PINS REF: APP/D2320/W/22/3295556

APPEAL BY MINISTRY OF JUSTICE

LAND ADJACENT TO HMP GARTH AND HMP WYMOTT, LEYLAND

CLOSING SUBMISSIONS ON BEHALF OF COUNCIL

---

1. In the Opening submissions to this inquiry the Council set out the case that they would advance according to the five main issues identified by the Inspector. This Closing will follow the same structure.

2. However before doing so, it is important to make a general point which touches upon a theme which the Council will continue to return to throughout their Closing submissions. This is, without a doubt, a large development in the Green Belt, an important project for the Appellant, and one which has triggered considerable local interest. The significance of this proposal is reflected in the fact that it has been called in by the Secretary of State.

3. It is not every day that a new prison is proposed in the Green Belt – and it would be expected that such a proposal would warrant the highest level of preparation to ensure that every issue was addressed, and that the proper level of scrutiny can be carried out. It is in everyone's interests (regardless of your view on the merits) that if planning permission is granted it is done on the most robust of bases.

4. However, as the Council will return to again and again this is not the approach the Appellant has taken. Instead for certain critical areas – transport, alternative sites and landscape and visual impact – a lighter touch approach has been adopted. One which - this inquiry has revealed - has meant that there are significant omissions both in the original application and in how the proposal sits today. These omissions form one of

the many bases on which the Council will ask the Secretary of State to refuse permission.

5. Turning to the main issues raised.

The effect of the proposal on the openness and purposes of the Green Belt;

6. It is common ground between all the parties that the appeal proposal would be inappropriate development in the Green Belt and have 'some' impact on both openness and purposes. The question for this inquiry is the level of the impact.

7. In relation to Green Belt openness (although it is a matter of planning judgment) both the Appellant and the Council's witnesses accept there is both a spatial and visual element to it.

8. In relation to spatial openness the approach that should be taken is that of a volumetric approach i.e how much of the Site is developed before the proposal, and how much would be developed after. Given the level of additional development (on the Appellant's calculation 8.41 hec of green agricultural field being built upon[1] in a 10.27hec area for the new prison alone) it is unsurprising that Ms Cottle found that there would be a 'significant loss' in spatial terms[2]. A point now accepted by Ms Machin[3] although she originally viewed the impact as 'limited'.

9. It is worth briefly addressing the approach taken by Ms Machin to Green Belt – which originally formed a section of the wider LVIA assessment. Green Belt (and the impact on it) is different from landscape (and the impact on its character). Green Belt is not a landscape character designation, and it should not be treated in the same way. The concern with Ms Machin's approach is that there were several times where she did exactly this.

[1] Ms Machin XX: calculation being 10.27 hec minus 1.86 hec already 'built upon'. Although it should be noted the 1.86 hec figure includes rural roads like Pump House Lane as being built upon.
[2] Ms Cottle Proof 5.26
[3] Ms Machin XX

10. A good illustration of it is the contention[4] (which she did not resile from in XX) that the fact the new built form of the prison would not be 'entirely uncharacteristic' with the built form nearby had some relevance to the impact on Green Belt openness. With the greatest of respect such a contention is highly unusual and entirely contradictory to the operation of Green Belt policy.

11. As set out in the NPPF[5] the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It is often the case that Green Belt adjoins built up areas. If harm could be minimised by developing Green Belt in a manner similar to the build development around it, then this would weaken the protection of Green Belt where it adjoins build up areas – which self-evidently would frustrate at least three of the five purposes of Green Belt (138 a),b) and c)).

12. This blurred approach also effects the Appellant's stance in relation to the visual impact on openness – where they maintained a limited effect would be had.

13. It is not the case that this Site is entirely visually contained. There are two Public Rights of Way that run through it. The bowling green, clubhouse, and mitigation planting – placed into an open countryside view – would have a detrimental effect on openness as perceived from the footpath running adjacent to it. The introduction of the prison would fill – on the Appellant's case - a 10.27 hectare area of the Site with an additional 8.41 hectares of build development.

14. The visual impact on openness from the new prison will not only be perceived walking north through and away from the Site (on a new diverted Pump House Lane running between a prison wall and screening woodland) but also in views looking south. As is illustrated by the modelled viewpoint 6[6] the development will fill a previously open landscape – albeit one with low lying prison buildings – with significant dominating-built form. One which a screening line of trees does not mitigate.

[4] 8.15 in the LVIA
[5] NPPF 147
[6] Ms Malchin Rebuttal: Appendix 2 'Night-time Visualisations' – Section 6

15. Therefore, the Council would reject the idea that this is a visually contained site or that the perception of the impact on the visual openness would be minimised. There would be a significant impact on visual openness.

16. However even if the Secretary of State did accept the Appellant's contention that this Site is visually contained, this should not be used as a way of minimising the harm to Green Belt. The approach of Ms Machin in both the LVIA and her proof is contrary to the warning sounded by Sullivan J in relation to the 'death by a thousand cuts' impact at [37] in **R (Heath and Hampstead Society) v Camden LBC** [2007] EWHC 977[7] (Admin):

> *"The planning officer's approach can be paraphrased as follows:*
>
> > *'The footprint of the replacement dwelling will be twice as large as that of the existing dwelling, but the public will not be able to see very much of the increase.'*
>
> *"……The approach adopted in the officer's report runs the risk that Green Belt of Metropolitan Open Land will suffer the death of a thousand cuts. While it may not be possible to demonstrate harm by reason of visual intrusion as a result of an individual – possibly very modest – proposal, the cumulative effect of a number of such proposals, each very modest in itself, could be very damaging to the essential quality of openness of the Green Belt and Metropolitan Open Land."*

17. The point being that the Green Belt is a diminishing resource which national policy has long held should be given the greatest importance. The Appellant cannot get around the fact that this proposal would have a significant harmful effect on both spatial and visual openness – and thus there would be a significant loss of openness overall[8].

18. In relation to harm to purposes, the proposal would completely undermine the ability of the Site's Green Belt to assist in safeguarding the countryside from encroachment. As Ms Machin fairly accepted (and as is reflected at Figure 7 of LVIA[9]) the north-eastern part of the Site – which is where the majority of the prison development is going

[7] The approach was cited with approval by the Court of Appeal in **Turner v Secretary of State for Communities and Local Government** [2016] EWCA Civ 466 at [24].
[8] Ms Cottle Proof 5.43
[9] Landscape and Visual Analysis – pdf page 158

– is countryside and the proposal will be encroaching into it. The same point applies to the Bowling Club.

19. The main mitigation the Appellant relies upon is the introduction of screening to introduce a new landscape boundary to provide a clear physical limit to the Green Belt (per 4.31 of Ms Machin proof). However, setting aside the other reasons why screening is not appropriate mitigation in relation to Green Belt, the ineffectiveness of this approach is illustrated by this very appeal. As is illustrated by Fig 7 of the LVIA this development would encroach development beyond the woodland boundaries to the north of the new Bowling Club site, to the north of Wymott, and to the east of the boiler house. Screening the encroachment doesn't minimise its harm or prevent further encroachment.

20. Instead, as set out by Ms Cottle the proposal would result in significant encroachment into the countryside instead of the limited put forward by Ms Machin.

21. Overall, in relation to issue i) the proposal would have a **significant** impact on Green Belt openness and a **significant** impact on Green Belt purposes. It is an unavoidably harmful proposal to the Green Belt.

The effect of the proposal on highway safety;

22. The issue of highway safety is one which national policy rightly highlights as an area of critical importance. As both planning witnesses accepted an 'unacceptable impact on highway safety' is one of the only times that a decisionmaker is entitled to refuse an application without going any further (per 111 of NPPF).

23. This is entirely right too – highway safety is not something that can be taken lightly given the consequences could be so severe. It is for this reason that there is a need in national policy for Transport Assessments to allow for the likely impacts of a proposal to be assessed (113), and for decisionmakers to ensure that 'any significant impacts….on highway safety, can be cost effectively mitigated to an acceptable degree' (110 d). While 110 d) doesn't expressly link that requirement to the TA as Ms Hulse

rightly accepted[10] where a TA is provided it would be natural place for such a policy requirement to be addressed.

24. The point being if – and the Council accepts that such a view is taken on the TA and any subsequent material such as proofs etc that have emerged through the inquiry – at the time of their decision the Inspector/SoS has a TA which does not properly assess the likely impacts of development and/or does not provide the evidence to ensure said impacts will be mitigated (and said evidence does not exist elsewhere) the TA will be deficient[11].

25. This is the case whether the deficiency relates to both operational traffic and construction traffic. As Ms Hulse said "*If a TA doesn't provide any consideration on construction traffic it is deficient'* – although to be fair the Council would again accept that if said information is provided afterwards in the inquiry that could address the deficiency (however as will be addressed later on in these submissions the Council's strong submission is that it does not here).

26. The critical final 'policy' point is this. If the TA is found to be deficient, and that deficiency has not been addressed by the close of the inquiry, then that entitles the Inspector/SoS to refuse permission under paragraph 111[12] - as both Ms Hulse and Ms Cottle accepted.

27. This is because the TA – and any additional information – must together be sufficient for the Inspector/SoS to reach a judgment as to whether there would be an unacceptable impact. If the evidence before this inquiry raises too much risk of an unacceptable safety impact and there is no reliable, objective evidence to address that risk then this entitles refusal under NPPF 111.

[10] Ms Hulse XX

[11] A point that both Ms Cottle (XiC) and Ms Hulse (XX) accept.

[12] **Satnam Millenium Ltd v Secretary of State for Housing, Communities and Local Government** [2019] EWHC 2631 (Admin) – see [58] – [60]. This case concerned whether residual cumulative impacts would be severe but there is no reason why the precautionary approach would not equally apply to unacceptable impacts on highway safety.

28. The Council's positive case is that the evidence of Mr Riley establishes that there will be an unacceptable impact on highway safety from the operational phase of the development (the Council will address construction traffic later on).

29. While elements of Mr Yeates proof will be addressed below it is worth addressing one overarching point – there is a critical difference between considering capacity and safety. Safety is not simply a numbers game but requires aligning those numbers with the existing characteristics and usage of a road network. The reliance on revoked government guidance in relation to road capacity reveals a misunderstanding of the Council's concerns and illustrates that Mr Yeates approaches the issue from the wrong perspective. Given the central importance of that point Mr Riley's evidence should be preferred.

30. The level of daily trips from the development is broadly agreed to be 1,332 which Mr Yeates rightly accepted is a significant number[13] - although it excludes ancillary traffic.

31. This significant level of trips is being placed on a local network populated by walkers (recreational walkers using the PROW), cyclists (including those using the Lancashire Cycleway) or equestrians (from the various nearby equestrian centres).

32. As set out by Mr Riley, the characteristics of the local road network coupled with these existing users, and the increase of trips, is what leads to an unacceptable impact on highway safety.

33. Numerous examples could be cited in this Closing. The high speeding on Moss Lane, the non LTN/20 compliant stretch of Ulnes Walton Lane that forms the Lancashire Cycleway etc but the point can be illustrated by just one: the Moss Lane/Ulnes Walton Lane junction.

34. This is a junction which is located where Ulnes Walton Lane bends around a corner after which – if travelling from the south – there is an interaction with right turning vehicles turning from the north into Moss Lane, which have poor forward visibility. It has a post box on one side and there are two bus stops close to it. The nearest of these currently serves the prisons and will also serve the bowling club – although there is no

[13] Mr Yeates XX

existing footway between them forcing users to use the verge or the carriageway. In effect this is a very busy junction, where right turns, poor visibility, generous geometry/radii and several pedestrian 'attractors' combine to create a series of significant risks.

35. It is through this junction that the development will be putting 100% of its trips through (1,332) which would be a 48% increase in its use[14]. It is for this reason that the Appellant's own capacity modelling shows that the right turn from Ulnes Walton Lane (N) into Moss Lane would be close to capacity at 0.82 RFC and with a 4.4 PCU queue[15]. A queue that will be occurring 'behind' the bend limiting their visibility to those travelling from the south[16]. The safety issues this raises are obvious and set out by Mr Riley – and yet the Appellant does not propose any mitigation to this junction beyond the repainting of carriageway markings - although the details are vague.

36. The next nearest mitigation is the Appellant's proposal to improve the Ulnes Walton Lane bus stop with a new shelter and to be disability compliant. Perhaps laudable in isolation until it is placed in the wider context of the Appellant's refusal of LCC's request for a footway to link the bus stop to Moss Lane. Those – potentially disabled – bus users attracted by the Appellant's improvements will still (to get to the existing prisons or bowling club) have to navigate the verge or carriageway before crossing Moss Lane - which now has in the AM peak in one direction (i.e. ignoring any cars coming the other way) an additional four cars a minute (to a total of 12 cars a minute or once every five seconds) with absolutely no mitigation[17].

37. I referenced a moment ago 'vagueness' and it is vagueness which has become a defining feature of the Appellant's proposed highway mitigations – and is partly why Mr Riley has no faith in them. One small example of this being that it was only during cross examination that it was revealed that seemingly promised mitigation scheme for Ulnes Walton Lane south of Moss Lane (see 2.8.2 of SY Proof) was not in fact proposed at all.

[14] Mr Riley Proof 6.1.1 and this figure remained the same after his revisions (XiC)
[15] TA Table 7-9 pdf 43
[16] Accepted by Mr Yeates in XX
[17] XX of Mr Yeates by reference to the middle columns of Table 2-2 in his Rebuttal.

38. This becomes however a significant concern in relation to the A581/Ulnes Walton Lane junction. The following propositions – drawn from concession by Mr Yeates – were put to Ms Hulse in her cross examination:

    i) Junction A581/Ulnes Walton – modelled to be over capacity with the development.
    ii) Without mitigation there would be a "significant" impact[18]
    iii) There is no designed or modelled scheme before the inquiry.
    iv) The Appellant's TA scheme is simply illustrative, and now the intention is for LCC to provide a mini-roundabout.
    v) But there is no evidence from LCC about that scheme, no evidence they have used the traffic levels in the TA, no evidence of design or modelling.
    vi) It would not be just a simple re-balancing exercise.
    vii) Mr Yates accepted the proposition that his TA was identifying a problem without providing a solution.

39. To expand slightly, the point is that this is a junction at which there would be a significant impact without mitigation on the Appellant's own case. It must be mitigated – and if it isn't or if it can't be, then planning permission should be refused. It is that central to the Appellant's case – but despite that at the end of this inquiry no-one can say how it will be mitigated or produce any evidence to show that it actually can be. The stance of the Appellant's is 'trust LCC' but we have nothing specific from LCC (beyond their non-objection) for the Inspector to have any confidence in.

40. What we can say is that the scheme has changed from the unmodelled, undeliverable illustrative one in the TA. Currently the best information we have on the new scheme is the vague 'it will be a mini roundabout' and in a matter of minutes in XX with Mr Yeates it was shown how that is not a straightforward solution. This is a busy junction with traffic flows from multiple directions and it is entirely unclear how such a scheme would not just shift the delays and queues to other arms of the junction.

41. Ms Hulse was entirely right when she recognised that the Inspector/SoS needs to be able to have sufficient information to conclude there is a 'realistic prospect' of such mitigation being delivered, and that the sum sought via the s.106 would be 'acceptable in planning terms'. There is nothing before this inquiry that allows the Inspector to do

[18] Accepted by Mr Yeates in XX

that beyond the fact the LCC have not objected. That is an unacceptable approach to take to highway safety, an approach that renders the TA deficient, and ones that justifies refusal on 111 alone.

42. That is before we consider construction traffic. The first of the three significant omissions in the Appellant's case. It is important to bear in mind – on the evidence we now have – that this is not a small matter. Again, I will set out the propositions I put to Ms Hulse that Mr Yeates had accepted:

    i) Mr Yeates accepted that an unacceptable impact on safety from construction traffic means 111 directs the SoS to refuse.
    ii) Neither the TA, his proof or rebuttal properly address Construction Traffic
    iii) The Appellant hasn't actually quantified it.
    iv) But the best information we have of the levels of construction traffic is that in the peak it exceeds the operational phase in terms of daily trips.
    v) And that both average and peak see a significant increase in HGVs – for the average 146 a day increase.
    vi) The mitigation has been designed on the basis of operational traffic.
    vii) None of the junction modelling has assessed construction traffic.
    viii) HGVs pose different safety issues from cars.
    ix) All construction traffic will be coming along Ulnes Walton Lane and passing through the Moss Lane Junction.

43. To expand on those propositions, the Appellant has forecast that for three years there will be an average increase of 146 HGVs a day. During a six-week peak period the construction traffic will exceed the operational period both for cars and HGVs[19]. And yet the first we heard of this was an appendix to the Appellant's noise proof. This is a – with the greatest of respect – an astounding situation which the Appellant does not seem overly concerned about. They have not even fully committed to a condition requiring the off-site road mitigation to be delivered before construction begins – instead leaving it to the Inspector's discretion.

44. To quickly deal with that point – on the Appellant's own evidence and modelling of operational traffic – the unmitigated impact of construction traffic on these roads would cause an unacceptable impact on highway safety. It must be imposed as a condition.

[19] 2,022 cars and 102 HGV trips

45. But that would not solve the concern. In particular a different feature of construction traffic is the higher proportion of HGVs (all the Appellant's modelling was on the basis of background HGV levels[20]). It is common sense – but also rightly accepted by Mr Yeates – that HGVs cause different safety issues – slower turning/taking up more junction capacity/larger degrading impact on carriageway. But these safety issues are ones which are entirely unaddressed in the Appellant's evidence because of their failure to address or consider the impact from construction traffic.

46. All this construction traffic is going to be using the Ulnes Walton/Moss Lane junction with all its inherent safety issues. But, again, this is a point which is not properly addressed by the Appellant in their TA, Mr Yeates proof or Rebuttal.

47. This again introduces – on top of all the other uncertainty – additional significant uncertainty to the TA which cannot be rectified on the evidence before the inquiry. It further renders the deficient TA even more deficient, prevents the decisionmaker being able to exercise judgment on whether there would be an unacceptable impact on safety, and further enforces why permission should be refused on 111.

The effect of the proposal on the living conditions of occupiers of nearby properties with regard to noise and disturbance;

48. The Inspector will have the evidence of the other parties at this inquiry, but this main issue no longer forms part of the Council's case.

The effect of the proposal on the character and appearance of the area;

49. The Appellant's original assessment was that this proposal would have a short term moderate adverse effect and a long-term minor to moderate adverse effect on the appeal site and its local landscape context (Ms Machin 3.47 and 3.48).

50. However, that finding was based on the view of Ms Machin that the north-east corner of the Appeal Site (north of the HMP Wymott wall, East of the boiler house) would

[20] Mr Yeates XX

only be of low susceptibility based on the area being 'urban edge' and dominated by institutional influence.

51. It is now the case that Ms Machin eventually accepted – after the specific request of the Inspector – that this part of the Site actually has a moderate susceptibility due to the fact that it should be considered to be predominantly rural – and this had a knock on increase to the adverse effect from this part of the site[21].

52. The Appellant may come back and say that the Council is wrong to focus in on just one part of the Site. But the Council would take the polar opposite view – it is this part of the Site that is one of the important areas to focus on.

53. It is this area of the Site that is not visually contained to the north, has two public rights of way running through, and is predominantly rural. It is where the impact on landscape will be most felt (although the bowling club location comes a close second) and coincidently it is where the majority of the largest element of the development – the prison – will be located. This clear landscape harm should not be watered down simply due to the containment of wider areas of the Site such as where the new boiler house will go.

54. The harm to the character of this landscape is illustrated by the modelled VP6[22] – which also illustrates that the Appellant cannot justify this scale of development in this open landscape through the use of screening trees. It is an approach directly contrary to the warning given in the Coastal Plain LCT[23].

55. All these points should serve to uplift the Appellant beyond their initial moderate adverse landscape effect in the short term to the higher-level where Ms Cottle places the harm[24].

56. In relation to the visual effect, we come onto the Appellant's second omission. Whilst it was corrected in Ms Machin's XiC, it is the case that the LVIA entirely missed the

[21] Ms Machin XX
[22] Ms Machin Appendix 2
[23] As extracted at 4.23 of LVIA.
[24] Ms Cottle's proof – 5.79

fact that there were PROWs running through the Site, and in close proximity to the Bowling Club Site. That is not a minor oversight but a major omission within the LVIA.

57. The reason being that – as Ms Machin accepted – if the impact on those close proximity views had been assessed (broadly Ms Cottle's VP 3/4/5 (Pump House Lane) and VP 1 ('the orange footpath') then they would have found a major adverse effect which couldn't be mitigated. The Appellant attempts to wave these away by noting that adverse effects will always be higher closer to the Site. But that is not a reason to dismiss them – and to do so would artificially lower the visual impact a proposal would have.

58. The Appellant's point could perhaps carry some weight if a VP were put forward on private land in the middle of a Site – but that is not the case here. These are PROWs often overlooking open countryside which will either be entirely extinguished or diverted to run between a prison wall and screening trees. It is a major adverse impact of this proposal which the Appellant cannot ignore – and yet don't seem to make a jot of difference to the Appellant's overall conclusions (barring the increase of VP20 up to moderate to major adverse).

59. The Appellant has underplayed the visual effects of this proposal by dismissing the most damaging viewpoints on the public rights of way as they run through the Site. This cannot be correct. Instead, as set out by Ms Cottle the proposal would have a significant visual effect which must be taken into account in the final balancing exercise[25].

Whether harm to the Green Belt, and any other harm, would be clearly outweighed by other considerations (including the need for the development, the availability of alternative sites, the socio-economic benefits, and biodiversity net gain) so as to amount to the very special circumstances required to justify the proposal.

60. The final main issue triggers the overall planning balancing exercise that the Inspector/SoS must undertake. There is broad agreement between the parties in relation to the policy background to this.

[25] Ms Cottle's proof – 5.79.

61. The all-encompassing test is whether there are Very Special Circumstances ('VSC') as set out at NPPF 147 and 148. It is all encompassing because all the harms and all the benefits needs to be weighed into the balance. Once that is done the benefits must clearly outweigh the harms and – collectively – be said to be very special[26].

62. If the benefits don't clearly outweigh the harms so as to constitute VSC then it doesn't matter whether the proposal would otherwise accord with the development plan or with paragraph 11 of the NPPF – the proposal should be refused.

63. Albeit there is one exception to this – as all parties accept paragraph 111 entitles immediate refusal on highway safety grounds - as such an unacceptable impact couldn't be 'outweighed' by benefits.

64. In relation to local policy, it is only important to note the red herring of Policy BNE5 – the fact that some of the Site is categorised as a previously developed site does not support this proposal[27] nor have any relevance as the exception it enshrines is not met. The proposal is inappropriate development and therefore there is an automatic definitional harm to the Green Belt.

65. Turning first to the weight to be given to the harms.

66. As set out above there is significant harm to Green Belt openness and purposes as well as the automatic definitional harm. In terms of the weight to be given to those harms Ms Cottle gives the collective basket of Green Belt harm 'very substantial weight[28]', while Ms Hulse now accepts (per XX) that on her approach each of the three individual Green Belt harms should each carry substantial weight due to the direction of NPPF 148 to give 'any' Green Belt harm 'substantial weight'.

67. It is important to point out here that the 'weighting' process is not quasi mathematical. It is not the case that three 'substantials' = one 'very substantial' and nor is one approach right while the other wrong. The application of paragraphs 147 and 148 – and

[26] See **The Queen on the Application of Chelmsford Borough Council v The First Secretary of State** [2003] EWHC 2978 (Admin) and Sullivan J at [56].
[27] Ms Hulse XX
[28] Ms Cottle 5.83

how the direction to ensure Green Belt harm is given, as a minimum, substantial weight is applied - is a matter of planning judgment for the decisionmaker, but what is clear is that it is now the case that both planning witnesses place a very high level of weight on the harm to Green Belt. Entirely – it should be noted – in line with the Government's intention that they do so.

68. There also arises a highway harm which either solely warrants refusal – if unacceptable impact on highway safety – or needs to be taken into account if it falls short of that level.

69. There is then the significant landscape and visual effect that this development will cause. Again, a separate harm and one which Ms Cottle gives significant weight. It is of note that despite Ms Machin increasing her landscape and visual effect in XX Ms Hulse did not move beyond her original 'limited weight'. It is for the Inspector to consider the veracity of such a position.

70. Turning to the benefits the predominant and central benefit the Appellant relies upon is the need for the prison. This is illustrated by the fact that Ms Hulse accepted that if either prison need is not established, or if there is an alternative site then VSC would not be made out[29]. Equally though even need is proved it would not – by itself – constitute VSC[30].

71. There are two sides to the 'need' case – both of which must be established for the Appellant to place any weight on it. The first is that there is a regional need which justifies this size of prison. The second is that there is no other reasonable alternative site for the need to be met.

72. In relation to the first of those propositions if the prison is 'oversized' then as Ms Hulse accepted that would reduce the weight to be given to need. The logic is simple – the Appellant will have taken up more Green Belt, generated more traffic, and caused more planning harm than is necessary to meet their evidenced need.

[29] Ms Hulse XX
[30] Ms Hulse XX

73. In relation to need generally the Council will – to save inquiry time even in Closing – rely on those submissions of the Rule Six Party. However, the Council would point to the fact that at the beginning of this inquiry the Appellant placed reliance on the projected regional capacity gap by March 2026 of 2,000[31]. But by the time of Ms Hulse's evidence – after Mr Seaton accepted that said figure did not reflect the expansion at HMP Hindley[32] and potentially not HMP Liverpool[33] - the Appellant now stresses that projections could go up or down, and it was a more complex matter of judgment than simply reliance on the mere numbers.

74. The Appellant is entitled to say that (albeit how much it assists a decisionmaker is a different question), but the Council will maintain that the placement of the prison at the upper figure of the efficiency range (1,715) was being justified by the capacity gap of 2000. It is now the case that on the Appellant's own best figures (which is all the inquiry has) that capacity gap will either be 1,506 or 1,306 – both of which would only justify the lower efficient range figure of 1,468. As accepted by Mr Seaton there is no modelled, projected, or existing figure which justifies this size of prison before the inquiry[34].

75. On that basis the Council would submit that the Appellant falls at the first need hurdle. But even if we went on to consider alternative sites this is where we encounter the Appellant's third omission.

76. Again, this is a matter that will be dealt with in greater length in the Rule 6 Party's Closing, but it is remarkable that the Appellant missed in their original site search Site A5 – Land south of Stakehill Industrial Estate. This is a site which the Council would submit is the reasonable alternatives site which the Appellant had claimed did not exist.

77. The fact that A5 would now come up against prematurity arguments is not a sufficient justification for the Appellant being let off the hook for missing it the first time. Especially given the intention for it to be released from the Green Belt.

---

[31] Appellant's Opening paragraph 3
[32] 494 cells
[33] 200 cells
[34] Mr Seaton XX

78. Equally it has been shown through XX by Mr Cannon, that the dismissal of A6 as a further alternative was down to a pre-application response which was not as damming as first suggested. It seems now that one of the main reasons relied upon for its exclusion would have been the effect such a proposal would have had on 'tourism'[35]

79. The scrutiny that has been able to be applied to this process during the inquiry (limited as it was by the lack of any scoring and weighting process of alternative sites or this Site against the mandatory, secondary and tertiary considerations) has revealed that the Inspector cannot have faith that there are no alternative reasonable sites. Far from it in fact - all the evidence points to the fact there are at least two sites.

80. If the Inspector/SoS were to find that there was a reasonable alternative site which the Appellant could or should have identified, then VSC are not made out. The Council would submit that reasonable alternative sites have been identified.

81. However, it is finally worth briefly touching upon the other benefits put forward by the Appellant.

82. The Appellant's economic benefits are generic and ones which arise with large development of this kind. While this doesn't mean they should carry no weight it does minimise their weight given the danger – especially with development in the Green Belt – of larger developments justifying themselves through the ever-increasing scale of economic benefits. As set out by Ms Cottle they should be given 'limited' weight'.[36]

83. The Appellant's social benefits should treated with caution due to the overlap with the broader weight given to the delivery of a prison, and the purported upgrading of Pump House Lane as it now runs between a prison wall and screening trees should carry no weight at all. As set out by Ms Cottle they should be given 'moderate' weight.

84. Finally, from out of the Appellant's environmental benefits need to be taken the numerous non-benefits or harm mitigations (the Site not being a flood risk, there being no sensitive ecological designations). What is left – in effect 20% biodiversity net gains

[35] Ms Hulse XX by Mr Cannon
[36] Ms Cottle 5.116

– should only carry an individual moderate weight given the incoming national requirement to deliver 10%.

Conclusion

85. Overall, there are numerous routes which justify this proposal being refused permission and the appeal dismissed. The unacceptable impact on highway safety, the lack of evidenced highway mitigation, the omission of construction traffic, the lack of justification for this size of prison, the existence of alternative sites. But overall, the point can be put in a fairly simple way – this is a proposal which would cause significant harm to the Green Belt, to landscape character, and have an unacceptable impact on highway safety all in return for a unevidenced justification for a prison of this size in this location.

86. It falls far short of Very Special Circumstances, and on that basis the Inspector and the SoS are respectfully requested to refuse planning permission and dismiss the appeal.

PIERS RILEY-SMITH
22nd JULY 2022
KINGS CHAMBERS
MANCHESTER, LEEDS, AND BIRMINGHAM