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## Costs Decision

Hearing Held on 11 June 2019

Accompanied Site visit made on 11 June 2019

Unaccompanied Site Visit made on 10 June 2019

**by Zoe Raygen, Dip URP, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 1<sup>st</sup> July 2019**

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### **Costs application in relation to Appeal Ref: APP/P1805/W/18/3211026 Land adjacent to New Inns Road, Rubery, Bromsgrove**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by h2land for a full award of costs against Bromsgrove District Council.
  - The hearing was in connection with an appeal against the refusal of the Council to grant planning permission for the change of use of maintenance/chapel building approved under planning permission 12/0448 to allow for cremations to take place, reduction in scale of building and hard standing and reduced operating times.
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### **Decision**

1. The application for an award of costs is partially allowed in the terms set out below.

### **The submissions for h2land**

2. A costs submission was made in writing prior to the Hearing. At the Hearing the applicant confirmed that their application still stands, and no new points were made.
3. The applicant seeks a full award of costs. In essence, it is submitted that the Council has behaved unreasonably by refusing the application against its professional officer's recommendation without robust evidence to support the different aspects referred to in the Council's one reason for refusal.

### **The response by Bromsgrove District Council**

4. The response from the Council was made in writing prior to the Hearing. The Council is of the view that it has adequately substantiated its reason for refusal, including reference to evidence from Redditch Borough Council's Bereavement Services Manager (BSM).

### **Reasons**

5. The Council's decision notice includes one reason for refusal which includes reference to a number of different aspects.
6. The Council alleges that the proposal would be harmful to highway safety due to the type of traffic using the highway, in particular slow moving hearses. It

states that repeatedly slowing traffic in an area where there is a tendency to drive at or exceed the speed limit could have deleterious consequences with regard to highway safety. However, while I accept that the applicants traffic data shows that the 85<sup>th</sup> percentile traffic speed is above the local speed limit, and that a funeral cortege may proceed at speeds less than 30mph the Council submits no substantiated evidence to support its claim.

7. The Inspector in a previous appeal decision<sup>1</sup> for a similar proposal on the appeal site considered that it was likely that by offering both cremation and burial services, the number of services would be likely to be greater than if there were only a cemetery at the appeal site. I have reached a similar conclusion. However, I have found that it is also likely that there would only be one service at any one time. As the number of traffic movements for a cremation would be similar to that for a burial then the amount of traffic accessing the appeal site at any one time is unlikely to change from that able to visit the site under the terms of the agreed extant planning permission<sup>2</sup>.
8. Both Worcestershire County Council and Birmingham City Council raised no objections to the proposal. Although the Council can decide not to accept the advice of these authorities, or that of its professional officers, it must offer some evidence to support its view. In this case none has been submitted and in that respect the Council has acted unreasonably.
9. Within its reason for refusal the Council also allege that the need for the development has not been demonstrated. Although this aspect was not included as a reason for refusal on a previous identical application for planning permission (16/0581/FUL), the Council advise that the advice from the BSM was not available at the time of the assessment of that application.
10. Although the evidence was mainly presented by the BSM who manages Redditch Crematorium, it was mostly limited to factual information regarding the number and frequency of services. Therefore, I am satisfied that the BSM was not acting in an impartial or conflicted manner.
11. The applicant also alleges that the Council is withholding information pertinent to the appeal regarding the need for a new Crematorium and I have had sight of relevant Freedom of Information (FoI) requests made by the appellant and responses from the Council. I was advised at the hearing that there is an ongoing internal process being undertaken by the Council in response to the latest correspondence from the applicant. However, these are separate processes being undertaken by the Council under the FoI legislation. It is for the Council to decide on the sensitivity of the information requested. In the absence of any substantive evidence to the contrary, I am also not convinced that the claim that the Council's persistent rejection of the proposal against its professional officer's recommendations on changing reasons is a clear indication that it has a vested commercial interest in preventing the development of competing crematoria.
12. The Councils assessment that, based on its limited evidence, the need for the development has not been demonstrated, led to its conclusion that Very Special Circumstances did not exist to justify the proposed development within the Green Belt. I am satisfied that although the evidence is limited and I have

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<sup>1</sup> APP/P1805/W/17/3168297

<sup>2</sup> 12/0448

reached a different conclusion to the Council, it advanced a case that, in its opinion, indicated that the proposal was contrary to the development plan and the National Planning Policy Framework.

13. The applicant would have had to submit an appeal as the application was refused on matters rather than that relating to highway safety. However, they have been put to the unnecessary and wasted expense of providing further evidence to address the Council's part of the reason for refusal relating to highway safety.
14. I therefore conclude that unreasonable behaviour resulting in wasted expense, as described in the PPG has been demonstrated and that a partial award of costs is justified in respect of the work undertaken by the applicant with regard to the Council's part of the reason for refusal relating to highway safety.

### **Costs Order**

15. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Bromsgrove District Council shall pay to h2land, the costs of the appeal proceedings relating to the reason for refusal in respect of highway safety only.
16. The applicant is now invited to submit to Bromsgrove District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Zoe Raygen*

INSPECTOR