

LAND ADJACENT TO HMP GARTH AND WYMOTT

MINISTRY OF JUSTICE

APPELLANT'S OPENING SUBMISSIONS

Introduction

1. This is an inquiry into an appeal against the decision by Chorley Borough Council ("the Council") to refuse¹ to grant a hybrid planning permission for development of a new prison and associated ancillary facilities, a replacement boiler house and a replacement bowling green on land adjacent to HMP Garth and HMP Wymott ("the Site"). The full description of development is as follows:

"Hybrid planning application seeking: Outline planning permission (with all matters reserved except for means of access, parking and landscaping) for a new prison (up to 74,531.71 sqm GEA) (Class C2A) within a secure perimeter fence following demolition of existing buildings and structures and together with associated engineering works; Outline planning permission for a replacement boiler house (with all matters reserved except for access); and Full planning permission for a replacement bowling green and club house (Class F2(c)) on land adjacent to HMP Garth and HMP Wymott, Leyland."

2. The Appellant in this appeal is the MoJ, which is responsible for running prison and probation services and rehabilitation services for people leaving prison.² Unfortunately, the current prison system faces several serious issues, and there is an imperative need for the development of additional, better designed, prison places. Primarily, the current prison estate is operating close to capacity, with the projected demand for prison places soon to outstrip supply. This acute and urgent pressure on the capacity of the prison system fundamentally impacts the MoJ's ability to protect

¹ The three reasons for refusal are set out in full in the Decision Notice at CD A100.

² Through its executive agency Her Majesty's Prison and Probation Service.

the public from offenders and harms public confidence in the criminal justice system (notably this pressure on capacity has led to prisoners being held in crowded conditions,³ and has previously resulted in the early release of prisoners). Further, much of the current prison estate was built in the Victorian era, and the age and design of these buildings makes running modern prison regimes within them difficult.

3. In particular, there is significant projected demand for prison places in the North West and Greater Manchester. It is estimated that there will be a capacity gap of 2,000 prison places in March 2026 in the region that would be served by a new prison on the Site. In addition to this projected growth in prison population, there is also an existing unmet need for Category C male prison places in the North West, with a large group of prisoners (around 1,350) currently being held in prisons outside their home region.⁴ Prisoners need to be held closer to home in order to help prepare for their release and resettlement into their community.
4. It is of critical importance that new prisons are built to provide additional, modern prison places to meet this demand. This demand cannot be met by expansions of existing prisons alone. On this basis, following a robust and thorough site search, both at feasibility and appeal stage, the land adjacent to HMP Garth and HMP Wymott was identified as being the only site available to suitably deliver a new prison in the North West within the required timescales.
5. As set out in the description of development, the proposed development on the Site consists of three components. The first is outline permission for a new prison and associated ancillary facilities to meet the identified need, which will be built and designed to be highly sustainable. The indicative site layout includes:
 - 7 new houseblocks each accommodating up to 245 prisoners (1,715 prisoners in total);

³ Paragraph 2.11 of Robin Seaton's Proof of Evidence.

⁴ As of May 2022, approximately 1,350 Category C men with less than 24 months sentence remaining and who had a home address in the North West were being held in prisons outside of the region; see para 4.15 of Robin Seaton's Proof of Evidence.

- supporting development including kitchen, workshops, kennels, Entrance Resource Hub, Central Services Hub and support buildings; and
 - car parking of circa 525 spaces, internal roads and perimeter fencing.
6. The second component of the development is the provision a replacement boiler house in a new location to the south west of the new prison, replacing the existing boiler house in the north of the Site which will be demolished.
 7. The third component of development is a replacement bowling green and club house to the south of the Site, which will replace the existing bowling green and club house which will be demolished.
 8. Overall, the proposed development complies with the development plan as a whole, and it will deliver significant economic, social and environmental benefits which clearly outweigh the harm to the Green Belt and other harms. Notably, this was clearly agreed by officers for the Council, who recommended that permission be granted, finding in their professional judgment that *“the proposed development is acceptable in line with the provisions of the development plan”* and *“[i]t is considered that it constitutes sustainable development”*.⁵
 9. None of the concerns raised by the Council in their three reasons for refusal (formed by Members contrary to officer recommendation) justify refusal of permission. The concerns expressed by the Ulnes Walton Action Group (“UWAG”) and other members of the public are equally not well-founded.
 10. In Opening, we briefly outline the MoJ’s case in relation to the main issues identified by the Inspector at the Case Management Conference on 18 May 2022.

Main issue 1: the effect on openness and purposes of the Green Belt

11. The majority of the Site is identified as a previously developed site in the Green Belt. It is accepted that the increase in built form from the appeal proposal will result in reduction to the openness of this part of the Green Belt. However, as part of this analysis, it must be recognised that there are aspects of the Site currently which

⁵ See the officer report at CD A97.

already impact on openness, both spatially and visually, including the existing buildings on site and the influence of the existing prisons. The degree of harm to openness from the proposed development will need to be assessed against this context.

12. In addition, it is accepted that the appeal proposal will conflict with one of the five purposes of the Green Belt,⁶ namely safeguarding the countryside from encroachment. The Council only relies on conflict with this single purpose of the Green Belt. The contribution that the Site currently makes to the countryside is tempered by the existing built form on Site, and again the degree of conflict with this single purpose of the Green Belt, must be assessment against this context.
13. Paragraph 147 of the NPPF provides that inappropriate development in the Green Belt should not be approved except in very special circumstances. As set out further below, the evidence at the inquiry will demonstrate that the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by the benefits of the proposed development. This constitutes the very special circumstances which justify the grant of permission in this case.

Main issue 2: the effect on highway safety

14. Evidence on transport on behalf of the MoJ is given by Stephen Yeates, who comprehensively addresses the concerns as to highway safety in the Council's second reason for refusal and other transport matters raised by UWAG and third parties.
15. The application for the proposed development was accompanied by a suite of transportation documents, including a detailed Transport Assessment, Outline Travel Plan and Technical Addendum. Extensive consultation was also undertaken with Lancashire County Council, as local highway authority, at both the pre-application stage and throughout the determination of the application. The County Council has confirmed that they are satisfied that the proposal is in line with the requirements of the NPPF, and do not offer any objection to the grant of permission, subject to obligations being suitably secured.

⁶ See paragraph 138 of the NPPF for the five purposes.

16. Mr Yeates will explain that the modest increase in traffic along Ulnes Walton Lane will not result in any unacceptable impact on highway safety. In addition, the agreed package of measure will in fact improve existing highway safety on surrounding roads. Appropriate measures to promote sustainable transport have also been taken up, and again the comprehensive package of measures will enhance sustainable transport options.
17. Overall, the appeal scheme wholly complies with policy BNE1(d) of the Chorley Borough Local Plan and section 9 of the NPPF, and there are no highways matters which weigh against the grant of permission.

Main issue 3: the effect on living conditions of nearby occupiers with regard to noise and disturbance

18. Eddy Goldsmith will provide expert evidence on road traffic noise. Detailed noise surveys have been conducted, and Mr Goldsmith follows the recognised methodology and guidance for assessing noise impacts.
19. The evidence shows that the noise impact arising from construction and operational traffic from the development will be moderate for the property known as Windy Harbour on Moss Lane, and negligible to minor for all other residential properties. This increase in noise levels will be below the levels recommended by the World Health Organisation, and below the level above which adverse effects on health and quality of life can be detected. This will not result in an unacceptable impact on living conditions. In particular, the temporary effects that will occur during the construction phase will be further reduced and effectively mitigated through a Construction Traffic Management Plan.
20. Overall, the proposal would not cause an unacceptable degree of noise disturbance, either during the day-time or night-time, and there will be no conflict with policy BNE1(g) of the Local Plan. Again, matters relating to the effect on living conditions of nearby occupiers do not justify the refusal of permission.
21. In addition, in relation to further concerns raised by residents of Windy Harbour as to impact on amenity arising from car headlights, this will again not result in any

unacceptable impacts on living conditions, due to the setback and orientation of the dwelling, location of habitable rooms and the option to mitigate any limited impact from car headlights.

Main issue 4: the effect on character and appearance of the area

22. Katie Machin assesses the impact on landscape character and visual effects of the proposed development, both within the detailed Landscape and Visual Impact Assessment submitted with the application, and in the evidence to this inquiry.
23. The local landscape context of the appeal site is undoubtedly influenced by the existing HMP Garth and HMP Wymott, which are of large scale and institutional, similar in character to the new proposed prison. It is acknowledged that there will be an inevitable change to the Site itself due to the new built form of the prison and the new bowling green and club house, however the extent of this impact will be limited to a local scale only, given the influence of the existing prisons, the containment provided around the Site and the introduction of new landscape planting.
24. Ms Machin has also carried out a thorough assessment of the effect on residential and recreational receptors. The impact on private views is limited when assessed against the baseline position and taking into account the setback of properties. This impact on private views does not come close to impacting on residential amenity so as to amount to a material planning consideration. There will be some impacts from recreational receptors, but these will be limited to those in close proximity to the Site. Further, the mitigation which has been embedded in the design of the scheme, as set out in the Comprehensive Landscape Masterplan, will considerably mitigate these impacts.
25. Additional work has been carried out to respond to UWAG's concern as to the lighting in the proposed development. The impact of the lighting from the new prison will not be significant. The effect of the new lighting would not be out of place given the baseline of the existing prisons and will be mitigated by the use of down-lit LED lamps and the existing and proposed tree cover.

26. Overall, the landscape and visual impacts of the proposal will be highly localised, and do not justify refusal of planning permission when weighed against the benefits of the appeal scheme.

Main issue 5: whether the benefits would clearly outweigh the harm so as to amount to very special circumstances

27. As set out in the overall planning balance by Katrina Hulse, the benefits of the proposed development clearly outweigh the potential harm to the Green Belt by reason of inappropriateness and any other harms resulting from the proposal.

28. The economic, social and environmental benefits that will flow from the development are overwhelming. The significant economic benefits, which are addressed particularly by Richard Cook, include:

- 122 gross temporary full-time equivalent (FTE) jobs supported during the construction of the development, of which 10% would be for local residents.
- Once built and operational, 643 staff are expected to be directly employed at the prison; 347 of these roles (around 54% of all jobs) could be taken by people living in Chorley and South Ribble.
- During the construction period there will be an estimated £117.2 million GVA (gross), and construction of the proposed development could support a further £96.5 million turnover/expenditure through the supply chain of which £32.2 million could be expected to occur at the local level.
- The operational spend of the prison will amount to £13.7 million, supporting 230 jobs at a regional level; and the operational regional supply chain spend will equate to £17.9 million per annum supporting 299 jobs at a regional level.

29. The significant social benefits of the scheme include:

- The delivery of new prison places to meet the imperative need for new prison places in the North West. This imperative need for the development of additional prison places in this location has already been touched upon above, and will be fully addressed by Robin Seaton for the MoJ. The robust site search,

which found that there are no suitable alternative sites to the appeal site, will also be addressed by Ms Hulse.

- The provision of safe, secure and modern facilities to deliver improved outcomes for prisoners and reduce reoffending rates.
- The replacement bowling green would be of at least an equivalent standard, and the new club house would be a significant enhancement to the existing club house provision.
- The package of measures agreed with the County Council will improve existing highway safety on surrounding roads and will enhance sustainable transport options.

30. Finally, the environmental benefits particularly include the delivery of a 20% biodiversity net gain, as explained in the written evidence of Dr Chris Gleed-Owen.⁷ The new prison buildings will also be highly sustainable, and would achieve BREEAM 'Excellent' rating, with endeavours to achieve BREEAM 'Outstanding'.

31. Overall, these benefits clearly outweigh the potential harm to the Green Belt by reason of inappropriateness and any other harms resulting from the proposal, which constitutes the very special circumstances to justify the grant of permission.

32. In accordance with decision-making duty in section 38(6) of the Planning and Compulsory Purchase Act 2004, the decision in accordance with the development plan is to grant planning permission, and material considerations further support the grant of permission.

Jenny Wigley QC

Anjoli Foster

Landmark Chambers

12 July 2022

⁷ Dr Gleed-Owen's written evidence, an appendix to Ms Hulse's Proof, also explains the suite of ecological surveys and assessments that have been carried out, demonstrating no unacceptable ecological impacts. This is a position agreed with the Council.