

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78

APP/D2320/W/3295556

LAND ADJACENT TO HMP GARTH AND HMP WYMOTT

APPELLANT: MINISTRY OF JUSTICE

PLANNING AUTHORITY: CHORLEY BOROUGH COUNCIL

OPENING STATEMENT

On behalf of Ulnes Walton Action Group, Rule 6 party

07 July 2022

1. At the outset of its opening, UWAG seeks to reassure the inspector that it acknowledges there is a lot of ground to cover in this inquiry. UWAG's involvement is important, but it accepts it must not cover ground already trodden by the Council. Broadly, UWAG stands behind the Council however, as you will be aware from pre inquiry correspondence, insofar as the case on need (and the purported lack of any alternative site for this form of development) is concerned, UWAG is going to take the lead.
2. With that being said, this is a s78 appeal against Chorley Borough Council's decision of 22 December 2021 to refuse an application by the Ministry of Justice for outline planning permission to develop land adjacent to HMPs Garth and Wymott. In short, the development is for a so called 'Mega Prison'. Further detail about the specifics of the development is already before the inquiry and not repeated.
3. On 29 June 2022 the parties were notified that this appeal had been Recovered by the Secretary of State due to the development being of major importance, involving significant development in the Green Belt and/or because the Ministry of Justice has a major interest in the outcome.
4. It is of course true that the Ministry of Justice *does* have a major interest in the outcome of the appeal. Not only is it the Appellant, but the rationale for the development itself, that more prisons are urgently needed to fulfil an overdemand, was a central tenet behind the Conservative manifesto in 2019. UWAG does not yet understand why the decision to recover the appeal was made so late – all of the reasons suggested have been true for many months.
5. It is, though, perfectly plain from the decision to recover the appeal that political considerations are at play here. One government department is seeking permission to depart from the long-established national planning policy priority of keeping Green Belt land permanently open. In making your recommendation to the Secretary of State, UWAG will invite you to do so on the *planning merits* of the case. This is a planning inquiry, and it is against national planning policy that you must consider your recommendation.
6. That can only start with the common ground that the proposals amount to inappropriate development in the Green Belt. This is agreed by all parties. It

follows that the proposals cut directly across a fundamental tenet of national planning policy: that the Green Belt should be kept permanently free from inappropriate development such as this. Planning permission for proposals such as this may *only* be granted where very special circumstances arise, such that overriding the longstanding, national, priority to keep the Green Belt free of inappropriate development is justified. To be clear, to secure permission, a high hurdle must be overcome.

7. You will be aware that such circumstances will only arise where it can be said that circumstances clearly outweigh the harm to the Green Belt, and any other harm, taken together and weighed in the planning balance; recalling that *any* harm to the Green Belt is to be given substantial weight, reflecting the paramount position in the hierarchy of protective designations that Green Belts enjoy. This is a heavily tilted balance, to coin a phrase, *against* a grant of permission.
8. The 'harm' side of the balance is really substantial here. What is proposed is a significant incursion into the Green Belt, well beyond the previously developed parts of the appeal site, such that everyone agrees it will cause harm to openness, and to the 'purpose' of safeguarding the countryside from encroachment. It will also be perceptible and visible, as the Appellant recognises. National policy says you must attach substantial weight to *any* harm to the Green Belt, however slight. Here, that harm is far from slight. It is itself substantial.
9. The harm does not end there, though. It is common ground that if the proposals are granted permission, they will cause landscape and visual harm to the local area. That is a matter predominantly dealt with by the Council, supported by UWAG, but UWAG notes that the Appellant's own landscape evidence acknowledges the harm caused. The only controversy is as to its extent.
10. There will be a loss of land safeguarded for mineral extraction, some loss of Best and Most Versatile Agricultural Land, and, importantly, the loss of a playing field. The inquiry is already aware that Sport England, one of the statutory consultees for this development, has raised a concern regarding the sports field; the Appellant's stance is simply to acknowledge this failure of the scheme to accord with national policy on retaining such facilities. It can be

added to the harm side of the equation. It is national policy to safeguard such facilities for a reason. These proposals are in direct contravention of that national policy.

11. UWAG also say that the proposals would, if granted, give rise to noise and disturbance to local residents. There is some technical evidence before the inquiry, but not from UWAG. UWAG relies on the evidence of Emma Curtis who is a local resident residing directly opposite the proposed entrance to the car park for the proposed new prison. She is best placed to provide commentary on the level of noise presently experienced in the local area, and the practical impact on local people.
12. Although in the long-term the proposals will deliver a biodiversity net gain, it is common ground that in the short- to medium-term there will be harm to biodiversity. This too must be added to the harm side of the balance.
13. Further, a non-designated heritage asset will be harmed; not sufficient to warrant refusal by itself but a yet further way in which these proposals will cause harm.
14. In terms of technical matters in dispute, you will be asked to consider the impact of the proposed development on the highway network. UWAG stands behind the Council in this regard and adopts its position on highways – it does not have its own technical evidence, but notes that if you share the Council’s view of this element, it is almost certainly fatal to the proposals by itself. UWAG does, however, make the point that the prospect of any significant level of non-car travel to and from the prison is fanciful: this is not, on any view, a sustainable location from that perspective. The facility will be overwhelmingly reliant on the private car. That is a yet further drawback of the scheme. That it is a rural location is true, but not a good answer: UWAG’s case is that its rural location is part of the problem. Prisons would be best built in urban and semi-urban locations, partly for this very reason.
15. In summary the harm case here is overwhelming: this development causes harm to a wide range of interests, including the central conflict with the aim of national policy on Green Belts. To **clearly** outweigh that harm really would

require something genuinely 'very special' in the matrix of material considerations arising.

16. The Ministry's case is that very special circumstances arise here that do clearly outweigh this wide-ranging harm. The majority of the components of that case are 'generic' – they would apply to any proposals for prison development, anywhere: economic benefits will accrue, of course, and they are not to be sniffed at; there will be social and some environmental benefits too. But what is said to elevate the circumstances from those that would arise in any case for new prison is the proposition that there is an urgent need for a Category C resettlement prison in the North West of England, *and* no other alternative site on which it could be delivered.
17. You will be asked to determine the extent of the need – and in particular its urgency - and weigh it up in the planning balance. Although UWAG will endeavour not to cover the same ground as the Council, it is important to acknowledge that both the Council and UWAG say that the Ministry's 'need' case is overstated. You will have read Proofs of Evidence from the Council's planning witness Tamsin Cottle who concludes that the need for a prison of the size proposed is not evidenced, and of UWAG's planning witness, Jackie Copley, who (drawing on the work of Emma Curtis of UWAG) concludes that the urgency of the need is overstated.
18. If you agree that the Ministry's need case is overstated and there is no, or no urgent, need for a category C resettlement prison in the area proposed, the case for planning permission starts to unravel. Paul Parker of UWAG explains why it cannot be sustainably maintained that the proposals must be delivered here: the Ministry's approach to considering whether there are alternatives is hopelessly opaque, and in any event throws up two sites which on their face are at least as suitable (and in some ways perform better against the Ministry's own criteria). UWAG will invite you to conclude that this central proposition of the Appellant's case is not made out.

19. When you come to consider all of these factors in the planning balance, UWAG will invite you to find that the proposed development will cause significant harm to the Green Belt, and a range of other harm as already discussed.
20. It might even be that on a non-Green Belt site, those benefits might come close to balancing the harms that might arise there. That is not this case: here, the harm to the Green Belt is to be treated differently to other kinds of harm, and the whole 'basket' of harms is required to be *clearly* outweighed by the matters pointing towards grant. That is how national policy protects Green Belts.
21. It is clear from the careful consideration given to all of these factors by Ms Copley (and essentially also by Ms Cottle for the Council) that whilst there is undoubtedly some considerable benefit arising from the development, the overall conclusion that should be reached is that the national imperative to protect the Green Belt such as this is not clearly outweighed by those benefits. Planning permission should be refused: the circumstances arising are not, in any real sense, 'very special'.
22. For these reasons, at the end of this inquiry, UWAG will invite you to agree and recommend that the Secretary of State dismisses this appeal.

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12 July 2022