements of Section 91 of the Town and Country Planning Act 1990.

2. The development hereby permitted shall be carried out in accordance with the following approved drawings:

SSF01\_P(0)000 Rev A Location plan  
SSF01\_P(0)002 Rev D Site area proposed  
SSF01\_P(0)003 Rev B Site roof plan proposed  
SSF01\_P(0)005 Rev B Ground floor and surrounds proposed  
SSF01\_P(0)008 Site sections  
SSF01\_P(0)011 Rev A Roof plan  
SSF01\_P(0)012 Rev B North and west elevations  
SSF01\_P(0)013 Rev B South and east elevations  
SSF01\_P(0)016 Crematorium sections A-A & B-B Rev A  
SSF01\_P(0)017 Crematorium sections C-C, D-D, E-E & F-F Rev A  
SSF01\_P(0)018 Rev B Ground floor plan  
SSF01\_P(0)020 Rev A Floral Tribute – Plan and elevations  
SSF01\_P(0)021 Rev A Floral Tribute details  
SSF01\_P(0)024 Gas Compound

Reason: for the avoidance of doubt and in the interests of proper planning.

3. The building hereby permitted shall not be constructed above damp proof course level until samples of the materials to be used in the construction of the external surfaces of the building have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Reason: to safeguard the amenity of the area.

4. Before the access drives, car parking areas and footways are constructed, samples of the materials to be used for their surfacing shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Reason: to safeguard the amenity of the area.

5. The crematorium hereby permitted shall not be operated for services outside the hours of 0900 to 1700 on Monday to Saturday and 0900 to 1300 on Sunday, and shall remain closed on Public Holidays.

Reason: to safeguard the amenity of the area.

6. Before the development hereby permitted is commenced a landscape scheme, including a timetable for its implementation and provision for the replacement of any failed planting, shall be submitted to and approved in writing by the local planning authority. The landscape scheme shall be implemented in accordance with the

approved details and the local planning authority shall be notified when the scheme has been completed.

Reason: to safeguard the amenity of the area.

7. Before the development hereby permitted is commenced a landscape management plan shall be submitted to and approved in writing by the Local Planning Authority. The plan shall include measures for the management of all areas of existing and proposed woodland and grassland, along with other areas of tree and shrub planting. The landscape management plan shall be implemented in accordance with the approved details.

Reason: to safeguard the amenity of the area.

8. Before the development hereby permitted is commenced details of the entrance gates and fencing, together with details as to the timing of their erection, shall be submitted to and approved in writing by the local planning authority. The gates and fencing shall be erected in accordance with the approved details.

Reason: to safeguard the amenity of the area.

9. No existing trees, shrubs or hedges on the site or its boundaries shall be lopped, topped or cut down without the prior written approval of the Local Planning Authority. If any existing trees, shrubs and hedges are cut down or die, they shall be replaced with the same species in the next available planting season and shall thereafter be maintained.

Reason: to safeguard the amenity of the area.

10. Any gates at the access to the site shall be located a minimum of 6.0m from the vehicular carriageway and shall open away from the highway.

Reason: in the interest of highway safety.

11. The development hereby permitted shall not be brought into use until the access drive, parking, servicing and turning areas have been provided in accordance with the approved plans.

Reason: in the interest of highway safety.

12. Before the development hereby permitted is commenced details of the off-site highway works shown in principle on Drawing SCP/14207/F03 Rev B, contained within the Transport Assessment, shall be submitted to and approved in writing by the local planning authority. The highway works shall include the provision of a ghost right turn facility. The off-site highway works shall be provided in accordance with the approved details before the development is brought into use.

Reason: in the interest of highway safety.

13. Before the development hereby permitted is commenced a scheme to dispose of foul sewerage shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved.



Reason: to ensure the development is provided with a satisfactory means of foul drainage and to reduce the risk of flooding.

14. Before the development hereby permitted is commenced a surface water drainage scheme including attenuation for storm events up to the 1 in 100 year plus 20% climate change, discharging at an equivalent drained area greenfield run-off, shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented and subsequently maintained, in accordance with the timing/phasing arrangements contained within the scheme.

Reason: to ensure the development is provided with a satisfactory means of surface water drainage and to reduce the risk of flooding.

15. Before the development hereby permitted is commenced details of mitigation strategies, to include timescales for the implementation of mitigation measures, in respect of all protected species on the site, including bats, great crested newts and breeding birds, shall be submitted to and approved in writing by the local planning authority. The strategies shall be carried out in accordance with the approved details.

Reason: to protect the ecology of the site.

16. No trees shall be felled until:

- a) Further inspections for the presence of bats have been undertaken in accordance with a methodology which has been submitted to and approved in writing by the local planning authority;
- b) A report on the outcome of the inspection has been submitted to the local planning authority;
- c) If the presence of bats is found, a scheme and programme of mitigation measures, to be included in the inspection report, has been submitted to and approved in writing by the local planning authority.

The mitigation measures shall be implemented in accordance with the approved scheme and programme.

Reason: to protect the ecology of the site.

17. Details of external lighting shall be submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details before the development is brought into use.

Reason: to safeguard the amenity of the area.

18. Before the development hereby permitted is commenced an intrusive site investigation in the form of borehole drilling shall be undertaken and the results of the investigation shall be submitted to and approved in writing by the local planning authority. If the site investigations confirm the need for site remedial works the works shall be undertaken before development commences.

Reason: to ensure the safety and stability of the development.



## **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.