

Case Name: *Wathen-Fayed v Secretary of State for Levelling Up, Housing And Communities*
[2023] EWHC 92 (Admin) (20 January 2023)

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Commentary: This was an unsuccessful section 288 challenge to the decision of an inspector to allow a planning appeal by the First Interested Party and so grant permission (subject to conditions) for a crematorium with a ceremony hall, memorial areas, a garden of remembrance and associated parking and infrastructure (the "Proposed Development"). The site is located in the Metropolitan Green Belt.

The Claimant put forward two grounds of challenge to the validity of the inspector's decision:

- 1) The inspector failed to properly consider whether the provision of the proposed crematorium on the site would be contrary to section 5 of the Cremation Act 1902 (the "1902 Act") which was a material consideration to the determination of the First Interested Party's appeal.
- 2) The inspector erred in concluding (with regard to the relevant planning policies) that there was no need for a sequential assessment of sites for the proposed development and that there were no reasonable alternative sites upon which to bring forward the proposed development.

Ground 1

Section 5 of the 1902 Act states that:

"No crematorium shall be constructed nearer to any dwelling-house than two hundred yards, except with the consent, in writing of the owner, lessee or 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".

The judge concluded that the inspector was correct in considering the location of elements of the Proposed Development as not falling within the definition of "crematorium" – i.e. access roads, car parking areas and memorial gardens - when considering whether the Proposed Development would contravene section 5 of the 1902 Act. There was found to be no impediment to the delivery of the proposed development and its ability to meet the need for new cremation facilities. The judge rejected the argument that the location of the cremation building itself would contravene section 5 of the 1902 Act on the basis that its doors and windows would extend to within 200 yards of neighbouring dwellings if open.

It was found that "the inspector gave proper, adequate and intelligible reasons for concluding that the site was able to accommodate the proposed development without contravening the restrictions" under section 5 of the 1902 Act.

Ground 1 was rejected.

Ground 2

The inspector did not misunderstand or misapply the relevant planning policies. The inspector's conclusion in the exercise of his planning judgment that the sequential test did not need to be applied to the Proposed Development could not fairly be impugned as irrational. The inspector's reasoning was sufficient in law to explain why they reached this conclusion. The judge found it unnecessary to address criticisms of the inspector's consideration of alternative sites.

Ground 2 was also rejected.

Case summary prepared by Amy Penrose