



Appeal Decision

Hearing Held on 11 March 2020

Site visit made on 11 March 2020

by Thomas Hatfield BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st April 2020

Appeal Ref: APP/L3245/W/19/3236638

Land off Holyhead Road (Former A5), Nesscliffe, Oswestry, SY4 1AY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Ed Aldridge of Westerleigh Group Ltd against the decision of Shropshire Council.
 - The application Ref 18/04965/FUL, dated 24 October 2018, was refused by notice dated 8 July 2019.
 - The development proposed is described as "*erection of a new crematorium for Oswestry with associated access, car parking and landscaping*".
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Decision

1. The appeal is dismissed.

Application for Costs

2. At the Hearing an application for costs was made by Mr Ed Aldridge of Westerleigh Group Ltd against Shropshire Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:
 - (a) Whether the development would result in an acceptable environment for mourners and visitors to the crematorium in respect of noise, disturbance, and odour, and;
 - (b) The effect of the development on the character and appearance of the area, including on the setting of Nesscliffe Hill Camp.

Reasons

Noise, disturbance, and odour

4. The appeal site is located a short distance to the north and east of the Nesscliffe Training Area, which is an extensive area of land used for military training purposes. RAF Shawbury is also located approximately 20 kilometres to the east, which provides helicopter training to armed forces personnel. In this regard, the appeal site is within a relatively narrow corridor that is used by helicopters travelling between RAF Shawbury and the Nesscliffe Training Area. At the hearing, it was stated that helicopters leaving RAF Shawbury typically aim for the Nesscliffe Hills before dropping to a low level in the vicinity of the

appeal site. In this location, it was stated that helicopters (including larger Chinooks) would typically fly at between 30 and 150 metres above the ground, 2-3 times an hour, as part of routine training operations.

5. The appellant has questioned whether the site is directly overflowed by military training helicopters and stated at the hearing that they had never witnessed helicopters in the vicinity of the appeal site. However, the Ministry of Defence (MoD) has consistently stated, including in its initial representations at application stage, that the bridge across the A5 (immediately to the north west of the appeal site) is used by helicopter pilots as a waypoint before proceeding to the Nesscliffe Training Area. This was reiterated at the hearing, and it is unclear why the MoD would persist in its objections if this were not the case. I further note that a number of local residents stated that they regularly see low flying helicopters in this location.
6. A series of noise impact assessments and technical notes have been submitted in support of the appeal proposal. These identify road traffic noise associated with the A5 as the dominant source of noise across the site, whereas helicopter noise in the vicinity was identified as not being significant. However, the MoD states that helicopter activity was significantly below normal levels during those survey periods¹. In this regard, it is asserted that only 16 flights took place during the initial 2 week survey period, and that flights during the second period were limited by poor weather. It is also unclear how close any helicopter flights recorded in those surveys were to the site, or at what height they were flying. Given the relatively small number of flights that took place, these surveys may not be representative of helicopter noise that would ordinarily be experienced at the site.
7. On the second day of the hearing, a demonstration was arranged for a training helicopter to fly near to and directly over the appeal site at 30 and 150 metres above ground level. During each of these flyovers, the helicopter was clearly audible above road traffic noise from the A5, and it had a loud pulsating character. This was most pronounced when the helicopter directly overflowed part of the site and in these cases the noise generated was dominant and intrusive. However, even on the flyovers that took place on either side of the appeal site, the character and level of the noise was highly distracting. Moreover, given the speed at which the helicopters were travelling, this noise emerged relatively quickly and intensely. Coupled with the visual impact of a helicopter travelling at low level and high speed, this had a startling effect that would be highly disconcerting if unexpected. This effect would be even more pronounced for a larger Chinook helicopter, which are also used for training purposes in this area.
8. Whilst it would be possible to insulate the crematorium building to prevent any significant disruption to services, mourners would be likely to gather outside both before and after a funeral to converse and offer condolences. At these times, a low flying helicopter in the vicinity of the appeal site would be highly distracting and likely to result in annoyance and distress to those grieving the loss of a friend or relative. In addition to the crematorium building, a large memorial garden is also proposed. This would be a place of contemplation and reflection, where personal memorials such as benches, trees, or miniature gravestones could be placed. Visitors to this area could reasonably expect a

^B Between 26-31 July 2018 and 2-10 December 2019

degree of peace and tranquillity, rather than being subjected to this level of disturbance.

9. At the hearing, representatives from the MoD, RAF, and British Army described the measures they have undertaken to minimise noise and disruption in the area. This includes participation in a RAF Helicopter Noise Liaison Group, and the careful routing of flights between RAF Shawbury and the Nesscliffe Training Area to avoid villages and other noise sensitive locations. As public bodies, these organisations are particularly sensitive to complaints regarding their operations. Given the potential for low flying helicopters to cause annoyance and distress to mourners and visitors to the crematorium, this would be likely to generate adverse publicity and a significant number of complaints. In turn, this could result in significant pressure to re-route helicopter flights away from the appeal site.
10. At the hearing, it was stated that this would not be straightforward and may have significant cost implications in terms of fuel usage and the ability to fulfil contractual obligations. It was also asserted that alterations to existing flight patterns would lead to a funnelling of activity elsewhere that could increase the risk of mid-air collision between helicopter traffic entering and leaving the Nesscliffe Training Area. Whilst only limited details have been provided of the routes that helicopters currently use, or where any funnelling would take place, it was stated that there would be security implications for placing this information in the public domain. I have no reason to doubt this, and as public bodies, I attach significant weight to the comments made by the MoD and the RAF regarding the effect of the proposal on their operations. I further note that Paragraph 95 of the National Planning Policy Framework ('the Framework') states that planning decisions should ensure that operational defence sites are not affected adversely by the impact of other development proposed in the area.
11. It is asserted in the Council's Development Management Report, and in the appellant's Statement of Case, that the MoD did not formally object to the original planning application. However, at the hearing, representatives from both the MoD and RAF stated that their comments were intended as a formal objection, even if this was not explicitly stated. From the tone and content of those comments it is clear that there were substantial concerns about the proposal, and I have no reason to doubt their stated intentions in this regard.
12. The appellant has provided a list of complaints received in Low Flying Areas in 2018. This shows that Low Flying Area 9 (which contains the appeal site) had the second lowest number of complaints, at 71 flying hours per complaint. However, this may simply reflect the efforts which are made locally to minimise disruption associated with military training helicopters. Moreover, Low Flying Area 9 encompasses 1,361 square miles, and so that data may not reflect the specific circumstances of this case.
13. The appeal site is also positioned next to the A5, which is a busy dual carriageway that generates a relatively consistent level of traffic noise. In this regard, the submitted noise reports indicate that the external noise levels within the memorial gardens would range between 53-60 dB, largely as a result of noise from the A5. This could be reduced by 2 dB through the installation of a 2.4 metre high acoustic barrier along the south western boundary of the site. It is asserted that this would result in only a modest exceedance of the WHO

guidelines for outdoor living areas, which specifies a range of between 50-55 dB. However, these guidelines state that a level of 50 dB would result in "*moderate annoyance, daytime and evening*" whereas at 55 dB this would result in "*serious annoyance, daytime and evening*". The proposed level of 58 dB would exceed this upper threshold. During my site visit, I observed the noise levels associated with the road, albeit without the proposed mitigation in place. Over time, this noise had an oppressive quality at odds with the tranquillity that visitors to a memorial garden could reasonably expect. In my view, this noise would further contribute to a poor environment for mourners and visitors to the site. Whilst it was asserted that housing developments have been approved by the Council nearby without an acoustic fence being required, the full details of those cases are not before me. In any case, I have come to my own view on this matter rather than relying on the approach the Council may have taken elsewhere.

14. The proposed crematorium building would also be positioned approximately 130 metres² to the north-east of a large poultry rearing site on the opposite side of the A5. In this regard, an Odour Assessment³ has been submitted that surveyed odour from this source. These surveys recorded odours downwind from the poultry sheds, including within the appeal site, during worst case conditions. However, no "*offensive*" odours were observed. Moreover, the use of chicken (or other) manure as a fertiliser on neighbouring fields is not unusual in a countryside location. Whilst mourners and visitors to the site may experience occasional odour from these sources, this matter would not justify withholding permission in my view.
15. Separately, the Nesscliffe Training Area is also used for 2-3 weeks a year for training exercises in relation to explosive ordnance disposal. These exercises involve members of the armed forces, the police, the fire and rescue service, and other agencies. During these exercises, the use of explosives is frequent, the volume of which is described as being akin to a large firework display. In addition, the use of sirens from military and police vehicles, as well as fire engines, would be frequent and ongoing. These exercises would take place approximately 1.5 km - 2 km away from the appeal site and on the other side of the A5. They would also be occasional in nature, and it was stated at the hearing that advanced warning is usually provided to local residents and businesses given the level of noise that is generated. In this regard, the appellant stated that it would be possible to schedule their maintenance so that services did not take place during these times. In these circumstances, I do not consider that this matter would justify withholding permission. However, that does not alter my other concerns regarding helicopter disturbance, as set out above. Separately, whilst the Nesscliffe Training Area is also used to dispose of recovered legacy munitions, this occurs infrequently, and controlled explosions are usually undertaken some distance away from the appeal site.
16. My attention has been drawn to a number of other crematoria that operate in close proximity to major roads and other sources of disturbance. However, the full details of those cases including the reasoning underpinning their approval are not before me, and I am therefore unable to assess any direct comparability to the current appeal proposal. In this regard, whilst I note that Llanelli Crematorium is approximately 300 metres from a Welsh Air Ambulance

² According to the Council

³ REC (May 2019)

base it is unclear that it is directly overflowed by helicopters at a comparable height and speed, and if so, how frequently this occurs.

17. For the above reasons, I conclude that the development would result in an unacceptable environment for mourners and visitors to the crematorium in respect of noise and disturbance. It would therefore be contrary to the relevant sections of Policy CS6 of the Shropshire Core Strategy (2011) which seeks, amongst other things, to safeguard local amenity. It would also be at odds with the Framework, which requires that development provides a high standard of amenity for existing and future users.

Character and appearance

18. The appeal site is visible from a number of vantage points in the surrounding area, including from nearby roads and footpaths, and in longer views from the top of Nesscliffe Hill. From these positions, the crematorium building and car parking areas would be clearly visible and the agricultural character of the site would be significantly altered. A submitted Landscape and Visual Impact Assessment⁴ (LVIA) identifies that there would be both 'moderate adverse' and 'substantial adverse' visual effects initially, although this would reduce to 'minor adverse' in all instances by year 15. In this regard, the LVIA illustrates that over time the proposed building and parking areas could be largely screened from view by an appropriate landscaping scheme. Significant areas of the site would also remain open.
19. Nesscliffe Hill Camp is an Iron Age hillfort and Scheduled Monument, located around 700 m to the south east of the appeal site. It occupies a prominent position on the northern part of the summit of Nesscliffe Hill. Although the monument is masked by dense tree cover, its hilltop location is widely visible across the surrounding landscape. The development would introduce a new and relatively large feature into the open agricultural setting of the hillfort. This open farming landscape adds to its significance as the people who built the hillfort and lived in the area are known also to have extensively farmed the same landscape. The presence of this fertile plain also helps to explain why the hillfort was sited at this location. By altering the character and reducing the openness of its setting, the development would result in some harm to the setting of Nesscliffe Hill Camp. This harm would be 'less than substantial' in the context of Paragraphs 195-196 of the Framework and would diminish over time. Set against this, the development would provide significant public benefits, as set out below. In my view these benefits would outweigh the harm that would arise solely to the setting of the Scheduled Ancient Monument.
20. The development would therefore accord with the relevant sections of Policies CS6 and CS17 of the Shropshire Core Strategy (2011), Policies MD2, MD12 and MD13 of the Shropshire Site Allocations and Management of Development Plan (2015), and guidance in the Framework relating to designated heritage assets.

Other Considerations

21. It is not disputed that the provision of adequate cremation facilities is an essential societal need. In this regard, bereaved relatives organising a funeral should be able to access suitable facilities within a reasonable distance, without

⁴ The Richards Partnership (October 2018)

significant delay. The adequate provision of cremation facilities is therefore clearly a weighty planning consideration.

22. The appellant has prepared a need assessment⁵ in support of the proposal, which concluded that there is a quantitative and qualitative need for a new crematorium to serve Oswestry and the surrounding communities. In addition, the Council commissioned its own Crematorium Need Assessment⁶ in relation to the proposal. This also concluded that there is a compelling quantitative and qualitative need for a new Nesscliffe Crematorium. I see no reason to dispute the findings of these assessments.
23. The siting of new crematoria is subject to the requirements of the Cremation Act 1902. Section 5 of Chapter 8 of the Act states that; *"No crematorium shall be constructed nearer to any dwelling house than two hundred yards [182 metres] except with the consent in writing, of the owner, lessee and occupier of such house, nor within 50 yards of any public highway"*. In practice, this restriction is likely to mean that any proposal for a new crematorium will require a countryside location away from existing settlements.
24. The appeal site is not identified as an allocation for a new crematorium in any adopted Development Plan Document, or in the emerging Local Plan Partial Review. However, nor are any other sites identified for this purpose.
25. My attention has been drawn to 2 recent appeal decisions⁷ where Inspectors found that 'very special circumstances' existed to justify allowing new crematoria in the Green Belt. However, neither of those cases appear to raise the same planning issues that apply here in relation to noise and disturbance.

Overall Balance and Conclusion

26. As set out above, the proposal would result in an unacceptable environment for mourners and visitors to the crematorium and would be likely to adversely affect nearby operational defence sites. It would be contrary to the development plan and the Framework in these respects. It would also result in less than substantial harm to the setting of a Scheduled Monument.
27. Set against this is the clear quantitative and qualitative need for a new crematorium, and the requirement for a countryside location. The development would also generate economic benefits through the creation of employment and the purchasing of materials, and it would deliver biodiversity enhancements. Together, these considerations carry significant weight in favour of the proposal.
28. Overall, however, I consider that the benefits of the development do not outweigh the harm I have identified. In the circumstances of this appeal, the material considerations considered above do not justify making a decision other than in accordance with the development plan.
29. For the reasons given above I conclude that the appeal should be dismissed.

Thomas Hatfield

INSPECTOR

⁵ Westerleigh Group, October 2018

⁶ Peter Mitchell Associates (June 2019)

⁷ APP/P1805/W/18/3211026 & APP/P3040/W/19/3229908

APPEARANCES

FOR THE APPELLANT:

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|------------|--------------------------|
| E Aldridge | Appellant |
| M Hubbard | Planning Consultant |
| C Kearney | Environmental Consultant |
| M Parker | Environmental Consultant |
| P Richards | Landscape Architect |

FOR THE LOCAL PLANNING AUTHORITY:

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| T Rogers | Shropshire Council |
| K Hall | Shropshire Council |

INTERESTED PERSONS:

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|-------------------|---|
| Cllr E Potter | Ward Councillor |
| P Hinton | Defence Infrastructure Organisation |
| Wing Cdr M Jordan | Royal Air Force |
| Maj R Slayney | British Army |
| P Brooks | Great Ness and Little Ness Parish Council |
| R Turner | Great Ness and Little Ness Parish Council |
| S Ruffler | |
| Z Robins | |
| M Robins | |
| J Burgoyne | |
| J Brisbane | |

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Site plan and planning history relating to a nearby residential development site on the edge of Nesscliffe village.