Appeal Reference: APP/D2320/W/22/3295556
Application Reference: 21/01028/OUTMAJ

LAND ADJACENT TO HMP GARTH AND WYMOTT

CLOSING SUBMISSIONS

On behalf of the Ulnes Walton Action Group (Rule 6 Party)

22 July 2022

A INTRODUCTORY SUMMARY

1. These closing submissions are filed on behalf of the Ulnes Walton Action Group ("**UWAG**") following an 8-day Recovered Planning Inquiry before Inspector Gilbert-Wooldridge on 12 – 22 July 2022.

2. The inquiry concerns an application for outline planning permission by the Ministry of Justice ("**the Appellant**") to develop land adjacent to Her Majesty's Prisons Garth and Wymott by, in summary, building a new prison. The application was rejected by Chorley Borough Council ("**the Council**") on 22 December 2021 and this appeal brought in the April thereafter.

3. References used in these closing submissions are as follows:

    a. Core Documents are in the format: [Document number A-K];

    b. References to evidence given orally to the inquiry is quoted verbatim unless otherwise stated;

    c. Paragraphs are referred to in the format: §paragraph number;

    d. The National Planning Policy Framework is referred to as the "**NPPF**".

B THE ISSUES FOR THE INQUIRY

4. To succeed in this appeal, the Appellant needs to show that the benefits and other factors in favour of development – including need – are such that they can properly be described as 'very special' *and* that they 'clearly outweigh' the harms identified: paragraph 148, NPPF. The Appellant must meet this policy test before planning permission for inappropriate development of a Green Belt site can be granted: paragraph 147, NPPF.

5. We note at the outset that this phrasing – the requirement for something 'very special' – is deliberately framed in national policy. It is the cornerstone of the approach to protecting Green Belts. It requires **more** than 'exceptional circumstances', which is *already* a stringent test – see R (Luton BC) v Central Beds DC and Ors [2015] EWCA Civ 537. The words 'very special' must be given their ordinary and natural meaning[1]. Ms Hulse sensibly agreed with this latter proposition in cross-exam by Mr. Riley-Smith.

6. On the other side of the equation, the facts are that the proposed development would lead to a significant area of Green Belt land being lost permanently to substantial built development. That sets it aside from ordinary (non-Green Belt) proposals. The Government attaches great importance to Green Belts, as it says at §137 of the chapter of the NPPF dedicated to protecting them. That paragraph stresses that the key characteristics of land in the Green Belt are its openness and its permanence. The proposals amount to a direct conflict with that fundamental aim.

7. The aim is at the top of the hierarchy of priorities in the NPPF.

    a. Any harm to the Green Belt is to be afforded at least substantial weight. Unusually, the question of weight given to this factor is not left to planning judgment; it must be afforded no less than substantial weight. That is rare.

    b. In the prisons context, there is no 'tilted balance' policy mechanism, akin to the one designed to address another national priority, that of significantly boosting the supply of homes and easing the national

[1] R (Chelmsford BC) v Draper and Ors [2003] EWHC 2978 (Admin)

housing crisis. In any event, Green Belt protection trumps that balance: it is clear that the preservation of permanent open Green Belts is a key strategic priority.

c. There is no mechanism in national policy to address a shortfall in specialist prison complexes, and no suggestion anywhere that the shortage should lessen the importance of protecting the Green Belt (still less that the shortage should be met on Green Belt sites). Although national criminal justice policy might aim to ensure that those in Category C resettlement prisons serve out the final months of their sentence closer to their home address, there is no related policy intervention which indicates the importance of this factor in associated planning decisions. The only sensible conclusion is that Green Belt policy is untrammelled by such aspirations.

8. The importance that the Government attach to preserving the openness of the Green Belt, and its position in the national hierarchy of priorities, may not be everybody's view of how we should plan for development in this country. It is a political choice, of course, but it is unquestionably the political choice that has been made and that national planning policy reflects. That these proposals are in fundamental conflict with that aim is their defining feature; ordinarily, they should be refused; and it is only where what can genuinely be described as very special circumstances arise that there can be any question of granting permission.

9. Before addressing the balance between harms and benefits here, we observe that for a large-scale and high-profile appeal, the Appellant's case has at times appeared surprisingly cavalier. The Transport Assessment ("**TA**") has left out of account the impacts of construction traffic, and also of all the many 'ancillary' vehicular journeys to and from the prison that our clients observe coming and going from the existing prisons; the assessment of need that is said to lie behind

the 'critical' gap between supply of places and the future prison population appears to have been calculated without any (or any transparent) assessment of future supply of new prison places; and the alternative sites assessment appears to have paid no regard at all to the criteria that were said to be the framework for that exercise, whilst leaving uncorrected until the last day of evidence a wholly misleading section of the Planning Statement dealing with the approach undertaken (despite the precise issue having been described carefully in Mr. Parker's evidence).

10. This is more than just a general complaint: the effect of all this is to have made it unnecessarily difficult for the Rule 6 Party to engage in proper scrutiny of the proposals at appeal. They have asked for clarification and been met with dismissive reply[2]; at times it appeared as if the Appellant's team had not read their carefully-prepared evidence; and when the approach was scrutinised in cross-examination it turned out to be based in large part on 'judgment calls', which are (of course) impossible to scrutinise rigorously. Rule 6 parties generally can add significant value to a planning inquiry, and we hope you agree that this Rule 6 party has done so here; but its ability to make a significant contribution here has been in spite of, rather than properly facilitated by, the Appellant – which is all the more regrettable given that the Appellant is an emanation of central Government.

11. More seriously, in many of these key areas, the Appellant's position does *not* stand up to rigorous scrutiny, which is after all, what this process is for. As we will turn to in due course, the evidence about need is, essentially, incomplete: there is no assessment *at all* of the future capacity (whether in the north-west or the country) against which to assess the projection of future population. Without that, talk of a 'capacity gap' is no more than rhetoric. That ought not to be sufficient.

[2] See, for example, the exchange at K9, K10 and G4b.

12. Similarly, the claimed absence of any reasonable alternative site appeared – following cross-examination – to be based on little more than a negative pre-application advice letter from Fylde Council. That may have been disappointing to receive, but it didn't (and doesn't) make the Kirkham site a non-runner as a reasonable alternative.

13. We will develop these points in more detail in the remainder of these submissions. The conclusion we will ask you to reach, in very broad terms is:

    a. The proposals amount to a substantial loss of open Green Belt land, in direct contravention of the national policy imperative to keep such land free from inappropriate development;
    b. In addition; they cause a range of other harms;
    c. That 'basket' of harms amounts to a very substantial accumulation of harm, and clearly outweighing it would take something very special indeed;
    d. While the socio-economic benefits of the proposals are significant, it is really the twin propositions that there is an urgent need for these places and nowhere else they could reasonably go that elevates the case from the ordinary to the potentially very special;
    e. Any rigorous analysis of Mr Seaton's evidence on future need for these places could *only* conclude that it was hopelessly uncertain: the projections of need themselves appear to be way too high, and the absence of even the most rudimentary assessment of future supply makes the assessment essentially meaningless; and
    f. Lastly, it is now obvious (if it wasn't before) that the land next to HMP Kirkham is **at least** a reasonable alternative; and has obvious potential to be a much **better** site for this prison than the appeal site. That alone is

sufficient to warrant dismissing the appeal, **on the Appellant's own case[3].**

C SUBMISSIONS

(I) HARM

Harm in principle

Definitional harm

14. The scale of the proposals bear repeating. This is a major development including seven blocks up to four storeys in height large enough to accommodate 245 prisoners each, with significant ancillary development. The replacement boiler house would lead to further visual impact from two 5.2m high silos and a flue extending up to 22m. The relocated bowling green would lead to new built forms in previously undeveloped countryside.

15. Although redevelopment of previously developed sites in the Green Belt can be considered appropriate, this is only where doing so would have no greater impact on openness[4] – see §149(g) of the NPPF. It is agreed that this case does not meet that requirement – not least because only part of the proposed site is previously developed, and a significant part of the site is undeveloped. That which is previously developed will be replaced with something of a significantly greater impact on openness. It is thus common ground that the proposals comprise inappropriate development.

[3] Ms Hulse sensibly conceded that without the 'no alternative site' component of the case, very special circumstances do not arise here, with the obvious consequences that follow.
[4] Or involves affordable housing, which does not apply here.

16. Inappropriate development is harmful to the Green Belt: §147 of the NPPF. The Inspector is required to give at least substantial weight to any Green Belt harm by the Framework.

Visual/spatial loss of openness

17. 'Openness' is the essential characteristic of Green Belts (together with permanence), and the fundamental aim of Green Belt policy is to keep that land permanently open: NPPF §137.

18. To what extent will the loss of openness be perceptible and appreciable? This is a quintessential matter of planning judgment. You will have made your own assessment at the site visit. We add the following brief observations:

19. The Officer's Report stated at paragraph 89 that:

> *"It can only be concluded that the proposed development would have a greater impact on the openness of the Green Belt both visually and spatially given the extent of open land across the site and the scale of development proposed as indicated on the proposed site plans".* [A97 #17]

20. Jackie Copley, for UWAG, endorsed that view as set out in her proof of evidence [G1 #59 §10.7]. The Appellant does not seriously contest that proposition, which is also made by Ms. Cottle for the LPA.

21. Ms. Machin's attempts to 'downplay' this harm to openness by referring to similar built development in the vicinity – that the development "*would not be uncharacteristic in this location*", as she put it - misses the point: that sort of point may be relevant in questions of landscape character and visual impact, but Green Belts exist to prevent urban sprawl – by definition they will be found adjacent to built development. That is the point. The fact that the reduction in

openness occurs adjacent to built form cannot reduce the harm thereby caused: such an approach would drive a coach and horses through Green Belt policy.

22. Substantial weight is required to be given to *any* harm to the Green Belt, and thus to any proposals which reduce openness (including, for example, modest proposals to extend individual dwellings, or replacement individual buildings larger than those they replace). That is the minimum level of weight to be attached, regardless of the extent of reduction in openness, the visibility/perceptibility of the development concerned, and so on. Here, there are significant factors which elevate the harm to the Green Belt to well above this minimum.

23. The impact of the proposed development – which amounts to the establishment of an industrial-scale prison complex and ancillary development – must be appropriately acknowledged. Ms Hulse accepted that the new prison is of a "significant scale." Ms. Machin estimated that even 'netting off' all built form – including the metalled surface of Pump House Lane – there would be a loss of 8.4ha of presently-open land. On any view this is a significant reduction in openness. We say that very substantial weight must be afforded to that loss, commensurate to the quantum of the reduction.

24. Contrary to the Appellant's position[5], the fact that only one of five purposes stated in §138 of the NPPF is engaged does not mitigate the fact that all parties agree that the proposals would conflict with the 'purpose' of Green Belt policy comprised in safeguarding the countryside from encroachment: see §138(c), NPPF. That they happen not to conflict with others is not a factor in their favour. The point is, they conflict with the aim of Green Belt policy, which is to keep Green Belt land permanently open.

[5] Ms Hulse's PoE, §7.22

25. In reality, the proposal would involve substantial built development of an urban nature within a currently open, broadly rural area of land. Ms Copley's opinion – which aligns with Ms Cottle's view – was that there are significant areas of the site that are presently undeveloped, including grassland, especially in the north-eastern and southern parts of the site. These areas would be encroached upon leading to a significant degree of conflict with this purpose and resulting in a high level of harm. Again, we expect you to have made your own assessment following the site view.

26. Ms Cottle reminded the inquiry of the scale of the development – 75500 square metres – and the fact that the proposed development is "much taller than anything else on site". Further, that the proposed development is "significant in scale…as compared to what is already there".

27. As to the visibility of this reduction, there is no real dispute that it will be highly visible from some locations, including from public rights of way and prescriptive footpaths. There are no significant long-range views of the site, and if this is what Ms. Machin's description of the site being 'contained' means, then so be it. What is clear (and does not require submissions to support it) is that to the north and east of the site there are presently open views across a pleasingly rural landscape, dotted with remnants of the former munitions depot which do nothing to detract from that rural character. Travelling down Pump House Lane from the north will permit extensive new views of the new built form.

28. We endorse, in general terms, the evidence given by Ms. Cottle for the LPA about the visibility of the reduction in openness (which is essentially mirrored in Ms. Copley's evidence). In short, in addition to the significant loss of openness in spatial terms, that loss will be highly perceptible from the public realm, albeit not from long-distance views. This adds to the weight to be afforded to the harm. Overall, we say you should attach very substantial weight to the harm to the Green Belt here, recognising that the proposals do substantially more than the minimum harm to the Green Belt.

Other adverse impacts

Landscape character and appearance and visual impact issues

29. Despite not being a 'valued landscape' in technical terms – the site is not subject to any specific landscape designations – there remains value in the local landscape contribution afforded by the site at present. Harm to its intrinsic character and beauty is harm to be weighed against the grant of planning permission. Unlike a non-Green Belt case, you do not need to weigh up whether this aspect would be 'unacceptable' or a reason for refusal in its own right: all that is needed is to assess the level of harm caused, and add it to the 'basket' of harm arising.

30. The Appellant's Landscape and Visual Impact Assessment ("**LVIA**") acknowledges residual effects on the existing local landscape character and wider landscape character area in the long-term. It finds that the effect upon the landscape character area at completion could be 'moderate adverse' reducing to 'minor adverse' at Year 15. In respect of the local landscape character, the effect would be 'moderate adverse' at completion reducing to 'minor-moderate' adverse at Year 15.

31. In short, as pointed out by Ms Copley, even the Appellant's LVIA identifies long-term landscape harm.

32. That harm is very much relevant harm in the planning balance – it amounts to harm lasting a generation, or, in penal terms, a life sentence.[6] It should be afforded appropriate weight in the balance (addressed below).

33. As set out in the LPA's evidence, the proposals include the significant extension of built form into open countryside, with the proposed landscaping

[6] See Schedule 21(5) of the Sentencing Act 2020.

significantly changing the current open agricultural character of the existing site. The proposals not only include the removal of open fields and hedgerows, but also include the removal of over 21,000 sq m. of existing mature tree planting – albeit to be 'replaced' elsewhere.

34. Nor can the appeal site's character sensibly be described as 'urban fringe'. One only needs to walk the site and its surroundings to see how inappropriate that description is.

35. UWAG endorses Ms Cottle's conclusion that the Appellant has underplayed the localised effects of the scheme on landscape character and overstated the efficacy of the mitigation to be achieved by the proposed landscaping. The proposals will have a notable adverse effect on landscape character and appearance.

36. In visual terms, it is clear that the new development would be visible from a range of viewpoints. From a number, the impact would be (on Ms. Machin's own evidence) at least moderate adverse and some would be major adverse. It is true that no such impacts arise from long-range views but that is hardly a factor in the proposals' favour – what is required is an assessment of the impact on views – and here a number are significantly affected, including from public rights of way.

37. In addition, UWAG is particularly concerned about light pollution arising from the development proposal. Ms Copley considered that the new development would not be without light spill and light glow in dark hours, amounting to a moderate harm in the planning balance. Ms. Machin's 'visualisations' did little to reassure in this regard.

38. In summary, Ms Copley concluded (in line with Ms. Cottle) that the harm arising from the landscape and visual impacts are greater than that identified in the LVIA provided by the Appellant, and we invite you to share that view.

39. We suggest that the impact on landscape character, together with the visual impact, taken together merits significant weight.

Other identifiable harms

40. UWAG are concerned to ensure that the Inspector takes into account the full range of adverse impacts that may arise from the proposed development.

41. Whilst UWAG has not taken an active part in the technical debate over highway safety, we observe that if you accept the evidence of Mr. Riley that the Appellant has failed to provide satisfactory evidence that no highway safety issues will arise, that is likely to be fatal to the appeal. UWAG are particularly concerned that the junction between Ulnes Walton Lane and Moss Lane – which local residents must cross to use the post box and catch the bus - is expected to take a vast number of additional vehicles – including 146 HGV movements a day for three years – without any meaningful upgrade to its safety features.

42. Ulnes Walton Lane is just 5.2m wide at its narrowest point, which is at the bus stop just south of the junction with Moss Lane (Mr. Parker's measurements were not contested by Mr. Yeates in xx or challenged when he was cross-examined). The prospect of two HGVs attempting to pass one another at this point – not unlikely given forecast volumes in the average construction month – is worrying. You will recall Mrs. Morrissey's description of the journey she undertakes to access the post-box in this location, and the effect of the lack of footways and fast traffic.

43. Further, the junction from Ulnes Walton Lane to the A581 is modelled by the Appellant to be over-capacity when the traffic generated from the proposals hits the network, causing long delays, to which the only answer seems to be a vague suggestion of a new mini-roundabout with, as accepted by Ms Hulse

under cross examination by Mr Riley-Smith, no technical work at all to show how (or if) that will ease things.

44. The impact of noise and disturbance from traffic generated by the proposals is another aspect of the case UWAG has sought to have taken seriously. The effect on Windy Harbour – the home of Mrs. Curtis – is the focus of this. Following the evidence of Mr. Yeates and Mr. Goldsmith the position appears to be:

45. The noise modelling done by Mr. Goldsmith is based on the traffic generation data produced by the TA. That excludes all 'ancillary' vehicle trips – deliveries, ambulances, contractor's vehicles and so on; and for construction traffic, relies on a draft Construction Traffic Management Plan ("**CTMP**") from another prison which the Appellant is at pains to point out is only in draft, is a '*work in progress*[7]', contains '*too many uncertainties*[8]' and contains data which might be different for this prison[9].

46. Further, it uses the 'modal split' from the TA which we say is unrealistic (which we address in due course). We say that in reality there will be fewer people using the bus, train and cycling, or sharing a car, than predicted[10], and more people coming in their own car.

47. It also proceeds on the basis that traffic will travel at the speed limit[11]. We know that traffic does not presently do that along Moss Lane – at 3.3.1. of the TA, on p.15, the 85th percentile speeds along Moss Lane are shown.

48. It is thus plainly not a 'worst case'.

[7] JWQC in xx of Mrs. Morrissey
[8] Mr. Yeates in evidence
[9] Mr. Yeates in xx by PRS
[10] Whether or not the evidence proceeds on the data *after* the TA's adjustment to reduce 'walking' to 0%.
[11] Mr. Goldsmith's proof at 6.2.1

49. Mr. Goldsmith chooses to use the approach set out in the Design Manual for Roads and Bridges[12] ("**DMRB**") for his assessment, noting at 4.3 of his proof that it provides a good framework for this kind of assessment. It is directed specifically at the noise implications of road traffic.

50. That framework suggests the following:

    a. In the **operational** phase of the proposed development, there will be an increase of 3.6dB at ESR3[13] in the daytime, which is described as 'moderate' by the guidance and thus a 'significant' increase in the noise environment[14] in the short-term;
    b. However, that increase does not push the noise environment above the 'Lowest Observable Adverse Effect Level' (or "**LOAEL**") set out in the DMRB guidance. The noise level will remain below that level.
    c. In the night-time, by contrast, the increase will be similar (3dB increase at ground floor level and 4dB increase at first floor level), which increases will mean that LOEAL *will* be exceeded.
    d. The effect of exceeding LOAEL is clear from the PPG table extracted at §3.4.2 of Mr Goldsmith's proof.
    e. Here, Mr. Goldsmith suggests that this exceedance of the LOAEL is not a concern because the noise environment already exceeds that LOAEL – see §7.2.9. That is strictly true of the first floor but not the ground floor; and the current noise environment at first floor level is only above the LOAEL by 1dB, which is not perceptible to the human ear – see §7.2.4 of the proof.
    f. For this reason, Mr. Goldsmith then abandons the approach in DMRB and considers the change in the noise environment against the World Health Organisation ("**WHO**") guidelines for community noise, which suggest a higher LOAEL at night-time (which would not be exceeded by the increase here). His reasons for this shift were not easy to understand:

[12] H4
[13] What the assessment calls Windy Harbour, on Moss Lane
[14] *Ibid.* at 7.2.3

the WHO guidelines address all forms of community noise whereas DMRB is specific to road traffic noise; and if the WHO approach is to be preferred on some objective basis, it is hard to see why DMRB was used at all.

g. Lastly, whilst it is true that ESR3 does not have a window at first floor level directly facing Moss Lane, it has French doors at ground floor level, and even on the revised analysis of the noise environment at first floor level to take account of the fenestration, the resultant noise environment[15] would *still* be above the LOAEL set out in DMRB.

h. In the **construction** phase of the proposed development, for the three-year construction period the average effect (called scenario 4) will be a 4dB increase at ESR3 in the daytime, again described by DMRB as 'moderate' and thus 'significant'.

i. In the 'peak' construction period – estimated to be six weeks long – there will be a 5dB increase at ESR3, described by DMRB as a 'major' impact.

j. In both scenarios the *duration* of that effect will exceed the limit set out at §3.19 of that document – see §7.3.9 of Mr Goldsmith's proof and his answers in cross-examination.

k. Both effects would mean the noise environment at ESR3 would be above the LOAEL

l. The answer Mr. Goldsmith offered to this 'major' impact is to suggest a 20mph temporary speed limit for the peak construction period. That self-evidently would not assist with the impact in scenario 4, which is to last for three years.

51. Because the approach is plainly not a 'worst case' there must be a real risk that these effects will be worse and/or more widespread. This is a further harm to be weighed in the balance.

Parking

[15] 42dB – see Table 9 of Mr. Goldsmith's proof

(a) The 525 spaces proposed in the application will *only* be sufficient if Mr. Yeates is correct that some 17% of staff will access their workplace by means other than driving their car: table 3-9 of the TA suggests that (once 'walking' has been removed and redistributed across the other modes) some 4.5% of staff will come by bus, 1.3% by train, and 1.9% by bike (each mode being more than the percentage of Chorley residents using that mode to access their workplace).

(b) That is self-evidently wrong. They won't. The vast majority will come by car. This is a workplace with shift patterns, with no useable railway station nearby, with a barely-used bus service that has been upgraded in the past and that upgrade abandoned for lack of use, and which is accessed by a narrow lane unsuitable for all but recreational, daytime, cycling.

(c) Mrs. Curtis suggests, instead, that 90% of staff will come by car. If *she* is right about that (and we suggest that is eminently likely) then the proposed car park will be too full during the day. The result will be staff members parking on surrounding roads – Moss Lane, Willow Road – with the resultant noise and disturbance to those that live there.

(d) Mr. Yeates' point about estimated visitor numbers being likely to be an over-estimate (R2.2.3) doesn't answer the point – as Mrs. Curtis said, even if you cut *visitor* numbers by half to account for this, the car park would still be over-capacity for much of each day.

(e) Nor does the suggestion that over-providing car parking space disincentivises people to use non-car modes of travel. Often, it does, but not here: being unable to find a car parking space will not inconvenience people who wish to drive, because they will (as Mrs. Curtis describes) simply park on the surrounding roads, which is free, and no less convenient. Staff from the two existing prisons do so already.

(f) Mr. Goldsmith sensibly accepted that if the TA underestimates the level of car use in accessing the proposed new prison, and that leads to additional parking on the surrounding roads, that would be likely to lead to a worse effect in terms of noise.

52. If you agree with Mrs. Curtis' analysis of the likely parking implications, and the likely effect in terms of increased on-street parking, that is a yet-further harm to be added to the 'basket'.

53. In addition, it is common ground that the following matters *also* constitute harms to be added to that basket:

    a. Loss of farmland[16] – The loss of a limited amount of high-grade farmland constitutes a negative impact that will not be overcome in future. Ms. Copley rightly points out that in an era of uncertain food security, that is not to be lightly dismissed.

    b. Mineral safeguarding[17] – there will be a loss of land safeguarded for mineral extraction.

    c. Trees[18] – There will be a loss of a substantial quantity of mature woodland. It is proposed to be 'replaced' elsewhere but the replacement to the present level of maturity will obviously take many years.

    d. Ecology[19] – it is agreed that there will be harm arising to ecology in the short- to medium term.

    e. There will be an un-compensated loss of a playing field[20] – albeit one not available for general public use - per Sport England's objection. It *is* used by inmates and staff of the existing prisons.

[16] SoCG between UWAG and Appellant, § 5.5

[17] *Ibid.* § 5.57
[18] *Ibid.* § 5.42 – 5.43
[19] *Ibid.* § 5.43
[20] *Ibid.* §5.36

f. Heritage[21] – there will be harm to the significance of a non-designated heritage asset, a former Ministry of Supply Depot.

54. Added to all of this are the points made by Mrs. Morrissey about the accessibility of the site – none of which was seriously challenged in cross-examination. This is not a sustainably-located site. The vast majority of journeys to and from the proposed new prison will be made by car, with very few indeed likely to be made by sustainable modes of transport. One can appreciate the convenience of locating new prisons adjacent to existing ones but that does not make the location sustainable from an accessibility point of view.

Conclusion - Harm

55. This is not one of those cases where the harm to be assessed is limited to the 'definitional harm' comprised in a reduction in openness. That exists here: there will be a significant reduction in openness, comprised in more than 8ha of 'net' new built form where presently there is none, but there is also a very real range of other harms caused by the proposed development.

56. The permanent and irreversible loss of Green Belt land, which would not be fully mitigated through landscape, siting and design, would also be visible and perceptible. The proposal represents a noticeable encroachment of urban development into the open countryside.

57. The totality of Green Belt harm would be significant. The definitional harm alone must attract at least substantial weight as a matter of national policy, but over and above that are a series of other harms, adding considerable additional weight against a grant of permission. In totality, such harm should attract very substantial weight here.

[21] *Ibid.* § 5.52

BENEFITS

58. It is agreed that there are a range of social, economic and environmental benefits to the proposed scheme. Following Ms. Hulse's evidence, it is clear that on their own – even taking *her* assessment of the weight to be attached to them, they cannot by themselves amount to very special circumstances. They are respectable, significant benefits of a new prison but on their own they are in no sense 'special'.

59. It remains the case that those benefits appear to have been calculated, or assessed, by reference to a 2013 report by Peter Brett Associates[22] which uses data from three non-rural prisons, specifically excluding the fourth prison data source on the basis that it was, like this proposal, in a rural area. That *must* undermine the reliability of that study as a basis for assessing the likely benefits here.

60. Some of the benefits relied on by Ms. Hulse – particularly under the heading 'environmental benefits' – are self-evidently nothing of the sort. The prime example is the suggestion that the proposals will not lead to flooding here or elsewhere: that is a relief, but it is not a benefit of the proposals in any meaningful sense. It did Ms. Hulse little credit to attempt to maintain this *was* a benefit.

61. The same analysis applies to the (claimed) minimisation of landscape and visual impact, and the mitigation of overall effect on species. That the Appellant proposes to use modern and efficient building methods is laudable but not a planning benefit either. These should be set to one side.

[22] J1

62. What *really* matters in this regard is the proposition that there is an urgent, pressing need for prison spaces of this kind, and nowhere other than this site on which to provide them. Without them, this case has nothing special about it whatsoever. Indeed, Ms. Hulse's professional view is that without just the latter – the absence of a reasonable alternative site on which this need could be met – the case for 'very special circumstances' falls away. We agree.

63. It is thus to those propositions that we direct the following observations.

Need for the Facility

64. There is no dispute that there is a need for more prison places, or that there is a need for a new Category C prison in the north-west. The common ground between UWAG and the Appellant is recorded in section 5 of the SoCG.

65. Without more, the existence of a need for a new Category C prison in the North-West cannot constitute the very special circumstances required to clearly outweigh the totality of Green Belt harm. With a growing population, and a governmental determination to catch more criminals and send more of them to prison, there will always be a need for more prison spaces. That is a given.

66. In this appeal, though, the question is whether this particular proposed prison, on the proposed scale, must be built at this exact Green Belt site, in order to meet the need that the Appellant claims is likely to arise in the next five years.

67. The context here is that the Appellant's case[23] is that it is of "critical importance" that this prison is delivered here in order to ease (or help to ease – which seems the maximum that can be hoped for, given that this proposal offers to deliver 1715 places) what is said to be a 'capacity gap' in March 2026.

[23] Appellant Opening

68. The first observation is that this prison will not deliver any places until Q3 of 2027[24] and so cannot assist with any capacity gap arising in March 2026.

69. The second is that in order to assess the robustness of the claim that a 'capacity gap' will arise, one needs **as a minimum** some robust evidence about future need, **and** robust estimates of future supply. A 'gap' can only be the relationship of one of those data to the other.

70. The third is that the 'gap' is said to be a regional one, arising here in the North-West. It follows that the evidence of need and capacity to support it must equally be at a regional level.

71. This inquiry has *none* of the necessary evidence.

National need

72. The first aspect of need relates to the national picture. It is common ground that there is a national need for new prison spaces, and that the prison population is likely to grow into the future. In short, UWAG's case is that the Appellant overstates the urgency and extent of national need. As Ms Curtis's evidence has shown, the Appellant's case is premised on forecasted demand for numbers. Those projections have been revised down once already since 2020, and the evidence is clear that the actual growth in prison population at the national level is tracking well below that projected in the 2021 projections.

    a. The population as at 10 June 2022 was 80,115[25];
    b. At the same date the operational capacity was 82,676 places[26];
    c. The increase in population in the 7 months since the projections were published (i.e., 19 November 2021) is just 535, while the operational capacity has grown by 1772 places[27].

[24] Mr. Seaton's Rebuttal at § 11
[25] G2f
[26] *Ibid.*
[27] G2b

d. The *rate* at which the population has grown since November 2021 is an average of c.100 per month (to May 2022, to permit comparison with the projections), which the 'central projection' suggests growth in that same period at a rate of c.650 per month, six times the rate[28];
e. The result is that the present population (as at May 2022) was some 6,000 prisoners lower than projected by the 2020-based projections, and some 3,000 prisoners lower than projected by the 2021-based projections; and
f. The 2021 projections suggested that the population was expected to "*rise to pre-COVID levels in July 2022*" – the pre-COVID level was 83,654 prisoners, in February 2020[29] - but the actual prison population in June 2022 was 80,115 (and will not reach pre-COVID levels by July 2022[30]) – some 3,500 prisoners short.

73. In a sense, this is consistent with Mr Seaton's evidence that the projections are necessarily uncertain, and rely on specific factors affecting projected demand. That is understandable: forecasting is an inexact science and highly sensitive to uncertainties. That is, it has to be said, why forecasters often use 'sensitivity testing', to explore the possibility that their assumptions turn out not to be reliable, but that doesn't appear in this case.

74. The point is, the factors identified as being crucial uncertainties in *this* forecast have turned out not to be robust, to the extent that it is no surprise at all that we are so far short of the projected population at this stage:

a. The recruitment of police officers may well result in more crimes being detected, and possibly more people ultimately ending up in prison, but it may also have a deterrent effect on crime – or some types of crime – and we have no sense of the regional breakdown whether as to number of officers recruited where, or the likely regional effect. It seems a stretch

[28] Agreed by Mr. Seaton in xx
[29] G2e
[30] Both obvious from the numbers, and also agreed by Mr. Seaton in xx

to base projected increases in prison population on this factor, which must at best be highly uncertain as to its effect on prisoner numbers (particularly on a regional basis);

b. Important context for it is that the overall aim of government policy must be to reduce crime, rather than just increase the rate of detection; the trend towards longer sentences must be intended (at least) to have some deterrent effect;

c. The effect of the backlog in the Crown Court is not to be underestimated. The government's aspiration to reduce it (with the effect of increasing the prison population) was considered forensically by the Public Accounts Committee ("**PAC**") of the House of Commons very recently. The report[31] is not happy reading;

d. The backlog was 61,000 in June 2021, up from 41,045 in March 2020 when the pandemic hit, and from 33,290 a year prior to that;

e. The aspiration is to reduce the current backlog to 53,000 by March 2025, described as a 'meagre' ambition by the PAC[32]; if that is achieved, the backlog by that time will be some 30% higher[33] than it was even before the pandemic hit;

f. The PAC consider even that 'meagre' ambition to be unlikely: recruitment of new judges has not been going well, and the plan to achieve the reduction was 'not credible[34]';

g. All of that pre-dates the ongoing industrial action by the Criminal Bar, which must be having a further negative effect on the backlog.

75. All of that both explains why actual data is lagging so far behind the projections, but also strongly suggests that the projection is itself over-heated.

[31] G2d
[32] At p.5 of that Report, G2d
[33] 53,000 compared to the March 2020 figure of 41,045
[34] Page 5 of the report, G2d

76. Mr Seaton says (in his Rebuttal, at §10) that all this is just a nine-month 'delay' in the projections, which given the commensurate (almost – it is actually at least 15 months) delay in delivering this proposed prison, is immaterial.

77. That doesn't bear scrutiny either: the 2021 projection suggested, as we have said, a return to pre-COVID levels of prison population by July 2022. That didn't happen, as we know, but pushing that prediction back nine months takes us to April 2023. If there really is a nine-month delay, we can expect pre-COVID levels by that date.

78. If that is so – i.e., if by April 2023 the prison population is around 83,654 (which was the pre-COVID level), then that would be some 4,600 short of what the projection suggests will be the population at that time (i.e., 88,300, at least for March 2023). The gap between the actual population and the projected population would have *grown*: it is presently around 3000 (see §72(f)) above).

79. All of this suggests strongly that the projected national need into the future is a significant overestimate.

Regional need

80. The second aspect of need is the regional picture. It is common ground that there is a specific need for new Category C resettlement prison places in the north-west. There are no projections of this need, and the national projection has not been broken down to a regional (or any other) level.

81. There is, in any event, some disagreement about the implications the claimed regional need has for the exact proposal presented in this planning application.

    a. As of May 2022, Mr Seaton's evidence identified that around 1,350 male Category C prisoners 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. He confirmed that this cohort would be held in the new prison. This cannot be correct given that the development, if allowed, would likely take longer than 24 months to build.

b. The proposal is for a 1,715-inmate prison on a Green Belt site. The sole reason for the proposed number of inmates is set out clearly in the Appellant's evidence: the figure equates with the maximum efficiency for construction costs and operations.

c. However, that efficiency should not be conflated with need, especially where each additional brick, slab or cell increases the level of harm to the Green Belt in respect of encroachment and impact on openness. Ms. Cottle is surely correct to say that only limited weight could be afforded to any plan, such as the proposed development, which extends beyond the current level of identified need.

d. In short, there is no evidence whatsoever (short of Mr. Seaton's assertions) to support the claimed regional level of need; and as we turn to next, no analysis whatsoever of the likely future *capacity*, whether in the North-West or at all.

82. That absence of any evidence at all about future capacity is, frankly, extraordinary. Literally all we know is that the operational capacity of the national prison estate was 82,676 as at June 2022; and that new places will be added to the estate at various points in the future, including:

- 500 places when the 'operational headroom' of 2500 is reduced to 2000, perhaps in the autumn;

- 1715 places in the midlands when HMP Fosse Way opens, perhaps in 2023;

- 1440 places in Yorkshire when HMP Full Sutton opens, perhaps in 2025;

- 494 places in the North-West when the expansion of HMP Hindley opens, at some point; and

- C.200 new (refurbished) cells at HMP Liverpool, perhaps in 2026

83. That is, obviously, encouraging. But the exercise here is to scrutinise the central component of the case for very special circumstances, a so-called 'capacity gap' in the North-West in March 2026. That is, literally, impossible. There is no data. We know nothing of when the above places will become available, or when (or whether) other places will be expected to come forward. We don't know whether (or when) prison cells space will be lost. There isn't even a 'back-of-an-envelope' estimate, year on year, whether nationally or, crucially, regionally.

84. We are simply asked to take Mr. Seaton's word for it. That is not how this process works. The only conclusion is that the Appellant's case on need is not robust and, for the inquiry's purposes, not made out.

Lack of alternative location

85. That ought to be sufficient to dispense with the case for very special circumstances, but it gets worse for the Appellant. The Appellant also relies heavily on the purported lack of alternative sites. In short, the Appellant says that there is nowhere else for this proposal to go. That is at the heart of the case for very special circumstances here: if (as UWAG consider) there are a number of potential locations for this development (even if the urgent need for them is made out), then the case changes materially: why should it go here? That is *why* Ms. Hulse accepted that it was an essential element of her case, without which, it would fail.

86. There is no national or development plan policy on how possible sites for new prisons should be chosen or taken forward. However, this lacuna does not afford the Appellant *carte blanche* to assert that only this site can feasibly accommodate the required new prison. To make out this aspect of its 'very special circumstances' case, the Appellant must evidence that there are no other alternative sites reasonably capable of supporting the proposed development. Ms. Hulse agreed[35] that the question is whether there is a site which is either *as* good or better than the appeal site. 'As good' is sufficient to defeat the Appellant's case. UWAG's case is that the Appellant has failed to discharge that burden.

87. The Appellant's case on alternative sites is at best opaque and at worst flawed. Despite multiple requests (and recourse to the Information Rights Tribunal) the Appellant has never disclosed its approach to 'scoring' the candidate sites. In cross-examination of Ms. Hulse it was clear that it didn't even embark on that process for at least some of the candidate sites (and in particular sites A5 and A6), or for the Appeal Site for comparative purposes.

88. Without that information, it is literally impossible to critically assess the process. How are the secondary criteria weighted one against the other? How are they weighted against the tertiary criteria? How are the tertiary criteria weighted one against the other? How is an overall 'rating' or score reached to permit comparison between sites? We have no idea and consequently no idea how the Appeal Site compares to either the Kirkham or Stakehill sites *on the Appellant's own identified criteria*.

89. Remarkably, that is precisely the criticism Ms Hulse advances of Mr. Parker's work: she says his Appendix 3 is not reliable (1.12-1.13) because his Red/Amber/Green rating system "*does not allow for weighting of criteria which may be more significant than others, and do not allow for the different scores…to be*

[35] In xx

afforded different weight in an overall assessment." She says his approach revealed "*no detail as to how it has been determined that the appeal site is less preferable than A5 or A6 through an overall scoring*". The irony will not, we are sure, be lost on you.

90. The one thing we *do* know is that the Appellant considers the appeal site to satisfy '*many of*' the identified criteria: see §7.36 of the Planning Statement[36]. It follows that it is not considered to meet them all. But which ones it does not meet, and the way in which that affects any kind of overall score, or the comparison, is entirely obscure.

91. Even on the evidence we do have, it is obvious that there is at least one, and probably two, sites that are reasonable alternatives to the appeal site for meeting the claimed need. The approach is, by definition, a high-level assessment: the level of detail one might reach in a planning appeal is not possible for the candidate sites. Are there constraints that rule out A5 (Oldham) or A6 (Kirkham) as reasonable alternatives, in this context? We say patently not. Both are of the requisite size (in fact well above), and in the North-West. Both are in the Green Belt, just like the appeal site. Aside from Mr. Parker's work, there is no assessment of either site against the identified criteria, or against the appeal site in that context.

    a. For **Oldham (A5)** the key issue appears to be its draft allocation in the emerging plan for Greater Manchester ('Places for Everyone'). It is part of a much larger draft allocation for a mix of housing, employment land and associated infrastructure, as Green Belt release. That can *only* be in its favour as an alternative to the appeal site, which is *not* proposed to be removed from the Green Belt by any plan. A5's days as a Green Belt site must be numbered. The harm entailed in delivering a prison on it *must* be much-reduced in that context.

[36] A3

b. Ms. Hulse's pessimism about timescales was not persuasive. There is no requirement to wait until a plan is adopted before making a planning application – this appeal is made following an application for a site which is *not* allocated in any plan, and there is nothing unusual about a pre-emptive application relying on a draft allocation (especially where the plan is at a reasonably advanced stage). This application was determined some 4 months after it was made; the delay to this point is largely down to the Appellant delaying its appeal until April 2022.
c. This might all be more persuasive if *any* attempt to engage with the LPA for site A5 had been made – whether as to its compatibility with the draft allocation, likely officer support, or timescales. There has been none, despite the LPA drawing the site to the Appellant's attention as part of the call for sites here.
d. There is no ecology, or heritage constraint that compares unfavourably with the appeal site.
e. In terms of access, the suggestion is that bus route 17 – which offers a frequent and short trip to and from the centre of Manchester – could not be used because there is presently no permeability between the industrial estate to the north (where it stops) and the appeal site. Ms. Hulse accepted (in xx and again in re-ex) that this was not likely to be insurmountable – especially given the budget apparently available here for enhancing the bus service.
f. The access by rail is a significant improvement over the appeal site, allowing a short trip from Manchester city centre to the appeal site via short walk from Mills Hill station.
g. Unemployment in Oldham is much higher than here in Chorley (or South Ribble), meaning the contribution of new jobs would be more valuable there than here.
h. While a small point, the site does not boast a sports field and so no equivalent loss of one would be suffered.
i. Overall, site A5 is just as good as the appeal site, offering some distinct advantages.

j. For **Kirkham (A6),** the extraordinary position seems to be that this site was dismissed from consideration upon receipt of an unfavourable pre-application response[37] from Fylde Council. That is, on its own terms, obviously insufficient. Pre-application advice is non-binding, and the letter raises no specific insurmountable constraint. It doubts that the 'very special circumstances' case advanced here, and opposed by Chorley BC here, would be sufficient.

k. Turning to the detail, the suggestion that it would prejudice the Green Belt 'purposes' relating to the setting of historic towns, and the unrestricted sprawl of large built-up areas, is not developed at all in the letter and seems objectively unsound.

l. The letter does not suggest any unacceptable (or insurmountable) constraint relating to landscape or visual impact.

m. It makes literally no reference at all to Ribby Hall[38], a listed building – that part of the case seems to have been misunderstood entirely (and essentially invented) by Ms. Hulse[39]; and it should not be forgotten that developing the appeal site causes harm to a non-designated heritage asset.

n. In highway capacity terms, the letter suggests early liaison with the Highway Authority, with a list of factors to inform discussions.

o. There is no 'design' constraint identified.

p. The ecological implications are no worse than the appeal site[40].

q. Mr. Yeates agreed in xx that the access implications were no different to those at the appeal site.

r. In addition, it is better connected to the trunk road network and – crucially – to sustainable travel modes, journeys by bus and train being

[37] J2

[38] The reference is to Ribby Hall *Village,* an up-market holiday complex which surrounds the Hall, and which is *not* a heritage asset

[39] And even if there is a concern about the impact on the Grade II listed Ribby Hall, for the reasons given by Mr. Parker and not attacked in cross-exam in any meaningful way, there is no basis to treat this as any kind of constraint. The Hall is surrounded by the holiday park development.

[40] The otherwise-diverting discussion about the potential for it to be a foraging site for pink-footed geese led only to the conclusion – expressed by Dr. Gleed-Owen – that it was no different to the appeal site in ecological terms

considerably more appealing than at the appeal site. Unemployment is higher in Preston and Blackpool than here in Chorley and South Ribble. There is no sports field to lose.

92. Mr Parker's evidence carefully and reasonably demonstrates that there are at least two alternative sites existing in Kirkham and Oldham, which appear to do better against the Appellant's own criteria than does the appeal site. Even accepting the approach and criteria set out, Oldham and Kirkham are no worse than the appeal site. In reality, nothing raised by the Appellant in this inquiry has done anything to upset that conclusion.

93. Further, Ms Copley's informed view was that an urban setting is generally preferable considering the many underused or vacant brownfield sites identified on the local authority brownfield registers in the North-West. This preference tallies with the Appellant's own assumptions for new prison builds: rural locations are unhelpful for staff retention and visitor access due to transport services (as noted elsewhere in Ms Morrisey's evidence).

94. Of course, there is no site in the region that is at the present stage of the appeal process; and so it is likely that no site could *as of now* deliver a prison sooner than this appeal site could – a point apparently made by way of re-examination of Ms. Hulse. However, other sites might deliver later but cause less harm. It would be perverse if the advanced stage of the appeal process gave rise to a substantive justification for the grant of planning consent. That is not an 'advantage' of the appeal site in planning terms (especially given the state of the evidence underpinning the claim of urgent need).

95. There is no compelling reason for the new prison to be developed on the appeal site, rather than at alternative sites. UWAG's evidence has shown the availability of alternative sites in the Appellant's site search. No weight should be attached to that proposition.

96. Without that component of the Appellant's case, no very special circumstances can, or do, arise.

D THE PLANNING BALANCE / CONCLUSION

97. The final issue for the Inspector is to determine whether the benefits and other factors are such that they can be properly described as 'very special' and clearly outweigh the harms identified. If they do clearly outweigh them, then planning permission will likely follow. But the hurdle is an important one: not just to outweigh the harms, but to do so 'clearly'.

98. As set out, although there are benefits of these proposals, these plans also cause considerable harm to a range of interests.

99. For all the reasons given here and also by the LPA, we invite you to find that the balance of competing priorities and considerations should be settled in favour of the Government's fundamental aim of keeping the Green Belt land permanently open here.

100. Accordingly, this appeal should be dismissed.

JOSEF CANNON
MATTHEW WYARD
JACK BARBER

COUNSEL FOR THE RULE 6 PARTY

ANNEX

EXTRACTS FROM AUTHORITY CITED

1. **R (Luton BC) v Central Beds DC and Ors 2015 [EWCA] Civ 537:**

"54. The second sentence of para. 83 of the NPPF provides guidance regarding the approach to be adopted if there is a proposal to alter the boundaries of the Green Belt in a local plan: exceptional circumstances have to be shown to justify such a course. But paras. 87-88 of the NPPF provide guidance regarding the approach to be adopted if there is a proposal for development of an area within the Green Belt set out in a local plan: "very special circumstances" have to be shown. This is a stricter test than that in para. 83 in respect of changing the boundaries of the Green Belt in the local plan."

2. **R (Chelmsford BC) v Draper and Ors [2003] EWHC 2978 (Admin)**

"54…However, I do not accept Mr Litton's submission that, if the decision taker concludes that a particular factor outweighs the harm to the Green Belt, that factor can therefore be described as a very special circumstance. To accept that submission would be to rewrite paragraphs 3.1 and 3.2 of PPG2, and to strip the words "except in very special circumstances" of any effective meaning.

55. The guidance given in paragraph 3.1 of PPG2 is unambiguous. Inappropriate development should not be approved in the Green Belt "except in very special circumstances". The words "very special" must be given their ordinary and natural meaning. Since the expression "very special" is so familiar, any attempt at definition is probably superfluous, but for what it is worth, the Shorter Oxford English Dictionary tells us that special means:

> "Of such a kind as to exceed or excel in some way that which is usual or common; exceptional in character, quality or degree …"

56. The circumstances must be not merely special in the sense of unusual or exceptional, but very special. The decision taker, whether it be the Secretary of State, one of his inspectors or a Local Planning Authority, has to be satisfied that the circumstances relied upon are indeed very special, but it does not follow that, merely because the decision taker considers that they outweigh the harm to the Green Belt, they are reasonably to be described as very special. The breadth of discretion that is conferred upon decision takers in other (non-Green Belt) cases is deliberately constrained by paragraph 3.1 of PPG2. The decision taker must be satisfied that there are very special circumstances. His judgment

that there are such circumstances is subject to review on Wednesbury grounds. A factor is not a very special circumstance merely because the decision taker chooses to describe it in that way. The decision taker must be able to point to a circumstance or circumstances which, viewed objectively, are reasonably capable of being described as "very special".

…

71.. The words "very special circumstances" must be given their ordinary and natural meaning, and the policy requirement that an applicant must demonstrate the existence of such circumstances must be given full weight and effect. "