

[REDACTED]

[REDACTED]

From: Lisa Jackson [REDACTED]
Sent: 24 June 2019 17:06
To: Simon Davis <Simon.Davis@arun.gov.uk>
Cc: Daniel Vick <Daniel.Vick@arun.gov.uk>; Neil Crowther <Neil.Crowther@arun.gov.uk>; Andrew Tice [REDACTED]
Subject: Re: Y/103/18/PL - Proposed Crematorium at Grevatt's Lane West

Dear Simon,

I refer to your email asking why the application was not accompanied by a sequential test in respect of flooding and to your later email informing me that the application has now been withdrawn from determination at committee on Thursday 27th June. I am very disappointed that I was not given the courtesy of a response before the decision was made to withdraw the application. The reason I say this it's because there is no firm requirement for a sequential test for the application site given the circumstances I set out below.

The application site is located within flood zone 1 and the current surface water mapping shows the site is at low risk from surface water flooding. This accords with paragraph 163 of the NPPF, which does not on the face of it say that a sequential test is

required for sites in flood zone 1 with a future risk of flooding. Looking in particular at footnote 50 all it appears to say is that a site-specific flood risk assessment is to be provided in such instances.

In your email you point to advice in the PPG. However, the interpretation of the NPPF and the PPG is not entirely clear. The extent of what is the 'future' in relation to flood risk is not specified. NPPF 155 refers to the need to direct away from the areas at highest risk (whether the existing or future) and then goes on to advise that where development does play place in these areas it should be safe for its lifetime.

There is discretion in the NPPF/PPG to carry out a sequential assessment for a site in flood zone 1 with only a future risk, particularly where that future risk of flooding falls outside the lifetime of the proposed development. The NPPF includes the caveat of 'as applicable' in relation to both sequential and exception tests in NPPF 163. In addition, NPPF158 refers to the need for a sequential approach (not test) in areas that are known to be at risk of future flooding. Given the date at which the application site may be at risk - some 92 years' hence, it cannot be 'known' with any certainty that the site will remain at risk. Future flood risk so far in the future will be subject to change as Environment Agency data and modelling is updated. Indeed your Council's SFRA states: Section 5.9.1, third para - *"Although qualitative statements can be made as to whether extreme events are likely to increase or decrease over the UK in the future, there is still considerable uncertainty regarding the magnitude of the localised impact of these changes"*

We were fully aware of issues with regards to the potential impact of future climate change on the proposed application at Grevatt's Lane West when the application was submitted. Section 5.10 of the FRA, submitted with the application, considers this and the report confirms: *"The SFRA maps indicate that the south eastern and eastern part of the site may become part of Flood Zone 3a by 2111."* We acknowledged at 8.7.4 that *"upon receipt of the Product 4 data flood resilience measures can be considered for incorporation into the design of the building to future proof against the impact of climate change flood events and facilitate recovery should an event occur"*.

Inherent within this consideration is the potential uncertainty associated with predicting future flooding that far into the future and the assumption that no intervening action (e.g. flood defences) would have been taken with respect to the evolving position regarding the implications of climate change.

To demonstrate there is no residual risk with future flooding potential in 2111, Landlink Estates can confirm that the lease with the operator is for a maximum of 90 years and they will accept an additional clause within the s106 agreement that requires the removal of the building by 2110 if future flood risk assessment confirms that the site remains at risk of flooding. This allows the Council to be certain that if the projections for future flood risk are confirmed, taking into account any changes in forecasting, flood modelling or flood defences, in the intervening period, this will be outside the lifetime of the development and therefore this is consistent with the requirement in NPPF155 that development should be made safe from flooding for its lifetime.

I would also note that the Council have extensive evidence about the limited availability of sites that are capable of meeting the need for a crematorium in the area from the sequential test carried out by the Southern Co-op for their application CM/4/19/PL. This was accepted by the Council as set out in the committee report for that application and was then assessed by officers to consider my client's site. There is no evidence before the authority of any site in the area which is in a lower flood zone and is available for this development. The only additional site not considered in Southern Co-op's sequential test would be the Landlink site under consideration in Y/103/18/PL. Contrary to the assessment by officers in the committee report it is clear that this is sequentially preferable to the site in application CM/4/19/PL as that site currently falls partly within Flood Zones 2 and 3 and may be subject to further flooding in 2031 due to climate change allowance, some 80 years' earlier than my client's site. Note this point is also considered in the attached advice from Counsel.

As this issue has been raised by the agents for the Southern Co-op, and highlighted by the Principal Solicitor, it would be important that this matter is now reported to Members before the committee determination on and I believe that you could provide a written update report that sets out to your Members your assessment that the application site Y/103/18/PL is sequentially preferable to the application CM/4/19/PL for the lifetime of the development and there is no evidence before the authority of any site in the area which is in a lower flood zone and is available for this development.

In order to assist the Council, I attach a note produced by Counsel in relation to the consideration of the Southern Co-op application. In conclusion the advice is as follows:

- (a) There is an obligation to take into account the Landlink Site when considering the Southern Co-op Application. Failure to do so would amount to an error of law.
- (b) The reasons given by Officers for discounting the relevance of the Landlink Site when assessing the Southern Co-op Application are based on a misinterpretation of the relevant policies. They are not lawful reasons for failing to take into account the Landlink Site.

(c) Properly assessed, due to the existence of the Landlink Site the Southern Co-op Application cannot meet policy SD SP3 or the sequential test.

I hope the above and attached note is helpful and explains why a sequential flood test was unnecessary in this instance. I do hope you can reconsider reinstating the application on the agenda for Thursday 27th. I look forward to your response.

Enclosure - Note from Counsel – Clare Parry, Cornerstone Barristers, 21st June 2019

Kind regards,

Lisa

Lisa Jackson
Jackson Planning Ltd



On 24 Jun 2019, at 12:32, Simon Davis <Simon.Davis@arun.gov.uk> wrote:

Dear Lisa,

We have had advice from our principal solicitor that suggests that a sequential assessment should have been provided and addressed in the officer report. Therefore, I would ask that you advise why the Flood Risk Assessment submitted with your application did not include a Sequential Assessment?

I note that paragraph 158 of the NPPF states that: “The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding”. Also that paragraph 033 (Reference ID: 7-033-20140306) of the PPG says that:

“The Sequential Test does not need to be applied for individual developments on sites which have been allocated in development plans through the Sequential Test, or for applications for minor development or change of use (except for a change of use to a caravan, camping or chalet site, or to a mobile home or park home site). Nor should it normally be necessary to apply the Sequential Test to development proposals in Flood Zone 1 (land with a low probability of flooding from rivers or the sea), unless the Strategic Flood Risk Assessment for the area, or other more recent information, indicates there may be flooding issues now or in the future (for example, through the impact of climate change).”

As the following extract shows, our SFRA shows that the site lies in an area designed as being Flood Zone 3a in the future (2111).

<image003.jpg>

(See - Appendix D, Part 1 as found here: <https://www.arun.gov.uk/planning-policy-flood-risk>)

Kind Regards

Simon J Davis MRTPI | Principal Planning Officer, Planning Department, Directorate of Place, Arun District Council |

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Please note that I typically work from home on Thursdays when I am unreachable on my work phone

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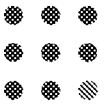
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IN THE MATTER OF AN APPLICATION FOR PLANNING PERMISSION AT GREVATTS LANE WEST, YAPTON, WEST SUSSEX

ADVICE

1. I am asked to advise Landlink Estates in relation to an application (CM/4/19/PL) by Southern Co-op for construction of a crematorium on Land South of Grevatt's Lane ("the Southern Co-op Site"). The application is to be considered by Arun District Council's Development Control Committee on the 27 June 2019. At the same time the committee are proposing to consider a detailed application (Y/103/18/PL) for development of a single chapel Crematorium on land at Grevatts Lane West, Yapton, West Sussex ("the Landlink Site").
2. The Landlink Site and the Southern Co-op Site are around a mile from each other. In practice both proposed crematoria would serve the same catchment area if both were built.
3. I am asked to advise on the correctness of the approach recommended by Officers in their Planning Application Report in relation to the Southern Co-op Site.

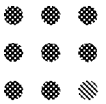
BACKGROUND

The Landlink application

4. The Landlink application was validated on the 24 December 2018. The application is for:

"Single Chapel Crematorium with car parking, landscape works, surface water drainage features & associated highway improvements."
5. The application was accompanied by a suite of documents including a Crematorium Need Assessment. The findings of the Crematorium Need Assessment is that:

"whilst there is a compelling quantitative and qualitative need for a single new crematorium at Grevatts Lane West, Bilsham, Yapton, West Sussex, there is no need for two crematoria at this location and, if both were developed neither would be financially viable."



6. The Landlink Site is not located in any strategic gap identified under Arun District Council Local Plan (“ADCLP”) policy SD SP3. It is entirely situated within Flood Zone 1.
7. The recommendation in the Planning Application Report is for approval subject to the signing of a section 106 agreement securing a contribution to the provision of a Traffic Regulation Order which may be required in future. I am instructed that preparation of the section 106 agreement is well advanced.
8. On 29 March 2019 Arun District Council were notified that Dignity had been selected by Landlink as operator of the proposed crematorium. Dignity are the largest private sector crematoria operator operating in the UK with some 46 crematoria. They have a wide range of experience in developing, delivering and operating high quality new build crematoria.

The Southern Co-op application

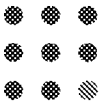
9. The Southern Co-op Application was validated on the 29 January 2019. The application is for:

“Construction of a crematorium comprising of a crematorium building & associated structures, car parking, access & landscaped spaces.”

10. The application is accompanied by a Crematorium Needs Assessment. That identifies a *“clear and functional need for an additional crematorium to be provided which can address the shortfall in provision”* in the area (§7.2). The report appears clear that the need is for a single additional crematorium and it contains no arguments in support of the need for more than one crematorium in the area.

11. The Site is located in Flood Zones 1 to 3, with the proposed crematorium building falling within the part of the Site identified as Flood Zones 1 and 2. The developer has provided a flood risk assessment. In relation to the sequential test that document provides in relation to the sequential assessment:

With reference to the NPPF the Sequential Test gives preference to locating new development in the available areas at lowest risk of flooding (i.e. Flood Zone 1). For sites that are allocated within the Local Plan it can be assumed that the Sequential Test has been passed; however, based on the Local Plan Policy Map the Site is not allocated.



....As indicated in Figure 3-2 the part of the proposed development is located within Flood Zone 2 and therefore a sequential test is required. This has been completed in a separate document [the Alternative Sites Assessment] demonstrating that there are no reasonably alternative sites that are subjects to lower levels of flood risk.

The crematorium was unable to be developed in Flood Zone 1 due to regulatory constraints relating to the 1902 Cremation Act."

12. No document entitled sequential test has been provided, but it is understood that the applicant relies on their 'Alternative Sites Assessment' in this respect. That states that there are no available sites and states in respect of what is understood to be the Landlink Site:

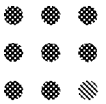
Our research did not identify any of the land within area 3 to be available. At the time of writing this report it is understood that an application may be submitted soon for the construction of a crematorium on land off Bilsham Road, at the southern edge of area 3. That land was not available to the Applicants. The application is understood to be being made on a speculative basis rather than by the end operator though, so eventual delivery of that site could not be guaranteed.

13. The Planning Design and Access Statement says in relation to the sequential test that:

9.6 It therefore needs to be considered whether there are any reasonably available alternative appropriate sites for the development in areas outside of the flood zone. Defining 'reasonably available appropriate sites' is the first step in that process. Fundamentally any potential 'available' site would either need to be already earmarked for such a development in the development plan, or be known to be available to the developer by reason of being on the market. Any available land would then need to be assessed for its appropriateness to accommodate the proposed development. When considering appropriateness in the light of a crematorium development that would be led by a combination of factors including its locational requirements, planning policy constraints and also the legislative requirements set out in paragraph 7.1

14. In respect of the sequential test the Planning Application Report says:

The proposed crematorium building would be located within the part of the site identified as flood zones 1 and 2, and therefore falls partially within the flood zone. Ideally the building would be relocated to a position within flood zone 1 only in order that it would be entirely outside of the flood zone. However, in this case that is not possible due to the legislative requirement that new crematorium buildings



not be located within 45 yards of a public right of way, which includes those on the north and west site boundaries. The memorial gardens to the rear of the crematorium building will fall within flood zones 2 and 3, but those elements of the proposals are not flood sensitive.

Policy W DM2 'Flood Risk' sets out the Council's criteria for allowing development in areas at risk from flooding, including the requirement to meet the sequential test, provide a site-specific Flood Risk Assessment, and identify adaptation and mitigation measures. This is reflected in policy CPN12 of the Neighbourhood Plan.

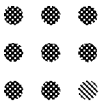
Chapter 14 of the NPPF is concerned with meeting the challenge of climate change, flooding and coastal change. Paragraph 155 confirms that inappropriate development should be avoided in areas of highest risk of flooding and steering new development to areas with the lowest risk of flooding. Paragraph 163 confirms that when determining planning applications, LPAs should ensure that flood risk is not increased elsewhere, and that, where appropriate, applications should be accompanied by site-specific flood-risk assessment.

Given the location of the crematorium building within an area of flood risk then in accordance with paragraph 158 of the National Planning Policy Framework the 'Sequential Test' needs to be applied to the proposed development. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding. Development should not be allocated or permitted if there are reasonably available appropriate sites for the development in areas with a lower risk of flooding.

In accordance with this guidance it needs to be considered whether there are any reasonably available alternative appropriate sites for the development in areas outside of the flood zone. Fundamentally any potential 'available' site would either need to be already earmarked for such a development in the development plan, or be known to be available to the developer by reason of being on the market.

Any available land would then need to be assessed for its appropriateness to accommodate the proposed development. When considering appropriateness, in the light of a crematorium development, an assessment is required of a combination of factors including its locational requirements, planning policy constraints and also the legislative requirements.

The Alternative Sites Assessment report that accompanies the application sets out the process by which the search for a crematorium site was undertaken, the need for the use in this location already having been established. No land was identified as being available by the Applicants except for the land on the southern side of the A259. Much of this land is, like the application site, within the flood zone and therefore no more sequentially preferable in flood risk terms than the application site. Whilst the application has been submitted at the same time as that at 10 Acre



Field (Y/103/18/PL) this application is to be determined at the same committee and there is currently no approved alternative site.

In landscape terms the proposed development site is considered to be the most appropriate location within the parcel of land on the southern side of the A259 that is available to the applicants. Whilst some of the neighbouring land falls outside of the flood zone now it is notable that all of it will fall within the flood zone once flood levels are adjusted accounting for climate change (see the FRA report). Therefore, none of that adjacent land is sequentially preferable to the proposed site.

On the basis of the above considerations it is therefore concluded that the proposals pass the sequential test in this case. No alternative reasonably available appropriate sites for the proposed development have been identified in areas of lesser flood risk.

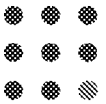
15. The Southern Co-op Site is also located within an area subject to Arun District Council Local Plan ("ADCLP") policy SD SP3.
16. In respect of this policy the Planning Application Report states:

Buildings and hard surfaces in this case would account for a small proportion of overall site coverage, in this case less than 20% overall. The site coverage of the building constitutes less than 4% of the total site area.

The new building will be single storey, flat-roofed and low height, which will enable it to assimilate discreetly into its landscaped setting. Given the landscaping that will both be retained and provided at the site boundaries the low scale of the proposed building is such that it will be well screened in longer distance views across the settlement gap.

The remainder of the site will be landscaped, and on that basis therefore, it is clear that the majority of the site, in excess of 80% will remain open and free of buildings or hard surfaces. This reduces the impact on the settlement gap and preserves its integrity.

The submitted accompanying Needs Report and Site Alternative Sites Assessment demonstrates why the application site was selected for the development. Section 6 of this Statement and the accompanying Landscape and Visual Impact Assessment, Landscaping Strategy and Landscape Plan demonstrates how the proposal has been designed to blend into the existing landscape, resulting in limited impact on wider views towards the site and limited impact on the landscape character of the area or integrity of the settlement gap.



17. The proposal is also located outside the Built Up Area Boundary and involves the loss of best and most valuable (grade 3a) agricultural land. The Planning Application Report concludes that those matters are outweighed by in particular the need for the proposal. The Planning Application Report concludes with a recommendation of grant of permission because:

The principle of development is contrary to the development plan as it is located in a countryside location, within a settlement gap, in an area partially at high risk of flooding and on grade 3a agricultural land.

The proposal represents sustainable development where the need for a new crematorium has been established. The evidence indicates this is the only available site which meets all of the required criteria. The proposal will make an efficient use of an accessible site. It will provide modern, purpose-built crematorium facilities which are of an appropriate design and will respond positively to the character of the area. It will be readily accessible to the residents of the Bognor Regis and Littlehampton areas and the proposal will preserve the character and appearance of the area, using natural resources, landscaping and appropriate materials.

The siting of a crematorium in the countryside is supported by the NPPF and by decision making elsewhere in the South East. These material considerations are such that in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004, a decision can be taken other than in accordance with the development plan.

DEVELOPMENT PLAN POLICIES

Arun District Council Local Plan policies

18. Policy SD SP3 provides:

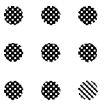
1. That policy provides:

Gaps Between Settlements

The generally open and undeveloped nature of the following gaps between settlements, as identified on the Policies Map will be protected to prevent coalescence and retain their separate identity:

.....

Development will only be permitted within the gaps if:



- a. It would not undermine the physical and/or visual separation of settlements;
- b. It would not compromise the integrity of the gap, either individually or cumulatively with other existing or proposed developments;
- c. It cannot be located elsewhere; and
- d. It maintains the character of the undeveloped coast;
- e. or, if a subsequent DPD or Neighbourhood Plan deems it appropriate through an allocation.

NPPF/ PPG

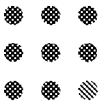
19. In relation to the sequential test the NPPF 2019 provides (as relevant):

155. Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future)....

158. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.

163. When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment [FN50]. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:

- a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;
- b) the development is appropriately flood resistant and resilient;
- c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;



d) any residual risk can be safely managed; and

e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.

20. Footnote 50 provides:

50 A site-specific flood risk assessment should be provided for all development in Flood Zones 2 and 3. In Flood Zone 1, an assessment should accompany all proposals involving: sites of 1 hectare or more; land which has been identified by the Environment Agency as having critical drainage problems; land identified in a strategic flood risk assessment as being at increased flood risk in future; or land that may be subject to other sources of flooding, where its development would introduce a more vulnerable use.

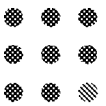
21. The Planning Practice Guidance gives further assistance on the application of the sequential test. At reference ID 7-003-20140306 it clarifies that for the purposes of the NPPF 'areas at risk of flooding' are principally land within Flood Zones 2 and 3, along with areas at acute risk of surface water flooding.

22. At reference ID 7-018-20140306 the guidance discusses the aim of the sequential test, saying:

The Sequential Test ensures that a sequential approach is followed to steer new development to areas with the lowest probability of flooding. The flood zones as refined in the Strategic Flood Risk Assessment for the area provide the basis for applying the Test. The aim is to steer new development to Flood Zone 1 (areas with a low probability of river or sea flooding). Where there are no reasonably available sites in Flood Zone 1, local planning authorities in their decision making should take into account the flood risk vulnerability of land uses and consider reasonably available sites in Flood Zone 2 (areas with a medium probability of river or sea flooding), applying the Exception Test if required.

DISCUSSION

23. In many instances where a local planning authority is presented with two 'rival' applications they are entitled simply to regard each case on its own merits without having regard to the availability of the other site: *Westerleigh Group Limited v Aylesbury Vale District Council* [2015] EWHC 885 at [70] to [72].



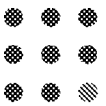
24. There are cases where an obligation to consider an alternative site would arise. In *Derbyshire Dales District Council v Secretary of State for Communities and Local Government* [2009] EWHC 1729 (Admin) Lord Justice Carnwath (as he then was) considered this issue. He rejected that any obligation arose in that case but went on to say at paragraph [37]:

37. I accept that, if there had been specific national or local policy guidance requiring consideration of alternatives, failure to have regard to it might provide grounds for intervention by the court

25. In my view in light of *Derbyshire Dales* it is clear that the local planning authority is obliged to consider the Landlink Site as an alternative site when considering whether to grant the Southern Co-op Application. This is because as I discuss further below, there is a clear requirement in both policy SD SP3 and in the NPPF/PPG on sequential assessments to consider alternative sites. This puts the case squarely within the observation of Lord Justice Carnwath at paragraph 37 of *Derbyshire Dales*. If the local planning authority fail to have regard in determining the Southern Co-op Application to the existence of the Landlink Site then in my view their determination will be unlawful.
26. Furthermore, the advice given in the Planning Application Report on the Southern Co-op Site about the Landlink Site is in my view unlawful, for the reasons I expand on below.

Policy SD SP3

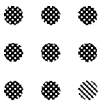
27. In my view policy SD SP3 when read correctly gives rise to a clear obligation to look for alternative sites where development is proposed in the identified gaps between settlements. Under the clear wording of policy SD SP3, in order to grant planning permission for development in the gap it is necessary either for the development to be allocated in a DPD or neighbourhood plan or for it to meet **all of** criterion (a) to (d). Those instructing may well have a view on whether the proposal meets criteria (a) (b) and (d), I do not consider those points further here. The crucial point for these purposes is that there is a need to meet criteria (c) which is that 'it cannot be located elsewhere'.
28. Here it is plain that 'the development', being the development of a crematorium to meet the needs in the local area, can be located elsewhere. That is amply demonstrated by the fact that the Landlink Site is available to meet that need.



29. All the Planning Application Report says about this requirement of policy SD SP3 is “the submitted accompanying Needs Report and Site Alternative Sites Assessment demonstrates why the application site was selected for the development.” With respect that statement does not address the correct question. The question asked by the policy is not why Southern Co-op selected their own site but why the development cannot be located elsewhere.
30. Further the Site Alternative Sites Assessment submitted by Southern Co-op does not show why the proposed development of a crematorium to meet the needs of the area for one crematorium cannot be met elsewhere. The only reasons given for rejecting the Landlink Site in the Site Alternative Sites Assessment are that the land is not available to Southern Co-op and that the application is not made by the end operator so delivery of the site could not be guaranteed. In respect of the first point the question posed by the policy is whether the development could be located elsewhere, not whether the proposed development could be built by this particular applicant elsewhere. In respect of the second point, as the Council is well aware a very experienced crematoria operator has been selected as operator of the proposed crematorium at Yapton so there is no reason to believe that delivery will not take place if planning permission is granted for the Landlink Application. It is also worth noting that nothing in the policy requires delivery of development on an alternative site to be guaranteed.

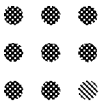
Sequential assessment

31. In my view there is also a need by virtue of the need for a sequential assessment to consider the Landlink Site as an alternative in the Southern Co-op application. The NPPF/ PPG is clear that:
- (a) There is a need to carry out a sequential assessment in this case;
 - (b) The purpose of the sequential assessment is to direct development to areas at lower risk of flooding;
 - (c) Development should only be permitted in Flood Zone 2 when there are no ‘reasonably available sites’ in Flood Zone 1.
32. It is therefore highly relevant whether the Landlink Site represents a ‘reasonably available’ site in Flood Zone 1.
33. The Planning Application Report appears to give two reasons why officers consider that the Landlink Site is not a sequentially preferable site which would cause the Southern Co-op Application to fail the sequential test:



- (a) Any alternative site would need to be earmarked in the development plan or be available to the developer by reason of being on the market; and
 - (b) Because the Landlink application is to be determined at the same time as the Southern Co-op Application there is no currently approved site to meet the agreed need for a single crematorium in the area.
- 34. In respect of the first point, nothing in the NPPG or PPG requires a site to be either earmarked in a development plan or on the market to make it a 'reasonably available site'. In my view that is not the proper interpretation of national policy and would significantly undermine the scope and aims of the sequential test.
- 35. At planning inspector level I have found two Inspector's decisions¹ considering whether the proposal needs to be available to the applicant to be considered to be a reasonably available site:
 - (a) In APP/T0355/W/18/3207932 the Inspector said the issue between the parties was whether it was appropriate to discount sites from the sequential assessment as they were unavailable to the applicant, or are being pursued by other parties or have an extant planning permission [14]. He said "in this case, based on the evidence before me, I am not persuaded that each of sites discounted for this reason would not be reasonably available" [15].
 - (b) In APP/T0355/W/16/3154088 the Inspector noted that the applicant had excluded a number of sites from his assessment on the basis they were unavailable to him because they were being pursued by other parties. The Inspector rejected this approach saying "in my opinion, a "reasonably available" site is not one which is only available to the appellant; it is a site which is available to the community at large. National guidance does not specify that sites should be suitable, developable and deliverable only by the applicant or appellant." [10]
- 36. Although I accept that Inspector's decisions do not provide authoritative guidance on the correct interpretation of the NPPF, in my view the approach taken by both Inspectors is correct and the interpretation of the NPPF/PPG set out in the Planning Application Report is not correct.

¹ It is possible there are further decisions in either direction on this point but these are the decisions I was able to find within the time available.



37. The other reason apparently given for concluding that the Southern Co-op Application passes the sequential test despite the existence of the Landlink Site is that the Landlink Site does not yet have planning permission. In my view that is not relevant. The NPPF/PPG does not require a site to have planning permission for a particular type of development to be 'reasonably available'. Furthermore it fails to take into account the fact that Officers have concluded that the Landlink Application is acceptable in planning terms and should be granted planning permission.
38. I note that it is now argued by Southern Co-op that the Landlink Application itself requires a sequential assessment. The correctness of that position is out of the scope of this advice but even if it were correct it would remain the position that the Landlink Site is a sequentially preferable site (being located in Flood Zone 1) and when lawfully approached should be considered to be a 'reasonably available site'. Therefore whether or not the Landlink Application requires a sequential assessment the correct conclusion is that the Southern Co-op Site fails the sequential test.

CONCLUSION

39. In conclusion my view is that:
- (a) There is an obligation to take into account Landlink Site when considering the Southern Co-op Application. Failure to do so would amount to an error of law.
 - (b) The reasons given by Officers for discounting the relevance of the Landlink Site when assessing the Southern Co-op Application are based on a misinterpretation of the relevant policies. They are not lawful reasons for failing to take into account the Landlink Site.
 - (c) Properly assessed, due to the existence of the Landlink Site the Southern Co-op Application cannot meet policy SD SP3 or the sequential test.
40. If I can be of any further assistance please do not hesitate to contact me.

21 June 2019

CLARE PARRY

CORNERSTONE BARRISTERS