



Doncaster Council

Report

18th December 2020

To the Chair and Members of the
PLANNING COMMITTEE

REPORT TITLE

Planning Applications for new crematoria – Advice for members of the Planning Committee in relation to the decisions before them

Relevant Cabinet Member(s)	Wards Affected	Key Decision
Councillor Chris McGuinness	Stainforth & Barnby Dun Sprotbrough Conisbrough	No

EXECUTIVE SUMMARY

1. This report advises the Planning Committee about the legal framework within which the determinations of the three planning applications for new crematoria within the Borough are to be made. Its purpose is to provide legal advice to members in relation to their approach to determining these applications, all of which are to be presented at the Extraordinary Planning Committee meeting on 18th December 2020.

RECOMMENDATIONS

2. That the report be noted.

WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?

3. The determination of these applications will be important to residents of Doncaster in terms of the provision of cremation services within the Borough.

BACKGROUND

4. The Council has received three applications for new crematoria within the www.doncaster.gov.uk

Borough, those being:

- a) 19/02434/FULM for the construction of crematorium, associated car park, access road, gardens of remembrance and area for natural and traditional burials at land east of Armthorpe Lane, Barnby Dun (“the Barnby Dun Proposal”);
 - b) 19/03088/FULM for construction of crematorium including memorial gardens, associated car parking, a new vehicle access onto Green Lane and ancillary works at land south of Green Lane, Brodsworth (“The Brodsworth Proposal”); and
 - c) 20/00334/FULM for a crematorium with ceremony hall, memorial areas, garden of remembrance and associated parking and infrastructure, including new access at land off Sheffield Road, Conisbrough (“the Conisbrough Proposal”).
5. These applications are for a rare form of development and have been submitted for consideration in close succession. Accordingly the Council has sought and is in receipt of Counsel’s advice regarding these determinations. This report sets out salient parts of Counsel’s advice and also seeks to guide members generally as to a lawful approach to reaching a decision on each of the applications before them.

LEGAL FRAMEWORK

6. Section 70(2) of the Town and Country Planning Act 1990 as amended (“TCPA”) requires the decision maker to have regard to the development plan and any other material considerations. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (“PCPA”) requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise. Decision-makers must therefore assess an application against the development plan policies, and weigh any other material considerations in the balance.
7. The planning case officer considers that all of the proposals are contrary to the development plan, and there are therefore clear planning objections weighing against each proposal. However as set out in section 38(6) PCPA, material considerations may justify a departure from the development plan.
8. The need for one or more new crematoria within the Borough is considered to be a material planning consideration. Each applicant has submitted its own assessment of need to justify the location of each respective proposal and the Council has commissioned its own independent assessment of the need for one or more such facilities within the Borough (“the PMA report”), in relation to which, members are referred to the “need” sections of the Officer’s Reports. It therefore follows that whilst each proposal will have to be assessed on its own merits, need is a fundamental material consideration, common to all three proposals.
9. It is a matter for the Council’s discretion as to whether the three proposals be considered together, as there is no express or implied requirement to do so in statute. Case law has indicated that where competing proposals are before a decision-maker, in a case where there are clear planning objections to them all, it may be irrational not to consider those applications together unless there is an identified and accepted need for all of the proposals (*obiter comments of Carnwath LJ in Derbyshire Dales District*

Council v SoSCLG [2010] 1 P & CR 19). The PMA report does not conclude that there is a need for an additional three crematoria in the Borough at the locations subject to these applications.

10. It is Counsel’s view therefore that the consideration of all three proposals as alternatives, and therefore material considerations in the determination of each proposal warranting joint consideration and comparison, is legally sound.
11. In the comparative exercise for these three planning applications, need is an important material consideration which must to be weighed into the planning balance. The advice from PMA, the consultant’s report to the Council on the need for new crematoria, is that there is a clear need. The extent to which an application meets that need is an important material consideration.
12. It is also important to compare the other adverse effects of the schemes and the extent to which they are constrained by planning policy. This means that where the need can be met on an alternative site that does not have the same level of environmental impact or is not as constrained by planning policy, then that alternative site should be preferred (see Oliver LJ in **Greater London Council v Secretary of State for the Environment (1986) P&CR 158**)
13. The applications are due to be presented to the Planning Committee in the following order:
 - (1) The Barnby Dun Proposal – recommended for approval;
 - (2) The Brodsworth Proposal – recommended for refusal;
 - (3) The Conisbrough Proposal – recommended for refusal.

OPTIONS CONSIDERED

14. Not applicable - the report at this stage is for noting only.

REASONS FOR RECOMMENDED OPTION

15. Not applicable.

IMPACT ON THE COUNCIL’S KEY OUTCOMES

- 16.

	Outcomes	Implications
	<p>Doncaster Working: Our vision is for more people to be able to pursue their ambitions through work that gives them and Doncaster a brighter and prosperous future;</p> <ul style="list-style-type: none"> • Better access to good fulfilling work • Doncaster businesses are supported to flourish • Inward Investment 	

	<p>Doncaster Living: Our vision is for Doncaster's people to live in a borough that is vibrant and full of opportunity, where people enjoy spending time;</p> <ul style="list-style-type: none"> • The town centres are the beating heart of Doncaster • More people can live in a good quality, affordable home • Healthy and Vibrant Communities through Physical Activity and Sport • Everyone takes responsibility for keeping Doncaster Clean • Building on our cultural, artistic and sporting heritage 	<p>The PMA report advises that any one of the 3 application sites would bring a benefit to residents by;</p> <ul style="list-style-type: none"> • Proximity- reducing their funeral travel times; • Increasing capacity - reducing delays between death and being able to hold a funeral at a convenient time and date; • Providing new capacity and choice of crematorium - reducing demand and thus reducing congestion at Rose Hill Crematorium; • Contemporary design and longer funeral services - giving more privacy to each group of mourners.
	<p>Doncaster Learning: Our vision is for learning that prepares all children, young people and adults for a life that is fulfilling;</p> <ul style="list-style-type: none"> • Every child has life-changing learning experiences within and beyond school • Many more great teachers work in Doncaster Schools that are good or better • Learning in Doncaster prepares young people for the world of work 	
	<p>Doncaster Caring: Our vision is for a borough that cares together for its most vulnerable residents;</p> <ul style="list-style-type: none"> • Children have the best start in life • Vulnerable families and individuals have support from someone they trust • Older people can live well and independently in their own homes 	

	<p>Connected Council:</p> <ul style="list-style-type: none"> • A modern, efficient and flexible workforce • Modern, accessible customer interactions • Operating within our resources and delivering value for money • A co-ordinated, whole person, whole life focus on the needs and aspirations of residents • Building community resilience and self-reliance by connecting community assets and strengths • Working with our partners and residents to provide effective leadership and governance 	
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RISKS AND ASSUMPTIONS

17. None.

LEGAL IMPLICATIONS

18. Legal advice is contained in the body of this report.

Officer Initials SC Date 08.12.20

CONSULTATION

19. With Counsel.

BACKGROUND PAPERS

Planning Case Officer Reports
 Counsel’s advice dated 18th June 2020.

REPORT AUTHOR & CONTRIBUTORS

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