

1 March 2024

Via e-mail to:

Ms Leanne Palmer, Major Casework, The Planning Inspectorate

Ms Claire Pegg, Cushman & Wakefield

Ms Adele Hayes, Chief Planning Officer, Chorley Borough Council

Dear Sir/Madam,

**RE: LAND ADJACENT TO HMP GARTH AND HMP WYMOTT  
APP/D2320/329555**

1. By this letter, Ulnes Walton Action Group ('UWAG', the Rule 6 Party in this appeal) invites the Inspector to refuse to accept the proposed amendment or alternative to the appeal scheme set out in the Appellant's addendum evidence, first received by the other parties on 26 February 2024 ('the alternative scheme'), for the reasons fully explained below.

**BACKGROUND TO THE RE-OPENED INQUIRY**

2. In August 2021, the Appellant made an application for outline planning permission (**CD A1**), which was subsequently refused by Chorley Council on 22 December 2021 (**CD A100**). That application made no reference to the alternative scheme.
3. The Appellant appealed and the appeal was 'called in' by the Secretary of State. In July 2022, the Planning Inspectorate held an inquiry to consider the appeal, which lasted for 8 days. At that Inquiry, there was no reference to the alternative scheme. The Inspector, who had heard detailed evidence, recommended refusal of the scheme, partly due to the Appellant's failure to overcome highways objections, which gave rise to a clear reason for refusal.
4. Notwithstanding the Inspector's informed recommendation, on 19 January 2023, the Secretary of State for Levelling Up, Housing and Communities issued a 'minded to grant' decision in relation to the proposed scheme. Within that decision the Secretary of State agreed with the Inspector that the scheme advanced by the Ministry of Justice would "*exacerbate existing hazards and risks within the local road network*" and concluded that the scheme as proposed would have "*an unacceptable impact on highway safety*" contrary to local and national policy. Taking a surprising and unorthodox approach, the

Secretary of State considered that “*it is possible that the highway safety issues could be satisfactorily addressed*” so invited the parties to “*provide further evidence on highways issues, including in relation to an amended s 106 planning agreement*” as well as rebuttals.

5. Initially it appeared that the Secretary of State envisaged this process involving no more than written representations. As set out in written representations by the Council and UWAG at the time, fairness required the re-opening of the Inquiry in order to test any evidence which arose. The Inquiry was subsequently reopened with a limited remit concerning highway safety matters, as communicated to the parties on 06 April 2023.

6. A case management conference took place on 22 June 2023. The note produced by the Inspector following that conference explains:

*“4. The SoS stated in his letter dated 19 January 2023 at paragraph 18 that further evidence on highways issues could be provided and responded to by the parties. **The paragraph then states that this should address the gaps in evidence noted elsewhere in his letter and any further evidence which parties consider is relevant to this matter.** In a letter dated 06 April 2023, the SoS confirmed that the remit of the reopened inquiry will be to consider such evidence on highway safety matters **identified in his 19 January letter** as the parties shall put forward.”* (emphasis added)

7. From the minded to grant decision and the Inspector’s interpretation as set out in his note of the CMC, it is clear that the original scope of the re-opened inquiry, and the evidence filed for it, was to address the gaps identified by the Secretary of State in so far as they concerned highways safety, or further evidence relevant to that matter (i.e. the gaps identified concerning highway safety in the scheme).

8. The Inquiry was due to re-open on 19 September 2023. In preparation for that Inquiry, proofs of evidence were exchanged by 22 August 2023. The Appellant’s evidence made no reference to the alternative scheme now relied upon. Before any rebuttals were served, around 8 September 2023, the Inquiry was further postponed, to be heard over at least four days, commencing 25 March 2024.

9. Around a month after the Inquiry had been further postponed, on 6 October 2023, a Decision Officer from the Planning Caseworker Unit at the Department for Levelling Up, Housing & Communities wrote to the parties stating that:

*“Given the amount of time that has elapsed since his ‘minded to grant’ letter was issued on 19 January 2023, the Secretary of State considers that the*

*reopened inquiry should also cover any material change in circumstances, fact or policy that may have arisen since the previous inquiry."*

10. Via emails of 11 and 13 October 2023, the Appellant's agent, Claire Pegg, confirmed that it did not consider there to have been any changes to policy, legislation or other matters which might warrant any extension of the allotted time; a position shared by the other parties.
11. On 3 November 2023, the Planning Inspectorate indicated that any existing rebuttals should be provided by 16 November 2023. That deadline came and went without any reference to the alternative scheme. By the same correspondence, the Planning Inspectorate indicated that the Inspector was amenable to the submission of updated highways proofs of evidence 4 weeks before the reopened inquiry, provided they focus on any material changes that may have arisen since the current proofs of evidence were drafted. Rebuttals to updated proofs should be submitted 2 weeks before the reopened inquiry.
12. Following this correspondence, UWAG heard nothing further from the Appellant for the best part of three months. On 26 February 2024 (i.e., over 18 months since the original inquiry, and over 30 months since the submission of the planning application), the Appellant filed a further 137 pages of technical evidence, advising that "*an agreement is now in place for the MoJ to secure land beyond the control of the local highway authority, and therefore the Appellant has developed an alternative scheme for the A581/Ulnes Walton Lane junction*" (§§1.1.2-1.1.3, §6.1.1(b)), i.e., seeking to address in a wholly new way one of the highway safety issues raised by the Inspector in his recommendation. Mr Yeates, the Appellant's witness, concludes "*the Appellant is committed to deliver either the original scheme....or the alternative scheme... as both accord with design standards*" (§6.2.1).
13. It is inevitable that, if this new evidence is admitted, UWAG will have to incur further significant time and costs in responding to it, and the same is likely to be true of the Council.

#### **AMENDING A PLANNING APPLICATION: PRINCIPLE**

14. The planning appeals process should not be used to evolve a scheme. It is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the LPA and interested parties at the application stage: Procedural Guide: Planning Appeals – England, para. 16.1.
15. Para. 16.2 of that guidance sets out that where amendments are proposed during the appeals process, the Planning Inspectorate will consider whether, exceptionally, to accept them.

16. Two key questions arise (see *R (Holborn Studios Ltd) v L.B. Hackney & Anor* [2020] EWHC 1509 (Admin); as also set out at §1.6.3 of the Inspectorate's Procedural Guide):
  - a. Whether the proposed amendment involves a substantial difference or fundamental change to the application i.e. would it make the development something that was not in substance not what was applied for [*Holborn Studios* at [73]];
  - b. Whether, if the proposed amendment was allowed, it would cause procedural unfairness (*Holborn Studios* at [78]).
17. Where the answer to either question is yes, then either the amendment to the scheme should not be considered, or steps taken to ensure procedural fairness.
18. In so far as procedural fairness is concerned, parties to a planning inquiry are entitled to know the case they have to meet and have a reasonable opportunity to adduce evidence and make submissions (*Hopkins Developments Limited v Secretary of State for Communities and Local Government* [2014] PTSR 1145

## **APPLICATION**

19. The Appellant states that it remains committed to delivering either the original or the alternative scheme.
20. In reality, its reliance now on an alternative scheme at the eleventh hour appears to be a last-gasp, "Hail Mary" attempt to drastically amend the existing scheme (for the first time) to overcome clear planning objections which the parties opposed to the proposals have always maintained (and continue to contend) are fatal to the planning merits of that scheme.
21. In effect, the Appellant – having singularly failed to persuade the Council at application stage and the expert Inspector at the first inquiry of the merits of its scheme in relation to highways issues – has subsequently sought to leverage its unparalleled governmental resources to exploit extensive procedural delay. It is worth noting that this extensive procedural delay has in great part been caused by what appears to have been a political imperative to afford the Appellant an unusual second bite at the appeal cherry, despite the shortcomings of its original evidence. Plainly, if the Inquiry had gone ahead in September 2023, this scheme would not have been available; it has not been foreshadowed at any point until February 2024.
22. To afford the Appellant the opportunity to evolve its scheme on appeal at this exceedingly late stage is wrong and contrary to procedural fairness.

23. As above at §12, the proposal contained in the latest proof of evidence of Steven Yeates is, by his own description of it, an entirely new and “*alternative scheme*” for the A581/Ulnes Walton Lane junction, including the following, entirely new provisions:
  - a. The provision of a raised table;
  - b. The provision of speed cushions along the A581;
  - c. Three new lighting columns on the Ulnes Walton Lane approach;
  - d. Relocated speed limit signs;
  - e. Dragons teeth on all approach arms.
24. If (contrary to the foregoing) the new proposals do *not* amount to an amendment to the scheme, and in any event, it would be procedurally unfair for them to be considered now for the following reasons:
  - a. Firstly, it is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the LPA and interested parties at the application stage. The alternative scheme now relied upon materially changes that scheme, such that it is substantially different from the original application, and gives rise to a host of new considerations (and considerable further cost expenditure if it is to be relied upon and tested at inquiry).
  - b. Secondly, the Appellant has evaded the requirement to consult on its new scheme which prejudices consultees who have not had an opportunity to consider the new scheme.
  - c. Thirdly, aside from a tight two-week window for rebuttals, there is no proper opportunity for those parties opposed to the proposals to consider the new scheme and file our own evidence on the same, contrary to *Hopkins Developments Limited*. If the amended scheme were allowed to be considered, it would (in the circumstances) cause irremediable procedural unfairness (and further, wholly unnecessary costs) to the other parties. Perpetual adjournment until the Appellant has its ‘ducks in a row’ is no proper way to conduct the appeal process.
25. For all of these reasons, we invite the Inspector to refuse to consider the Appellant’s alternative solution to the A581/Ulnes Walton Lane junction at this late stage, which would amount to an amended scheme.

## **ALTERNATIVE**

26. In the alternative, if the amended scheme contained within the latest evidence from Mr Yeates *is* to be considered, the parties should be afforded sufficient time to consider it, and (if appropriate) to respond by their own evidence. That would require, at the minimum, an adjournment of the inquiry scheduled to begin on 25 March 2024. UWAG would be open to commencing the inquiry in the week presently set aside as a 'reserve week', i.e., the 4 days commencing 23 April 2024, with an appropriate direction that evidence in rebuttal be produced by (say) 2 April 2024.

## **CONCLUSION**

27. In the premises it is submitted that the new evidence from the Appellant amounts to an amendment to the original planning application which fails the *Holborn Studios* test, and amounts to procedural unfairness in any event, and should not be permitted at this very late stage.
28. Accordingly, the Inspector should not consider the new "alternative scheme".
29. Alternatively, if the Inspector is not minded so to rule, the inquiry scheduled to begin on 25 March 2024 should be adjourned to 10am on 23 April 2024, with consequent directions for evidence.
30. We would be grateful if the Inspector would confirm urgently whether he will allow the Appellant to rely on its amended scheme, and/or whether he intends to adjourn the inquiry, in order that the appropriate arrangements can be made.

Yours faithfully

Emma Curtis, Lynette Morrissey, Paul Parker

**ULNES WALTON ACTION GROUP**