
Appeal Decision

Hearing held on 10 November 2016

Site visit made on 10 November 2016

by Jonathan Price BA(Hons) DMS DipTP MRTPI

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

Decision date: 29th December 2016

Appeal Ref: APP/X1355/W/16/3148225

Land to the north of Castle Eden Brewery, Castle Eden, County Durham

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Dignity PLC against the decision of Durham County Council.
 - The application Ref DM/15/01841/FPA, dated 12 June 2015, was refused by notice dated 5 February 2016.
 - The development proposed is erection of new cremation facility comprising a crematorium building, new access road, car parking facilities, ancillary external areas including gardens and pond.
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Decision

1. The appeal is allowed and planning permission is granted for erection of new cremation facility comprising a crematorium building, new access road, car parking facilities, ancillary external areas including gardens and pond at land to the north of Castle Eden Brewery, Castle Eden, County Durham in accordance with the terms of the application, Ref DM/15/01841/FPA, dated 12 June 2015, subject to the conditions set out in the Schedule attached to this decision.

Application for costs

2. An application for costs was made by Dignity PLC against Durham County Council. This application is the subject of a separate Decision.

Background and Main Issue

3. The proposal relates to an arable field of about 3 hectares situated to the east of the B1281 junction onto the A19 and just to the west of the village of Castle Eden. A closed-off unclassified road runs diagonally along the south-western boundary of the site and the fairways to holes 3 and 4 of the Castle Eden golf course abut the eastern and northern boundaries respectively.
4. A proposal of the same description was the subject of an appeal¹ dismissed on 4 February 2015, following a hearing held on 24 September 2014, because the Inspector considered that the scheme would not provide an appropriate level of personal safety for mourners and had not satisfactorily addressed and mitigated the potential for crime and, as a consequence, the fear of crime.
5. This proposal is a revised scheme seeking to address the reasons the previous appeal had been dismissed. In summary, the main change to the layout of the

¹ APP/X1355/A/14/2221052

development has been to relocate the memorial garden from the north-west side of the site to a more central position. This seeks to overcome the concerns raised by the Inspector over the risks to the safety of attendees from miss-hit golf balls from the 4th tee.

6. In respect of mitigating the potential for crime this proposal now includes an access gate and fencing just beyond the turn into the revised access from the B1281. Street lighting would be installed along the re-opened, re-surfaced section of the unclassified road up to the crematorium entrance where there will be directional bollard lighting and CCTV. A swing gate at the end of the made-up section of road would restrict vehicular access further.
7. In refusing the application the Council had considered the access details had addressed the Inspector's concerns in respect of mitigating the potential for crime in this location. However, the Council was not satisfied the amendments to the design and layout of the crematorium overcame its concerns over safety and the risk to mourners from errant golf balls and so the planning permission was refused on this basis.
8. Consequently, the main issue in this case is whether the proposal would provide prospective users with a safe environment, with regard to its proximity to the adjacent golf course.

Reasons

9. The appeal site is located adjacent to two of the fairways which comprise part of the Castle Eden golf course. To the east is the 3rd hole where the fairway runs north from a tee at its southern end. The fairway to the 4th hole runs alongside the northern boundary of the site. Here the tee is to the east and balls are driven westwards along the fairway which dog-legs northwards to the hole.
10. With regard to the effect of miss-hit balls from the 3rd tee the previous Inspector had taken account of the proposed area of informal parkland on the eastern part of the development, separating the crematorium building, its access and parking areas and the formal garden spaces from the adjacent fairway. The Inspector had considered this parkland area avoided an unacceptable level of conflict with the adjoining use. However, the Inspector had found there to be a clear risk arising from miss-hit balls from the 4th tee to the safety of mourners congregating in the formal garden areas in the north-west corner of the site.
11. The layout of the current scheme retains the same area of parkland within the eastern part of the site. To address the previous Inspector's concerns over balls hit from the 4th tee, the formal garden areas have been relocated centrally within the site and away from the northern boundary.
12. Both the golf course design report² produced by Castle Eden Golf Club (CEGC) to support its objection, which the Council places some reliance on, and the appellant's advice³, confirm that a separation of 80m, as measured from the centre line of the fairway to the boundary of an adjacent development, is the generally applied industry standard for safety.

² Gaunt Golf Design 5 January 2016

³ Westenborg Golf Course Architecture – letters dated 21 August and 11 November 2015.

13. The current scheme provides the same open parkland area to the east of the site as proposed previously. The appellant's evidence shows that this area would provide the 80m separation from the central line of the fairway to the 3rd hole and that the crematorium buildings, access road, parking areas and the re-sited memorial gardens would all be located beyond this.
14. The appellant's evidence also shows that a similar 80m distance from the centre-line of the fairway to the 4th hole would almost reach the northern end of the crematorium building. With the re-location of the remembrance gardens, the only publicly accessible part of the northern 80m zone would be a small part of an internal loop road, intended for the circulation of hearses and where any attendees would be within a vehicle. The formal garden that the crematorium building looks north onto would not be for public access. Apart from containing the attenuation pond, the rest of the northern part of the development site within this 80m zone would be parkland not intended for general public access.
15. The report produced by CEGC also provided plans which superimpose the 80m safety zones onto the development site and these closely equate to the plans produced by the appellant. The CEGC report also superimposes safety cone areas showing the likely flight of golf balls hit from the hole 3 and 4 tees. The intersection of the hole 3 safety cone with the appeal site increases northwards but remains within the 80m limit. The hole 4 safety cone largely avoids the appeal site and just glances its north-west corner.
16. The evidence presented to me is that, in recent years, the technology of golf equipment has resulted in players generally being able to drive balls higher and further. However, it would appear that this has been the reason the safety distance standard has increased from 60m to 80m. It is accepted that a misdirected shot could reach any part of the crematorium development from either the 3rd or 4th tee. The human impact of being struck by a golf ball can be serious and potentially fatal but the evidence does not suggest this is a common occurrence outside of golf courses. Although the trees along both the northern and eastern site boundaries would provide incomplete protection to errant golf balls, many of which could travel over or through the vegetation, there remains the area of 80m buffer beyond. Although protective fencing as a solution would be inappropriate here on landscape grounds, this is mainly a necessity on boundaries to adjacent uses that golf balls might be driven towards.
17. The Council and interested parties have made the point that a congregation of mourners would provide a potentially large target where golf balls could strike hard-surfaced areas and bounce unpredictably. The concerns expressed were that the impact of a miss-hit golf ball into the areas of the crematorium where mourners congregated would have a particularly unfortunate impact, regardless of any physical harm, given the solemn nature of proceedings. It was also a view put forward that, regardless of the operators' intentions for landscaping and attendee management, there would be a residual risk of visitors wandering into the restricted areas and also an ongoing safety issue in regard to grounds maintenance staff.
18. Consideration has been given to the human impact on golfers also, should they inadvertently miss-hit a shot into this proposal. This proposal would expose the golf club and its members to a greater degree of risk of liability and these

concerns are fully appreciated. However, the 80m safety zone has emerged through practical experience over time to provide a standard which, whilst not eliminating risk, reduces it to a reasonable and acceptable level. I am not persuaded golf technology has advanced the average hit distance of golf balls in the period since 80m became commonly adopted such that this standard is no longer fit-for-purpose.

19. From the evidence presented I consider the provision of the landscaped area to the east of the development would reduce the safety risk to attendees arising from errant golf balls to an acceptable level and in this respect I find no reason to differ with the view of the previous Inspector. Golfers would generally seek to avoid driving balls out-of-bounds to the west of this fairway. A prevailing south-westerly wind would favour high balls being blown away from the proposed crematorium. Whilst some miss-hit balls from the 3rd hole tee would reach the publicly accessible parts of the proposed development the evidence suggests most would be intercepted by the intervening landscape buffer.
20. The 4th hole has a shorter fairway than the 3rd. The safety cone illustration suggests that a large number of balls would be driven beyond the western extent of the appeal site. The CEGC representatives considered that the layout of this fairway encouraged a slight leftward bias in driving balls to avoid trees and line up a later shot towards the 4th hole. However, I consider that, whilst only accomplished golfers would have the range to drive a ball over the trees directly to the hole, many would drive towards the turn in the dog-leg but, as with the 3rd hole, seek to avoid steering balls out-of-bounds towards the appeal site.
21. Within and beyond the 80m buffer proposed along the north of the site there would be a somewhat greater likelihood of a golf ball hitting a hard surfaced area or part of a structure that might cause it to bounce further. However, the area of hard-surfaced road is quite small in this zone and the proposed contouring of the site and the partial ground encasement of the main building would make this part of the crematorium development relatively resilient to any harmful impact from stray golf balls.
22. The scheme, as revised from the previous appeal, would provide the industry-accepted 80m safety zones along the eastern and northern parts of the development. These areas would be mainly free from development and preclude entry by crematorium visitors. There would be a maintenance presence within these areas but this would be at a relatively low-level and safety could be acceptably managed through appropriate staff training and personal protective equipment.
23. Whilst I can fully appreciate the particular sensitivity of this use to the effect of stray golf balls, given the solemn circumstances for attendance, the safety evidence provided on behalf of the CEGC, which has been influential on the Council's decision, is less persuasive than that provided by the appellant. Whilst the safety risk to workers and attendees at the proposal would not be eliminated, the revised proposals now provide safety margins that would reduce this to an acceptable level.
24. Policy 1 of the District of Easington Local Plan 2001 (DELP) judges development proposals against sustainable development principles and the benefits provided to the community and local economy and sets out a series of criteria for location, design and layout which includes safeguarding the general amenity of

people living and working within the vicinity of the site. This refers to DELP Policy 35 whereby the design and layout of development will be required to have no serious adverse effect on the amenity of people living and working in the vicinity of the development site and the existing use of adjacent land or buildings in terms of privacy, visual intrusion, noise, other pollutants and traffic generation. In the previous appeal the Inspector had assessed this issue against DELP Policy 38. However, I accept the advice from both parties that this policy relates specifically to safety from crime.

25. Given the uncommon circumstances of both the proposal and the Council's reason for refusal it is not surprising the available DELP policies do not provide a close fit. Nonetheless, I infer that the intention of these policies would include developments providing a safe environment for visitors and employees. In this regard, I consider this proposal would satisfy the broad aims of DELP Policies 1 and 35. These are consistent with the aims in paragraph 69 of the National Planning Policy Framework in respect of promoting safe and accessible developments. For these reasons, I do not find it necessary to consider the DELP policies silent in respect of this proposal.

Other Matters

Issues relating to the potential for crime and the fear of crime

26. The unclassified road leading to the appeal site from the B1281 has in the past attracted a high-level of crime involving insalubrious and threatening activities. I am in no doubt that this had a seriously harmful effect on the well-being of the local community and had generated a great deal of fear and distress. There had been significant efforts made to have this road closed to vehicular traffic and for the barrier to be installed.
27. The previous appeal decision had made it clear that the lack of detailed mitigation measures to prevent these criminal activities re-surfacing due to the re-opening of this road weighed strongly against the proposal. Whilst appreciating the strong local concerns over the re-occurrence of these criminal activities, I nonetheless consider that the making up of the access, the trimming and managing of the hedging and the installing street lighting and CCTV would introduce a degree of formality and ownership to this location. This would be likely to make this area more secure and less attractive to criminal activity.
28. The site security measures proposed, based on the commissioned Site Security and Vulnerability report, have the support of the Police. Whilst there might be issues to manage regarding entry to the site for visitors, and the use of CCTV would have limitations where any potential criminals sought to conceal their identity, I nevertheless consider that the measures proposed are reasonable in seeking to avoid future problems.
29. Policy 1 of the (DELP) applies the principle that new development should assist with the objective of reducing crime and increasing personal safety through appropriate design and layout, as further set out in Policy 38. The measures proposed to ensure that this development does not lead to the re-emergence of illegal activity meet the aims of these policies.

Highway considerations

30. Consideration has been given to the concerns expressed by interested parties over the effect long, slow moving funeral cortèges would have on the operation and safety of the surrounding road network. Reference was made to this proposal exacerbating the peak-time incidence of traffic backing up on the slip roads onto the A19 from the B1281 junction, where drivers often enter Castle Eden to take a U-turn in order to avoid queuing traffic.
31. However, there is no objection to this proposal in respect of its effect on the A19 trunk road from Highways England and the local highway authority has agreed the access design onto the B1281. The proposal would be restricted to eight hourly cremations between 0900-1700, on weekdays only, which would be a reasonable level of operation. The revised junction design onto the B1281 is considered adequate to cater for this development and provide safe visibility, and the 60 on-site visitor car parking spaces would meet the requirements of most cremations. Consequently, this proposal could be accommodated by the local road network and would not result in material harm to the safety and convenience of highways users.

The principle of development and the demonstration of need

32. In the previous appeal the Inspector accepted the principle of this proposal in respect of its location within the countryside and found that the need for a crematorium here had been demonstrated. Having considered the further representations in respect of this second appeal and I find no reason to take a contrary view to this.

Landscape and visual impacts and the effects on heritage and natural assets

33. This proposal amends that considered in the previous appeal, mainly in respect of the location of the formal remembrance garden. The actual cremation buildings, internal roads and car parking would remain where previously proposed. The topography of the site is such that this development would mainly be viewed from the B1281 and the south, where it is quite well screened by trees and vegetation, and from the adjacent golf course, where the re-location of the remembrance garden would provide for a more natural external appearance to the development.
34. Consideration has been given to the supporting Landscape Assessment, which is deemed an adequate basis to determine the impacts of this proposal. The buildings would remain of a low-level, green-roofed design and be concealed by mounding and landscaping. Only the dressed stone flue would rise above the mainly low profile of the buildings. With landscaping, this development would not have a harmful visual effect on the Area of High Landscape Value within which it is situated. It would consequently satisfy the aims of DELP Policy 7. This lack of harmful visual impact would also preserve the character and appearance of the adjacent Castle Eden Conservation Area and the setting of the grade II listed former Castle Eden brewery to the south-east. The evidence shows there would be no material harm to archaeological interests or to any statutorily protected nature conservation sites or species, subject to adherence to the mitigation and enhancement set out in the ecology report.

Living conditions

35. The crematorium would be sufficiently screened and far enough away from the nearest residential properties not to have a harmful effect on outlook. Any

emissions or noise emanating from the development would not be at a level to give rise to adverse effects. Living conditions for village residents would mainly be affected by the change in the character of the site due to the development itself and the regular processions of cars following hearses. This area, particularly since the closure of the unclassified road, currently provides a peaceful rural location enjoyed by walkers and golfers. However, the development of this site would not materially harm the potential to enjoy the wider countryside or the golf course. Consequently, the proposal would comply with DELP Policy 1 by safeguarding the visual and general amenity of people living and working within the vicinity of the site.

Conditions

36. Consideration has been given to the conditions suggested by the Council. At the hearing the appellant confirmed agreement to these. In addition to the standard time limit for commencement (1) it is necessary in the interests of certainty that this proposal be carried out in accordance with the plans submitted (2). In the interests of the generally acceptable living conditions of Castle Eden residents, and the satisfactory operation of the surrounding road network, conditions are necessary restricting cremations to 8 per day between the hours of 0900 and 1700 on Monday to Friday, with no more than one cremation per hour (3), and requiring arrangements to be agreed in advance with the Council over how larger than average congregations would be managed (4). For the same reasons the development is conditioned to be the subject of an agreed construction method statement (12).
37. In the interests of public safety and to avoid the incidence of crime a condition is required to ensure the development operates in accordance with a scheme for site access gate opening times and out of hours access security and emergency protocols, agreed in advance with the Council (5). For the same reasons the approval is conditional upon the development implementing an external lighting strategy (11) and a scheme for signage and CCTV coverage (13).
38. To secure adequate foul and surface water drainage the development shall comply with a scheme addressing these matters which has the prior written agreement of the Council (6). In the interests of supporting biodiversity the development is conditioned to be carried out in accordance with the submitted mitigation and enhancement strategy (7).
39. In the interest of character and appearance conditions require the prior agreement to external materials and finishes (8), the implementation of a landscaping scheme (10) and details of development levels relative to the site re-profiling (9).

Conclusions

40. DELP Policy 1 provides an over-arching policy whereby developments are assessed in accordance with the principles of sustainable development, together with any benefits derived to the community and the local economy. This proposal would benefit the local economy through the investment in its construction and servicing and by providing employment, although the number jobs directly connected with the operation of crematorium would be small. The benefits of this facility would mainly relate to the wider community rather than Castle Eden itself.

41. The development would be quite significant relative to the small size of the village but would meet a need acceptable in principle in this area of countryside. The funeral processions and gatherings of mourners would alter the character of this area but the restrained atmosphere of these would not cause undue disruption or disturbance. The development is designed not to intrude harmfully into the surrounding landscape and preserve biodiversity and built heritage interests.
42. The access to the site would include measures likely not to lead to a reoccurrence in criminal activities. The scheme design and layout would provide prospective users with a safe environment, with regard to its proximity to the adjacent golf course. Consequently, having taken into account all other matters raised, I conclude that this appeal should be allowed.

Jonathan Price

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Philippa Jackson	Counsel
Ian Ginbey	Clyde and Co
Ciaran Nolan	Dignity Plc
Jeremy Good	England, Good and Lyle
Marc Westenborg	Westenborg Golf Course Architecture

FOR THE LOCAL PLANNING AUTHORITY:

Colin Harding	Durham County Council
Neil Carter	Durham County Council
Jonathan Gaunt	Gaunt Golf Design

INTERESTED PERSONS:

Mary Wilmer	Chair - Castle Eden Parish Council
Barry Turnbull	Vice Chair - Castle Eden Parish Council
Rob Crute	Councillor – Durham County Council
Lynn Pounder	Councillor – Durham County Council
Phil Barclay	Castle Eden Golf Course/Residents Action Group
Stuart Forster	Castle Eden Golf Club
Dennis Chaytor	Castle Eden Golf Club
Graham Border	Castle Eden Golf Club
Natasha Maddison	Interested Party
Keith Maddison	Interested Party
Pauline Wood	Interested Party
Tony Hill	Interested Party
Peter McGlasham	Interested Party
Myfanwy Lancaster	Interested Party
Beverley Jones	Interested Party
Catherine Walker	Interested Party

Schedule of Conditions
Appeal Ref: APP/X1355/W/16/3148225
Land to the north of Castle Eden Brewery, Castle Eden, County Durham

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: site location plan 1:2500 @ A4, LM01 – landscape masterplan – Rev A, proposed floor plan drawing no. 1324/L101 Rev A, proposed site plan drawing no. P-100-03 rev. C, proposed access highway drawing no. P-100-02, proposed elevations drawing no. 1324/L103 rev B, drainage strategy drawing no. 3812-C-09-01, Appendix 1 tree protection plan, Appendix 1 phase 1 habitat plan.
- 3) The crematorium hereby permitted shall not be operated outside the following times: 0900 to 1700 Monday to Friday. No more than 8 cremations shall take place each day, and no more than one cremation per hour.
- 4) Prior to the development being brought into use a cremation booking strategy that addresses how anticipated larger than average congregations would be managed, and associated vehicles parked, shall be submitted to, and agreed in writing by, the Local Planning Authority. Thereafter the strategy shall be implemented in full accordance with that agreement.
- 5) Prior to the development being brought into use a scheme for the controlling of the opening of the site access gates (which shall include opening and closing times, security and emergency protocol for out of hours access) shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter operate in accordance with the agreed scheme.
- 6) No development shall take place until a scheme for the management and disposal of surface and foul waters from the development has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be implemented in accordance with the approved details.
- 7) The development hereby permitted shall only be carried in accordance with the recommended Mitigation and Enhancement Strategy contained within the approved Ecology Report (Dendra Consulting Ltd) December 2015.
- 8) Notwithstanding the information shown on the submitted application, details of all materials to be used externally and the standard of their finish shall be submitted to and approved by the Local Planning Authority in writing before the development is commenced, and thereafter implemented in accordance with the approved details.
- 9) No development shall take place until a scheme of proposed ground levels has been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall include details of grading and mounding, including the relationship of such works to the existing

vegetation and landform. The development shall be carried out in accordance with the approved details.

- 10) Prior to development commencing, a detailed landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme of landscaping shall include details of hard and soft landscaping, ground levels, means of enclosure, species, sizes, densities, numbers, method of planting and maintenance regime, as well as indications of all existing trees and hedgerows on the land and details of those to be retained, together with measures for their protection in the course of development. Thereafter implementation shall take place in accordance with the approved scheme within the first available planting season following commencement of the development.
- 11) No development shall take place until an external lighting scheme has been submitted to, and approved in writing by, the Local Planning Authority. The agreed scheme shall thereafter be implemented in accordance with the approved details.
- 12) No development shall take place until a construction method statement and management scheme has been submitted to, and approved in writing by, the Local Planning Authority. The approved statement shall be adhered to throughout the construction period. The statement shall provide for:
 - a) Hours of work during the construction period.
 - b) The phasing of the movement of construction traffic.
 - c) Parking of vehicles of site operatives and visitors.
 - d) Loading and unloading of plant and materials.
 - e) Storage of plant and materials used in constructing the development.
 - f) Wheel washing facilities.
 - g) Measures to control the emission of dust, dirt, noise, vibration and light during construction.
 - h) A scheme for recycling and disposing of waste resulting from construction works.
 - i) Details of piling.
- 13) No development shall take place until a scheme of signage and CCTV coverage relative to the use of the crematorium has been submitted to, and agreed in writing by, the Local Planning Authority. The development shall be carried out in accordance with the approved details.

---End of Conditions---