

**FLINTSHIRE COUNTY COUNCIL**

**REPORT TO:** **PLANNING COMMITTEE**

**DATE:** **WEDNESDAY, 26<sup>TH</sup> JULY 2017**

**REPORT BY:** **CHIEF OFFICER (PLANNING AND ENVIRONMENT)**

**SUBJECT:** **FULL APPLICATION - ERECTION OF A  
CREMATORIUM WITH ASSOCIATED CAR  
PARKING, NEW ACCESS, LANDSCAPING AND  
GARDEN OF REST AT STARKEY LANE, NORTHOP**

**APPLICATION  
NUMBER:** **055775**

**APPLICANT:** **J.E. DAVIES & SON**

**SITE:** **STARKEY LANE,  
NORTHOP**

**APPLICATION  
VALID DATE:** **26<sup>TH</sup> JULY 2016**

**LOCAL MEMBERS:** **COUNCILLOR M. BATEMAN**

**TOWN/COMMUNITY  
COUNCIL:** **NORTHOP COMMUNITY COUNCIL**

**REASON FOR  
COMMITTEE:** **SCALE OF DEVELOPMENT RELATIVE TO  
DELEGATION SCHEME**

**SITE VISIT:** **NO**

**1.00 SUMMARY**

1.01 This full application which has been submitted by J.E. Davies & Sons (Funeral Directors) proposes the development of a crematorium, together with associated car parking, new access, landscaping and garden of rest. The application site covers approximately 4.1 hectares (10 acres) of existing agricultural land. The site is within a Green Barrier and the open countryside as defined in the Flintshire Unitary Development Plan, and is located to the north of the A55, east of the A5119 Northop – Flint Road and South of Starkey Lane between the settlements of Northop and Flint Mountain.

- 1.02 For Members information this application has been submitted further to two previous applications for a proposed crematorium on this site, one of which was refused under 051043 by the Planning and Development Control Committee in October 2014, and the subject of an appeal to The Planning Inspectorate which was withdrawn on 29<sup>th</sup> June 2015. A subsequent application submitted under 053025 was the subject of an appeal on the grounds of non-determination which was lodged (but not validated) by The Planning Inspectorate, on 13<sup>th</sup> February 2015. This appeal was also withdrawn on 24<sup>th</sup> February 2015.
- 1.03 This current application was submitted in advance of an appeal held by way of a Public Inquiry in June/July 2016 to consider a proposal for a competing proposal by Memoria Ltd, under 052334 for a crematorium on land at Kelsterton Lane/ Oakenholt Lane, Northop. This appeal was allowed in August 2016, and has been the subject of a legal challenge by the applicant of the current application, which was dismissed.
- 1.04 At the time that the current application at Starkey Lane was submitted, the Supporting Planning Statement in Paragraph 6.9 advised:
- 1.05 *“ If the Inspector grants planning permission for the Memoria site, our clients have indicated that they will withdraw the current application as they acknowledge the need is for one crematorium”*
- 1.06 In the intervening period the applicant/agent have been requested in light of the above, to confirm whether they wish to continue with the progress of this current application. It has subsequently been confirmed that a determination is requested as in their opinion *“ There is concern that Memoria may not implement their planning permission. If that were the case, it would leave Flintshire without a much needed facility.”*
- 1.07 As a result and in accordance with the delegation scheme the application is being reported to the Planning Committee for formal determination.

**2.00 RECOMMENDATION: TO REFUSE PLANNING PERMISSION FOR THE FOLLOWING REASONS**

2.01

- 1) The proposal is contrary to the aims of Planning Policy Wales paragraph 4.8.16 and policy GEN4 of the FUDP as it represents inappropriate development in a Green Barrier. The applicant has failed to demonstrate the existence of very exceptional circumstances to justify that there is a need for such a facility to be located within a Green Barrier.

- 2) The proposal is contrary to the aims of Planning Policy Wales as set out in paragraph 4.10.1 and policy RE1 of the Flintshire Unitary Development Plan as the proposal falls to justify the loss of Grade 3a agricultural land which is classified as the Best and Most Versatile.
- 3) The proposal is contrary to the aims of Planning Policy Wales paragraph 5.5.11 and TAN 5, as well as policy WB1 of the Flintshire Unitary Development Plan as the Local Planning Authority do not consider that the EU Habitats Directive Derogation tests have been satisfied.

### **3.00 CONSULTATIONS**

#### 3.01 Local Member

Councillor M. Bateman

No response received at time of preparing report.

Northop Community Council

Object on the following grounds:-

- It is contrary to the Flintshire Unitary Development Plan Policy GEN4 paragraph 4.10, sub-section (b).
- The crematorium would impact on the character and appearance of the area resulting in the loss of, and unacceptable harm, to the openness of the green barrier.
- It would increase the volume of traffic, impacting on residential amenity and road safety.
- The outcome of the planning appeal (17:8:2016) by Memoria Ltd supported the development of a crematorium on an alternative site at Northop Hall and the decision is a relevant consideration. In the Inspector's report it is stated in point 71 "there is only a need for one crematorium to service Flintshire" and point 72 "Given that I have concluded that the proposal before me (the site at Smithy Lane Northop Hall) is acceptable on landscape and highway safety grounds and taking into account the alternative site at Starkey Lane is also located within the countryside and additionally a Green Barrier, I am satisfied that the potential of this alternative site is not demonstrably preferential to the appeal site to justify a refusal of the appeal proposal".

Head of Assets and Transportation

Recommend that any permission includes conditions in respect of access, visibility, parking/ turning facilities and the submission of a Construction Traffic Management Plan.

Head of Public Protection

No response received.

#### Dwr Cymru/Welsh Water

As the applicant intends utilising a septic tank facility, advise contact with Natural Resources Wales (NRW) who may have an input into the regulation of this method of drainage disposal. Should circumstances change and a connection to the public sewerage system/public sewerage treatment is preferred then reconsultation will be required.

#### Environment (Drainage)

Attention drawn to Surface Water Management Guidance Note & Proforma.

#### Natural Resources Wales

Recommend that any permission includes a condition requiring the implementation of a Great Crested Newt mitigation scheme.

#### Welsh Government (Transport)

As highway authority for the A55 trunk road, does not issue a direction in respect of this application

### **4.00 PUBLICITY**

#### 4.01 Press Notice, Site Notice, Neighbour Notification

The application has been advertised as a departure from the provisions of the development plan.

66 letters of objection have been received, the main points of which can be summarised as follows:-

- Planning permission currently exists following an appeal for a crematorium on an alternative site which is not located within a Green Barrier.
- This is the third application for a crematorium on this site where permission has previously been refused and the Local Planning Authority should not be considering unnecessary planning applications.
- Development is inappropriate within a Green Barrier.
- The appraisal of alternative site does not mention the site at Northop Hall that is now available for development following a successful appeal.
- Detrimental impact on vehicular movements on A55 and A5119.

### **5.00 SITE HISTORY**

#### 5.01 **051043**

Erection of a crematorium with associated car parking, new access, landscaping and garden of rest – Refused 30<sup>th</sup> October 2014. Appeal to The Planning Inspectorate – Withdrawn 29<sup>th</sup> June

2015

**053025**

Erection of a crematorium building with associated car parking, new access, landscaping and garden of rest. Appeal to The Planning Inspectorate lodged on the grounds of non-determination (but not validated), Appeal withdrawn 24<sup>th</sup> February 2015..

For Members information since submission of the above applications, permission has been allowed on appeal under Code **052444** on 17<sup>th</sup> August 2016 for the erection of a crematorium on land at Kelsterton Lane/ Oakenholt Lane, Nr Northop. The permission has been the subject of a legal challenge which has been dismissed.

**6.00 PLANNING POLICIES**

6.01 Flintshire Unitary Development Plan

Policy STR1 – New Development.

Policy STR2 – Transport & Communications.

Policy STR7 – Natural Environment.

Policy STR10 – Resources.

Policy GEN1 – General Requirements for Development.

Policy GEN3 – Development in the Open Countryside.

Policy GEN4 – Green Barriers.

Policy D1 – Design, Quality, Location & Layout.

Policy D2 – Design.

Policy D3 – Landscaping.

Policy D4 – Outdoor Lighting.

Policy TWH1 – Development Affecting Trees & Woodlands.

Policy TWH2 – Protection of Hedgerows.

Policy L1 – Landscape Character.

Policy WB1 – Species Protection.

Policy WB5 – Undersigned Wildlife Habitats.

Policy WB6 – Enhancement of Nature Conservation Interests.

Policy AC21 – Pedestrian Provision & Public Rights of Way.

Policy AC4 – Travel Plans for Major Traffic Generating Developments.

Policy AC13 – Access & Traffic Impact.

Policy AC18 – Parking Provision & New Development.

Policy MIN8 – Protection of Mineral Interests.

Policy MIN9 – Borrow Pits.

Policy MIN10 – Mineral Buffer Zones.

Additional Guidance

Cremation Act 1902

Planning Policy Wales (PPW) Edition 9 – November 2016.

Technical Advice Note 5 – Nature Conservation & Planning.

**7.00 PLANNING APPRAISAL**

### 7.01 Introduction

The site the subject of this application amounts to approximately 4.1 hectares (10 acres) of existing agricultural land which is within a Green Barrier and the open countryside, to the north of the A55, east of the A5119 and south of Starkey Lane between the settlements of Northop and Flint Mountain.

7.02 The site extends over a series of gently undulating fields interspersed by hedgerows some containing native trees. On the western boundary there is a shallow valley running along the base of the embankment with the A5119 Northop – Flint Road that connects to the A55. To the north of the site is Starkey Lane along which there are a number of residential properties including Ash Mount, Belgrave, The Old Barn and Tyddyn Starkey.

### 7.03 Proposed Development

The application proposes the development of a crematorium, together with associated car parking, formation of a new vehicular access, landscaping and garden of rest. In addition to the standard application forms and plans, the application is accompanied by:-

- A Design & Access Statement.
- A Building Design Statement.
- Ecological Report.
- Traffic Statement.
- Landscape & Visual Impact Assessment.
- Needs Assessment.
- Minimum Drive Catchment Assessment.
- Site Search and Alternative Site Search Assessment.
- Tree Survey.
- A Supporting Planning Statement.

7.04 In terms of the detailing of the proposed elements of the application, this can be summarised as follows:-

### 7.05 Crematorium Building

A single storey structure which measures approximately 43 m x 35 m x 5.5 m high. It is proposed that the building incorporates an entrance/lobby, a chapel to accommodate 90 – 100, a waiting area with space for 20 – 30 persons, an office/staffroom, book of remembrance room, crematory and clergy vestry. It is proposed that the roof of the building is contemporary in its form (double curve) the applicant being of the view that this will help to assimilate the building into the landscape in a more sympathetic fashion than were it of traditional roof profile. It is proposed that the building be constructed having stone/render external walls with a profiled sheeting roof system and is sited within the south western part of the site with it being orientated so that its main elevation/entrance faces northwards when approached from the

driveway off the A5119. The height of the associated chimney would be approximately 6.5 m this being incorporated within the roof structure and protruding above it by approximately 1 m. There would be a service yard with staff/hearse parking area for 10 No. vehicles to the south of the building.

7.06 Vehicular/Pedestrian Access

The application proposes that the development be served by utilisation/adaptation of an existing agricultural field access into the site from the A5119 with a proposed visibility splay of 2.4 m x 136 m in a northerly direction and 2.4 m x 160 m in a southerly direction. It is also proposed that the improvements to the access are accompanied by the introduction of a right-turn facility/separation island into the site from the Northop direction.

7.07 Parking Provision

The site layout plan shows the provision of a total 60 No. car spaces with 6 No. disabled spaces to serve the development. These are proposed to be sited to the west of the crematorium, between the building itself and A5119.

7.08 Parkland/Grazing Meadows/Remembrance Pavilion

The crematorium building is proposed to be sited within a landscaped setting, encompassed by grazing meadows to the north of the building adjacent to the site access and along the northern site building relative to existing properties at Tyddyn Starkey. A remembrance pavilion and Memorial Gardens are located to the south of the crematorium building and car park.

7.09 The principle change to the scheme from that previously submitted is in relation to the entrance. Whilst the access carriageway, verge and tree planting previously aimed to give a parkland character, the landscape elements and modified layout are now designed to reflect the pastoral character of the local landscape.

7.10 Implications of the Cremation Act 1902

For Members' information, proposals for new crematoria must have regard to the Cremation Act 1902. In addition to numerous requirements imposed on the operation of such a facility, the Act places restrictions on the layout and siting of the crematorium. In particular, it is required that:-

“No crematorium shall be constructed nearer to any dwelling house than 200 yards (182.88 m), except with the consent, in writing of the owner, lessee and occupier of such house, nor within fifty yards of any public highway, nor in the consecrated part of the burial ground of any burial authority”.

7.11 Whilst this is not a planning requirement it provides a useful indicator of the potential impact on residential amenity and with

this in mind the approximate distances to existing dwellings located adjacent to the site are:-

<b>Property</b>	<b>Distance to Site Boundary</b>	<b>Distance to Crematorium Building</b>
Ashmount	58 m	225 m
Belgrave	58 m	201 m
The Old Barn	60 m	150 m
Tyddyn Starkey	23 m	116 m

7.12 It will be noted that two of the properties fall within this 200 m threshold and whereas the applicant has confirmed that Tyddyn Starkey and The Old Barn are currently within his ownership, it is his responsibility to ensure that the requirements of the Cremation Act are met.

7.13 Background / Recent Developments

There is a significant and recent background of planning history in relation to previous applications for development of this site for a crematorium, and a competing application for a crematorium on land at Kelsterton Lane/Oakenholt Lane, Northop submitted under 052334, which is referred to in paragraph 5.00 of this report.

7.14 For Members information the application at Kelsterton Lane/Oakenholt Lane submitted under 052334 has been the subject of an appeal which was held by way of a 6 day Public Inquiry in June/July 2016. The appeal was allowed on that site on 17<sup>th</sup> August 2016, and a subsequent legal challenge to the decision by Mr J E Davies was unsuccessful.

7.15 In paragraphs 71 & 72 of the report on the Kelsterton Lane/Oakenholt Lane appeal the Inspector comments as follows:-

*Para 71. J E Davies & Son and other third parties contend that an alternative site at Starkey Lane offers a more suitable location than the appeal site given the concerns relating to the proposal's impact on landscape character and highway safety. I have taken into account the case law cited in respect of the consideration of alternative sites and I have applied my discretion as set out in those cases in considering the generic comparisons of the respective sites. I consider this is necessary given that evidence suggests there is only a need for one crematorium to serve Flintshire.*

*Para 72. Given that I have concluded that the proposal before me is acceptable on landscape and highway grounds and taking into account that the alternative site at Starkey Lane is also located within the countryside and additionally within a Green Barrier, I am satisfied that the potential of this alternative site is not*



*demonstrably preferential to the appeal site to justify the refusal of the appeal proposal*

- 7.16 A central issue in determining the current application is whether there has been a material change in planning policy and/ or in any other material planning considerations since the decisions were taken previously to refuse planning permission for development of the site for a crematorium
- 7.17 The applicant's case through its agent, and notwithstanding the decision to allow the appeal for a crematorium on land at Kelsterton Lane/ Oakenholt Lane, Nr Northop and subsequent legal challenge, is that :-“ *There is concern that Memoria may not implement their permission. If that were the case, it would leave Flintshire without a much needed facility*”. The applicant has not however, provided any evidence to define or explain the basis for this ‘concern’.
- 7.18 Planning Policy Framework  
There is no specific national planning policy guidance setting out the criteria which must be taken into account when assessing applications for new crematoria. Crematoria are not mentioned explicitly in Planning Policy Wales (PPW) or the adopted Flintshire Unitary Development Plan (FUDP). Each application must therefore be considered and assessed on its own merits, although both PPW and the FUDP provide a policy framework within which to consider the development of a crematorium.
- 7.19 PPW contains policies relating to Green Belts and locally designated “Green Wedges”. The FUDP uses the term “Green Barriers”. There is a general presumption against inappropriate development in Green Wedges/Green Barriers. The construction of new buildings is inappropriate development unless it falls within certain exceptions, defined in Policy GEN4 of the FUDP and paragraph 4.8.16 of PPW. Otherwise, inappropriate developments should not be granted planning permission except in very exceptional circumstances where other considerations clearly outweigh the harm which such development would cause to the Green Barrier/Green Wedge.
- 7.20 In recent years there have been a number of appeals regarding applications for crematoria. These have highlighted matters which can be material when determining such applications - in particular, whether there is a need for such development, and that in cases where a crematorium is proposed in a Green Barrier, Green Belt or Green Wedge that “very exceptional circumstances” can only be properly made out if there are no other suitable sites outside these designated areas. This is clearly not the case in Flintshire as permission has been allowed on appeal, for the development of a site which is not within a Green Barrier.

### 7.21 Main Planning Considerations

It is considered that the **main** issues to be taken into account in determination of this application are:-

- Principle of development following the recent appeal decision / conclusions of a legal challenge for a proposed crematorium on land at Kelsterton Lane/Oakenholt Lane, Northop.
- Acceptability of the Site Search Assessment.
- Current progress / timescales for the development of crematorium by Memoria Ltd on Kelsterton Lane/Oakenholt site.
- Agricultural land classification.
- Ecological considerations.

### 7.22 Other Matters

It is considered that these are not main issues but instead form material planning considerations to be weighed in the planning balance.

- Adequacy of highway network and access to serve the development.
- Impact of development on the character of the landscape and the openness of the Green Barrier.
- Impact on amenity of occupiers of nearby properties.
- Design.
- Impact on mineral resources.
- Adequacy of drainage.

### 7.23 Principle of Development

As previously highlighted in paragraph 7.15 of this report, the Inspector in allowing the appeal for a new crematorium on land at Kelsterton Lane/ Oakenholt Lane, Northop, concluded that:-

- a) there is only a need for **one** crematorium to serve Flintshire, and;
- b) that the site at Tyddyn Starkey the subject of this application is not demonstrably preferable to that the subject of the appeal.

7.24 Having regard to the above, and the fact that the applicant also acknowledges that there is only a need for one crematorium in Flintshire, there is no justification for the development of the site the subject of this application, as an alternative proposal (outside a Green Barrier) has been considered to be sequentially preferable in land use planning terms to meet the needs of Flintshire.

### 7.25 Acceptability of Site Search Assessment

The Site Search Assessment submitted as part of this application

was completed in advance of the appeal decision/conclusions of the legal challenge to the Memoria proposal on land at Kelsterton Lane/ Oakenholt Lane, Northop. As a result the applicant/ agent have been afforded the opportunity to update their Supporting Planning Statement and Alternative Site Search Assessment, following the allowal of the appeal by Memoria. This would have provided the agent with the opportunity to examine why this site is acceptable in light of the recent appeal decision. The agent has however requested that the application be determined on the basis of the information initially submitted.

7.26 The site search assessment does not reflect the current and most up to date position which exists in relation to the erection of a crematorium on a suitable site within Flintshire, and “very exceptional circumstances” to release this site for the development as proposed do not exist.

7.27 Current Progress / Timescales for Memoria Crematorium

Whilst the concerns of the applicant are noted in respect of the implementation of the Memoria permission, Members are advised that site works on this permission have commenced. The developer has indicated that “the build is projected to take 10 months and is likely to open to the public in April 2018”.

7.28 In light of the above, it is considered that significant progress has been made on the commencement of site works subsequent to the conclusions of the legal challenge and requirement for the discharge of the pre-commencement conditions imposed on the appeal decision. The timescale for the completion of the works is comparable with that employed during construction of the crematorium by Memoria on land at St Asaph, Denbighshire and therefore it appears to be an entirely realistic proposition that the crematorium at Kelsterton Lane will be completed.

7.29 Agricultural Land Classification

In consideration of previous applications on the site an assessment of the agricultural land classification of the site has been sought. This has established that the soil types present are possibly a mixture and equitable split of subgrade 3a and 3b which are defined being a mix of good/moderate quality agricultural land. There is no evidence to substantiate that this has altered.

7.30 Previously it was considered that the loss of 5 acres of grade 3a agricultural land would not lead to a significant reduction in the amount of good quality land within the County. However I attach significant weight to a recent appeal decision (reference 317183 which is reported on this agenda) which forms a material consideration in the planning balance. The appeal decision considers the loss of less than a hectare of BMV land as an unjustified and damaging loss of such land. PPW paragraph

4.10.1 and FUPD Policy RE1 seeks justification of the loss of such land which has to be based on the overriding need for the proposed use or the lack of other land for the proposed use. No case has been made for the justification and therefore the proposal directly conflicts with PPW and UDP Policy RE1.

7.31 Ecological Considerations

The site has been the subject of an ecological assessment and species survey which accompanies the application. This confirms that there are a number of ponds within 250 m of the site boundaries with evidence of the presence of Great Crested Newts (GCN). In addition to the above, the site has been surveyed for the presence of bats, badgers and nesting birds.

7.32 The EC Habitats Directive 1992 requires the UK to maintain a system of strict protection for protected species and their habitats. The Directive only allows disturbance, or deterioration or destruction of breeding sites or resting places, in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment and provided that there is no satisfactory alternative and no detriment to the maintenance of the species population at favourable conservation status in their natural range.

7.33 The UK implemented the Directive by introducing The Conservation (Natural Habitats etc) Regulations 1994, now the 2010 Regulations, which contain two layers of protection a requirement on Local Planning Authorities (“LPAs”) to have regard to the Directive’s requirements above, and a licensing system administered by the Welsh Ministers.

7.34 Planning Policy Wales (Edition 9, paragraph 5.5.11) advises Local Planning Authorities that: “The presence of a species protected under European or UK legislation is a material consideration when a local planning authority is considering a development proposal which, if carried out, would be likely to result in disturbance or harm to the species or its Habitats”.

7.35 Technical Advice Note 5 - Nature Conservation and Planning (2009) states at para. 6.3.6:- “Regulation 3(4) of the Habitats Regulations [Regulation 9 (5) in the Habitats Regulations 2010] requires all local planning authorities, in the exercise of their functions, to have regard to the provisions of the Habitats Directive so far as they might be affected by the exercise of those functions. Consequently, the Directive’s provisions are relevant in reaching planning decisions where a European protected species may be affected and it is therefore important that such planning decisions are reached in a manner that takes account of, and is consistent with, the Directive’s requirements. Those requirements include a

system of strict protection for European protected species, with derogations from this strict protection being allowed only in certain limited circumstances and subject to certain tests being met. These requirements are transposed by the provisions of the Habitats Regulations. The issues of whether development could give rise to a breach of the Regulations' requirements, and whether there may be a potential need for a licence to avoid such a breach, are therefore a material consideration in a relevant planning decision, and where a licence may be needed, the three licensing 'tests' required by the Directive should be considered by the local planning authority. Paragraph 6.3.7 then states:- "It is clearly essential that planning permission is not granted without the planning authority having satisfied itself that the proposed development either would not impact adversely on any European protected species on the site or that, in its opinion, all three tests for the eventual grant of a regulation 44 (of the Habitats Regulations) licence are likely to be satisfied".

7.36 Whilst there is no direct impact on the Great Crested Newt Habitat, the development will require the issue of a license under the above regulations in accordance with the tests outlined. This will be dependent upon:

- i. The need for this facility having been proven in undertaking the qualitative and quantitative need assessment referred to earlier in this report.
- ii. That there is no satisfactory alternative to the development of this site (i.e., in this context, a suitable site outside the Green Barrier).
- iii. That mitigation measures would compensate for any adverse impacts arising from the increase in activity from the development of this site in this location. These would include:
  - Reasonable avoidance measures being undertaken to include temporary amphibian fencing prior to the
  - Commencement of development and provision of amphibian friendly road drains, gutters and kerbs.
  - The creation of a terrestrial habitat buffer and mitigation between the development and breeding ponds.

7.37 The proposed development and supporting ecological report have been assessed by Natural Resources Wales and it is considered that the development is not likely to have a significant effect on the GCN population. In addition to the above, an assessment of the impact of the proposed development on bats, badgers, nesting birds and barn owls has been undertaken. It is acknowledged that the proposal would entail the removal of an oak tree at the site entrance with this identified as a potential bat roost. In terms of mitigation it is proposed that a bat box is installed within the

crematorium building in order to compensate for the removal of the tree. There is no evidence of badgers on site and limited hedgerow removal is proposed, which can be timed to avoid disturbance to nesting birds. With the supplemental planting which is proposed within the site, this will help to maintain the diversity of the habitat at this location. In terms of the impact of development on barn owls, the enhancement of grassland through the use of wildflower seed with low key management could benefit the vole population as a food resource for owls. Whilst in themselves these effects are potentially capable of being mitigated, the fact that there will be some disturbance which triggers consideration of this proposal against the EU Habitats Directive derogation tests, and also that an alternative permission for a crematorium exists and has commenced elsewhere, are material factors. Given this it can no longer be said that there is an imperative reason of overriding public interest to justify this proposal in this location, as the need for a crematorium has been met on a suitable alternative site elsewhere in Flintshire. This proposal does not therefore satisfy the first derogation test required by the EU Directive and as such it is in conflict with Planning Policy Wales and UDP policy WB1.

#### 7.38 Other Matters

Set out below are a series of issues which are not considered to be the main issues but are material considerations which should be weighed in the planning balance.

#### 7.39 Adequacy of Highways

Given the relationship of the site to the A55 Trunk Road and with direct access into the site being proposed from the A5119, consultation on the application has been undertaken with both Welsh Government Transport and the Highway Development Control Manager.

#### 7.40

Following submission of a road speed analysis Welsh Government Transport have confirmed that they raise no objection to the development from a Trunk Road perspective. In addition the Head of Highway Development Control Manager has advised that there is no objection to the development subject to (i) the completion of a Section 106 Obligation/Unilateral Undertaking to secure funding towards the upgrading of existing bus stop facilities adjacent to the site and (ii) the imposition of conditions imposed on any permission to ensure improvements to the A5119 to facilitate the provision of a right turn facility/pedestrian refuge together with details of the site access and parking facilities. This is a material consideration which weighs in favour of the proposal but does not overcome the harm which would derive from the inappropriate nature of the development in the Green Barrier and the loss of BMV land. I therefore attach little weight to this matter in the planning balance.

7.41 Landscape Impact

The application site of 4.1 hectares comprises a number of existing agricultural fields interspersed by hedgerows and trees. A Landscape and Visual Impact Assessment of the site has been submitted in support of the application which is considered to assess the existing landscape character and the potential impact of the proposed development adequately.

7.42 The character is defined both within the site and in the wider context by the following elements and features:-

- Semi-improved/improved grassland extending over undulating
- Topography.
- Field boundaries of managed hedgerows.
- Interspersed mature hedgerow trees.
- Small blocks of woodland.
- Areas of low lying wetland or ponds with trees.

7.32 There are also man-made features which assist in defining the wider character of the landscape including:-

- Lanes with high hedgerows or banks.
- Electricity poles along the A5119.
- Dispersed farmsteads and residential properties.
- Man-made embankment of the A5119/A55 junction and slipways.
- Road lighting columns.

7.43 There are a number of views into the site from Starkey Lane, the A5119 Northop – Flint Road, Footpath 5 which runs alongside and through the site; with partial glimpses from the A55. The objections relating to the impact of development on the character of the landscape and openness of the Green Barrier are duly noted.

7.44 During the construction phase, it is acknowledged that disturbance, movement and additional noise would affect the landscape character of the site and locality. However, the impact will be temporary and only for the duration of the works. The effects would be highly localised and would diminish upon moving away from the site into the wider landscape.

7.45 In terms of permanent effects and impacts upon the landscape, the new buildings would by definition reduce the openness of the site, but it is not considered that the degree of openness lost would lead to 'unacceptable harm to the open character and appearance of the Green Barrier', within the meaning of Policy GEN4(ii) of the UDP. The operational development proposed would only consume a relatively modest proportion of the overall

site, with most of the site remaining entirely open and being enhanced through extensive landscaping treatment. That said, this is premised on the proposal being appropriate development in a Green Barrier or that exceptional circumstances have been demonstrated for the need for it to be in a Green Barrier, neither of which is the case.

7.46 The concerns raised from residents living in proximity to the site in respect of increased noise/disturbance from the additional traffic generated by the development together with light pollution are duly noted. It is acknowledged however that the A55 and A5119 are currently heavily trafficked roads and whilst there will be an inevitable increase in vehicular movements at this location over and above that which currently exists, it is considered that the associated highway improvements that are required would help to accommodate and enable the free movements of vehicles at this location. In addition the respective distances to the curtilage boundaries of existing dwellings and the associated substantial internal planting proposals, mean that the issues of noise, disturbance, and impact on privacy/amenity could be adequately mitigated. Although the proposal would not of itself adversely affect the openness and appearance of the Green Barrier, which is a material consideration to be weighed in the planning balance, this matter does not outweigh the harm caused to the other purpose of a Green Barrier in this location, such as safeguarding the countryside from encroachment, and also the overall loss of BMV land. I therefore attach little weight to this matter in the planning balance.

7.47 Design/Siting

In accordance with the requirements of proviso (ii) of Policy GEN4 of the adopted Flintshire Unitary Development Plan, any new development must “not unacceptably harm the open character and appearance of the Green Barrier”. To this effect the design/siting and associated landscaping are important when assessing the impact of development on the site’s Green Barrier designation. As indicated in paragraph 7.04 of this report the proposed building is contemporary in its form, with the provision of a double curve roof. In design terms, there is no objection to the general ‘low key’ form of the building proposed subject to some minor design amendments.

7.48 In addition to the above, the siting of the building away from the site boundaries would help to frame it within the overall site area and in combination with the landscaping proposals help to assimilate the development into the locality without causing demonstrable harm. As it is considered the design of itself does not harm the openness and appearance of the Green Barrier, this is a material planning consideration to be weighed in the planning balance. However, this matter does not override the other



purpose of the Green Barrier in this location, such as safeguarding the countryside from encroachment, and also the overall loss of BMV land. As the principles of design cannot, in themselves override the fundamental principles as set out in Policy GEN4, I attach very little weight to this matter in the planning balance.

7.49 Impact on Mineral Resources

For Members information the site is located on an area of land containing gravel deposits and Policy MIN8 of the adopted Flintshire Unitary Development Plan recognises that where there are significant deposits of important mineral resources that these are safeguarded to ensure their availability in the future.

7.50 Whilst the applicant has not submitted any information with regards to the quality/extent of mineral deposits in this locality, it is considered that given the site area involved i.e., 4.1 hectares (10 acres) that this would have a small impact on the potential availability of sand and gravel resources within the County. In addition, and recognizing that there are a number of existing residential properties close to the mineral resource, it is unlikely that the mineral resource would be worked except as a potential borrow pit for future highways infrastructure works. Given the proximity of the site to residential properties this would also reduce the extent of the deposit that could be worked due to the application of a buffer zone of 100 m for sand and gravel workings as required by Policy MIN10 of the UDP. In these circumstances it is not considered that the retention of this land is fundamental to the County's mineral supply or extraction would be acceptable given the proximity of existing residential properties. As the proposal would not adversely affect the supply or extraction of minerals on the Country, this is a matter which would weigh favourably in the planning balance. However, this does not override the principle conflict of the proposal forming inappropriate development in the Green Barrier and I therefore give this matter little weight in the planning balance.

7.51 Adequacy of Drainage

It is proposed that foul drainage from the site is dealt with by the provision of a septic tank given that there is no mains drains network located in close proximity to the site. Consultation on this aspect of the proposal has been undertaken with Natural Resources Wales who have confirmed that in these circumstances the treatment and disposal of foul drainage must comply with relevant guidance and permits. In addition, and in respect of surface water drainage from the car park, this must pass through an oil interceptor before discharge and is not an issue, considering the small proportion of building coverage in relation to the total site area. This matter of drainage is not an issue and therefore and this can be weighed in the planning balance, but is not capable of overcoming the principal conflict of the proposal forming

inappropriate development in the Green Barrier. I therefore give this matter little weight in the planning balance.

- 7.52 Whilst I acknowledge that the proposal has a number of factors which form material considerations which should be weighed in the planning balance, these do not individually or cumulatively overcome the principle that the proposal would result in inappropriate development in the Green Barrier and that no very exceptional circumstances have been demonstrated to overcome this policy position.

## **8.00 CONCLUSION**

- 8.01 In conclusion, the appeal decision for the proposal by Memoria Ltd, for the erection of a crematorium on land at Kelsterton Lane/Oakenholt Lane, Northop is a significant material consideration. In the absence of national and local policy tests for provision of crematorium I attach considerable weight to the appeal decision which examines case law and similar appeal decisions elsewhere in concluding the issue of need. As there is significant progress being made on the construction of the Memoria site, with it being anticipated that it will be open to the public in April 2018, there is therefore no over-riding need for this development and there are no “Very Exceptional Circumstances” which exist, to warrant the erection of an otherwise inappropriate development in the Green Barrier. I therefore recommend that permission be refused for the reason advanced in paragraph 2.01 of this report.

### **8.02 Other Considerations**

The Council has had due regard to its duty under Section 17 of the Crime and Disorder Act 1998 and considered that there would be no significant or unacceptable increase in crime and disorder as a result of the recommended decision.

The Council has acted in accordance with the Human Rights Act 1998 including Article 8 of the Convention and in a manner which is necessary in a democratic society in furtherance of the legitimate aims of the Act and the Convention.

The Council has had due regard to its public sector equality duty under the Equality Act 2010.

The Council has had due regard to its duty under Section 3 of the Wellbeing of Future Generations (Wales) Act 2015 and considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the recommended decision.

## **LIST OF BACKGROUND DOCUMENTS**

Planning Application & Supporting Documents

National & Local Planning Policy  
Responses to Consultation  
Responses to Publicity

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