



Ministry of Housing,
Communities &
Local Government

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Our ref: APP/C3430/W/15/3039163
Your ref: P968/PD/clw

31 March 2021

By email:

patrick.downes@harrislamb.com

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY DIGNITY UK
LAND ADJACENT TO HOLYHEAD ROAD, WERGS, CODSALL, STAFFORDSHIRE WV8
2HF
APPLICATION REF: 14/00838/FUL**

1. I am directed by the Secretary of State to say that consideration has been given to the report of David Nicholson RIBA IHBC, who held a public local inquiry commencing on 16 January 2019 into your client's appeal against the decision of South Staffordshire Council to refuse your client's application for planning permission for the construction of a new crematorium with associated car parking, memorial gardens and access off Holyhead Road (A41), application ref: 14/00838/FUL, dated 14 October 2014. The inquiry also considered an appeal against the decision of the Council to refuse planning permission for a proposed crematorium at Broad Lane, Essington ("the Essington appeal"), South Staffordshire, in accordance with application ref: 14/00906/FUL, dated 4 November 2014.
2. On 22 March 2017, both 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.
3. The Secretary of State initially issued his decision in respect of both appeals by way of his letters dated 6 November 2017. Those decisions were challenged by way of an application to the High Court and subsequently quashed by order of the Court dated 23 March 2018. Both [appeals](#) have therefore been redetermined by the Secretary of State, following a new inquiry into this matter at January 2019 and the Essington appeal decision can also be accessed via the link provided.

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Inspector's recommendation and summary of the decision

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

Matters arising since the close of the inquiry

6. On 13 November 2020, the Secretary of State wrote to the main and interested parties to afford them an opportunity to update the evidence before him, primarily on need and on any rebalancing of the use of crematoria in the area that may occur should one or both crematoria be developed. The resulting representations were circulated to the parties on 8 December 2020 with further comments from three parties circulated on 30 December. A list of all representations about planning matters received post inquiry and separately those received in response to the reference back exercise are all listed at Annex A.
7. The Secretary of State is satisfied that the issues raised in the other post-inquiry correspondence do not affect his decision, and no other new issues were raised to warrant further investigation or necessitate additional referrals back to parties.

Policy and statutory considerations

8. 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.
9. In this case the development plan consists of the South Staffordshire District Local Plan, comprising the Core Strategy (2012) and Site Allocations Document (September 2018). The Secretary of State considers that relevant development plan policies include those in the Council's Statement of Common Ground with Dignity UK and with Westerleigh Group Limited, with those set out at IR3.4 – 3.9. being of particular relevance.
10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework'), associated planning guidance ('the Guidance'), as well as material referred to in IR3.1 and 3.2.
11. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

Emerging plan

12. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the

Framework. The emerging South Staffordshire plan is at a relatively early stage with the Local Plan Review Preferred Options consultation having been moved back to summer 2021. As there are currently no draft policies for consideration, consequently very little weight can be given to the emerging plan.

Main issues

Green Belt

13. The Secretary of State agrees with the Inspector that the proposal would be inappropriate development in the Green Belt, contrary to policy in Paragraph 143 of the Framework, and that it would encroach into the countryside, in conflict with Paragraphs 133-134 of the Framework (IR13.44). For the reasons given at IR13.25, IR13.45 and IR13.46, he also agrees with the Inspector that the proposal would affect openness, with significant harm to the visual dimension of openness (IR13.46). He further agrees that it would conflict with Core Policy 1 and Policy GB1 (IR13.55). In line with Paragraph 144 of the Framework, the Secretary of State considers that substantial weight should be given to the harm to the Green Belt. He has gone on to consider whether very special circumstances exist which clearly outweigh the harm to the Green Belt and any other harm.

Historic interest

14. The Secretary of State has carefully considered the Inspector's analysis of the impact of the scheme on the historic interest of Wergs Hall, a grade II listed building (IR13.18-13.24). Parties agree that the site with its wall (an undesignated heritage asset), covert and tree avenue is within its setting, and part of the Historic Landscape Area (HLA). The site contributes to the special interest and significance of the Hall (IR13.18). For the reasons given at IR13.19-13.23, the Secretary of State agrees with the Inspector that it is unlikely that the reconstruction of the wall would significantly improve its appearance or its integrity, and that the wide road margin would be at odds with the relationship between other historic walls next to roads in the area (IR13.21). He further agrees that while the works proposed for the avenue and covert might enhance the landscape qualities and prevent turf cutting, these works would also undermine their historical significance (IR13.23). Overall, he agrees with the Inspector that the proposals would harm the historic setting to Wergs Hall and would also cause significant harm to the HLA and detract from the values that led to its designation (IR13.24). He further agrees that although this harm would be less than substantial harm, and could be reduced by conditions, it carries considerable weight.

15. The Secretary of State agrees that the scheme would conflict with Core Strategy policy EQ3, some aspects of EQ4 and the advice in paragraphs 184,192-3 and 196-7 of the Framework (IR13.24). Therefore, in accordance with Paragraph 196 of the Framework he has gone on to weigh the less than substantial harm to the heritage assets against the public benefits of the development (see paragraph 26 below).

Other harm and alternatives

16. The Secretary of State agrees with the Inspector at IR13.41 that traffic and wildlife concerns should be given limited weight. For the reasons given at IR13.38-IR13.40 he agrees with the Inspector on the likelihood and timing of facilities at alternative locations.

Need

17. The Secretary of State has carefully considered the quantitative need for both proposals as set out by the Inspector at IR13.2-13.14 alongside the updated evidence from the parties following the reference back exercise in November 2020. The Inspector considered that the evidence provided no definitive answer to the extent of quantitative need (IR13.14), but concluded there is an overall shortage of facilities near the West Midlands Conurbation which is only going to get worse (IR13.13). Overall he considers that there is a quantitative need for both appeals to relieve pressure on existing crematoria in the future (IR13.14). Having considered the updated information provided by the parties, the Secretary of State notes that forecast need is now greater than at the time of the inquiry. This reinforces his overall conclusions on the quantitative need for these developments.
18. In terms of the quality of experience (i.e. qualitative need) the Inspector considers that many of the existing crematoria are ageing, in need of investment and updating, and at or reaching capacity and also that this will only get worse until rival facilities offer competition and so drive investment (IR13.15). Moreover, and for the reasons given at IR13.16 the Secretary of State agrees that existing crematoria do not serve different parts of the community as well as they ought to and that the provision of a viewing gallery would be an option at Wergs, subject to careful internal reconfiguration controlled by condition. He considers this should be attributed moderate weight.
19. Overall the Secretary of State agrees there is a substantial, if different quantitative and qualitative need for both proposals (IR13.17) and that the latest evidence before him demonstrates this remains the case. He gives this significant weight. It was common ground between all the main parties that at least one new crematorium is required to relieve pressure on Bushbury and that this need amounts to very special circumstances that could outweigh the harm by reason of inappropriate development, to the Green Belt (IR13.44). For the reasons given at IR13.48-13.50, the Secretary of State agrees with the Inspector at IR13.50 that the consequences of chronic pressure at Bushbury would amount to very special circumstances, and also that taking account of the latest information on need and rebalancing, the need for both proposals (this proposal and the Essington appeal referred to in paragraph 1 above) has increased. He agrees with the Inspector that taking account of rebalancing, the need for both proposals means that very special circumstances exist to justify both appeal schemes.

Other benefits

20. The Secretary of State agrees with the Inspector at IR13.42 and IR13.53 that the scheme would have economic benefits, through employment, and through social advantage in providing a much needed facility, and that there would be benefits to the rural economy and to community services, supported by paragraphs 83 and 92 of the Framework. He considers these factors attract moderate weight in favour of the proposal. The Secretary of State considers the benefits arising from landscape enhancement assessed at (IR13.25-IR13.28), such as through the restoration of the avenue (IR13.26) would be relatively modest compared with the extent of the heritage harm (IR13.28) Therefore this, and the end of turf cutting carry moderate weight. The biodiversity benefits also carry moderate weight (IR13.5) and the public access (IR13.29) limited weight.

Planning conditions

21. The Secretary of State has given consideration to the Inspector's analysis at IR11.1–2 and 11.4, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in Paragraph 55 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 55 of the Framework and that the conditions set out at IR Appendix C (Annex B of this decision letter) should form part of his decision.

Planning obligations

22. Having had regard to the Inspector's analysis at IR12.1, the Unilateral Undertaking under section 106 of 11 February 2019, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR12.1 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework.

Planning balance and overall conclusion

23. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Core Policy 1 and 2 as well as policies GB1, EQ3 and EQ4, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

24. The Secretary of State considers the need for the facility carries substantial weight, while the provision of a viewing gallery by means of condition carries moderate weight. The economic benefits, including the benefits to the rural economy and to community services, attract moderate weight, as do the landscape enhancements and ending of turf cutting, biodiversity gains with public access benefits attributed limited weight.

25. The Secretary of State considers the harm to the Green Belt through inappropriate development, encroachment and harm to openness carries substantial weight, while traffic and wildlife concerns carry limited weight. The 'less than substantial harm' to heritage assets carries considerable weight. The possibilities for alternative proposals and locations carry limited weight.

26. Overall the Secretary of State considers that the public benefits of the appeal scheme are collectively sufficient to outbalance the identified 'less than substantial' harm to the significance of Wergs Hall, and that the balancing exercise under paragraph 196 of the Framework is therefore favourable to the proposal.

27. The Secretary of State considers that the above benefits clearly outweigh harm to the Green Belt by reason of inappropriateness and any other harm, and so very special circumstances exist. Overall, he considers that there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

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

Formal decision

29. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning

permission subject to the conditions set out in Annex B of this decision letter for the construction of a new crematorium with associated car parking, memorial gardens and access off Holyhead Road (A41), in accordance with application ref: 14/00838/FUL, dated 14 October 2014.

30. 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

31. 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.

32. A copy of this letter has been sent to South Staffordshire Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

MA Hale

Mike Hale

This decision was made by the Secretary of State and signed on his behalf

Annex A

General representations – post inquiry both appeals

Party	Date
Liz Dew	29 January 2019
Elaine Forrester	28 January 2019
Alan Bailey	24 January 2019
Councillor P Allen	24 January 2019
Mr & Mrs Davey	24 January 2019
Gina Whitaker	24 January 2019
Clare Rudge (senior caseworker to Rt Hon Gavin Williamson) on behalf of Sonnya Hawkesford	22 January 2019
Sonnya Hawkesford (direct)	22 January 2019
Dawn Saunders	18 January 2019
Sue Holden	21 January 2019
Georgina Whitaker	23 January 2019
Andrew Bradley	22 January 2019
Edwin McClean	23 January 2019
Kathryn Hart	4 February 2019
William Wilson	20 August 2019
Rt Hon Gavin Williamson MP (enclosure William Wilson)	30 January 2021

Reference back to parties both appeals – November 2020

Party	Date
William Wilson	30 November 2020
Councillor Lees, Deputy Leader for South Staffordshire Council	27 November 2020
Clerk, on Behalf of Perton Parish Council	26 November 2020
Harris Lamb	1 December 2020
TLT Solicitors	2 December 2020
Harris Lamb	17 December 2020
TLT Solicitors	18 December 2020
William Wilson	16 December 2020

Annex B List of conditions

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. Except as provided in condition 3 below, 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)
3. The development hereby permitted shall not be begun until details of the internal layout of the crematorium building (to include a viewing room or facility for the purpose of mourners viewing the cremator) have been submitted to and approved in writing by the local planning authority. The development hereby permitted shall not be carried out otherwise than in accordance with the approved details.
4. The development hereby permitted shall not be begun 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 completed in accordance with the approved details before the development hereby permitted is brought into use, and shall be subsequently maintained.
5. The development hereby permitted shall not be begun until details of hard and soft landscaping, have been submitted to and approved in writing by the local planning authority. The development hereby permitted shall not be brought into use until the approved hard and soft landscaping has been completed. The approved hard and soft landscaping shall be retained throughout the life of the development. Any trees or plants that, within a period of two years after planting, are removed, die or become damaged or defective, shall be replaced in the next available planting season with others of the same species, size and number and shall subsequently be maintained.
6. The development hereby permitted shall not be begun until 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 have been 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'. The proposed footpaths shall be completed in accordance with the approved details before the development hereby permitted is brought into use, and shall be subsequently maintained.
7. The development hereby permitted shall not be begun until details of any alterations to the existing ground levels have been submitted to and approved in writing by the local planning

authority. The development shall not be carried out otherwise than in accordance with the approved details.

8. The development hereby permitted shall not be begun until details of a proposed ghost right turn facility on the A41 and improvement works to the existing site access off Holyhead Road, as shown on drawing number 3162-003-P1-001-P02, have been submitted to and approved in writing by the local planning authority. The development hereby permitted shall not be brought into use until the works have been completed in accordance with the approved details and are open to the public. Any gates at the vehicular access off Holyhead Road shall be located a minimum of 8m from the vehicular carriageway and shall open away from the highway.

9. The development hereby permitted shall not be begun until a landscape and ecology management plan has been submitted to and approved in writing by the local planning authority. The plan shall include a programme for its implementation and proposals for the following:

- (a) long-term woodland management;
- (b) replacement planting;
- (b) woodland understorey planting;
- (c) wildflower and grassland seeding;
- (d) pond management and any aquatic re-profiling and re-planting of ponds on the site; and
- (e) public access.

The development shall not be carried out otherwise than in accordance with the approved management plan.

10. The development hereby permitted shall not be begun until the design, content and location of historic landscape interpretation boards for environmental education and visitor information have been submitted to and approved in writing by the local planning authority. The development hereby permitted shall not be occupied until the approved interpretation boards have been completed. The approved interpretation boards shall be retained throughout the life of the development.

11. The development hereby permitted shall not be brought into use until the following improvements to the boundary walls of the site fronting Holyhead Road and Heath House Lane have been completed in accordance with a scheme that has been submitted to and approved in writing by the local planning authority:

- (a) re-establishing the wall to a height of four courses with coping stone;
- (b) replacing existing flat coping stones at the existing access to the site with segmented coping stones;
- (c) repairing wall mortar; and
- (d) replacing cement pointing with lime mortar.

The walls shall subsequently be maintained in accordance with the approved scheme.

12. The development hereby permitted shall not be brought into use until the proposed access drive, parking, servicing and turning areas have been provided in accordance with the approved plans. Thereafter, these areas shall be retained for these purposes and for no other purposes.

13. The development hereby permitted shall not be brought into use until details of an area for the scattering of ashes have been submitted to and approved in writing by the local planning authority. The details shall include a method statement for the future maintenance of the area. The area shall not be provided and subsequently maintained otherwise than in accordance with the approved details.

14. The development hereby permitted shall not be brought into use until details of all external lighting have been submitted to and approved in writing by the local planning authority. All such lighting shall be designed so as to minimise any impact on bats. No external lighting shall be provided and subsequently maintained otherwise than in accordance with the approved details.

15. 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. If the results identify that mitigation works are required as a result of the inspection, then the development hereby permitted shall not be brought into use until these mitigation works have been carried out in accordance with a scheme which has been submitted to and approved in writing by the local planning authority.

16. Removal of vegetation and any tree works shall only be undertaken between September and February i.e. outside of the bird breeding season. If this is not possible, all affected vegetation and trees should be checked for nesting birds by an experienced ecologist no more than 72 hours prior to works being undertaken. If nesting birds are found, no works to affected vegetation and trees shall be commenced until a mitigation strategy has been submitted to and approved in writing by the local planning authority. The works shall subsequently be carried out in accordance with the approved mitigation strategy.

17. 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.



Report to the Secretary of State for Housing, Communities and Local Government

by David Nicholson RIBA IHBC

an Inspector appointed by the Secretary of State

Date: 13 May 2019

TOWN AND COUNTRY PLANNING ACT 1990

SOUTH STAFFORDSHIRE COUNCIL

TWO APPEALS MADE BY

DIGNITY UK (APPEAL A) &

WESTERLEIGH GROUP LIMITED (APPEAL B)

Inquiry held on 16-28 January 2019
Accompanied site visit held on 15 January 2019

Land adjacent to Holyhead Road, Wergs, Staffordshire WV8 2HF (Appeal A)
Broad Lane, Essington WV11 2RJ (Appeal B)

File Refs: APP/C3430/W/15/3039129 (Appeal A) and 3039163 (Appeal B)

CONTENTS	Page No.
1. Procedural Matters	1
2. The Sites and Surroundings	2
3. Planning Policy	5
4. The Appeals Proposals	7
5. Common ground on need	8
6. The Case for Dignity UK	11
7. The Case for Westerleigh Group Ltd	12
8. The Case for South Staffordshire Council	12
9. The Case for SSCC	13
10. The Cases for Interested Parties	14
11. Conditions	14
12. Planning obligation	14
13. Inspector's Conclusions	15
14. Inspector's Recommendations	26
Appendices	
A. Appearances	27
B. Documents	28
C. Suggested conditions	41
D. Closing submissions	48

GLOSSARY

Ax	Appendix
CD	Core document
CLG	Communities and Local Government
CS	Core Strategy
DAS	Design and Access Statement
ha	hectares
HLA	Heritage Landscape Area
IC	Examination in chief
ID	Inquiry Document
IR	Inspector's Report
IQ	Inspector's question
JWL	Jenny Walkers Lane
LB&CA	Listed Buildings and Conservation Areas
LPA	Local Planning Authority
LVIA	Landscape and Visual Impact Assessment
NPPF	National Planning Policy Framework
ONS	Office for National Statistics
POS	Public open space
PPG	Planning Practice Guidance
PSED	Public sector equality duty
ReX	Re-examination
RfR	Reason for Refusal
s66	Section 66 of the Planning (LB&CA) Act 1990
s106	Section 106 of the Town and Country Planning Act 1990
SoCG	Statement of Common Ground
SoS	Secretary of State
SSCC	South Staffordshire Cemetery & Crematorium Ltd
T&CP	Town and Country Planning
XX	cross-examination

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

Land adjacent to Holyhead Road, Wergs, Staffordshire WV8 2HF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (T&CP) Act against a refusal to grant planning permission.
- The appeal is made by Dignity UK 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 (A41).
- This report supersedes that issued on 6 November 2017. That decision on the appeal was quashed by order of the High Court dated 23 March 2018.

Summary of Recommendation: the appeal should be allowed.

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

Broad Lane, Essington WV11 2RJ

- The appeal is made under section 78 of the T&CP Act against a refusal to grant planning permission.
- The appeal is made by Westerleigh Group Ltd 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.
- This report supersedes that issued on 6 November 2017. That decision on the appeal was quashed by order of the High Court dated 23 March 2018.

Summary of Recommendation: the appeal should be allowed.

1. Procedural Matters

- 1.1 The application to which Appeal A relates was refused by the Council for one reason¹; that for Appeal B for three reasons². Determination of the appeals was originally recovered by the Secretary of State (SoS). The previous Decisions were both quashed by the High Court by Consent for reasons set out in an attached Schedule³. This identifies that: the issue of 'rebalancing' should have been grappled with, as should the submissions that there might be the need for two crematoria. No grounds or other issues were barred from being raised at redetermination. The Schedule also stipulates a fresh report following a further inquiry before a new Inspector⁴. As well as updating their own evidence, both parties introduced new evidence of characteristics relating to the other's site with a view to denigrating the other's scheme.
- 1.2 At the Inquiry, I asked whether the wall around the Wergs site should be considered as a part of the listed Hall for consent purposes. As I received no simple answer, I held the Inquiry open for further representations on the

¹ See Decision Notice, CD I8: harm to the Green Belt.

² See Decision Notice, CD I7: harm to the Green Belt; loss of openness/sprawl/ encroachment; impact on protected species

³ Core Document (CD) T3, dated 23 March 2018

⁴ Paragraph 7, confirmed in the SoS letter dated 9 April 2018, CD U1

status of the wall around the Wergs site. Following receipt of these⁵, I gave instructions for the Inquiry to be closed on 25 February 2019. I summarise the additional comments regarding the wall for each party under their cases (below). Late submissions were also received from SSCC⁶. To the extent to which they add new evidence relevant to the appeals, the Council replied by email⁷. These comments are self-explanatory.

- 1.3 A planning obligation submitted by Dignity under section 106 of the Town and Country Planning Act 1990 (s106) would ensure that turf cutting on the land adjoining the Wergs site would not continue.
- 1.4 Much of the 'need' evidence was dealt with by means of a round table discussion. This was preceded by an agreed note⁸ between the Appellants and the Council.
- 1.5 It was common ground between Westerleigh and the Council that *unrestricted sprawl* as referred to in the second reason for refusal (RfR) would not be defended or pursued by the LPA and that similarly sufficient ecological information had been provided following the third RfR⁹. In addition, that issues of 'open space', 'landscape', 'ecology', 'air quality', and 'transport and access' have all been considered and discounted by the Council¹⁰.

2. The Site and Surroundings

- 2.1 South Staffordshire is a rural District which wraps around the west side of the West Midlands conurbation. Aside from the built-up areas, 80% of it is within the Green Belt¹¹. Both sites lie within the Green Belt. The particulars of each site are as set out in the Statements of Common Ground (SoCG)¹² between each of the Appellants and the Council. They are also as summarised in the Report of the previous Inspector¹³. Site plans can be found in the Design and Access Statement (DAS)¹⁴ for each appeal. A general plan of the area is the Policies Map to the South Staffordshire District Local Plan Core Strategy 2012 (CS)¹⁵.
- 2.2 Amongst other things, new evidence to this Inquiry expanded on the historic background to the Wergs site and the status of the Essington site with regard to the Forest of Mercia. Both appeal sites are close to, but outside, the built-up area boundaries of Perton and Essington respectively.

⁵ ID22: an email from Westerleigh dated 20 February 2019 and a SoCG between Dignity and the Council submitted on 21 February. A response from Dignity, ID30, dated 25 February 2019

⁶ ID33 series of emails

⁷ ID34 email dated 5 February 2019

⁸ ID15

⁹ SoCG §6.23. Endorsed by Committee Members at their Meeting on 19 April 2016

¹⁰ Ibid 6.24

¹¹ CD A1 §2.1: the South Staffordshire portion of the West Midlands Green Belt

¹² Dated 10 January 2019 between Dignity and the Council

¹³ CD S1 and S2 §§5-7

¹⁴ CD F5 and C24

¹⁵ CD A1c

Existing crematoria

- 2.3 Existing crematoria in the area include those at Bushbury (just north of Wolverhampton), Gornal Wood (west of Dudley), Streetly (east of Walsall), Telford, Stafford, Lichfield, Sutton Coldfield and Sandwell (West Bromwich)¹⁶. Those at Sutton Coldfield, West Bromwich and Gornal Wood are all relatively close to Birmingham. A recently permitted crematorium at Cannock¹⁷ would be just east of the town, to the northeast of Wolverhampton.
- 2.4 Bushbury crematorium was opened in 1954 and so is dated as a facility. It was accepted at the Inquiry, and apparent on the accompanied site visit, that it is very well used with restricted car parking and areas for memorials. It stands roughly halfway between the appeal sites. On my unaccompanied site visits I saw that both Streetly and Gornal Wood are extremely busy with constricted car parking. Gornal Wood operates 40 minute service times.
- 2.5 Undisputed evidence confirmed that the Streetly facility, owned by Walsall Council, has two chapels and struggles to cater for the additional vehicles attending Sikh and Hindu cremations there. Indeed, two chapels may reduce its effective capacity¹⁸. Telford crematorium, operated by Dignity, is just northeast of the town, around 15 miles from Bushbury, and operates one hour services. Stafford and Sutton Coldfield crematoria opened in 1964 and are rather dated. Whilst the crematorium at Lichfield is modern, having opened in 2013, it is not yet a well-used facility.

Appeal A

- 2.6 This site lies to the northwest of Wolverhampton on the Telford road. It is within the setting of Wergs Hall which is a Grade II listed building. It was common ground between the two Appellants that the listed building is designated for its architectural and historic interests as a mid-nineteenth century country house influenced by the Italianate style. Its significance is primarily embodied in its physical fabric which would not be affected by the Wergs Scheme.
- 2.7 It includes a sandstone wall, possibly dating from the mid-19th century¹⁹ which was once within its ownership and marked the boundary between the property and the road. Although not conclusive, the conveyances²⁰ provide evidence that the Hall and the site were sold separately in 1976 and so they were probably in separate ownerships and uses when it was listed in 1985.
- 2.8 The Wergs Site includes Brick Kiln Covert, the remnants of an avenue of Horse Chestnut trees and an area of land used for turf production. The boundaries of the Wergs Site alongside the A41 and Heath House Lane are defined by the sandstone wall that forms part of the boundary of the former Wergs Estate. The wall includes gates at the end of an avenue of trees which lined an

¹⁶ See maps at Best Appendix 5, p34

¹⁷ ID17 Application no. CH/18/380, dated 21 January 2019, and ID9

¹⁸ McArdle in XX day 5

¹⁹ Stoten in answer to Inspector's questions (IQs)

²⁰ ID22

alternative entrance to the Hall. Some of the wall has been previously rebuilt on a new alignment and there is a structural crack in the wall beyond the avenue of trees, along Heath House Lane. There was no dispute that the wall is of historic interest and should be considered as a heritage asset. The historic maps indicate that the trees in the avenue had become apparent some time between 1907 and 1919.

- 2.9 The site's features include the wall, a tree covert or thicket (an area of trees and undergrowth) called Brick Kiln Covert, and a tree avenue leading from gates in the wall adjoining the road junction and leading round the back of the covert to the lake and the Hall. There is no intervisibility between the site and the Hall. No traces of kilns were seen on the site visit. Part of the boundary wall has been realigned. The public currently has no formal or informal access to the Wergs site.
- 2.10 Part of the former Wergs Hall estate (including the appeal site) is a Historic Landscape Area (HLA) on the CS Development Plan Document Proposals Map (adopted December 2012)²¹. The HLA comprises designed parkland around Wergs Hall and some of the land associated with the former estate.

Appeal B

- 2.11 The Essington Site extends to approximately 4.8 hectares (ha) of mostly mixed broadleaved woodland. It lies approximately 140m northwest of Bloxwich and around 585m southeast of the village of Springhill. Small groups of buildings lie along Broad Lane between these settlements²². The site lies close to Bloxwich railway station and two bus route stops. It is part of a former coal mining colliery that was planted by the Forest of Mercia (part of a national programme of Community Forests in England) in the late-1990s²³. The objectives of the Community Forest generally include forestry planting for public access, health and wellbeing, for the benefit of the local community²⁴. While the site lies within the Green Belt, it is not subject to any other landscape or amenity planning designation²⁵.
- 2.12 It was common ground that the Essington Site, and the area of woodland abutting the south-eastern and south-western boundaries, is used for informal access and recreation, typically walking or dog-walking by local residents, although there are no public rights of way cross the site. Also, that Staffordshire County Council currently manages the woodland which is now well established²⁶. Fly-tipping is evident on and adjacent to the appeal site and parts of the site have an uneven surface²⁷.

²¹ Heritage SoCG 2.1.2

²² SoCG between Dignity and Westerleigh, §2.1.1

²³ Ibid 2.1.2 and SoCG between the Council and Westerleigh §4.2

²⁴ SoCG between Dignity and Westerleigh, §2.1.2

²⁵ Ibid 2.1.5

²⁶ Ibid 2.1.7-2.1.9

²⁷ SoCG Council and Westerleigh §3.9 and site visit

- 2.13 There was disagreement as to whether the site is public open space (POS)²⁸ but no dispute that there is public access²⁹.

Jenny Walkers Lane (JWL)

- 2.14 South Staffordshire Cemetery & Crematorium Ltd (SSCC) owns a site on JWL, just south of Perton. This currently carries out burials with a particular emphasis on providing for the Sikh, Hindu and Buddhist communities³⁰. It describes itself as a Peace Garden and was inspired by a Japanese example in Cornwall³¹. SSCC had planted over 10,000 trees on its site by 2003 and is aiming for 100,000 by 2019. It has been trying to establish the need for a crematorium on the site since 2003³² and made a planning application for this at JWL in 2014. Due to unfortunate circumstances³³, no appeal was launched. Unchallenged evidence was that it has on-site parking for 3,000 vehicles. A vehicular access was approved in 2007. Dignity submitted evidence regarding the visibility splays at the access points³⁴.

3. Planning Policy

Statutes

- 3.1 The T&CP Act 1990, the Planning and Compulsory Purchase Act 2004, the Localism Act 2011, the Planning (Listed Buildings and Conservation Areas) (LB&CA) Act 1990 and the Equalities Act 2010 – which contains the Public Sector Equality Duty (PSED)³⁵ - are relevant. Section 5 of the Cremation Act 1902³⁶ essentially prevents construction nearer than 200 yards from any dwelling or 50 yards from any public highway.

National policy

- 3.2 The National Planning Policy Framework (NPPF), 2019 revision, and Planning Practice Guidance (PPG) are relevant. The factors to be taken into account when assessing a curtilage structure include those set out in the PPG and *Listed Buildings and Curtilage: Historic England Advice Note 10*.

Development plan

- 3.3 The development plan includes the South Staffordshire District Local Plan. This comprises the CS³⁷ and the Site Allocations Document adopted in September 2018. However, the latter has no policies relevant to these appeals³⁸. All

²⁸ Between Johnson and Bateman both IC

²⁹ Peachey acknowledged that it would be wrong to say that there was no public access, in XX by Hutton

³⁰ Statement of William Art Wilson, p6

³¹ Ibid, p10

³² Ibid, p2

³³ Wilson's personal health

³⁴ Tucker s7

³⁵ Under the

³⁶ CD B2

³⁷ CD A1

³⁸ Johnson 5.2 and others

relevant policies are listed in the Council's SsoCG with Dignity and with Westerleigh. The following are of particular relevance.

- 3.4 Strategic Objective 1 seeks to protect and maintain the Green Belt and Open Countryside in order to sustain the distinctive character of South Staffordshire. Policy GB1 sets out the limited circumstances where development acceptable within the terms of the NPPF will be allowed in the Green Belt. The Council acknowledged that policy GB1 is clumsily worded³⁹ but assumed that both schemes are contrary to Policy GB1.
- 3.5 Core Policy 2 supports development which would protect, conserve and enhance the District's natural and heritage assets. This is expanded in Policy EQ1 which adds that proposals should build in biodiversity by incorporating ecologically sensitive design and features. The CS recognises the Forest of Mercia as a natural asset⁴⁰. The objectives of the Community Forest include forestry planting for public access, health and wellbeing for the benefit of the local community⁴¹. Community Forests may be a material consideration in deciding planning applications, with reference to NPPF142.
- 3.6 The effects of climate change are addressed in Core Policy 3 which requires development to cater for, and minimise, environmental impacts referring to supporting and encouraging development which facilitates sustainable modes of transport. Core Policy 11 aims to improve accessibility and transport choice by ensuring that new development is well served by a choice of modes, including public transport.
- 3.7 Policy EQ3 seeks the conservation and enhancement of South Staffordshire's historic environment by a number of means including: minimising the loss and disturbance of historic materials. Policy EQ4 expects that the intrinsic rural character and local distinctiveness of the District should be maintained and, where possible, enhanced. Proposals within a Heritage Landscape Area (HLA) should have special regard to the desirability of conserving and enhancing the historic landscape character, important landscape features and the setting of the HLA.
- 3.8 Core Policy 4 and Policies EQ11 and EQ12 expect development proposals to achieve a high quality of both the design of buildings and their landscape setting and set out the criteria for assessing these. Core Policy 7 supports measures to sustain and develop the local economy of South Staffordshire, whilst Core Policy 9 supports the social and economic needs of rural communities within the District.
- 3.9 Core Policy 14 aims to promote and provide an appropriate network of high quality accessible open space, including by safeguarding all existing open space. Policy HWB1 does not permit the loss or displacement of existing indoor and outdoor open space, sport and recreation facilities to other uses unless it can be demonstrated through up-to-date and robust evidence that an alternative facility of an equal quantity and quality or higher standard will be

³⁹ Johnson in XX

⁴⁰ CD A1: CS §7.6, p67

⁴¹ Ibid §7.11

provided in at least an equally convenient and accessible location to serve the same local community. Policy HWB2 refers to the enhancement of a network of facilities including native woodlands.

3.10 The Council has begun the review of the Local Plan, but it is at a very early stage and none of the parties drew on it in evidence. It should be given very little weight. The Council acknowledged that there is no guidance in national or local planning policy as to what constitutes an acceptable level of crematoria provision⁴².

4. The Proposals

4.1 The submitted applications comprised several documents, plans and supporting information. Each scheme is set out in its respective DAS⁴³.

Appeal A

4.2 As well as a crematorium, parking and landscaping, the Wergs scheme would include hard landscaping features and new wildflower meadows which could be subject to conditions. The existing covert would become accessible. Much of the surrounding wall, between the old gates and the vehicular entrance, would be taken down and rebuilt on a different alignment to create visibility splays. A significant proportion of this has previously been rebuilt, probably for road widening. The scheme would also include tree and other planting along the road just inside the wall to screen the development in due course. This would partly reinstate trees which, according to historic maps⁴⁴, were once present.

4.3 The scheme would develop and enclose the land, altering its character. It would also manage and enhance the tree avenue. The DAS describes this as a crematorium landscape and shows the tree avenue with underplanting, and the additions of a pond and a pergola, but again these could be omitted when landscaping details are finalised, subject to control by a condition.

4.4 The s106 obligation would be intended to extend and retain the proposed environmental advantages of the scheme by preventing rotational turf cutting. This would secure what the Council saw as significant landscaping enhancements⁴⁵.

4.5 Dignity submitted a *Sequential assessment of locations for a new crematorium facility*. The search area extends from Wombourne in the south to Brewood in the north and extends from Bridgnorth in the west to Wolverhampton in the east. After discounting sites which failed to meet minimum operational requirements, 9 sites were identified for further consideration, including the Wergs site and that at JWL (site 7). The Wergs site came out as preferable, the next highest scoring sites were discounted particularly due to poor access. The report also identifies benefits for the Wergs site.

⁴² Johnson 6.12 and Hawkins 2.2

⁴³ CDs C25 and F5

⁴⁴ See in particular White appendices, Maps 5 and 7; and Stoten proof, plates 7-9

⁴⁵ Johnson 3.4

- 4.6 The key features of the HLA were agreed to be the wall, the covert and the tree avenue. It was common ground⁴⁶ that the wall would be largely rebuilt on a new alignment to accommodate visibility splays⁴⁷. Of this, about 160m has been previously rebuilt and around 180m remains on its original alignment. The tree avenue has lost several trees and would be replaced and, subject to conditions, brought into the crematorium landscape. The same would apply to the covert which would be landscaped to include walks within it.
- 4.7 In its assessment of heritage, the Council confined itself to considering the professional officer's opinion⁴⁸ and did not review this following further evidence from Westerleigh⁴⁹.

Appeal B

- 4.8 The proposals for Essington would only cover a small proportion of the site. Here there would be a building and parking for 77 cars (plus staff)⁵⁰ within the existing trees. The crematorium itself would be set back away from the road and nearby buildings. It would contain a viewing gallery designed to cater for mourners who wish to view the cremation.
- 4.9 Around 2.0 ha of woodland would be removed⁵¹ but a significant amount would be retained between the proposed building and the road. The necessary visibility splays would require the loss of a dozen mature trees along the front boundary (within a 120m visibility splay) and the addition of fencing, entrance features and signage. The scheme would include maintenance and ensure the removal and prevention of fly tipping. The proposals would still provide general public access via footpaths across the site that would link to the wider land to the east, west and north of the site⁵².
- 4.10 Westerleigh submitted an Updated Needs Report⁵³. It used a specialist GIS based demographic software system for location planning⁵⁴, to produce detailed catchment and population data. This estimates a population of nearly ½ million within 30 minutes' drive-time at the speed of a cortège⁵⁵. Westerleigh submitted a map showing actual addresses to indicate that its catchment for Lichfield is realistic⁵⁶.

5. Common ground on need

- 5.1 It was agreed at the Inquiry that all but one existing crematorium in the area are operating above their practical capacity, which was agreed to be 80% of its core capacity⁵⁷. It was widely accepted that 45 minutes is a minimum ideal

⁴⁶ ID21: agreed wall length

⁴⁷ See CD F4 application plans – proposed site plan, and CD F12 Transport statement, Ax E, p129

⁴⁸ Johnson in XX and to IQs

⁴⁹ Ibid

⁵⁰ CD C41 and Bateman Rebuttal to Wilson §2.7

⁵¹ SoCG Dignity/Westerleigh §2.1.6

⁵² Bateman Rebuttal to Wilson §2.2

⁵³ Bateman appendix 1, dated November 2018

⁵⁴ See Bateman 6.74-6.82 and CD V19

⁵⁵ Ibid 6.77 and Table 15

⁵⁶ ID16

⁵⁷ ID15, referred to as 'over-trading', Round Table Reading Note on Need, §4 bullet 4

duration for a service but there is no industry-wide standard. Catchment areas were calculated based initially on the drive time for a cortège, as a rule of thumb, but then with different assumptions for fringe and overlap areas⁵⁸. Also agreed were the use of January as the peak month, and population and historic trends for death rates from the Office for National Statistics (ONS)⁵⁹. There was significant agreement between the Appellants covering the current number of cremations⁶⁰.

- 5.2 The core hours were not agreed⁶¹ although it was accepted that demand is highest in the middle of the day with a steady increase and then decrease in services over the course of the day. The relative importance of the availability of a time slot at a suitable time of day was not agreed. For qualitative need, the main parties agreed that the quality of the operations at all nearby crematoria would improve with a new crematorium. Overall, in line with the conclusions of both the Inspector and the SoS following the previous Inquiry, there is a chronic quantitative need. In either case this is a compelling need which could amount to very special circumstances for a new crematorium in the Green Belt in South Staffordshire.
- 5.3 It was agreed at the Inquiry⁶² that there is a chronic quantitative need⁶³ for at least one new crematorium to relieve the pressures at Bushbury. Also, that Gornal Wood is also under pressure and that neither need could be met outside the South Staffordshire Green Belt. The Council accepted that the pressing need to relieve the capacity issues at Bushbury crematorium could be relieved by either of the appeal schemes and that this could clearly outweigh harm to the Green Belt so as to give rise to very special circumstances.
- 5.4 The SoCG on need between Dignity and Westerleigh⁶⁴ agrees that Bushbury is dated, compromised by its second chapel and lack of car parking, and very busy; Streetly has insufficient car parking; Stafford is very busy and the related short (30 minute) services reduces quality. Gornal Wood, Telford, Lichfield and Sutton Coldfield were also assessed. The Appellants agreed on the numbers of actual and forecast cremations for these seven crematoria. Dignity acknowledged that the impact of its scheme on Telford would not be significant⁶⁵.
- 5.5 Apart from SSCC, all relevant witnesses gave evidence⁶⁶ that it would be highly difficult and unlikely that an alternative site could be found. It was unchallenged that there is an under-provision of facilities in the area for the Sikh and Hindu communities. Evidence of need, and of the lack of alternative

⁵⁸ Put at 18 minutes or 30 minutes at cortège speed – ID15 §31-34

⁵⁹ CD B6

⁶⁰ SoCG - Need and Rebalancing - January 2019

⁶¹ At the round table session: Westerleigh 10.30-15.00; Dignity 10.00-16.00

⁶² Ibid. The Review notes that representations were made by Wolverhampton City Council and Walsall Council, who manage, operate and own Bushbury and Streetly respectively, that there is no need for additional facilities. However, they lack robust evidence and as owners/operators have a vested interest.

⁶³ Johnson IC Day 1

⁶⁴ Dated 8 January 2019. See also Best Table 7.1 and Bateman Table 9

⁶⁵ Best at round table to IQs

⁶⁶ In proofs of evidence and in response to IQs

sites, also came from Horizon Cremation, the firm behind the planning application in Cannock⁶⁷. The Council⁶⁸ did not dispute the conclusions of Dignity's alternative sites analysis and sequential assessment⁶⁹ which favoured Wergs over other sites considered, including JWL.

- 5.6 The Council commissioned an independent planning review of the need case advanced at JLW, Wergs and Essington⁷⁰. It looked at previous appeal decisions⁷¹ and followed the conclusion⁷² that: *In a planning context, it is normally understood that 'need' is a significantly higher test than just demand, and both of these are quite distinct from questions of viability. ... to demonstrate a need, sufficient to outweigh the harm to the Green Belt, it would be necessary to show that the continuation of the existing situation would involve some significant adverse consequence.*
- 5.7 The review interpreted quantitative need as supply and demand and qualitative need as experience, which it restricted to drive-times. The Council considered the 'need' issues regarding these applications as ... *a complex analysis of catchments, demographics, operational performance and travel distances/times*⁷³. With regard to the drive time aspect of qualitative need, it acknowledged⁷⁴ that the Essington proposal would bring a significant population within a 30-minute drive time of a crematorium for the first time, but also judged that few would have a drive time of more than 35 minutes.
- 5.8 The Council considered the impact of each application scheme in turn⁷⁵. For JLW, the review found that the quantitative need was not demonstrated, and the qualitative need was not persuasive. For the Wergs scheme, the Council concluded that there was evidence of quantitative peak demand need, which will worsen in future years⁷⁶, but aside from this found the quantitative need case less persuasive and that qualitative need was not demonstrated.
- 5.9 For the Essington option the review similarly found evidence of quantitative need as a result of peak time pressure on Bushbury. It acknowledged that Streetly would come under pressure but did not accept that this would be until 2041⁷⁷. It found that the qualitative need case was not persuasive as the vast majority of the population is already within what it saw as a 'reasonable' drive-time of an existing facility, albeit marginally over 30 minutes. It found that with 'rebalancing' taken into account, should Essington be at capacity from the outset, the quantitative need identified at Bushbury would not be fully met by the Essington proposal.

⁶⁷ Best Ax 19

⁶⁸ Wergs SoCG §6.16

⁶⁹ CD Q7: Harris Lamb October 2014

⁷⁰ CD I3. Planning review of need cases – Bilfinger GVA, February 2015, prepared by Hawkins

⁷¹ Ibid §§2.2 and 2.5

⁷² APP/N3020/A/13/2208636 Land at Orchard Farm, Catfoot Lane, Lambley, Nottinghamshire (Decision date: 4 August 2014) §66

⁷³ §5.4.9 of their Committee Report

⁷⁴ CD I3 GVA Report Table 5.2

⁷⁵ Ibid s3, 4 and 5

⁷⁶ Hawkins Rebuttal 2.10

⁷⁷ Ibid 2.9

- 5.10 Future capacity was estimated using different assumptions for the design year and the death rates and reached alternative conclusions. Theoretical capacity was calculated using different core hours and also drew different conclusions. Further methods were used to determine catchment areas, again reaching different answers. Westerleigh looked at forecasts for the population in 2041. As a result, widely differing figures were reached for the populations and death rates within each catchment although both recognise that the catchment area for Essington, which includes much of Wolverhampton and Walsall, has a significantly higher population and so death rate⁷⁸. The largest populations in the area include the Wolverhampton, Walsall, West Bromwich and Dudley conurbations. Essington is much closer to these dense urban areas than Wergs⁷⁹. Sikh and Hindu cremations may draw large numbers but are poorly catered for in the area at the moment⁸⁰.
- 5.11 For Wergs, the evidence on populations and travel distances are only approximations based on a 50% 'trade draw' figure for fringe areas beyond the immediate catchment. For Essington, the evidence looked at populations and overlaps, relying more on an overall need in the wider area and reference to a much higher population in the immediate catchment in the foreseeable future. There was new evidence on the rising death rates in the area⁸¹, as a result of demographic changes⁸².
- 5.12 The Dignity evidence was that its scheme would relieve Gornal Wood as well as Bushbury and that the Cannock permission is likely to meet some of the demand at Streetly and Sutton Coldfield. Westerleigh's Updated Need Report 2018⁸³ forecasts a greater demand than capacity and consequential rebalancing. Its evidence was that, through rebalancing, a reduction in pressure at Bushbury from its scheme would be likely to give rise to diversions from Gornal Wood⁸⁴. Dignity gave specific predictions for rebalancing while Westerleigh addressed this descriptively.
- 5.13 Dignity subsequently argued that the Essington facility would be 'over-trading' as soon as it opened. The Council⁸⁵ concluded that both would be under pressure to meet demand, but Essington more so than Wergs.

6. The Case for Dignity UK

- 6.1 Its case was set out in its proofs of evidence and summarised in its closing submissions with references to key points⁸⁶. This should be read in full to understand this Appellant's case. The revised version includes comments added orally at the time. Its closing submissions identify issues regarding need, heritage, landscape and open space, design, biodiversity, Jenny Walkers

⁷⁸ SoCG §20

⁷⁹ Bateman 6.114

⁸⁰ Bateman Ax1, 2.52-2.57 appendices 8 and 9

⁸¹ Ibid Table 2: 19.54% for South Staffordshire

⁸² In particular within the Asian community as post-war immigrants move into old age

⁸³ Bateman appendix 1

⁸⁴ Westerleigh closing §89 and McArdle 3.6

⁸⁵ Hawkins rebuttal 3.14

⁸⁶ See ID27 attached at Appendix D to this report

Lane, other alternative sites, and the planning balance. Significant points which arose in spoken evidence are included in the oral comments added to the closing.

- 6.2 Following my question on the wall around the Wergs site, Dignity supplied information and, with the Council, maintained that the wall was not within the curtilage of the Hall, and so should not be considered as a listed structure.

7. The Case for Westerleigh Group Ltd

- 7.1 Its case was set out in its proofs of evidence and summarised in its closing submissions with references to key points⁸⁷. This should be read in full to understand this Appellant's case. Here it identified the issues regarding the Green Belt, rebalancing, whether there is a need for more than one crematorium, planning policy, weight to factors, and impact on landscape and heritage assets.
- 7.2 A number of points arose in spoken evidence, as follows.
- 7.3 On the argument over whether the site should be assessed as parkland, the Heritage witness gave evidence⁸⁸ that the combination of the wall, the avenue of trees, the covert, the pasture and the open space together were not incompatible with parkland. Also, that parkland can include arable land such as at Warwick Great Park.
- 7.4 It was accepted⁸⁹ that the wall around much of the Wergs site was not in immediate need of repair. Westerleigh disputed Dignity's conclusions on the evidence about whether or not it is a curtilage listed structure⁹⁰.
- 7.5 While acknowledging the large number of objections to the Essington proposal, the majority of which cited loss of open space, Westerleigh⁹¹ countered that, while they might say that, the evidence was that the site is neither attractive nor safe for public access. It added that all but 2% of the site would be replaced with more accessible open space, albeit that it would not be appropriate to allow dogs to run free⁹².
- 7.6 The Council⁹³ acknowledged that it was important to plan ahead and that this included consideration of the change in death rates.

8. The Case for South Staffordshire Council

- 8.1 Its case was set out in its proofs of evidence and summarised in its closing submissions with references to key points⁹⁴. This should be read in full to understand the Council's case. With regard to the planning balance, it concluded that: both schemes cause comparable levels of harm to the Green

⁸⁷ See ID26 at Appendix D

⁸⁸ Stoten in XX by Village

⁸⁹ By White in XX by Goatley

⁹⁰ ID30, ID35

⁹¹ Peachey in XX by Hutton

⁹² Peachey to IQs

⁹³ Hawkins in XX by Goatley

⁹⁴ ID25 at Appendix D

Belt (through inappropriateness, loss of openness, and encroachment into the countryside); neither scheme causes any other significant harm; harm to the Green Belt attracts substantial weight; either scheme would relieve the compelling need for a new crematorium arising out of pressure at Bushbury; the relief of that compelling need is sufficient to generate very special circumstances; the Wergs proposal would make a significant contribution to relieving pressure at Gornall Wood; and, would deliver environmental benefits.

- 8.2 It did not accept that need could justify both appeals. Consequently, it found that the planning balance for Wergs is more favourable than that at Essington, and preferred the Wergs proposal.

9. The Case for South Staffordshire Cemetery & Crematorium Ltd (SSCC)⁹⁵

- 9.1 This comprised an oral opening, a statement against each of the Dignity and Westerleigh appeals, with attachments, and another in favour of its own site at JWL. There are 9 separate appendices. The appeal statements are attached. Additional documents were submitted during the Inquiry⁹⁶, and with closing submissions⁹⁷.
- 9.2 SSCC also submitted Inquiry statements on Planning and Green Belt policy but in the event these witnesses did not attend⁹⁸. They included copies of the earlier proposals and a DAS. Rebuttal statements were submitted against both the appeal proposals.
- 9.3 A series of emails were received from SSCC after closing submissions⁹⁹. To the extent that they are relevant to the decisions to be made on these appeals, I have taken them into consideration.
- 9.4 In oral evidence, SSCC expressed its support for the Parish Council¹⁰⁰ and its highway safety concerns. It outlined the history of the Wergs site and claimed that the landowner had a right of way to the adjacent field. Discussions had been held with various parties around the potential for the site.
- 9.5 It argued that a crematorium should be a calm and quiet place but that the Wergs site was noisy and dusty on account of the busy road. Also that the Wergs site contained Great Crested Newts, which could be harmed by the use of insecticides, and that the wall was in a good state of repair.
- 9.6 Turning to JLW, this has 5 gates it was and asserted that the site has hosted between 3 and 5 thousand cars without any traffic problems¹⁰¹. There is also a requirement for facilities that would accommodate the needs of the substantial Sikh and Hindu communities in the area.

⁹⁵ The case was presented by Wilson alone

⁹⁶ ID13

⁹⁷ ID24

⁹⁸ By Paul Turner and Celia Wilson-Roberts

⁹⁹ ID33

¹⁰⁰ And for Cllr. Allen

¹⁰¹ See SSCC appendix 9

10. The Cases for Interested Parties/written representations¹⁰²

- 10.1 **Perton Parish Council** submitted a report¹⁰³ on the walked route from Perton Village to Codsall High School. The purpose of this was to conduct an independent audit and so assess whether students residing in Perton should be entitled to receive free transport. It identified the route as along Heath House Lane and crossing the A41 Holyhead Road at the junction at the corner of the Wergs site.
- 10.2 **Councillor Allen** pointed out the new developments proposed for the golf course and elsewhere and the dangers at the A41 crossroads. She highlighted: the fact that Perton essentially has only one route in and out, the number of accidents at the junction and excessive speeds.
- 10.3 Many of the written representations voiced concern at the potential loss of public access to part of the community woodland that is the Essington site.

11. Conditions

- 11.1 Schedules of conditions were discussed at the Inquiry and, subject to minor changes, agreed between the Council and each of the Appellants. They are as set out in Appendix C.
- 11.2 For Appeal A, the latest draft conditions¹⁰⁴ mostly reflect those agreed at the last Inquiry and attached to the Report with a list of reasons which the previous Inspector accepted. These have since been updated to reflect the discussions at the Inquiry.
- 11.3 For Appeal B¹⁰⁵, the SoS Decision recorded that he had considered the Inspector's analysis and was satisfied that the conditions recommended by him would comply with the policy test sets and should form part of his decision. It was agreed at the Inquiry that, for the same reasons, they should be attached.
- 11.4 I have had regard to national policy on conditions in NPPF206 and the relevant PPG. Should planning permission be granted for the proposals, for the reasons accompanying the attached conditions, I recommend that they should be imposed on the appropriate appeal as attached.

12. Unilateral Undertaking under s106

- 12.1 The Unilateral Undertaking¹⁰⁶ prohibits the owner of the land adjoining the Wergs site from cutting turf on that land. Given that the ecological benefits that are part of the scheme might otherwise be lost, this is necessary to make the scheme acceptable in planning terms.

¹⁰² Those made prior to the previous Inquiry remain valid, including by the Rt Hon Gavin Williamson MP

¹⁰³ ID1: delivered by Councillor Allen

¹⁰⁴ ID18a

¹⁰⁵ As listed in the SoCG between the Council and Westerleigh

¹⁰⁶ ID29

13. Inspector's Conclusions

From the evidence before me at the Inquiry, the written representations, and my inspection of the appeal sites, their surroundings and other facilities, I have reached the following conclusions. The references in square brackets [] are to earlier paragraphs in this report.

Main considerations

13.1 The main considerations in these appeal are as follows:

For each of the appeals:

- (i) 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;
- (ii) the implications of 'rebalancing' as referred to in Ground 1 of the claim (partly leading to the quashing of the previous Decisions);
- (iii) whether there is a need for more than one new crematorium, given that the SoS, based on paragraph 232 of the previous Inspector's Report, wrongly thought that the parties had agreed this matter;
- (iv) the weight to be given to any other benefits.

For the Dignity appeal at Wergs (Appeal A):

- (v) whether the proposals would preserve the setting of Wergs Hall, and their effect on non-designated heritage assets;

For the Westerleigh appeal at Essington (Appeal B):

- (vi) the effect of the loss of public open space, community woodland and mature roadside trees.

Benefits - need

13.2 The key benefit put forward for each appeal was that it would satisfy the need for its facilities. Quantitative need can be assessed in many ways including, amongst other things, the availability of time slots (particularly during the core hours) and travel times/distances. The needs case has evolved since the Council refused planning permission for both schemes in March 2015 and new evidence has been submitted since the previous Inquiry. The Council now recognises that either of the schemes would relieve the pressure at Bushbury and satisfy the compelling need for new provision in the Green Belt in South Staffordshire. It was common ground that this is needed within a reasonable distance and without undue delay. Either scheme, or both, would satisfy these requirements. [5.1 5.2 5.3]

13.3 Neither Appellant confined its evidence to Bushbury but argued that their schemes would provide significant benefits to other crematoria which are also under pressure. This could be either directly or as a result of rebalancing between facilities following an easing of demand for Bushbury. [5.8, 5.9, 5.12]

13.4 Assessing current and future use of a crematorium is not an exact science. For example, the calculations of pressure on existing facilities were based on core slots. However, demand will generally increase and then decrease steadily over the course of the day and so there was disagreement over

which hours should constitute core slots and whether these should be based on a 45 minute or a one-hour service. Neither the catchment areas for the Wergs or Essington Scheme, nor the method of determining them, were agreed. The Wergs use of a 50% figure for its fringe catchments, while not an unreasonable estimate, is little more than an educated guess. It takes no account of quality, and so is unlikely to be equally applicable to all crematoria. For Essington, the evidence of overlaps relies more on an overall need in the wider area and on a much higher population nearby with rising death rates. This all illustrates the subjective nature of some of the assumptions behind the needs assessments. It does not mean that one is necessarily better than the other, only that they are different. [5.2 5.11]

- 13.5 Both Appellants produced logical and reasonable forecasts of need but also gave persuasive critiques of the other's evidence and the accuracy of their approach and conclusions. As a result, while the numerical evidence gives an indication of the relative pressure being exerted on the existing crematoria in the area, it does not provide a simple answer as to whether or not there is a compelling need beyond that at Bushbury. [5.2 5.8 5.9 5.11]
- 13.6 The Council argued that the weight to a need identified as a long way in the future should attract less weight than one now. However, the current need cannot be met, and it is likely to be about a year from the Inquiry to consent for either scheme and at least a further 2 years before that would be up and running. In general, it would be correct to give more weight to a need in 3 years' time than in 20 years. On the other hand, planning should be about looking ahead. If only one scheme is allowed, it is likely to be about 5 years from the time of this Inquiry until new figures can be obtained for the impact of that new crematorium on existing pressure. If these figures were to show a continuing need, it would probably be at least another 3 years before it could be addressed by a further facility. Consequently, 2027 should probably be the earliest future date that should be considered. Using the ONS historic trends for annual growth for population and death rates, figures for 2031 or even 2041 should not be discounted. [5.8 5.10]

Rebalancing

- 13.7 Looking further afield, the Council accepted that the Wergs scheme would result in a reduction in pressure at Gornal Wood, now and in the future. This would be partly as a result of rebalancing following an increased availability of time slots at Bushbury. It considered that this should attract significant weight but put it no higher than that. It saw no distinct benefits for Streetly crematorium but acknowledged that there would be a compelling need in years to come. The Council therefore concluded that Wergs would be preferable as it would also reduce pressure on Gornal Wood. [5.3 5.8 5.9 5.12]
- 13.8 Dignity pointed to the pressure at Gornal Wood as being greater than that at Streetly. However if, as the Council suggested, some of the reduced pressure at Gornal Wood were to come about as a result of rebalancing from Bushbury, then the relief that Essington would provide to Bushbury would similarly benefit Gornal Wood, albeit indirectly. Rebalancing as a result of relieving Bushbury is likely to ease Gornal Wood regardless of whether this comes directly from Appeal A or indirectly from Appeal B. [5.3 5.9]

- 13.9 Part of the Dignity case, acknowledged by the Council, was that Essington would be under pressure from the start and would not be able to fully relieve Bushbury. However, that conclusion does not sit comfortably with the claim that the other crematoria that Essington would aim to relieve are currently below capacity. Rather, it supports the argument that the overall need at adjacent facilities, including Gornal Wood, Streetly and Sutton Coldfield, is too high. Within the Essington catchment, and for Streetly and Sutton Coldfield, this would probably not drop significantly even if Wergs were to relieve much of the pressure at Bushbury. That is to say that the present need is much wider than just around Bushbury and extends to the much larger populations south of Essington. [5.13]
- 13.10 The Council judged that the recent Cannock permission would lead to rebalancing overall. In the light of this, it minimised any concerns arising from Stafford and Sutton Coldfield. However, while Cannock would be likely to ease pressure on Stafford and the wider rural area to the north, it is at a distance from the main population centres of Walsall and Wolverhampton and so is less likely to have a direct impact on the demand at Streetly let alone Sutton Coldfield. Moreover, Cannock has not been built let alone started carrying out cremations. There remains some uncertainty as to how it will perform. [2.3 5.12]

Need for more than one

- 13.11 While the pressing case was identified as relieving Bushbury, granting permission for both sites would ensure the provision of crematoria in the area against an increasing need in years to come. The matter of rebalancing goes to the wider need. As the Council emphasised, *need* is a significantly higher test than just *demand* and, to outweigh the harm to the Green Belt, it would be necessary to show that allowing the existing situation to continue would involve some significant adverse consequence. If predicting the direct impact of either crematorium on need is difficult, anticipating the secondary effects is trickier still. Efforts to accurately predict a third tier of impact for crematoria even further afield must fail and judgements must be made. Evidence was not that rebalancing would necessarily alleviate other specific problems but that there is substantial pressure on a number of existing crematoria. [5.2 5.6 5.11 5.13]
- 13.12 The Wergs proposal would provide some relief to Gornal Wood as well as Bushbury. Essington would assist Streetly and, indirectly, Gornal Wood and Sutton Coldfield and would be closer to a larger population. It would be likely to relieve predicted pressure further afield and into the future. The Council played down the significant number of people who would be within a 30 minute drive time for the first time as most of these would still only experience a 35 minute drive. However, that is a significant journey and likely to be longer still by public transport which might be a far easier option for the larger populations south of Essington than it would be for Wergs. The scheme at Cannock should relieve pressure at Stafford and to the north but would be unlikely to greatly reduce that at Streetly or Bushbury. [4.10 5.1]
- 13.13 What is evident is that there is an overall shortage of facilities near the West Midlands conurbation which is only going to get worse even if the Cannock

permission is completed and operates successfully. The argument that Essington would be under pressure from the start only goes to highlight the widespread need across the district of South Staffordshire and into the West Midlands conurbation. Due to the Green Belt and the Cremation Act, this cannot be provided within that area. Although Wergs would be likely to have a greater impact on pressure at Bushbury and Gornal Wood, Essington would not only relieve these crematoria but also serve a larger population within a shorter distance. Both Dignity and the Council found that the quantitative need identified at Bushbury would not be fully met by the Essington proposal. [3.1 4.10 5.1]

Conclusion on quantitative need

13.14 The evidence provided no definitive answer to the extent of quantitative need. It was common ground that Bushbury needs relief now but more for empirical reasons than definitions of an appropriate threshold. Similarly, there was no agreed point for assessing when Gornal Wood, Streetly and Sutton Coldfield would meet the same threshold, if they haven't already. While not quite as obviously overstretched as Bushbury, planning ahead, that moment is likely to come before any useful data is available on the impact of only one new crematorium. The overall conclusion should be that there is a quantitative need for both appeals to relieve pressure on existing crematoria in the future and that only by granting permissions now will that need be met in a timely fashion.

Qualitative need

13.15 The parties' cases took little account of quality of experience, that is to say, some crematoria are more attractively laid out and more popular than others, some have two chapels rather than one, there are different lengths of service and flexibility over types of service. All have slightly different amenities, access and car parking facilities and areas for memorials. The preferences of local undertakers is probably a further factor. The site visits demonstrated that, while all were well cared for and maintained, many of the existing crematoria are aging, in need of investment and updating, and at or reaching capacity. This will only get worse until rival facilities offer competition and so drive investment. In the case of the local authority-run crematoria, while there may be the desire to make improvements, and increase space for parking and memorials, their current ability to invest may be limited even if there is space to expand. Achieving investment will therefore require alternative facilities. [5.2]

13.16 The previous Inspector gave no weight to the need for a viewing gallery. However, the balance of new evidence at this Inquiry was that existing crematoria do not serve different parts of the community as well as they ought to and that there is a need, albeit that this is only one of a number of factors which should be given some weight. The Essington scheme would provide a gallery. It would be an option at Wergs subject to careful internal reconfiguration controlled by a condition. Consequently, both schemes would, or would be able to, comply with the PSED but the Essington proposal actively demonstrated that it would comfortably exceed the minimum requirement, and this would be a significant public benefit. [3.1 5.10]

Conclusions on need

13.17 On this issue, the evidence shows a lack of facilities overall in the area, that due to their age and high demand many of the existing crematoria provide a poor standard of service, and that none caters specifically for minority needs. Overall, this suggests a substantial, if different, quantitative and qualitative need for both schemes.

Appeal A

Historic interest

13.18 Wergs Hall is a listed building and it was agreed that the site is within its setting, even if there is no direct inter-visibility. This is because the site contributes to the way the Hall and its surrounding land is experienced as one moves around. This has been recognised in its HLA designation. The Hall was listed because of the building itself but its setting is also part of its historic interest and assists in the understanding of its historic development. The site therefore contributes to the special interest and significance of the Hall. [2.6 2.10]

13.19 It was common ground that the wall around the site is a heritage asset. While the information supplied by the parties is not conclusive, on the balance of the relevant factors, including layout, function and ownership, the wall should probably not be considered as part of the Hall for listed building consent purposes. Nevertheless, the harm that would be caused to it would be the same whether it is listed or not and weight should be given to that harm even as an undesignated heritage asset. [2.1 2.7 3.2]

13.20 The scheme would demolish most of the wall and replicate it, using existing stones as far as would be possible, on a new alignment. This would be set back from the road to achieve the desired traffic visibility splays. The opening in the wall, already a later alteration, would more closely match the reconstruction, arguably making the wall's historic development less easy to understand. As a result, the historic position of the wall and its relationship with the road would be altered. Although many of the existing stones could probably be reused, the wall would require new mortar and footings and stones would be damaged, some for the second time. This would apply to most of the heritage asset albeit that a substantial portion has been reconstructed before on a different alignment. [2.7 4.2]

13.21 Dignity argued that the wall was not in good condition but, as the site visit showed, while there are some areas which could benefit from local repair, the wall as a whole appears structurally sound apart from a very short section along Heath House Lane which does not require realignment. It is unlikely that reconstructing it, on a new foundation with new mortar and some repaired or replacement stones for those which might be damaged during demolition, would significantly improve its appearance or its integrity. The wide road margin would be at odds with the relationship between other historic walls next to roads in the area. [2.7 2.8 4.2]

13.22 The site, with its wall, covert and tree avenue, is also within an HLA. The wall surrounds what was previously part of the estate. The historic maps are

inconclusive as to whether the site, or part of it, coincided with the park at some stage. These maps do show the site as mostly devoid of trees and so it is reasonable to conclude that it was mostly open land, whether pasture or park. In the past there was boundary landscaping. On this point it is not possible to say with confidence whether the appeal site, or some of it, was ever part of the park or just the wider estate, whether there was ever such a distinction at this point, or whether it changed over time from being within or outside the park. [2.8 2.10]

13.23 What is evident is that a substantial wall was built, and that this included gates at the road junction, opening onto what became an avenue of trees, lining a long approach to the Hall. It follows that the wall, the gates, the avenue, the covert and the land between are all important to understanding one of the routes to the Hall and so to its setting. They are part of its character. While the works proposed for the avenue and covert might enhance their landscape qualities, and prevent the rotational turf-cutting which at the moment denudes parts of the site from time to time, they would undermine their historic significance. The distinction of whether the HLA should be defined as parkland, or just understood to be a close part of the estate, is not critical to the harm that would be done to these separate non-designated elements or to the issue of setting. [2.8 2.9]

13.24 All these elements contribute to the heritage of the HLA, which is also in the setting of Wergs Hall. Taken together, the proposals would cause significant harm to the HLA and detract from the values that led to its designation. For similar reasons, it would harm the historic setting to Wergs Hall. Although this would be less than substantial harm, and could be reduced by conditions, it should be given considerable importance and weight in the decision making process. The scheme would conflict with CS policy EQ3, some aspects of policy EQ4, and advice in NPPF paragraphs 184, 192, 193, 196 and 197.

Landscape

13.25 As above, the Wergs scheme would introduce new landscaping around the building, curtail the turf cutting and enhance the adjoining avenue albeit with new trees. To be set against this, there would be a new structure in the setting of the listed building and what was probably once part of the wider park to the Hall. The natural covert would become part of the crematorium landscape which would also butt up against the avenue. The proposed tree belt alongside the A41 could eventually screen the building and parking areas from the road. It would not amount to built development but it would also have a visual impact on the Green Belt. The impact of this and on the openness of the Green Belt is dealt with below. [2.9 4.3]

13.26 The Council and Westerleigh accepted that the restoration of the avenue would amount to an enhancement, albeit the weight as a benefit was not agreed. Similar considerations apply to the turf cutting from the remainder of the site which could be excluded in future through the s106 Undertaking. It is unlikely that the works to the avenue or cessation of turf cutting would happen without the scheme. [4.3 4.4]

13.27 The landscape and visual impact of Wergs was assessed favourably by the conservation officer and the previous Inspector as an enhancement. However, the new evidence put before this Inquiry correctly puts more emphasis on preserving the significance of the historic interest of the site and adjacent Hall than on making the landscape more attractive. While reversing the decline of the avenue would be a planning benefit, the landscaping proposed to abut it would alter an understanding of it. This is because it would no longer look like an entrance through the previous estate but would appear as an adjunct to the crematorium landscape. Although the turf cutting is unattractive from when it occurs until new grass grows, it takes place at ground level and was not particularly obtrusive from public views on the day of the site visit. Consequently, while a benefit, the landscape enhancements would be relatively modest compared with the extent of harm to the heritage assets. [4.3 4.4 4.7]

13.28 The scheme would accord with relevant landscape policies including some aspects of EQ4. The HLA designation also means that the site should qualify as a valued landscape under NPPF170a. [2.10 3.7]

Benefits

13.29 Subject to conditions, the public access, natural landscape (including no more turf cutting) and biodiversity benefits were not challenged. The Council's Landscape officer considered that the new wildflower meadows would result in significant biodiversity interest where very little currently exists. The Scheme would accord with EQ1. [4.4]

13.30 As a crematorium, and as a building in a new landscape, unchallenged evidence was that the scheme amounted to a good design. However, this does not alter the effect that it would have on its historic environment. [4.7]

Appeal B

Sprawl

13.31 The proposals would amount to built development in the Green Belt between two nearby settlements. However, most of the scheme would be landscaping or parking with a limited volume of building. No viewpoint could be demonstrated where there would be sight of the crematorium and both settlements at the same time. Reference to signage and road widening as evidence of sprawl would be to stretch a point too far. The suggestion that the scheme would impact on the purposes of the Green Belt, by leading to sprawl, should be given very limited weight. I note that, having previously referred to this in its RfR, the Council did not defend it or pursue this issue. [1.1 3.4]

Landscape

13.32 The proposals would cause a loss of open space, albeit now largely covered with trees, on the part of the Essington site where the building and parking would be located. Westerleigh acknowledged that there is informal public access but did not accept that the Community Forest rendered the site either a valued landscape or POS. However, POS or otherwise, the number of

written objections from local residents shows that, as well as being part of the Forest of Mercia, it is valued as open space by local residents, whether at the moment they can use it easily or not. [2.11 2.12]

- 13.33 Given that the site has public access, informal or otherwise, and noting the extent of evidence from local residents to this effect, the site should be regarded as open space under NPPF97. The replacement of 2.0 ha with a crematorium landscape, with or without public access, would not amount to an equivalent provision for the loss of open space under NPPF97b. Community Forests may also be a material consideration in deciding planning applications, with reference to NPPF142, as part of the overall Green Belt assessment. [2.12 3.5 10.3]
- 13.34 Whether or not the Essington site is a valued landscape as defined by NPPF170a is a matter of fact and degree. Given its uneven surface and extensive fly-tipping, much of it may not be used for recreation at the moment. However, while evidence of its past, or potential future, recreational use is scant, its present degraded state, as a result of temporary neglect and lack of enforcement against fly-tipping by its owners and the authorities, should not detract from its assessment as valued. Its location within the Forest of Mercia combined with its public access and its use by local residents should tip the balance in favour of it being considered as a valued landscape under NPPF170a. [2.12 10.3]
- 13.35 The degree of openness of the site should be considered with regard to its lack of built development. This is not the same as the effect on visual impact where existing and new tree cover and screening could be relevant. The scheme would also require the removal of a significant number of mature trees to facilitate the visibility splays on either side of the proposed entrance. While the extent of such splays may be relaxed in certain circumstances, that of a slow-moving cortège is unlikely to be one of them. [2.12]
- 13.36 On this issue, the proposals would be contrary to Core Policy 14, and Policies HWB1 and HWB2 as well as advice in NPPF97 and NPPF142. [3.5 3.9]

Benefits

- 13.37 The Essington site is close to large populations and, by whatever assessment, there are more people within its catchment than that of the Wergs site. It has accessibility benefits being located close to Bloxwich Railway Station and stops for two bus routes. The specifics of the proposals would include a large standing area and a viewing gallery of particular benefit to Sikh and Hindu communities. The scheme would demonstrably discharge the PSED duty and this weighs in its favour. [4.8 4.9]

Jenny Walkers Lane

- 13.38 The SSCC planning application was refused at the same time as the Wergs and Essington schemes. There was no appeal or further application and SSCC has no experience in operating crematoria. Since 2012 it has approached five operators, to enter into some sort of partnership or agreement at JWJL, but to date no firm operator has been found. Two issues were raised with the site: access and landscape. Both of these would need to be overcome, and

permission obtained, before there would be any likelihood of a crematorium coming forward. Consequently, any scheme there would be likely to take a long time to come forward even if the problems could be overcome. The weight to be given to this site as a feasible alternative in the short to medium term should be limited. [2.14 5.5]

Other sites

13.39 Dignity submitted details of its site searches. These concluded that all the land within the area of need is designated as Green Belt and that it is difficult to locate crematoria facilities near built up areas due to the 200 yard restriction. SSCC contended that there were plenty of other sites which, although being in the Green Belt, would not share the difficulties it perceived at Wergs. However, other than for its own site, it did not produce any evidence of other nearby sites or provide detailed criticism of the sequential report. If there were persuasive evidence that another Green Belt site could come forward within a reasonable timescale, which would not cause harm other than to the Green Belt, then that site should be preferred. However, the searches suggest that this is unlikely. [4.5]

13.40 It could be concluded that another site might come forward that would cause less harm beyond that to the Green Belt. However, this is uncertain, would take a much longer timescale, and by itself would be unlikely to satisfy all the demand at present let alone in the near future. [5.10]

Other matters

13.41 The Wergs application and appeal gave rise to some understandable traffic concerns. However, where relevant, transport statements¹⁰⁷ addressed these and, while doubts were expressed, there was little evidence to show that the TA was inaccurate or that, cumulatively, the scheme would give rise to serious impacts as referred to in NPPF109. This is because the junction is operating with reserve capacity and that the number of additional vehicle movements would be very small compared with the existing traffic. While the Parish Council's report into pedestrian safety to Codsall High School is of obvious concern, the relevant route crosses the A41 Holyhead Road and does not pass the entrance. Moreover, the core hours, when the proposals would be likely to attract high volumes of mourners, are in the middle of the day and so have less impact on vehicular movements during the hours when pupils are most likely to be using the road. As with the fact that the Wergs site might be relatively noisy and dusty, on account of the busy road, and might contain Great Crested Newts, this concern should be given limited weight. [9.5 10.1 10.2]

Benefits

13.42 As well as those mentioned above, both schemes would have economic benefits, through employment, and through social advantage in providing a much-needed facility.

¹⁰⁷ CD F12 and Q11

13.43 The accessibility of the Essington site by different means is also a benefit to that scheme and this was not challenged. On the other hand, while staff could and should be encouraged to use public transport, it is unlikely that a coffin or the mourners from the immediate families would travel this way. This is a factor which attracts moderate weight towards the Essington scheme and is not matched to the same extent at Wergs. [4.9]

Green belt balance

13.44 Both appeal sites are within the Green Belt and either scheme would be inappropriate development contrary to policy in NPPF143. Both would encroach into the countryside, in conflict with NPPF133-134. It was common ground between all the main parties that at least one new crematorium is required to relieve pressure on Bushbury and that this need would amount to very special circumstances that could outweigh the harm by reason of inappropriate development, to the Green Belt. The Council did not differentiate between the level of Green Belt harm arising from each of the schemes. Nor did it accept that very special circumstances exist for more than one. [3.4]

13.45 Both the proposals would also affect openness. NPPF133 explains that: *The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.* Openness can have a spatial aspect as well as a visual dimension. Notwithstanding the existing tree screening at Essington, the Council considered that both schemes would have a similar impact on the perception of openness in the Green Belt. It found no other significant harm from either.

Appeal A

13.46 The Wergs appeal would eventually be screened by new planting but this would take time to fully mature. Only a relatively small proportion of the site would be built on but cars in the car park would also affect openness. Initially at least, the scheme would therefore cause significant harm to the visual dimension of openness as well as to heritage assets. [4.2]

Appeal B

13.47 The Essington site is heavily treed, and the proposals would be largely concealed within these trees. However, the building and parking would cause significant harm to openness through both its spatial impact and its limited appearance from the road and from recreational use of the wider forest. There would be some harm from the loss of mature roadside trees and from the loss of open space with reduced public access. [4.8]

Need from rebalancing with regard to the Green Belt

13.48 Both Appellants pointed to relief to crematoria further afield as part of the wider planning balance. Dignity focussed mainly on direct relief to Gornal Wood while Westerleigh looked more broadly at Streetly and rebalancing to crematoria beyond. Any benefit to Gornal Wood arising from rebalancing at Bushbury, could be applied to both schemes. [1.1 5.9 5.12]

- 13.49 Westerleigh also referred to the increasing populations and death rates, including the area covering Walsall and West Bromwich, with significantly updated evidence since the last Inquiry which the Council did not really address. If only one new facility is built, these increases are likely to result in comparable pressure at other crematoria. It follows that only through rebalancing the supply of services at a second crematoria would pressure comparable with that at Bushbury be avoided. [5.8 5.10 5.12]
- 13.50 It was agreed that the consequences of chronic pressure at Bushbury would amount to very special circumstances. Taking account of rebalancing, the need for both proposals should also mean that very special circumstances exist to justify both appeal schemes.

Planning balance

- 13.51 Both schemes would be inappropriate development, harm the openness of the Green Belt and cause substantial harm by definition, contrary to NPPF paragraphs 133-134 and 143-145. Both sites are valued landscapes: Wergs for its heritage interest, Essington for its community forest. Contrary to the Council's view, in both cases, the opposing Appellant successfully demonstrated that there would be harm in addition to that to the Green Belt, in conflict with NPPF170a. Although not directly comparable in nature, the harm to the combination of heritage assets at Wergs, contrary to NPPF paragraphs 184, 192, 193, 196 and 197, should be given more weight than the loss of a relatively small area of community forest, and a slight reduction in public access at Essington, in conflict with NPPF paragraphs 83d 92a 97 and 142.
- 13.52 Each scheme would directly relieve pressure further afield than Bushbury, for which that at Gornal Wood is more pressing than that at Streetly. While allowing Appeal A would reduce the need for Appeal B, rebalancing from the latter would be likely to provide substantial relief to the pressure at Gornal Wood, Sutton Coldfield and elsewhere such that the reverse is also true.
- 13.53 The harm to heritage assets at Wergs should be given more weight than the harm to the loss of POS, community woodland and mature roadside trees at Essington. The better qualitative offer at Essington would be a further benefit there. The ancillary benefits, at Wergs to bio-diversity and elimination of turf cutting, at Essington through a better qualitative offer and good public transport accessibility, warrant similar weight. Benefits to the rural economy and to community services, supported by NPPF83 and NPPF92 would apply to both.
- 13.54 For the above reasons, on balance, the benefits for either appeal on Bushbury Crematorium would amount to very special circumstances and so at least one appeal should be allowed. Overall, the need for both crematoria would clearly outweigh the harm by definition to the Green Belt, and any other harm.

Development plan

- 13.55 Both appeals would conflict with Core Policy 1 and Policy GB1. For different reasons, they would be contrary to Core Policy 2 through their effects on

heritage and natural assets respectively. The Wergs scheme would be supported by Policy EQ1, through incorporating ecologically sensitive design and features, but contrary to Policy EQ3 and Policy EQ4 as a result of harm to the historic environment and the HLA. The Essington scheme would be supported by Core Policies 3 and 11, as it would facilitate sustainable modes of transport, but conflict with Core Policy 14 and Policies HWB1 and HWB2 through the loss of existing open space and woodlands.

13.56 Both schemes gain support from Core Policy 4 and Policies EQ11 and EQ12, as their proposals would achieve a high quality of both the design of buildings and, other than for heritage and POS, their landscape settings. They gain backing from Core Policies 7 and 9 as they would support the local economy of South Staffordshire and the rural communities.

13.57 On balance, notwithstanding the harm to the Green Belt, other harm and benefits, for both appeals there is a compelling case which is likely to increase as time goes by. This need should outweigh the conflict with the development plan and the appeals should succeed.

14. Recommendations

14.1 I recommend that Appeal A should be allowed subject to the attached Schedule of conditions.

14.2 I recommend that Appeal B should be allowed subject to the attached Schedule of conditions.

David Nicholson

INSPECTOR

Appendix A

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Ian Ponter of Counsel	instructed by Manjit Dhillon, solicitor, South Staffordshire Council
He called	
Stephenie Hawkins BSocSc MPhil, MSc, MRTPI	Barton Willmore
Andrew Johnson BSc DipTP MBA MRTPI	South Staffordshire Council

FOR DIGNITY UK:

Peter Village QC	instructed by Clyde & Co., London
Victoria Hutton of Counsel	
She called	
Paul White BA MPhil MCIfA PIEMA	Ecus Ltd
Stephen Kirkpatrick BSc BLD CMLI	Scarp Landscape Architecture Ltd
Simon Tucker BSc MCIHT	David Tucker Associates
Alan Lathbury FCMA MBA	Dignity Funerals Limited
Patrick Downes BSc MRICS	Harris Lamb Chartered Surveyors
Jonathan Best BSc DipTP MRTPI	Montagu Evans

FOR WESTERLEIGH:

Peter Goatley of Counsel	instructed by TLT Solicitors, Bristol
David Martin of Counsel	
He called	
Gail Stoten BA MCIfA FSA	Pegasus Group
Jeremy Peachey BSc MLD CMLI	Pegasus Group
Ian McArdle BSc MBA MRICS	Westerleigh Group
Anthony Bateman BA TP MRICS MRTPI	Pegasus Group
MCMi MIOd FRSA	

FOR SOUTH STAFFORDSHIRE CEMETERY & CREMATORIUM LTD (SSCC):

Billy Wilson
He called himself and gave evidence

INTERESTED PERSONS:

Cllr. Penelope Allen	Perton Parish Council
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Appendix B**LIST OF INQUIRY DOCUMENTS**

ID01	Perton Parish Council Submissions regarding traffic
ID02	Dignity's Opening Statement
ID03	Westerleigh's Opening Statement
ID04	Council's Opening Statement
ID05	Signed and dated Landscape Statement of Common Ground (SoCG) between Dignity and Westerleigh signed 24 January 2019
ID06	Westerleigh note regarding the Landscape Statement of Common Ground
ID07	Extract from Birmingham Plan
ID08	Letter from County Council dated 14 November 2014 regarding highways and the Jenny Walkers Lane development
ID09	Letter dated 15 January 2019 from the Secretary of State on the Cannock Scheme
ID10	Correspondence from South Staffordshire Council regarding a tree removal notice relating to land to the east of the Wergs appeal site
ID11	Wergs Draft Conditions
ID12	Errata Note to Mr McArdle's Proof of Evidence
ID13	Mr Wilson's documents received on 21.01.2019
ID14	Wergs Hall Listing
ID15	Need Round Table Reading Note
ID16	Note from Simon Tucker dated 22 January 2019
ID17	Cannock Crematorium Decision Notice dated 21 January 2019
ID18	Updated Wergs Draft Conditions
ID18a	Wergs Draft Conditions Final – Agreed between Council and Dignity
ID19	2003 Wergs Decision Notice and accompanying update and officer's report (01/00643/OUT)
ID20	Gail Stoten's Note on the Jura Report
ID21	Agreed Note on Wall Lengths within Appeal Site at Wergs
ID22	Draft SoCG about Wall Listing and Westerleigh email of 20 February 2019
ID23	Paul White's Response to Gail Stoten's Note on the Jura Report appending Official Copy of Register of Title and Plan (SF354637)
ID24	Mr Wilson's Closing Summary Documents
ID25	Council's Closing Submissions
ID26	Westerleigh's Closing Submissions
ID27	Dignity's Closing Submissions
ID28	Cannock Chase crematorium floor plans
ID29	Completed Unilateral Undertaking signed and dated 11 February 2019
ID30	Response to Westerleigh's email on curtilage listing - 25 February 2019
ID31	Westerleigh draft note on agriculture dated 14 February 2019
ID32	Dignity note on the law regarding agriculture - 12 February 2019
ID33	Mr Wilson's documents and emails dated 5, 19, 20 and 25 February 2019
ID34	Reply to Mr Wilson from SSC dated 23 January 2019
ID35	SoCG on Chronology sent by email dated 21 February 2019

CORE DOCUMENTS

Background (A)

National Planning and Ministerial Statement Local Plan Policy and Supplementary Planning Guidance / Documents

- A1 Adopted South Staffordshire Core Strategy (2012) (incl. Proposals Map and Inset Plan)
- A2 Adoption Statement Dec 2012
- A3 Inspectors Report South Staffs CS 17-10-12
- A4 Green Belt and Open Countryside SPD (2014)
- A5 Village Design Guide SPD (South Staffordshire Council September 2009)

Background Documents

- A6 Historic Environment Character Assessment: South Staffordshire (Staffordshire County Council January 2011)
- A7 Green Belt Review (LUC – January 2014)
- A8 Study of Physical and Environmental Constraints (South Staffordshire Council – January 2009)
- A9 Accessibility Mapping Report (South Staffordshire Council 2014)
- A10 Settlement Study (South Staffordshire Council December 2010)
- A11 Dunn and Co Report and Report of the Leader of the Council dated 10th December 2013 (Land at Broad Lane, Springhill, South Staffordshire)

Technical Papers (B)

- B1 The Framework (2012)
- B2 1902 Cremation Act
- B3 The Siting and Planning of Crematoria 1978 (Department of the Environment _ LG1/232/36)
- B4 Recommendations on the establishment of crematoria – Guide to Crematoria (Federation of Burial and Cremation Authorities)
- B5 Process Guidance Note PG5/2 (12) – Statutory Guidance for Crematoria (Defra – September 2012)
- B6 ONS Population Statistics & Cremation Data
- B7 Extract from the ICCM Charter for the Bereaved (November 2014)
- B8 DCLG Review of Crematoria Process and Facilities Discussion Paper (March 2016)
- B9 The Framework (2018)
- B10 The Setting of Heritage Assets. Historic Environment Good Practice Advice in Planning Note 3 (Second Edition)

The Westerleigh Planning Application (14/00906) (C) Drawings

- C1 Site Location Plan
- C2 Artists' Impressions
- C3 Block Plan as Existing
- C4 Block Plan as Proposed
- C5 Entrance Fencing and Gates
- C6 Floral Tribute Details
- C7 Floral Tribute Elevations
- C8 Gas Compound
- C9 Ground Floor Layout Plan and Surrounds
- C10 Ground Floor Layout Plan
- C11 Landscape Layout Plan
- C12 North and West Elevations (Colour)

C13	North and West Elevations
C14	Path Finishes and Lighting
C15	Proposed Lighting Plan
C16	Roof Plan and Surroundings
C17	Roof Plan
C18	Sections AA BB
C19	Sections CC DD EE FF
C20	South and East Elevations (Colour)
C21	South and East Elevations
C22	Vegetation Removals Plan
C23	Water Feature
C24	Design and Access Statement
C25	DAS Appendices 1 to 6
C26	Ecology Report
C27	FRA (Original)
C28	FRA Revised Part 1
C29	FRA Revised Part 2
C30	GNC Method Statement
C31	FD Letter of Support
C32	LVIA Part 1
C33	LVIA Part 2
C34	Mining Risk Assessment
C35	Review Map 1 Rev A
C36	Review Map 2 Rev A
C37	Review Map 3 Rev B
C38	Site Search Document Part 1
C39	Site Search Document Part 2
C40	Stage II Ground Investigation Report
C41	Transport Assessment
C42	Tree Survey
C43	Westerleigh Supplementary Report on Need – February 2015
C44	Appendices to Need Report 2014
C45	Appendix A – How a Crematorium Operates
C46	Appendix B – Busiest Crematoria in the UK 2012
C47	Appendix C – Extract from a Cremation Society of Great Britain
C48	Appendix D – Catchment 1
C49	Appendix E – Halstead Appeal Decision – Feb 2014
C50	Appendix F – Cambourne Appeal Decision – Aug 2009
C51	Appendix G – Lach Dennis Appeal Decision – June 2013
C52	Appendix H – Swanick Appeal Decision – July 2013
C53	Appendix I – Countesthorpe Appeal Decision – March 2014
C54	Appendix J – Great Glen Appeal Decision – May 2014
C55	Appendix K – Competition Decision for Stevenage – July 2005
C56	Appendix L – Travel Isochrones
C57	Appendix M – Funeral Director Letter of Support (See also C31)
C58	Appendix N – Streetly Crematorium Schedule of Charges
C59	Appendix O – Core Funeral Times at Westerleigh Crematoria
C60	Appendix P1 – South Staffordshire Death Rates 2009-2013
C61	Appendix P2 – UK Death Rates 2013 & 2014
C62	Appendix Q – Extract from the Charter for the Bereaved

- C63 Appendix R – Staffordshire Obituaries – Funeral Delays within the Catchment
- C64 Appendix S – Photographs of Bushbury Crematorium
- C65 Appendix T – FBCA Recommendations on the Establishment of Crematoria
- C66 Appendix U – Photographs of Streetly Crematorium
- C67 Appendix V1 – Population Projections for Walsall
- C68 Appendix V2 – Population Projections for South Staffordshire
- C69 Planning Application forms – 4th November 2014
- C70 Application Submission Letter – 4th November 2014
- C71 Fee Submission Letter – 6th November 2014
- C72 Development Team Meeting Notes of 1st October 2014
- C73 DLA Response to the Ecology Objection – January 2015
- C74 Support Letter for the Westerleigh Proposal – 15th March 2015
- C75 Site Sections

The Westerleigh Inquiry Evidence from May 2016 (D)

- D1 Planning Appeal Forms – 22nd May 2015
- D2 Original Written Statement of Evidence (Prepared for a “Hearing”)
- D3 Statement of Common Ground – Signed on 9th May 2016
Submissions of Matt Hubbard
- D4 Proof of Evidence on Planning Matters
- D5 Appendix A – Cremation Act 1902
Appendix B – FBCA Guidance – see Core Document C65
Appendix C – Report to OS Committee – see Core Document I1
Appendix D – Report to Full Council – see Core Document I2
Appendix E - GVA Planning Review of Need Cases – see Core Document I3
Appendix F – Report to Regulatory Committee – see Core Document I4
Appendix G – Core Strategy Policy GB1 – see Core Document A1
Appendix H – NPPF Section 9 – See Core Document B1
- D6 Summary Proof on Planning Matters – April 2016
Submissions of Jim Budd
- D7 Proof of Evidence on Transport Matters
- D8 Summary Proof on Transport Matters
Submissions of Alison Strange
- D9 Proof of Evidence of Ecology Matters
- D10 Appendices 1 to 3
Submissions of Richard Evans
- D11 Proof of Evidence on Need Matters
- D12 Appendix A – LPA Agreements with Westerleigh
- D13 Appendix B – Savills Letter of 15th April 2016
- D14 Appendix C – Decision Notice for the Truckers Rest Application 15/00765/FUL – 11th April 2016
- D15 Appendix D – National Bereavement Poll Results
- D16 Appendix E – Busiest Crematoria in the UK 2014
- D17 Appendix F – Extract from Pharos International - Summer 2015
- D18 Appendix G – Extract from the Charter for the Bereaved – June 2012
Appendix H – Dunn & Co. Feasibility Report – see Core Document I5
- D19 Appendix I – New Permitted Crematoria in the UK – January 2016
- D20 Appendix J – DCLG Review of Crematoria Provision & Facilities 2016
- D21 Appendix K – Updated DCLG Table for Regional Provision of Crematoria
Appendix L – Need Report – see Core Document C44

- D22 Appendix M – Population Statistics for Hindu & Sikh Communities
Appendix N – Halstead Appeal Decision – see Core Document C49
Appendix O – Cambourne Appeal Decision – see Core Document C50
Appendix P – Lach Dennis Appeal Decision – see Core Document C51
Appendix Q – Swanwick Appeal Decision – see Core Document C52
Appendix R – Great Glen Appeal Decision – see Core Document C54
- D23 Appendix S – Letter from Dr Bill Webster – 15th April 2016
- D24 Appendix T – Testimony from Local Residents
- D25 Appendix U1 – Questionnaires from Bereaved Families Part 1
- D26 Appendix U2 – Questionnaires from Bereaved Families Part 2
- D27 Appendix V – ONS Population and Death Statistics
- D28 Appendix W – 2015 Cremation Totals
- D29 Appendix X – Comments of Walsall Council
- D30 Appendix Y – High Court Judgement GBC v Timmins – 9th February 2016
- D31 Appendix Z – Historical Cremation numbers for Bushbury and Streetly
- D32 Appendix AA – Public Support for Application in Gedling BC
- D33 Appendix AB – Extract from Officer Report of GBC – May 2013
- D34 Appendix AC – SRU Survey for GBC
- D35 Appendix AD – Mumsnet Survey
- D36 Appendix AE – Daily Express Article on Agonising Waits for Funeral Dates
- D37 Appendix AF – Traffic Survey of Bushbury and Streetly Crematoria
- D38 Appendix AG – Extract from Cremation Society of GB – 2015 Directory
Appendix AH – Countesthorpe Appeal Decision – see Core Document C53
Appendix AJ – FBCA Guidance – see Core Document C65
- D39 Appendix AK – Streetly Crematorium Questionnaire and Comments
- D40 Appendix AL – Streetly Crematorium Log of Email Complaints
- D41 Appendix AM – Bushbury Crematorium Questionnaire and Comments
- D42 Appendix AN – FOI Request to Wolverhampton Council and Reply
- D43 Appendix AO – FOI Request to Walsall Council and Reply
- D44 Summary Proof on Need Matters
- D45 Rebuttal Proof on Planning Matters
- D46 Rebuttal Proof on Need Matters
- D47 Supplementary Proof on Need Matters
- D48 Appendix A – FOI Email to Walsall Council
- D49 Appendix B – Streetly Crematorium Questionnaires 1
- D50 Appendix C – Streetly Crematorium Questionnaires 2
- D51 Appendix D – Streetly Crematorium Questionnaires 3
- D52 Appendix E – Streetly Crematorium Questionnaires 4
- D53 DoE Guidance on the Siting & Planning of Crematoria 1978

The Council’s Inquiry Evidence on the Westerleigh Appeal from May 2016 (E)

- E1 Council Statement of Case
- E2 Council Proof of Evidence on Planning Matters
Appendix 1 – Site Location Plan – see Core Document C1
Appendix 2 – Report to OS Committee 17th Sept 2013 – see Core Document I1
- E3 Appendix 3 – Report to Cabinet 3rd Dec 2013
Appendix 4 – Report to full Council 10th Dec 2013 – see Core Document I2
Appendix 5 – Dunn & Co Report Nov 2013 – see Core Document I5
Appendix 6 – DTM Notes of 1st Oct 2014 – see Core Document C72
- E4 Bilfinger GVA (Formerly GVA Grimley) Proof of Evidence on Need

- E5 Appendix 1 – GVA Planning Review of Need Cases – see Core Document I3
- E5 Appendix 2 – Email from the LPA the GVA of 19th Feb 2015
- E6 Appendix 3 – Halstead Appeal Decision – see Core Document C49
- E6 Appendix 4 – Lichfield Appeal Decision
- E7 Appendix 5 – Calverton Appeal Decision 2008
- E8 Appendix 6 – Calverton Appeal Decision 2009
- E9 Appendix 7 – Lambley Appeal Decision
- E9 Appendix 8 – Dunn & Co Report Nov 2013 – see Core Document I5
- E9 Appendix 9 – Report to OS Committee 17th Sept 2013 – see Core Document I1
- E10 Appendix 10 – Cannock Chase Local Plan Extract (District Profile)
- E11 Appendix 11 – Adopted Core Strategy Extract (Spatial Portrait)
- E12 Appendix 12 – Extract from the Lambley Statement of Need
- E13 Bilfinger GVA Summary Proof of Need

Dignity Planning Application Documents (F)

- F1 Pre-application response from the LPA – 3-9-2014
- F2 Covering Letter
- F3 Application Forms and Ownership Certificates
- F4 Application Plans
- F5 Design and Access Statement
- F6 Planning Statement
- F7 Statement of Community Involvement
- F8 Sequential Assessment Report
- F9 Flood Risk Assessment
- F10 Arboricultural Report
- F11 Extended Phase 1 Habitat Survey & Protected Species
- F12 Transport Statement
- F13 Need Assessment
- F14 Soil and Agricultural Baseline Report
- F15 Landscape and Visual Impact Appraisal
- F16 Heritage Statement
- F17 Air Quality Assessment

Dignity Planning Application Consultation Responses (G)

- G1 Consultee Responses
- G2 Neighbour Consultation Letters
- G3 Letter of support from a funeral director

Dignity Planning Application Reporting and Decision (H)

- H1 Officers Report to Planning Committee
- H2 Committee Report Update
- H3 Planning Committee Minutes
- H4 Decision Notice
- H5 Bilfinger GVA – Crematoria Applications – Planning review of need cases – February 2015

Additional Reports, Documents and Decision Notices (I)

- I1 Land Disposal Report to OS Committee on 17th September 2013
- I2 Land Disposal Report to Full Council on 10th December 2013
- I3 GVA Planning Review of Need Cases February 2015
- I4 Report to Regulatory Committee (Westerleigh) 17th March 2015

- I5 Dunn & Co Report November 2013
- I6 Report to Regulatory Committee (Dignity UK) 17th March 2015
- I7 Decision Notice (Westerleigh) 20th March 2015
- I8 Decision Notice (Dignity UK) 20th March 2015
- I9 Letter to PINs to Withdraw Representations to Dignity UK Application 22nd April 2016
- I10 Refusals (x2) for the Proposed Development at Trucker's Rest
- I11 Signed Statement of Common Ground (Westerleigh)

The Revised Appeal Documentation at December 2016 (J)

- Westerleigh
- J1 Westerleigh Statement of Case at 1st December 2016
Appendices A-K all referred to previously
- J2 Appendix L – Ecological Assessment March 2016
- J3 Appendix M – Bat Activity Report March 2016
- J4 Appendix N – Invertebrate Site Appraisal March 2016
Appendix O – Letter to PINs of 22nd April 2016 – see Core Document I9
Dignity UK
- J5 Dignity UK Statement of Case at 2nd December 2016
The Council
- J6 The Council's Statement of Case in Relation to the Westerleigh Appeal
- J7 The Council's Statement of Case in Relation to the Dignity UK Appeal

The Westerleigh (Resubmission) Application (16/00938/FUL) (K)

The documents and details listed below are only those that differ from the original planning application 14/00906/FUL. In all other respects, the drawings and original documents/reports are that same as those listed under Section C above and Core Documents J2, J3 and J4.

- K1 Planning Application Forms 14th October 2016
- K2 Application Submission Letter 14th October 2016
- K3 Design and Access Statement
- K4 Planning Statement
- K5 Transport Assessment
- K6 Transport Assessment Appendices
- K7 Tree Survey
- K8 Tree Constraints Plan
- K9 GNC Method Statement 8th December 2016
- K10 Vegetation Removal Plan 19th December 2016
- K11 Landscape Layout Plan 19th December 2016
- K12 Proposed Planting Plan 19th December 2016
- K13 Updated Need Report 28th September 2016
Appendix A – LPA Agreements with Westerleigh – see Core Document D12
Appendix B – How a Crematorium Operates – see Core Document C45
Appendix C – Busiest Crematoria in the UK 2014 – see Core Document D16
- K14 Appendix D – Extract from Pharos International – June 2016
Appendix E – Extract from the Charter of the Bereaved June 2012 – see Core Document D18
Appendix F – Dunn & Co Report November 2015 – see Core Document I5
Appendix G – New Permitted Crematoria – see Core Document D19
Appendix H – DCLG Review of Crematorium Facilities – see Core Document D20
Appendix I – Updated DLCG Table – see Core Document D21

	Appendix J – Population Statistics for Hindu & Sikh Communities – see Core Document D22
K15	Appendix K – The Special Nature of Hindu & Sikh Cremation Services
K16	Appendix L – Catchment Map
K17	Appendix M – Catchment Table
	Appendix N – ONS Population & Death Statistics – see Core Document D27
	Appendix O – Halstead Appeal Decision – see Core Document C49
	Appendix P – Cambourne Appeal Decision – see Core Document C50
	Appendix Q – Lach Dennis Appeal Decision – see Core Document C51
	Appendix R – Swanwick Appeal Decision – see Core Document C52
	Appendix S – Great Glen Appeal Decision – see Core Document C54
	Appendix T – Competition Decision for Stevenage – see Core Document C55
K18	Appendix U – Letters from Local Funeral Directors
	Appendix V – Letter from Dr Bill Webster – see Core Document D23
	Appendix W – Testimony from Local Residents
	Appendix X – Support from New Crematorium in Gedling – see Core Document D32
	Appendix Y – Extract from Officer Report GBC – see Core Document D33
K19	Appendix Z1 – Questionnaire from Bereaved Families 1 - 28
K20	Appendix Z2 – Questionnaires from Bereaved Families 26 - 63
K21	Appendix Z3 – Questionnaires from Bereaved Families 64 - 91
K22	Appendix Z4 – Questionnaires from Bereaved Families 92 - 126
K23	Appendix Z5 – Questionnaires from Bereaved Families 127 - 186
	Appendix AB – Streetly Crematorium Schedule of Charges – see Core Document C58
	Appendix AC – Westerleigh Core Funeral Times – see Core Document C59
K24	Appendix AD – Pharos & ONS Statistics for Death Rates in the Catchment
K25	Appendix AE – Population Forecasts for South Staffs and Walsall
	Appendix AF – HC Judgement GBC v Timmins – see Core Document D30
	Appendix AG – Historical Cremation Number for Bushbury & Streetly6 – see Core Document D31
	Appendix AH – Staffordshire Obituaries – see Core Document C63
	Appendix AI – National Bereavement Poll Results – see Core Document D15
	Appendix AJ – Mumsnet Survey – see Core Document D35
	Appendix AK – Daily Express Article – see Core Document D36
	Appendix AL – Traffic Survey Bushbury & Streetly – see Core Document D37
	Appendix AM – Extract from Crematorium Society Directory – see Core Document D38
	Appendix AN – Countesthorpe Appeal Decision – see Core Document C53
	Appendix AO – FBCA Guidance – see Core Document C65
K26	Appendix AP – Map of Bushbury Crematorium
K28	Appendix AR – Extract from Crematorium Society Car Parking Capacity
	Appendix AS – Photos of Bushbury Crematorium – see Core Document C64
	Appendix AT – Photos of Streetly Crematorium – see Core Document C66
	Appendix AU – Streetly Crematorium Questionnaire – see Core Document D39
	Appendix AV – Streetly Crematorium Log of Complaints – see Core Document D40
	Appendix AW – Bushbury Crematorium Questionnaire – see Core Document D41
	Appendix AX – FOI Request to Wolverhampton – see Core Document D42
	Appendix AY – FOI Request to Walsall – see Core Document D43
K28	Appendix AZ – ONS Actual & Projected Births & Deaths
K29	Appendix BA – Catchment for Bushbury & 2 Proposed Crematoria
K30	Appendix BB – Essington Catchment & Diversion from Existing Crematoria
K31	Appendix BC – Crematoria Capacity including Impact of New Crematoria
K32	Appendix BD – Rise in Deaths and Cremation Rates 2011 - 2015

K33 Appendix BE – Impact on Capacity of Projected Rise in Deaths and Cremation

Dignity’s Enquiry Evidence from Dignity UK Appeal May 2016 (L)

- L1 Proof of Evidence and Appendices of Patrick Downes, Harris Lamb
- L2 Proof of Evidence and Appendices of Paul Burley, Montagu Evans
- L3 Proof of Evidence and Appendices of Alan Lathbury, Dignity UK
- L4 Proof of Evidence and Appendices of Stephen Kirkpatrick, Scarp

The Council’s Inquiry Evidence on the Dignity UK Appeal from May 2016 (M)

- M1 Sue Frith – Proof final version
- M2 Appendix 1 – Site location plan
- M3 Appendix 2 – Historic Landscape Area
- M4 Sue Frith – Summary proof final version
- M5 Council Proof of Evidence – S H Dignity
- M6 Summary POE – S H Dignity

High Court Cases & Appeal Cases (N)

- N1 High Court Judgment (9th February 2016)
Timmins v Gedling BC and Westerleigh Group Ltd (2016) Neutral Citation Number EWHC 220
- N2 Planning Inspectorate appeal reference
Land off Oxtan Road, Calverton, Nottinghamshire – Appeal Ref: APP/N3020/A/07/2039505
- N3 Planning Inspectorate appeal reference
Land off Oxtan Road, Calverton, Nottinghamshire NG14 6NU
Appeal Ref: APP/N3020/A/2074820
- N4 Planning Inspectorate appeal reference
Land at Bubb Lane/Burnetts Lane, West End, Southampton, Hampshire
SO30 2HH – Appeal Ref: APP/W1715/A/08/2070547
- N5 Planning Inspectorate appeal reference
Land at Race Farm, Camborne – Appeal Ref: APP/D0840/A/09/2098108
- N6 Planning Inspectorate appeal reference
Land south west of Birches Lane, Lach Dennis, Cheshire – Appeal Ref:
APP/A0665/A/12/2186911
- N7 Planning Inspectorate appeal reference
Land East of Derby Road, Swanwick – Appeal Ref: APP/M1005/A/12/2188880
- N8 Planning Inspectorate appeal reference
Land south of Orchard Barn, London Road, Halstead, TN14 7AD – Appeal Ref:
APP/G2245/A/13/2210128
- N9 Planning Inspectorate appeal reference
Land East of Countesthorpe Cemetery, Foston Lane, Countesthorpe,
Leicestershire – Appeal Ref: APP/T2405/A/13/2210523
- N10 Planning Inspectorate appeal reference
Land at London Road, Great Glen – Appeal Ref: APP/F2415/A/14/2211858
- N11 Planning Inspectorate appeal reference
Land north of Oak Tree Farm, London Road, Halstead, Kent, TN14 7AB – Appeal Ref:
APP/G2245/A/14/2217055
- N12 Planning Inspectorate appeal reference
Land at Orchard Farm, Catfoot Lane, Lambley, Nottinghamshire NG4 4QH – Appeal Ref:
APP/N3020/A/13/2208636 and the scheme which was subsequently approved by Gedling
Borough Council (the Committee Report is at Core Document D6)

- N13 Planning Inspectorate appeal reference
Fishwicks Ltd. Beetham Hall, Beetham, Milnthorpe, LA7 7BQ
APP/ M0933/W/15/3003034
- N14 Planning Inspectorate appeal reference
Springhill Farm, Walsall Road, Lichfield
APP/K3415/A/10/2131804
- N15 Secretary of State Decision.
Planning Inspectorate appeal reference
Land at Perrybrook to the north of Brockworth and south of the A417, Brockworth,
Gloucester. APP/G1630/V/14/2229497
- N16 Planning Inspectorate appeal reference
Land North of Junction 36 M6, adjacent to the A65, near Crooklands.
APP/M0933/W/15/ 3135605

Other Relevant Planning Applications (O)

- O1 Land at Broad Lane, Springhill, South Staffordshire – Application Ref: 14/00906/FUL -
Decision Notice & Proposed Site Layout Plan
- O2 Land at Truckers Rest, Watling Street, Four Crosses – Application Ref: 14/00798/FUL -
Decision Notice & Proposed Site Layout Plan (ORIGINAL APPLICATION)
- O3 Land at Truckers Rest, Watling Street, Four Crosses – Application Ref: 15/00765/FUL -
Decision Notice & Proposed Site Layout Plan (REVISED APPLICATION)
- O4 Land at South Perton Farm, Jenny Walkers Lane, Perton – Application Ref: 14/00797/FUL -
Decision Notice & Proposed Site Layout Plan
- O5 Land adjacent to Holyhead Road, Wergs, Staffordshire – Application Ref: 0334/98
(approved vehicular access) – Decision Notice
- O6 Gedling - Decision Notice, Committee Report and Committee Minutes
- O7 Jenny Walkers Lane, Perton – Green Belt policy and Design and Access Statement,
September 2014
- O8 Jenny Walkers Lane, Perton – Green Belt Policy and Special Circumstances Addendum
Statement, February 2015
- O9 Cannock Chase planning application – The need for a Crematorium to serve Cannock and
the Surrounding Area, October 2018

Miscellaneous Items (P) – WERGS APPEAL

- P1 Tree Preservation Order Plan
- P2 Tree Preservation Order Schedule

Dignity Resubmission Application December 2016 (Q)

- Q1 Application Forms and Ownership Certificates
- Q2 Application Plans
References:
12.07.20-C, .25-H, .26-A, .27-B, .29 and .30; site elevations
SK_P010 – 16, SK_P020-26, SK_P030-33, SK_P040, SK_P050 and SK_P051
- Q3 Topographical survey
- Q4 Design and Access Statement, December 2016
- Q5 Planning Statement, December 2016
- Q6 Statement of Community Involvement, October 2014 and Addendum, December 2016
- Q7 Sequential Assessment Report, October 2014
- Q8 Flood Risk Assessment, December 2016
- Q9 Tree Survey, December 2016

- Q10 Ecological Appraisal, December 2016
- Q11 Transport Statement, December 2016
- Q12 Need Assessment, March 2014
- Q13 Soil and Agricultural Use and Quality, October 2014
- Q14 Landscape and Visual Impact Assessment, December 2016
- Q15 Heritage Statement, December 2016
- Q16 Air Quality Assessment, October 2014
- Q17 Need Statement from Paul Burley, Montagu Evans

2017 Inquiry Proofs of Evidence (and related Appendices) and Inquiry Documents (R)

- Westerleigh
- R9 Westerleigh Group Ltd Proof of Evidence and Appendices in respect of Planning, Broad Lane, Essington
- R10 Westerleigh Group Ltd Proof of Evidence and Appendices in respect of Highways, Broad Lane, Essington
- R11 Westerleigh Group Ltd Proof of Evidence and Appendices in respect of Need, Broad Lane, Essington
- R20 Outline Opening submissions on behalf of Westerleigh Group Ltd
- R23 Statement of Common Ground (3039129)
- R25 Explanatory Note prepared by Mr. Tucker on Essington proposed crematorium
- R26 Bundle of documents relating to Essington proposed crematorium
- R28 Bundle of responses to Mr. Tucker’s Explanatory Note (Doc 12)
- R29 Sutton Coldfield catchment before and after Essington diversion
- R30 Newly served population for Wergs and Essington proposed crematoria
- R31 Draft Conditions for Essington proposed crematorium
- R36 Outline Closing Submissions on behalf of Westerleigh Group Ltd.
- R42 Rebuttal proof of Richard Evans on behalf of Westerleigh Group Ltd.
- R43 Witness Statement by E Poole on behalf of Westerleigh Group Ltd.

- Dignity
- R1 Proof of Evidence and Appendices of Patrick Downes, Harris Lamb in respect of Holyhead Road, Wergs
- R2 Proof of Evidence and Appendices of Paul Burley, Montagu Evans in respect of Holyhead Road, Wergs
- R3 Proof of Evidence and Appendices of Alan Lathbury, Dignity UK Proof of Evidence and Appendices of Alan Lathbury, Dignity UK
- R4 Proof of Evidence and Appendices of Stephen Kirkpatrick, Scarp in respect of Holyhead Road, Wergs
- R19 Opening Statement on behalf of Dignity UK
- R22 Statement of Common Ground (3039163)
- R24 Codsall Parish Council comments on Wergs proposed crematorium
- R27 Extract from Subnational Population Projections
- R30 Newly served population for Wergs and Essington proposed crematoria
- R32 Draft Conditions for Wergs proposed crematorium
- R33 Train maps for Wergs and Essington proposed crematoria
- R37 Closing Submissions on behalf of Dignity UK Ltd.
- R38 Addendum to Dignity
- R44 Rebuttal Proof of Paul Burley on behalf of Dignity UK Ltd.

- The Council
- R7 Council Proof of Evidence and Appendices in respect of Planning, Holyhead Road, Wergs
- R8 Council Proof of Evidence and Appendices in respect of Need, Holyhead Road, Wergs
- R12 Council Proof of Evidence and Appendices in respect of Planning, Broad Lane, Essington
- R13 Council Proof of Evidence and Appendices in respect of Need, Broad Lane, Essington
- R21 Opening Submissions on behalf of the Local Planning Authority

- R39 Council Rebuttal Proof of Evidence in respect of Planning - land adjacent to Holyhead Road, Wergs
- R40 Council Rebuttal Proof of Evidence in respect of Need - Broad Lane, Essington and land adjacent to Holyhead Road, Wergs
- R45 Council closing submissions

Decision Letters of the Secretary of State and the related Inspectors' Reports (S)

- S1 Holyhead Road, Wergs appeal decision dated 6/11/17 (3039129)
- S2 Broad Lane, Essington appeal decision dated 6/11/17 (3039163)
- S3 Westerleigh Summary grounds of resistance

High Court Challenge Papers (T)

- T1 Claim Form dated 14 December 2017
- T2 Statement of Facts and Grounds dated 14 December 2017
- T3 Agreed Consent Order dated 23 March 2018

2018 Reopened Inquiry Documents (U)

- U1 Letter from MHCLG dated 9/4/18
- U2 Letter from Rt Hon G. Williamson to Harris Lamb dated 19/4/18
- U3 Letter from Clyde & Co to MHLG dated 27/4/18
- U4 Email from PINS dated 21/5/18 attaching email from LPA dated 21/5/18 and letter from Walsall Council dated 30/4/18 and attached note from Walsall Bereavement Services Email from PINS dated 30/4/18 attaching letter from Walsall Council dated 30/4/18
- U5 Email from PINS dated 28/5/18 attaching letter from PINS dated 23/5/18
- U6 Letter from P Downes, Harris Lamb to PINS dated 12/6/18
- U7 Dignity Second Updated Statement of Case
- U8 Westerleigh revised Statement of Case dated 29/6/18
- U9 Email from Clyde & Co to PINS dated 5/10/18
- U10 Council's further representations dated June 2018
- U11 Letter from Walsall Council on Holyhead Road, Wergs and Broad Lane, Essington dated 17/8/18
- U12 Council's email to the Planning Inspectorate dated 20/11/18

- U13 Letter from TLT Solicitors to the Planning Inspectorate dated 26/11/18

2018 Inquiry Additional Documents (V)

- V1 Guidelines for landscape and Visual Impact Assessment
- V2 ECWA Civ 466, 2016 – Turner v SSCLG
- V3 ECWA Civ 489, 2018 – Samuel Smith v North Yorkshire County Council
- V4 EWCA Civ 137 – Barnwell Manor Wind Energy v East Northamptonshire District Council
- V5 EWHC 1985 – The Forge Field Society v Sevenoaks District Council v West Kent Housing Association
- V6 EWCA Civ 1243 – Jones v Modue
- V7 Historic England 2015 – Historic Environment Good Practice Advice in Planning Note 2
- V9 English Heritage 2008 – Conservation Principles, Policies and Guidance
- V10 ECWA Civ 1697 – Catesby Estates v Peter Steer v Historic England
- V11 EWHC 2847 (admin) 0 Bedford Council v SSCLG, Nuon UK Limited
- V12 2 AC 141, 1992 – South Lakeland District Council v SSE
- V13 Site Allocations Document September 2018
- V14 Local Plan Issues and Options, October 2018
- V15 Rebuttal Proof on Transport Matters by David Roberts
- V16 Rebuttal Proof on Planning Matters by Matthew Hubbard
- V17 Dignity Report – Cost, Quality, Seclusion and Time
- V18 IPR Policy Brief – Death, Dignity and Devolution
- V19 Westerleigh CACI / Population technical Guidance / Drive Time Speed Calibration Explained / Drivetime Explained

Appendix C

PLANNING CONDITIONS

Appeal A (Wergs)

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. Except as provided in condition 3 below, 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 development hereby permitted shall not be begun until details of the internal layout of the crematorium building (to include a viewing room or facility for the purpose of mourners viewing the cremator) have been submitted to and approved in writing by the local planning authority. The development hereby permitted shall not be carried out otherwise than in accordance with the approved details.

Reason: for the avoidance of doubt and to ensure that an internal viewing room or facility is provided.

4. The development hereby permitted shall not be begun 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 completed in accordance with the approved details before the development hereby permitted is brought into use, and shall be subsequently maintained.

Reason: to ensure the development is provided with a satisfactory means of drainage and to prevent flooding and the risk of pollution in accordance with Core Strategy [CS] Policy EQ11.

5. The development hereby permitted shall not be begun until details of hard and soft landscaping, have been submitted to and approved in writing by the local planning authority. The development hereby permitted shall not be brought into use until the approved hard and soft landscaping has been completed. The approved hard and soft landscaping shall be retained throughout the life of the development. Any trees or plants that, within a period of two years after planting, are removed, die or become damaged or defective, shall be replaced in the next available planting season with others of the same species, size and number and shall subsequently be maintained.

Reason: to safeguard the amenity of the area in accordance with CS Policies EQ4, EQ11 and EQ12.

6. The development hereby permitted shall not be begun until 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 have been 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'. The proposed footpaths shall be completed in accordance with the approved details before the development hereby permitted is brought into use, and shall be subsequently maintained.

Reason: to safeguard the amenity of the area in accordance with CS Policies EQ4, EQ11 and EQ12.

7. The development hereby permitted shall not be begun until details of any alterations to the existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall not be carried out otherwise than in accordance with the approved details.

Reason: to safeguard the amenity of the area in accordance with CS Policy EQ11.

8. The development hereby permitted shall not be begun until details of a proposed ghost right turn facility on the A41 and improvement works to the existing site access off Holyhead Road, as shown on drawing number 3162-003-P1-001-P02, have been submitted to and approved in writing by the local planning authority. The development hereby permitted shall not be brought into use until the works have been completed in accordance with the approved details and are open to the public. Any gates at the vehicular access off Holyhead Road shall be located a minimum of 8m from the vehicular carriageway and shall open away from the highway.

Reason: in the interests of highway safety in accordance with CS Policy EQ11.

9. The development hereby permitted shall not be begun until a landscape and ecology management plan has been submitted to and approved in writing by the local planning authority. The plan shall include a programme for its implementation and proposals for the following:

- (a) long-term woodland management;
- (b) replacement planting;
- (b) woodland understorey planting;
- (c) wildflower and grassland seeding;
- (d) pond management and any aquatic re-profiling and re-planting of ponds on the site;
- and
- (e) public access.

The development shall not be carried out otherwise than in accordance with the approved management plan.

Reason: to protect the ecology and landscape interests of the site and to safeguard the amenity of the area in accordance with CS Policies EQ 4 and EQ12.

10. The development hereby permitted shall not be begun until the design, content and location of historic landscape interpretation boards for environmental education and visitor information have been submitted to and approved in writing by the local planning authority. The development hereby permitted shall not be occupied until the approved interpretation boards have been completed. The approved interpretation boards shall be retained throughout the life of the development.

Reason: to protect, and enhance the understanding of, the historic environment of the area in accordance with CS Policies EQ3 and EQ4.

11. The development hereby permitted shall not be brought into use until the following improvements to the boundary walls of the site fronting Holyhead Road and Heath House Lane have been completed in accordance with a scheme that has been submitted to and approved in writing by the local planning authority:

- (a) re-establishing the wall to a height of four courses with coping stone;
- (b) replacing existing flat coping stones at the existing access to the site with segmented coping stones;
- (c) repairing wall mortar; and
- (d) replacing cement pointing with lime mortar.

The walls shall subsequently be maintained in accordance with the approved scheme.

Reason: to protect the heritage interests of the site and to safeguard the amenity of the area in accordance with CS Policies EQ4 and EQ11.

12. The development hereby permitted shall not be brought into use until the proposed access drive, parking, servicing and turning areas have been provided in accordance with the approved plans. Thereafter, these areas shall be retained for these purposes and for no other purposes.

Reason: in the interests of highway safety in accordance with Policy EQ11.

13. The development hereby permitted shall not be brought into use until details of an area for the scattering of ashes have been submitted to and approved in writing by the local planning authority. The details shall include a method statement for the future maintenance of the area. The area shall not be provided and subsequently maintained otherwise than in accordance with the approved details.

Reason: to safeguard the amenity of the area in accordance with CS Policies EQ1 and EQ11.

14. The development hereby permitted shall not be brought into use until details of all external lighting have been submitted to and approved in writing by the local planning authority. All such lighting shall be designed so as to minimise any impact on bats. No external lighting shall be provided and subsequently maintained otherwise than in accordance with the approved details.

Reason: to safeguard the amenity of the area in accordance with CS Policy EQ11.

15. 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. If the results identify that mitigation works are required as a result of the inspection, then the development hereby permitted shall not be brought into use until these mitigation works have been carried out in accordance with a scheme which has been submitted to and approved in writing by the local planning authority.

Reason: to safeguard the habitat of a protected species in accordance with CS Policies EQ1 and EQ12.

16. Removal of vegetation and any tree works shall only be undertaken between September and February i.e. outside of the bird breeding season. If this is not possible, all affected vegetation and trees should be checked for nesting birds by an experienced ecologist no more than 72 hours prior to works being undertaken. If nesting birds are found, no works to affected vegetation and trees shall be commenced until a mitigation strategy has been

submitted to and approved in writing by the local planning authority. The works shall subsequently be carried out in accordance with the approved mitigation strategy.

Reason: to safeguard the ecology of the site in accordance with CS Policy EQ1.

17. 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 in accordance with CS Policies EQ9 and EQ11.

Appeal B (Essington)

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

Reason: The reason for the imposition of these time limits is 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)010 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: In order to define the permission and to avoid doubt.

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 in accordance with policy EQ11 of the adopted Core Strategy

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 in accordance with policy EQ11 of the adopted Core Strategy

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 in accordance with policy EQ11 of the adopted Core Strategy

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 in accordance with policy EQ11 of the adopted Core Strategy

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 in accordance with policy EQ11 of the adopted Core Strategy

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 in accordance with policy EQ11 of the adopted Core Strategy

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 in accordance with policy EQ11 of the adopted Core Strategy

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. To comply with the principles set out in the National Planning Policy Framework

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. To comply with the principles set out in the National Planning Policy Framework

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. To comply with the principles set out in the National Planning Policy Framework

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 drainage as well as to reduce the risk of creating or exacerbating a flooding problem and to minimise the risk of pollution; in accordance with policies EQ1 and EQ7 of the adopted Core Strategy.

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 compliance with local plan Core Policy 2, EQ1 and EQ7. The Humber river basin management plan requires the restoration and enhancement of water bodies to prevent deterioration and promote recovery of water bodies. Without this condition, the impact could cause deterioration of a quality element to a lower status class or prevent the recovery of the waterbody Sneyd Brook from Source to Tame (W/hampton Arm) (GB104028046950) currently classified as being at Moderate Ecological Potential which has the aim of meeting Good Ecological Potential by 2027.

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: In order to protect any protected species on the site in accordance with EQ1 of the adopted Core Strategy.

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: In order to protect any protected species on the site in accordance with EQ1 of the adopted Core Strategy.

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 in accordance with policy EQ11 of the adopted Core Strategy.

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: In order to establish the exact situation regarding coal mining legacy issues on the site and safeguard the amenity of the area in accordance with policy EQ11 of the adopted Core Strategy.

Appendix D

CLOSING SUBMISSIONS ON BEHALF OF DIGNITY FUNERALS LIMITED (APPEAL A)

NOTE: ORAL COMMENTS ARE INCLUDED IN RED

Introduction

1. These closing submissions should be read together with our Opening Submissions, which we incorporate by reference.
2. The provision of a new crematorium at Wergs has widespread and weighty support. The Council, even before the grant of planning permission at Cannock, agreed (by their proofs dated 18 December 2018) that permission should be granted for the Wergs scheme. The Parish Council actively support the re-submission application made in 2016 (same scheme, same location).¹⁰⁸ The Inspector in 2017, again before the grant of planning permission at Cannock, recommended that permission be granted at Wergs. In dismissing the appeal in 2017¹⁰⁹, the Secretary of State agreed that his decision was unlawful.¹¹⁰
3. By contrast, the Council remains opposed to the scheme at Essington. The Inspector in 2017 recommended that permission should be refused.¹¹¹ The Secretary of State agreed that his decision to grant planning permission at Essington in 2017 was unlawful.¹¹² The Essington application has attracted c.150 third party objections on a number of grounds but particularly on the basis that the scheme will lead to the loss of public open space.¹¹³
4. The grant of planning permission at Cannock has both made the case for Wergs stronger as it has made the case for Essington even weaker.¹¹⁴ The claim by Westerleigh to serve 37,000 people for the first time within 30 minutes has evaporated through the Cannock permission.¹¹⁵ Cannock will also draw significantly from Streetly such that the claim by Westerleigh that Streetly requires relieving is simply untenable. Simply reviewing the catchment maps for Cannock and Essington (notably not provided by Westerleigh) makes this abundantly clear.¹¹⁶
5. The Essington scheme entails the chopping down of over 2ha of community woodland and 12 mature trees alongside Broad Lane. It will lead to the material reduction of existing open space and as such breach various local plan and national policies. By contrast, the Wergs scheme brings with it a host of environmental benefits including: heritage, landscape, biodiversity improvements (including the cessation of turf cutting) and the provision of public open space. Those benefits are: championed by the Council, accepted by the Inspector in 2017 and also the Secretary of State in 2017. Though Westerleigh has sought to undermine those benefits, given that this is the same scheme, in the same location, it would be simply irrational for the Secretary of State to reach any materially different view this time around.
6. In these closing submissions we consider the issues in the following order:
 - a. Need
 - b. Heritage
 - c. Landscape and Open Space
 - d. Other issues including:
 - i. Design;
 - ii. Biodiversity;
 - iii. Jenny Walker's Lane and Mr Wilson's case;
 - iv. Other alternative sites;
 - e. Planning balance

¹⁰⁸ CD R24

¹⁰⁹ CD S1

¹¹⁰ CD T3

¹¹¹ CD S2

¹¹² CD T3

¹¹³ Not in core documents but with LPA appeal questionnaire.

¹¹⁴ ID 17

¹¹⁵ Included in Westerleigh's opening statement ID03

¹¹⁶ ST Figure 5.1

Need

7. The starting point for the consideration of need at this inquiry is the decision of the SoS ("DL") and the Inspector's report ("IR")¹¹⁷ at the last inquiry in relation to need. These are decisions of great weight and no party to the inquiry has disputed them. We draw particular attention to, and rely upon, the conclusion of the Inspector at IR 218 that there is no reason to doubt the need for a new crematorium in the GB in South Staffordshire; and at IR 219, that the need is compelling: IR 219. In particular, the Inspector concluded: "Bushbury Crematorium is operating under severe pressure, and has done for a number of years, and this pressure is not going to diminish until a new crematorium is developed and brought into use." These conclusions were accepted by the SoS: DL 12.

8. Given there has been no contrary suggestion at this inquiry, it is unnecessary to say more about those conclusions.

9. The conclusion of the SoS regarding the weight to be given to the population "first served" is also relevant – see DL14 – although as we explain below, the factual matrix in respect of that point has reversed in favour of Wergs.

10. There are other aspects of the previous Inspector's and SoS's decision which should also be accorded significant weight, namely that "no weight should be given to the proposed provision of a viewing gallery in the Essington scheme; and that the different service periods offered by the two operators result from the commercial decisions and do not affect the overall conclusions reached on the planning applications": DL 17. There has been no suggestion that the previous Inspector and the SoS misunderstood the arguments here, or that they failed to take relevant matters into account. Given the ease with which the internal crematorium building could be reconfigured were this considered important, (to avoid mourners being taken through the tea-making area) it clearly of no consequence.¹¹⁸

11. First the issue of seating which is raised at paragraph 29 of PG submissions. He refers to some 78 people. In fact, the evidence which was unchallenged, in the planning statement will be 100 – para 2.17 of the planning statement

12. In terms of numbers viewing a Hindu or Sikh cremation from outside – the burning, there will be up to 10. Para 108 of PG's submissions. In fact, both Mr Lathbury and Mr McArdle referred to the same number of people – 5-10 people, that could easily be accommodated. If it was necessary as I have suggested then a condition could be proposed for the LPA to approve the internal layout in the event that this was required.

13. The question, then, is which of the two schemes before the inquiry should be granted planning permission. Both the Wergs and the Essington schemes will provide relief to Bushbury and as such both can demonstrate a compelling need which is sufficient to amount to VSC.

14. Before considering the two schemes, it is necessary to compare the approaches of the two appellants.

Westerleigh's approach

15. Uniquely, Westerleigh sought to rely upon two different and conflicting assessments of the need for Essington. It purported to rely upon the evidence of Mr McArdle, who was latterly proffered as the need witness, and to whom Mr Bateman, the planning witness, deferred on matters of need. Indeed, Mr Bateman made clear in his p/e¹¹⁹ that the Westerleigh Updated Need Report ("UNR") – which we now know was authored by Mr McArdle – "sets out [Westerleigh's] views regarding the quantitative and qualitative needs case". And indeed within

¹¹⁷ S1

¹¹⁸ 'In cross-examination, and also evidence in chief, Westerleigh made much of the 'Public Sector Equality Duty'. This was a duty which came into force in April 2011 via the Equalities Act 2010. By virtue of the Act there is a duty on public bodies to have regard to the protected characteristic of religion. That duty was in force at the date of the last decision. The Dignity scheme as designed allows for members of any religion to witness the charging of the coffin. Mr Lathbury's evidence was that this would often be older male relatives of the deceased in the Sikh and Hindu religion. There is no evidence that this design somehow puts any faith group at a disadvantage. In these circumstances the existence of the duty does not weigh in favour of the Westerleigh scheme.'

¹¹⁹ Bateman p/e para 2.3

the UNR is to be found Westerleigh's view of the number of cremations that will take place at Essington and the diversions to Essington from relevant crematoria. This is the first need report which has ever been written by Mr McArdle.

16. Mr McArdle's approach was based on producing an "Immediate Catchment Area"¹²⁰ based on the nearest (in terms of time) crematorium to the population and relying on that area to produce his assumed numbers. The assessment was done using CACI computer software. No detail was given of the inputs given to that software and therefore it is impossible to interrogate what has occurred. However, there are clear issues with this program as were highlighted by Mr Tucker in XX. One can see from the purported catchment map of Essington at Appendix 3 to the UNR that it extends almost up against Bushbury crematorium itself. If the catchment map is meant only to catch the closest crematorium by drivetime then this map clearly does not. Further, the map at Appendix 9 is also not credible. It shows Burntwood as within Sutton Coldfield's catchment. However it is clearly closer to Lichfield Crematorium.

17. In any event, the problems for Mr McArdle's assessment are much more profound. At the Inquiry even he appeared to disavow his own figures (both at the round table and in XX). This is unsurprising. First, they take no account of Cannock, a facility which has recently been granted permission right on Essington's doorstep. The purported diversion figures cannot stand in light of that permission.

18. Second, Mr McArdle's assessment claims that the Essington scheme will perform 1,836 cremations p.a.¹²¹ There is no indication that that figure is anything other than present day, and so it takes no account of growth. For that reason it should be compared with 2017 figures for cremations in the area. The bottom line is that this presents a picture of the Essington crematorium over-trading to a greater extent than Bushbury.¹²² In other words, rather than provide a new crematorium which produces a "balanced" provision across the region, the Essington proposal is predicted to replace one over-trading crematorium with a crematorium that over-trades even more than the one it is said to be relieving. Thus, the very *raison d'être* for the new crematorium – increasing the qualitative offer in the area by reducing pressure on Bushbury – would not be met, given the problem would be transferred to Essington.

19. We have long made it part of our case, that is to say, Dignity has long suggested that the Essington proposal would be over-trading. I need to make that clear in light of what PG says at para 67 of his submissions where he says that the Dignity case against Broad Lane advanced on day 5 of the inquiry [READS FROM PG SUBMISSIONS] that's not in fact correct, that's a point that was raised front and centre of our last inquiry as our closings at that inquiry make clear.

20. At the Inquiry Mr McArdle sought to argue that the 80% figure of trading at practical capacity in the peak month should not be used at Essington. However, this contradicts his explicit statement at para 2.6 of his rebuttal proof. Again, insofar as Mr McArdle's point relies on his own experience, it is necessary to remember that he has only three months experience in the crematorium industry.

21. I draw attention to para 68 of PG's submissions, he states that Mr McA confirmed that new modern crematoria [READS FROM SUBMISSIONS]. First, Mr McArdle's experience was challenged, I know it wasn't something that appealed to you but it was challenged. Secondly, and because we rely on it it is important to note that PG is relying on Mr McArdle's experience in his favour. Third, we specifically challenged the point McArdle was making, new crematoria operating at above 80% practical capacity because I drew his attention to where he had referred to the 80% figure without seeking to qualify it.

22. Of course, in reality, the Westerleigh scheme would not overtrade to the extent claimed by Mr McArdle and a number of cremations would in fact rebalance back to existing crematoria. (This is the conclusion of Mr Best. So far from over-stating the trading position of Essington, Mr Best has sought to bring some common-sense to the assessment). Thus, quite apart from leaving Cannock out of account, the figures produced by Mr McArdle are in any event unreliable and no weight can be given to them by the SoS.

¹²⁰ UNR paras 7.8 and 8.6

¹²¹ Sum of 990 from Bushbury (para 5.10 UNR), 647 from Streetly (5.14 UNR), 98 from Sutton Coldfield (5.16 UNR) and 94 from Stafford (5.16 UNR).

¹²² Accepted by McArdle in XX

23. Extraordinarily, Westerleigh also presented a quite separate and conflicting approach to the assessment of need at Essington and Wergs. Mr Bateman, again in his first crematorium needs assessment, asserted that need could be quantified in two separate ways: (1) the extent of overlap between two crematoria and (2) the assessment of what can only be described as 'hermetically sealed cremation market areas'. Neither of these approaches hold water.

24. First, in relation to the reliance upon the extent of overlap areas, in order to have a true understanding of likely trade draw one cannot artificially isolate two crematoria and leave out of account other crematoria whose catchment areas also overlap with the two which are being assessed. This is perfectly demonstrated by Cannock. In his paragraph 6.84 Mr Bateman states that the overlap cremations between Essington and Bushbury are 1,998 deaths and that 'there is a reasonable possibility that Essington could provide relief for Bushbury for a proportion of this figure'. However he has left Cannock, whose catchment area significantly overlaps with Essington completely out of account. The failure to consider the presence of a facility which will itself take on a number of these overlap cremations means that Mr Bateman's assessment is simply unreliable.

25. Further, Mr Bateman accepted in XX that he produces no quantitative analysis of the effect of the Essington crematorium on other crematoria, including Bushbury; and that consequently based on his evidence it is not possible to make a judgment on either the extent of the claimed relief given to Bushbury by the Essington scheme, or the relief to other crematoria (eg Streetly), or even the impact (in terms of trading on other crematoria) of the Essington scheme. This of itself completely undermines Westerleigh's ability to claim the benefits which would underpin their claim to a compelling need constituting VSC.

26. Second, in attempting to deal with Cannock Mr Bateman, in his supplementary proof entitled 'Consideration of the Cannock Permission' sought to develop yet another methodology of calculating need. This note sought to place the Essington site within what is effectively a 'cremation market area', a hermetically sealed area within which Mr Bateman asserts that need should be assessed. The area which Mr Bateman chooses for the Essington scheme is that currently served by Bushbury, Streetly, Stafford and Sutton Coldfield. No evidence was given by Mr Bateman as to why this area should be seen as a separate market area. The very obvious omission, picked up on by Mrs Hawkins for the Council and Mr Best is that of Lichfield. Lichfield is the third closest crematorium to Essington and also already draws cremations away from Bushbury, Sutton Coldfield and Stafford (ID17). Lichfield currently has significant spare capacity¹²³ and, had Lichfield been taken into account, Mr Bateman's assessment would not get off the ground.

27. Further, Mr Bateman's assessment of need is based upon an overly conservative assessment of what amounts to a core slot. As Mr Lathbury explained in his evidence the Dignity approach to core slots (services between 10am and 4pm) is well supported. It is consistent with the information which Dignity has given to the Competition Markets Authority in their investigation into the funeral market. Further, it is supported by the data which Mr Lathbury has provided from Telford. The table above 6.32 of his proof of evidence shows that in recent years there has been a distinct preference for slots between 10am and 3pm with the 9am and 4pm slots being much less well used. Westerleigh's more restrictive approach to core slots has not been supported by any evidence. Dignity's approach is clearly to be preferred.

28. The effect of restricting core slots is to inappropriately over-state the need in this area and therefore allow Mr Bateman to purport to develop a case that there remains a need for Essington as well as Cannock.

29. Finally, and significantly, this methodology still fails to assess let alone show any quantified likely trade diversion from Bushbury, or Streetly, to Essington.

It is the overtrading at Bushbury and the need to relieve it which gives rise to the potential for Westerleigh to demonstrate material considerations amounting to VSC. Mr Bateman's own evidence doesn't in fact show that a new crematorium at Essington would even achieve this. For such evidence one has to look to the more reliable assessment of Mr Best. No weight can be given to Mr Bateman's assessment of need.

¹²³ See table 7.6A JPB17

Dignity's approach

30. By contrast to the evidence produced on behalf of Westerleigh, Mr Best's approach, on behalf of Dignity was transparent and consistent and could have been replicated by any party to the Inquiry.

31. Much of Mr Best's evidence on need and impact¹²⁴ draws on Mr Tucker's plans of the catchment areas ("CA's") of the existing and proposed crematoria¹²⁵. The CA's are defined based upon areas with the quickest travel times (not distances) to a given crematorium or scheme site. Mr Best provided the Inquiry with detailed versions of Mr Tucker's plans, focusing on the key CA's of the proposals and their immediate surroundings, at JPB10 for Wergs and JPB11 for Essington. The content of these detailed plans is adapted in the Diversion Plans at JPB12 and 13 respectively. On 2 January 2019 Cannock Chase Council resolved to grant planning permission for a new crematorium known as the Cannock Scheme, also in the northern West Midlands area. The decision notice on that application was issued during the inquiry granting planning permission [ID17].

32. Mr Best's Supplementary PoE of January 2019 updated his evidence on capacity, need and impact¹²⁶. He supplemented it with evidence of the cumulative impact of the Wergs and Cannock Scheme and, in the alternative, the Essington and the Cannock Scheme in his Appendix 22.

33. Whilst the bereaved select crematoria for a variety of reasons, Mr Lathbury explained at the Need RT that proximity to the home of the deceased is often the main determinant – which is also evidenced in Chart 4.9 of the research report at JPB6.

34. Accordingly, Mr Best's assessment of quantitative need and impact¹²⁷ is derived from geographical areas, as represented on the CA plans. Mr Best explained that other factors, such as scheduling, should have a neutral effect in terms of inflows and outflows from any given CA.

35. Mr Best's methodology for predicting trade diversion to new facilities is transparent, logical and replicable by any other party to this inquiry. He has also applied this methodology even-handedly to both Wergs and Essington. In short, it first plots a catchment area for the new facility in which that new facility will be the closest crematorium for cremations within that area. As distance is the main driver behind crematorium choice (Lathbury) he apportions 100% of cremations in that area to the new facility. The methodology then goes on to look at fringe areas. These are areas which are technically closer to another crematorium by drivetime but remain within 12.9 minutes drivetime of the new facility. Given the clear qualitative benefits of the new facility versus those overtrading around it, he apportions 50% of cremations within those areas to the new facility. Therefore if two people are currently technically closer to Bushbury but under 13minutes drivetime from Wergs or Essington, Mr Best assumes that one of these will chose Wergs or Essington over Bushbury. Given the acknowledged problems at Bushbury the use of a 50% trade draw from fringe areas can only be described as conservative.

36. Mr Best's unchallenged Table 5.1 sets out travel times between the appeal sites and the six existing crematoria to which Mr Best refers. As stated above, Lichfield, unassessed by Westerleigh, is the third closest to the Essington site. Mr Best told the need RT that Sutton Coldfield is further afield from the Essington Site (45.5 minute drive). Whilst this was disputed by Mr McArdle, he gave no alternative times.

37. The Wergs Site is located to the west of the Bushbury Crematorium; Essington is to the east of it with the Cannock Site beyond. Bushbury is therefore situated in a central location for the consideration of CA's for the Wergs and Essington Schemes¹²⁸. Bushbury is surrounded by the CA's of crematoria at Gornal Wood to the south, Telford to the west, Stafford to the north as well as Lichfield and Streetly to the east/south east. Together these are the six relevant crematoria to assess the Wergs and Essington schemes and, in so far as Mr Tucker's plans are concerned, they comprise the CA's of Bushbury and the five outer crematoria.

¹²⁴ Capacity tables in Appendix 8, as replaced by Appendix 18, does not draw on the CA Plans.

¹²⁵ Appendix 1 of ST's Proof of Evidence

¹²⁶ Appendix 18, 20 and 21 – which replaced JPB8, 15 and 16.

¹²⁷ JPB20, 21 and 22 – but not 18.

¹²⁸ see ST Figure 1.1.

38. Beyond the periphery of the CA's of the five outer crematoria are further crematoria, such as at Sutton Coldfield to the south east of Streetly, with additional crematoria beyond that.

39. At the hearing, and notably for the first time, Westerleigh sought to criticise Mr Best's methodology on the basis that its catchment areas were incorrectly drawn. It is to be noted that this is not a criticism which featured in Westerleigh's rebuttal evidence, notwithstanding that Mr McArdle took full advantage of preparing a rebuttal proof. Clearly, if the CA's of further crematoria, such as for Sutton Coldfield, were shown on Mr Tucker's plans, this would alter the peripheral boundary of the five outer crematoria and reduce the population and the number of deaths/ cremations within the CA's for Gornal Wood, Telford, Stafford, Lichfield and Streetly. This explains why the 10,773 actual annual cremations that Mr Best identifies¹²⁹ is 5,039 cremations lower than the 15,815 forecast annual cremations of the deceased who had lived in the CA's of the six relevant crematoria¹³⁰.

40. **The issue of the catchment areas – I draw your attention to para.58 of PG's submissions. Where Mr Goatley says that Mr Tucker had in fact produced [READS FROM PG SUBMISSIONS] First, you have the evidence which Mr Tucker confirmed was his truthful evidence. Secondly, Mr Tucker offered the opportunity of PG seeing those plans and he said he wasn't going to invite them. PG is effectively saying Mr Tucker is lying in circumstances that Mr Tucker made it clear it was his honest evidence and he had in fact undertaken that work.**

41. However, the extension of the catchment boundaries in areas furthest away from the Wergs and Essington site has no impact upon Mr Best's assessment of the likely trade diversions to those sites, as he explained. The suggestion made by PG in XX demonstrated that Westerleigh simply did not understand Mr Best's approach.

42. First the issue of capacity is unaffected. Tables 7.1 and 7.2 of JPB18 set out the actual annual cremations of the six relevant crematoria for 2017 and 2027, as well as the mean monthly equivalents and the peak monthly figures. In 2017 there were 10,773 cremations in the six relevant crematoria.

43. The actual mean and peak cremations are compared to the theoretical and core capacity of the six relevant crematoria from Table 7.5 onwards. Other than in identifying the relevant existing crematoria, the CA plans have no relevance to these tables.

44. Second, the assessment of need is unaffected. Tables 9.1, 9.8 and 9.15 of JPB20 forecast the population, deaths and cremation for the primary and fringe areas of the three schemes.¹³¹ The number of cremations to the new schemes from the fringe areas is limited to 50%¹³², projected to 2027¹³³ and converted into monthly peaks¹³⁴. The core capacity of the schemes is then calculated.¹³⁵ Tables 9.7, 9.14 and 9.21 show the number of cremations needed in the catchment area during the peak months, in relation to the core capacity of the schemes.

45. These tables therefore rely upon the population, death and cremation information for the CA's of the proposed crematoria, as shown on the plans at JPB12 and 13, and not on the number of cremations within the five outer crematoria, as shown on Mr Tucker's plans.

46. Third, the impact is unaffected. The second and third columns of Tables 10.1 and 10.9 of JPB 21 set out the deaths and cremations in the relevant CA's from Figure 1.1.

47. For Essington (Table 10.9), there were the 15,815 cremations referred to by Westerleigh. The fourth column shows that within this area as a whole, 1,992 cremations are within the Primary CA of the Essington Scheme leaving 13,933 cremations in the CA's of the remainder of the six relevant crematoria. The same approach is taken for Wergs in Table 10.1.

48. There is no further relevance in the tables of the 13,933 cremations in the remainder of the Bushbury, Telford and Gornal Wood CA's. Patently, it would make no difference to the rest of the tables if, beyond the Essington CA, the CA's of the remainder of the six relevant crematoriums were bigger or smaller. Therefore, the absence of the CA's for the further crematoria (e.g. Sutton Coldfield) has no effect on the impact calculations. The figures of the

¹²⁹ JPB18, Table 7.1, column 2

¹³⁰ JPB22, Table 10.9, column 3

¹³¹ There are no fringe areas identified for Cannock

¹³² Tables 9.2, 9.9 and 9.15

¹³³ Tables 9.3, 9.10 and 9.17

¹³⁴ Tables 9.4, 9.11 and 9.18

¹³⁵ Tables 9.5 and 9.6, 9.12 and 9.13, as well as 9.19 and 9.20

final column of Tables 10.1 and 10.9, deducted from these in the third column, are simply a means to calculate the cremations diverted to the new schemes – shown in the fourth column.

49. Data for the fringe areas is taken from Tables in JPB20 and combined with the cremations of the primary area¹³⁶ in Tables 10.3 and 10.11 respectively.

50. Diversion to the new schemes is deducted from the cremations at the actual crematoria (not their CA's) – e.g. in Tables 10.4/5 and 10.14B/10.15B for the Wergs and Essington schemes. A similar approach is taken for Cannock based upon data in the Horizon report (JPB19).

51. Fourth, cumulative impact is unaffected. The tables in JPB22 draw on the data from JPB21. In no other respect do they use the population, death of cremation data for the CA's of the existing crematoria shown on Figure 1.1.

52. Therefore, though Westerleigh seeks to undermine Mr Best's assessment on the basis that certain second tier catchment areas are not shown on Mr Tucker's maps, the plotting of catchments of, say, Sutton Coldfield and West Bromwich, would have no effect upon Mr Best's impact calculations. Westerleigh's submission to the contrary merely underlines its misunderstanding of Mr Best's approach.

53. Westerleigh also made a half-hearted attack upon the principle of a crematorium taking from 'fringe areas' at the inquiry. That criticism is untenable for two main reasons. First, Mr Bateman himself stated at the round table discussion that the entire area of overlap between Essington and Bushbury's catchment areas (plotted according to an 18minute drivetime) was 'up for grabs'. If that is true then it is much more true for the areas within the 12.9 minute drivetimes plotted by Mr Tucker and analysed by Mr Best. Second, the plan of actual cremations carried out by Lichfield crematorium in 2017 neatly demonstrates that it, as a relatively new facility, draws cremations away from its neighbours: Stafford, Streetly and Bushbury [ID 17].

54. The criticisms of Mr Best's evidence by Westerleigh are unsubstantiated. The fact is that Mr Best has produced a transparent, conservative methodology which he has applied consistently to all relevant crematoria. The element of judgment (that a new crematorium will draw 50% of cremations away from fringe/overlap areas with crematoria which are currently overtrading) is appropriately conservative. Not only is it a matter of common sense but the fact of trade draw from fringe areas is borne out from the actual trading of Lichfield as shown on ID17.

Comparison between the two proposals in terms of Need

55. On a straight comparison between the two schemes in terms of need:

a. Essington cannot credibly claim relief to Streetly; and its approach at this inquiry has been ostrich-like so far as the grant of pp at Cannock is concerned. We consider this in more detail below.

b. Essington does not claim any material relief to any other over-trading crematorium. There was a passing suggestion that it relied on providing relief to Stafford and Sutton Coldfield¹³⁷ but on Mr McArdle's own admission the numbers are not significant¹³⁸, and no further reliance was placed on them following the giving of that concession during the Need Round Table session ("Need RT").

c. Essington can no longer claim to offer a facility which "first serves" a population within a 30 minute drive time. This was an important material advantage which Westerleigh claimed at the last inquiry, and it was expressly accepted by the SoS as a weighty material consideration: see DL 14 – where he said that the 51,695 people served for the first time by the Essington scheme, compared to 22,736 for Wergs, was a consideration of "significant weight" and that "this weighs heavily in favour of the Essington scheme". Thus, the fact that Essington "first served" an additional 28,959 compared to Wergs was a consideration of significant weight. This was also relied on by PG in his Opening Submissions As Mr McArdle conceded in XX by PV, there are in fact no "newly served" within the Essington catchment as a result of Cannock, whereas

¹³⁶ Tables 10.1 and 10.9

¹³⁷ McArdle UNR (Appx 1 of Bateman) para 5.16

¹³⁸ Ibid para 5.17 – 98 from Sutton Coldfield and 94 from Stafford

Westerleigh's own figures show Wergs will provide 27,676 Newly Served – a figure which does not change as a result of the Cannock decision. This figure is only marginally less¹³⁹ than the figure the SoS previously considered should be accorded "significant weight". In our submission, there is no rational basis for the SoS to depart from his previous (unchallenged) conclusion.

d. This is the issue of first served. I draw attention to para 52 of PG's submissions where he says that Mr McArdle's evidence was that unless the newly served figure was over 50,000 [READS FROM PG SUBMISSIONS] Sir, I am astonished that MLF can make such a submissions it is completely wrong. The SoS made it perfectly clear that he was relying upon the newly served figures para.14 of the DL. What PG says there is absolutely incorrect. In addition, I would add this, the issue of newly served and the number of funerals that would come from the newly served is not simply a question of the number of funerals but it also relates to those people in close proximity to a crematorium who would include mourners. It is an accessibility point as well as the number of funerals that would fall from that population.

e. Mr Goatley raises a point at para.65 which relates to the number of people within 30 minutes catchment area of the crematorium and he says in addition the overlap is 254,000 in contrast to 176,000. Broad lane would be the nearest for 230,000. Two points, those figures take no account of Cannock. Second, those figures do not say this is the only crem within 30 minutes it is one of a number of crematoria which overlap for that population within 30 minutes. One is bound to say so what? It is merely in paragraph 66 of what PG is saying.... in what way is it catering for the largest population merely that it is one of a number of crematoria which fall within the 30 minute drivetime. In that sense it offers nothing new for the first time by way of choice. There is already a crematorium providing for that population.

Streetly

56. We now turn to consider in more detail the relief claimed by Westerleigh in terms of relief of Streetly. As the appeal sites are situated within the green belt, material considerations of sufficient weight so as to amount to VSC must be demonstrated in order for a grant of planning permission. For need to amount to such a consideration it patently must be occurring now. Even on its own evidence, taking into account the artificial restriction of core slots, Westerleigh cannot demonstrate the presence of a need at Streetly. Taking Westerleigh's own evidence, Table C in Mr Bateman's note on Cannock shows Streetly to be trading at under 80% in the peak month. It is only once Mr Bateman projects forward to 2031 and 2041 that he can show an operation above 80% in the peak month.

57. Given the fact that these are appeal schemes in the Green Belt for which very special circumstances must be demonstrated, it is clearly inappropriate to rely upon need in the future to justify such development. This is not a local plan process.

58. In fact, the true position, is that Streetly is currently operating at only 55.3% of factored capacity and only 67.5% during the peak month.¹⁴⁰ Further, as shown by Mr Best, even projecting forward to 2027 Streetly will still be operating well below 80% in the peak month.¹⁴¹ As such, there is no need to relieve Streetly. And insofar as there is a particular problem about car parking, there does not appear to be any dispute that that can be remedied by extending the car parking in a relatively unconstrained location.¹⁴²

59. But crucially, so far as Westerleigh's argument regarding Streetly is concerned, now that Cannock has been granted planning permission, this is projected to draw 350 cremations away from Streetly p.a.¹⁴³ The effect of this will be to reduce Streetly's trading by 14% of its factored

¹³⁹ 1,283

¹⁴⁰ Para 2.20 JB supplementary proof

¹⁴¹ Para 2.29 JB supplementary proof

¹⁴² See also the representations from Walsall Borough Council CD D29

¹⁴³ Para 5.16 JB supplementary proof, and table 10.20

capacity¹⁴⁴, leaving it trading at a level of 57% of its core capacity in peak months in 2027¹⁴⁵. (It should be noted that the Horizon report indicates that the diversion to Cannock from Streetly will be even greater - 438¹⁴⁶. It is telling that this was a revelation to Mr McArdle during XX by PV.)

60. There is no basis for Mr McArdle's assertion that a lower threshold than 80% should be used to demonstrate need at Streetly. It was not a view expressed in his written evidence or any other documentary material. It is precisely assertions like this which mean it is highly relevant¹⁴⁷ to have regard to Mr McArdle's lack of experience in the crematorium sector – all of three months¹⁴⁸. Even in his 'rebuttal statement' he maintained that the figure of 80% was the correct one.¹⁴⁹ The somewhat desperate attempt by Westerleigh to argue that a figure of lower than 80% of core capacity in the peak month should be taken as demonstrating a need is no more than an attempt to confect a case that Streetly is overtrading. It should be rejected.

61. Given that Streetly is not overtrading now, will not be overtrading even by 2027 and will have a significant number of cremations drawn away from it by Cannock, any purported 'relief' of Streetly cannot be given any weight in the planning balance in favour of the Essington scheme.

Gornal Wood

62. All parties to the inquiry agree that trading at 80% of practical or core capacity demonstrates a need for a new crematorium, and this is the very basis of the approach of Mr McArdle¹⁵⁰. This threshold was accepted by the previous inspector: IR 215, accepted by the SoS DL12.

63. Gornal Wood is currently trading at over 87.1% of core capacity. In the peak winter month this increases to c.106.3% of core capacity.¹⁵¹ The need experienced at Gornal Wood is therefore even more acute than that at Bushbury. As all parties agree that the relief of Bushbury is a material consideration of sufficient weight to amount to very special circumstances, the relief of Gornal Wood must also be a material consideration of such weight or even greater.

64. Indeed, the Council agrees that the Wergs Scheme will relieve capacity at Gornal Wood and that significant weight should be attached to this.¹⁵² Westerleigh has not produced any evidence to dispute (a) that the operation of Gornal Wood is significantly overtrading; (b) that it is consequentially qualitatively deficient or (c) that it would be relieved to a material degree by Wergs.¹⁵³ In those circumstances the position is clear. Only the Wergs scheme will relieve Gornal Wood and therefore, irrespective of whether permission is granted at Essington, there are very special circumstances for granting planning permission for a crematorium at Wergs in order to relieve Gornal Wood.

Conclusion regarding Need

65. There has been no dispute from any quarter or party of the compelling need to relieve Bushbury crematorium, which offers a qualitatively poor experience.

¹⁴⁴ Table 10.24A.

¹⁴⁵ Ibid.

¹⁴⁶ Best Supplementary appx 19, table 1 (pg 19) – the difference between 2,402 and 1,964.

¹⁴⁷ Contrary to the Inspector's indication

¹⁴⁸ He explained that he joined Westerleigh in October 2018 from the health care sector, and had no previous experience in crematoria.

¹⁴⁹ Para 2.6

¹⁵⁰ McArdle UNR para 2.33

¹⁵¹ Para 2.17 JB supplementary proof

¹⁵² SoCG para 6.2(d) and (e)

¹⁵³ It is worth noting that Westerleigh did not challenge the number of cremations forecast for Wergs, the three crematoria from which they would come (Bushbury, Gornal Wood and Telford). Further it did not challenge the fact that Gornal Wood and Telford are over trading and displaying a need. Whilst Mr Goatley did cross examine Mr Lathbury on the basis that more cremations would come from Telford than Gornal Wood, this is of limited relevance. Even if it is correct (which is not accepted) Wergs would still be relieving two crematoria which are undisputedly displaying a need.

66. This compelling need amounts to a VSC sufficient clearly to outweigh the harm caused by inappropriateness by development in the GB.

67. The proposal at Essington offers no additional considerations of weight in its favour. Streetly does not require relieving, either as matters stand as of today, or even in the future. The development of the Cannock facility will provide further relief of Streetly, even were it required, which it is not.

68. In fact, the Essington scheme would, on Mr McArdle's figures, replace one over-trading crematorium with another.

69. By contrast, the Wergs scheme would provide relief to both Bushbury and Gornal Wood. The relief provided to the latter has not been challenged by Westerleigh yet its importance (in terms of weight in the planning balance) has been acknowledged by the Council: see Council/Dignity SOCG¹⁵⁴.

70. We therefore turn to consider whether there are any other considerations of such weight which would affect the manifest advantage, in terms of need, which the Wergs scheme enjoys over the Essington scheme.

Heritage

71. In the SoS's DLs dated 6th November 2017, he gave express consideration to the heritage impacts of the very same scheme before this inquiry. His conclusion at DL16 was that the character of the historic environment would be enhanced by the proposed development at Wergs, and the proposal was in accordance with CS Policies EQ3 and EQ4. In so finding, the SoS accepted the Inspector's conclusions at IR 224-226 in which the Inspector found as follows:

'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.¹⁵⁵

72. These conclusions were informed following a site visit by the Inspector, as well as a statement of objection submitted on Westerleigh's behalf [CD R9, Appendix 1] and evidence on behalf of Dignity (from Mr White).

73. Although the SoS's DLs were quashed following legal challenge, there was no challenge to these conclusions and as such they should be accorded full weight. As a matter of law, [see for example *St Albans DC v SSCLG* [2015] EWHC 655 at paras 127-128] the unchallenged aspects of the SoS's decisions are material planning considerations.

¹⁵⁴ SoCG para 6.2(d)

¹⁵⁵ CD S1

74. Moreover, there is the important principle of consistency in decision-making in planning cases – that like cases should be decided alike.¹⁵⁶ A fortiori, where the same development proposal is being reconsidered.

75. We shall of course come to the detail of the criticisms made on Westerleigh's behalf by Mrs Stoten, which relate to the nature of what Dignity and its consultants consider are enhancements – and of course these were considered as enhancements by both the Council's conservation and landscape officers, the previous Inspector and the SoS.

76. However, leaving aside the points of detail raised now by Mrs Stoten (and we consider these below), what Westerleigh and Mrs Stoten cannot deny is that the SoS has made his view clear in a number of important respects as a matter of principle:

- a. that not only is development of a crematorium within a HLA acceptable as a matter of principle, the development of this crematorium is acceptable within this HLA; or to put it another way, there is nothing intrinsically unacceptable about the development of a crematorium within this HLA;
- b. that development of the Dignity scheme is acceptable within the setting of Wergs Hall. (In this respect, it has always been acknowledged that the appeal site forms part of the setting of Wergs Hall – see the evidence of Mr White given to the previous inquiry)¹⁵⁷. Thus, the mere fact that it falls within the setting of Wergs Hall is not considered to be a reason for rejecting this development;
- c. that built development in the form of the Dignity scheme is acceptable as a matter of principle within the confines of the boundary wall of the former estate;
- d. In terms of the "dynamic" views of Wergs Hall, there is no evidence that those views have materially changed since the SoS's 2017 decision. Furthermore, those "dynamic" views were before the previous Inspector and the SoS. And importantly, none of the dynamic views were sufficient for the previous Inspector and SoS to find any harm to any designated or non-designated assets.

77. Against that background, Mrs Stoten was instructed in July 2018 at the same time as Mr Peachey¹⁵⁸. Inexplicably the first time Westerleigh informed PINS and Dignity of their intention to expand their case – not trailed in the updated S/C dated 26/6/18 – was 24/8/18; but notwithstanding that Mrs Stoten and Mr Peachey had been instructed since 23/7/18, no details were given as to the basis of their case. Indeed, no such details were provided until exchange of proofs on 18 December 2018.

78. Mrs Stoten made no reference in her proof of evidence to the previous Inspector's conclusions or recommendation, or the SoS's conclusion. Nor did she make any reference to the conclusions of the conservation officer. She claims that she did not do so because to have done so would have been repetition. But this cannot be right – the reality is that they were very clear weighty conclusions, and they required rebuttal if they were considered wrong. In truth, there has not been a rebuttal to the clear conclusions of the Council's officers, the previous Inspector's recommendations, or the conclusion of the SoS. It is no answer for Mrs Stoten to say that she has produced her evidence; the reality is that the underlying facts from which she draws her conclusions have not altered. In particular, none of the key points of dispute now raised by Mrs Stoten in her written evidence are omitted from the Heritage Statement¹⁵⁹, submitted long ago with the planning application.

79. The key areas of dispute are identified in the Dignity/Westerleigh Heritage SoCG, and it those which we now address.

80. The contribution that the Wergs site makes to the historic parkland around Wergs Hall.

- a. There is no dispute but that the appeal site forms part of a designated Historic Landscape Area ("HLA") designated as such by the Council. The extent of that designation can be seen from Appx B of Mr Kirkpatrick's p/e.

¹⁵⁶ See *North Wiltshire DC v SSE* [1992] 4 WLUK 171

¹⁵⁷ CD R1 (Appx to Downes p/e) para 3.3.17

¹⁵⁸ XX of Peachey by VH

¹⁵⁹ CD F16

b. Front and centre of Mrs Stoten's case is that the appeal site can properly be described as historic parkland – and she produces a plan which purports to describe "Wergs Parkland Area intelligible as historic parkland and grounds". Inexplicably this excludes part of the designated site to the north – notwithstanding that the estate wall, which everyone acknowledges is a key feature of the HLA designation, still exists in that location. The only implication of that omission is that Mrs Stoten is suggesting that the wall has little or no contribution to understanding the legibility of the estate. In truth, her exclusion of that part of the wall demonstrates her misunderstanding of the importance of the wall; and instead focuses on the parkland to the exclusion of the wall.

c. However, Mrs Stoten's plan is telling because it effectively acknowledges that the land she has omitted never functioned as parkland. And in this she is undoubtedly correct. That land has never been identified as parkland on any OS map at any stage. The difficulty for Mrs Stoten's argument, however, is that in this respect the land she has excluded is no different from at least the majority of the appeal site.

d. Thus, an examination of the historical maps demonstrate that the land which forms part of the appeal site was never designed as parkland when the estate was laid out. This can be clearly seen from the OS map of 1890 (White Map 5, Appx 1). Thus, from that map one can see that the land excluded by Mrs Stoten, and all the land to the south of Brick Kiln Covert is excluded from parkland designation. The reality is that they were fields with angular boundaries and field patterns.

e. The first time part of the site was identified as part of the parkland associated with the estate was in the early twentieth century: see Plate 6 of Mrs Stoten's p/e, where the parkland envelopes the Brick Kiln Covert; and then Map 6 of Mr White's Appx 1, which is a sales plan for 1907, where the parkland is extended still further.

f. So the very height of Mrs Stoten's case is that part of the site became parkland in the early part of the twentieth century¹⁶⁰. But in historical terms, it is perfectly obvious that that land was never designed to be appreciated as part and parcel of parkland within the setting of Wergs Hall, unlike the landscape to the east of the lake nearest to the Hall, or the tree planting to the north-east of Brick Kiln coppice, and identified in sales particulars as "The Parks".

g. There are no trees identified within the appeal site (as seen from the 1907 Plan). So it never even functioned as parkland when it was eventually identified as such.

h. As Mr White identified in x/c, while the appeal site contains important landscape elements (the boundary wall, the covert, the tree Avenue) which in combination contribute to the area being within the HLA, the appeal site is of relatively lower significance to the historic parkland than other areas of the Wergs Hall estate and which contribute to the listed building and the HLA.

81. The character of that part of the HLA within which the Wergs Site is located

a. In terms of its character now, there is no dispute that the open land within the appeal site is used for rotational turf production¹⁶¹. Mrs Stoten says, "this mostly gives a pasture character in these areas, which was very close to how it appears to have been historically as part of the parkland"¹⁶². Given Mrs Stoten's apparent concern (in other respects, for example the wall) for historical authenticity, we suggest that the turf production is unlikely to be mistaken for pasture, especially as it is periodically stripped. In any event, pasture in character is quite different from parkland.

b. The evidence of Mr Kirkpatrick is that the turf production leads to a degraded character. Indeed, this was a point made against Mr Kirkpatrick – that the benefit of the removal of the turf production only extended to the appeal site, and that the turf production would continue on the rest of the site. Although this recently raised point has been disposed of by the offer of a UPO, it goes to demonstrate that on any rational and fair basis the cutting of turf does

¹⁶⁰ In Stoten summary p/e she says by 1924: see para 2.3

¹⁶¹ Heritage SOCG para 2.1.4

¹⁶² Mrs Stoten para 7.23

degrade the landscape, which is precisely why Westerleigh sought to make much of the fact that the removal of the turf cutting only extended to the appeal site.

c. If it is concluded – as we suggest it should be – that the appeal site does not have the character of parkland, then as Mrs Stoten accepted in XX, many of her concerns about development in parkland fall away¹⁶³. However, as we have already noted, there is no suggestion from the SoS or the previous Inspector about any inherent unacceptability of development in parkland.

d. There are other aspects of the decline in character of the HLA (per Mr White x/c) and include the loss of tree belts along the estate boundary and other trees in the site, loss of the tree avenue, non-management of Brick Kiln Covert, reduction in wall height and the use of the area for turf cultivation and stripping thereof.

e. As Mr White noted, the openness of the area is a modern construct, and this allows the opportunity to enhance those landscape elements that have degraded. As he explained in XX, the site has the capacity to accommodate change without impacting on the heritage significance of the whole asset, or harm the setting of the listed building. However, the key features of the site as described by Mr White (and agreed to by Mrs Stoten) – the wall, the Brick Kiln Covert, and the avenue of trees – are all features which it is proposed to enhance. Mrs Stoten takes issue with whether there is the claimed enhancement (and we deal with that below) but there is at least agreement as to the key features of the HLA.

82. Elements of setting and contribution that the Wergs site makes to that significance.

a. Mr White sets out the heritage significance of Wergs Hall in his p/e164. Its historic interest is the design of the building and its location and status of the principal building within the surrounding HLA. Mr White sets out the contribution of the setting in his p/e165 which relates to the parkland setting near to the hall and glimpsed views from the public realm from adjacent roads and other areas of the HLA.

b. In terms of the contribution the site makes to the setting of the listed building, we submit that there is no inter-visibility from the site in which the heritage interests of the listed building can be experienced or appreciated¹⁶⁶. Mr White considers that the contribution to the setting relates to the historic land ownership – which is most identifiable in the landscape by the boundary wall which encloses the land. It is this conclusion which makes Mrs Stoten’s decision to define the historic parkland and grounds excluding the western section of the wall so remarkable and demonstrates her lack of understanding of the importance of the wall to the legibility of the estate.

83. Whether the Wergs Scheme would comprise appropriate restoration of the avenue approach within the site, wall and covert, or would harm them.

a. It is notable that Mrs Stoten admits that the restoration of the avenue of trees is a benefit of the scheme, albeit she describes as “small”.¹⁶⁷

b. That it was a benefit was clearly the view of the Council and the previous Inspector. The difference between Mrs Stoten and all others who have opined on this is the extent of the benefit.

c. Mrs Stoten has raised concerns about the construction of the pond and the pergola. The reality is the former would not be seen at all from outside of the site and in any event is entirely characteristic of the landscape. The suggestion that the pond would remove the legibility as a historic approach to the house is odd. First, it is extremely unlikely that the pond could be seen from any public vantage point. Second, it is at odds with Mrs Stoten’s concern not to “mislead” through restoration proposals. The reality is that the avenue has long lost its association as an historic approach to the house.

¹⁶³ See Mrs Stoten paras 7.45, 7.47, 7.48, 7.53, 7.54, 7.62, and 7.63

¹⁶⁴ White proof paras 4.3.2-4.3.3.

¹⁶⁵ White proof paras 4.3.4 – 4.3.10

¹⁶⁶ White proof para 4.3.11

¹⁶⁷ Stoten p/e para 7.60 third bullet

d. The pergola would be an attractive landscape feature and to suggest it would cause harm to the non-designated heritage asset, especially given its modest size and “removability”, is an exaggeration and wrong in any event.

e. Mrs Stoten herself described how historic landscapes change – thus the establishment of the original avenue of trees was circa 1924. On any reasonable assessment, the tree planting is restoration of the original landscape concept.

f. However, if the pond, or for that matter the pergola, were considered inappropriate, then both could be removed given they both form part of landscape proposals. The points could be covered by imposing a condition were this considered necessary.

g. In terms of management of Brick Kiln Covert, the proposed management of this is also described by Mrs Stoten as a benefit, albeit qualified as “small”¹⁶⁸. Again, she differs in her judgment on this from the Council, the previous Inspector and the SoS as to the extent of the benefit. Mrs Stoten says this does not constitute restoration because of the introduction of footpaths. However, these paths do not exit (as Mrs Stoten asserted) to the north east of Brick Kiln Covert. The extent to which the paths will be noticed as such will depend on the extent of under-storey planting, all of which will be controlled by a detailed landscaping scheme. Again, it is difficult to understand what Mrs Stoten is really concerned about, and in particular why it diminishes the heritage assets. To the extent that the paths aid appreciation by the public of the wider historic asset, they should be welcomed. But the paths will not diminish the historic significance of the woodland.

h. Finally, the wall. It is Mr White’s contention that the wall is in decline. That would seem obvious from a cursory inspection. Mortar has fallen out, bricks are missing, whole courses of stone have been removed. Mrs Stoten does not see the wall in that way at all. In this she differs from everyone else who has considered the matter. Of course this is her entitlement – but one has to ask whether she has exercised a reasonable judgment in concluding that the wall is in a satisfactory state of repair.

i. It is true that part of the wall will be re-built along a slightly different alignment and in this she is correct. What she failed to manifest any appreciation of in her written evidence was the wall has already been rebuilt along a different alignment – as explained by Mr White in some detail in x/c. The significance of this is that Mrs Stoten failed to suggest that the wall did not function in its already re-aligned route as a historical mark of the extent of the estate.

j. The reality is that the wall as realigned and rebuilt to align with the height of the original will improve the legibility of the non-designated heritage asset, namely the HLA and in particular the land’s association with the former estate. What is restored is the sense of enclosure that the wall offers, in terms of height. The purpose of the proposals is beneficial in re-establishing the prominence of the wall along the road in appropriate materials.

k. A late runner to Mrs Stoten’s arguments appear to be a concern about a verge between the wall and the footpath. This is not mentioned in her written evidence, but in any event it does not detract from the wall’s status as an enclosure to the estate, and the proposals will enhance the wall’s legibility in that respect.

84. Conclusion – harm or benefit?

a. Even on Mrs Stoten’s analysis of the proposals, there are identifiable benefits from the Wergs scheme. In our submission, Mrs Stoten’s concerns flow from a misunderstanding of the importance of the wall in the designation of the land as a HLA. The highest her case gets is that part of the appeal site was identified as parkland in the early twentieth century. That was short lived but in any event it does not represent the character of the appeal site today.

b. Mrs Stoten seeks to diminish the degraded nature of the site, including the turf cutting. Her suggestion that the turf cutting gives the site the character of “pasture”¹⁶⁹ is not a fair assessment of the site’s appearance, which is why Westerleigh make the point about turf cutting continuing on the remainder of the landowner’s title absent a UPO.

c. The reality is that the appeal proposals have been designed to enhance the HLA by reinstating the avenue of trees, provide for maintenance of Brick Kiln Covert, and restore the

¹⁶⁸ Stoten proof para 7.60, final bullet

¹⁶⁹ Stoten para 7.23

wall (albeit on a slightly different alignment) but in a way that sympathetically restores its previous height and function.

d. We invite the SoS to endorse the reasoning he gave in the 2017 decision. Nothing which Mrs Stoten has provided evidence upon diminishes or undermines the reasoning of the previous Inspector as endorsed by the SoS.

e. **Dealing with the point raised by the SoS at paragraph 16, that this is not the only way of securing the landscape and heritage benefits offered by the scheme. We rely upon the Jura report ou have seen the further note. The important point is that it is not an issue of cost but there is no explanation by anyone as to how these benefits would be procured other than through a scheme of the kind that we are proposing. There isn't any other way in which they would come forward in the real world. If there was there would have to be some evidence on that, there is none.**

Landscape and Visual Impact and Open Space

85. As indicated by the Inspector on day 1 of the Inquiry, many of the issues between the parties are matters of judgement which can be reached by the evidence and the site visit. We are therefore content not, in these closings, to give chapter and verse on each viewpoint but rather to deal with matters of principle between the parties, as focussed upon in cross examination of Mr Peachey. The issues can be broken down into the following points:

- a. Loss of Open Space at Essington;
- b. Deficiencies in the LVIA and assessment of Mr Peachey;
- c. Whether Essington is a valued landscape;
- d. Mitigation;
- e. Openness;
- f. The impact upon the purposes of the Green Belt; and
- g. The landscape and visual impact of Wergs.

We will address each one in turn.

Loss of Open Space at Essington

86. In cross examination¹⁷⁰ Mr Peachey confirmed that he had been instructed since around July 2018 and that he had reviewed all material documents including the officer's report ('OR') on the Westerleigh application and all third party representations on the application/appeal before writing his LVIA and proof of evidence.

87. It is a matter of fact that nowhere in his LVIA or proof does Mr Peachey mention either (a) that the Essington site is currently public open space and (b) that as a result of that scheme there will be a loss of open space at that site (nor does any other witness appearing for Westerleigh). The omission is remarkable. The issue is clearly raised in the OR to the Essington scheme¹⁷¹ where Walsall expresses clear concerns with regards to the loss of accessible public open space and also expressed the view that the site had been omitted from the South Staffordshire Open Space Strategy. That was a point agreed by the officer from South Staffordshire in that report.¹⁷² Further, if one reviews the third party representations on the Westerleigh scheme which are before the inquiry¹⁷³ it is clear that the vast majority of the 147 objections on the Council's website raise loss of open space as an objection to the scheme.

88. At the inquiry Mr Peachey argued that the Essington site would not be bordered by a fence, i.e. it would have totally permeable boundaries and would provide 24 hour access. This feature of the scheme is not mentioned in any proof of evidence or any document submitted on behalf of Westerleigh. Mr Peachey was unable to point to any other example of a Westerleigh crematorium with permeable 24hr public access when bordered by land which itself had open public access. Indeed, given the fly tipping issues in this area the lack of a fence being installed around the perimeter in future is unlikely. Further, and more importantly, Mr Peachey confirmed

¹⁷⁰ 18 January 2019 by VH

¹⁷¹ CD I4, para 5.14.3

¹⁷² Para 5.14.4

¹⁷³ Not in the Core Documents

that such a level of access is not being offered as a condition at the Westerleigh site. Without such a condition there is nothing restricting the site from being closed to the public at some point in the future¹⁷⁴ and no weight can therefore be given to this claim of 24 hour public access. One therefore has to conclude that the Westerleigh scheme will result in public access being restricted in terms of the times of day it can occur. It is currently 24hr, in the future it will depend on what access Westerleigh or any other operator allows for.

89. The recreational access to the site will also be limited in terms of its geographical area. In cross examination Mr Peachey confirmed that, when looking at the Westerleigh Landscape Plan¹⁷⁵ any recreational users of the site would stick to the footpaths (these are few in number and peripheral). That much is absolutely clear from the design, the car parks and memorial gardens would clearly be unsuitable for recreational access. There can therefore be no doubt that the geographical area will reduce to a very significant degree, from over 4ha which currently exists to a few footpaths.

90. It was claimed by Mr Bateman in his evidence that the car park would give an opportunity for people to drive to the site, park their car and use it for recreation. But this would remove car parking spaces from mourners. No parking survey has been carried out to demonstrate that the car park provided by the Westerleigh scheme is adequate to accommodate both mourners and recreational users.

91. The types of recreational use for which the site will be available will also be limited. The use of the site as currently exists is not limited. There is patently nothing to prevent children playing games and people walking their dogs off of leads. Mr Peachey tried to argue that people would still be able to walk dogs around the crematorium. However, it is reasonable to assume that they will be required to be on leads for obvious reasons of respect for mourners and memorials. The prospect of a dog relieving itself on a memorial is clearly inappropriate and therefore on the balance of probability even if dogs were to be permitted at the site in future they will most likely be required to be on leads.

92. It is therefore clear that the Essington scheme will result in:

- a. the building upon open space; and
- b. the reduction of open space in terms of:
 - i. the times during which it may occur
 - ii. the space on which it may occur; and
 - iii. the types of recreational use which may occur.

93. The significance of the above is clear in policy terms. Mr Peachey agreed in cross examination that if there was a loss of open space then the scheme would be contrary to:

- a. Core strategy objective 12;
- b. Core Strategy objective 15;
- c. Core Policy 14;
- d. Policy HWB1; and
- e. Policy HWB2.

94. Mr Peachey also confirmed that the loss of over 2ha of woodland would also be contrary to policy HWB2.

95. Policy EQ4 is also clearly engaged as it states: '*Trees...woodland...should be protected from damage and retained unless it can be demonstrated that removal is necessary and appropriate mitigation can be achieved*'. Westerleigh is not proposing to mitigate the loss of over 2ha of woodland. Further, if the SoS finds that either scheme is justified by a need for a new crematorium and either facility can equally meet that need (which is not accepted) then the loss of such a significant area of woodland patently cannot be necessary as that need can be met at Wergs.

96. Finally, it is necessary to consider the NPPF. Mr Peachey agreed that as this policy was part of national policy promulgated within the last year, significant weight could be given to it. Paragraph 97 states:

'Existing open space... should not be built on unless:

- a) *an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or*

¹⁷⁴ Confirmed by JP in XX by VH

¹⁷⁵ Appendix J to SK proof

- b) *the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or*
- c) *the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.'*

97. Mr Peachey agreed (and Mr Bateman confirmed) that the Essington site met the NPPF Glossary's definition of open space. He agreed that there would be building on the site. This patently includes the crematorium building, the car park and footpaths etc. Mr Peachey agreed that an assessment relating to surplus requirements (subparagraph (a)) had not been undertaken. It is clear that the loss resulting from the proposed development would not be replaced by equivalent or better provision in terms of quantity and quality in a suitable location (subparagraph (b)). Finally Mr Peachey agreed that subsection (c) was not relevant to the Essington site. There can be no doubt that paragraph 97 NPPF is breached by the Essington proposal. As Mr Peachey states, this is a policy which should be given significant weight, so too should its breach.

98. Mr Peachey sought to diminish the significance of the breach of this policy by stating that only 2% of the site was being built on. It appears that he was only taking into account of the crematorium building. However, the car park, footpaths, internal roads and other structures will clearly be built upon the site and, as set out above, the physical availability of space for public recreational use will be much reduced. In any event, this policy must be given its objective meaning. Whatever the percentage of building, it is undoubtedly breached by the Westerleigh scheme. **I draw attention to paragraph 164 of PG's closing submissions where he says that the proposal satisfies criterion (b). That simply isn't the case because paragraph 97 requires equivalent or better provision in terms of both quantity and quality, it clearly doesn't provide. The 2% referred to by PG only relates to the building and not the car parks, footpaths, internal roads and other structures.**

99. Finally under this heading, the Essington scheme is also clearly in breach of paragraph 142 NPPF. This paragraph sets out the Government's support for community forests. The removal of 2ha of such forest (which is not being planted elsewhere) must contravene it. Mr Peachey's bold assertion that this policy was not contravened is simply not credible.

Public Access to Wergs

100. Contrary to the position at Essington, the Wergs scheme offers the opportunity to open up a site currently inaccessible to the public. Given the nature of the site this access, as highlighted by Mr Kirkpatrick, will provide an opportunity for members of the public to have a greater appreciation of the historic resources in the area. It will also, as highlighted by the landscape officer's consultation response allow members of the public to appreciate an area of ecological interest (PPS 73 CD H1). A draft condition provides for information boards to be sited to allow visitors to appreciate the unique elements of this site. The provision of public access accords with: Core Strategy Objectives 12 and 15, Core Policy 14 and policy HWB2 and ought to be given significant weight in the planning balance.

Deficiencies in the Essington LVIA

101. Throughout his cross examination Mr Peachey maintained that he had not failed to take into account the fact that the Essington site and surrounding woodland was used as public open space. This line of answers to VH's questions is simply not credible in light of the clear words which Mr Peachey himself used in his LVIA and proof. Nowhere in either of those two documents did Mr Peachey acknowledge that there was any public access at the Essington site or in the surrounding woodland further, Mr Peachey explicitly wrote:

- 'There is no public access to the site itself' (para 3.45 LVIA)
- 'no public access' (Table 2 on p.35 LVIA)
- 'it is important to note that the site is not publicly accessible' (paragraph 5.47 LVIA)

102. Mr Peachey sought to argue that what he meant by 'no public access' was that there was 'no formal public access' to the site and surrounding woodland. We remain unclear as to the precise distinction between 'formal' and 'informal' public access. Mr Peachey suggested that a footpath was formal public access. That begs the question how this site is any different in terms

of its use, except perhaps that there is wider and more comprehensive public access across the site and surrounding woodland as opposed to a footpath where one is restricted to the confines of a path's width. If Mr Peachey's distinction is reliant upon the appearance of the site on a map of open spaces then that distinction is immaterial. None of the policies listed above make such a distinction and, in any event, as agreed by Mr Peachey it appears that the site and the wider woodland owned by the council was accidentally omitted from the Open Space Strategy for this local authority. The mere presence or absence of a space on a plan, deliberate or otherwise, does not affect the actual use of the site by local people or the application of policy to it. The distinction Mr Peachey sought to draw is simply irrelevant and does not make sense.

103. Further indicating that Mr Peachey had not taken into account the recreational access to the site and surrounding woodland in his assessment was his description of it at 'private land' (para. 3.40 LVIA) and as a 'private area of young woodland planting' (table 3 p.37 LVIA). Mr Peachey's explanation for this was frankly bizarre. He stated that he meant that the site was not 'owned by the public'. When it was highlighted to him that the site was Council owned and when asked what he meant by that distinction he gave the example of land which might have been bequeathed by someone in their will to the public at large. He was at first unable to give an example of any land in the country which was owned by the 'public at large'. He then alighted upon 'common land'. Common land is in fact not owned by the nebulous public at large but often by a council or a private body. Though persistent, Mr Peachey's maintenance that he had taken into account the recreational use of the site and surrounding woodland is simply untenable.

104. Mr Peachey accepted in cross examination that the land use of a proposed development site was a highly material factor in conducting an LVIA. His omission in taking account of the recreational use of the site and surrounding woodland has infected the entirety of his assessment. We make the following points:

- a. there is no mention of the recreational use under 'land use' (para. 3.40-42 LVIA);
- b. there is no mention of the recreational use under the section 'public access' (paras 3.45-6 LVIA);
- c. para 4.3 LVIA states that views are limited to the immediate boundary of the site where there are gaps or rides within the woodland. This conclusion is clearly based upon an understanding that the only visual receptors are outside of the woodland, it has left out of account receptors using the site and surrounding woodland for recreation;
- d. under openness there is no consideration of the visual impact for recreational users of the woodland (para 4.7-12);
- e. neither visibility from the surrounding woodland nor the recreational use is not listed as a constraint at para 4.21;
- f. Mr Peachey accepted that recreational use and access is a highly material consideration when considering the value of the site. It is not taken into account at table 2 on p.35 which in fact states that there is no public access. This clearly undermines his conclusion of 'low to medium value' at paragraph 5.24;
- g. Mr Peachey agreed that public access makes a landscape more susceptible to change, the failure to take this into account necessarily undermines his conclusion of 'low' at para 5.28 LVIA;
- h. Sensitivity is a function of value and susceptibility as such, Mr Peachey's conclusion of 'low to medium' at para 5.31 LVIA is also undermined;
- i. In terms of Landscape Character Mr Peachey's LVIA relied upon there being a small scale loss of woodland (para 5.44) in fact there will be over 2ha lost as part of this scheme, almost half of the site owned by the Council. Further, Mr Peachey stated 'it is important to note that the site is not publicly accessible' (para 5.47). That statement is clearly wrong. One does not need to be a landscape professional to see that the character of the site and its environs will be irreparably and fundamentally altered for those who use the woodland for recreation. This impact has been left out of account by Mr Peachey as such his conclusion of significance of effect as 'negligible to minor adverse' has been under-reported;
- j. Finally, GLIVIA 3 is clear that persons engaging in outdoor recreation are a class of receptor most susceptible to change (para 6.33). Further, in order to produce an LVIA worth its salt it is necessary to understand the specific, direct impacts upon each view for visual receptors (para 6.3 LVIA). Nowhere in Mr Peachey's material did he consider the

visual effects of the crematorium on receptors currently using the woodland. This is a fundamental omission.

105. It is clear that the leaving out of account the recreational use of the site and surrounding woodland in the LVIA has fundamentally undermined Mr Peachey's assessment. As stated by Mr Kirkpatrick in his evidence in chief, the assessment is not in accordance with the Guidelines for Landscape and Visual Impact Assessment (3rd edition). Its conclusions cannot be relied upon by the SoS.

106. Mr Kirkpatrick's assessment of the Essington site does take into account the public access. He characterised the visual impacts of the Essington scheme on recreational users of the woodland as harmful. He stated that great weight should be given to that harm given the status of the site as community woodland and the effect of the scheme in detracting from the full use of that woodland. As also stated by Mr Kirkpatrick, the Essington scheme would diminish the strong rural character of the gap between Bloxwich and Essington, significant weight should also be given to this harm.

Mitigation

107. In his evidence Mr Peachey states that the mitigation strategy for Wergs is more substantial and more necessary than that at Essington (p.26 PoE, fifth bullet). He uses this as a reason why the Essington scheme is to be preferred in landscape terms. What Mr Peachey leaves out of account is of course the complete absence of mitigation in the Essington scheme for the chopping down of over 2 hectares of woodland and 12 mature roadside trees. The NPPF is clear in its support for both trees and community woodland (cf paras 170(b) and 142). The failure to mitigate for the losses of these assets on the Essington site weighs heavily against the proposal.

Valued Landscape

108. In his evidence Mr Peachey stated that the meeting of just one criterion in box 5.1 of GLVIA could render a landscape as valued for the purposes of paragraph 170(a) NPPF. He has left out of account a key factor in that box: '**Recreation value:** evidence that the landscape is valued for recreational activity where experience of the landscape is important' (p.84). As explained by Mr Kirkpatrick the status of the land as community woodland immediately adjacent to the built up area heightens its value. It is also well used as is clear from the significant number of objections to the Essington scheme who cited loss of public open space as a reason for objection. Therefore, quite apart from its community woodland status, this landscape should be protected and enhanced in accordance with paragraph 107(a) NPPF. The Essington scheme fails to do this and it is therefore in breach of that policy. It is no answer to this point that the Essington site is currently the subject of flytipping. The site is managed by the Council and there are patently measures which could be put in place to prevent this activity.

109. **Para 180 of PG's submissions, he states that Dignity will suggest that Broad Lane is a valued landscape whereas SK made no assessment. Mr Kirkpatrick made it clear that he had approached it on the basis of the GLVIA criteria in box 5.1 albeit not in his proof of evidence. PG says this cannot be a submission that they believed. There was no suggestion to SK that he was making it up. If that was going to be made it should have been put to SK so he could answer it, quite improper for it to be made now.**

110. It is accepted that, as an HLA, the Wergs site is a valued landscape for the purposes of para.170(a) NPPF. The policy protection for HLAs in the Local Plan (EQ4) is up to date and consistent with the NPPF. Westerleigh has presented a case to this inquiry that the Wergs scheme engenders harm to the HLA and also to a valued landscape. That harm is not accepted. However, if any harm is found it is clear that in law it cannot be 'double counted' as harm to the HLA under EQ4 and also harm to a valued landscape in the NPPF. The case of *CEG Land Promotions II Ltd v SSHCLG* [2018] EWHC 1799 (Admin) dealt with exactly this point. Mr Justice Ouseley stated at para.53:

'53 However, once a Local Plan policy and the harm arising is given its due weight because of the fullness to which it reflects the obligation in [109] of the Framework to produce such policies, then to give the policy, or the harm under it, greater weight because of the Framework policy, is to use the Framework policy twice over: once to give weight to the Local Plan policy because of the Framework and second to give weight to the Framework whose weight has already been

reflected in the weight given to the Local Plan policy. That would be as irrational as double-counting harm; it is really just a different way of putting the same point and suffers from the same vice.'

Openness

111. Mr Peachey sought to advance an argument at the Inquiry that the Wergs scheme had a materially worse impact upon openness and therefore on the Green Belt than the Essington Scheme. The logic behind this argument is, to say the least, novel. The effect of it, as admitted by Mr Peachey, was to argue that in circumstances where one scheme cuts down 2ha of trees but leaves some around the perimeter to screen the development but another scheme is located on a more open site but plants trees around it, the effect on openness and therefore harm to the green belt is worse on the latter scheme than the former. As put to Mr Peachey in cross examination, the result is perverse.

112. Openness, as stated in Mr Peachey's own proof (para 5.8) is commonly taken to be the absence of built development. The courts have confirmed that visual impact is a relevant factor when considering openness but if openness is the absence of built form then when assessing the visual aspect of it then clearly what one has to assess is the visual impact of the built form. It is worth briefly considering the main cases on this issue. In *Turner v SSCLG* [2016] EWCA Civ 466 the visual impact which the Court was concerned with was a three bedroomed bungalow and the removal of lorries, in *Samuel Smith v North Yorkshire County Council* [2018] EWCA Civ 489¹⁷⁶ it was the visual impact of a quarry extension where the landscaping included built development in the form of a bund and planting.

113. Mr Peachey's argument contends that the planting of trees can harm openness. He admitted in cross examination that he had no policy or legal precedent for his claim. The fact is that the planting of a tree belt along the wall on Holyhead Road is not built development. In fact it will screen built development in the form of the crematorium and also existing built development which sits behind it in the form of Codsall and Wergs Garden Centre, the Heath House Farm buildings cluster and Field Manor¹⁷⁷.

114. In short, Mr Peachey's argument regarding openness is simply unsustainable and deeply unpalatable. Each of the schemes before the SoS will have an impact on openness. This impact is as recorded in the Council/Dignity SOCG which states at paragraph 6.1:

'The Scheme constitutes inappropriate development in the Green Belt and is, by definition, harmful to the Green Belt. The Scheme causes harm to the Green Belt by reason of loss of openness, and infringement of one of the Green Belt purposes, namely safeguarding of the countryside from encroachment. The previous Inspector recorded the Council's acceptance that these two factors (for the purposes of the NPPF) do not add any harm to that caused by reason of inappropriateness (see paragraph 14 of his report). As such, planning permission should not be granted unless very special circumstances exist. Local planning authorities should ensure that substantial weight is given to any harm to the Green Belt.'

Harm to the Purposes of the Green Belt

115. As set out in the evidence of Mr Kirkpatrick, both the Essington and the Wergs scheme will encroach into the countryside. As a crematorium has, by law, to be 200 yards from the nearest dwellinghouse¹⁷⁸ this is hardly surprising.

116. The Essington scheme will however also contravene the first purpose of the green belt 'to check the unrestricted sprawl of large built-up areas' (para 134 NPPF). Mr Peachey states in his proof that the Essington site could subjectively be considered as sprawl (para 5.50). He agreed in cross examination that sprawl is not an objectively defined term in the NPPF, it is necessarily something which is subjective and therefore if subjectively it is sprawl, it must be sprawl. Even on Mr Peachey's own evidence it is therefore clear that the purpose is contravened.

¹⁷⁶ This case is being appealed (with the permission of the Supreme Court) to the Supreme Court, but not with respect to the meaning of "openness").

¹⁷⁷ As marked on photographs I, N and T of Appendix E to SK Proof

¹⁷⁸ Cremation Act 1902, unless written consent is given

117. The evidence of Mr Kirkpatrick is that the contravention of the first purpose in this location is particularly egregious given the sensitive nature of the gap between the built up areas of Bloxwich and Essington. It is clear from, for example, the site location plan at SK figure 5 that there is a defined urban edge to the settlement of Bloxwich. There is then only a 1km gap between Bloxwich and Essington and there are points along Broad Lane from which one can see both settlements. Mr Kirkpatrick describes this as having a strong rural character (a phrase also used by the Council in their OR at CD I4 para 5.3.6). Mr Peachey disagreed. Patently this is a matter for the SoS's judgment. It is true that there has been built development in the gap, but as Mr Kirkpatrick states this merely makes that gap more sensitive to built development in the form of sprawl. Again, this is a matter for the SoS's judgment.

Landscape Impact of Wergs

118. The Wergs scheme has been landscape (as well as heritage) led. It has been thoroughly reviewed through an LVIA and also the evidence provided by Mr Kirkpatrick to the Inquiry. It is clear that the scheme represents a onetime opportunity to enhance the landscape and visual amenity of this area and in particular the HLA. The Council's Landscape Officer's consultation response (on the same scheme in the same location, CD G1) makes this absolutely clear:

"In assessing this application in terms of effects on the landscape, and in particular, the historic landscape, it is necessary to consider the contribution the development will make to the following factors:

- 1. Minimising visual effects and assimilating the development into the landscape;*
- 2. Retaining and enhancing (restoring) parkland elements along with their positive ongoing management;*
- 3. Improving the character and appearance of the Historic Landscape Area;*
- 4. Protecting and enhancing the setting of the listed hall and its associated gardens;*
- 5. Protecting and enhancing key views from public viewpoints;*
- 6. Protecting and enhancing biodiversity interest.*

Having rigorously studied the application documents, I consider this to be an extremely well-conceived proposal that surpasses my expectations against all of the above factors." (Page PPS72)

"The landscape proposals show that a new parkland character will be introduced and I consider this will fulfil two key functions. Firstly, it will ensure there are only glimpsed and/or filtered views of the crematorium building from Holyhead Road and Heath House Lane. There will be no direct views of the building. This will be further reinforced through the sweeping layout of the proposed drive. In many instances, the building will not be visible and the eye will be drawn to the structural landscape elements rather than the building. Secondly, it will strengthen the parkland character of the site, physically linking it to the surviving areas of historic parkland around the hall. This will therefore strengthen the character of the historic landscape beyond the hall and its immediate grounds. It is clear from the submitted historic environment documentation that attempts have been made over time to achieve this (through the planting of the tree avenue and the introduction of field trees; the latter now disappeared)." (Page PPS73)

"The Landscape and Visual Impact Assessment (LVIA)concludes that the development can be accommodated on the site without detriment to the physical landscape, key views or the historic environment. I concur with these findings." (Page PPS74)

119. The Wergs site sits within a denuded landscape. The turf cutting which currently takes place on site has degraded its character and is damaging to the landscape and biodiversity of the site¹⁷⁹. Although the site is relatively open this is largely due to the erosion and loss of certain historic landscape components. As explained by Mr Kirkpatrick (14.1.2 proof) these include the reduction of the boundary wall, the introduction of the vehicular entrance, the loss of the peripheral trees/shrubs and the decline in the condition and structure of the avenue and the covert. As Mr Kirkpatrick states, the development proposal provides for the restoration of these landscape components and will thereby enhance the character of the HLA (para 14.1.2 proof).

¹⁷⁹ Council/Dignity SoCG para 6.16

120. Indeed, even Mr Peachey acknowledged that the Wergs scheme does engender landscape benefits 'in terms of historic landscape restoration' (para 7.11 proof)

121. After the last inquiry, the Inspector found that the character and the historic environment would be enhanced by the proposed development in accordance with EQ3 and EQ4 (IR226 CDS1), the Secretary of state agreed (para 16DL). These findings were not challenged in the High Court proceedings and they ought therefore to be given significant weight.

Westerleigh's criticisms

122. In cross examination Mr Peachey confirmed that he was instructed by Westerleigh to review both the Essington and Wergs sites as part of his evidence. The sole criticisms Mr Peachey raised against Mr Kirkpatrick's assessment and the landscape impacts of the Wergs Scheme can be found at paras 4.21 to 4.31 of his proof. These amount to very minor points on the LVIA, some of which are merely semantics. In terms of substantive criticisms of the Wergs scheme Mr Peachey's comments were limited to:

- a. the Wergs site being more sensitive than the Essington site;
- b. the changes are likely to be greater at Wergs; and
- c. the mitigation strategy at Wergs is more substantial and will enclose view corridors (para 4.36)¹⁸⁰

123. Mr Peachey in fact acknowledged in his proof that Wergs would bring acknowledged benefits in terms of landscape features (para.4.36).

124. Dignity agrees that the Wergs site, sitting within an HLA, is more sensitive than the Essington site. However, with that sensitivity comes the opportunity for significant benefits. These, as set out above, will be delivered by the scheme. The landscape design and mitigation proposals are more substantial, however that is because Essington is failing to mitigate the loss of over 2ha of woodland. There will be changes on both sites. But, in any event, change is not necessarily harmful. Indeed, it may be beneficial, as is the case at Wergs.

125. Mr Peachey confirmed in cross examination that his proof of evidence contained all of the important points on each of the schemes. It is therefore telling that the criticisms of removing some rhododendron from Brick Kiln Covert, the building of a new pond which might be shaded, concerns regarding the pergola and archway and also the grass verge at the entrance to the site were raised for the first time by Mr Peachey in oral evidence and put to Mr Kirkpatrick in cross examination. The fact that these elements were not mentioned in his proof as in any way harmful indicates that they are non-points.

126. Indeed, PG's cross examination of Mr Kirkpatrick alleged that it was inappropriate to insert a crematorium into a parkland landscape. This criticism doesn't appear anywhere in Mr Peachey's proof of evidence. As Mr Kirkpatrick explained, the crematorium together with all of the associated development has been carefully and sensitively designed within the HLA with resultant landscape enhancement. The design is strongly supported by the Council. Although Dignity commends the design in its entirety to the SoS, if there are any concerns with regards to the: management of rhododendron, pond, pergola and archway then these matters can be dealt with by condition.

127. The change of part of the wall to include a grass verge cannot be said to be harmful in landscape terms, and we return to consider this in the heritage section above. The fact that no party to the inquiry, not least Westerleigh, have mentioned it in any of their evidence demonstrates this to be an afterthought.

128. It was also said at the Inquiry that the benefit of ceasing the turf cutting is not so significant if the turf cutting can continue in the area around the site. Dignity disagrees, clearly the prevention of turf cutting within the site is a material benefit of the scheme. However, the landowner of the wider site has now agreed to enter into a section 106 obligation to prevent turf cutting in the future. If the SoS is of the view that this meets the tests in regulation 122 Community Infrastructure Levy Regulations 2010, in particular, that it is necessary to make the scheme acceptable in planning terms then this s106 will bite and the scheme will engender the added benefit of preventing turf cutting over a wider area than just the site.

¹⁸⁰ Mr Peachey also criticised Wergs' impact upon the green belt, these matters are dealt with elsewhere in these closing submissions.

129. Reference to 183 of PG submissions – the new suggestion that turf cutting is not an agricultural activity under 1990 Act. Not a point made in any proof of evidence. There is some law on this we have identified cases which deal with it. We would want the opportunity of dealing with this, it's a horticultural activity and that falls within the definition of agriculture.

130. In landscape terms, the scheme complies with both local and national policy. The landscape benefits of the Wergs scheme are clear, and as per the Inspector's decision in 2017 they ought to be given significant weight.

Other Matters

131. Though not contested by any other party to this Inquiry, we briefly address the Secretary of State on matters of design and biodiversity which weigh in favour of a grant of permission at Wergs.

Design

132. As an uncontested issue at this appeal we spent little time on the design of the Wergs scheme though we unhesitatingly commend it to the SoS. Mr Kirkpatrick in his evidence in chief detailed how he had been involved in the design of the scheme from a landscape perspective. The architects, Howl Associates Ltd, were previously awarded an award by RIBA for their design of the Wyre Forest Crematorium (SK App.H).

133. When asked to consider the scheme against EQ4 which states that Heritage Landscape Areas are designed to protect them from inappropriate development Mr Kirkpatrick stated: *'The objective of EQ4 would be maintained. The thrust of it is to make sure that heritage assets are protected and that is precisely what this scheme achieves by conserving those most important parts of the site. The building is contemporary and high quality - this is not something to be fearful of. It would be well integrated by the gardens and walkways.'*

134. The SoCG with the Council states:

'The contemporary and sympathetic design of the crematorium building and the choice of materials are appropriate for the sensitive, historic location of the Site. The Scheme accords with policies EQ3 (Heritage Assets) and EQ1(Design).'

135. We therefore commend the design of this scheme to the SoS.

Biodiversity

136. That the Wergs scheme will result in biodiversity benefits has not been challenged by any party. The SoCG with the Council records:

'The Council's Landscape officer considered that the new wildflower meadows to be created would result in significant biodiversity interest on the Site where very little currently exists. The Scheme accords with EQ1 of the Development Plan.'

137. The SoS is invited to attach significant weight to this benefit.

Jenny Walker's Lane

138. The site at Jenny Walker's Lane ('JWL') has been put forward at this inquiry by its owner Mr Wilson as an alternative to the Wergs Site. Mr Wilson previously made a planning application for a crematorium at JWM (in 2014) which was refused with both the Wergs and Essington Schemes in 2015. He decided not to appeal that refusal. Since that refusal no further planning application has been made for a crematorium at JWL.

139. Mr Wilson has no experience in operating crematoria. He confirmed in cross examination¹⁸¹ that since 2012 he had approached the following operators: Dignity, Westerleigh, the Co-op, the Council and Horizon to enter into some sort of partnership/agreement with him at JWL. As yet, despite around 7 years of attempts no operator has been found for this site.

140. The need being experienced at both Bushbury and Gornal Wood is being experienced now. The planning situation at JWL clearly indicates that there is no real prospect of a

¹⁸¹ By VH on [DATE]

crematorium coming forward on this site to meet the compelling need which has been identified at those two locations.

141. In 2014 Mr Lathbury of Dignity UK identified two issues with the JWL site from an operator's perspective: access and landscape¹⁸². Those issues remain at the present time. We deal with each one briefly.

142. With regards to landscape, no LVIA was submitted with Mr Wilson's planning application in 2014, nor was there an arboricultural report. Neither types of report have been commissioned for this site since then. As highlighted by Mr Kirkpatrick in his proof, the accommodation of the development on top of the hillspur is heavily reliant upon the existing lines of Leylandii trees. Some of these trees would be lost to the development for the roads and also some site levelling which would be required. The thinning would be likely to have an adverse effect on the trees which remain as a result

of their exposure to wind. Some of the trees are already experiencing crown failure, and this is likely to get worse. The development and cars moving to and from it would be highly visible from a number of surrounding residential properties and publicly accessible viewpoints including from the Monarch's Way. Ultimately, as concluded by Mr Kirkpatrick, the JWL scheme would conflict with relevant policies including NPPF para 170, CP2 and EQ4 together with Core Strategy Objectives 12, 14 and 15.

143. With regards to access, in 2014 the Highways Authority ('HA') did not object to the scheme at JWL but this was on the condition that the development would not be commenced until details of the 2.4m x 120m visibility splays had been submitted and approved and would thereafter be maintained.¹⁸³ The reason for that condition, as explained by Mr Tucker, is that the relevant stopping distance for a 40mph road is 120m and therefore that length of visibility splay is required. Mr Wilson's TA¹⁸⁴ as submitted with his application itself stated that only a 103m visibility splay could be achieved at the northern access (see para 2.9). Mr Tucker has assessed the JWL site for the purposes of this inquiry and has found that, in fact, neither of the proposed accesses for the 2014 scheme could provide a 120m visibility splay.¹⁸⁵ At the northern access, 120m can only be achieved to the north if 90m of hedge which is outside Mr Wilson's ownership was to be removed. At the southern exit, the relevant visibility splay is restricted to c98m due to the vertical alignment of the road. As Mr Tucker stated in his evidence in chief, this is a 'real issue' as it is not a question of simply removing vegetation but concerns the alignment of the road itself.

144. Mr Tucker has also highlighted that there would be a need for a right hand turn lane into the site. There is no evidence that this could be achieved at JWL.

145. In his cross examination of Mr Tucker¹⁸⁶ Mr Wilson relied upon the fact that there were five entrances and exits available at his site and that it had hosted a significant number of vehicles for his events at the site. However, there is no assessment of any of those exits before this Inquiry. The only two relied upon as part of the planning application are patently unsafe and inadequate. In the absence of any evidence of a potential safe alternative there can be no confidence that JWL is a viable alternative from a highways perspective.

Highways matters at Wergs

146. In his representations and oral submissions Mr Wilson made a number of criticisms of highways matters at the Wergs site. These were:

- a. the accuracy of traffic counts on the A41;
- b. whether a right hand turn lane could be accommodated; and
- c. the fact that inadequate parking was provided for.

147. The Transport Assessment ('TA') to Dignity's application fully answers these points. The right hand lane is shown at appendix E to TA CD F12. As stated by Mr Tucker in his evidence he reviewed this document and was satisfied that it was robust. The document has also been

¹⁸² Article at Addendum 8 to Mr Wilson Submission 'Items from Lathbury'

¹⁸³ ID 11

¹⁸⁴ ID 10

¹⁸⁵ Para 7.9 ST proof of evidence and plan at appendix B

¹⁸⁶ 22 January 2019

reviewed by the HA who clearly have no concerns as demonstrated by their lack of objection to the scheme.

148. The traffic counts are at table 3.2 in the TA (CD F12). As stated by Mr Tucker those counts were repeated in 2016 and also 2018 and found to be robust. In his submission to the inquiry Mr Wilson claimed to have done a traffic count of his own, however evidence of this has never been provided.

149. With regards to parking, Mr Wilson claimed that over 600 parking spaces were needed for a crematorium in this area¹⁸⁷, no evidence policy or guidance has been given for this figure nor any opinion from a professional highways expert. The reality of this view is neatly refuted by the application made at JWL by Mr Wilson's consultants who themselves proposed 78 parking spaces for the scheme¹⁸⁸, that is two fewer spaces than the 80 proposed at Wergs. The figure of 80 spaces is supported by Dignity's own experience of being the operator of 46 crematoria across the country and their own data has been relied upon in arriving at this number of spaces (see paras 5.3-5.17 of the TA at CD F12).

150. Cllr Allen from Perton Parish Council submitted a report to the Inquiry.¹⁸⁹ On 22 January 2019 Cllr Allen clarified that she was not speaking for the Parish Council as they had not had a chance to discuss their position. Mr Tucker addressed the report in his evidence in chief. He explained that the report looked at the safety of the walking route from Perton to Codsall High School. The report does not seek to assess the impact of the Wergs site and in fact there is no direct relationship between the assessment made in the report and the Wergs proposal. Mr Tucker highlighted that in the morning peak hour the Wergs scheme wouldn't generate any traffic at all and in the evening, in the context of the flows on that road, the trips generated by the

Wergs scheme would be a very small proportion. He stated that ultimately although the report was interesting background it did not go to the acceptability of the Wergs scheme. That view was not challenged by any party to the Inquiry.

151. I hadn't sought to deal with the issue of transport and accessibility as against Essington site because you will recall that I asked Mr Bateman about this in his evidence. Paragraphs 185-190 PG, it is being suggested now by PG that there is an accessibility issue with the Wergs site. First, there was no XX of Mr Tucker by PG in relation to that. He didn't have any opportunity of answering these points. Secondly, it wasn't advanced by a single witness of Westerleigh. To the contrary I asked Mr Bateman and he expressly told you he wasn't making any points about the accessibility of one site in relation to the either. It is therefore thirdly conspicuously unfair and if any reliance is made on them it would be unfair to Dignity. It is wholly improper for submissions to be made which don't reflect the evidence or one's own client's case. The submissions at para 190 says that the SoS in the previous appeal concluded that the accessibility and capacity benefits of the Broad Lane site were superior. That is a travesty of the truth. First, in so far as it is being suggested that you should take account of the capacity benefits, the capacity benefits identified by the SoS in his decision was the first served point, one which on any basis doesn't exist in least in Westerleigh's favour. Second, in relation to accessibility para 15 makes it clear that the SoS considered it a neutral consideration. 191 PG goes on to say that the factors which led the SoS to form this conclusion that is manifestly wrong. The first served point is not run by Westerleigh it is run by Dignity. So far as accessibility is concerned it was neutral and both parties have accepted that.

Other Alternative Sites

152. A sequential site assessment was undertaken by Dignity and submitted with the 2014 planning application (CD F8). As recorded in the statement of common ground with the Council, the Council does not dispute the conclusions of that survey. The position of a lack of alternative sites was confirmed by Mr Lathbury and Mr Downes in their evidence before this Inquiry. Noting the issues with JWL as identified above, it can be said that there is no suitable alternative

¹⁸⁷ Statement of William Art Wilson on Wergs, first page (e)

¹⁸⁸ Green Belt Policy Design and Access Statement (Sept 2014) at the back of Mr Wilson's inquiry statement

¹⁸⁹ ID 01

crematorium site to deal with the acute need which is being experienced at both Gornal Wood and Bushbury.

Planning Balance

153. The Wergs proposal accords with all relevant development plan policies. In particular, it complies with GB1 which is a permissive policy which identifies certain types of development which are acceptable in the Green Belt. This was the only policy identified in the Council's reason for refusal.

154. Specifically, the Wergs scheme fully complies with heritage policies (CP1, CP2 and EQ3), natural assets policies (CP2, EQ1, CP3, EQ3 and EQ4), community facilities policies (CP10 and EV9) and public space policies (CP14 and Policy HWB2). The policy support for the various environmental and social benefits provided by this scheme should be given significant weight.

155. This scheme also complies with all material parts of national policy. There are material considerations which clearly outweigh harm to the Green Belt by reason of inappropriateness and any other harm. The need to relieve either Bushbury or Gornal Wood is sufficiently weighty so as to amount to VSCs. The fact that this scheme relieves both therefore weighs overwhelmingly in its favour. The NPPF also provides significant policy support for (a) heritage benefits (cf paragraphs 192, 193 and 200) (b) landscape benefits (cf paragraphs 127(c), 141 and 170(a)), (c) biodiversity benefits (cf paragraph 175(d)) (d) the provision of open space (cf paragraphs 83(d), 92(a) and 98).

156. The scheme represents sustainable development bringing with it a host of economic social and environmental benefits. These are set out at paras 7.50-7.59 of Mr Downes' p/e.

157. Even if, which is not accepted, Mrs Stoten is correct in alleging that the Wergs scheme would engender harm then paragraph 196 NPPF applies and that (minimal) harm should be weighed against the public benefits of the proposal including, where appropriate, its optimum viable use. The public benefits offered by Wergs are myriad and are set out above. Therefore, even if the development was considered neutral or even harmful in heritage terms, the planning balance still falls heavily in favour of a grant of permission.

158. Turning to the Essington scheme, though a facility in this location would relieve Bushbury it does not materially relieve any other crematorium at which a need is being experienced through its overtrading. On the contrary, on Westerleigh's case, it would serve to relieve one over-trading crematorium with another. Further, the scheme through its felling of over 2ha of community woodland and also building upon an area of open space breaches a number of local and national policies. In particular: core strategy objectives 12 and 15, core policy 14, HWB1, HWB2 and EQ4. Further NPPF 97 is engaged and clearly breached. We set out this policy in para.91 above. Unlike paragraph 196 NPPF it does not allow for a balance to be conducted but is absolute. The Government is of the firm view that open space should not be built on except in limited circumstances. None of those circumstances apply here and therefore permission ought to be withheld.

Conclusion

159. The case for granting planning permission for a crematorium at Wergs is compelling. There is a clear and unchallenged need to relieve pressures at both Bushbury and Gornal Wood. Only Wergs can do this. There is no credible alternative site, including both Essington and Jenny Walker's Lane. The relief of need at these two locations easily amount to VSCs. The scheme also offers a host of environmental benefits including heritage, landscape, biodiversity and public access. Significant weight is to be given to these.

160. Though Essington would relieve Bushbury to an extent, it offers no other material circumstances which are sufficiently weighty so as to amount to VSCs. To the contrary, the scheme breaches numerous open space and community forest policies (both local and national). Further, even if Essington were granted permission there would remain a need to relieve Gornal Wood. As such, the need for the Wergs scheme would remain and permission ought to be granted irrespective of a grant of permission at Essington.

161. The decision, we submit is clear and incontrovertible. Permission ought to be granted at Wergs.

CLOSING SUBMISSIONS ON BEHALF OF WESTERLEIGH (APPEAL B)

INTRODUCTION

1. Westerleigh Group Ltd ("the Appellant") seeks full planning permission for the erection of a crematorium with ancillary book of remembrance building, floral tribute area, memorial areas, garden of remembrance and associated parking and infrastructure on land at Broad Lane, Essington.
2. This represents the third inquiry that has commenced for this site at Broad Lane. Its merits have been tested and considered previously and were found by the Secretary of State to not only warrant the grant of planning permission, contrary to South Staffordshire District Council's ("the Council") position of refusal, but also to be preferable to the other site considered at this appeal at Wergs, Codsall, as advanced by Dignity Group Ltd ("Dignity").

Background

3. Following public consultation and pre-application meetings, the Broad Lane application to which this appeal relates was submitted on 4th November 2014.
4. Objections were only raised by Essington Parish Council, on Green Belt grounds, and Walsall Council, who operate the facility at Streetly, on concerns regarding the use of open space and on the basis that there already existed sufficient capacity to meet the quantitative and qualitative needs of the area. An argument that there exists sufficient crematoria capacity in the area is not advanced by any party to this appeal, the contrary position is now accepted common ground.
5. The application was considered by the Council's Regulatory Committee on 17th March 2015¹⁹⁰, with a recommendation to refuse permission for two reasons. Council members resolved to refuse permission and added a third reason, in relation to protected species, in its decision notice of 20th March 2015¹⁹¹. This third reason for refusal was not maintained.
6. As such the Council's reasons for refusal of Westerleigh's application are:
 - i. The proposal constitutes inappropriate development within the Green Belt and does not accord with Policy GB1 of the adopted Core Strategy or paragraph 89 (NPPF 2012). Very Special Circumstances have been put forward, but these do not overcome the automatic harm to the Green Belt by way of inappropriateness; therefore, the proposal is contrary to the Development Plan and the NPPF.*
 - ii. The proposal would not maintain the openness of the Green Belt, contrary to paragraph 79 of the NPPF (NPPF 2012). In addition, it would conflict with two of the five purposes of the Green Belt, as set out in paragraph 80 of the NPPF (NPPF 2012); namely it would not check the unrestricted sprawl of a large built up area or assist in safeguarding the countryside from encroachment.*
7. The appeal was part-heard in May 2016, but was adjourned so that it could be heard in conjunction with the Wergs appeal, both subsequently heard in March 2017. The Secretary of State recovered both appeals and decisions were issued on 6th November 2017¹⁹². Permission was granted for Broad Lane and refused for Wergs. The decisions were challenged by Dignity and were ultimately quashed by consent order dated 23rd March 2018¹⁹³.

¹⁹⁰ CD I4

¹⁹¹ CD I7

¹⁹² CD S1

¹⁹³ CD T3

8. At this, the third inquiry, the Broad Lane proposal faces the two original reasons for refusal as set out above, relating to Green Belt policy, both national in the form of the NPPF and local in the form of policy GB1 of the adopted South Staffordshire Core Strategy (2012)¹⁹⁴.

KEY ISSUES

9. On day 1 of the inquiry, the inspector set out the following as being the key issues in the appeal:

Affecting both appeals:

- 1) *Whether the benefits of the proposals clearly outweigh any harm to the Green Belt so as to amount to the 'very special circumstances' necessary to justify the proposal;*
- 2) *The implications of rebalancing;*
- 3) *The Secretary of State had previously and incorrectly thought that parties had agreed there was the need for only one crematorium, what is the position now;*
- 4) *The current development plan position;*
- 5) *The status of development plan policies following the revised NPPF;*
- 6) *Evidence in relation to the weight that the Secretary of State should give to the different factors outlined and why.*

Affecting Dignity's proposal only:

- 7) *The impacts on landscape and heritage matters;*

Affecting Westerleigh's proposal only:

- 8) *The impacts on species.*

PLANNING

Development Plan Policy

10. Only policy GB1 of the South Staffordshire District Local Plan Core Strategy (2012)¹⁹⁵ was cited against the application in the reasons for refusal.

11. The Appellant does not dispute that in accordance with s.38(6) of the Planning and Compulsory Purchase Act 2004, this appeal is to be determined in accordance with the development plan, unless material considerations indicate otherwise.

12. Whilst Policy GB1 permits cemeteries (see GB1 A)b)), crematoria are not mentioned and as such the proposals cannot rely on the policy to support the development. However, this is a policy that is only permissive in its detail, it does not preclude other forms of development from coming forward, including crematoria.

13. The Broad Lane proposals are not in conflict with policy GB1 and as such do not conflict with the only policy in the development plan cited in the reasons for refusal. The Council's own planning witness Mr Johnson on day 6 of the inquiry confirmed during cross examination, that policy GB1 is "neutral" in relation to the proposal. It neither supports nor gives rise to conflict with the proposals.

¹⁹⁴ CD A1 page 74

¹⁹⁵ CD A1 page 73

Green Belt

14. Since the previous inquiry, the new National Planning Policy Framework ("NPPF") (hereafter referred to as "NPPF 2018") was published on 24th July 2018¹⁹⁶.
15. The Appellant accepts that in the context of the previous NPPF (NPPF 2012), the proposals constituted inappropriate development within the Green Belt. Green Belt policy within NPPF 2018 has been reordered and renumbered, but the fundamental policy has not changed.
16. Paragraphs 79 and 80 of NPPF 2012, as cited in the second reason for refusal, have been transposed in their previous form into the new NPPF at paragraphs 133 and 134.
17. Inappropriate development is harmful to the Green Belt¹⁹⁷ and it should not be approved except in very special circumstances, these being such that any harm is clearly outweighed by other considerations¹⁹⁸. These tests remain the same in NPPF 2018 as they were under NPPF 2012 and as considered at the previous appeal.
18. Whilst the appeal site at Broad Lane is within the Green Belt and is accepted as inappropriate development within it¹⁹⁹, consideration must be had to the amenity value that it is currently providing and therefore what exactly would be lost if the appeal and the proposed development were to be allowed.
19. The Broad Lane site can accurately be described as self-contained, overgrown and is littered with a significant amount of fly-tipping debris in various locations, as detailed throughout the inquiry and witnessed on the site visit. Its current contribution towards 'openness' is questionable.
20. The condition of the Broad Lane appeal site must be compared with that of the extant position of the Wergs site, which by contrast is very open and somewhat picturesque. The two sites could not visually appear more different and exist at either ends of the appearance spectrum.
21. The openness of Green Belts is one of their essential characteristics²⁰⁰. 'Openness' itself is not however defined within the NPPF 2018 but it is accepted as relating to a spatial designation and "an absence of development".
22. However, the presence or absence of built development is not the only consideration of openness. The cases of *Turner*²⁰¹ and *Samuel Smith*²⁰² confirm that openness is not just concerned with spatial dimension but also the visual dimension.
23. Mr Peachey's evidence to the inquiry is that the Broad Lane appeal site benefits from strong and effective visual containment and the proposals positively address the spatial and visual dimensions of openness of the Green Belt. The same cannot be said of the Wergs appeal site, with a mitigation and design approach that does not align with the openness of that site.
24. It is accepted that harm to the purposes of the Green Belt need to be considered. One of the purposes of the Green Belt is the prevention of urban sprawl²⁰³. The suggestion by Mr

¹⁹⁶ CD B9

¹⁹⁷ NPPF 2018 paragraph 143

¹⁹⁸ NPPF 2018 paragraph 144

¹⁹⁹ Mr Bateman's proof of evidence at page 59, paragraph 10.2.

²⁰⁰ NPPF 2018 paragraph 133

²⁰¹ *Turner v SSCLG* (2016) EWCA Civ 466, CD V2

²⁰² *Samuel Smith v North Yorkshire County Council (NYCC)* EWCA Civ 489, CD V3

²⁰³ NPPF 2018 paragraph 134 a)

Kirkpatrick²⁰⁴ and which will no doubt be advanced by Dignity in closing, is that the Broad Lane development will introduce sprawl into the area between Bloxwich and Springhill.

25. This suggestion is entirely unfounded and when pushed in cross examination on the point, Mr Kirkpatrick stated that the coalescence of the two settlements would be caused by the presence of new signage and road widening only. He was unable to assist the inquiry, despite repeated opportunity being given, with a location at which one should stand to appreciate this alleged sprawl, eventually stating that one should just "travel along the road". He accepted there would be no views of the crematorium, only changes introduced to the road character.

26. Mr Kirkpatrick accepted in cross examination that you would not know either what was there or indeed how far away it was. There would not be sprawl at the Broad Lane site.

27. Mr Johnson, the Council's planning witness²⁰⁵ put the final nail in the coffin of this argument when he confirmed that he did not agree that the Broad Lane proposals would constitute sprawl. Whilst this may be the case if the proposals were of a housing nature, he confirmed that for a crematorium proposal such as this, it would not represent sprawl.

The Planning Balance

28. Both proposals represent inappropriate development within the Green Belt, something to which substantial weight should be afforded against both proposals in the planning balance.

29. The Broad Lane proposals, given the provision of a bespoke viewing room, provision of coach parking and increased capacity, that provides seating for 112 and standing room for more than double that number is a real benefit for the Sikh and Hindu communities, where the turnout is often considerably higher than other faith ceremonies. The Wergs proposals by contrast allow for seating of just 78 people, offers no coach parking or viewing gallery and these must therefore be viewed as real benefits of the Broad Lane proposals over those at Wergs, to which significant weight must be attached.

30. These differences are both significant and material if proper regard is to be had to the public sector equality duty contained in section 149 of the Equality Act 2010. Although this was in force at the time of the previous public inquiry²⁰⁶ it neither seemed to have been considered or appreciated by the Inspector or the Secretary of State. It is respectfully submitted that it is only the Broad Lane proposal that properly fulfils this duty in circumstances where people of Hindu and Sikh faiths account for 5.21% of the Essington catchment area compared to a national average of 2.06%²⁰⁷.

31. There is no indication that there has been an equality impact assessment carried out by the Council. The officer's report to committee in respect of the Wergs proposal²⁰⁸ is silent on the point. It is submitted that there is a need, in making this decision on these appeals, to have specific regard to the impact on groups with protected characteristics (in this case the religion and beliefs, particularly of the Sikh and Hindu communities) of the need to provide proper and adequate facilities for viewing the process of cremation in order to discharge the section 149 duty.

32. In particular, in taking this decision, the Secretary of State must "...have due regard to the need to--

(a) *eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*

²⁰⁴ Examination in chief on day 3

²⁰⁵ Cross examination on day 6

²⁰⁶ This statutory duty came into force on 5 April 2011

²⁰⁷ See the Westerleigh updated need report (AB App1) at paragraphs 2.52 to 2.57 and 4.60 to 4.65

²⁰⁸ CD H1

- (b) *advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
(c) *foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*²⁰⁹

33. In addition, *"Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to--*

- (a) *remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;*
(b) *take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;...*²¹⁰

34. Mr Wilson attested to the benefit of increased capacity on day 1 of the inquiry with his evidence regarding the recent cremation of an eminent local man, Dr Lal, and the significant number of mourners that attended his service.

Sustainable Development

35. Mr Bateman's evidence to this inquiry²¹¹ is that the Broad Lane appeal site constitutes sustainable development across all three objectives within paragraph 8 of the NPPF 2018.

36. Economically, jobs would be provided in both the initial construction phase of the development and then on into the long term, throughout the operational running of the facility. This is not the case of a housing development where criticism is often levelled that jobs created are transient only. Here, not only are construction jobs created, but once built, an enterprise remains that needs to be staffed. It is also likely that visitors of the crematorium will bring disposable income to the local area, benefitting local shops and businesses.

37. Socially, the facility would provide a necessary public service, relieving pressure elsewhere within the crematoria system and delivering the modern facilities needed by both the population of today and the growing population into the future.

38. Whilst environmentally the proposals will introduce change to the site, its present condition must be taken into account. Evidence from Mr Peachey detailed how landscape benefits at Broad Lane could arise in respect of improved woodland management and species diversity.

NEED

39. Both Appellants to this inquiry, the previous Inspector²¹² and the Secretary of State all agree that there is need for a new crematorium in the Green Belt in South Staffordshire. Mr Johnson²¹³ reinforced this by his repeated reference to this need, specifically from Bushbury, as being *"chronic"*.

40. This need provides the 'very special circumstances' that are required under Green Belt National Policy²¹⁴, to allow what is otherwise inappropriate development within the Green Belt. We are now over four years since that application was made and in that time the need for more crematoria capacity in the area has only increased.

²⁰⁹ Section 149(1)

²¹⁰ Section 149(3)

²¹¹ Proof of Evidence pages 59 and 60

²¹² CD S2, Inspector Braithwaite's report IR 215-219

²¹³ Examination in Chief Day 6

²¹⁴ NPPF 2018 paragraph 143

41. A Statement of Common Ground ("SOCG"), agreed between Mr Bateman and Mr Best, on Need and Rebalancing confirms that need for additional crematoria can be expressed in terms of both 'quantitative' and 'qualitative' considerations.

Quantitative

42. The sites at Broad Lane and Wergs were incorrectly considered in the previous inquiry in a 'head to head' battle for one permission. The Broad Lane site caters for the North and East of Wolverhampton and Wergs is better suited to the West. This 'single site' was not a restriction advanced by either party, however the Secretary of State favoured the Westerleigh site at Broad Lane in this scenario, partly on the grounds of capacity.

43. Whilst it is likely to be Dignity's argument that the very recent permission at Cannock²¹⁵ now does away with the need for the site at Broad Lane and tips the balance to Wergs, this is not so.

44. When considering current and future need, both proposals could be legitimately granted permission now. As noted above, they serve different catchment areas. There is a clear crematoria capacity deficit in the area, confirmed by all sides, with all but one existing crematoria operating above their practical capacity²¹⁶ and some over their core capacity. There exists a real need now.

45. This need is accepted as increasing with the progression of time as death rates are set to rise. Different in this current inquiry to the last is the agreed increase in death rates, set out in the 2016 based SNPP. At the previous inquiry these were considered to be decreasing. The need that exists now, will only grow in the future.

46. The presence of suitable and available sites in the Green Belt in this area is very limited. The inspector asked all relevant witnesses about the prospects of finding alternative sites if both were dismissed at this appeal. The response back was consistent and that it would be highly difficult and unlikely that alternative sites could be found.

47. Before the Secretary of State now are two sites, both benefitting from extensive investment already. This does not need another 'single site shoot out' scenario. Granting permission for both sites would 'future proof' the crematoria provision in the area, against an accepted increasing need.

48. Curiously, at this inquiry Mr Best contended²¹⁷ that it is Dignity's case that Bushbury was trading at a practical capacity of 94%. At the previous inquiry, his colleague then giving evidence on behalf of Dignity, Mr Burley, advanced an equivalent figure of 96%²¹⁸.

49. Mr Best accepted that cremation and death rates had increased since that previous inquiry, yet his figure has dropped. This cannot be correct and raises questions regarding the credibility of the Dignity information.

50. Conversely, at the previous inquiry Westerleigh advanced a figure for Bushbury of 115%, which is agreed as having been accepted by the Inspector and Secretary of State²¹⁹, in line with this and the rise in cremations and deaths since then, Westerleigh's figure for this inquiry has increased to 116%²²⁰. It is submitted that Westerleigh's approach is clearly and demonstrably to be preferred.

²¹⁵ Decision letter dated 22nd January 2019 and ID 17

²¹⁶ Accepted to be 80% of core capacity. ID 15, paragraph 4 bullet 4

²¹⁷ Examination in chief on Day 5

²¹⁸ Agreed by Mr Best in cross examination on Day 5

²¹⁹ CD S2 Secretary of State paragraph 12 and Inspector's report at IR 215

²²⁰ PofE of Mr McArdle, Appendix 1 to Proof of Evidence of Mr Bateman, page 17 para 4.40 table 3

Newly served population

51. The argument is that the Wergs site can cater for a larger newly served population than Broad Lane. However, on their own evidence before the inquiry, highlighted by Mr McArdle on day 4's roundtable discussion, the proof of evidence of Mr Best details a newly served area that had only 51 cremations in 2017²²¹, confirmed as being over a year period. The inspector himself questioned whether this therefore was a point of significance.

52. Mr McArdle's evidence to the inquiry²²² was that unless the newly served figure is over 50,000, it is not considered in the industry to be a significant benefit. The inspector and Secretary of State previously in this relation to this matter, similarly, did not find any significance in relation to the newly served figures²²³.

53. In relation to the newly served population of the Broad Lane proposal, the very recent permission at Cannock results in the related figure reducing to zero. This change was accepted early on in the inquiry by the Appellant and whilst the previous figure was included within the Updated Needs Report²²⁴, no weight (because it was lower than 50,000) was attached to this by Mr McArdle. Mr Bateman's proof of evidence made no reference to it. It is respectfully submitted that no weight should be applied to this factor in the determination of these appeals.

Catchment areas

54. There is a fundamental issue with the catchment maps produced by Mr Tucker. The CACI data that Mr Best relies on for his population areas and numbers are based on catchment maps drawn by Mr Tucker and then provided to CACI²²⁵ to obtain population data.

55. Mr Best in examination in chief²²⁶ referred to the six key catchments areas as being: Bushbury, Streetly, Stafford, Gornal Wood, Telford and Lichfield.

56. However, Mr Tucker in his catchment maps starting at Figure 1.1 fails to take account of two other extremely busy existing crematoria in the area, Sutton Coldfield and West Bromwich, both of which lie within the catchment areas he had identified as being served by other crematoria. Mr Best's proof of evidence²²⁷ also completely ignores their existence as one of the 'existing crematoria within the North West Midlands Area', which is clearly incorrect. Mr Tucker accepted²²⁸ that failure to take account of these two existing crematoria meant that his catchment areas and the populations derived from them, were inaccurate and would have to change if these two crematoria were to be factored in.

57. As the CACI information on catchment populations is based on the catchment areas, inaccurately drawn by Mr Tucker, any numbers arising from them, through no fault of CACI, which works on the inputs it is given, must also be inaccurate. As such, there can be no reliance on the numbers produced that are based on Mr Tucker's maps. These are the exact figures relied on by Mr Best for his work on quantitative need.

58. Mr Tucker stated²²⁹ that he had in fact produced the catchment maps that included Sutton Coldfield and that they showed what he thought, that it made no significant difference to the catchment area populations Dignity were concerned with. If this was the case and such supporting evidence was produced, logic follows it would have been presented to the inquiry.

²²¹ PofE of Mr Best, page 51, para 10.8

²²² Examination in chief on day 5

²²³ CD S2, Inspector's report at IR 221

²²⁴ PofE Mr Bateman appendix 1

²²⁵ PofE Mr Best page 43 para 9.4

²²⁶ Day 5

²²⁷ PofE Mr Best, page 15, table 5.1

²²⁸ Cross examination day 4

²²⁹ Cross examination day 4

59. If it didn't alter the outcome, at the least it would have shielded Mr Tucker from the very criticism rightly levelled at him. The maps he referred to were never put before the inquiry and as such are curious by their absence. The maps he puts before the inquiry are not complete and are inaccurate.

60. By contrast, the maps of Mr McArdle and in particular appendix 6 to his updated needs report²³⁰ does include all existing crematoria in the area. The catchment areas it produces are as such more accurate than Mr Tucker's (being independently produced by CACI), are not manipulated and so should be the ones to be relied upon.

61. Support for the accuracy of the CACI data relied on by Westerleigh can be found in the diversion rates from Telford to Wergs. The CACI data advanced by Westerleigh gives a figure of 220 diversions. At the last inquiry, Mr Lathbury, utilising actual cremation data available gave an equivalent figure of 209, remarkably similar. The increase in the period from then to now can be explained by and attributed to the accepted rise in death and cremation rates.

62. The suggestion by both Mr Best and Mr Tucker that the inclusion of West Bromwich and Sutton Coldfield would not be significant somewhat fell apart on day 5 of the inquiry, when under cross examination of Mr Best, it became clear, and was not challenged, that there were 5,042 cremations, of the 15,815²³¹ total current cremations in the area in 2017, that were unaccounted for by the six crematoria included by Dignity.

63. The missing cremations must fall to be allocated to the other crematoria within the total area, i.e. including West Bromwich and Sutton Coldfield. This unaccounted for cremations number represents nearly a third of total cremations in the area and cannot be considered therefore or dismissed as Dignity do as being merely 'insignificant'.

64. Mr Tucker attempted to salvage his map inaccuracies by producing his overlay map²³² on day 5 of the inquiry. This plotted the postcodes of all cremations for people cremated at Lichfield in 2017 onto his existing figure 1.1. This still failed to include any equivalent information for Sutton Coldfield cremations and still completely ignored West Bromwich crematorium.

65. The development at Broad Lane, if allowed, would simply be able to serve a wider catchment area population of 490,843 people, than that possible by Wergs' 244,426 people²³³, nearly double the amount. This is an unchallenged fact put to the inquiry. In addition, the overlap with the Bushbury catchment area at Broad Lane is 254,883²³⁴ in contrast to the overlap with Wergs of 176,861 people²³⁵. Broad Lane would be the nearest accessible crematorium for over 230,000 people, significantly in excess of the 150,000 cited in other appeals²³⁶. By contrast the figure for Wergs is less than half the amount, at 113,000.

66. Whilst grant of permission for both crematoria can be justified, should only one be permitted, this must surely be the one capable of catering for the largest population. This is Broad Lane by a considerable distance.

67. The Dignity case against Broad Lane advanced on day 5 of the inquiry hung its hat on the argument that when divergence from existing crematoria was factored in, Essington if allowed, would be immediately 'overtrading' above its practical capacity and as such would be unable to assist other crematoria and relieve the capacity deficit.

²³⁰ Appendix 6 to Updated Needs Assessment of Mr McArdle, appendix 1 PofE Mr Bateman

²³¹ PofE of Mr Best, appendix table 10.9 showed 15,815 total in the area and table 7.1 shows 10,773 across the six 'significant' crematoria.

²³² ID 16

²³³ Mr McArdle Undated Needs Report page 22 para 5.9, Appendix 1 to PofE Mr Bateman

²³⁴ Bateman proof Table 15, page 41

²³⁵ Bateman proof, Table 20 p 54

²³⁶ Updated Needs Report Mr McArdle page 12, paras 3.10-3.13. PofE Mr Bateman, appendix 1

68. This argument is flawed and has numerous holes in it. Firstly, it ignores the fact that existing demand is what will fill up Essington, removing that demand from other crematoria. Secondly, it ignores the impact of the recently approved Cannock scheme, which itself will assist in relieving existing pressure. Thirdly, it ignores the impact of natural rebalancing that will occur amongst the crematoria network in the area when any excess capacity is utilised at another. Finally, it ignores the evidence and experience of Mr McArdle who confirmed²³⁷, and which was not challenged, that new and modern crematoria, because of their design, can operate effectively at above the 80% practical capacity threshold.

69. More importantly and a somewhat own goal, is that this argument only serves to highlight just how big a quantitative need there is in the area for crematoria capacity and how big a need specifically there is in the area of the proposed Broad Lane site. The fact that on their own evidence the Wergs site would not be operating at practical capacity is suggestive that it is in either the wrong location or at the least not in the most effective location for addressing the existing need.

70. When Mr Best considered the diversion numbers from existing crematoria in the primary catchment areas to Wergs or Essington from Bushbury, the result was 596 to Wergs and 1,086 to Essington²³⁸. Mr Best did not like this answer produced and proceeded to overlay two further assumptions on top of the result that more cremations would divert from Bushbury, accepted as being the existing crematoria in the most need of relief, to Essington than Wergs.

Core Slots

71. The capacity of crematoria is dependant on the number of core slots that it has. There is a small difference between the parties in relation to this. It is Westerleigh's case that core slots commence between the hours of 10:30 and 15:00, inclusive²³⁹.

72. Dignity propose core slots as being those that commence between the hours of 10:00 and 16:00, inclusive²⁴⁰.

73. The effect of increasing the number of core slots, by widening the 'core hours', is to reduce the trading level of the existing crematoria. The result of the differences between the appellants in relation to core slots is that in respect of Bushbury, Streetly, Stafford, Gornal Wood and Telford, Dignity show more core slots available than Westerleigh²⁴¹. Showing more core slots, as Dignity do, reduces the apparent current need at existing crematoria and so the benefit that can be provided by a new crematoria. This approach by Mr Best also results in his capacity figures for Bushbury and Streetly being exacerbated, due to them being multi-chapel sites.

74. Whilst Dignity propose six, hourly slots for the Wergs scheme, Westerleigh proposes seven, 45 minute slots for Broad Lane. The increased service length at Wergs should not be seen as a benefit above that on offer at Broad Lane.

75. 40-45 minute slot lengths are stated as being the desired minimum for the industry²⁴² and evidence from Mr McArdle²⁴³, which as not disputed, is that there is no difference in chapel time between a 45 minute slot and a one hour slot. One hour slots are operated by those crematoria with lowers levels of demand.²⁴⁴ There is no discernible benefit of one hour slots above 45 minute slots when services are carried out within a modern crematoria design and facility, as such no weight should be attached to this difference.

²³⁷ Cross examination on day 5

²³⁸ PofE Mr Best tables 10.3 and 10.9

²³⁹ ID 15 para 4 bullet 3

²⁴⁰ ID 15 para 4 bullet 3

²⁴¹ ID 15 page 6, table and PofE Mr Best appendix JB 17 and Mr McArdle's Updated Needs Assessment

²⁴² PofE Mr Best, Appendix JB 1, Charter Targets, para 3 e)

²⁴³ Cross examination on day 5

²⁴⁴ Mr McArdle, day 4 roundtable

Fringe areas

76. A further step taken by Mr Best is to include an additional population allowance for 'fringe areas'. This inclusion, by Mr Best only, relates to areas that are outside of the primary catchment areas of either the Wergs or Broad Lane sites, but which fall within a constrained 12.9 minute drive time of another crematorium's primary catchment area.

77. Mr Best's catchment calculations assume that 50% of the population within this 'fringe area' will choose to attend one of the new crematoria, despite it not being their closest. He then adds this additional 50% of the fringe area population onto the primary catchment populations for Wergs or Essington.

78. The effect of this step is to increase the diversion numbers to both the Wergs and Essington sites, firstly showing Wergs to be more valuable in catering for a higher population and secondly to argue that as a result Essington would be 'overtrading', above its 80% practical capacity.

79. Mr Best confirmed²⁴⁵ that his adopted approach was not supported by any guidance nor had it ever been tested let alone supported by any inspector or Secretary of State decision. This is an entirely new methodology, introduced for the first time at this inquiry by Mr Best, it was not raised at the previous inquiry. Mr Best confirmed that the 50% figure that he utilises was created by him and is not justified by or derived from any source.

80. Mr Best's justification for this step was that the qualitative benefits of either the Wergs or Broad Lane proposals, if allowed, over those on offer at existing crematoria would draw an amount of the catchment population of those existing crematoria away from what might be their closer crematoria, to the new facility(ies).

81. Mr McArdle referred to this²⁴⁶ as the 'qualitative gain' and whilst he recognised the idea, he was clear that there was no industry justification for its use and that it had not been demonstrated consistently by any of the new crematoria opened by Westerleigh in the recent past, the operations and performance of which he had examined in detail.

82. Furthermore, despite not being justified or supported by any guidance, this approach by Mr Best fails to take account of two important factors. Firstly, it is agreed that the capacity relief brought about by new crematoria permitted in the area would raise the qualitative standards and offerings at all existing crematoria, which would reduce the potential and amount of divergence from them.

83. Secondly, the 50% is applied in blanket fashion across all existing crematoria. Therefore there is no account taken of the very different qualitative factors and experience on offer by them. For example Telford, is agreed as being modern and a good crematorium and Streetly is agreed as providing a poor experience and with insufficient parking, yet a 50% diversion is assumed by Mr Best from both, they are not differentiated despite being accepted as different.

84. Much reliance by Mr Best has been placed on the Horizon data and approach taken in relation to the Cannock site, however Horizon, did not advocate or adopt Mr Best's fringe area approach²⁴⁷, which in any event is based on figures derived from inaccurate catchment maps.

12.9 minute drive time

85. The constrained 12.9 minute drive time area, supposedly reflecting the actual driving time for a cortege when taking into account initial walking time and traffic stops, adopted by Mr

²⁴⁵ Cross examination on day 5

²⁴⁶ Examination in Chief on day 5

²⁴⁷ Confirmed by Mr Best in Cross Examination on Day 5

Best in relation to his fringe area, was originally an argument and notion belonging to Westerleigh at the 2017 inquiry. However, this was abandoned by them at that appeal, yet was seized upon and taken up by Mr Burley for Dignity then and subsequently inherited and maintained by Mr Best now.

86. This concept formed no part of either the Inspector's or Secretary of State's decisions or reasoning in the previous appeal and should not at this one.

Rebalancing

87. The issue of rebalancing is not confined to the Essington site in isolation but affects any new facility introduced, including Wergs²⁴⁸. People in the area have a choice of crematoria and number of factors, qualitative and quantitative, affect their decision over which they choose. This results in natural rebalancing, which is more prevalent in an urban context such as South Staffordshire.

88. Due to the number of factors that affect the crematorium decision and the knock on effects to crematoria within the entire network with new competition introduced, quantifying the precise level of rebalancing is nigh-on impossible to do with any accuracy. Mr Bateman accepts that rebalancing will occur but does not attempt to quantify that which cannot be counted.

89. Instead, Mr Bateman highlights that what is more important is to look at the total capacity of the existing facilities within the catchment area, utilising the CACI maps and populations, and their ability to accommodate current and future need. Mr Bateman's analysis demonstrates that Broad Lane and Cannock between them would assist in meeting the current need²⁴⁹. In areas with severe capacity needs, such as that around Broad Lane, rebalancing will happen naturally²⁵⁰. For example, any capacity created at Bushbury by the relief it receives from Broad Lane and Cannock, would then be filled from Gornal Wood.

90. Mr Best's alternative approach to quantify rebalancing is to overlay artificial assumptions on top of inaccurate and incomplete maps, demonstrating his lack of understanding of the concept.

Time horizons

91. The importance of planning for the future not just the present is agreed by all parties to the appeal.

92. Mr Best uses a single design year of 2027²⁵¹, whereas Mr Bateman employs horizon years of 2031 and 2041²⁵². Mr Village was quick to criticise Mr Bateman for his use of 2041 as being some 22 years in the future. However, the emerging draft plan for South Staffordshire, plans the housing future for the district until 2037.

93. It is simply "*proper planning*" as Mr Bateman put it²⁵³, to ensure that when planning for housing need well into the future and until 2037, provision is also made for the facilities required to support those future households, including crematoria. This approach, far from warranting criticism, should be applauded for its prudence and forward thinking.

94. Mr Johnson confirmed²⁵⁴ that the Council itself had made no provision for additional crematoria facilities in the future within either its Issues and Options Statement or its Site

²⁴⁸ Accepted by Mr Burley (for Dignity) at the last inquiry, CD L2

²⁴⁹ Mr Bateman, supplementary proof of evidence, Consideration of Cannock Permission, paras 3.1 to 3.6

²⁵⁰ Mr McArdle updated needs assessment, page 26, para 6.15. PofE Mr Bateman, appendix 1

²⁵¹ ID 15 para 7 and PofE Mr Best para 7.7

²⁵² ID 15 para 8

²⁵³ Cross examination on days 5 (need) and 6 (planning)

²⁵⁴ Cross examination on day 6

Allocation Document. The opportunity to secure that provision exists now and has been presented by both Westerleigh and Dignity.

95. Owing to the inaccurate catchment maps produced by Mr Tucker, on which Dignity's CACI information and some of Mr Best's evidence is derived; the unusual drop in Dignity's trading capacity at Bushbury and the use by Mr Best of unsupported methods and assumptions relating to fringe areas and the constrained 12.9 minutes' drive time, the quantitative need evidence relied on by Dignity is incomplete, inaccurate and not as credible as that produced by Westerleigh.

Qualitative need

96. Common ground between the parties is that improvements in relation to quantitative factors would result in qualitative gains across all crematoria and that quantitative pressures on existing crematoria result in a diminished qualitative experience.

97. Qualitative need concerns factors such as; the time and scheduling of services, amenities at the crematoria, access and car parking, as well as cultural and religious flexibility. Appendix 1 to the proof of evidence of Mr Bateman includes a qualitative review of local, existing crematoria and demonstrates there to be a real need and issues existing in relation to the qualitative experience that users get from existing crematoria in the area.

98. Bushbury (Wolverhampton) was opened in 1954 and is now dated. It is accepted as operating over-capacity by all parties to the inquiry and lacks sufficient car parking. Its need for relief is "*chronic*"²⁵⁵ and represents the very special circumstances required to allow the inappropriate Green Belt development of both proposals.

99. Streetly (Walsall) has insufficient car parking, especially to cater for the often additional vehicles attending Sikh and Hindu cremations. Mr McArdle on day 4 highlighted the Dunn & Co report²⁵⁶ and his rebuttal proof at paragraph 3.10, which set out Streetly as being located at the rear of a cemetery and that the user experience there is a poor one. Direct comparisons of the capacity between Streetly and other existing crematoria is not comparing apples with apples, by virtue of Streetly being a multi-chapel site. For this reason it is suggested²⁵⁷ that Streetly has a lower practical capacity than the suggested 80% threshold and as a consequence could in fact already be trading above its actual practical capacity.

100. Stafford crematorium was opened in 1964 and is dated as a facility. It operates predominately 30 minute slots, with some one hour slots available. As a norm, it does not offer the recommended industry minimum 40-45 minute service. Sutton Coldfield is similar to Stafford in that it is now some 54 years old, also having been opened in 1964 and also operates 30 minute services.

101. Whilst the crematorium at Lichfield is modern, having opened in 2013, it is not yet a well-used facility²⁵⁸. Mr Bateman and Mr McArdle gave clear and consistent evidence to the inquiry that this is because it is simply too far away from the local area.

102. The Broad Lane appeal proposals offer and would provide modern facilities and capacity for 112 people, with standing room to accommodate double that number, catering for larger congregations, which are often associated with cremations within the Sikh and Hindu communities.

²⁵⁵ Mr Johnson on day 6

²⁵⁶ CD 15

²⁵⁷ Cross examination of Mr McArdle day 5

²⁵⁸ PofE Mr Best page 24, paragraph 6.53

103. The proposals provide for a large waiting area and provision for 95 car parking spaces, plus provision for coach parking. Evidence to the inquiry was that mourners attending Sikh and Hindu cremations would often travel by coach. They can be accommodated at Broad Lane, but no such specific coach provision has been provided at the Wergs site.

104. The Broad Lane proposals also better serve the specific faith requirements of the Sikh and Hindu communities as they have provided for a specific and large viewing room of the crematory. This allows family and friends of the deceased to witness the cremation, being an act of fundamental importance to their faiths.

105. This specific design feature and purpose built room incorporated into the Broad Lane proposals was confirmed by Mr Wilson, who assisted the inquiry with his extensive knowledge of the Sikh and Hindu communities in the area, as being a "*significant benefit*" and something for which there was a "*significant need*".

106. Ms Hawkins under cross examination confirmed that this was something to which weight should be given in any decision and Mr Johnson, for the Council, confirmed that this provision should weigh in favour of the Broad Lane proposals when considering the Public Sector Equality Act duty²⁵⁹.

107. The Wergs proposal provides for no such specific viewing area. This significant need for the Sikh and Hindu communities has not been designed into the Wergs proposal or specifically catered for.

108. In an attempt to salvage the position for Wergs, Mr Lathbury stated that people wishing to view the cremation at the Wergs site, from whatever faith, could proceed "*back of house*" to the crematory to view this. He stated that the crematory could accommodate between 5-10 people wishing to do this.

109. However, on viewing the proposed building plan for the Wergs site²⁶⁰, whilst this route to the crematory is possible for mourners, it is not one that has been specifically planned for or treats them with much dignity.

110. Mr Lathbury²⁶¹ confirmed that the route for mourners from the chapel at the Wergs site requires them to go back into the lobby, past the accessible toilet, past the accessible shower, into the administration area, through the tea point and into the crematory. The only other possible route being to go outside, to the back of the crematorium building, through the staff car park and in through the service yard, neither being ideal or considerate.

111. It was also suggested that provision of the viewing gallery by the Broad Lane site was nothing new to the catchment area as the recently proposed Cannock site has one as well²⁶². However that assertion was incorrect. The viewing gallery at Cannock looks out to a 'vestibule area' not the crematory.

112. Mr Wilson gave further evidence to the inquiry regarding just how important a factor the viewing gallery is to the Sikh and Hindu communities. His evidence was that people were willing to and actively travelled further distances to the crematorium at Sandwell solely because of its provision of a viewing gallery.

113. As such, the viewing gallery proposed by the Broad Lane site is a significant benefit and asset, which when coupled with the increased car and coach parking offered, means it better serves the wants and needs of the Sikh and Hindu communities than not just the Wergs proposal

²⁵⁹ Cross examination day 6

²⁶⁰ CD F4, 12.07.27 Proposed Building Plan

²⁶¹ Cross examination day 5

²⁶² Ms Hawkins Day 4, need roundtable

but all existing crematoria in the area. The Sikh and Hindu populations in the area that would benefit from these factors are significant ones and are growing. These benefits should attract significant weight.

114. Evidence of the support for the Broad Lane proposals from the Sikh and Hindu communities is provided in letters from them that appear at appendices 8 and 9 of the Updated Need Report of Mr McArdle²⁶³. Dignity have no such supporting evidence to the inquiry for the Wergs proposals²⁶⁴.

115. The modern layout of Broad Lane will be carefully designed to provide a seamless circulation of people and vehicles around the facility in a way that preserves the individuality and respect for each funeral. Broad Lane offers higher quality and standards and would be able to operate at a higher capacity, all from a more accessible location than Wergs.

116. Mr Best suggested that there already existed two modern crematoria in the area, in the form of Cannock and Lichfield and as such the suggestion was that the Broad Lane site was not required.

117. Firstly, Cannock was granted permission less than three weeks ago²⁶⁵ and if Broad Lane were granted permission, the two would likely be built out and start operating at similar times, working together to address the need that exists now in the area and which by that time will be greater than it is at present. As set out above, Broad Lane can be differentiated from Cannock due to the bespoke crematory viewing gallery offered and not present at Cannock.

118. Secondly, the truth is that Lichfield does not serve the same catchment area and is too far away. It was built in 2013, and in the 5/6 years since opening has only performed c.600-700 cremations per year, nowhere near capacity and underlining its remote location. Mr McArdle's evidence to the inquiry based his operating experience with the Westerleigh group was that if a crematorium opens up in area where the need exists, it fills up to operating capacity almost immediately.

HERITAGE

Broad Lane

119. Subsequent to the previous Secretary of State appeal decision Westerleigh retained Mr Bateman to provide his planning assessment and give evidence to this inquiry. Alternative heritage advice was also sought from Mrs Stoten. That advice highlighted the significance of this issue for one of the sites. It is now clear that the two appeal sites could not be more different in terms of their heritage issues and impacts. The evidence of Mrs Stoten on day 1 of the inquiry regarding the Broad Lane proposals was clear. Following detailed consideration by her of the potential for the proposals to impact listed buildings and after consideration of the historic landscape, her conclusion is that the proposed development would not harm the significance of any heritage asset.

120. Mrs Stoten's unchallenged evidence to the inquiry was that the crematorium at Broad Lane can be developed without harm to any heritage assets or their setting.

121. Furthermore, the Council have at no point raised any concerns regarding the Broad Lane site on heritage grounds, nor has any other party.

²⁶³ PofE of Mr Bateman appendix 1

²⁶⁴ Confirmed by Mr Lathbury in Cross examination on day 6

²⁶⁵ Resolution to grant permission 2nd January 2019 and Decision letter dated 23rd January 2019 ID 17

Wergs

122. As clear as her evidence was regarding the lack of any impact on heritage assets of the Broad Lane proposals, Mrs Stoten delivered compelling and detailed evidence to the inquiry on day 1 in relation to the harm that would be caused by the Wergs proposals to both the designated heritage asset, the setting of the Grade II listed Wergs Hall and the non-designated heritage asset of the parkland.

123. Mrs Stoten started afresh in her assessment of the Wergs site and the proposals, going back to first principles and considering the heritage assets and how the proposals could benefit or harm them.

124. The non-designated parkland contributes to the setting and significance of Wergs Hall. This is parkland that was developed throughout the middle 19th century and the character of which endures to today.

125. The parkland and its character are shaped by; a visible and legible avenue of trees, the historic gateway, the grasslands and the brick kiln covert. Together, these features contribute to the historical significance of Wergs Hall but also aid any observer in their appreciation of the high status of the hall.

126. The avenue was a conscious landscape addition, added in the early 20th century, forming the northern limit of the site.

127. The Wergs proposals would fundamentally and irreversibly change the character of a large part of the parkland. The parkland, intended and providing the setting for the hall would instead become the accessory for the new crematorium. We know this because the Design and Access statement²⁶⁶ says so, referring to the once parkland as the now "*crematorium landscape*", usurping its historic and intended purpose, also adding new light to what is and has been an unlit space.

128. The Design and Access statement is also clear that the crematorium building would have a "*strong formal character*"²⁶⁷ in the crematorium landscape and within the current grassland, grassland that would disappear.

129. The avenue would be detrimentally transformed by the proposals. The replanting is cited by Dignity as a benefit to the scheme, but when considered in the fullness of the proposals, it cannot be so. Existing horse chestnuts that have stood for years would be swiftly removed, to be replaced with lime trees²⁶⁸.

130. The historic gateway entrance that historically signalled the commencement of your journey along the avenue would lose its significance with the proposed inclusion of a new archway, boasting a striking modern design that is awkward and not befitting the setting. This archway is located after the historic gateway in an attempt to immediately steal the avenue and allocate it as a new feature of the new crematorium.

131. The end of the avenue, where once vehicles en-route to Wergs Hall would pass, is now blocked by the introduction of a pergola, ensuring both ends of the avenue are marked out and captured by the crematorium landscape. The pergola's aim, despite having views through it, is to signal the termination of the avenue for the purposes of the crematorium landscape, removing its legibility as the approach to the Hall.

²⁶⁶ CD F5, page 8, section 8 Landscape Design Approach

²⁶⁷ CD F5, page 8, section 8 Landscape Design Approach

²⁶⁸ CD F5, page 9

132. Further change to the historic landscape and setting is introduced in the proposals by the pathway across the newly installed pond²⁶⁹, which diverts the route southwards into the brick kiln covert.

133. Whilst there would be management introduced to the woodland from which a benefit can be derived, again when taken in the round with the creation of new pathways throughout, never historically documented or present before, this benefit is eroded by the pathway intrusion.

134. Works to the wall are touted and justified by Dignity as being 'restoration', however the wall is not in a poor state, confirmed by Mrs Stoten on day 1 and Mr Bateman on day 6, such as to warrant its complete destruction, moving and rebuilding further back from the road. To do so would to "remove all of its legibility and would represent poor conservation practice"²⁷⁰ and against Historic England's Conservation Principles²⁷¹. There has been no engineering report undertaken by Dignity to show that the wall is either unsafe or in a poor condition as suggested.

135. A great majority of the wall is sited within its historic location and there is no pressing need to change that.

136. On the issue of change, the Wergs proposals would introduce considerable change to the present site and its character, change that in these circumstances would harm both the designated and non-designated heritage assets.

137. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 provides the general duty as respects listed buildings and the need when considering whether to grant permission for the Wergs appeal that special regard must be had to the desirability of preserving the listed building of Wergs Hall or its setting.

138. Furthermore, the importance of protecting our heritage assets is captured and evident in national policy, paragraphs 196 and 197 of the NPPF 2018 provide:

196. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

197. The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

139. Mrs Stoten was honest that the harm of the proposals to Wergs Hall would not be 'substantial', that being a high bar to meet²⁷². However, whilst the harm would be less than substantial, it is still harm to Wergs Hall and this harm should be weighed against any public benefits of the proposals²⁷³.

140. In relation to the harm to the non-designated parkland, this also should be taken into account in determining the application²⁷⁴. Neither such considerations of harm or diminution of benefits are required to be taken into account in relation to the Broad Lane proposals.

141. Dignity appear to be aware of and rightly concerned by the harm caused to the setting of the designated heritage asset and the resultant need for consideration of paragraph 196 of the NPPF 2018. Perhaps in order to try and argue for a levelling of concerns, on day 6, Mr Village

²⁶⁹ CD F5, page 10, para 3

²⁷⁰ Examination in Chief Mrs Stoten day 1

²⁷¹ CD V9, para 93

²⁷² Cross examination on day 1

²⁷³ NPPF 2018 paragraph 196

²⁷⁴ NPPF 2018 paragraph 197

sought to advance an argument relating to open space and the Broad Lane proposal (see further below) and that the effects of non-compliance with paragraph 97 NPPF 2018 was on a par with that of paragraph 196. For the reasons set out in more detail below (under "Landscape") this argument is nonsense. Firstly, the Broad Lane proposals satisfy paragraph 97 as criteria b) is satisfied. Secondly, paragraphs 196 and 97, whilst both important, do not operate with the same levels of effect. Whilst breach of one *is* capable of removing the tilted balance within paragraph 11 d) (paragraph 196), non-compliance with the other *is not* (paragraph 97). The two are not alike.

142. Consideration of the impact on the setting of Wergs Hall by the Wergs proposals is a fundamental consideration in this inquiry and in any decision to be taken²⁷⁵. Setting was agreed by Mr Johnson as being more than just views and intervisibility, as was the need to reach a primary decision as to whether the introduction of development into a setting of a heritage asset would result in harm or not.

143. There was no evidence that such an assessment in relation to harm to the setting had been undertaken or such a conclusion on the point had been reached in the officer's report²⁷⁶. The totality of their assessment of 'setting' is contained within PSS 74, item 4 and PSS 73.

144. The necessary consideration of harm to the setting was not put before the inspector or the Secretary of State at the last inquiry and as such could not have been at play in their decision making then. It is a matter firmly presented before this inquiry by Mrs Stoten for Westerleigh.

145. The Wergs proposals and in particular the required demolishing and rebuilding of the boundary wall are also contrary to local policy contained in EQ3 of the Council's adopted Core Strategy (December 2012)²⁷⁷, which requires that the loss and disturbance of historic materials is minimised and that alterations are reversible²⁷⁸.

Policy EQ3: Conservation, Preservation and Protection of Heritage Assets The conservation and enhancement of South Staffordshire's historic environment will be achieved by a number of means:

e) The Council will consider the significance and setting of all proposed works to heritage assets, informed by relevant guidance that is supported by English Heritage. In addition the following principles will be adhered to:

- minimising the loss and disturbance of historic materials*
- using appropriate materials, and*
- ensuring alterations are reversible*

146. Whilst future provision is of course important, it cannot come, and need not in this case, come at the cost of our prized heritage assets, both designated and non-designated. These and their unique characteristics are lost forever when permanent changes, in the form and manner of those proposed at the Wergs site, receive the green light.

LANDSCAPE

147. After a single visit to both sites, you are left in no doubt as to the landscape differences between them. Broad Lane is an enclosed, semi-mature woodland landscape. Wergs is an open parkland landscape boasting discernible features such as; the Avenue, brick kiln covert and existing ponds. In landscape and visual terms, the two could not be more different.

²⁷⁵ Accepted by Mr Johnson in cross examination on day 6

²⁷⁶ CD H1

²⁷⁷ CD A1

²⁷⁸ CD A1 Policy EQ3 e)

148. At present there is informal public access only across the Broad Lane site. Its two main uses at present appear to be dog walking and fly-tipping, not necessarily in that order. Public access is constrained by the landscape's intimidating current appearance and in parts dangerous underfoot condition²⁷⁹, featuring heavy rutting and fly-tipped debris.

149. The Broad Lane proposals will ensure that all but 2% of the site, being the area comprised by the proposed crematorium building itself, remains open for public access. The future openness of the Broad Lane site was detailed in the original Committee Report on the Essington site²⁸⁰, which confirmed that "*the site would remain accessible to the public albeit in an altered form*". Mr Peachey confirmed this²⁸¹, reading aloud a short email that set out how Westerleigh crematoriums allow 24-hour public access (not vehicular) to their sites.

150. Mr Peachey's evidence to this inquiry is that the Broad Lane appeal site is located within a landscape and visual context that is of a lower sensitivity than that of Wergs and that the changes that are likely to take place should development be permitted would be detrimentally worse at Wergs than at Broad Lane.

151. Development would be nothing new to the area around the Broad Lane appeal site. Ribbon development extends along Broad Lane and other forms of built development, such as a golf clubhouse, sports pavilion, electricity pylons and railway and canal infrastructure are also present. You are aware as you travel between Bloxwich and Springhill of existing development.

152. Built development would be entirely new however in the landscape of the Wergs site, fundamentally changing its landscape character.

153. The Design and Access Statement is clear that the Wergs proposals will introduce a "*strong formal character*"²⁸² into the existing parkland, accepted by Mr Kirkpatrick²⁸³. The proposals will replace the existing parkland character with a "*crematorium landscape*"²⁸⁴.

154. That is the purpose of the Wergs design proposals, to create a crematorium landscape, an entirely new landscape and character, doing away with the existing landscape features or ensuring if they remain that they fit the crematorium character desired.

155. Mr Kirkpatrick was unable to provide a single example of where a new crematorium landscape has been subsumed into an existing parkland landscape. It appears it has not been done before and there are good reasons for that.

156. From Holyhead Road there are currently expansive views across the site, with features such as the avenue and the covert in the background. The imposition of the cemetery building will interrupt these views and displace the current visual amenity that can be enjoyed.

157. A walk along a length of tree lined avenue is not considered a suitable enough feature for the crematorium landscape desired and as such new features, confirmed by Mr Kirkpatrick as not required for the crematorium's development²⁸⁵, in the form of an arbour and a pergola are to be introduced.

158. The archway to be introduced towards the start of the avenue was confirmed as being "*a marker to reinforce the sense of entrance and arrival into the crematorium landscape*"²⁸⁶. Mr Kirkpatrick's verbalised journey along the proposed new avenue made no mention at all of the

²⁷⁹ Evidence of Mr Peachey (day 2) and Mr Bateman (days 5 and 6)

²⁸⁰ CD I4, para 5.14.4

²⁸¹ Examination in chief day 3

²⁸² CD F5, page 8, section 8

²⁸³ Cross examination day 3

²⁸⁴ CD F5, page 8, section 8

²⁸⁵ Cross examination day 3

²⁸⁶ Mr Kirkpatrick cross examination day 3

historic gateway at the start, his first reference was to the new archway. The historic landscape features such as the gateway have been forgotten, surpassed by attention for the crematorium landscape.

159. The pergola marks the end of the avenue for the crematorium landscape's purpose, reinforced by the new pond, and it will do nothing but horizontally constrain views of the continuing avenue. The avenue itself continues, but that continuance is not within the crematorium landscape and as such the fulness of views of it are not maintained by the design, deemed surplus to requirements.

160. Despite there presently being two ponds on the site, this is seemingly not enough for Dignity who propose the removal of large amounts of earth to create a third pond that cuts right across the historic route of the avenue and signalling the end of it for the purposes of what the crematorium landscape requires it for.

161. The avenues historic length that has stood for some 100 years is sectioned by the new pond to capture just the amount required for the purposes of the new crematorium landscape. This new feature and its location would represent physical change and be a "surprise" to people walking along the avenue²⁸⁷.

162. The extension of the avenue onto land outside of the site will be visually enhanced once the tree replacement order (ID 10) of December 2018 is complied with. The replacement planting has not yet taken pace, but when it does this will increase the legibility of the Wergs' site parkland character, strengthening the avenue's character and continual visual tree alignment and placing the new landscape features of the pergola and 'blocking' pond even more at odds with the historic landscape character.

Policy

163. As highlighted above, concern was expressed by Dignity with regard to the open space position at Broad Lane. This was despite the officer's report to committee being clear that there was no difficulty with this issue²⁸⁸. Paragraph 97 of the NPPF 2018 provides:

97. Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

- a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or*
- b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or*
- c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.*

164. Only one of the criteria a) to c) within paragraph 97 need to be met and the Broad Lane site satisfies b). There will be a loss of open space on the site, a total of only 2% for the crematorium building. However, the proposals must be considered in the round and countering that minimal loss is a vast improvement in terms of the amount of high-quality open space that will be delivered and which is not currently present.

165. The Broad Lane proposals will create and deliver sure-footed and safer footpaths, managed woodland and pleasantly planted areas. The site will become a place where people will want to walk and can for the first time feel safe walking.

166. Paragraph 98 NPPF 2018 provides:

²⁸⁷ Mr Kirkpatrick in cross examination on day 3

²⁸⁸ CD I4, paras 5.14.3 – 5.14.4

98. *Planning policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails.*

167. The Broad Lane proposals will deliver much needed improvements to the footpaths and public right of ways across the site, increasing its amenity value and enhancing the links to and through the Mercia Community Forest, in accordance with Policy EQ4 of the adopted Core Strategy (2012). It is a very real possibility that people will utilise the newly available parking at the Broad Lane Site as the start of their walk to and through the Community Forest.

168. Much of what is proposed at Wergs however does not accord with policy EQ4. The proposed planting of a tree belt along the boundary wall, which is to be moved, would block the present expansive views from Holyhead Road, that extend right across the site and beyond. The visual experience will be detrimentally altered. In particular on this point Policy EQ4 states:

"...Throughout the District, the design and location of new development should take account of the characteristics and sensitivity of the landscape and its surroundings, and not have a detrimental effect on the immediate environment and on any important medium and long distance views."

169. Policy EQ4 also states that; *"Proposals within the Historic Landscape Areas (HLA) defined on the Policies Map (the Wergs site is a HLA) should have special regard to the desirability of conserving and enhancing the historic landscape character, important landscape features and the setting of the HLA"*.

170. The important landscape feature of the boundary wall is to be demolished, moved to an entirely new alignment and rebuilt, higher than before. The historic boundary wall will become an entirely new wall, much of the mortar could not be retained²⁸⁹.

171. Furthermore, the avenue, approaching 100 years of age and an important landscape feature signalling the opulence of the landowner and providing users with an appetiser of the great hall to come, is to lose its historic character and become an accessory to the new 'crematorium landscape' and become complicated and bounded at either end by an arbour and a pergola.

172. The brick kiln covert is to have much of its understorey removed and pathways created through it, where there have historically been none. By its very nature the 'covert' is an enclosed and screened area, typically for game to hide in. This character will be lost as it is opened up for the public to walk very overtly through the middle of.

173. The proposals for the wall, the avenue and the brick kiln covert at Wergs sit contrary to that requirement within EQ4 to *"conserve and enhance the historic landscape character, important landscape features and the setting of the HLA"*.

Valued landscape

174. It is common ground²⁹⁰ that the Wergs site is a valued landscape for the purposes of the NPPF 2018, confirmed in cross examination by Mr Kirkpatrick on day 3 of the inquiry.

175. Whilst the NPPF 2018 does not itself provide a definition of 'valued landscape', box 5.1 of the Guidelines for Landscape and Visual Impact Assessment²⁹¹ ("GLVIA") version 3, provides useful guidelines and factors to be taken into account when forming such a judgment of a landscape.

²⁸⁹ Confirmed by Mr Kirkpatrick in cross examination on day 3

²⁹⁰ Landscape SOCG paragraph

²⁹¹ CD V1, box 5.1

176. Whilst the Wergs site is confirmed as a valued landscape by virtue of its HLA designation, Mr Peachey was clear to the inquiry²⁹² that due to its parkland character and features, its role and setting with regards to the settlements to the North and South East and its scenic qualities, these would likely render it a valued landscape in any event.

177. As a result of being a valued landscape, any planning decision should ensure that it is protected and enhanced in accordance with the NPPF 2018, paragraph 170(a).

178. Mr Peachey attached great weight to its status as a valued landscape and Dignity's own Landscape and Visual Impact Assessment²⁹³ confirms it to be an area of high sensitivity. The site is also in the Green Belt and as such presents an "*extraordinarily challenging*"²⁹⁴ position in landscape and visual terms from day 1. These complications do not exist and need not therefore be overcome with the Broad Lane site.

179. Broad Lane by contrast is not a valued landscape. The site does have value; however, sadly, this value is increasingly one as a rubbish dump and favoured fly-tipping location. It is not and cannot be said to be a valued landscape for the purposes of the NPPF 2018, to even consider it as such is perverse and an embarrassing and concerning submission. As Mr Peachey put it²⁹⁵, "*it does not even come close to the radar of a valued landscape, let alone be on it*".

180. Dignity will suggest that Broad Lane is a valued landscape, yet Mr Kirkpatrick admitted he had made no assessment of it using the box 5.1 GLVIA criteria. This cannot be a suggestion that they believe. It is however understandably one that they must make in order to attempt to level the amount of planning complication that exists with their own site in landscape terms.

181. Mr Kirkpatrick somewhat reluctantly argued that Broad Lane was a valued landscape and when taken through the guidance criteria in box 5.1 of the GLVIA in cross examination, attempted to justify this based on its recreational value only. People simply do not use the site for recreation, children do not play on the site for example and use of the site seemingly requires either a very large Alsatian or fellow human accompaniment. The Rambler's Association, likely recreators of the site if there were to be any, have no objections to the Broad Lane proposals.

182. Mr Kirkpatrick was careful in his answers to not state that he considered the site to be in a good landscape condition. On his evidence, the woodland was and the surface was not. He could not say that the site had scenic quality, this he put as "*variable*" and he confirmed there were no conservation interests involved with it.

183. It is Dignity's case that the development at Wergs will deliver a landscape benefit in the form of cessation of turf cutting on the site. Mr Johnson²⁹⁶ was unable to explain the basis upon which the turf cutting was, in any event, permissible. The proffered suggestion of it being a function of agriculture seemed surprising and unwarranted as it did not fall within any of the terms provided by section 336 of the Town and Country Planning Act 1990. Be that as it may, it is clear that the turf cutting operations exist not just on the site but also beyond it and without a signed legal obligation from the landowner, there is nothing to prevent its continued occurrence. It is understood that such an obligation is now proffered and this may become apparent by the time of closing.

184. Both sites are located within the Green Belt but presently offer very different levels of amenity value. Put simply, more would be lost in landscape and visual terms at Wergs than at Broad Lane. Wergs is further complicated by it being a valued landscape and the interference required with the historic landscape character features.

²⁹² Examination in chief day 3

²⁹³ CD F15

²⁹⁴ Mr Peachey, Cross examination day 3

²⁹⁵ Examination in chief day 3

²⁹⁶ Cross examination on day 6

TRANSPORT AND ACCESSIBILITY

185. On day 1 of the inquiry, Councillor Allen provided local knowledge and insights into the severe traffic problems that already persist around the Holyhead Road and Heath House Lane junction, worsening at peak times. Her evidence detailed the numerous accidents at that junction, on what is a 50mph road.

186. Councillor Allen described the problems encountered by pedestrians at the proposed access point of the Wergs site and lack of any proper pedestrian crossing, there being only a pedestrian refuge.

187. Councillor Allen was also able to assist the inquiry with details of a proposed housing development opposite the Wergs site, that would add considerably more motor vehicles onto what is already a congested road, heightening the problems in her neighbouring Parish of Perton, which has only a single access road in or out (the second being for use of buses only). This is on top of the 200 new homes recently approved for development on the local golf course site.

188. The thought of the addition of slow moving corteges onto this road and the accompanying large numbers of mourners that would be present for each funeral caused "*serious concerns*" for Councillor Allen and the residents of her community.

189. There have been no such concerns raised regarding the Broad Lane site, which is sustainably located and well-served by public services.

190. The Secretary of State in the previous recovered appeal and as a matter of overall and pure planning judgment concluded that the accessibility (and capacity) benefits of the Broad Lane site were superior to the benefits advanced by the Wergs site.

191. The factors that led the Secretary of State to form this conclusion have not changed at this appeal. The evidence of Mr Tucker, on transport and accessibility for the Wergs site does nothing to alter the basis upon which the Secretary of State found as he did previously and for the accessibility of the Broad Lane site in preference to that at Wergs.

192. The changes required for the appropriate accessibility and visibility splays of the Broad Lane site do not necessitate the complete demolishing and rebuilding of 289m of historic boundary wall, on an entirely new alignment.

193. It is true now, as it was previously, that the Council put forward no reason for refusal in relation to the Broad Lane site on the basis of accessibility or highways and there are also no statutory consultee or local resident objections on these grounds.

194. The Broad Lane site is well-connected to the existing transport network, both road and rail. It is located in close proximity to the M54, M6 and M6 toll roll motorways as well as the A5.

195. Bloxwich North railway station, is located 500m from the site and this provides hourly services, which rise to half hourly at peak times, on Mondays to Saturdays. This offers a direct service between Rugeley and Birmingham New Street.

196. There are reliable bus services that pass within 400m of the site. These services operate two routes, services 31 and 2. The number 31 runs every 6 minutes, the number 2 every 30 minutes and there is an overall increase in the services offered from that which existed before the previous inquiry.

197. There is a continuous footpath that links the Broad Lane site to the bus stops and railway station. This presents users of the Broad Lane site with genuine, available and more sustainable alternatives to private car use. Users of the Wergs site do not have such options in as close a proximity.

CONCLUSIONS ON INSPECTOR'S KEY ISSUES

198. In relation to the Inspector's identified key issues²⁹⁷:

- 1) The need that exists at Bushbury due to its current "chronic" overtrading provides the very special circumstances required to justify either proposal and overcome the harm caused to the Green Belt and substantial adverse weight to be attached to this.
- 2) Rebalancing is a natural process that cannot be accurately or numerically measured. What is of more importance is the capacity of all existing crematoria in the catchment area and their ability to accommodate current and future need. Mr Bateman has shown that there is a pressing need not only for Broad Lane but also Cannock to meet current and future needs in the area to the North and East of Wolverhampton. In the absence of significant and effective action in the form of additional facilities this pressing need will only deteriorate year on year. All existing crematoria in the area are self-evidently interlinked and so the capacity left behind by diversions that go to Broad Lane will be filled by other demand within the network. Death rates are also increasing, raising future need.
- 3) All parties agree that the Secretary of State can either reject or approve both proposals or approve just one. It is Westerleigh's position that there is the demand, certainly in the future to justify a grant for both proposals now, but that Broad Lane should be preferred based on its lack of heritage and landscape impacts should just one be approved.
- 4) The Broad Lane proposals are not in conflict with the current development plan. Cited policy GB1 in reason for refusal 1, was confirmed by the Council's planning witness as being 'neutral' to the proposal. An emerging draft plan is scheduled to be adopted in 2022, covering the period to 2037. The provision of facilities to support that future housing was confirmed as an important factor by the Council's need witness.
- 5) The position in 4) is unchanged by the new NPPF 2018.
- 6) The harm caused to the Green Belt by the inappropriate development of both proposals gives rise to substantial weight in accordance with NPPF 2018 paragraph 144. However, the need and relief that is required at Bushbury is significant enough to give rise to the very special circumstances required by NPPF 2018 paragraph 143 to overcome this. The heritage harm caused by the Wergs proposals should attract less than substantial weight but should be weighed against any public benefits cited (Paragraph 196 NPPF 2018). The effect of the harm to the non-designated heritage landscape area caused by the Wergs proposals should also be taken into account in determining the application (Paragraph 197 NPPF 2018).
- 7) The Wergs proposals will cause both landscape and heritage harm. Heritage harm will be to the setting of the Grade II listed Wergs Hall and the non-designated Historic Landscape Area of the parkland that surrounds it. There are no such harms caused by the Broad Lane proposals. The Wergs site is also a valued landscape, Broad Lane is not.
- 8) The impact on protected species is not pursued by the Council at this appeal and there have been no species concerns raised against the Broad Lane proposal.

CONCLUSION

199. Westerleigh certainly do not state that only one of the appeal sites can come forward, their evidence to the inquiry on day 5 was that the need may well exist for both now, but certainly will exist for both in the future.

200. However, if only one is to get the green light, then on a comparison of the Broad Lane and Wergs sites and the evidence presented to this appeal, the Secretary of State's previous decision to favour Broad Lane can be appropriately repeated in light of the following:

- a. Population within the catchment of nearly double at Broad Lane, together with a much larger overlap population with Bushbury than that at Wergs;

²⁹⁷ Adopting the same numbering as paragraph 9 above

- b. The significant gap in capacity of existing crematoria against the current and increasing need in the area to the North and East of Wolverhampton, which will require both Cannock and Broad Lane just to keep the current capacity across all crematoria at the 80% threshold;
- c. No valued landscape issue at Broad Lane, the Wergs site is accepted as a valued landscape;
- d. No heritage issues or assets at Broad Lane, the Wergs site has to overcome harm to both a designated and non-designated heritage asset;
- e. Both sites are located within the Green Belt but Broad Lane is visually enclosed and Wergs is open;
- f. No accessibility or transport concerns raised against the Broad Lane site, local concerns raised about Wergs;
- g. Better provision of services to the Sikh and Hindu communities by Broad Lane with a bespoke viewing gallery and coach parking;
- h. Broad Lane is located within close proximity to Bloxwich Railway Station (500m) and two bus routes stop close to the site (400m), offering better links to public transport.

201. In the light of the foregoing, the need for the proposed development not only gives rise to the very special circumstances to justify development in the Green Belt, but also to benefits across all three objectives of sustainability. The development at Broad Lane, Essington does not inflict the heritage and valued landscape harm that Wergs would and as such the appeal should be upheld and planning permission ought to be granted for Broad Lane.

CLOSING SUBMISSIONS ON BEHALF OF THE LOCAL PLANNING AUTHORITY

Introduction

1. When South Staffordshire Council (“the Council”) refused planning permission for the appeal schemes in March 2015 (CD’s I7 and I8), the evidence, as it then stood, did not convince the Council that there existed the very special circumstances required to justify the grant of planning permission for inappropriate development in the Green Belt. The proofs of evidence filed in support of the appeals, ahead of the adjourned inquiries in 2016, the conjoined inquiry in 2017, and ahead of this inquiry demonstrate how the evidence has evolved.

2. By the time of the last inquiry (in 2017), the Council was satisfied that there was a compelling need for new crematoria provision in order to relieve pressure being felt at Bushbury crematorium. That remains the position (as we set out below). In particular, the Council recognises;

- (i) the pressing need for relief of the capacity issues faced by Bushbury crematorium,
- (ii) the fact that either of the 2 appeal schemes would operate to relieve that need, and,
- (iii) that those factors are themselves sufficient to clearly outweigh harm to the Green Belt generated by either of the schemes so as to give rise to very special circumstances.

3. However, no party has argued, and there is no evidence to support a finding that both appeal schemes are required in order to relieve Bushbury’s capacity problems. Accordingly, the Secretary of State can safely proceed on the basis that the grant of consent for either the Wergs scheme or the Essington scheme will address the compelling need for new crematorium provision that is accepted by the Council (i.e. that associated with Bushbury’s problems).

4. This inquiry (as in the case of the last) has largely been dominated by each of the 2 Appellants seeking to undermine the other’s case. They have adopted that approach for a simple reason, namely that only 1 of the 2 schemes is required in order to address the compelling need generated by Bushbury’s capacity problems. It is that factor that lies at the heart of each of the Appellants’ cases for very special circumstances. Accordingly, the grant of consent for 1 scheme fundamentally undermines the case for very special circumstances for the other scheme.

5. Without the central plank of the need argument (i.e. meeting the compelling need in light of Bushbury’s issues), residual factors (in respect of either of the appeal schemes) will fall short of clearly outweighing Green Belt harm²⁹⁸.

Policy

6. The relevant component of the Development Plan is the Core Strategy²⁹⁹. It confirms that development acceptable within the terms of national policy set out in the Framework will normally be permitted, subject to it falling within specified categories (of ‘not inappropriate’ development³⁰⁰).

7. Crematoria development is inappropriate development in the Green Belt. Accordingly, neither appeal scheme is supported by policy GB1.

8. Westerleigh makes the point that policy GB1 does not preclude development in the Green Belt (since it is framed positively), but,

²⁹⁸ That contention is addressed in more detail in the Council’s conclusions set out below.

²⁹⁹ CD A1, adopted 11 December 2012.

³⁰⁰ noting that there has been a slight change in the lists of not inappropriate development in the Green Belt as between NPPF 2012, and NPPF 2018.

- (i) the policy applies national Green Belt policy, which does preclude inappropriate development unless very special circumstances are demonstrated,
- (ii) GB1 requires proposals to be consistent with other local planning policies, one of which (Core Policy 1) seeks to protect the Green Belt from inappropriate development, and,
- (iii) even if the appeal schemes are 'neutral' when judged against policy GB1, that matter is of no consequence. All parties agree that the determinative factor is whether or not very special circumstances are demonstrated for each of the appeal schemes (in accordance with national policy). The planning balance required to determine that issue is unaffected by the question of whether or not policy GB1 suffers a breach.

9. The well-trodden principles of relevant national policy are unchanged since the last inquiry;

- (i) on the basis that both proposals comprise inappropriate development in the Green Belt, each of the Appellants must demonstrate very special circumstances in order to justify the grant of planning permission,
- (ii) very special circumstances will only exist if potential harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposal is clearly outweighed by other considerations (§144 of the Framework, CD B9),
- (iii) in conducting that balancing exercise, the decision-maker must ensure that substantial weight is given to any harm to the Green Belt (ibid.).

Harm to the Green Belt

10. In addition to harm caused by being inappropriate, both schemes give rise to loss of openness, and infringement of one of the 5 Green Belt purposes, namely, to assist in safeguarding the countryside from encroachment³⁰¹.

11. We note that;

- (i) each of those components of harm appears to be accepted by the Appellants,
- (ii) each attracts substantial weight, and,
- (iii) the Council does not distinguish between the level of Green Belt harm arising from each of the schemes.

12. Harm through inappropriateness attracts substantial weight for each scheme. Similarly, both sites lie in the countryside and are currently open. The Appellants propose to introduce significant, and broadly comparable levels of built development onto their sites. Whilst Westerleigh (through Mr Peachey) seeks to make an argument that the Dignity scheme has a greater impact on openness (in particular, the perception of openness), the Council considers that the harm caused by each scheme through encroachment into the countryside and loss of openness is comparable. In accordance with national policy, it attributes substantial weight to those components of Green Belt harm generated by each scheme.

The Central Plank of the Need Case

13. Having heard extensive evidence in respect of the need for new crematoria provision at the con-joined inquiry in March 2017, the previous Inspector;

- recorded that, "All parties agree that Bushbury Crematorium in north Wolverhampton, on any assessment, is under significant pressure" (CD S1, §215), and,
- concluded that, "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

³⁰¹ §134 of the Framework, CD B9.

crematorium is developed and brought into use. There is therefore a compelling need for one of the two crematoria...to be granted planning permission.” (CD S1, §219).

14. Dignity’s case confirms that the alleviation of need generated by pressure at Bushbury crematorium is a central component of its case for very special circumstances (see §8.5 and Appendix C of Mr Downes’ proof).

15. Similarly, Westerleigh’s case confirms that meeting need generated by pressure at Bushbury crematorium forms a central plank of its case for very special circumstances (see §10.3 of Mr Bateman’s proof).

16. Dignity’s evidence assesses the degree of relief that may be provided to Bushbury as a result of its scheme³⁰². Taking into account the committed crematorium at Cannock and the Wergs proposal³⁰³, Mr Best concludes that in 2027, Bushbury will be conducting 1,621 cremations as opposed to a forecast 2,867, that is, 820 cremations would be diverted from Bushbury to Wergs and 425 diverted from Bushbury to Cannock³⁰⁴.

17. Expressed as a percentage of its “core capacity”, the impact on Bushbury’s operation as a result of the combination of new facilities at Cannock and Wergs is substantial. Without diversions to Cannock and Wergs, Mr Best forecasts that Bushbury would be operating at 99% of its core capacity in the peak month in 2027. In other words, during the peak month, all core slots (judged by Dignity to be between 10am and 4pm) would be utilised³⁰⁵. With Cannock and Wergs in operation, Mr Best forecasts Bushbury to be operating at 56% of its core capacity in the peak month. Even with some re-balancing (to take account of the fact that his assessment shows that Wergs and Cannock would be busy), Bushbury’s capacity problems will have been resolved³⁰⁶.

18. Whilst Mr Bateman advances no diversion figures for Bushbury, the updated need report (“UNR”) that he produces as his Appendix 1 (of his main proof) does contain a diversion assessment. On the basis of its gravity model (known as CACI), the UNR suggests that Weserleigh’s proposal at Essington would divert in the order of 990 cremations from Bushbury.

19. Mr Best’s assessment of the number of likely diverted cremations from Bushbury to Essington is not dissimilar. He forecasts that 826 cremations would be so diverted, which, together with diversion from Bushbury to Cannock (again, assessed by Mr Best at 425 in 2027), addresses Bushbury’s capacity issues³⁰⁷.

20. Accordingly, together with the level of relief provided to Bushbury by the committed Cannock scheme, the grant of planning permission for either of the 2 appeal schemes would

³⁰² Mr Best’s analysis provides a comprehensive picture of forecast levels of diversion from existing crematoria to either Wergs + Cannock, or Essington + Cannock (he does not assess a combination of all 3). His analysis is robust. The criticism (made by Westerleigh) that the total number of actual cremations at the 6 crematoria in Mr Best’s table 7.1 (10,773) is different to the total ‘demand’ figure in their primary catchments at Mr Best’s table 10.9 in JPB21 (15,815) takes Westerleigh nowhere. The difference is explained by the fact that the figure at table 10.9 does not taken into account the ring of existing crematoria surrounding the 6 existing crematoria that he considers. If their primary catchments were added to the data, then the primary catchments of the 6 existing crematoria would reduce (on their outer edges), and the 15,815 figure would reduce.

³⁰³ and there is no basis on which to discount Cannock. It is a commitment, the decision notice having been issued. There is no indication that any party seeks to challenge the grant of consent and no evidence to support a conclusion that the scheme will not progress.

³⁰⁴ Table 11.2 within JPB22.

³⁰⁵ Table 11.7 in JPB22.

³⁰⁶ See Table 11.16 of JPB22, showing that even with a reduction in levels of operation at Wergs and Cannock, Bushbury would be operating at only 60% of its core capacity in the peak month.

³⁰⁷ Table 11.9 of JPB22 shows that with those levels of diversion to Cannock and Essington, Bushbury would be operating at 56% of its core capacity in the peak month.

result in the resolution of the compelling need for new crematorium provision generated by the capacity problems faced by Bushbury crematorium.

Ancillary Need Arguments

(a) Gornal Wood

21. Gornal Wood is a busy crematorium. Dignity's evidence shows that in 2017 it performed 1,756 cremations (in a single chapel)³⁰⁸ meaning that in the peak month in 2017, it is assessed as operating at 112% of its core capacity³⁰⁹ (i.e. in the busiest month, all of the core slots and many of the non-core slots will have to be utilised, as they are now).

22. Mr Best's assessment shows that the proposal at Wergs will alleviate some of that pressure. With a diversion of some 400 cremations from Gornal Wood to Wergs (but none to Cannock), Gornal Wood's operation will have fallen to 86% if its core capacity in the peak month.

23. With plenty of headroom created at Bushbury (generated by the diversion of well over 1,000 cremations to Wergs and Cannock combined), there may be scope for a further reduction in numbers of cremations at Gornal Wood by a "re-balancing" effect between it and Bushbury.

24. Accordingly, the evidence shows that there will be a welcomed reduction in pressure at Gornal Wood as a result of the Wergs scheme. That additional factor (in respect of quantitative need) should attract significant weight.

25. By contrast, the Essington scheme is not forecast to divert any cremations from Gornal Wood.

(b) Streetly

26. Even within only the core hours within the peak month, Streetly's levels of operation are acceptable.

27. Whether Dignity's or Westerleigh's core hours form the basis of assessment, current operations at Streetly within the peak month³¹⁰ fall below the 80% level which is accepted to represent a level at which crematoria operate satisfactorily³¹¹;

(i) on the basis of Dignity's assessment of core hours (from 10am to 4pm), Streetly is assessed as operating at around 67% of its core capacity (in 2017)³¹², and,

(ii) on the basis of Westerleigh's assessment of core hours (from 10.45am to 3.45pm), Streetly is assessed as operating at 78.7% of its core capacity³¹³.

28. Whichever approach is taken, it is apparent that there is no current need to divert cremations from Streetly.

29. Of course, it is relevant to determine whether or not capacity problems will emerge in years to come. Clearly, the weight attaching to forecast future pressures (and the potential relief

³⁰⁸ Mr Best's Table 7.1, at page 27 of his proof.

³⁰⁹ Mr Best's Table 11.7 in JPB22.

³¹⁰ There is a relatively immaterial difference in the calculation of cremation numbers in the peak month. Mr Bateman applies 10.28% to the total number of cremations for the year in identifying the number that are forecast to take place in the peak month. Mr Best's approach considers that cremations in the peak month are 22% higher than in the average month.

³¹¹ There is no significant dispute about the 80% threshold. For example, Westerleigh's UNR states that, "...crematoria cannot work at 100% of their annual core capacity as it is impractical to fill every slot in the core hours, every day of the week and every week of the year. Partly this is because it is difficult to co-ordinate family, funeral director, celebrant and crematorium availability in such a way to fill each slot. ...Therefore a crematorium will be operating above capacity...if running at more than 80% of its core capacity." (at §'s 2.32 and 2.33 of the UNR).

³¹² Mr Best's Table 7.6 in JPB18.

³¹³ Mr Bateman's Table C in his "Consideration of Cannock" document.

to those pressures delivered by development proposals) must diminish as the time horizon recedes. A compelling need that is forecast to emerge 12 or 22 years down the line (Mr Bateman's 2031 or 2041) must carry significantly less weight than a compelling need that exists now (as in the case of Bushbury's capacity problems).

30. In any event, there is no clear evidence to demonstrate a future compelling need arising from the number of cremations at Streetly forecast for the years to come.

31. Mr Best's assessment (based upon Dignity's approach to core hours) shows that in 2027 Streetly will still be operating well below the 80% threshold in the core hours of its peak month (his table 7.8 in JPB18 records the figure of 70.9%).

32. Mr Bateman's assessment (based upon Westerleigh's different approach to core hours) shows that Streetly will be operating at 84.2% and 94.5% of its core capacity in the peak month in the years 2031 and 2041 respectively (at his Tables D and E of his "Consideration of Cannock" document). However, those projected levels of operation take no account of the operation of the proposed crematorium at Cannock. Dignity's evidence shows that Cannock will achieve a significant level of diversion from Streetly (some 425 in 2027³¹⁴). In light of that significant level of diversion from Streetly to Cannock, even if;

- (a) Westerleigh's more restrictive approach to core hours is applied, and,
- (b) one looks as far ahead as 2031 or 2041,

it is clear that there is no future compelling need to divert cremations from Streetly.

33. In addition, we again note that should either of the appeal schemes come forward, then together with the committed scheme at Cannock, operations at Bushbury will fall well below the 80% threshold during core hours in the peak month. Accordingly, should any pressure at Streetly emerge (in 12 or 22 years time), then there is likely to be scope for "re-balancing" with Bushbury.

(c) Stafford and Sutton Coldfield

34. The evidence shows that Stafford crematorium is under some pressure during the peak month of January. For example, Mr Best's evidence shows that in 2017 Stafford operated at 92.3% of its core capacity in the peak month³¹⁵. Mr Bateman's evidence (adopting his approach to core capacity) shows that Stafford operated at 133.3% of its core capacity in the peak month.

35. However, the proposed crematorium at Cannock will have a substantial impact on Stafford's operation. Mr Best forecasts that in 2027, Cannock will be diverting well over 400 cremations per year from Stafford³¹⁶ and that operations will have fallen to an acceptable 75% of its core capacity in the peak month (Mr Best's Table 11.6 in his JPB22).

36. The only figure in Westerleigh's UNR for the likely level of diversion from Stafford to Essington is 94 per annum. That level of diversion is relatively immaterial, and in any event, is not required in light of the grant of consent for the new facility at Cannock.

37. Similarly, whilst Sutton Coldfield is clearly busy³¹⁷, Westerleigh's UNR suggests that Essington will achieve only a small level of diversion from Sutton Coldfield (98 per annum³¹⁸), offering very little relief for any need faced by that facility.

³¹⁴ Mr Best's Table 11.2 at JPB22.

³¹⁵ JPB18, Table 7.6.

³¹⁶ JPB22, Table 11.2.

³¹⁷ Mr Bateman's Table C (in his "Consideration of Cannock" document) shows it operating at 95.2% if its core capacity in the peak month, noting that that level of operation is generated by running 30 minutes long service intervals.

³¹⁸ §5.16 of the UNR.

38. Mr Bateman's approach is not to produce diversion figures, but rather to look at overall capacity in a defined area³¹⁹, and compare that with existing and future levels of demand.

39. By reference to that approach (at Table G of his "Consideration of Cannock" document) Mr Bateman contends that the total monthly core capacity (adopting Westerleigh's approach to core capacity) of the 4 existing facilities at Bushbury, Streetly, Stafford and Sutton Coldfield is 861 cremations, and that current peak demand is 892 cremations, growing to 954 in 2031, and 1,035 in 2041.

40. With respect, that assessment is of limited utility. For example, Mr Bateman excludes Lichfield from his defined area of analysis. He is wrong to do so. Lichfield has a recent crematorium. Its catchment;

- (i) is as proximate to Essington's proposed catchment as Stafford's (that Mr Bateman does choose to include)³²⁰, and,
- (ii) even on Westerleigh's evidence³²¹ enjoys a close relationship with Stafford's and Sutton Coldfield's catchments, both of which are included in Mr Bateman's analysis.

41. If Lichfield's capacity (and demand) was included in Mr Bateman's analysis, there is no doubt that a very different picture would emerge. Lichfield is relatively new and in the first years of operation suffered a setback due to a fire. Accordingly, in 2017 it operated at only 58.6% of its core capacity in the peak month³²². Lichfield has plenty of operating headroom. If Mr Bateman had included Lichfield in his calculation of capacity versus demand, the picture would have looked considerably better. The conclusion that some 203 additional core slots are required in order to maintain existing crematoria at 80% of core capacity in the peak month could not be sustained. Self-evidently, with the inclusion of Lichfield, that figure would be a lot lower³²³.

Qualitative Issues

42. By relieving the capacity problems faced by Bushbury (and, in the case of the Wergs proposal, Gornall Wood), the provision of a new crematorium will deliver qualitative improvements to users of crematoria in the area. In particular, waiting times during peak periods should reduce, and congestion at existing crematoria (whether felt in car parks, or at the chapel) should ease.

43. There is some evidence that faith communities (in particular, the Hindu faith) are not sufficiently catered for within existing crematoria (Appendices 8 and 9 to the UNR). The Hindu Council of Birmingham refers to their needs not being catered for fully, including the need to accommodate larger congregations (their representation does not specify how large congregations may be), a viewing area (for the charging of the cremator), and a covered prayer area to be used following the service.

44. In respect of these needs, the Council notes;

³¹⁹ defined by him.

³²⁰ see Mr Tucker's Figure 3.1

³²¹ UNR, Appendix 6.

³²² Mr Best's Table 7.6, JPB18.

³²³ The fallacy of Mr Bateman's approach is further highlighted by reference to his Table J (erroneously labelled Table G at page 11 of his "Consideration of Cannock" document). That table includes a similar exercise for Bushbury, Telford and Gornal Wood. Of course, Bushbury is included in the catchment for his analysis in Table G (page 8 of his "Consideration of Cannock" document). If conducting a meaningful exercise of capacity versus demand, Bushbury cannot be accounted for in 2 separate catchment areas. It would have to be in one or the other (otherwise Bushbury's capacity is being counted twice). That fact demonstrates that it is artificial to attempt to split the area to the north of the West Midland's conurbation into a series of discrete catchments within which it is possible to calculate supply and demand. The best one can do is to attempt an assessment of diversion from existing to new facilities (as done by Mr Best, and as set out in Westerleigh's UNR).

- (i) existing facilities appear to offer acceptable levels of accommodation. For example, the evidence from Walsall Council (CD U4) confirms that the West Chapel at Streetly can accommodate 250 people. Streetly provides car parking amounting to 76 spaces together with overflow facilities on a network of internal roads and car parking spaces (see Streetly car park survey at CD D37³²⁴). The appeal schemes offer similar levels of provision (the car park at Essington contains 77 spaces – CD C69, and there are 80 spaces proposed at Wergs – CD F3),
- (ii) provision for viewing the charging of the cremator can be made at Streetly (Mr Best's Appendix 6) albeit there is no dedicated viewing room. Whilst Westerleigh's proposal provides a viewing room, Dignity (through Mr Lathbury) confirms that viewing can be accommodated within its scheme, and that such arrangements are common and operate successfully throughout the industry³²⁵,
- (iii) it is not clear that any facility (existing or proposed) offers a covered area for mourners to conduct post-service rites.

45. Accordingly, there is no other significant qualitative issue (that would not be relieved by the alleviation of capacity problems at Bushbury) affecting existing crematoria provision in the area. We note for completeness that neither Appellant can place significant weight on an argument that either of their facilities will provide a crematorium within 30 minutes drive (at cortege speed) to a substantial number of people. With the provision of a crematorium at Cannock, there is no gap in 30 minutes isochrones that the Essington scheme might serve, and whilst Wergs may well serve an area to its south-west (that currently has no crematorium within 30 minutes drivetime), there is no evidence showing how much in excess of a 30 minutes drive those people currently face. Accordingly, it is not possible to attribute that matter any significant weight (and none of Dignity's witnesses suggest otherwise).

Conclusions on Need

46. The Council draws the following conclusions based on the most recent evidence of need;
- (i) the compelling need to relieve pressure at Bushbury crematorium would be met by either appeal scheme,
 - (ii) the Wergs proposal would contribute significantly to relieving pressure at Gornal Wood,
 - (iii) there is no evidence of current 'over-trading' at Streetly,
 - (iv) evidence of future capacity issues at Streetly is equivocal (Dignity's evidence conflicts with Westerleigh's), but in any event, the new facility at Cannock will divert a significant number of cremations from Streetly,
 - (v) any capacity issues (now or in the future) faced by Stafford will be relieved by the new facility at Cannock,
 - (vi) whilst Sutton Coldfield is a busy crematorium, such evidence as exists with regard to diversions from there to the appeal scheme at Essington shows the effect to be small, and,
 - (vii) the central qualitative issue concerns extended waiting times for services in peak periods. That qualitative issue will be resolved with the provision of new facilities (Cannock and one of the appeal schemes). Other qualitative issues do not add significant weight to the Appellants' arguments concerning the need for new facilities.

47. Accordingly, insofar as the Wergs proposal addresses the compelling need for a new facility arising out of Bushbury's over-capacity issues and offers significant relief to Gornal Wood (which the Essington scheme does not), it generates a greater level of benefit in terms of meeting the need for new crematoria provision.

³²⁴ The car park survey shows that when overflow areas are factored in (around the internal roads in the Streetly site), there is an acceptable level of car parking offered at Streetly.

³²⁵ Mr Lathbury confirmed that Dignity is the biggest provider of crematoria in the country, that Dignity's crematoria provide for viewing the cremation process on request, and that those arrangements are acceptable (Mr Lathbury stated that he was not aware of any complaint regarding the process).

Other Benefits

48. Save for meeting the compelling need arising out of Bushbury's over-capacity issues, the Essington proposal does not deliver any other significant benefit.

49. In addition to meeting that compelling need (and providing a significant level of relief to Gornal Wood), the Council considers that the Wergs proposal delivers environmental benefits.

50. It is recognised that those benefits are the subject of dispute between the 2 Appellants who have called opposing witnesses. It is anticipated that the Appellants' submissions will address the evidence heard from those witnesses. The Council did not call its own witnesses on matters of heritage and landscape, and it recognises that the Inspector's recommendation, and Secretary of State's decision will rest largely on judgments formed in light of the Appellants' competing evidence (that has been tested through the inquiry process).

51. Whilst it carries less weight than evidence tested through the inquiry process, the Council's position remains as set out in the appraisals conducted by its conservation and landscape officers. Their consultation responses (contained in the officers' reports – H1 and I4) demonstrate careful and detailed consideration of the proposals. Their conclusions coincide with the conclusions reached by the previous Inspector, who, with the benefit of site visits, found that significant environmental benefits would accrue with the Wergs proposal.

Conclusions on Planning Balance

52. The Council's submissions with regard to the planning balance are as follows;

(i) both schemes cause comparable levels of harm to the Green Belt (through inappropriateness, loss of openness, and encroachment into the countryside),

(ii) neither scheme causes any other significant harm,

(iii) harm to the Green Belt attracts substantial weight,

(iv) either scheme would relieve the compelling need for a new crematorium arising out of pressure at Bushbury. The relief of that compelling need is sufficient to generate very special circumstances,

(v) in addition, the Wergs proposal will make a significant contribution to relieving pressure at Gornall Wood,

(vi) the Wergs scheme delivers environmental benefits.

53. Accordingly, the planning balance for Wergs is more favourable than that at Essington, and the Wergs proposal is preferred.

The "Residual" Case

54. As already stated (and as recorded in Mr Bateman's evidence - §10.3), the central plank of Westerleigh's case for very special circumstances is meeting the compelling need for new crematoria provision to address pressures at Bushbury. If the proposal at Wergs is allowed (because it generates a more favourable planning balance), then that central plank of Westerleigh's case is stripped away.

55. Mr Bateman suggested (in cross-examination as opposed to his proof) that the planning balance in respect of the Essington scheme would be unchanged in those circumstances. With respect, that suggestion is unsupported.

56. Without delivering that central benefit, the Essington proposal is left with claims that it is needed to address;

- (i) future capacity issues at Streetly,
- (ii) capacity issues at Stafford and Sutton Coldfield, and,
- (iii) qualitative deficiencies, and particularly those associated with catering for the Hindu and Sikh communities.

57. We have addressed those residual points in our submissions. In short;

- (i) future capacity issues are not proven (particularly “post-Cannock”),
- (ii) Stafford is relieved by Cannock, and in any event, the level of diversion from Stafford and Sutton Coldfield to Essington is minimal, and,
- (iii) current provision, together with new facilities at Wergs and Cannock will address any remaining qualitative needs.

58. In order to justify the grant of planning permission, Westerleigh must demonstrate that there are factors that clearly outweigh the substantial weight attributed to harm caused to the Green Belt. The residual factors that Westerleigh is left with, assuming the Wergs proposal receives a planning permission, fall well short of outweighing (let alone clearly outweighing) harm to the Green Belt so as to give rise to very special circumstances³²⁶.

59. In those circumstances, the Council invites the Secretary of State to allow Dignity’s appeal and grant consent for the Wergs proposal, and to dismiss Westerleigh’s appeal.

³²⁶ The Council notes for completeness that Mr Best confirmed (in evidence-in-chief) that he did not make a case that there is space for both Wergs and Essington in light of the Cannock permission. Neither Appellant has assessed the impact of allowing both appeal schemes in terms of diversions from existing crematoria (Dignity) or the provision of capacity versus demand (Westerleigh). In any event, it is apparent that Essington might only receive a planning permission (ahead of Wergs) if Wergs was found to cause significant environmental harm (as opposed to delivering environmental benefits). In those circumstances, there is no evidence that the residual benefits (i.e. providing some relief to Gornal Wood) would clearly outweigh both Green Belt and environmental harm.

CLOSING SUBMISSIONS ON BEHALF OF SOUTH STAFFORDSHIRE CEMETERY & CREMATORIUM LTD

Dignity Appeal

a. The site is believed to be on a flood plain as identified in previous refusal for Cemetery. See attached photograph Sunday 16th December 2018 showing low lying wet site.

b. Parking : A41 is the busiest dual carriageway road in the Midlands, no possible parking.

c. Traffic lights 6 way system. North to South, East to Heathhouse Lane, West to Perton Road. Video to follow.

d. Narrow Heathhouse Lane, no possible parking.

e. The site will need parking for up to 600 or more vehicles because Sikh, Hindu, Buddhist are 100% to be cremated, demographics show the religions have over 30,000 inhabitants local communities, they celebrate funerals with massive grieving followers, majority have :- With horse cart at 10mph, 20 plus funeral cars, massive amount of friends and relatives. Also 75% other people today opt in for cremation over burial.

f. Wrottersley Natural Burial Company Perton Road This has opened since the appeal commenced, it is situated opposite side of A41. Just 500 yards from Dignity Appeal Site. These have very limited off road parking for 6 vehicles. This business is flourishing.

g. Dignity Error of Statements They state that their application is based upon 4 to 6
3

cremations per day? This figure is widely astray. This is an unviable amount to cover the cost of build also the running costs as shown by Streetly, Telford and Bushbury.

h. Dignity fail to state that if planning was granted, they would need to increase to two, possibly three cremators

i. STREETLY, Telford, Bushbury similarly state facts :- with 2 cremators giving 30 minute slots 5 days per week, 9 till 5, equates to 135 funerals per week.

With 45 minute slots, equates to 105 funerals per week. i.e. several hundred vehicles entering and exiting all day long. See Streetly report attached.

j. Whence price wars develop!? Recent national publicity shows a mass protest against the rising costs of funerals average £4250.00. In today's austerity dilemma a price war is inevitable between Crematoriums. Dignity being the largest provider would attract the majorities with competitive best fees. Bringing the need for parking up to hundreds of cars every 45 minutes during the A41 busiest traffic periods.

k. Holyhead Road A41 Wergs One entrance/exit would be swamped with an average of 100 funerals per week, say 300 vehicles per funeral, equates to 30,000 vehicles at a speed of funeral respect pace 20mph? Even just 50 funerals per week equates to over 15,000 vehicles in slow caterpillar of in and out of Gateway to this A41 very busy road all day every day, CREATING TRAFFIC NIGHTMARES.

Westerleigh Appeal

Westerleigh are facing massive opposition :-

a. From local people and Essington Parish Council stating loss of green space for large conurbation, see newspapers, attached.

b. Walsall Council facts of their existing Crematorium at nearby Streetly state this is under used and has facilities to serve the area around Essington will be encroached with possible losses, attached.

c. Cannock close by new Crematorium planned.

d. Parking needs of Parking for over 300 or more vehicles to avoid congesting Broad Lane.

e. Essington is a long difficult drive away from the main hub of south Staffordshire of Codsall, Perton, Pattingham, Wombourne, Kinver, where the greater majority live.

Travel time for these Residents would be over 30 /50 minutes.

3

f. Map of South Staffordshire shows outer distance.

g. Map shows position of Essington on the far Eastern side of South Staffordshire, attached.

h. Essington is more akin to Bloxwich/Great Wyrley/Cheslyn Hay/ Saradon/ Hatherton small communities, Walsall/ Cannock who state that they have an existing Crematorium at Streetly with spare slots to accommodate the Residents of Essington area.

i. Wheaton Aston, Stretton, Weston, Blymhill, these are all closer and easier access to Telford Crematorium.

j. Essington will not therefore attract clients from Bushbury.



Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

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.