

DURHAM COUNTY COUNCIL

At a Meeting of **County Planning Committee** held in Council Chamber, County Hall, Durham on **Tuesday 6 December 2022 at 9.30 am**

Present:

Councillor G Richardson (Chair)

Members of the Committee:

Councillors A Bell (Vice-Chair), D Boyes, J Higgins, P Jopling, C Marshall, C Martin, M McKeon, B Moist, I Roberts, A Simpson and S Zair

Apologies:

Apologies for absence were received from Councillors C Hunt, P Molloy, K Shaw and S Wilson

1 Apologies for Absence

Apologies were received from Councillors Hunt, Molloy, Shaw and Wilson.

2 Declarations of Interest

There were no declarations of interest.

3 Minutes

The minutes of the meeting held on 1 November 2022 were agreed as a correct record and signed by the Chair.

4 Applications to be determined

5 DM/22/01917/WAS - Unit 9, Byron House, Hall Dene Way, Seaham Grange Industrial Estate, Seaham

The Committee considered a report of the Senior Planning Officer regarding the change of use from storage (B8) to pet crematorium (Sui Generis) and installation of chimney at Unit 9, Byron House, Hall Dene Way, Seaham Grange Industrial Estate, Seaham (for copy see file of minutes).

C Shields, Senior Planning Office gave a detailed presentation of the application which included a site location plan, aerial photographs, photographs of the site and a summary of objections received.

There had been concerns raised regarding the application as in breach of the Cremation Act 1902 however the Act applied to the burning human remains.

Councillor D McKenna, Local Member, noted the separation distance between the unit and gardens of the 5 dwellings of the affected properties, which were roughly 20m from the pet crematorium.

Councillor McKenna, Local Member, confirmed that as a dog owner he understood the need for this type of facility and therefore was not opposed to the scheme but the location was too near residential properties. He argued that there was no need for a pet crematorium in this area as there were already services available in Sunderland less than 10 miles away as well as in Hartlepool and Durham. The report stated that the crematorium was 40m from properties on Stockton Road, however at nearest point the chimney was located 20m from residential gardens, which would impact on outdoor amenity in summer months. If approved, a precedent would be set permitting pet crematoriums in residential areas.

Councillor McKenna was also concerned about the impact on nearby businesses, such as food production and a nearby children's play area. There were businesses promoting healthy lifestyle, have to think twice before opening windows for ventilation if the cremator was in operation.

The site was required to be assessed on its merits and he questioned whether this scheme would enhance local businesses and the environment or detract to be a source of conflict undermine health welfare and living conditions of residents and businesses.

The reference to the Cremations Act 1902 had been dismissed by the Planning Officer due to the reference to human remains, however in 1902 cremation was a new process and the idea of animal cremations had not been envisaged, which should not detract that the concerns around health and safety remained for either.

The Act stated that no crematorium should be constructed within 200yds of any house without their written consent, or within 50yds of a public highway, but if this scheme was approved the Council were consenting to a crematorium within 50 yds of a dwelling. Those whom had drafted the Act 120 years prior, could not have comprehended animal cremations and residents should not be penalised for this.

The report confirmed that the crematorium did not sit within the specific class use on this site, and he asked that the Committee retain the integrity of the site of its intended purposes and to reject the application on the grounds that this was an unsuitable location due to distance and the properties that would be impacted.

Ms K Robinson was in attendance to represent her elderly parents who had lived on Stockton Road for nearly 30 years and after first moving into one of the four semi-detached dwellings, they had built a dorma bungalow in 1994 when properties overlooked open agricultural fields and to the front there was the main road through to Seaham and two bus stops.

In 1998 the Industrial Estate had been built and to prevent overlooking the Council had planted trees and over the years as new businesses arrived, there had been an increase in traffic, noise, and odour. The residents had never made formal complaints however due to wind direction, odour could be sickening at times and they were impacted due to the congregation of workers at the bus stand at 6.00 a.m. If the scheme was approved, the effect of fumes and particles from the cremator would have a detrimental impact on residents' health.

Residents had been notified of the application in August 2022 and had all lodged objections, her parents had also written to the MP who made representations to the Council on their behalf and had also contacted Councillor McKenna and Seaham Town Council. She found it hard to believe only five residents had been notified and queried the reason wider properties had not been consulted. The Council had given some additional time to receive representations, but those residents had still not been informed.

Despite Ms Robinson's Mum suffering from ill health, she had collected 30 signatures on a petition and although they knew this type of facility was important, she wondered if Members would be happy with it on their doorstep. Due to the distance to properties, the location was not appropriate.

Mr C Henderson, local resident, lived at Glebe Drive Estate which was 100m from unit. He referred to the site photograph and advised that the report had not made reference to the use on the second floor of the building as office accommodation and the proximity of the chimney was such that waste products would be dispersed in the air directly outside of the windows.

When the estate was originally built it had attracted food manufacturing companies and employed a large number of people but Mr Henderson feared this type of application would prevent other businesses from investing in the area in future.

Although the Applicant intended to cremate a small number of pets, he suggested that as the business expanded it could result in 24-hour operations. There was a lack of legislation with regards to this type of scheme waste dispersed was not guaranteed to be within guidelines.

The incinerators were deemed to be safe, but he questioned the lack of available options if pollution was to escape into the air in such proximity to houses. Applications in other areas of the country had been refused on this aspect alone. Mr Henderson suggested that the impacts were also dependent on the volume of waste and this had not been clarified.

In summary, he advised that 100m from his home a chimney stack would distribute vapor from a pet cremation and in light of this, he wondered whether he would be able to open his windows or enjoy his garden. He questioned whether the application breached Article 8 of the Human Rights Act and also whether it was necessary to approve this scheme so close to people's homes.

If the application was approved Mr Henderson believed it would set a precedent for further development near to homes, schools and shops. He agreed there was a

need for this type of business, however the location was the key issue and there was insufficient evidence to establish whether this process was safe.

The Applicant, Mrs L Howes, addressed the Committee. She had invested a lot of time and money into the application and the Planning Officer had responded to the points raised by objectors, however she wanted to address some of those raised during the meeting.

Ms Howes referred to the Cremation Act 1902 which was legislated for the cremation of human remains. This was not an application for a human cremation service and was categorised as a waste disposal site. She queried whether those who had attended a human crematorium had ever noticed any odour or smoke, despite it being on a much larger scale.

The machine had been chosen from international leaders of the market and was chosen for its design. It was smokeless, odourless and quiet so it would not impact on the public in any way. Consultations with Statutory Consultees had concluded that it would not affect wildlife. Ms Howes referred to the way animals had previously been disposed of by cremation in the open air and confirmed that a pet crematorium was environmentally friendly with the ability to control pollution.

Ms Howes confirmed that the business would start as a small, family ran business with three members of staff. The objections had been dealt with within the report and she hoped that the need for the service had been demonstrated and Members would grant a favourable outcome.

In response to a question from Councillor Jopling regarding the planned number of cremations per day and the maximum capacity of the machine, Ms Howes confirmed that the plan anticipated for three to four per day however she had provided information which confirmed the maximum capacity of the machine was seven cremations per day.

Councillor McKeon confirmed that in her experience as a former Member of the Durham Crematorium Committee the process included a huge operation and expense to ensure that the extraction and filtration system did not allow harmful gases to escape. She asked what maintenance plans were in place, given it was an unregulated part of the economy.

Ms Howes confirmed that the machine included a secondary chamber to burn off excess gases and the chimney included integrated prevention control to prevent emissions from escaping. With regards to ongoing maintenance, they had agreed to a maintenance contract and on site provision included an odour management plan. On expiration of the ten year warranty, Ms Howes confirmed that the business would ensure the machine was maintained and operating at its optimum level. The manufacturer had never had a machine returned in 23 years.

In response to a question from the Chair with regards to the size of the animals, Ms Howes confirmed that it was for domestic pets and the maximum weight was up to 45kg per hour so did not require an environmental permit.

The Senior Planning Officer confirmed that the main issues which had been raised by objectors were with regards to the principle of development, the location and impact on amenity.

Policy 61 of the County Durham Plan allowed waste disposal schemes as long as it would not prejudice the function of the estate and existing class B1, B2 and B8 users. The impact on those users mentioned by the objectors were not typical uses on an industrial estate so it would be unfair to refuse to allow a typical user permission due to the impact on non-typical users.

The Planning Officer confirmed that with regards to the impact on residential amenity, extensive assessments had been carried out and considered by Environmental Health. There was also a condition to ensure the chimney stack was exactly as in the dispersion plan and an odour management plan was in place.

With regards to the comments raised about the cost of maintenance, this was not comparable to the costs of a human crematorium and the capacity was limited to 45kg per hour. Any increase would require an environmental permit, so there were limits on expansion and protection in terms of maintenance.

N Carter, Solicitor referred to the Cremation Act 1902 which had been adequately covered within the report, however it was not applicable to consider alternative legislation under the planning system and although he acknowledged that when drafted, pet cremations may not have been foreseen, Parliament had opportunity since that time to legislate.

With regards to Article 8 of the Human Rights Act, despite the possibility of some interference with this right it was a qualified right and as long as it was in accordance with other legislation, it would not be unlawful to grant permission.

Councillor Boyes agreed with the need for this type of service, however he did not consider this was the correct location. He was familiar with this area and the use on this site which was diverse and had moved away from traditional industrial units. He was concerned that if the scheme was approved, it would affect this diversity and impact businesses.

Councillor Boyes was also concerned about the proximity of the unit to residential properties and noted that pet crematoriums in both Hartlepool and Durham were well removed from residential areas. He noted that there were a lot more sites in East Durham that would be more suitable and queried whether other sites had been considered. As this site was more diverse and included a gym, children's play area and a number of shops, he could not support the application.

Councillor McKeon advised that the area that she represented had a few units with odour management plans and they could not guarantee that there would be no odour entirely, the most contentious issue in her area was wind direction and prevented use when pointing towards residential properties or other users. This was a site surrounded by buildings and she was not convinced an odour management plan was sufficient to control the impact and she had doubts over the application under Policy 31 of the County Durham Plan.

Councillor Bell had originally considered the application to be straightforward however he had since shared some of the concerns raised and did not agree that the Committee should not consider the issues raised due to the fact this service was not regulated in the same way as a human crematorium.

Mixing uses on this site may impact on existing or new businesses and impact on employment and whilst sympathising with the Applicant, he was not comfortable with the location and there had been some valid points raised regarding the chimney and proximity to the office windows, especially in summer months.

Councillor Marshall was uncomfortable with the proximity to residential properties but he accepted the comments of the Planning Officer. Research by Business Durham had confirmed there was high demand for business users in this area with the existing type of users, this was not an industrial estate that was struggling for occupancy and he wondered if changing the typical use at this location could have a detrimental impact and whether this presented an argument for loss of amenity.

With regards to reasons for refusal, Councillor Marshall considered the addition of a waste disposal unit on this site would impact on existing units located on this estate.

Councillor Jopling considered this to be a fairly low key business plan with a maximum of seven animals a day, which was an important point. The Planning Officer's had done thorough job assessing the application and she was leaning in favour of the proposal rather than rejection.

In response to the Chair, Councillor Jopling moved approval of the application.

In the absence of a seconder, Councillor Boyes moved refusal of the application as it contravened policies in both the County Durham Plan and County Durham Waste Local Plan with regards to the suitability of the site.

The Senior Planning Officer responded to some of the comments regarding whether other sites had been considered and confirmed that for waste development sites, there was no requirement to do a sequential assessment of other sites, but whether the site chosen was acceptable or not.

With regards to Policy 61, the locational requirement, this site was identified for employment use under policy 2 and the test was whether a non B1 B2 B8 development would compromise the use of the site for those types of development and the uses on this site that had been raised as sensitive users were not B1 B2 or B8 so the Council would effectively be prioritising non-employment uses over a use that would be acceptable on an employment site.

He advised the Committee of a recent Appeal decision on a similar application for a waste disposal incinerator and the refusal reason was that development would impact other employment, which the Inspector ruled against and allowed the Appeal.

S Reed, Planning and Development Manager, confirmed that there were a few planning issues raised by Members but with regards to pollution, which was assessed under Policy 31 of the County Durham Plan and he advised that it would be difficult to refuse the application on those grounds due to the comments from Environmental Health and the work done with ACOM who had scrutinised the application. With regards to the loss of employment land, the amount of employment proposed was broadly similar as it would be with a more traditional type of employment use.

The Planning and Development Manager referred to the issues on residential amenity which Officer's had been determined to be and advised that that if Members considered the height of chimney and perceived impact of having a crematorium facility in proximity to housing, he considered this could be given some weight when determining the application.

The Planning and Development Solicitor echoed the advice from Planning Officers and confirmed that he was concerned about the sustainability of Councillor Boyes' motion as there was not a sequential approach required for site selection. With regards to the impact on other uses on the site and whether this particular use would discourage expansion or relocation to the area, he reiterated the recent decision of the Planning Inspector which was refused on similar grounds although it was an incinerator of a different scale and medical waste. He suggested that the impact on residential amenity was a more subjective issue which could be given some weight however Councillor Boyes agreed that he would add the impact on residential amenity to the reasons he had already outlined for refusal.

Councillor Martin confirmed that whatever the reasons were for rejecting the application, a general steer had been given to the Committee that some of the concerns raised by Members could not be relied upon as reasons for refusal. He was concerned about the impact on other uses as having taken the decision to be located on a business park, they were taking a risk that other users would be typical industrial estate users. He would therefore prefer to refuse on the impact on residential amenity which was a more reasonable argument.

Resolved

That the application be **REFUSED** consent for the following reason;

1. By reason of proximity the development would have an unacceptable impact on the amenity and living conditions of residential properties in conflict with County Durham Plan Policy 31, Part 15 of the National Planning Policy Framework and Paragraph 7 of the National Planning Policy for Waste.