LAND ADJACENT TO HMP GARTH AND WYMOTT

MINISTRY OF JUSTICE

APPELLANT'S CLOSING SUBMISSIONS

Introduction

1. The evidence that has been presented at this inquiry has served to reinforce the Appellant's case. The overwhelming benefits of the scheme, which importantly will meet the very substantial and urgent need for a new prison of this type in this location, clearly outweigh the harms.

2. This was exactly the conclusion reached by officers for the Council. Following extensive pre-application discussions, and a thorough consideration of the proposal, the officers' report recommended that the permission be granted for the proposal. The reason an appeal has been made is because Members disagreed with this expert recommendation.

3. These closing submissions will set out that the proposed development complies with the development plan; and that material considerations, in particular the NPPF, also support the grant of permission.

4. (For the avoidance of doubt, the Appellant agrees to the suggested pre-commencement conditions, as set out in the draft conditions and as discussed at the conditions round table discussion.)

Green Belt policy

5. As always, the starting point in terms of policy is the statutory development plan. The appeal site is located in the Green Belt and is identified in the Chorley Local Plan 2012-2016 as a 'major previously developed site' in the Green Belt.[1] Policy BNE5 of the Local

[1] See para 7.20 of the Chorley Borough Local Plan, CD I1.

Plan, which is a permissive policy, allows redevelopment of previously developed sites in the Green Belt where certain criteria are met. It is common ground that the proposed development does not meet the criteria in policy BNE5.

6. It is also common ground (as confirmed by Ms Cottle in cross-examination) that as BNE5 is a permissive policy only, the lack of compliance with BNE5 cannot and does not displace a conclusion that, as a matter of principle, the proposal complies with the development plan as a whole. This is reflected in the Council's reasons for refusal, which do not rely on any breach of policy BNE5. Indeed, the only development plan policy that the Council allege is breached by the proposed development in the reasons for refusal is policy BNE1 (which is fully addressed below).

7. The relevant Green Belt policy is found in national policy, in section 13 of the NPPF, a highly relevant material consideration in this case. It is agreed that the proposed development should be assessed as a whole, and that it is 'inappropriate development' in the Green Belt. Paragraph 147 of the NPPF provides that such development should not be approved except in very special circumstances. Paragraph 148 of the NPPF states that very special circumstances will only exist where the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

8. The correct approach to very special circumstances has been addressed by the courts several times, with a useful summary being as follows:[2]

> "*29. First, the correct approach to the very special circumstances test is to ask the following question (adapting the wording of §70 in Doncaster (as approved by Carnwath LJ in Wychavon §26)):*
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> > *"Given that inappropriate development is by definition harmful, the proper approach [is] whether the harm by reason of inappropriateness and the further harm, albeit limited, caused to the openness and purpose of the Green Belt was clearly outweighed by the [countervailing benefit arising from the*

[2] Taken from paragraph 29 of *R (Wldie) v Wakefield Metropolitan District Council* [2013] EWHC 2769 (Admin). See also the Court of Appeal decision in *Wychavon DC v. SSCLG* [2008] EWCA Civ 692 at paras 21 to 32.

development] so as to amount to very special circumstances justifying an exception to the Green Belt policy"

Thus, in considering whether to allow development in the Green Belt, the decision maker must consider, first , the "definitional" harm arising from the inappropriate development as well as such further harm to the Green Belt as is identified as being caused by the development in that case, and then secondly consider countervailing benefits said to be served by the development; and then consider whether those benefits clearly outweigh the harm so as to amount to very special circumstances. Secondly, ***in order to qualify as "very special", circumstances do not have to be other than "commonplace" i.e. they do not have to be rarely occurring.*** *Thirdly, the test is not one of whether the harm to the Green Belt (definitional or specific) is "significant or unacceptable", either of itself or following the balancing exercise."*

9. We draw attention in particular to the emphasised quote above, due to the suggestion by the Council's witness Ms Cottle that very special circumstances will only arise where the benefits are "*unique*" and her discussion of "*generic*" benefits not being sufficient.[3] The approach Ms Cottle advocates is concerning and is quite simply wrong. It is well established that in order to qualify as "*very special*", circumstances do not have to be unique or other than commonplace. The other parties' reliance on *Chelmsford* to suggest otherwise should be treated with caution. The Court of Appeal decision in *Wychavon* (see footnote 2 above) (at paras 21 to 32) considers *Chelmsford* and sets out the caution with which it has been treated.

10. Ms Jackie Copley, for UWAG, adopted a far more objective approach (in line with Ms Katrina Hulse's approach) accepting that so-called "*generic*" benefits, such as economic benefits, are clearly capable of constituting very special circumstances. Little weight can be placed on Ms Cottle's assessment of very special circumstances on this basis.

11. We will first address the extent of the Green Belt harm which will be caused by the proposal, together with any other harm, and then turn to address the benefits, before

[3] Her answers given in evidence.

finally assessing whether these benefits clearly outweigh the harms. In summary, we will set out how the evidence at this inquiry has demonstrated that the overwhelming benefits of the proposal do clearly outweigh the harms so as to amount to very special circumstances justifying development in the Green Belt.

Openness and purposes of the Green Belt

12. It is accepted that the proposed development would be inappropriate in its Green Belt location, giving rise to definitional harm, which carries substantial weight. It is also necessary to take into account the effect on openness and the purposes of the Green Belt.

13. In relation to openness, it is fairly accepted by Ms Katie Machin and Ms Hulse that the significant scale of the proposed new built form will inevitably result in a reduction in the spatial element of this part of the Green Belt, and this must weigh against the development. However, in considering this harm, it is plainly also necessary to take into account the perceptibility and impact of that reduction. In this case, there are a number of factors to take into account which limit its perceptibility and impact.

14. First, the majority of the site is previously developed land (this is expressly recognised by the Council in designating this land as a 'major previously developed site' in the Local Plan). There are clearly aspects of the site currently which already impact on openness, both spatially and visually. Ms Machin drew attention to the existing built elements on the site itself, including the energy centre, associated hardstanding and storage areas, farm buildings, the disused social club building, the pumping station, Pump House Lane itself, the security fence/wall to HMP Wymott and HMP Garth, and the sports pitches and associated buildings. Outside the site boundary, the large-scale built form of HMP Garth and HMP Wymott, the adjacent residential area of Wymott, and the remnant built elements of historic munitions storage also all have an influence that must be taken into account.

15. Second, the appeal site itself is already relatively enclosed by virtue of the established woodland and tree belt along the northern boundary and through the centre of the site, other areas of mature vegetation, and the substantial built form of the existing

prisons. Together with the low-lying nature of the local landform, there are limited opportunities for wide ranging or long-distance views across the landscape.

16. Third, appropriate mitigation integral to the development means that the loss of openness would only be experienced by a limited number of highly localised viewpoints and would not be experienced over a wide area. The proposed landscape planting is set out in the Comprehensive Landscape Masterplan, which includes the new woodland planting on the northern boundary of the site, which will help bolster the filtering and screening of the proposed new built form in views from the north.

17. In relation to impact on Green Belt purposes, it is accepted that this must weigh against the proposals, but again in determining the weight attributable to this harm, it is plainly necessary to take into the extent of this harm. It is common ground between all parties that the proposal will only conflict with one Green Belt purpose,[4] namely safeguarding the countryside from encroachment. In relation to the extent of harm caused here, it is relevant that, as a matter of fact, the majority of the appeal site is a previously developed site (as recognised in the Local Plan). As stated by Ms Machin, this means that much of the site has already been encroached upon. Considering this – in addition to the urban influences, level of enclosure and new proposed landscape boundary planting described above – the extent of harm to this single Green Belt purpose will be limited.

Landscape character and appearance

18. At the outset, it is important to recognise that the Council does not raise any objection to the proposed scheme, in its reasons for refusal, based on the effect on landscape character and appearance. This separate issue was clearly not a material area of concern for Members when the application was refused, and tellingly the Council do not rely on any expert evidence from a qualified landscape witness.

19. The only expert evidence provided to the inquiry on character and appearance matters is by Ms Machin of Pegasus Group, who is a Chartered Member of the Landscape Institute. The written evidence includes a detailed Landscape and Visual

[4] Paragraph 138(c) of the NPPF.

Impact Assessment[5] ("LVIA") and Design and Access Statement[6] that were prepared as part of the planning application.

20. Ms Machin explained that positive pre-application meetings were held with the Council's landscape officer and case officer to agree the scope of the LVIA, agree on representative viewpoints, and receive feedback on the design of proposals and the mitigation strategy. The landscape officer accepted the findings of the LVIA and did not raise any substantive issues with the landscaping scheme.[7] This then led to positive comments in the Officer's Report to committee, which stated that the LVIA was comprehensive and that its scope was appropriate, and that the extent of new planting is considered proportionate to compensate for the tree losses and offers benefits in terms of extending and diversifying the current arboricultural resource and that the appeal proposals are compliant with policy BNE10.[8]

21. Given this, and given that the Council does not raise any character and appearance objections in its reasons for refusal nor does it present any landscape expert evidence of its own, it is difficult to understand how the extensive cross-examination of Ms Machin on her character and appearance judgments by the Council's barrister (and the lengthy section in closing) was justified. That section of the Council's case should be treated with a heavy dose of scepticism in circumstances where the Council's qualified landscape officer, case officer *and* indeed members had no such concerns.

22. In relation to landscape character, the site itself is not subject to any national or local landscape designations. Ms Machin also explained that the appeal site and local context do not fully represent the published key environmental features of the wider landscape character type within which it is located.

23. Ms Machin explained that the physical landscape impacts of the appeal proposals in relation to landform, land use and vegetation, are direct and limited to the extent of the appeal site only. She also explained that importantly, in terms of susceptibility, the local landscape context is obviously influenced by the existing two prisons, which

[5] CD A25.
[6] CD A5.
[7] See paras 2.16-2.20 of Ms Machin's Proof at CD E6.
[8] CD A97, see in particular paragraphs 338-339.

define large lengths of the site's boundaries. As a result, there is extensive existing context for exactly the type of development proposed.

24. The magnitude of impact of the proposed development is also balanced by the relative enclosure of the site, provided by the existing built form and tree planting, which restricts the potential area of influence the development will have (which can be experienced in viewpoints 10 and 11 in the LVIA[9]). The proposed development will also not materially harm key environmental features of the wider landscape character type within which it is location. The specific objection by Ms Cottle that the proposed tree planting will not integrate into the landscape is without merit – woodland planting is clearly characteristic of the local landscape and is an appropriate means of mitigation in this location.[10] The proposed linear planting on the northern boundary of the appeal site is simply an extension of an existing tree belt and the proposed pocket of woodland is a typical feature of the landscape character.

25. Overall, Ms Machin concludes that there will be a moderate adverse effect on landscape character in the short-term (Year 1 – operation), which will reduce to a minor to moderate adverse effect in the longer term (Year 15).

26. In relation to visual effects, these have been assessed in the representative viewpoints in the LVIA, as agreed with the Council. It is notable that there are no protected key views or vistas identified in any landscape documents or by the Council, which relate to the appeal site. Ms Machin focussed on the key residential and recreational receptors that will potentially be most impacted by the development.

27. With regard to residential receptors, the impact on private views is limited when assessed against the baseline position and taking into account the setback of properties and the set back of the taller elements of the proposal. This impact on private views does not come close to impacting on residential amenity so as to amount to a material planning consideration. Ms Cottle confirmed that the Council does not consider there would be any conflict with BNE1 (b) by virtue of overlooking or by the

[9] CD A25.
[10] CD I14, p.82, second bullet in *Landscape Strategy for the Coastal Plain*

development being overbearing or causing overshadowing. UWAG also confirmed, at least in relation to overlooking, that there would be no conflict.

28. As to recreational receptors, Ms Machin identifies effects to users of public rights of way, in the form of prescriptive footpaths.[11] She identifies moderate to major adverse effects in the short term for users moving along Pump House Lane (see viewpoint 6 in the LVIA), with the highest impacts limited to circa 300m of the route which passes through the appeal site itself. She also acknowledges impacts for users of other prescriptive footpaths, including within the appeal site and close to the proposed bowling green. Significant visual effects within the site itself are plainly inevitable in any development proposal. The significance of these effects will reduce as a result of mitigation planting, and the sensitive design of the bowling green and club house, which it is agreed with blend visually into the local landscape.[12] Whilst some significant visual effects within the site itself will remain unmitigated, this is simply an unremarkable and inevitable feature of introducing development onto a site. Overall, these material adverse impacts on visual receptors will be limited to recreational receptors near the boundaries of the site and on the site itself, and there is no doubt that this visual impact will be highly localised.

29. Finally, Ms Machin set out her assessment of effects on night-time views, with the aid of night-time visualisations. She explained that the impact of the lighting from the new prison will not be significant. The effect of the new lighting would not be out of place given the baseline of the existing prisons and will be mitigated by the use of down-lit LED lamps and the existing and proposed tree cover.

30. To sum up, any adverse impacts on character and appearance are of a limited nature and are largely confined to the inevitable impacts on the site itself or to locations in very close proximity to the boundaries of the site. This significantly tempers the weight to be given to any identified harm, and these matters do not weigh heavily against the proposed development.

Highway safety

[11] As explained in her examination in chief.
[12] SoCG between Appellant and Council at CD C7, see para 7.19.

31. The starting point is that in policy terms, development can only be refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe (see paragraph 111 of the NPPF). Mr Riley was clear that the Council's only concern in reason for refusal 2 is highway safety, not the impact on the road network or network capacity. There is no allegation from any party that the impact on the road network would be severe.

32. The application for the proposed development was accompanied by a substantial volume of technical highways evidence, including a detailed Transport Assessment[13] ("TA") (CD A35) and Outline Travel Plan (CD A36). A Technical Addendum (CD A37) was also produced in response to the comments provided by the Highway Development Control Officer at the County Council. These documents assessed the impact on the existing transport network, including the off-site highway impact. In addition, a draft construction management plan ("CMP") (CD K11) had been produced as a working, discussion document in consultation with the local highways authority.

33. The technical documents are now further supported by the evidence of Mr Stephen Yeates of Atkins at this inquiry, a Chartered Member of the Institute of Logistics and Transport. This can be set in contrast to Mr Riley, the Council's witness, whose membership of relevant professional organisations lapsed 10 years ago[14] (contrary to his initial position in his Proof[15]).

34. Despite the concerns of the Council and local residents, Lancashire County Council, as local highway authority, has judged the development to be acceptable in highways terms, subject to mitigation being suitably secured. This agreement has followed extensive pre-application discussions and post submission dialogue between the Appellant and the County Council, and a thorough review of the submitted reports by the County Council. Three pre-application meetings were held to consult with the County Council as to the TA and Outline Travel Plan and to agree the correct scope of

[13] As to Council's criticisms of the TA, the sufficiency of information in a document such as the TA is a matter for the expert judgement of the highways authority – see *R (oao Hawkhurst PC v. Tunbridge Wells BC* [2020] EWHC 3019 at paras 128 to 134.
[14] As he revealed in cross examination.
[15] Para 1.2.1 of Riley Proof.

assessment;[16] and this was followed by six meetings during the determination period to discuss several topics, including agreeing the appropriate mitigation measures.[17]

35. Importantly, the County Council has confirmed that they are satisfied that the proposal is in line with the requirements of the NPPF, and do not offer any objection to the grant of permission.[18] This is both in relation to construction and operational phases of the development. It is well established in law that the views of a local highway authority, as a statutory consultee, should be given "*great*" or "*considerable*" weight by a decision-maker, and a departure from these views requires "*cogent and compelling reasons*".[19]

36. In relation to the issue of highway safety, Mr Yeates explained that there is a link between safety and capacity, in that if a road is used beyond its design limits then road safety issues may occur. On this basis, he explained that the good practice approach is to assess the standard of the road and compare this against the existing road safety record. In the present case, the evidence clearly demonstrates that there is no existing safety record of concern, and further that, with appropriate mitigation, the surrounding roads will have sufficient capacity.

37. The TA provides a review of existing personal injury accidents ("PIAs") data on surrounding roads, which recorded 9 PIAs between 2016-2020. In response to the suggestion by Mr Riley that 2020 traffic levels were suppressed due to Covid so the number of reported PIAs will be likely to lower than otherwise expected,[20] Mr Yeates provided in his rebuttal[21] the PIA record for the period between 2014 – 2018, which revealed 10 PIAs during that period. Mr Riley accepted[22] this was not materially different to the later period which included 2020 and accepted that his earlier concern fell away. Mr Yeates' COBALT assessment (which Mr Riley agreed[23] was a valid assessment to carry out) forecasts a total of 19.4 PIAs across the study area. The

[16] CD A35, page 12.
[17] CD A35, page 12.
[18] See County Council response at Appendix A of Mr Yeates' Proof of Evidence.
[19] See *Visao Ltd v Secretary of State for Housing, Communities and Local Government* [2019] EWHC 276 (Admin) at paras 65ff and see *East Meon Forge v. East Hampshire DC* [2014] EWHC 3543 (Admin) at para 108.
[20] CD F1, 4.2.7
[21] CD E12, 2.1.1 to 2.1.2
[22] in cross-examination
[23] In cross-examination.

baseline number of 9 PIAs is considerably lower than the expected PIAs, considering the existing network characteristics and traffic volumes. This demonstrates that there is an existing substantial headroom in the safety 'capacity' of the study area, which can safely accommodate for an increase in traffic. Mr Riley accepted that the recorded data shows no existing safety issues[24], and his assertions as to alleged 'near misses' are wholly unevidenced.

38. In response to Mr Riley's criticisms of the extent of the COBALT assessment (made by Mr Riley for the first time in his examination in chief), Mr Yeates has also undertaken a COBALT assessment to forecast the anticipated number of PIAs 'with' and 'without' the proposed development in a future assessment year.[25] This assessment shows that for a 2025 future assessment year, the increase in traffic associated with the proposed development would theoretically generate an additional 0.5 PIAs per annum. Mr Yeates explained that such a projected theoretical increase patently does not represent an unacceptable impact.[26] In any event, as will be explained further below, the Appellant is also delivering a road improvement scheme to mitigate any impacts.

39. Mr Riley's contention that the proposed development will have a highway safety impact is not based on existing safety records or safety forecasts, but rather is based purely on the increase in traffic numbers generated by the development, primarily relying on percentage increases in traffic.

40. In relation to this assessment of traffic increases, the Council agree that the Appellant's approach to traffic surveys is satisfactory and that this provides a suitable baseline against which to assess the impacts of the proposed development.[27] It is also agreed that the Appellant's approach to committed developments in the TA is acceptable and Mr Riley accepted that this included modelling the effect of growth caused by planned developments (contrary to the unfounded assertions made by Councillor Green).[28]

[24] He accepted in cross-examination that his statement to this effect in his proof at para 4.2.7 CD F1, could not be made without any Covid related caveat.
[25] CD K13.
[26] An additional 2.5 PIAs overs 5 years (11.5 or 12.5 PIAs over 5 years) is still well below the 19.4 expected PIAs.
[27] SoCG between the Appellant and the Council at CD C7, para 7.28.
[28] SoCG at CD C7, para 7.29.

41. Mr Yeates sensibly cautioned against Mr Riley's use of percentage increases to assess development proposals and explained that a far better approach would be to assess the existing capacity of each road and model the effect of the projected traffic increases. The modelling in the TA demonstrates that the B5248 Dunkirk Lane/School Lane junction, the Ulnes Walton Lane/Moss Lane junction, and the proposed site access/Moss Lane junction will all operate within capacity with the proposed development.

42. Mr Yeates also carried out an assessment of highway link capacity using DMRB TA 79/99 Traffic Capacity of Urban Roads. He explained that it was appropriate to apply this guidance even though it is now withdrawn, because the principles established in the document remain true and underpin many transport planning calculations. He also explained that applying this assessment was robust and of assistance, even though the surrounding roads may be described as more rural rather than urban. He explained that this is because urban characteristics tend to reduce capacity, as shown by the typologies in the guidance. The assessment demonstrates that none of the roads within the study area will be approaching their highway link capacity during the AM and PM Peak periods and will remain uncongested following the additional traffic generated by the proposed development.[29]

43. Added to this, the proposed development will also deliver traffic calming measures along Moss Lane and Ulnes Walton Lane[30] (as well as wider section 278 works), which have been agreed as acceptable by the County Council, following thorough scrutiny.[31] These measures will reduce vehicle speeds along Moss Lane and Ulnes Walton Lane, and indeed will provide a road safety benefit. Section 2.8 of Mr Yeates' Proof details the full scope of section 278 works which the development will deliver – complimented as "*laudable*" by Mr Riley.[32]

44. Mr Riley highlighted a specific concern as to the safety impact of the increase in traffic for residents using the post box and bus stops at the junction of Moss Lane/Ulnes

[29] See section 2.4 of My Yeates' Rebuttal.
[30] See Appendix B of the Technical Addendum at CD A37.
[31] See the County Council's response at Appendix A of Mr Yeates' Proof.
[32] In cross-examination.

Walton Lane, and also as to users of PROW (including FP8 and FP9). The response to this is as follows:

i) As shown by the evidence above, Mr Yeates explained there will be no highway safety issue at this junction, particularly taking into account the traffic calming measures and the fact that there have been no recorded accidents in the vicinity of this junction (and none at all involving pedestrians).

ii) As to the post box, there is an existing post box located within Wymott village – this is more convenient for residents and for staff and visitors to the new prison. It gives residents the option to avoid the post box at the junction of Moss Lane/Ulnes Walton Lane if they so wish.

iii) As to existing users of the bus stops in that location, Mr Yeates also considered that the proposed development would give rise to no road safety issue for them. Crossing the road would not be unsafe and he noted that the frequency of pedestrians needing to cross the road to make use of those bus stops was likely to be very low, particularly in light of the long grass around the bus stop indicating little use and the low use of the bus by existing residents.[33] Further, staff and visitors to the new prison will not use this bus stop but would use the much closer bus stop at Willow Road.

iv) As to users of PROW, Mr Yeates' evidence and analysis[34] showed that the existing crossing provision remains appropriate given the forecast hourly traffic flow. Whilst Mr Yeates was aware that he was relying on out of date guidance for this analysis, judging whether a pedestrian crossing was necessary for safety reasons by reference to traffic and pedestrian flows remained appropriate in light of the up to date guidance.[35] Mr Riley's evidence does not contain any analysis to demonstrate that the existing crossing situation would not be appropriate, and he accepted that the nature of these recreational footpaths and the absence of any particular destinations (such as

[33] Ms Morrissey's observation was that if you see two people on the bus, it's busy.
[34] CD E12, 2.6.1 to 2.6.7
[35] At CD J19, para 13.1.10 and sections 13.3 and 13.4

schools or health facilities etc.) nearby meant that they would not attract use by vulnerable pedestrians.

45. In relation to the A581 Southport Road/Ulnes Walton Lane junction, the modelling demonstrates that the proposed development would have an impact on the free flowing of the junction in the AM peak.[36] There is agreement with the County Council that the Appellant's section 106 contributions to help fund the construction of a wider corridor scheme along the A581, including a mini roundabout at the junction, which is to be delivered by the County Council will satisfactorily mitigate this impact. The County Council's improvement scheme is understandably not yet fully worked up, however Mr Yeates explained that the mini-roundabout (as publicly referenced by the County Council within its business case document to the Department for Transport) would be deliverable and successful. Notably, the County Council's justification for this mitigation is to "*improve network operation*", rather than being borne out of any highway safety concerns.[37]

46. There is no substance to the Council's complaints as to the fact that this A581 junction mitigation has not yet been fully worked up. As explained above, Mr Yeates' judgement was that the mini-roundabout would be deliverable and successful. The capacity issues at the junction are caused by an imbalance of traffic volumes on the junction approaches and a mini-roundabout would effectively re-balance priority between the arms of the junction. Moreover, the construction and completion of this scheme will be secured by condition, either prior to occupation of the prison or prior to commencement of the prison development, depending on the decision-maker's view as to which is deemed necessary (see alternative proposed conditions 4a and 4b). It follows that the decision maker can be assured that the proposed development (and the resultant projected impact in the AM peak) will not occur without the appropriate mitigation scheme being in place.

47. As to the construction period, no-one raised any concern as to the design of the construction access which has been approved by the highways authority. As to the

[36] CD A35, Table 7-11
[37] Appendix A of Mr Yeates' Proof, page 12.

issue of the construction traffic, again the local highway authority has considered this issue, together with a working draft CTMP, and are content that it can be adequately dealt with by mitigation in a finalised CTMP to be required by condition. Mr Yeates explained that it is usual to mitigate for temporary construction traffic by temporary mitigation measures such as routeing, signage, temporary speed limits, banksmen, managed hours and the like, as set out in the draft CTMP. As to the criticism that construction traffic has not been specifically modelled and assessed, this was a non-point in circumstances where, in an average construction month, the volume of such traffic is predicted to be lower than the predicted operational traffic (which *has* been modelled and assessed). As explained by Mr Yeates, this is the case even when each HGV is counted as two vehicles.[38] Whilst the number of construction vehicles on site during the peak month will be higher, this is only for the short period of six weeks. And, in any event, the predicted pinch points in the highway network are at the peak hours only and construction traffic can be managed to avoid those times. Further, Mr Yeates explained that the daily construction traffic numbers set out in the draft CTMP have been calculated based on the assumption that there are 4 weeks and 20 working days in a month[39] whereas in reality there are more construction working days in a month, not least because construction work tends to take place on Saturdays.[40] This means that the daily construction traffic in the draft CTMP is likely to be an overestimate.

48. In conclusion on this, as already mentioned, Mr Yeates, along with the local highways authority, considers that the impacts of construction traffic can be adequately mitigated by measures in a CMP and this approach would be the appellant's preference. However, should the decision maker consider that the measures proposed to mitigate for the operational traffic should be in place earlier in order to mitigate for the construction traffic then, as discussed in the conditions session, the relevant condition could be amended to require this.

[38] When adjusted to take this into account the daily number of construction vehicles taken from table 4-2 at p.14 of the draft CMP at CD K11 is 573 (i.e 499 plus 73) which equates to 1,144 two way movements. This compares with the figure of 666 for the predicted number of vehicles at the operational stage and 1,332 two way movements at that stage.
[39] See CD K11 at para 4.4.1
[40] Yeates evidence in chief

49. Mr Yeates comprehensively rebutted UWAG's additional concerns, as expressed by Ms Morrisey. Ms Morrisey has no transport expertise herself, and openly accepted that she instead relied on her own "*impressions*" and "*hunches*".[41] In particular, Mr Yeates explained that the speed surveys for Ulnes Walton Lane, with 83.91% of vehicles travelling within the speed limit, were not abnormal (and he urged caution as to the reliability of the data). He further explained that opportunities to promote sustainable transport have been taken up, including through all the sustainable transport measures that have been agreed with the County Council through the section 106 contributions, and that the site would be accessible by a genuine choice of sustainable transport modes in line with the NPPF. He made clear that the modal split assumed in the projections had been agreed with the local highways authority and assumed more reliance on the car than the Chorley modal split which itself included a large rural area in addition to urban areas. It was thus robust and reliable. As to UWAG's point that deliveries, ambulances and ancillary vehicles are not included in the modelling (the inputs of which were agreed with the highways authority and are not disputed by the Council), as pointed out by Mr Yeates these are likely to have a negligible effect given that the numbers of such trips are low and would not generally occur in the peak periods.

50. In relation to the proposed financial contributions to improve the bus service, Ms Morrissey accepted that improvements to that bus service are specifically encouraged by the Chorley Local Plan.[42]

51. Mr Yeates also comprehensively rebutted UWAG's concerns relating to parking provision, as expressed by Ms Curtis. The trip generation agreed with the highways authority predicts a maximum of 499 vehicles needing car parking at any one time.[43] It represents 3 spaces per 5 staff members on site, which is appropriate provision in line with the Chorley Local Plan.[44] This is comfortably below the 525 spaces which will be provided, meaning that parking needs will be adequately accommodated. Further the prediction is very robust because it assumes that all prisoners will take up their full

[41] Answers given in cross examination.
[42] CD I1, policy ST1, p. 10 and para 4.8, p.11.
[43] CD A35, 6.2 p.33.
[44] CD I1, Appendix A – 'parking standards' p.63 and Mr Yeates evidence in chief.

visitor entitlement of two visits per month in circumstances where take-up is actually likely to be much lower[45] and where the availability of virtual visiting could lower the number of in-person visits even further.[46]

52. Ms Curtis' projections of 78 more spaces being required was based on her anecdotal discussions with two friends who work in the existing prison and whose shifts meant they were unable to car share. This was not objective, representative evidence and even if it were it did not take into account the ability of the Travel Plan to ensure that shift patterns be arranged to enable car sharing (a possibility which has also not been taken into account in the parking accumulation predictions). Mr Yeates also confirmed that the Appellant was contributing a specific sum of monies to fund monitoring and enforcement of the Travel Plan. Further her suggestion that human beings' natural "*laziness*" meant that people would park on the road even if there were spaces in the car park was patently flawed in circumstances where the pedestrian access to the prison will be directly from the proposed car park, meaning that the closest place to park will be in the car park itself.

53. Finally, Mr Yeates also addressed all concerns by other third parties. This included setting out his analysis to show that the suggestion by Katherine Fletcher MP (who notably did not have any objection to the principle of the development of the new prison) for an alternative vehicular site access located to the northwest via Ridley Lane was not valid, as it would not achieve a safe and suitable access. He also explained why there was no justification for re-opening Midge Hall railway station.[47]

54. Overall, the appeal scheme wholly complies with policy BNE1(d) of the Chorley Borough Local Plan and section 9 of the NPPF, and there are no highways matters which weigh against the grant of permission.

Living conditions of nearby occupiers with regard to noise and disturbance

[45] CD E12 paras 2.2.1 to 2.2.3, noting that at four similar Cat 3 resettlement prisons, the take up of visit entitlement was not higher than 50% in 2019.
[46] as accepted by Ms Curtis in cross examination.
[47] He pointed out that, even if it were a viable option, it is less accessible to the proposed prison that the existing railway station at Croston which is nearer and connected to the prison by a bus service.

55. The Appellant has undertaken a full assessment of the noise impacts of the proposed development arising from construction and operational road traffic, and car parking; both through the Noise Impact Assessment submitted with the application and the further evidence provided by Mr Eddy Goldsmith.

56. Mr Goldsmith has followed recognised methodology and guidance for assessing notice impacts. Neither the methodology nor the findings in his assessments have been substantively challenged. Following the confirmation by Ms Cottle (in cross-examination) that the Council did not offer any evidence to support reason for refusal 3, the Council has confirmed that they have formally withdrawn this reason for refusal.[48] It follows that the Council no longer has any objection based on the effect on living conditions of nearby occupiers with regard to noise and disturbance, and no longer contends that there is any conflict with policy BNE1 on this basis.

57. Ms Curtis, a local resident on behalf of UWAG, expressed concerns as to noise. However, she has no noise expertise; her concerns are entirely unquantifiable and bear no relation to any policy or guidance. She fairly conceded[49] that she had no basis for disputing the technical findings of Mr Goldsmith.

58. The Appellant has undertaken noise surveys in the vicinity of the site to assess the baseline situation and has modelled the noise that will be generated by the development for existing sensitive receptors. The evidence shows that the noise impact arising from construction and operational road traffic from the development will be moderate for the property known as Windy Harbour on Moss Lane, and negligible to minor for all other residential properties.

59. Mr Goldsmith explained that these increases in noise levels during the daytime will be below the levels recommended by the World Health Organisation ("WHO"), and below the level above which adverse effects on health and quality of life can be detected ("LOAEL"). This means that road traffic noise associated with the proposed development will be present and not intrusive in accordance with Planning Practice Guidance. Further, in relation to road traffic noise during the construction phase,

[48] Publicly announced by the Council's barrister in the inquiry the day after Ms Cottle gave evidence.
[49] Answers in cross-examination.

especially during the peak construction period, this can be suitably reduced by means of a Construction Traffic Management Plan, secured by condition.

60. In relation to night-time noise levels, again Mr Goldsmith assessed that the noise associated with development generated road traffic would not exceed the night-time LOAEL, in accordance with WHO guidance. Thus, although associated noise may be noticeable it would not be intrusive and would not result in any change in quality of life. He further pointed out that the orientation of first floor windows in Windy Harbour is such that the internal night-time noise levels in bedrooms at Windy Harbour will in reality be lower than initially assessed.

61. Ms Curtis expressed a specific worry as to the noise generated from car parking. However, the technical evidence demonstrates that the average and maximum noise levels associated with the proposed car park at nearby sensitive receptors are significantly lower than health-based guideline levels. This also needs to be seen in the context that the end of Ms Curtis' garden is 50m away from the car park entrance. Mr Goldsmith also explained why UWAG's concern as to noise from speeding along Moss Lane was not valid, not least because speeds would inevitably reduce when turning into the development access opposite Windy Harbour (a factor which conservatively had not even been factored into the model).

62. In addition, the objections by Ms Curtis as to other disturbance to living conditions are without merit. There is nothing unusual about living on a street where people walk past and drive with headlights. There will plainly be no unacceptable impacts on living conditions for Ms Curtis' property from car headlights or people walking on the street, considering the setback and orientation of the dwelling, location of habitable rooms and the option to mitigate any limited impact. Ms Curtis accepted that the option to close her curtains was open to her if she so wished. There is further no substantive allegation from any party as to harm to residential amenity from overlooking, overshadowing or overbearing.

63. Overall, the proposal would not cause an unacceptable degree of noise disturbance, either during the daytime or night-time, and there will be no conflict with policy BNE1(g) of the Local Plan, and this is now common ground with the Council. There are

also no other factors which will unacceptably adversely affect living conditions. Accordingly, matters relating to the effect on living conditions of nearby occupiers do not provide any justification for refusal.

Need for this development

64. There is a very substantial and urgent need for the development of additional, better designed, prison places in the North-West region, and the proposed development will help to meet this need. This matter was addressed comprehensively in evidence by Mr Robin Seaton, a Senior Civil Servant working as a Deputy Director within the Prison Supply Directorate in Her Majesty's Prison and Probation Service, who is the Senior Responsible Owner for the new prisons programme.

65. Given the challenge that was made to Mr Seaton's evidence at the inquiry, it is worth stepping back to serve as a reminder that there is a large amount of common ground between the parties on the need for the proposed development, as set out in the Statements of Common Ground. As between the Appellant and the Council:

> *"7.6. It is agreed that the prison population is forecast to increase over the next ten years, reaching unprecedented levels by 2030. The MoJ is therefore seeking to deliver additional prison places through the refurbishment and expansion of existing prisons, and construction of new prisons.*
>
> *7.7. The proposed prison is one of four new prisons which will help to address the forecast increased demand for prison places. It is agreed that these new prisons need to be distributed across the country in order to best target the areas of greatest forecast demand.*
>
> *7.8. It is agreed that there is a specific need for new Category C resettlement prison places in the North West. Category C resettlement prisons provide prisoners with the opportunity to develop skills so they can find work and resettle back into the community on release."*[50]

66. As between the Appellant and UWAG:

[50] CD C7.

"5.5. It is agreed that the prison population is forecast to increase over the next ten years, but the extent of that growth is not agreed. 5.6. It is agreed that the refurbishment and expansion of existing prisons cannot meet all of the forecast demand, nor does it represent the best value for money. As such, there is a need for new prisons to be constructed.

5.7. The proposed prison is one of four new prisons which will help to address the forecast increased demand for prison places. It is agreed that these new prisons need to be distributed across the country in order to best target the areas of greatest forecast demand.

5.8. It is agreed that there is a specific need for new Category C resettlement prison places in the North West. Category C resettlement prisons provide prisoners with the opportunity to develop skills so they can find work and resettle back into the community on release.

5.9. It is agreed that the site search criteria are appropriate."[51]

67. Against this common ground, the dispute between the parties is considerably narrowed.

68. Mr Seaton set out that the adult male prison estate is operating close to capacity – he explained in his examination in chief that as of last week, the male prison estate is operating at 98.3% capacity. The projected demand for prison places will soon outstrip supply and there is a need to ensure that there are sufficient prison places of the right type to meet long term needs.

69. As well as the increasing prison population, there is a need for the development of new, better designed, prisons. Much of the current prison estate was built in the Victorian era, and the age and design of these buildings makes them difficult to run modern prison regimes and expensive to maintain. The modern prisons currently being proposed have been designed to hold prisoners in single cell accommodation in a secure environment, which enables the delivery of a regime to address their offending behaviour and offer rehabilitation. Ms Hulse also gave evidence, from her

[51] CD C8.

own visits to HMP Five Wells (a model for the prison that is proposed to be provided here), as to how the design of the built form, significantly improves levels of safety and ability for prisoners to be rehabilitated.

70. Mr Seaton explained that the calculation of demand for prison projections uses a suite of modelling tools. He also explained that in addition to the mathematical modelling, inevitably judgement and experience also play a large part. As set out in his evidence, the total prison population is forecast to increase to a record high of 98,500 by March 2026.[52] As of 10 June 2022, the operational capacity of the system is 82,676 places and at the time of writing his Proof of Evidence, the prison population is 80,115. As explained in his examination in chief, as of last week, the male prison estate is now operating at 98.3% capacity.

71. Breaking this down to a regional level, Mr Seaton explained that the Ministry of Justice estimates a capacity gap of 2,000 prison places in March 2026 in the region that would be served by the proposed new prison. In addition to this projected growth in demand for prison places, as of May 2022, around 1,350 Category C men with less than 24 months sentence remaining and who had a home address in the North West were being held in prisons outside of the region. Prisoners, particularly at the resettlement stage of their sentences, need to be held in their home region in order to improve chances of successfully integrating with their communities and not reoffending when released. Mr Seaton in examination in chief explained that this number of Category C men had now risen to 1,400, and it was expected to continue to increase.

72. Both the Council and UWAG focussed on criticising the degree of uncertainty in these projections. Mr Seaton fairly acknowledged that there are inherent uncertainties in calculating these projections, given that this obviously relates to crimes which have not yet been committed. He explained that matters such as the change in mix and types of crimes, behaviours of sentencers, efficiencies of the police, and 'shock events' (e.g. the 2011 riots which resulted in 1,200 additional people in prison in a matter of weeks) are matters which are difficult to mathematically model.

[52] CD J14.

73. Nevertheless, it is crucial that these projections are made on a precautionary basis so that the system can accommodate for these future changing events, given the dangers that will occur if demand outstrips supply. Mr Seaton described the dangers that would occur if demand outstrips supply, such as of crowding of prisoners, the expense involved in the use of police cells as a spill over, and the early release of prisoners – poetically described by UWAG's barrister as an "*apocalyptic scenario*".

74. Importantly, these projections of need are made using the best available evidence. They are signed off by senior leadership within the MoJ, the Home Office and the Crown Prosecution Service; and have National Statistic status meaning that they meet the highest standards of trustworthiness, quality and public value. External scrutiny is also provided by the Treasury, who use these projections to justify signing off spending reviews.

75. Mr Seaton thoroughly rebutted the specific criticisms made by Mrs Curtis. He explained that any deterrent effect as a result of an increase in police would not reduce the number of crimes (out of a much larger pool) which are caught. He also explained that the easing of covid restrictions in the Crown Court (which resulted in less courtrooms being available) had been lifted later than anticipated. He also cautioned against Ms Curtis' reliance on monthly figures as statistically unreliable and explained that this did not capture the particular capacity problems with the adult male estate.[53] As to the House of Commons Report[54] relied on by Mrs Curtis, this makes clear that the challenge of overcoming the covid backlog is itself made harder by the urgent need for more prison places which is not being met.[55] Further the criticisms in that report as to delays in judicial recruitment are answered in the MoJ response to the report and by Mr Seaton who set out the further significant financial investment that is being made to address these concerns and delays.

76. Mr Seaton also comprehensively dealt with the allegations by the Council and UWAG that there would be an oversupply of prisons. Contrary to UWAG's allegations, the supply in the pipeline was clearly set out. He explained that of the 20,000 prison

[53] In response to Ms Curtis's use of her Appendix 10.
[54] CD G2(d) / G25
[55] CD G2(d) / G25, para 4 on p.6 and para 14 on p.10

places originally planned to be delivered,[56] 3,000 had already been delivered. Of the remaining 17,000 places, 9,000 places still do not currently have planning permission.[57] In addition the planned new prisons are already behind expected delivery (due to refusal at local level, and progress through the appeal system). Taking this into account, it would not be reasonable or prudent to simply rely on these numbers to show an ample supply.

77. In this regard, Mr Seaton explained that it also needed to be taken into account that there is no certainty that all existing prison places will remain available in the future, given the huge ongoing maintenance need for these places to keep them in operation (£250 million investment per year, with £1.3 billion works that need to be done in total); and given the risk of losing places due to other events (e.g. the violence that occurred in HMP Birmingham).

78. Finally, it was demonstrated that the grant of permission at HMP Hindley (494 places), and expansion of places at HMP Liverpool, did not materially change the picture in the North West. These are not the same catchment areas as a prison on the appeal site, and HMP Hindley will also contain Category C training places, which cannot be used for Category C resettlement places, as these are different cohorts of prisoners. In any event, the reliance by the Council on such immaterial minor changes in the arithmetic in order to challenge the size of the prison proposed has the effect of acknowledging the urgent need in principle but, without any expertise or experience, represents a foolhardy attempt to seek to challenge the judgement, experience, and prudence that Mr Seaton explained plays a large part in projecting need, particularly given the inherent risks in the system (both in terms of increases in prison population, and loss of existing and expected supply) which the prison system needs to be able to accommodate.

79. In reality, neither the Council nor UWAG, who do not have any expertise in prison population forecasting, have any basis for substantively challenging the MoJ's

[56] See paragraph 5.2 of Mr Seaton's Proof.
[57] This is made up of 5,000 in new prisons (including the appeal scheme), and 4,000 in prison expansions.

projections, which show a very substantial and urgent need for the new Category C resettlement prison for up to 1,715 places on the appeal site.

Alternative sites

80. It is accepted in the present case that it is relevant to consider whether the substantial and urgent need identified above, can be met on an alternative site, other than the appeal site. This is because the appeal site is within the Green Belt and because the other parties to the inquiry, in particular UWAG, have specifically identified two sites which they claim are relevant alternatives sites (namely, the Land south of Stakehill Industrial Estate and Land adjacent to HMP Kirkham).

81. In order to constitute a relevant alternative site, plainly the alternative site must be *more* acceptable or *more* appropriate in planning terms, than the current site being considered. This is made clear in the case law. The correct approach in law to the relevance of alternative sites has been addressed by the Courts, and the analysis in *Trusthouse Forte Hotels Ltd v Secretary of State for the Environment* (1986) 53 P&CR 293 is of particular assistance. The Judge set out a number of principles that apply to the assessment of alternative sites including:

> *"(1) Land (irrespective of whether it is owned by the applicant for planning permission) may be developed in any way which is acceptable for planning purposes. The fact that other land exists (whether or not in the applicant's ownership) upon which the development would be yet more acceptable for planning purposes would not justify the refusal of planning permission upon the application site.*
>
> *(2) Where, however, there are clear planning objections to development upon a particular site then it may well be relevant and indeed necessary to consider* ***whether there is a more appropriate alternative site elsewhere****. This is particularly so when the development is bound to have significant adverse effects and where the major argument advanced in support of the application is that the need for the development outweighs the planning disadvantages inherent in it."*
>
> *…*

"(6) The extent to which it will be for the developer to establish the need for his proposed development on the application or appeal site rather than for an objector to establish that such need can and should be met elsewhere will vary. However, in cases such as this, when the green belt planning policy expressly provides that "the need for a motel on the site proposed, not merely in the area generally, has to be established in each case" the burden lies squarely upon the developer. Thus in this type of case it will be the more likely that the planning authority could reasonably conclude that the need can be met elsewhere without reference to some identified ***more appropriate alternative site****."*

82. This analysis in *Trusthouse* was recently cited with approval by the Court in *R (Save Stonehenge World Heritage Site Ltd) v Secretary of State for Transport* [2021] EWHC 2161 (Admin):

"269. The analysis by Simon Brown J (as he then was) in Trusthouse Forte Hotels Ltd v Secretary of State for the Environment (1986) 53 P & CR 293, 299–300 has subsequently been endorsed in several authorities. First, land may be developed in any way which is acceptable for planning purposes. The fact that other land exists upon which the development proposed would be yet ***more acceptable for such purposes*** *would not justify the refusal of planning permission for that proposal. But, secondly, where there are clear planning objections to development upon a particular site then "it may well be relevant and indeed necessary" to consider* ***whether there is a more appropriate site elsewhere****. "This is particularly so where the development is bound to have significant adverse effects and where the major argument advanced in support of the application is that the need for the development outweighs the planning disadvantages inherent in it." Examples of this second situation may include infrastructure projects of national importance. The judge added that, even in some cases which have these characteristics, it may not be necessary to consider alternatives if the environmental impact is relatively slight and the objections not especially strong."*

83. The Court in *Stonehenge* went onto say the following:

"*270. The Court of Appeal approved a similar set of principles in R (Mount Cook*

Land Ltd) v Westminster City Council [2017] PTSR 1166, at para 30 . Thus, in the absence of conflict with planning policy and/or other planning harm, the relative advantages of alternative uses on the application site or of the same use on alternative sites are normally irrelevant. In those "exceptional circumstances" where alternatives might be relevant, vague or inchoate schemes, ***or which have no real possibility of coming about****, are either irrelevant or, where relevant, should be given little or no weight.*

271. Essentially the same approach was set out by the Court of Appeal in *R (Jones) v North Warwickshire Borough Council* [2001] 2 PLR 59, paras 22–30 . At para 30 Laws LJ stated:

"it seems to me that all these materials broadly point to a general proposition, which is that consideration of alternative sites would only be relevant to a planning application in exceptional circumstances. Generally speaking—and I lay down no fixed rule, any more than did Oliver LJ or Simon Brown J—such circumstances will particularly arise where the proposed development, though desirable in itself, involves on the site proposed such conspicuous adverse effects that the possibility of ***an alternative site lacking such drawbacks*** *necessarily itself becomes, in the mind of a reasonable local authority, a relevant planning consideration upon the application in question."* (emphasis added)

84. Accordingly, the question for the decision-maker in this case is whether there is a *more* acceptable or *more* appropriate site elsewhere, other than the appeal site, for meeting the urgent need for a new Category C resettlement prison in this region. To be materially significant, the alternative site has to lack the drawbacks of the appeal site (in this case, its Green Belt status) and has to have "a real possibility of coming about" within the timescales necessary to meet the urgent need (see emphasised passages above). The question is not whether an alternative site is "*no worse than*" the appeal site (which was the phrasing repeatedly used by UWAG's barrister in questioning[58]). In carrying out this analysis, the reasonableness of the Appellant's previous site

[58] To the extent the phrasing was accepted by Ms Hulse, this does not affect the Appellant's case which relies on the correct legal position set out in the caselaw above.

searches at the feasibility stage and in advance of the appeal submission are relevant to consider; however primarily the assessment as to whether there is a more acceptable or more appropriate site elsewhere clearly needs to be assessed at the date of this decision on this appeal. The assessment is necessarily high level and cannot realistically descend into anything like the kind of granular detail that would be appropriate if alternative planning applications were pursued and assessed.

85. The selection criteria used for the site search is set out in Mr Seaton's evidence, and there is common ground that this site search criteria are appropriate. The site search process, at both the feasibility stage and as refreshed at the appeal stage, is explained in Ms Hulse's Proof of Evidence.

86. As Ms Hulse sets out, at the feasibility stage in 2020 the Appellant undertook an extensive site search by contacting local authority areas within a 90-minute drive-time of Manchester, contacting Government Departments, and undertaking a site search of private land interests within the 90-minute drive-time. At this feasibility stage a long list of 14 sites were considered (plus the land available at HMP Kirkham), amounting to 15 sites in total. 9 of these 15 sites did not meet the mandatory requirements or were not available (these are set out in Table 3 of Ms Hulse's Proof) and were not shortlisted. The 6 shortlisted sites (which are set out in Table 4 of Ms Hulse's Proof), which included the Kirkham site, were then dismissed for reasons relating to specific site constraints.

87. The site search was then prudently refreshed in advance of the appeal submission. This time 9 sites were shortlisted (these are set out in Table 5 of Ms Hulse's Proof). This again included the Kirkham site and also included the Stakehill site (as explained by Ms Hulse, Stakehill came to light for the first time at the appeal stage and had not been discovered in the 2020 site search[59]). These 9 sites were all dismissed for reasons

[59] This was not challenged in cross-examination and Mr Riley- Smith is wrong in closing to cast aspersions in relation to this (at his closing paras 76 – 77). If the veracity of this statement, together with the veracity of the extent of the search carried out in 2020 (which included contacting local authorities within a 90 minute drive) was doubted, it was incumbent for any doubts to be put fairly in cross examination and, crucially, for any allegation of dishonesty to be put squarely. The failure to do this is extremely concerning if the Council is intending to imply dishonesty.

relating to specific site constraints (as set out in Table 5 of Ms Hulse's Proof and also in the site search document at CD E1).

88. This process was explained by Ms Hulse in her evidence to the inquiry. For the sake of clarity and to help the inquiry, she pointed out that paragraph 7.31 of the Planning Statement (CD A5) should be corrected, in order to be consistent with the evidence already set out in her Proof of Evidence. The exaggerated outburst that this prompted from UWAG's barrister really was a storm in a teacup. There was nothing controversial about this correction to the wording in the Planning Statement, which only sought to reflect what Ms Hulse has already clearly set out in her Proof of Evidence. The reason that Mr Parker was not cross-examined on his contention that some of the sites resulting from the search did not meet the mandatory criteria was obviously because this point was not in dispute – and that position was consistent with the correct position set out in Ms Hulse's Proof of Evidence.

89. UWAG rely on there being two alternative sites, Kirkham (known as site A6) and Stakehill (known as site A6). However, neither of these sites are more acceptable or more appropriate for meeting the urgent need for a new prison. Importantly, both of these sites are also in the Green Belt, and thus would also need to show very special circumstances. We note that this reinforces the point that a Green Belt location is needed for the new prison development. However, these sites are clearly not more acceptable in planning terms than the appeal site, but rather are, at best, the same as the appeal site. As Ms Hulse stated,[60] for a site to be a relevant alternative site which attracts significant weight in this regard, one would need to show a non-Green Belt site.

90. In relation to Kirkham in particular, the Appellant made a formal pre-application submission to Fylde Council in July 2020, which resulted in a pre-application meeting and a formal response.[61] This made clear that Fylde Council would not support an application for a new prison in this location. The detailed pre-application response set out several fundamental concerns with the proposal. This included that the site in

[60] in re-examination.
[61] CD J2

Kirkham contributed to three purposes of the Green Belt (this can be contrasted to the single Green Belt purpose served by the appeal site); reference to the "*significant impact*" on "*particularly sensitive*" views in the vicinity of Ribby Hall Village (which includes a heritage asset); concerns that the existing access would be unlikely to be suitable for the construction and operational traffic; as well as other concerns. This led the pre-application response to firmly conclude that "*this proposal is that it is not one that I am expecting will receive officer support and so I advise against progressing it further*." This can be contrasted against the positive pre-application engagement for the appeal site given by the Council here,[62] which led to a positive officer recommendation (albeit not followed by Members).

91. Considering this, not only is the site at Kirkham not more appropriate than the appeal site; it also actually fares considerably worse (at least in terms of a high-level assessment). It was wholly reasonable for the Appellant not to pursue Kirkham upon receiving this advice from Fylde Council, given the merits of this site were advised to be so problematic. In addition, even if this site was pursued, all the indications at the time were that it would almost certainly require an appeal. In these circumstances, given the urgent need for a new prison, it was sensible for the Appellant not to pursue this certain high-risk option.

92. Ms Cottle accepted that it was reasonable for the Appellant not to pursue Kirkham given the pre-application response. Mr Parker also agreed, stating that the negative pre-application response "*would present a barrier*".[63] Mr Parker's suggestion that the Appellant could have hedged their bets and made several planning applications on more than one site is not a fair suggestion and would certainly not be a good use of public money.

93. Finally, the timescales for pursuing a planning application at Kirkham now (following an appeal decision on this site) would not be appropriate to meet the urgent need for a new prison. Ms Hulse explained that the timescales would mean that, even if

[62] See CD A27, para 3.10, third bullet, recording that officers' pre-application advice for the appeal site was that a case for very special circumstances could likely be made in relation to the appeal proposal.
[63] His words in cross-examination.

permission was granted on appeal for Kirkham, it would likely be 2030 by the time a prison on this site could accept prisoners.

94. As to Stakehill, this site is a draft employment allocation, as part of a wider allocation, in the emerging Places for Everyone, Greater Manchester combined plan. This emerging plan has been submitted for examination, with hearing sessions expected in late 2022 and Spring 2023. Ms Hulse explained that a likely adoption date now, given the complexities in the joint plan, would be late 2024. Any planning application for Stakehill now would likely be refused on grounds of prematurity, and Ms Cottle agreed with this view.[64] Ms Hulse explained that waiting for this plan to be adopted, before making an application (which may be protracted given the master planning and design code requirements for this allocation), would likely only result in a prison on this site accepting prisoners in 2030-31. Again, this would not be appropriate to meet the urgent need for a new prison.

95. In addition, Mr Yeates explained that the Stakehill site has no apparent vehicle access, with nearby roads currently unsuitable as a primary access. Mr Parker agreed that this would be problematic – his suggestion that this could be solved by constructing a new motorway junction would be extremely costly and likely involve third party land. Whilst access issues may ultimately be resolved as part of bringing forward the larger allocation, this would inevitably involve considerable investment and delay.

96. It follows that not only is the site at Stakehill not *more* appropriate than the appeal site; it is also *less* appropriate than the appeal site.

97. Accordingly, there are no more appropriate sites than the appeal site to meet the urgent need for a new prison in this region. It has been demonstrated that the development cannot be accommodated on a non-Green Belt site or a more appropriate Green Belt site, and therefore the Green Belt harms from the development would be the inevitable consequence of meeting the urgent need for such a prison anywhere in the North West. The lack of an alternative site carries significant weight.

[64] in cross examination.

Benefits of the proposed development

98. The economic, social and environmental benefits that will flow from the development are overwhelming. These are addressed in the evidence of Ms Hulse and she rebutted the argument[65] that they are intrinsically linked to the scale of built development and should be discounted on that basis. The benefits are as much linked to the actual nature of the development (rather than its scale) and, in any event, the harm caused by the scale of development is taken into account on the other side of the balance. Consistently with the NPPF,[66] Ms Hulse attributes substantial weight to the significant economic benefits (also dealt with in the unchallenged written evidence of Mr Richard Cook[67]). It is inappropriate for the other parties to criticise the assessment of those economic benefits in closing in circumstances where the opportunity to cross examine Mr Cook was not taken up. Those benefits include:

    i) 122 gross temporary full-time equivalent (FTE) jobs supported during the construction of the development, of which 10% would be for local residents.

    ii) Once built and operational, 643 staff are expected to be directly employed at the prison; 347 of these roles (around 54% of all jobs) could be taken by people living in Chorley and South Ribble.

    iii) During the construction period there will be an estimated £117.2 million GVA (gross), and construction of the proposed development could support a further £96.5 million turnover/expenditure through the supply chain of which £32.2 million could be expected to occur at the local level.

    iv) The operational spend of the prison will amount to £13.7 million, supporting 230 jobs at a regional level; and the operational regional supply chain spend will equate to £17.9 million per annum supporting 299 jobs at a regional level.

99. Ms Hulse also attributes substantial weight to the social benefits of the appeal scheme, which include:

[65] Put by Mr Riley-Smith
[66] NPPF para 81
[67] See Appendix B of Ms Hulse's Proof. Mr Cook was available to be cross examined and both parties declined to do so. Both his proof and rebuttal evidence should be fully considered and taken into account.

i) The delivery of new prison places to meet the substantial and urgent need for new prison places in the North West, as set out above. The robust site search has showed that there are no alternative sites which are more appropriate for the purpose of meeting this need than the appeal site.

ii) The provision of safe, secure and modern facilities to deliver improved outcomes for prisoners and reduce reoffending rates. Ms Hulse explained that this is a significant social benefit in itself, in that the modern design of prisons (compared to older existing designs) achieves "*good social outcomes through transformative design*".[68]

iii) The replacement bowling green would be of at least an equivalent standard, and the new club house would be a significant enhancement to the existing club house provision[69].

iv) The package of measures agreed with the County Council will improve existing highway safety on surrounding roads and will enhance sustainable transport options.

100. Ms Hulse also attributes moderate weight to the environmental benefits, which include:

i) The delivery of a 20% biodiversity net gain ("BNG"), as explained in the evidence of Dr Chris Gleed-Owen.[70] Dr Gleed Owen's findings on BNG were unchallenged. Notably the 10% BNG requirement in the Environment Act 2021 has not yet been brought into force and is not applicable as law currently. A net gain of just 1% would be compliant with the encouragement to provide net gains in paragraph 174 of the NPPF. Viewed in this context, the delivery of a 20% BNG on the appeal site is significant.

ii) The majority of the site is previously development land, and the effective use of such previously developed land is strongly encouraged in paragraphs 119

[68] Answers in cross-examination.
[69] an agreed point in both Statements of Common Ground.
[70] Appendix C of Ms Hulse's Proof.

and 120 of the NPPF. Ms Cottle accepted that this was a moderate benefit of the scheme.[71]

iii) The new prison buildings will also highly sustainable, and would achieve BREEAM 'Excellent' rating, with endeavours to achieve BREEAM 'Outstanding'.

101. Finally, it is noted that there are a number of matters which are matters of agreement with the main parties and which do not weigh against the proposal.[72] This includes flooding, heritage, air quality, land contamination and ecology (which were either addressed by the Appellant's witnesses on the first day of the inquiry or in written notes in response to queries from the Inspector). Whilst there is some policy conflict caused by the loss of a sports pitch, both other parties agreed that this is only of limited weight and no party relies on this as a material policy conflict leading to a breach of the development plan.

The benefits clearly outweigh the Green Belt harm and any other harm, constituting very special circumstances

102. As set out above, the impacts weighing against the proposal are either limited in extent, or non-existent. When considering the impacts, it is important to bear in mind that the development cannot be accommodated on a non-Green Belt site or a more appropriate Green Belt site, and therefore the harms would be the inevitable consequence of meeting the need for such a prison anywhere in the North West.

103. Set against this are the overwhelming and substantial benefits that the proposed development will deliver. Clearly, any and all benefits which will flow from the development must be weighed in the balance. Ms Cottle's approach of discounting certain benefits on the basis that the development is in the Green Belt or because these benefits are allegedly "*generic*" is not a sound approach and involves double counting of Green Belt harm, and consequently very limited weight can be given to her skewed balancing exercise.

[71] As stated in cross-examination.
[72] As fully detailed in the Statements of Common Ground at CD C7 and C8.

104. These benefits do clearly outweigh the Green Belt harm, and any other harm, thus constituting very special circumstances justifying development in the Green Belt. This was the conclusion originally reached by officers for the Council (in recommending the grant of permission) and this is a view the Appellant endorses. Indeed, Ms Copley for UWAG fairly accepted that if it is concluded that the Appellant's site search has been reasonable and if an urgent need for the prison development is demonstrated, then this would amount to very special circumstances – that is exactly the position here.

105. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that decisions be made in accordance with the development plan, unless material considerations indicate otherwise. As set out above, the proposed development complies with the development plan as a whole; there is no breach of policy BNE1, which is the single policy relied on by the Council in their reasons for refusal. Thus, the clear decision in accordance with the development plan is to grant planning permission. Material considerations do not indicate otherwise; rather material considerations, in particular the relevant parts of the NPPF, further support the grant of permission.

106. On this basis, the Appellant respectfully requests that the Inspector recommend that the appeal be allowed and planning permission granted.

Jenny Wigley QC

Anjoli Foster

Landmark Chambers

22 July 2022