



Costs Decision

Inquiry held on 6 and 7 July and 16, 17 and 18 November 2021

Site visits made on 28 June and 17 November 2021

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2021

Costs application in relation to Appeal Ref: APP/N0410/W/21/3270138 The Lea, Western Avenue, Denham UB9 4NA

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Anoopam Mission for a full and/or partial award of costs against Buckinghamshire Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for a crematorium, dining hall and widening of access road with associated landscape and biodiversity enhancements.
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Decision

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

Preliminary details

2. The full submissions are set out in Annexes to this Decision.

The summary submissions for Anoopam Mission

3. This is an application for full costs against the Council because it has behaved unreasonably in failing to grant planning permission. In the alternative, an application is made for a partial award because the Council has acted unreasonably by:
 - (a) failing to provide reasons for refusal which stand up to scrutiny on the planning merits of the case;
 - (b) causing delay in providing information or other failure to adhere to deadlines;
 - (c) providing information that is shown to be manifestly inaccurate; and/or
 - (d) not reviewing their case promptly following the lodging of an appeal against refusal of planning permission, as part of sensible on-going case management.

Substantive Unreasonableness – Full Award of Costs

4. Planning permission was recommended by the Case Officer, then refused by the Council at Planning Committee. The planning application was not considered by officers to be defective or lacking in evidence. The Council also employed an external consultant to address Green Belt and landscape matters. That advice highlighted no lack of evidence.
5. Councillors suggested that insufficient research had taken place into spare capacity in current crematoria and that the site search should consider a retail

site and other local authority areas. Councillors appeared to give scant regard to its Public Sector Equality Duty (PSED).

6. The appellant undertook a wider review of sites, which was submitted as part of the Statement of Case (SoC). No alternative sites were suitable to meet the specific needs of the Hindu beliefs.
7. At the start of the Inquiry, the Council's position was that there was both a quantitative and qualitative need for an additional multi-faith crematorium, with a quantitative capacity and qualitative provision deficiency. However, it was their expert witness' position in written evidence and examination in chief (XiC) that better management of these crematoria would be sufficient to address the unmet needs of the Hindu faith.
8. That position proved to be indefensible. The Council's case was premised on the absence of "need" for this development, limited to "drive time" analysis as the basis upon which there was no identified need. That position was wholly untenable. The Council's need witness, Mr Smith:
 - (a) gave scant regard for the commissioned government papers identifying the need for faith-based cremation facilities;
 - (b) conceded that the qualitative deficiencies for Hindu based cremation facilities were capable of being an identified "need" in any event;
 - (c) agreed that the need should be met where there is the greater concentration of Hindus.
9. Mr Smith also dismissed the key features of the Hindu faith during his evidence, that showed a lack of professional understanding or balance, or proper regard for the PSED.
10. Mr Smith put forward a list of sites which in his view were "high level" alternatives. He had not visited any of them. The Council relied upon his advice as part of its Supplementary SoC. This suggests it never undertook the reasonable evidential review of the baseline case before putting forward this evidence to the Inquiry. If the Council were minded to rely upon alternatives, those should have been defensible. They were not.
11. The appellant undertook work to establish the "high level" alternatives were inappropriate. Mr Smith agreed this was "robust" and accepted in cross-examination (XX) that all the sites were unacceptable. Mr Smith could not point to any alternative sites. No other sites were before the Inquiry. The suggestion that there were alternatives was baseless. Mr Smith conceded that the appellant's qualitative need case had been made out.
12. The Council's "need" case collapsed and Mr Regan (planning witness) had to concede that very special circumstances (VSC) existed and both witnesses conceded that planning permission should be granted. Mr Smith's evidence was ill-directed, poorly researched and uncorroborated. He was not appropriately qualified for the Council to rely on his evidence.
13. Given the Council can now offer no planning rationale for why planning permission should be refused, the Council have been unreasonable, and this appeal was preventable. The Reason for Refusal (RfR) could not withstand scrutiny and the appellant submits that the full award of costs ought to be awarded.

Procedural unreasonableness – Partial Costs Award

14. Article 35(1)(b) of the Town and Country Planning (Development Management Procedure) (England) Order 2015/595 mandates that where planning permission is refused, the refusal notice *"must state clearly and precisely the full reasons for the refusal, specifying all policies and proposals in the Development Plan which are relevant to the decision"*.
15. The RfR specifies insufficient evidence-based research had been submitted to demonstrate that there is no capacity elsewhere. The application was subject to detailed analysis and the Case Officer was satisfied with the evidence presented. Members chose to ignore their Case Officer's advice.
16. The decision notice refers to a breach of policy GB1 only. If a Council wants to rely on a breach of policy, it must cite that policy and state 'precisely and clearly' why that policy is said to have been breached. Policy GB1 is out of date and inconsistent with the National Planning Policy Framework (the Framework). There has been a reluctance by the Council to agree this.
17. This unreasonableness is further exacerbated by the fact that Mr Smith focuses on "better management" to resolve the current problems of meeting religious needs and difficulties with an absence of capacity. The Council's SoC concerns itself solely with narrowing the potential geographical area from which the proposal can expect to attract cremations, whilst arguing that meeting unmet faith needs plays no part in considering the proposed co-location of the proposal.
18. The initial SoC provided no evidence upon this issue, which appears to reflect the formal decision of the Council. Mr Smith sought to advance an argument that failed to adequately address the need of the Hindu faith (relying instead on a need for a multi-faith facility). Upon testing that argument fell away.
19. The Council's appeal case officer sought to delay the submission of the Council's SoC. When submitted, it was inadequate and a Supplementary SoC was requested by the Inspector. That Supplementary SoC was not sent directly to the appellant nor posted on the Council's website. It was sent to the appellant by PINS the day after the deadline.
20. The above reasons are sufficient in themselves to establish unreasonable behaviour. Additionally, the arguments raised by the Council regarding capacity are without merit and unreasonable:
 - (a) The Council assert in the RfR that the applicant failed to provide adequate evidence. However, Policy GB1 requires no such evidential hurdle to be overcome. Nonetheless, the planning application was accompanied by an assessment of agreed alternative sites based upon criteria agreed with the Case Officer and the Council's external advisors. The Council's decision was unjustified.
 - (b) Evidence was agreed between the appellant and officers of the Council and sufficient evidence was submitted.
 - (c) The Council has failed to substantiate its arguments (including those relating to alternative sites, unmet quantitative need and unmet faith needs) with adequate and relevant evidence. It argued that quantitative and qualitative needs existed for at least one crematorium, simply suggesting the difference is multi faith need.

- (d) The Council argued that the grant of permission for the appeal proposal would hinder the delivery of a new multi-faith facility (or facilities). No evidence came forward to substantiate this.
 - (e) A range of criticisms were initially made of the appellant's alternative site assessment (ASA), although Mr Smith resiled from these in XX. This ignored the fact that the Green Belt Assessment was agreed with the officers. The applicant worked with the Council to agree the impact on the Green Belt and VSC. It is not reasonable for the Council to seek to disavow that agreement.
 - (f) The Council could not point to a single alternative site.
 - (g) The Council's SoC shows no proper understanding or adequate sensitivity to Hindu faith and their beliefs.
21. The Council has been substantively and procedurally unreasonable. This is underscored by the misconceived assertions and arguments that were advanced by, and initially relied upon by the Council, and which since have been dispelled.
22. The appellant requests that the Council be ordered to pay (1) all of the costs of this appeal that the Appellant has incurred in connection with, and arising from the Council's refusal of planning permission, or, alternatively (2) part of the Appellant's costs in respect of those arising from and connected to the capacity and need arguments raised by the Council.

The summary response by Buckinghamshire Council

23. Refusing permission against officer's advice is not unreasonable behaviour. It is only if the Council's refusal and support for it on appeal is substantively unreasonable that there is any basis for a costs award. Case law also sets out it wrong to seek to reinterpret the resolution to grant planning permission by reference to comments of individual Councillors¹. It is the RfR given by the Council that matters.
24. The Council exercised its duty to determine the application reasonably and it should not be liable for an award of costs. The planning committee made a balanced judgment on an application for inappropriate development in the Green Belt with a complex range of material considerations put forward as VSC. The RfR identifies the substantial weight to be given to the harm to the Green Belt and judges that the VSC case is not made out. This is a reasonable exercise of judgment on the material before the committee at the time.
25. The Costs Application suggests an example of unreasonable behaviour within the PPG relating to "raising arguments that are wholly without merit and contrary to matters that were agreed subject to officers...". This bullet is not included in the PPG. This (false) bullet is an example of the appellant's failure to recognise that members are entitled to disagree with officers as part of the determination of applications and doing so is not unreasonable behaviour.
26. This is not development that was refused that should clearly be permitted. It is common ground that the proposal:
- (a) is contrary to Policy GB1,
 - (b) causes substantial permanent harm to the openness of the Green Belt,

¹ R. (on the application of Historic Buildings and Monuments Commission for England) v Milton Keynes Council and St Modwen Developments Ltd [2019] JPL 38

- (c) causes moderate harm to safeguarding the countryside from encroachment, and
 - (d) and that substantial weight should be given to any harm to the Green Belt.
27. These raise a strong presumption against the grant of planning permission. Any grant of permission in these circumstances requires a balanced judgment as to the overall benefits of the scheme and whether they clearly outweigh all that harm. The appellant's submission that refusal was unreasonable or that the development should be clearly permitted face a very substantial obstacle to overcome.
28. The refusal also reflects evidence available at the time. An ASA had not been provided as part of the application and this is a matter that the Council was clearly able to consider given the substantial harm to the GB.
29. The Council did produce evidence to substantiate the RfR through its supplementary SoC, proofs of evidence (PoE) and appendices. Quantitative and qualitative need is only one aspect of the case for VSC and requires weighting alongside other factors. The Council recognised a quantitative need for an all-faith crematorium – but "need" has many facets reflecting a general all-faith need, capacity at local crematoria, quantitative and qualitative need, including if the appellant had demonstrated the need could not be met elsewhere.
30. The Council has always been clear that there is a qualitative need for a bespoke Hindu facility. This was given significant weight. The co-location of the facility was beneficial and given moderate weight. The Council's evidence addressed PSED and recognised that Hindu faith requirements were not completely catered for within existing crematoria. There is no basis for asserting that Mr Smith dismissed the key features of the Hindu faith during his evidence.
31. The Council recognised a quantitative need arising for a bespoke Hindu crematorium and this matter was given moderate weight. Furthermore, the Council's evidence was not that every issue giving rise to a qualitative issue could be met by different management practices. Mr Smith's position was that management practices were relevant to the extent of the need and the extent to which local crematoria were able to improve their offer for the Hindu faith.
32. It was a matter of weight and degree within an overall balancing exercise which starts with a strong presumption against the development. Questions of the extent of need, or the weight to be given to it, are fundamentally matters of judgment. There is no one established methodology.
33. The concepts of quantitative and qualitative need are known to the industry and have been refined and applied in several appeal decisions. This was summarised and set out in the SoCG by reference to the December 2020 report of the Competition and Markets Authority. In the recent Secretary of State decision at Essington, the Inspector recognised quantitative need can be assessed in many ways and assessing current and future use of a crematorium is not an exact science. In the Oxted decision, the Inspector considered the questions of need by reference to 30 minute cortège drive times and how many residents would be brought for the first time within that catchment. Mr Mitchell in his PoE sets out similar. Therefore, it is reasonable to produce evidence that

considers quantitative and qualitative need by reference to the drive-time analysis, before considering general matters relating to the facilities.

34. This is what Mr Smith's written evidence did. It specifically considered the population currently unserved by any crematorium within the 30 minute cortège drive time of an existing crematorium, and the population that would identify the proposed site as their closest crematorium. It did so on a faith blind basis finding cogent need, and on a single faith basis finding lesser need. It made clear that the weight to be given to the assessed need was a matter of judgment for others. It went on to consider more generic qualitative issues that were facility specific. It is incorrect to say that only drive time analysis was considered – the most local alternative facilities were considered, and Mr Smith spoke directly with the operators.
35. Mr Smith accepted in XX that consideration of an unconstrained 45 minute catchment was a reasonable approach to a single-faith facility and on that basis he considered there was a cogent need for a single-faith crematorium within that catchment. He maintained his view that drive time was relevant but not determinative. This was a change in conclusion by Mr Smith – and a concession – not made in his written evidence. Making a concession is not unreasonable. There will be a range of judgments and under XX a professional witness may well accept an alternative view. It does not mean that the refusal was unreasonable, or that it has not been substantiated. It is a balanced view following testing at Inquiry. Need assessment is not an exact science, and there are different ways of doing it. There was no clear conflict within the Council's case with any caselaw or published policy or guidance.
36. Mr Regan reviewed his planning balance immediately after Mr Smith's evidence and recognised the need for adjustment and these changes tipped the balance. That does not mean that the original refusal was unreasonable or that the original RfR was not substantiated through evidence.
37. In the above circumstances, there is no basis for a costs award. The refusal was not unreasonable. It was a matter of planning judgment on the material there available.
38. Although the Appellant is critical of Mr Smith, he has considerable experience of operating in the sector by reference to both promotion of cemeteries and crematoria. The Appellant fails to identify what qualification or experience is a pre-requisite to give evidence as to quantitative and qualitative need. The Council did review its case. It is reasonable for a party to respond to cases as they advance.
39. In relation to alternative sites, no ASA was submitted through the application. The first ASA was submitted with the appellant's SoC. This was reviewed by the Council and discussed in the supplementary SoC. The criteria were not considered robust and sites that did meet the criteria were overlooked. In the appellant's PoE further information on alternative sites was provided. It did not address the sites mentioned by the Council. Mr Smith provided a high level response in his PoE and made clear the purpose of identifying the overlooked sites was not to claim that those sites were suitable, but that those sites fit the appellant's criteria. The sites were not addressed in Mr Sweeney's rebuttal, but less than a week before the Inquiry resumed, a response was submitted. It was by reference to this document that Mr Smith considered he was satisfied that the consideration of alternative sites was robust.

40. It is not that the RfR was not substantiated but rather the appellant provided more information which overcame that concern through evidence. The Council's position has been consistent – it was not that an alternative site had been identified but that the appellant had not demonstrated sufficiently the inability to meet the need elsewhere. In Mr Smith's position, this was not done until the week before the Inquiry resumed.
41. It is clear when the evidence is fairly considered and viewed in totality that none of the allegations of substantive unreasonableness is made out.

Procedural Unreasonableness

42. The Costs Application is not clear as to what behaviour is said to be unreasonable. The sufficiency of the evidence and whether the appellant had provided sufficient evidence to demonstrate VSC is a matter of judgment. The Committee do not have to agree with officers. If this is a point about alternative sites, it has been addressed above.
43. The RfR only identifies breach of GB1 and no other development plan policy. GB1 is breached. There is a disagreement between the parties if it is out of date – but even if it is, it is still breached. The Council is entitled to require clear justification and reach the view that it has not been provided.
44. The request to extend the submission of the SoC was not unreasonable. There was no failure to adhere to any deadline. Any delay cannot have caused any unnecessary expense. The production of a supplemental SoC was not unreasonable. The supplementary SoC was produced in line with the timetable imposed at the case management conference. The fact that the Appellant received it one day later than PINS is not unreasonable behaviour and did not cause any unnecessary or wasted expense. These alleged delays should also be seen in the context of the delay brought about by the appellant's failure to provide adequate notification to a relevant landowner.
45. There has been no lack of co-operation or failure to agree common ground. A party can only be expected to agree matters that are generally common ground. There were several points where the Council was unable to agree the wording and this was made clear in the SoCG.
46. The position in relation to alternative sites has been addressed above. However, the application was not accompanied by an ASA, only consideration of 13 temple sites predicated on a criterion of co-location as a necessity which the Council did not accept. The references to officers "agreeing" the evidence, and equally departing from officer's position is a misconception and does not reflect the reasonable and proper operation of the planning system.
47. Officers produced a recommendation with which members can disagree. This is not a question of procedural unreasonableness. This is referred to in the RfR, the shortcomings have been substantiated in the evidence of Mr Smith, and only overcome by very late evidence. In relation to the Council's argument that the grant of permission would hinder the delivery of a new multi-faith facility, this is again not a procedural issue, and really reflects a lack of clarity within the appellant's case.
48. Mr Mitchell's evidence continues to present substantial evidence as if the proposal would operate as an all-faith facility (as was also referred to in the appellant's opening). The assessed diversions in those sections were assessed

on that basis. If the proposal is exclusively to serve the Hindu population then the diversions, and so the relief of pressure, does not arise in that way.

49. For all the above reasons the costs application and each component of it should be rejected.

The summary final response by Anoopam Mission

50. All elements justify the award of costs. The development was clearly delayed, there was a failure to substantiate the RfR, and there has been generalised and vague assertions.
51. The circumstances are materially different reference to the references to case law² to understanding how the Council reached the decision that it did. Members can only be protected from costs if the assessment is justified, and in these circumstances, it was not justified.
52. The proposal was only contrary to policy GB1 because policy GB1 makes no reference to VSC. So even if one demonstrates VSC, that is not a relevant factor, which is why it is inconsistent with the Framework and out of date. The fact that the site is within the GB does not represent a blanket justification for a Council to refuse planning permission on an unjustified basis.
53. The ASA was a series of exercises. Post-decision in the appellant's SoC, and in responding to Mr Smith's ASA exercise. Pre-decision, there is an ASA in the Green Belt assessment dealing with other Temple sites and an examination of the Brownfield register. The officer report highlights co-location of the facility would be beneficial and demonstrated no suitable alternative temple sites.
54. The Council did not produce evidence to substantiate the RfR. Mr Regan relied on Mr Smith. Mr Smith embarked on an ASA exercise without instruction and recognised under XX that Section 6 of his PoE was irrelevant, as he had failed to recognise need for a Hindu faith crematorium, that rendered his drive time analysis irrelevant.
55. We are also told there is a qualitative need for a Hindu crematorium that the Council have always accepted. Manifestly had that been the case, we wouldn't have been here now.
56. Mr Smith dismissed key features of the Hindu faith in arriving at his views, such as auspiciousness, as it was not a lawful element of religious requirement and he said the issues of co-location was a *"little bit of a red herring"*.
57. The Council did not recognise quantitative need. Mr Smith thought the unserved Hindu catchment was just over 9,000 people and 171 cremations per annum. That is materially different to the evaluation of Mr Mitchell and that is the reason why there has been a failure to understand the needs quantitatively and qualitative.
58. Mr Smith's PoE asserts that with better management, existing and local crematoria can fully cater for the Hindu faith. The Council's response should be rejected.

² R. (on the application of Historic Buildings and Monuments Commission for England) v Milton Keynes Council and St Modwen Developments Ltd [2019] JPL 38

59. The Council requests examination of quantitative and qualitative need and refers to a faith blind assessment of crematoria in the industry, not for a faith specific crematorium, for which Mr Smith conceded his methodology was irrelevant. The Decisions referred to are non-faith proposals.
60. Mr Mitchell's part 1 PoE looked at the general position to understand the quantitative circumstances locally. Part 2 looked at the qualitative needs. Mr Smith did something very different. Both need witnesses did not follow the same tract on drive time analysis. Mr Mitchell's methodologies are commended, being different to Mr Smith's, who without evidence engaged in a process of double counting with his unique and minimum catchment, which was not endorsed by any single appeal decision.
61. The Council seek to contend an unconstrained approach is irrelevant, but this is precisely what Mr Smith accepted as the correct approach in this case. Mr Smith was not being 'reasonable' by making a concession in XX, he had no choice. Mr Smith utterly failed to grapple with the proposal that was before him and sought to roll out a methodology that he has used a few times elsewhere, but not at appeal. There is a full scale basis for a costs award. The 30 minute drivetime approach used in isolation was not appropriate or reasonable and hadn't been thought about before being applied.
62. The Council assert Mr Smith had experience. You have his answers to my questions in respect of his qualifications and experience and expertise. I would invite you to look at Annex O of the PINS Procedural Guide.
63. Mr Smith told us he was not instructed to consider the suitability of sites, but that underpinned the Council's approach to suggest sites outside the Green Belt. Those sites were all unacceptable in planning and proximity terms. He identified no local Hindu population. You may consider that it was inappropriate having regard to the PSED and proximity principles.
64. For those reasons, the response does not begin to meet the relevant requirements and the Council's position is unreasonable.

Reasons

65. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The purpose of the costs regime includes encouraging Councils to *"properly exercise their development management responsibilities, to rely on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay."*
66. The proposal is inappropriate development, causes substantial harm to openness and the permanence of the Green Belt and moderate harm to its purposes. This attracts substantial weight against the proposal, of which the other considerations advanced must comprise VSC to clearly outweigh the totality of harm. The decision taken by the Council to refuse the planning application was predicated upon there being insufficient evidence based research to demonstrate that there is not capacity elsewhere to accommodate the proposed crematorium.
67. It is not a requirement of Policy GB1 to provide adequate evidence since there is no reference to VSC. However, the Framework is referred to within the RfR

- and this does require demonstration of VSC. The demonstration of VSC could be wide ranging, and the Council found that there was a gap in the applicant's evidence. The ASA carried out within the Green Belt Assessment only considered other Temple sites in order to co-locate, and although the case officers were satisfied with this approach, Members have the discretion to disagree. Therefore, although the transcripts of the Committee meeting proved to be interesting reading, fundamentally, the decision to refuse the application was not unreasonable.
68. However, the appellants submitted an ASA³ as part of the appeal documents. This 'plugged the gap' in evidence and demonstrated there were no suitable alternative sites. An updated ASA⁴ was also submitted with the Planning PoE.
69. Nonetheless, in the Council's supplementary SoC, and in Mr Smith's PoE, sites from the ASA were highlighted which appeared to meet the appellant's criteria but were said to have been overlooked. The appellant did not respond directly to this point in either PoE. However, a review of the alternative sites was submitted by the appellant a week before the Inquiry was due to resume. This is when the Council stated, "Mr Smith considered that he was now satisfied that the consideration of alternative sites was robust."
70. Yet, it took until the end of XX of Mr Smith, following a long series of questions to find out that he was satisfied there were no alternative sites and the appellant's analysis was robust. If Mr Smith was eventually satisfied that the consideration of alternative sites was robust following the additional submissions by the appellant, I am unsure why this was not aired during his XiC, or earlier.
71. Furthermore, whilst it is submitted that it was a high level review, under XX it became apparent that little thought had gone into the identification of these sites aside from them being outside the Green Belt. Indeed, despite assertions that they complied with the Cremation Act 1902, each were constrained by it, and it was evident that they were all plainly unsuitable on this basis alone.
72. The identification of these sites resulted in additional work by the appellant to provide a response. It was also relied on by the Council in its supplementary SoC⁵. The identification of the additional sites was indefensible, unsupported by any objective analysis and demonstrates a lack of co-operation. The submission of the ASA with the appeal responded to the RfR, addressing the Council's concern that there was insufficient evidence of capacity elsewhere to accommodate the proposed crematorium. Yet, the Council pursued the case of need on other matters, and this equally was the subject of many concessions under XX.
73. This led to Mr Smith agreeing at the end of his XX that there were VSC, and the case for the Council became clearly indefensible. The planning witness re-considered his position in light of Mr Smith's concessions and rightly amended his planning balance to find there were also now VSC and planning permission should not be withheld.
74. The Council's case on the aspect of need was not robust and collapsed when tested. Whilst the Council argue the need comprised of many facets and weight

³ Appendix 3 SoC Dated December 2020

⁴ Appendix 4 Planning PoE Dated June 2021

⁵ 2.33 Supplementary SoC

was given to both quantitative and qualitative need, the weight was considerably increased following Mr Smith's XX such that the balance moved from "finely balanced" to one where the benefits clearly outweighed the harm.

75. Consequently, the Council's evidence relating to need did not stand up to scrutiny. They were not reasonable concessions or matters of judgement on the weight to be given to it. The evidence provided by Mr Smith, on which the planning witness based his weighting, was unsubstantiated, and there was a failure to grapple with the unmet quantitative need and unmet qualitative faith needs with adequate and relevant evidence that looked at the whole picture. The argument that quantitative and qualitative needs existed for at least one crematorium, and suggesting the difference was multi faith need did not stack up when considering a sensible unconstrained catchment as put forward by the appellant.
76. Looking at this in more detail, Mr Smith conceded that the issue of drivetime was not a determinative factor in this appeal and was largely irrelevant. This is because, as Mr Smith accepted in XX, a Hindu would seek to be cremated at this facility over another closer nonfaith or Christian/Anglican crematorium, and therefore the catchment would be unconstrained by other crematoria. Thus, a 45 minute drive time would not be unreasonable.
77. It is reasonable to produce evidence that considers quantitative and qualitative need by reference to drive-time analysis, and there are other examples of doing so in other appeals by reference to 30 minutes. However, it was not of utmost importance in this case, given that it is faith specific, and the crematoria in the area was already on average, operating significantly over, or close to capacity. The evidence from Mr Mitchell did indeed refer to the 30 minute drivetime, but he also went onto explore a wider unconstrained catchment when considering the faith specific nature of the proposal.
78. Mr Smith placed a heavy reliance⁶ on his 30 minute drivetime and used his own methodology to calculate these figures, but he could point to no other appeals that had endorsed this approach. Contrary to the claim in 6.12 of his PoE, this was quite the opposite of Mr Mitchell, and under XX, Mr Smith accepted his figures which referred to the Hindu population in his drivetime⁷ could no longer be maintained. He also conceded that the calculations in 6.15-6.20 of his PoE, relating to need analysis, were not relevant when considering an unconstrained approach.
79. Additionally, Mr Smith asserted⁸ that the development of the proposal could restrict future development of a multi-faith crematorium within the same catchment "as the capacity of this proposal would never be fully realised in the context of an equivalent multi-faith facility". No evidence was presented to substantiate this. Quite the reverse, Mr Smith acknowledged in XX that there was a need for at least 2 new crematoria in the area, taking no account of future deaths.
80. Mr Smith's approach to the qualitative need and emphasis on better management of existing crematoria to address unmet faith needs was unsubstantiated⁹ and lacked sensitivity. Within the conclusion of his PoE, Mr

⁶ Mr Smith PoE 6.1

⁷ Mr Smith PoE 6.14

⁸ Mr Smith PoE 6.23

⁹ Carried out by series of uncorroborated telephone calls

Smith set out that “the qualitative data suggests that with better management and organisation, local existing crematoria can fully cater for the Hindu community” (my underlining). This is patently incorrect.

81. Additionally, his approach to PSED was worrying and in his XiC referred to the assessment of co-location as a “*red herring*” because he struggled to find a religious requirement.
82. It was clear that the above issues arose due to the witness’ lack of expertise in the areas of Hindu faith and crematoria need.

Other Matters

83. The reluctance from the Council to agree that Policy GB1 was inconsistent with the Framework was unreasonable. It is obviously inconsistent, as set out in the Appeal Decision. However, I do not find this resulted in any wasted costs as no time was spent on this matter at the Inquiry.
84. The requirements for a supplementary SoC was necessary as the original SoC failed to meet Annex J.3 of the Procedural Guidance: Planning Appeals. This was submitted to the Planning Inspectorate on time, but a copy was not sent to the appellants. Whilst a copy was sent the day after, there was a lack of co-operation from the Council in this regard, and this was unreasonable. However, I see no reason why this resulted in wasted or unnecessary costs.

Conclusion

85. Following submission of the robust ASA with the appeal documents, the Council’s continued pursuance of the need case was unsubstantiated and thus unreasonable. It clearly resulted in wasted and unnecessary expense in the appeal process.
86. Therefore, I conclude that the application for a partial award of costs is justified, relating to the costs arising from and connected to the capacity and need arguments raised by the Council, from the point at which the ASA was received with the appeal documents.

Costs Order

87. 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 Buckinghamshire Council shall pay to Anoopam Mission, the costs of the appeal proceedings described in the heading of this decision, limited to those costs arising from and connected to the capacity and need arguments raised by the Council from the point at which the Alternative Site Assessment (December 2020) was received with the appeal documents; such costs to be assessed in the Senior Courts Costs Office if not agreed.
88. The applicant is now invited to submit to Buckinghamshire 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.

Katie McDonald

INSPECTOR

ANNEX 1 – THE SUBMISSIONS FOR ANOOPAM MISSION

Introduction

1. This is an application for a full costs award to be made against the Council in this matter on the basis that it has behaved unreasonably in failing to grant planning permission.
2. In the alternative, an application is made for a partial award of costs on the basis that the Council has acted unreasonably by:
 - a. failing to provide reasons for refusal which stand up to scrutiny on the planning merits of the case;
 - b. causing delay in providing information or other failure to adhere to deadlines;
 - c. providing information that is shown to be manifestly inaccurate; and/or
 - d. not reviewing their case promptly following the lodging of an appeal against refusal of planning permission, as part of sensible on-going case management.

Relevant guidance

3. The relevant guidance is set out in the NPPG starting at para. 027 (16-027-20140306). The purpose of the costs regime (set out para. 028) includes encouraging Council to *“properly exercise their development management responsibilities, to rely on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay.”*
4. Unreasonable behaviour may be *“substantive – relating to the issues arising from the merits of the appeal”* (para. 31). The guidance provides examples of the types of behaviour that may give rise to a substantive award against a Council. The following examples of substantive unreasonableness listed in the NPPG (at para. 049) are of particular relevance in this case:
 - The failure to produce evidence to substantiate each RfR on appeal.
 - Preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
 - Vague, generalised or inaccurate assertions about a proposal’s impact, which are unsupported by any objective analysis.
 - Raising arguments that are wholly without merit and contrary to matters that were the subject of agreement with the officers throughout the process of determination by the Council and in respect of which matters the Planning Committee raised no objections in its decision notice.
5. These examples are expressly said to be non-exhaustive (paras. 46 and 49). It is submitted that in addition to the above, it is also self-evidently unreasonable to pursue arguments that do not reach the threshold of respectability (i.e. an argument that no reasonable inspector could possibly accept).
6. Unreasonable behaviour may be *“procedural – relating to the process”* (para. 031). The PPG provides a list of procedural unreasonableness which includes the following:
 - delay in providing information or other failure to adhere to deadlines;

- introducing fresh and substantial evidence at a late stage necessitating extra expense for preparatory work that would not otherwise have arisen;
 - prolonging the proceedings by introducing a new RfR;
 - providing information that is shown to be manifestly inaccurate.
7. These examples are also expressly said to be non-exhaustive. It is submitted that, in addition to the examples above, it is unreasonable to fail to have proper regard to protected characteristics under the Equality Act 2010. It is also self-evidently unreasonable not to agree issues that are clearly a matter of record, to introduce alleged policy breaches which are not recorded on the refusal notice that led the Appellant to incur extra expense because the hearing is prolonged and/or because they necessitate additional attendances at the inquiry by professional and/or lay witnesses. The procedural unreasonableness is further exacerbated where the new arguments raised are without merit (i.e. an overlap with substantive unreasonableness).

Submissions

Substantive Unreasonableness – Full Award of Costs

8. Planning permission was recommended by the Case Officer against a comprehensive planning committee report and a substantial period of pre-application engagement.
9. The planning application was not considered by officers to be defective or lacking in evidence. The Council specifically took the advice of an external consultant in determining whether all Green Belt and landscape matters had been appropriately considered; including alternative site search, the methodology was agreed with them and the Council of being appropriate. That advice was that the Council was free to determine the planning application based upon the evidence it had received. It was also the Case Officer's opinion that sufficient evidence had been provided.
10. The planning application was presented to the Planning Committee with a detailed planning committee report with a recommendation for approval. The Planning Committee asked extensive questions of the officer and that advice remained positive: that the planning application could be determined positively. No counter evidence was presented to the Planning Committee by objectors or third parties or introduced by Committee Members.
11. The Planning Committee determined to refuse the planning permission based upon the following key debate matters [The Planning Committee discussions are recorded, and the transcript is attached at Core Document F4]:
- a) Councillors suggested that "*insufficient research*" had taken place as to how spare capacity elsewhere [40% of time slots per week nationally] in current crematoria might be used [Recording at 1hr 36mins, 1hr 48mins, 1hr 49mins]. It is understood that the Council's position is now that there is presently a very substantial shortfall in cremation capacity in the locality and that there is a need for one or more additional multi-faith crematoria to meet a quantitative and qualitative need.
 - b) Councillors considered that the site search should consider a retail site and locations in areas covered by other local authorities (at 56mins 38sec and 58mins 15sec).

- c) Councillors appeared to give scant regard (let alone appropriate weight) to its PSED, which formed part of the Case Officer's planning committee report but suggested that *"under the Equalities Act authorities might well be obliged to alter the existing crematoria that have capacity for this"* [1hr 36min].
12. In order to seek to address the Planning Committee's assertion of capacity of crematoria and availability of retail/employment sites, the Appellant undertook a wider review of these sites, which was submitted as part of the SoC. No alternative sites were considered to be suitable to meet the specific needs of the Hindu beliefs.
13. At the start of this inquiry, it was the Council's contended position that there is both a quantitative and qualitative need for an additional multi-faith crematorium both to meet current needs as well as future needs. The Council now accept that there is a quantitative capacity and qualitative provision deficiency in the locality of the appeal site. However, it was their expert witness' opinion in written evidence and XiC that better management of these crematoria would be sufficient to address the unmet needs of the Hindu faith and their beliefs.
14. During evidence, that position however proved to be indefensible. It is clear that the Council's entire case was premised on the absence of "need" for this development. In order to substantiate that position, it was clear that the Council's case was limited to "drive time" analysis as the basis upon which there was no identified "need" for this crematorium. It is now evident that position was wholly untenable. Mr Smith in his evidence:
- a) gave scant regard for the fact that there was commissioned government papers identifying the need for faith-based cremation facilities;
 - b) conceded that the qualitative deficiencies for Hindu based cremation facilities were capable of being an identified "need" in any event;
 - c) agreed that the need should be met where there is the greater concentration of Hindus.
15. Mr Smith also dismissed the key features of the Hindu faith during his evidence. That too showed a lack of professional understanding or balance, or proper regard for the PSED.
16. Despite having no instructions to undertake an 'alternative site assessment', Mr Smith put forward a list of sites which in his view were "high level" alternatives. He admitted that he had not visited any of the sites, or indeed even visited the appeal site.¹⁰ He suggested that he acted on his own instruction. Nonetheless, the Council have relied upon his advice as a central plank of their Supplementary SoC. This suggests that the Council never undertook the reasonable evidential review of the baseline case before putting forward this evidence to the inquiry that planning permission ought to be refused.¹¹ If the Council were minded to rely upon alternatives, those should have been defensible. They were not.
17. In order to overcome the assertion that alternatives were available, the Appellant had to undertake a considerable body of work to show how the alternative sites were inappropriate. Mr Sweeney's work to dispel the

¹⁰ Mr Smith, XX.

¹¹ see Paragraph 5.14 which said that the Alternative Site Assessment was not detailed or robust enough.

- alternatives was an assessment which Mr Smith agreed was “robust”.¹² In cross-examination, Mr Smith accepted that each of the sites put forward by him were unacceptable (and the reasons for that are set out in that document and reflected in the Appellant’s closing submissions).
18. Despite this being a key element of the Council’s case, Mr Smith could not point to a single alternative site. No other sites were before the inquiry. The suggestion that there were alternatives was an entirely baseless assertion. Mr Smith had to concede that (1) the Appellant’s qualitative need case had been made out;¹³ and (2) that there were no alternative sites available to meet that need.
19. On that basis, the Council’s “need” case collapsed and Mr Regan (who relied upon the evidence of Mr Smith) had to concede that the VSC relied upon by the Appellant existed. Accordingly, both Mr Smith and Mr Regan had to concede that planning permission should be granted.¹⁴
20. Fundamentally, it is clear that Mr Smith’s evidence was ill-directed, poorly researched and uncorroborated. Notwithstanding his lack of qualification or experience to be giving need-based evidence for crematoria (as detailed in the Appellant’s closing), Mr Smith’s evidence plainly ventured into planning matters too (beyond his expertise). It is submitted that Mr Smith was not appropriately qualified for the Council to rely on this “need” evidence to pursue the case to Appeal. Moreover, Mr Regan, throughout the SoC and his PoE of Evidence, promotes Mr Smith as being of a professional and evidential standing to undertake such analysis, elevating his assessment of alternative sites as detailed, when in fact, they were devoid of any reasonable level of evidential review.
21. Given that the Council can now offer no planning rationale for why planning permission should be refused, and contrary to the Officer’s Report, the Appellant submits that the Council have been unreasonable and that this Appeal was entirely preventable. The RfR could not withstand scrutiny for the reasons set out above. On that basis, the Appellant submits, in the strongest possible terms, that the full award of costs ought to be awarded.

Procedural unreasonableness – Partial Costs Award

22. Article 35(1)(b) of the Town and Country Planning (Development Management Procedure) (England) Order 2015/595 mandates that where planning permission is refused, the refusal notice *“must state clearly and precisely the full reasons for the refusal, specifying all policies and proposals in the Development Plan which are relevant to the decision”*.
23. The refusal notice in this case specifies that insufficient evidence-based research had been submitted to demonstrate that there is not capacity elsewhere to accommodate the proposed crematorium facility.
24. The Planning Application was subject to detailed analysis in the Report to Planning Committee. The Case Officer was very clear that the Council was

¹² *ibid*.

¹³ he conceded that there was a “need” based justification for the proposal on the basis of the qualitative evidence. The Appellant obviously contends that there is a separate, and pressing, quantitative need case too, which we submit has also been made out, but which we have not addressed in detail here.

¹⁴ XX of Mr Smith, and XIC of Mr Regan.

satisfied with the evidence presented to it by the Applicant and that the proposal outweighed the harm to the Green belt and any other harm. A recording of the members' discussion is available (and relevant extracts of the transcript are found at CD F4). This records the members discussing national based evidence on availability of non-core time slots. They chose to ignore their Case Officer's advice.

25. As set out above, the decision notice refers to a breach of planning policy GB 1 only. This reflects the contents of the members' discussion, and shows that there was agreement between officers and members that compliance with all other planning policies had been demonstrated. Had the members wanted to say that other planning policies were breached, they had every opportunity to do so and to issue a refusal notice that cited other breaches of policy.
26. In concluding the debate, the presenting officer put the refusal wording to the members for approval, citing capacity and breach of planning policy GB 1 and NPPF Section 13. As set out above, if a Council wants to rely on a breach of a given policy, it must cite that policy and state 'precisely and clearly' why that policy is said to have been breached. Planning policy GB 1 is out of date and not consistent with the Framework.
27. There has been a reluctance on the part of the Council to agree matters. This is why the SoCG records at para. 7 a substantial number of matters of disagreement, e.g. Policy GB 1 being out of date.
28. This unreasonableness is further exacerbated by the fact that the Council's expert witness focuses on "better management" to resolve the current problems of meeting religious needs and difficulties with an absence of capacity. The Council's SoC concerns itself solely with narrowing the potential geographical area from which the appeal proposal can expect to attract cremations, whilst arguing that meeting unmet faith needs plays no part in considering the proposed co-location of the appeal proposal.
29. The initial SoC provided no evidence upon this issue, which appears to reflect the formal decision of the Council. The Council has chosen to employ an external consultant to assist it to defend its RfR. That consultant sought initially to advance an argument that failed to adequately address the need of the Hindu faith (relying instead on a need for a multi-faith facility). Upon testing that argument simply fell away.
30. The Council's Appeal Case Officer sought to delay the submission of the Council's SoC due to prior holiday commitments. However, once an extension of time was refused, the Case Officer did submit a SoC within the timetable. However, this contained no appendices, nor did it adequately set out what the Council's case was for the evidential basis upon which it was to rely.
31. At the Case Management Conference, the Inspector agreed that the SoC was inadequate for the purposes of appeal procedures and allowed the Council until 13th May to submit a compliant SoC.
32. That Supplementary SoC was not sent directly to the Appellant or its agent within the Inspector's timescales. Nor was it posted on the Council's website for the Appellant or members of the public to access within the Inspector's agreed timeframe. The Appellant's agent did subsequently receive a copy of the

Council's Supplementary SoC (on the following day, by email from PINS case officer) following a direct request to PINS.

33. It is submitted that the above are sufficient in themselves to establish unreasonable behaviour on the part of the Council. Added to this, the arguments raised by the Council regarding capacity are wholly without merit and are not reasonable:
- a) It is stated that the applicant failed to provide adequate evidence. However, Policy GB 1 requires no such evidential hurdle to be overcome. In any event, that policy is inconsistent with the Framework and is out of date. Nonetheless, the planning application was accompanied by an assessment of agreed alternative sites based upon criteria agreed with the Case Officer and the Council's external advisors. The Council's decision was unjustified. It may be noted that no specific alternative sites were being suggested by committee members, and no competing scheme was being promoted or submitted for determination elsewhere. It may be inferred that the Planning Committee was simply hoping to find something at a later date. The outcome of testing is that that hope was wildly misplaced.
 - b) The fact is that the evidence was agreed between the Appellant and officers of the Council, as recorded in the report to the Planning Committee (see para 1.3 page 8, para 5.100 page 35, 5.112 page 37, para 5.124 page 40, section 4.0, Page 72). At no point did the Case Officers of the Council say that they disagreed with the methodology or approach.
 - c) Simply as a matter of fact, sufficient evidence was submitted.
 - d) The Council has failed to substantiate its arguments (including those relating to alternative sites, unmet quantitative need and the need to seek to meet unmet faith needs) with adequate and relevant evidence. It argued that quantitative and qualitative needs existed for at least one crematorium, simply suggesting the difference is multi faith need.
 - e) The Council argued that the grant of permission for the appeal proposal would hinder the delivery of a new multi-faith facility (or facilities). No evidence came forward to substantiate that assertion.
 - f) A range of criticisms were initially made of the Appellant's alternative site assessment, although Mr Smith resiled from these in XX. This ignored the fact that the Green Belt Assessment was agreed with the officers of the Council as part of an application process, as recorded at para 5.12 and subsequently Section 4 of the officer's report to Planning Committee. Where an applicant worked with the Council and their external advisors to agree the impact on the Green Belt and VSC, it is not reasonable for the Council to seek to subsequently to simply disavow that agreement. This amounts to moving the goalposts.
 - g) The mainstay of the argument appears to be that some speculative alternative site might exist and subsequently may come forward. The Council could not point to a single one. That was a baseless assertion that alternative sites in fact exist (see above) which the Council now concede, they do not.¹⁵
 - h) As regards the Hindu faith and their beliefs, the Council's SoC shows no proper understanding or adequate sensitivity to it. In short, even with a

¹⁵ Mr Smith, XX.

quantitative and qualitative need agreed, the Council's position appeared to be one that did nothing to meet this need.

34. By reason of the above, it is submitted that the Council has been substantively and procedurally unreasonable. This is underscored by the misconceived assertions and arguments that were advanced by, and initially relied upon, by the Council at inquiry, and which have been dispelled when the evidence was tested under cross-examination.

Conclusion

35. For all of these reasons the Appellant respectfully requests that the Council be ordered to pay (1) in full, all of the costs of this appeal that the Appellant has incurred in connection with, and arising from the Council's refusal of planning permission, or, alternatively (2) part of the Appellant's costs in respect of those arising from and connected to the capacity and need arguments raised by the Council.

ANNEX 2 – THE RESPONSE FOR BUCKINGHAMSHIRE COUNCIL

Introduction

1. The Appellant makes a full application for costs in relation to the substance of the claim and also for partial awards of costs in the alternative by reference to procedural issues.

PPG

2. Generally all parties are expected to behave reasonably to support a timely and efficient process (16 – 028). There is also an expectation of sensible on-going case management (e.g. 16-49 penultimate bullet).
3. In order for costs to be awarded the Inspector has to be satisfied that:
 - (a) a party has behaved unreasonably; and
 - (b) the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
4. Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals (16-49). Examples of this include (as relied on by the Appellant):
 - (a) preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
 - (b) failure to produce evidence to substantiate each RfR on appeal;
 - (c) Vague generalised or inaccurate statements about a proposal's impact that are unsupported by any objective analysis.
5. The touchstone is whether the behaviour of the Council has been unreasonable, and then whether that behaviour has caused unnecessary expense. It is therefore necessary to consider carefully the specific behaviour that is said to be unreasonable.
6. It should be immediately noted that refusing permission against officer's advice is obviously not an example of unreasonable behaviour. It is only if the Council's refusal and support for it on appeal is substantively unreasonable that there is any basis for a costs award.
7. It is also wrong as a matter of principle to seek to reinterpret the resolution to grant planning permission by reference to comments of individual Councillors and so impute to the authority a RfR different to the one provided under the DMPO (*see R. (on the application of Historic Buildings and Monuments Commission for England (known as Historic England)) v Milton Keynes Council and St Modwen Developments Ltd [2019] JPL 38 at paras 38 and 50*). It is for this reason that PPG refers to the Council's RfR being substantiated. It is the RfR given by the Council that matters. The Costs Application at paragraph 11 is accordingly entirely misguided.
8. Where a local planning authority has exercised its duty to determine planning applications in a reasonable manner, it should not be liable for an award of costs (ID 16-050). The Council submits that this is the case here. The officer's

report laid all the issues before the planning committee for their balanced judgment on an application for inappropriate development in the Green Belt with a complex range of material considerations put forward in toto as forming VSC. The RfR identifies the substantial weight to be given to the harm to the Green Belt and judges that the VSC case is not made out. This is a reasonable exercise of judgment on the material before the committee at the time.

9. The Costs Application at para 4 bullet 4 suggests an example of unreasonable behaviour within paragraph 16-49 of the PPG relating to “raising arguments that are wholly without merit and contrary to matters that were agreed subject to officers....”. This bullet is not included in the PPG either at para. 49 or elsewhere, and no explanation is given as to why the Costs Application suggests it is. This (false) bullet is an example of the Appellant’s failure to recognise that members are fully entitled to disagree with officers as part of the determination of applications in relation to the overall judgment and component matters of weight and robustness of evidence and doing so is not unreasonable behaviour.

This is not development which should clearly be permitted or where the evidence does not substantiate, ie support, the RfR

10. This is not development that was refused that should clearly be permitted.
11. It is common ground that the proposal is contrary to GB1 of the Local Plan. Mr Sweeney’s contention is not that the policy is complied with, but as to the weight to be given to it. The proposals do not therefore accord with the development plan read as a whole¹⁶.
12. It is also common ground that the proposal causes substantial harm to the openness of the Green Belt, which is permanent harm; that this amounts to a substantial negative effect on openness and permanence, and that this amounts to substantial harm¹⁷. It is further common ground that it causes moderate harm to purpose (c) of the Green Belt, that is safeguarding the countryside from encroachment¹⁸, and that the Government attached great importance to the GB, that the fundamental aim is to prevent urban sprawl by keeping land permanently open, and the essential characteristics are their openness and permanence¹⁹; and that substantial weight should be given to any harm to the Green Belt²⁰. These are clearly matters of substantial weight raising a strong presumption against the grant of planning permission. Any grant of permission in these circumstances requires a balanced judgment as to the overall benefits of the scheme and whether they clearly outweigh all of that harm. Again, this is not the refusal of development that should clearly be permitted.
13. In these circumstances the Appellant’s submission that refusal was unreasonable or that the development should be clearly permitted face a very substantial obstacle to overcome. The Council members were reasonable in concluding that strong presumption was overcome.

¹⁶ Regan 8.2

¹⁷ Sweeney PoE 6.1.4 – 6.1.6

¹⁸ Sweeney PoE 6.2.3

¹⁹ NPPF 137; Sweeney 3.4.5

²⁰ NPPF 149 and Sweeney PoE 6.3.1

14. Secondly, as in any case, the refusal of planning permission reflects evidence available at the time of the refusal. The refusal was clearly reasonable as an exercise of a planning judgment as to the balance between harm and benefit, where policy requires substantial weight to be given to Green Belt harm, and for the benefits to clearly outweigh all the harm. An Alternative Sites Assessment had not been provided as part of the application²¹ and this is a matter that the Council was clearly able to take into account given the “substantial harm”²² to the GB, and in light of the caselaw summarised in paragraph 20 of the Council’s Opening Submissions.
15. Thirdly, the Council submits the Council clearly did produce evidence to substantiate the RfR. It produced substantial evidence through its supplementary SoC, and the detailed PoEs of evidence and appendices of Mr Smith and Mr Regan. In relation to quantitative and qualitative need, which appears to be the main focus of the Costs Application, this is only one aspect of the case put forward for VSC. It is a matter that requires weighting alongside other factors. At all times, the Council has recognised that there was a quantitative need for an all-faith crematorium within the local area²³, and the RfR was not a denial of need – but “need” has many facets reflecting the nature of the proposal more general all-faith need, capacity at local crematoria, quantitative and qualitative need) which were considered through the evidence of Mr Smith (and indeed Mr Mitchell), as well as whether the Appellant had satisfactorily demonstrated that the need could not be met elsewhere.
16. The Council has also at all times been clear that there is a qualitative need for a bespoke Hindu facility as a result of shortcomings in the extent to which local alternative criteria are over capacity and are not able to provide an entirely appropriate funeral including pre-cremation rites²⁴, and Mr Regan gave the overall qualitative need significant weight within his planning balance²⁵. The Costs Application at para. 13 appears to misrepresent the Council’s position by implying that before the inquiry the Council did not accept such a qualitative need. The Council always accepted a qualitative need for a Hindu-faith specific crematorium²⁶ and gave that issue significant weight. It also recognised that the co-location of the facility on an existing temple site was beneficial given the associations involved²⁷ and gave that specific issue additional moderate weight. Contrary to Costs Application para. 7 re PSED the Council’s evidence specifically and carefully addressed PSED²⁸ and in doing so recognised that the qualitative issues had been taken into account, and the fact that the Hindu faith requirements were not completely catered for within existing crematoria and the qualitative need for a bespoke Hindu crematorium attracted significant weight taking into account the PSED²⁹. There is no basis for asserting (Costs Application 15) that Mr Smith dismissed the key features of the Hindu faith

²¹ The Green Belt Assessment contained only a cursory consideration of the ability to locate a crematorium at 13 other existing Temples within settlements – See CD C25 at 6.43 to 6.44

²² Sweeney 6.3.1

²³ See for example SoCG at p26 point 13 and Supplementary SoC at 2.19 that there was a cogent need for such a facility.

²⁴ SSOC 2.41

²⁵ 7.11

²⁶ See Regan 7.11

²⁷ Regan 7.12

²⁸ Regan 7.32 – 7.35

²⁹ Regan 7.35.

during his evidence. These were specifically by Mr Smith³⁰ Further, the specific PSED issues were addressed as part of the balance by Mr Regan.

17. The Council has also recognised that there is a quantitative need arising for a bespoke Hindu crematorium and this matter was given weight (moderate) in Mr Regan's planning balance in his PoE referring to the evidence produced by Mr Smith³¹. The Costs Application is wrong therefore at para. 14 to suggest that the Council did not recognise any quantitative need. It did – albeit a lesser need than the Appellant contended for. The Costs Application seeks to treat both quantitative and qualitative need as binary questions (Costs Application 13 and 14), when they are matters of degree. As above, the Council did not say there was no quantitative or qualitative need for a bespoke Hindu facility – moderate and significant weight were attached to these issues. Further, and for the same reason, the Council's evidence was not that every issue giving rise to a qualitative issue could be met by different management practices (Costs Application 13). Mr Smith's position was that management practices was relevant to the extent of the need and the extent to which going forwards local crematoria were able to improve their offer in terms of ceremonies more appropriate for the Hindu faith. The Council gave qualitative need issues significant weight in its balancing exercise. To suggest, as does Costs Application 14 that "the Council's entire case was predicated on absence of "need" for this development" is simply – as shown above – incorrect. It was a matter of weight and degree within an overall balancing exercise which starts with a strong presumption against the development.

18. Questions of the extent of need, or the weight to be given to it, are fundamentally matters of judgment. There is no one established methodology. The following points may be noted from the background (ie non-opinion) evidence at this appeal:

(1) The concepts of quantitative and qualitative need are known to the industry and have been refined and applied in a number of appeal decisions. This was summarised, and set out in the SoCG³² by reference to the December 2020 report of the Competition and Markets Authority, as follows:

"Whilst COUNCILs will determine each planning application on its own specific facts, some past planning decisions in England and Wales have defined the level of quantitative and qualitative need required to justify a new crematorium on open countryside in the following terms:

(a) Quantitative need refers to the number of people who will be closer to a new crematorium than any other crematorium. Recent appeal decisions have defined an area to have a quantitative need where a new crematorium will be the closest crematorium for between 136,000 and 171,000 people.

(b) Qualitative need typically refers to the number of people who currently live further than 30 minutes from their closest crematorium but will live within a 30 minute drive of the new crematorium. Recent planning decisions have defined an area to have a qualitative need where between 59,000 and 95,000

³⁰ PoE from 6.38 and through the survey of local facilities and their ability to accommodate the specific facets of a Hindu ceremony

³¹ Regan 7.10

³² Para 6.1.14

people will benefit from the reduced travel time. More generally planning inspectors have found that a drive of longer than 30 minutes (at cortege speed) is unacceptable. Providers may also make a qualitative need case by submitting arguments in relation to factors such as waiting times, chapel capacity and crematorium design and facilities” (Funerals Market Investigation, Final Report, Appendix B: Regulation paragraph 101.

- (2) In the recent Secretary of State decision at Essington (G10, 31 March 2021) the Inspector recognised that quantitative need can be assessed in many ways (13.2) and that assessing current and future use of a crematorium is not an exact science (13.4). The Inspector distinguished concepts of need and demand (13.11);
- (3) In the most recent Inspector’s decision relating to a new crematorium in the Green Belt (the Oxted decision of Jonathan Price dated 30 September 2021) at paragraphs 42 and 43 the Inspector considered the questions of need by reference to 30 minute cortege drive times and how many residents would be brought for the first time within that catchment.
19. Mr Mitchell on behalf of the Appellant summarises the position as follows at para. 8.12 of his PoE:
- “Whilst neither enshrined in statute nor planning policy, it is clear that a 30-minute funeral drive-time at 60% of normal traffic speeds, with a clear recognition that this may be extended in rural areas, has been held at appeal to be one appropriate basis upon which to establish the quantitative need for a new crematorium.”
20. This summary follows from a review of a number of cases referred to within Mr Mitchell’s PoE from 8.4 to 8.13.
21. It is therefore entirely reasonable to produce evidence that considers quantitative and qualitative need by reference to the drive-time analysis. It is the established method of considering both quantitative and qualitative need, and then going on to consider more general matters relating to the facilities. This is what Mr Smith’s written evidence did. It specifically considered the population currently unserved by any crematorium within the 30 minute drive time of an existing crematorium³³, and the population that would identify the proposed site as their closest crematorium³⁴. It did so on an awful basis finding cogent need, and on a single faith basis finding lesser need. It made clear that the weight to be given to the assessed need was a matter of judgment for others³⁵. It went on to consider more generic qualitative issues that were facility specific. It is incorrect to say that only drive time analysis was considered – Mr Smith considered the most local alternative facilities (see Appendix 2) and indeed spoke directly with the operators. To the extent that drive-time matters were considered it was reasonable to do so given the established approach of considering drive-time to facilities in assessing need – which Mr Mitchell also did.

³³ 6.7(i)

³⁴ 6.7(ii).

³⁵ 6.21

22. By contrast neither Mr Mitchell nor Mr Smith, or indeed any other party, refer to any policy document or planning decision, or report of the Competition or Market Authority that recommends assessing quantitative or indeed qualitative need by reference to an unconstrained (that is ignoring the present of all other including more proximate crematoria) catchment on the basis that the proposal is to be focused on one particular religion or faith.
23. In the present case the Appellant's SoC makes clear that the proposed facility will not seek only to attract Hindu funerals and will not compete for the general population cremations (2.14.2), although there is the "potential" for "non-Hindu" users comfortable with the faith specific iconography such as the Jain and Sikh faith groups (2.16.14). The SoC advanced a need case on the basis only of a 30 minute drive time (2.13.1).
24. Mr Mitchell's evidence considers matters of general need by reference to consideration of a 30-minute constrained catchment, and considers diversions on the basis that the appeal site operated as an "all-faiths" crematorium and the Appellant's case was opened on that basis³⁶.
25. Mr Mitchell's section 12 addresses a quantitative need case for a bespoke Hindu facility by reference to an unconstrained drive time of both 30 and 45 minutes. The analysis suggests that within a 30minute drive time there is a Hindu population of 77,936 and within 45 minutes one of 199,340, predicted to give rise to 482 and 1,195 deaths respectively per year.
26. Mr Smith accepted in cross-examination that consideration of an unconstrained 45 minute catchment was a reasonable approach to a single-faith facility that met all the needs of that faith group, and that on that basis he considered there was a cogent need for a single-faith crematorium within that catchment. He maintained his view that drive time was relevant but not determinative. This was a change in conclusion by Mr Smith – and a concession – not made in his written evidence. Making a concession is not unreasonable. There will be a range of judgments and under cross-examination a professional witness may well accept the reasonableness of an alternative view that he or she has not previously accepted. It certainly does not mean that the refusal was unreasonable, or that it has not been substantiated. As noted in G10 – need assessment is not an exact science, and there are different ways of doing it. There was no clear conflict within the Council's case with any caselaw or published policy or guidance.
27. The evidence should be seen in totality. The approach of Mr Smith was reasonable in considering drive time – as did Mr Mitchell. Both witnesses placed the emphasis based on appeal decisions on the 30 minute drive time. Both witnesses recognised the general need to have regard to existing crematoria. In cross-examination Mr Smith recognised the appropriateness in bespoke circumstances – and where there is no specific guidance or clear body of appeal decisions – of using an unconstrained 45 minute drive-time as a reasonable approach, and that on that basis a cogent need was demonstrated. There is absolutely nothing unreasonable in this. It is a balanced view following testing at inquiry.
28. In addition, the needs assessment fed into Mr Regan's evidence. That evidence already gave significant weight to qualitative need, and moderate weight to

³⁶ Opening submission para 21

quantitative need. Mr Regan reviewed his planning balance immediately after Mr Smith's evidence and recognised the need for adjustment. This was an example of good ongoing case review and management which helped reduce inquiry time. Given that Mr Regan considered the matter finely balanced these changes tipped the balance. Again, that change as a result of evidence at the inquiry does not mean that the original refusal was unreasonable or that the original RfR was not substantiated through evidence.

29. In the above circumstances, there is no basis for a costs award. The refusal was not unreasonable. It was a matter of planning judgment on the material there available. To advance PoEs of evidence by reference to drive times, and in particular a 30-minute drive time was reasonable and indeed reflects established practice. A change in the strength of a need case does not mean that the development should clearly have been permitted by the committee or that that costs example is now automatically met. It is a matter of degree and judgment on the basis of consideration of the totality of the evidence, and against the strong presumption raised against inappropriate development in the Green Belt. Although the Appellant is critical of Mr Smith, he has considerable experience of operating in the sector by reference to both promotion of cemeteries and crematoria³⁷. The Council rejects the suggestion there is a "lack of qualification or experience" (Costs Application 20). The Appellant fails to identify what qualification or experience is a pre-requisite to give reasonable evidence as to quantitative and qualitative need – a subject on which Mr Smith confirmed he had prepared reports and appraisals on many cemetery and crematorium sites³⁸. In line with good practice the Council did review its case and appointed specialist consultants whose evidence then formed part of the Council's case. Mr Smith was not instructed prior to the Council's decision, but did produce evidence in support of it and to assist in the overall striking of the planning balance. It is reasonable for a party to respond to cases as they advance. These matters are not exact questions of science. Assessment even against a 30 minute drive time as per Mr Mitchell shows 77,936 within an unconstrained catchment; against 45 minutes – 199,349. These are not absolutes, but predictions that need interpretation and judgment.
30. In relation to alternative sites (Costs Application 17), no Alternative Site Assessment was submitted through the application. A first ASA was submitted with the SoC (at Appendix 3) in March 2021. This was reviewed promptly by the Council and detailed comments were provided in the SSOC in April 2021. The criteria were not considered robust and sites that did meet the criteria were considered to be overlooked (see SSOC paras 2.28-2.38 and in particular the sites identified as 2.33). A number of sites were identified (see Appendices 7 and 8 to SSOC). In the Appellant's PoEs of evidence further information on alternative sites was provided in Appendix 4. It did not address the sites mentioned by the Council. Mr Sweeney provided a high level response in his PoE(5.5.5, 5.5.10, 5.5.11). Mr Smith's PoE made very clear that the purpose of the identifying the overlooked sites was not to claim that those sites were suitable but that those sites all fit the Appellant's stated criteria but have not been identified or considered (PoE 7.12). This had also been made very clear in the SSOC at 2.33. The Council was not suggesting that those sites were suitable, but rather than the ASA had not been shown to be robust because Mr

³⁷ See PoE section 1

³⁸ See PoE 1.7 – 1.9.

Smith by applying the same criteria through a high level review had been able to find overlooked sites. The sites referred to in Mr Smith's PoE were not addressed in Mr Sweeney's rebuttal in June 2021 and there was no suggestion they would be. Without any further indication an additional evidential document was sent to the Council less than a week before the inquiry resumed which did consider the suitability of those sites. It was by reference to this document that Mr Smith considered that he was now satisfied that the consideration of alternative sites was robust. It is not that the RfR was not substantiated but rather the Appellant over a period of several months provided more information which overcame that particular concern through evidence. The Council's position has at all times been consistent – it was not that an alternative site had been identified but that the Appellant had not demonstrated sufficiently the inability to meet the need elsewhere (see RfR). In Mr Smith's (substantiated) position, this was not done until last week. It was not that Mr Smith had no instruction to consider the topic of the robustness of the ASA (Costs Application 16) – which he did consider by reference to the criteria and sites overlooked even applying them – the point he made was that he was not himself instructed to consider the suitability of individual sites.

31. Set against the examples given by the Appellant is clear when the evidence is fairly considered and characterised and viewed in totality that none of the allegations of substantive unreasonableness is made out.

Procedural Unreasonableness

32. The Council's response in relation to the alleged procedural unreasonableness may be stated more briefly.

PPG

33. Examples of unreasonable behaviour are provided at PPG 16-047. Any unreasonable behaviour must cause identifiable unnecessary or waste costs.

Response

34. The Costs Application is not clear as to what behaviour is said to be unreasonable.
35. In relation to Costs Application 23/24 the sufficiency of the evidence and whether the Appellant had provided sufficient evidence to demonstrate VSC is a matter of judgment. The Committee do not have to agree with officers. If this is a point about alternative sites it has been addressed above.
36. Costs Application 25 is not understood. The RfR only identifies breach of GB1 and no other development plan policy. That is also the case with Mr Regan's planning evidence. GB1 is breached (See Regan 6.2 and 8.2). Costs Application 26 refers to its being out-of-date – that was evidential disagreement between the parties – but even if out of date it is still breached. As set above as a result of the breach of the development plan policy and the promotion of inappropriate development causing harm to the Green belt, the Council is entitled to require clear justification and reach the view that it has not been provided.
37. The point taken in Costs Application 30 about Mr Regan seeking a one week delay to the SoC due to his being away on holiday is trifling, if not frivolous,

and certainly not unreasonable. There was no failure to adhere to any deadline. Any delay cannot have caused any unnecessary expense.

38. The production of a supplemental SoC was not unreasonable. The original SoC was in line with the level of detail in many similar appeals. In any event, a supplementary SoC was subsequently produced in line with the timetable imposed at the case management hearing. The fact that the Appellant received it one day later than PINS is again trifling, if not frivolous, and is not the result of any unreasonable behaviour, and in any event did not cause any unnecessary or waste expense. The Appellant produced its evidence on the basis of the SSOC.
39. These alleged delays should also be seen in the context of the delay brought about to the inquiry by the appellant's failure to provide adequate notification to a relevant landowner causing a delay of over four months.
40. In relation to the flood risk sequential point, this was raised in the letter of 15 November but is not repeated. In short, the Council drew to the Appellant's attention a revised response from the EA. This was after the appeal had been lodged. The position is, and this does not appear to be disputed, that a proper legal interpretation of the PPG and the vulnerability classification of the proposal that a sequential test is required. It was incumbent upon the Council to draw this to the appellant's attention and also that of the Inspectorate to avoid any risk. This is reasonable and sensible ongoing case management. The Council did, however, confirm that notwithstanding this changed interpretation it would not be making a substantive case that permission should be refused for failure to meet the sequential test. In response the Inspectorate confirmed that the Inspector was satisfied that no further evidence was required from the Appellant. The Council behaved entirely reasonably and no unnecessary or waste costs was caused by the Council's behaviour.
41. In relation to common ground (Costs Application 27), there has been no lack of co-operation or failure to agree common ground (PPG 16 – 047). A party can only reasonably be expected to agree matters that are generally common ground and consistent with its case. The Council did so and a detailed SoCG was agreed. There were a number of points where the Council was unable to agree the wording of the draft SOCG proposed by the Appellant due to its proposed language and this was made clear in the SoCG itself (see the final version (draft 4 dated 6 July 2021 at para 7.1.1, p16).
42. The position in relation to alternative sites has been addressed above. There is no procedural unreasonableness in relation to this issue. The issue was raised clearly as part of the Council's reasons for refusal and was addressed by the Council in its statements of case and evidence. By contrast the Appellant continued to submit additional information until last week. The Council's PoE was produced in early June 2021. No prior indication was given that it intended to produce additional evidence and no attempt in advance to seek permission to do so, or whether the Council considered it necessary. In relation to specific points raised in Costs Application 33, the application was not accompanied by an alternative site assessment but only consideration of 13 temple sites predicated on a criterion of co-location as a necessity which the Council did not accept. The references to officers "agreeing" the evidence (33(b)), and equally departing from officer's position "moving the goalposts" is a misconception and does not reflect the reasonable and proper operation of the planning system.

Officers produce a recommendation with which members can disagree. This is not a question of procedural unreasonableness. Members disagreed. This is referred to in the RfR, the shortcomings have been substantiated in the evidence of Mr Smith, and only overcome by very late evidence. In relation to 33(e) this is again not a procedural issue, and really reflects a lack of clarity within the Appellant's case. Mr Mitchell's evidence continues to present substantial evidence (sections 8-10) as if the proposal would operate as an all-faith facility (as was also referred to in the Appellant's opening). The assessed diversions in those sections were assessed on that basis. If the proposal is exclusively to serve the Hindu population then the diversions, and so the relief of pressure, does not arise in that way.

Conclusion

43. For all the above reasons the costs application and each component of it should be rejected.

ANNEX 3 – THE FINAL RESPONSE FOR ANOOPAM MISSION

44. It is observed and it may be noted that the Council's reply is more extensive than the Council's position statement at the closure of the Inquiry, which does not seek to contest the appropriateness to the grant of planning permission.
45. Paragraph 4a-4c of Council's response – all the elements of a, b, and c justify the award of costs. The development was clearly delayed, there was a failure to substantiate the RfR, and there has been generalised and vague assertions.
46. Paragraph 6 – we do not contend it is unreasonable by failing to follow officer advice, but this was officer advice by way of a recommendation in the Committee Report following a Planning Performance Agreement and extensive period of engagement with the Council and external consultants, specifically selected by reason of experience and expertise in dealing with similar cultural and religious sensitivities, for example, the Gardens of Peace decision.
47. Paragraph 7 – The case is a judicial review, unsuccessfully brought by Historic England (HE), amount a decision to de-list a listed building. One aspect of HE's case was seeking to forensically unpick the terms of the Committee meeting, to examine the motivations and rationale of component members of the Committee to support an allegation of unlawfulness, which would lead to quashing. It is not as a matter of blanket principle, and the courts leave open the potential to look at such matters and whether the approach was appropriate. Justice Dove considered it was not.
48. It is evident that the circumstances are materially different to the purposes of understanding how the Council reached the decision that it did and the views of the chairman of the Planning Committee - it is not legally irrelevant. You must give whatever weight you may give as a matter of judgement and discount the Council's submissions that it is misguided.
49. Paragraph 8 – asserts that just because members reached the view they did and are entitled to do so as decision maker, that they can be protected from costs, even if their decision was contrary to an exceptionally detailed and comprehensive officer report. That can only be right if the assessment is justified, and in these circumstances, it was not justified. The proposal was only contrary to policy GB1 because policy GB1 makes no reference to VSC. So even if one demonstrates VSC, that is not a relevant factor in the policy, which is why it is fundamentally inconsistent with the Framework and out of date.
50. Paragraph 12 – The Green Belt issue highlighted as a strong presumption against development. The fact that the site is within the GB does not represent a blanket justification for a Council (against a properly advised officer report), to refuse planning permission on an unjustified basis.
51. Paragraph 14 – The Alternative Site Assessment (ASA). There was a series of ASA exercises. Post-decision in the Appellant's SoC, and in responding to Mr Smith's ASA exercise. Pre-decision, there is an ASA in the GB assessment³⁹ dealing with the Hindu sites and an examination of Brown Field register. That was subject of discussion in the officer report, it having been the product of the process of engagement throughout the application. The officer report also highlights co-location of the facility with the existing Anoopam Mission would be

³⁹ CD C25

- beneficial and demonstrated no suitable alternative temple sites. That was the basis agreed with the Council officers.
52. Paragraph 15 – contends the Council clearly produced evidence to substantiate the RfR. We disagree. The production of paper with ink on it is without foundation if the evidence underlying it is without basis and foundation. Mr Regan relied on Mr Smith. Mr Smith embarked on an ASA exercise without instruction and he recognised Section 6 of his report was irrelevant, as he had failed to recognise need for a Hindu faith crematorium, that rendered his drive time analysis completely irrelevant. The fact that it dawned on him only under cross-examination was irrelevant. It is the Council's members who decided to reject their own officer advice, who took that view, perhaps in the vain hope that something would turn up. What turned up for them was the evidence of Mr Smith, which does not count.
53. We are also told there is a qualitative need for a Hindu crematorium that the Council have always accepted. Manifestly had that been the case, we wouldn't have been here now or in July.
54. The question of the Council evidence to address the PSED, I will leave to you to review in para 16 of the Council's Costs response. I take a different view. Look at Para 8.5 (vi) of Mr Smith PoE. He dismissed the question of auspiciousness as it was not a lawful element of religious requirement and it the issues of co-location was a "little bit of a red herring" – I will invite you to concur with my submission that Mr Smith dismissed key features of the Hindu faith in arriving at his views.
55. Paragraph 17 – the costs application is wrong to suggest the Council did not recognise any quantitative need. With respect, one can only recognise the quantitative need if you understand what you are looking for. Mr Smith thought the unserved Hindu catchment was just over 9,000 people and 171 cremations per annum. That is materially different to the evaluation of Mr Mitchell and that is the reason why there has been a failure to understand the needs quantitatively and qualitative.
56. Paragraph 17 – states that the Council's evidence was not that every issue giving rise to a qualitative issue could be met by different management practices. Yet, Mr Smith PoE asserts that with better management, existing and local crematoria can fully cater for the Hindu. For that reason, please reject that contention.
57. Paragraph 18 – requests examination of quantitative and qualitative need and refers to the report. That report was a faith blind assessment of crematoria in the industry, not for a faith specific crematoria, for which Mr Smith conceded his methodology was irrelevant.
58. Paragraph 18 (2) and 18 (3) – referring to Essington and Oxted, those were both non faith proposals.
59. Paragraph 18 – makes support for this analysis for Mr Mitchell's part 1 evidence, as does paragraph 20 and 21. Mr Mitchell's part 1 was looking at the general position to understand the quantitative circumstances locally. Part 2 looked at the specific needs, qualitative. Mr Smith did not do the same, he did something very different. By reference to Paragraph 21 of Council's response, it is not a case they follow the same tract on drive time analysis, Mr Mitchell's

- methodologies are commended to you, being wholly different to Mr Smith's, who without evidence engaged in a process of double counting with his unique and minimum catchment, which was not endorsed by any single appeal decision.
60. Paragraph 22 – which seeks to contend an unconstrained approach is irrelevant, but this is precisely what Mr Smith accepted as the correct approach in this case.
61. Fundamentally, concessions that are outlined in paragraph 26, is what was a reasonable approach for a single faith facility, being the very type of facility that the proposal is dealing with, which at first Mr Smith sought to suggest was not necessary. This was not a case that Mr Smith was being reasonable by making a concession in XX, he had no choice. That means that the Members who chose to take their decision had the last vestige of any form of defence kicked away. Because Mr Smith has utterly failed to grapple with the proposal that was before him and sought to roll out a methodology that he has used a few times elsewhere, but not at appeal.
62. Contrary to paragraph 29, there is a full scale basis for a costs award. The 30 minute drivetime approach used in isolation was not appropriate or reasonable and hadn't been thought about before being applied.
63. Paragraph 29 – told Mr Smith had experience. You have his answers to my questions in respect of his qualifications and experience and expertise. I would invite you to look at Annex O of the Procedural Guide as to whether his evidence by training and experience in a particular subject was in his expertise to give those views and how he went about it.
64. You are invited to take that the figures are not absolute. You were being invited by Mr Smith to assess that the minimum and unique drive times was correct, and for the reasons that followed, invite you to dismiss this.
65. Para 30 – ASA - Mr Smith told us he was not instructed to consider the suitability of sites. Be that as it may, that was the underpinning of the Council's approach to say why not look somewhere else that doesn't have a GB designation. For reasons previously given, you should wholly reject that approach and come to the view that Mr Smith came to that there were no alternative sites that anyone else could refer. Remarkably he had not been to any of the sites that he submitted to the Inquiry. Not examined their status or any constraints subjected to.
66. Those sites were all unacceptable in planning terms, and in proximity terms, and nowhere near the populations that the Hindu crematoria was intended to serve to meet the needs of the Hindu population. He identified no local Hindu population. You may consider that it was inappropriate having regard to the PSED and proximity principles, when drawn to him in cross-examination.
67. The reason why all these matters are remarkable is that none of them are rocket science. All patently obvious, and until I had the opportunity to cross examine Mr Smith, he was untroubled by any of those features and characteristics.
68. For those reasons, the response does not begin to meet the relevant requirements and the Council's position is unreasonable.