

**APPEAL BY THE MINISTRY OF JUSTICE  
LAND ADJACENT TO HMP GARTH AND HMP WYMOTT, LEYLAND,  
LANCASHIRE**

**OPENING ON BEHALF OF  
ULNES WALTON ACTION GROUP (RULE 6 PARTY)**

1. This opening statement has been prepared on behalf of Ulnes Walton Action Group ('UWAG'), the Rule 6 party in this appeal. UWAG maintains its objection to the appeal scheme, including on the highways issue which this re-opened inquiry shall consider.
2. We start with a simple proposition.
3. The planning process is multi-faceted and involves the consideration of various interrelated issues.
4. That was demonstrated at the last inquiry, where evidence and submissions covered diverse ground from the need for prison places to green belt policy, noise to highways, and so on.
5. Having considered that wide range of issues and reached conclusions on each, the Inspector recommended that the appeal be dismissed.<sup>1</sup>
6. His reasons included that the proposal would have an unacceptable effect on highway safety contrary to (then) paragraphs 110 (d) and 111 of the NPPF, as well as local policy; but (importantly) was that *overall*, the benefits of the scheme did not clearly outweigh its harms, taken together, such as to amount to very special circumstances<sup>2</sup>.
7. The Secretary of State agreed that the proposals would have exacerbated existing hazards and risks within the local road network, where the Appellant's

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<sup>1</sup> IR/14.1

<sup>2</sup> IR/13.89

evidence (including the TA) on the proposed mitigation measures was lacking in detail and could not provide confidence as to achieving the desired effects. This weighed heavily against the proposal in the overall planning balance.<sup>3</sup>

8. In the light of that recommendation, the Secretary of State took an unusual position of stating that he was conditionally minded to allow the appeal and grant planning permission.<sup>4</sup> The condition was that, once the parties had the opportunity to provide further evidence on highways issues, he could be “*satisfied that these matters can be satisfactorily addressed*” (sic).<sup>5</sup>
9. The inquiry has been reopened principally to further interrogate these highways concerns, with further technical and factual evidence submitted by the three main parties to this appeal.
10. Obviously, the Inspector will need to reach a view on whether the Appellant has demonstrated that the appeal scheme will not have an unacceptable effect on highway safety (i.e., contrary to local or national policy).
11. The Local Highways Authority (‘LHA’) has no objection to the appeal scheme. However, that was the case last time around, a position directly rejected by the Inspector and Secretary of State. Although the statutory consultee’s views must be taken into account, ultimately the Appellant’s case needs to be made good not by deference to the LHA but on what the evidence shows (or fails to show).
12. At this reopened inquiry, UWAG will stand behind the Council’s case, which similarly still opposes the grant of planning permission for the appeal scheme. We will seek to minimise duplication of points with a view to ensuring the efficient running of the appeal. Unless expressly stated, we fully endorse the evidence and case advanced by the Council.

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<sup>3</sup> CD L1, IR 13.35

<sup>4</sup> DL/4

<sup>5</sup> DL/4

13. UWAG will also seek to present its own case. In a nutshell, the further evidence put in by the Appellant has not satisfactorily addressed the highways issues with the appeal scheme, and in many cases leaves more questions than it provides answers. In particular, there remain serious concerns over:
- a. the junction between Moss Lane and Ulnes Walton Lane;
  - b. the junction between Ulnes Walton Lane and the A581 to the south;
  - c. the construction phase of development; and
  - d. the safety of non-motorised users of Ulnes Walton Lane.
14. UWAG's case is supported by the evidence of four witnesses.
15. The first, Mr Graham Eves, is a professional highways expert with extensive experience, including in giving evidence at numerous planning inquiries. He has prepared a proof with appendices and a rebuttal in advance.
16. The other three – Mr Paul Parker, Ms Lynette Morrissey and Ms Emma Curtis – are residents from the area where the appeal scheme is proposed. They each give factual evidence based on their local experience and knowledge. None are highways experts in any formal sense, although the uncharacteristically protracted nature of the current proceedings mean that they have more experience of planning inquiries than they would like.
17. UWAG's advocates - Mr Josef Cannon KC, Matthew Wyard and Jack Barber - remain the same team of barristers who took on the case via Advocate (the Bar's pro bono charity) almost two years ago. This time around, the team intends to split some of the advocacy.
18. If – as both UWAG and the Council say – the evidence before the Inspector cannot satisfy him as to highway issues, such that the proposals continue to give rise to unacceptable highways impacts, then the Inspector should (obviously) maintain and repeat his recommendation that planning permission should be refused. In a case such as this one, it is not appropriate to “kick the can” any further down the road to wait and see what happens.

19. However, even if – contrary to UWAG’s case – the Appellant has satisfactorily addressed the highway issues said to arise from the appeal scheme, or has addressed some but not all, such that what remains might not, by itself, justify refusal in its own right, the Inspector is not obliged to recommend the grant of planning permission. His previous findings remain otherwise unchallenged, and his experienced professional judgment remains integral in properly informing and advising the ultimate political decision-maker. To warrant permission, the Appellant needs to show that ‘very special circumstances’ arise, which is the output of a weighing of *all* the harm against *all* the benefits.

20. Given the passage of time and the unusually focused nature of this re-opened inquiry, we should all keep in mind that the Inspector’s finding on highways related to main issue three of five identified at the first CMC.<sup>6</sup>

21. This is important context for this appeal because the Inspector’s previous recommendation involved a much more nuanced analysis of the planning merits. As we said a moment ago, the planning process is multi-faceted and involves consideration of various interrelated issues.

22. His other main conclusions remain unchallenged and several of them militate strongly against recommending the grant of planning consent, irrespective of the highways picture:

- the appeal scheme would have a significant harmful effect on the openness of the Green Belt and cause significant conflict with one of the five Green Belt purposes, with that harm and conflict to be weighed in the overall planning balance<sup>7</sup>;
- there would be a significant harmful effect on the character and appearance of the area, contrary to CLP Policy BNE1(c), carrying significant weight in the overall planning balance<sup>8</sup>;

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<sup>6</sup> CD L1, IR 13.2

<sup>7</sup> CD L1, IR 13.9

<sup>8</sup> CD L1, IR13.17

- The Appellant's case that there was an urgent need for this prison, and that there are no alternative sites, was essentially rejected, attracting only moderate weight<sup>9</sup> in the balance; and
- Overall, the very special circumstances necessary to justify the proposal do not exist.<sup>10</sup>

23. In due course, UWAG will invite the Inspector to recommend dismissal of the appeal and the refusal of planning permission.

Josef Cannon KC  
Matthew Wyard  
Jack Barber

24 March 2024

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<sup>9</sup> Hulse Proof at 10.24: contending for *substantial* weight in favour of permission

<sup>10</sup> CD L1, IR 13.89