

**RE-OPENED APPEAL BY MINISTRY OF JUSTICE**

**LAND ADJACENT TO HMP GARTH AND HMP WYMOTT, LEYLAND**

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**OPENING SUBMISSIONS ON BEHALF OF COUNCIL**

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**COUNSEL:**

Piers Riley-Smith

**INSTRUCTED BY:**

Alex Jackson, Chorley Council

**WITNESS:**

Mr Kevin Riley, Director, WSP (Transport)

1. This is an called in appeal against Chorley Borough Council's ('the Council) refusal of planning permission for the hybrid planning application for a prison, boiler house and bowling green/club house at on land adjacent to HMP Garth and HMP Wymott, Leyland ('the Site').
2. On 20 October 2022 – after a seven-day public inquiry – the Inspector recommend that the Appeal be dismissed given the harm to the Green Belt, the character and appearance of the area, and highway safety.
3. In relation to highway safety the Inspector concluded at 13.35<sup>1</sup>:

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<sup>1</sup> CD L1

*In conclusion, the proposal would exacerbate existing hazards and risks within the local road network, where the appellant's evidence (including the TA) on the proposed mitigation measures is lacking in detail and confidence that they would have the desired effect. Therefore, the proposal would have an unacceptable effect on highway safety contrary to CLP Policy BNE1(d) and NPPF paragraphs 110(d) and 111*

4. The Inspector's conclusions as to highway safety were agreed with by Lee Rowley MP on behalf of the Secretary of State ('SoS') at paragraph 17 of the Decision Letter<sup>2</sup> dated 19 January 2023:

*Overall, the Secretary of State agrees that the proposal would exacerbate existing hazards and risks within the local road network, where the appellant's evidence on the proposed mitigation measures is lacking in detail and confidence that they would have the desired effects (IR13.35). As such, on the basis of the evidence before him, he agrees (IR13.35) that the proposal would have an unacceptable effect on highway safety contrary to CLP Policy BNE1(d) and paragraphs 110 (d) and 111 of the Framework. He further agrees that on this basis, this matter should carry substantial weight against the proposal (IR13.87).*

5. This led the SoS to conclude – like the Inspector - that Very Special Circumstances did not exist, and that permission should be refused. Un-usually however this was not the end of the matter. Instead, the Appellant was given a second chance to address the highway safety issues identified by the Council, UWAG, the Inspector and the SoS. This has led us back here to the re-opened inquiry.
6. Since January 2023 the Appellant has had a two additional 'bites of evidential cherry' producing a first batch of evidence in March 2023 followed by an updated further alternative design for the A581/Ulnes Walton Lane junction produced almost a year later in February 2024 – a month before this inquiry has re-opened.
7. The question for this inquiry is whether the Inspector and the SoS's concerns have been addressed by the new evidence and designs which the Appellant has produced over the last year and a half. The Council's case – through the re-calling of Mr Riley – is a

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<sup>2</sup> CD L1

resounding no. The concerns remain and have, in fact, been illustrated by the evidence produced by the Appellant.

8. It is important at the outset to note that this is not a normal inquiry. The parties are not starting afresh but instead there is a clear finding from both the Inspector and the SoS that the appeal proposal will have an unacceptable impact on highway safety which was not addressed previously by the Appellant. This is the starting point for the re-opened inquiry and the onus is on the Appellant to show enough have been done to change those evidenced and justified previous conclusions.
9. As set out in the SoCG<sup>3</sup>, as well as a general concern that the appeal proposal would continue to have an unacceptable impact on highway safety and be contrary to NPPF 115 – there are five areas of specific concern to the Council:
  - i) Ulnes Walton Lane Carriageway Markings and Traffic Calming
  - ii) Moss Lane Traffic Calming
  - iii) Footway between Ulnes Walton Lane and Moss Lane
  - iv) A581/Ulnes Walton Lane Mitigation
  - v) Construction Phase Assessment
10. In relation to issues i to iii) Mr Riley will set out why the updated mitigation measures fall far short of addressing the Inspector and SoS concern's both in terms of what is provided, and what is still missing. The significance increases in the number of daily vehicle movements (which is an established previous finding of the Inspector per 13.20 of his Report<sup>4</sup>) will continue to pose a safety risk both to vehicles using Ulnes Walton and Moss Lane and Non-motorised Uses (pedestrians, cyclists and equestrians).
11. In relation to issue iv) Mr Riley will set out why the necessary mitigation<sup>5</sup> of the A581/Ulnes Walton Lane junction has not been provided. At the last inquiry the Appellant suggested that a mini roundabout could be provided without setting out the detail of how this could be achieved (and without providing a design). The safety and

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<sup>3</sup> Core Document P2

<sup>4</sup> CD L1

<sup>5</sup> It is accepted by all parties that the traffic impact from the development on the junction must mitigated in some way.

appropriateness of such a scheme was disputed by the Council. The detail was subsequently provided with a first design in 2023 ('the 2023 Design') and a second different design in 2024 ('the 2024 Design') – and Mr Riley will set out why the Council's concerns have been realised.

12. In relation to the 2023 Design the Council will set out how there are several fundamental safety issues with the design which make the proposed mitigation unacceptable in highway terms. The raising of these fundamental issues in Mr Riley's August 2023 proof is seemingly what led the Appellant to produce a further design after quickly acquiring more land around the problematic junction.
13. But despite having worked up the 2024 Design in full knowledge of Mr Riley's concerns, as will be set out it still fails to address the fundamental issues raised. This is not through lack of trying by the Appellant – but reflects that fact that the Appellant is trying to deliver a type of mitigation that is fundamentally unsuitable for this location and the envisaged substantial increase in traffic flows (operational and construction). The Council will show how the Appellant has now twice failed to fit a square peg in a round hole which starkly illustrates that in highway terms the appeal proposals cannot be safely delivered.
14. Finally in relation to issue v) – which again related to a lack of evidence, which now provided has confirmed the Council's fears – Mr Riley will set out how the significant level of HGV and car traffic along narrow semi-rural lanes for over a three year period is unacceptable in highway safety terms.
15. Overall, while not usually the case in planning appeals, a burden does exist in this re-opened appeal and it rests with the Appellant to show that the fundamental highway concerns that the Council, UWAG, the Inspector and the SoS had with the appeal proposals previously have now been addressed. If they cannot, then permission will be refused (per the terms of Mr Rowley's Decision Letter).
16. Through the expert evidence of Mr Riley the Council will show that the Appellant has failed to discharge that burden. The fundamental highway safety issues remain, and in fact, have been further illustrated by the Appellant's attempts to address them.

17. In highway terms, this is the wrong place for the appeal proposal as it would cause unacceptable impacts in highway safety. On that basis, at the end of this inquiry, the Council will ask the Inspector to maintain your view and ensure that the SoS reaches the right decision (for the second time).

*Piers Riley-Smith*

*25<sup>th</sup> March 2024*

KINGS CHAMBERS

MANCHESTER – BIRMINGHAM - LEEDS