

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

**CLOSING SUBMISSIONS ON BEHALF OF THE RULE 6 PARTY
ULNES WALTON ACTION GROUP**

INTRODUCTION

1. These closing submissions are delivered in late April 2024. This has been a protracted process and for the residents of this corner of the world, a gruelling one. It has also been surprising. We said, when closing the previous inquiry, that Ulnes Walton Action Group (“**UWAG**”) had been surprised at how cavalier the Ministry of Justice’s (“**MoJ**’s”) case had been, and how difficult that had made it for UWAG to engage. Your findings effectively endorsed that suggestion: the case was riddled with gaps. For reasons UWAG found baffling, the MoJ were given a second chance, but far from taking that opportunity to dispel the concerns about its scheme, the MoJ have fallen short **again**. UWAG’s sense of dissatisfaction about it all has only been compounded by this re-opened inquiry. At the end of these closing submissions, we will ask you to reach the same finding: too many gaps, uncertainties and concerns remain unresolved, and this scheme should be refused.

2. In particular, the MoJ having comprehensively failed to persuade either you, or the Secretary of State (“**SoS**”), of its case that there were no highways concerns arising from its proposal, since January 2023 (when that news landed) we have seen a self-evidently unsatisfactory scheme for a mini-roundabout promoted, in the face of multiple serious concerns from the two Road Safety Audits (“**RSA**”) carried out, and then, at the 11th

hour, a further scheme (which also gives rise to serious RSA concerns), but no accompanying acknowledgment that the 2023 design was flawed.

3. The sheer quantum of extra, frankly unnecessary work that approach has necessitated will be addressed in our costs application. For these closing submissions, we simply say that it is astonishing that we have reached this point in the process and so much remains unresolved.
4. The headline, in our view, is that the MoJ's highways proposals remain hopelessly unsatisfactory. In almost every respect, the concerns expressed in the Inspector's Report (and endorsed by the SoS remain unresolved:
 - (i) There has been no change to the visibility issues noted in respect of the Ulnes Walton Lane/Moss Lane junction: Mr. Yeates' best case is that when he went on site on his own, and measured by eye using a plant pot as a reference, and then plotted that against the topographical survey, the visibility was one metre above the absolute minimum required by Manual for Streets 2. If Messrs Eves and Riley are right that for semi-rural roads such as Ulnes Walton Lane ("UWL"), a modicum of judgment is required, and some reference to DMRB standards is warranted, the visibility is grossly insufficient, even on Mr. Yeates' own case. That there have been precious few PIA's at this point over the years didn't assist last time, and doesn't assist now: the proposal is to dramatically increase the number of vehicles using this junction.
 - (ii) The concerns about access to the bus stops and post box on UWL have been addressed *only* in respect of the bus stop serving the northbound carriageway, where a 2m wide footway has been introduced. The post box is ignored, apparently (as before) because Mr. Yeates thinks no-one uses it. They do. The southbound bus stop is ignored, despite it being proposed by the MoJ to upgrade the bus service to make it two-way (and thus utilise that bus stop). The impression was that Mr. Yeates had simply forgotten that detail. Even the footway serving the northbound bus-stop has issues: Mr. Eves pointed out in August 2023 that installing signage and street furniture might impinge on this 2m: Mr. Yeates simply kicks the can

down the road and says that'll all be worked out later. If it is so easy to resolve, why not produce a drawing showing it? It's not as if there hasn't been time.

- (iii) Concerns about speeding on Moss Lane have been 'met' by nothing more than painted markings on the road; with the exception of a raised table at the southern end of Moss Lane, painted road markings are the sum of the MoJ's response to concerns about speeding on that road, notwithstanding that the proposals will entail removing one factor which suppresses speeds: the poor road surface.
- (iv) Until February 2024, the absence of any scheme for the UWL/A581 junction had been 'met' by the production of a proposed mini-roundabout design, which attracted a series of concerns by both consultancies asked to audit it for road safety, both essentially recommending the MoJ think again about the appropriateness of a mini-roundabout here. The proposed design - on any vaguely sensible use of language - failed to accord with accepted design standards as to visibility; it was (and remains) self-evidently unacceptable as a form of mitigation for this junction.
- (v) At the 11th hour - despite it having been in advanced stages of preparation at least as long ago as September 2023, a completely redesigned scheme was produced. It appears to *increase* the overall junction delay compared to the 2025 without development situation, and whilst it provides an improvement in the unacceptable RFC for the AM peak compared to the 2025 without development scenario, it does so only 'marginally' and does not bring it below the acceptable threshold of 0.85 (or 85%).
- (vi) When it was audited for road safety implications, it attracted the suggestion that splitter islands should be included to assist with definition. It turns out that that key recommendation of the RSA has been dismissed as unnecessary by Mr. Yeates and will not feature. Leaving aside his attempt to justify that, it is self-evidently impossible to incorporate splitter islands because of the presence of the private driveways giving onto the roundabout. The otherwise-diverting debate about whether these constitute 'arms' should not obscure the reality of the position: their presence adds significant complexity to what is already a challenging junction.

(vii) Remarkably, Mr. Yeates' position seemed to boil down to pointing to an apparently random selection of ten mini-roundabouts across the county, and pointing to the low PIA record at each, as somehow providing comfort that this mini-roundabout, in this location, on the county cycling route and featuring a significant number of cyclists using it each day, and also due to take the entirety of the construction traffic from the five year construction period of a national-scale construction project, will be fine. That should not be sufficient. This is an evidence-led process. The irresistible impression is that this is not a sensible location for a mini-roundabout – just as the Council and UWAG have said throughout.

(viii) As to the concerns expressed about construction phase traffic using UWL, since the decision it has been confirmed that the volume of HGV traffic will be greater, and for longer, than the numbers on which that assessment was based: the position has got worse. In response we have diagrammatical confirmation that two HGVs *cannot* safely pass for extensive stretches of UWL; we have a vehicle tracking output report for three construction phase routes that will *not* be used, but none for either route 4 or 5 proposed to be used; we have a very high-level report from someone who drove a HGV one way along routes 4 and 5 at some unspecified point on one day and professed the route to be 'suitable'; and we have Mr. Yeates reassuring us that construction traffic uses narrow roads all over the country; that he once saw two HGVs pass one another on a road somewhere else; and that you can't only locate new prisons at the end of A-roads.¹ None of that should be given any credence. It is, in truth, completely inappropriate in this context.

5. So, before we turn to the detail, it is worth just stepping back and recalling that the entire purpose of this inquiry is to give the MoJ an opportunity to resolve those parts of its case that were found to be unsatisfactory on the last occasion. UWAG accepts that it has resolved *two* of those concerns: visibility on the approach to the UWL/A581 junction (very belatedly), and pedestrian access to the northbound bus stop on UWL. The remainder are unresolved. If you agree, then the recommendation must remain the same: the highway implications of this proposal are unacceptable.

¹ Although on the location of prisons near major roads, see Kirkham: UWAG remains convinced that is a preferable site for this project.

PRELIMINARY ISSUES

(i) The role of the planning system

6. Highway safety is critically important in planning appeals, as one of the few areas of national policy which justifies immediate refusal of a scheme where it has an unacceptable impact. In short, if you find that the highway safety implications of the proposal remain unacceptable, you will no doubt recommend refusal (again); and if the SoS agrees that they are unacceptable, he will refuse permission.
7. These closing submissions provide the community perspective on the unacceptable impact that this development will have on highway safety, contrary to national and local policy, whilst summarising why the technical objections maintained by Mr. Eves (for UWAG) and Mr. Riley (for the Council) should be preferred to the case for the MoJ as endorsed by Mr. Yeates. We will conclude by inviting you to reiterate your initial view of this scheme: it causes harm that is not outweighed, let alone clearly, by the benefits; and in particular, there is an unacceptable impact on highway safety.

(ii) The Inspector's previous recommendation

8. Given the passage of time and the unusually focused nature of this re-opened inquiry, it should not be forgotten that the Inspector's finding on highway safety related to only *one* of the five key issues identified at the first CMC.²
9. Last time, having considered that wide range of issues and having reached conclusions on each, the Inspector recommended that the appeal be dismissed. 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.**”³

² CD L1, IR 13.2.

³ IR/13.89.

10. This is important context for this appeal because the Inspector's previous recommendation involved a much more nuanced analysis of the planning merits, and of which the highway safety implications were only a part. The planning process is multi-faceted and involves consideration of various interrelated issues.
11. All of the other main conclusions remain unchallenged and several of them militate strongly against recommending the grant of planning consent, irrespective of the highways picture:
- (i) 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 balance⁴;
 - (ii) 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 balance⁵;
 - (iii) the MoJ's case that there was an urgent need for this prison, and that there are no alternative sites, was essentially rejected, attracting only moderate weight⁶ in the balance; and
 - (iv) overall, the very special circumstances necessary to justify the proposal do not exist.⁷
12. The reopened inquiry is unusually focused in its scope. There is no basis to impugn the above judgments. The SoS has asserted that if highway safety matters are resolved, then very special circumstances would exist, such that material considerations would justify a decision other than in line with the development plan.⁸ However, at no point to date has the SoS had the benefit of the Inspector's uniquely privileged perspective.⁹ We say that

⁴ CD L1, IR 13.9.

⁵ CD L1, IR13.17.

⁶ Hulse Proof at 10.24: contending for *substantial* weight in favour of permission.

⁷ CD L1, IR 13.89.

⁸ CD L1, DL/39.

⁹ As expert tribunal appointed to report back to him on the matters arising on appeal.

the Inspector is entitled (indeed, required) to offer a view as to the outcome of the key test (whether the harms are clearly outweighed) in light of his new conclusions on the highways position. Put simply, would very special circumstances arise if the highway safety concerns were fully addressed? What if they were partially addressed? This is the key planning judgment required in this case: is the totality of the harm – which must include any highway safety harm remaining following this re-opened inquiry – clearly outweighed such that very special circumstances arise? We say not. But either way, the SoS should have the benefit of the Inspector’s view on that question.

(iii) Approach to the SoS’s letter and the Inspector’s previous findings

13. At the July 2022 inquiry, Mr. Yeates described how “*a comprehensive package of measures has been agreed with the LCC which will improve the existing highway and enhance road safety*”.¹⁰ He concluded that the proposals would not have an “*adverse impact on highway safety, let alone an impact which could reasonably be described as unacceptable*”.¹¹ Ultimately, the IR and the SoS reached a conclusion diametrically opposed to Mr. Yeates on the scheme then before them. He was wrong.

14. In relation to highway safety the Inspector concluded (emphasis added):

In conclusion, the proposal would exacerbate existing hazards and risks within the local road network, where the [MoJ’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 111.¹²

15. The SoS’s overarching conclusions mirrored (indeed, adopted) the Inspector’s conclusion (emphasis added):¹³

Overall, the Secretary of State agrees that the proposal would exacerbate existing hazards and risks within the local road network, where the [MoJ’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

¹⁰ E4, §7.1.1.

¹¹ E4, §7.2.2.

¹² IR/13.35.

¹³ DL/15-17.

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).¹⁴

16. Despite agreeing with the Inspector on highways issues, the SoS decided to give the MoJ another shot at resolving things and said that subject to being persuaded that highway safety could be satisfactorily addressed (whatever that means), he was minded to allow the appeal.¹⁵
17. We are in unusual territory. The MoJ's expert witness who last time sought to suggest that a finding of unacceptable effect on highway safety would be unreasonable or irrational¹⁶, now once again seeks to deny any issue. For Mr. Yeates, it has always been a case of *nothing to see here*, even when he was plainly and demonstrably wrong. And yet, despite the MoJ's efforts last time, the Inspector and the SoS have clearly found that the proposal will have an unacceptable impact on highway safety which was not previously addressed by the MoJ. The onus is on the MoJ to make good their case, i.e., that all unacceptable highways safety concerns have been resolved.
18. Relatedly, it is not enough for the MoJ to say that the proposal is better than the previous one, and therefore permission should be granted because it is important that the prison gets built. The revised scheme simply has to be better than what came before – that is necessary but not conclusive.
19. It is notable that the MoJ has dropped the approaches previously advanced and changed tack by providing additional evidence, in some instances with new or alternative mitigation responses. In the case of the A581/UWL junction, this has happened not once but twice since the last inquiry (and having read Via's 2023 RSA recommendations, one cannot help but conclude that the reason we got a second design – at further public expense and at the last minute – was because the MoJ really knows that the first indicative design it came up with in Spring 2023 fell short of what was required) .

¹⁴ DL/17.

¹⁵ DL/4.

¹⁶ E4, §7.1.1.

20. We submit that the decision-maker now needs to ask three broad questions when considering whether the identified highway safety concerns have been *satisfactorily addressed* by the new evidence and designs which the MoJ has produced over the last year and a half:
- (i) First, would the proposal exacerbate existing hazards and risks within the local road network?
 - (ii) Second, does the evidence presented at the Inquiry remain lacking in detail, or is it otherwise defective such that the decision-maker cannot have confidence that the proposed mitigation would have the desired effect?
 - (iii) Third, would the proposal have an unacceptable effect on highway safety, contrary to national and local policy?
21. In short, the MoJ's evidence has not come close to supporting a different conclusion from the one reached by the Inspector (and endorsed by the SoS) last time around.
- (iv) **Approach to the Local Highways Authority ("LHA")**
22. The production of professional transport assessments is intended to provide a sufficient and satisfactory basis for considering highways impacts. The process is not formulaic and necessarily requires a number of assumptions and professional judgements to be applied. As such, there is significant scope for disagreement between professionals and it will often be the case that two different assumptions can both be reasonably made, where justified in the particular circumstances of the case. For this reason, those undertaking transport assessments generally apply a precautionary approach, making conservative assumptions that demonstrate a robust outcome, and look to a 'worst case' in order to provide comfort that they are robust.
23. In relation to the present scheme, the LHA continues to have no objection to the MoJ's proposed mitigation.

24. Proper respect should be given to the opinions of statutory consultees, and clear and cogent reasons should be given if departing from those opinions.¹⁷ However, that does not mean that decision-makers should simply defer to those statutory consultees, and in this case the decision-maker is entitled to – and we say should – disagree with the ultimate conclusion drawn by the LHA here.
25. We say this because in reality, reliance on LCC’s views as LHA without *much* more is utterly hopeless:
- (i) The LHA waved through the first scheme as presented in the 2022 appeal, despite the LPA, the Inspector and the SoS each ultimately concluding that the proposed scheme gave rise to unacceptable highway safety issues such that there was – at least in that iteration – a conflict with national and local policy.
 - (ii) The LHA waved through the 2023 mini-roundabout scheme, which as we will set out below is fundamentally and fatally flawed, and in any event the MoJ seems to have now all but abandoned.
 - (iii) It is not clear that the LHA has properly grappled with the issues raised by the Council and UWAG in reaching their conclusion.
 - (iv) The LHA has not been present at the Inquiry for the testing of their opinions, or the basis for their professional judgements reached.
 - (v) In any case, the LHA does not have full details before it – the Appellant is relying on further critical details being provided and duly rubber-stamped at a later stage.
26. For these reasons, there is ample justification to support the Inspector in once again departing from the conclusions reached by the LHA, notwithstanding their role as statutory consultee. It all comes down to the evidence: ultimately the MoJ’s case needs

¹⁷ See *R (Akester) v DEFRA* [2010] Env. L.R. 33 at [112]; *Shadwell Estates Ltd v Breckland DC* [2013] EWHC 12 (Admin) at [72]; although note that in obiter, Holgate J recently expressed “substantial reservations” as to whether there is a special reasons test in such cases: *East Quayside LLP v SSLUHC* [2022] EWHC 2752 (Admin), at [74]-[75].

to be made good not by deference to the LHA but on what the evidence shows (or fails to show).

27. What matters is not what the LHA says, but rather whether the material before this Inquiry – namely the tested transport assessment and highways evidence – is sufficiently precautionary, robust and comprehensive to address existing highways safety concerns. UWAG says that it is not.

(v) **A holistic approach to highway safety – and not a box-ticking standards compliance exercise – is required**

28. Following the previous inquiry, the IR identified that there would be a “*significant increase in the number of daily vehicle movements*”, including (for example) a 48% increase in traffic at the Moss Lane / Ulnes Walton Junction.¹⁸ However, as the Inspector recognised “*merely relying on percentage increases as evidence of a highway safety issue is overly simplistic*”; “*it is necessary to consider any existing safety issues along with the characteristics and capacity of individual roads and junctions*”.¹⁹ The IR concluded that the proposal would not exacerbate any safety issues insofar as PIA is concerned²⁰, but acknowledged that there are “*hazards and risks associated with different parts of the local road network*”.

29. A pivotal theme in the disagreement between the MoJ’s Mr. Yeates, and the other experts in this appeal has been around which set of standards one should apply in a given case. That requires resolution, of course, but it should not obscure the real question: is it safe? Of course, compliance with standards can provide (often compelling) evidence that highway safety matters have been addressed. It is a good starting point. However, that is not to say that compliance with standards, and highways safety, are interchangeable. Throughout consideration of the specific flashpoints which arise as matters in issue between the main parties, UWAG urges the Inspector to have in mind that his role as decision-maker is not a formulaic box-ticking exercise or an arid compliance check. Rather, the Inspector must make a series of professional judgments, informed by the

¹⁸ L1, IR 13.20.

¹⁹ L1, IR 13.20.

²⁰ L1, IR 13.21.

views of the expert and other witnesses he has heard from, before reaching an overall conclusion.

30. In his evidence, Mr. Eves refers to the fact that now is not the time to “kick the can” further down the road to detailed design. There are several good reasons for this. In some instances (such as in relation to the overrunning point), we say that appropriate mitigation will not be possible by that stage. Detailed design may, of course, address some issues, but we cannot be sure and that would require the decision-maker to effectively trust in the MoJ’s judgement that existing issues can be addressed. More generally, the MoJ has had months to produce its evidence base and its proposals in relation to highway safety matters, and that these have still been emerging, incrementally, even into this year²¹ and even this inquiry²² indicates an alarmingly ad-hoc approach to the provision of design responses to very real safety concerns. The Inspector needs to have confidence in the safety and suitability of the proposals based on the evidence before him. That was, after all, the point of re-opening the inquiry.

MATTERS IN ISSUE BETWEEN MOJ AND BOTH THE COUNCIL AND UWAG

31. Unless expressly stated in these closing submissions, UWAG endorses and stands behind the Council’s case on highways matters.
32. As well as the general concern about highway safety, there are several specific flashpoints:
- (i) The junction between Ulnes Walton Lane and the A581 (“UWL/A581”);
 - (ii) The junction between Moss Lane and Ulnes Walton Lane (“ML/UWL”);
 - (iii) Moss Lane traffic calming;
 - (iv) The construction phase of development; and
 - (v) The safety of non-motorised users (“NMUs”) of UWL.

²¹ The 2024 design only emerged four weeks prior to that start of the inquiry, despite it being in existence for some months prior to that date.

²² Mr. Yeates’ measurement of 54m of forward visibility at the Moss Lane/UWL junction emerged during his evidence this week, and the updated NMU survey emerged during the Inquiry, after the other parties had given evidence.

33. As raised at the end of day 5 of the re-opened inquiry, UWAG have sought to liaise with the Council to ensure that, as far as possible, you do not have to hear the same points twice. Accordingly, and reflecting the division of labour in cross-examination, UWAG proposes to ‘major’ on the points arising from the A581/UWL junction. On the other points, having seen an advance draft copy, UWAG wholeheartedly endorses and adopts the position adopted by the Council as set out in Mr.Riley-Smith’s closing submissions. We will not seek to rehearse those points in our closings.

(i) **UWL/A581 roundabout scheme**

34. We turn to the UWL/A581 roundabout scheme. In reality, the indicative risk and evidential shortcomings associated with this aspect of the proposed mitigation – given the centrality of the location in the context of the construction phase – is enough to justify a recommendation of refusal on its own.

35. As noted in the IR²³, the A581 is a busy road between Chorley and Rufford. The junction is nearly at capacity and would, if unimproved, be well over capacity with the development in place. The parties continue to agree that mitigation is needed to address this significant impact. The question is what mitigation, and will it be safe?

36. We’ve been here before. At the last inquiry, the MoJ initially proposed a signalised junction to widen the road and provide separate space for right hand turns; then the MoJ suggested that the LHA’s preferred option - a mini-roundabout - could be provided. The safety and appropriateness of such a scheme was disputed by the Council at the time. Nevertheless, Mr. Yeates’s previous evidence was that even on the scheme as initially advanced, the proposal would not have an adverse impact on highway safety, let alone an impact which could “reasonably” be described as unacceptable.²⁴ With no little hubris, in July 2022, the MoJ’s closings stated that there was “*no substance to the Council’s complaints as to the fact that the A581 junction mitigation has not yet been*

²³ IR 13.28-13.29.

²⁴ E4, §7.2.2.

fully worked up".²⁵ Mr. Yeates accepts that his previous conclusion (the position set out in the MoJ's previous closing submissions) was wrong.²⁶

37. The Inspector dealt briefly with the evident shortcomings of this aspect of the proposed mitigation: the roundabout was without any indicative design, modelling of effects or assessment of traffic flow; or evidence of costings.²⁷ Clearly, this was one of the areas where the proposed mitigation measures were lacking in detail and confidence that they would have the desired effect:

Nevertheless, while the LHA has no objection to the proposed mitigation works for the A581 junction, it has not been demonstrated that the works would resolve capacity issues or that the financial contribution would be sufficient. The inability to satisfactorily mitigate the effects on this junction means that the proposal would have an unacceptable impact on highway safety.²⁸

38. Since the last inquiry, the MoJ has provided not one but two schemes. The first was presented in additional evidence in March 2023 ("**the 2023 design**"). The re-opened inquiry was due to sit in September 2023, but it was unavoidably deferred. Despite the protracted procedural history and extensive rescheduling, the second ("**the 2024 design**") was still only sprung upon the other parties at the last minute - without satisfactory explanation - in Mr. Yeates' addendum proof of February 2024 (despite the plans having clearly been in the works from at least September 2023).²⁹
39. The 2023 design sought to provide a raised table; speed cushions along the A581; three new lighting columns on the UWL approach; relocated speed limit signs along UWL to extend the existing 30mph zone; a reduced inscribed central diameter ("**ICD**") and dragons teeth on all approaches.³⁰
40. The 2024 design involves the provision of a raised table, the provision of speed cushions along the A581, three new lighting columns on UWL approach, relocated speed limit

²⁵ K26, para. 46.

²⁶ Yeates XX.

²⁷ IR 13.29.

²⁸ IR 13.32.

²⁹ Drawing P6, which 'is' the scheme, is dated September 2023. That drawing (M3a p.4) notes that the site boundaries were adjusted in October 2023.

³⁰ See M3a, pdf p.5.

signs along UWL to extend the 30mph zone, and dragon’s teeth on all approaches.³¹ The principal differences between the 2023 design and the 2024 design are that the MoJ has secured control of more land around the junction with a view to addressing visibility splay issues, and the roundabout is larger in diameter.

41. In relation to the 2023 design and the 2024 design, in pure capacity terms, the proposed designs would mitigate the additional traffic at the junction to some degree (although the detailed outputs appear to suggest that the 2024 design adds to overall junction delay). However, the principal issue between the parties is whether the submitted schemes will provide safe and suitable mitigation at this location.³² Reaching a conclusion on this issue calls for a considerable amount of judgment in the individual circumstances of the case; it is not simply a matter of “compliance with standards = safe”. As Mr. Yeates put it, the question for the Inspector is a “holistic” one depending heavily on context. Ultimately, the process of deciding the suitability of a site for a mini-roundabout is a complex one where a range of variables come into play.³³
42. A key aspect of that context here is that if permission is granted, since all other routes are broadly inappropriate for the nature and volume of traffic envisaged, the A581/UWL junction will inevitably carry all of the construction traffic (including the “significant” increase in HGVs). We learned at the re-opened inquiry that the picture is worse than the Inspector and SoS initially thought.³⁴ Mr. Yeates confirmed that there will be over 100 HGVs per day for a period of 80 weeks (and around 200 HGVs per day at peak construction).³⁵ In RX, Mr. Yeates was taken to the Mini-roundabout Good Practice Guidance, which says (emphasis **added**):

“The use of mini-roundabouts does not cause any **particular problems except the overrunning of the central island at smaller sites**... In addition, a large number of turning manoeuvres by HGVs can lead to the rapid wear of road markings.”³⁶

³¹ M10, §2.1.2.

³² P1, §3.8.3.

³³ M7, p.72, §4.3.

³⁴ L1 13.33.

³⁵ See N5 Appendix B p.52.

³⁶ M7, p.71, §4.2.8.

43. This passage is not the green light the MoJ seems to think it is. First, general problems (such as visibility, the viability of implementing fundamental traffic calming measures identified in RSAs, complications arising from the presence of private driveways, and the question of whether the proposed mitigation safely and suitably accommodates NMUs) remain. Second, the “particular problem” of overrunning is specifically identified by the guidance. Third, that is self-evidently a passage expressed in general terms: but it must be true that the more HGVs that use a mini-roundabout, the greater the chance of two doing so at the same time, and therefore of conflict with one another and with more vulnerable road users. This junction will take a very high load of HGVs, for a considerable period of time.
44. For the Council, Mr. Riley set out four fundamental issues with the 2023 design:
- (i) Visibility;
 - (ii) Overrunning;
 - (iii) Private driveways;
 - (iv) NMUs.
45. Mr. Riley considered any one of these issues rendered the 2023 design unacceptable, but given the toxic convergence of problems, the 2023 design should clearly have been shelved earlier. All parties agree that the 2024 design amounts to an improvement on the 2023 design in several key respects (although that does not mean that it is a safe and suitable proposal in context). An improvement on the 2023 design is the least we might hope for, given the apparently substantial additional work, cost and time spent on the part of the MoJ in producing the latest iteration.³⁷ For his part, Mr. Yeates accepted that it was no part of his case that the 2023 design is better than the 2024 design in any material respect. He accepted the proposition that if the 2024 design is not safe – a live question for the Inspector to address – there is no world in which the 2023 design is safe. It is thus moot. It is ‘dead in the water’. Nonetheless, that Mr. Yeates continues to defend it as a suitable alternative solution does serious damage to his credibility.

³⁷ At the very least 6 months before telling the Inspector or the other parties to this appeal.

(i) *Visibility*

46. One of the key problems identified by Via’s 2023 RSA of the 2023 design is that drivers attempting to enter a mini-roundabout with insufficient visibility to the right are “likely” to be involved in collisions with previously unseen vehicles emerging from other limbs of the junction (as identified in the VIA 2023 RSA).³⁸ That is a concerning conclusion.
47. Incontrovertibly, we say that given the nature of the problem identified in the MoJ’s own RSA, resolving the issue of visibility is one of the fundamental prerequisites of ensuring the junction design is safe and suitable in context. Mr. Yeates had difficulty with the words “fundamental prerequisite”, but settled on “key part of the equation”. Potato, potato.
48. In relation to the UWL entry:
- “recommending further mitigation measures would be unlikely to improve [the 85%ile speed].... Therefore the available visibility is likely to remain below the level required to ensure safe operation”.³⁹
49. In respect of both the UWL entry and the A581 Westbound entry, the recommendation contained in the MoJ’s own RSA was to suggest a fundamental redesign of the junction:
- “It is recommended that visibility is improved by acquisition of a portion of the adjacent land, to allow the highway boundary to be set back, preferably on both sides of the junction. Should this not be possible, a redesigned layout may be required, or failing that, an alternative method of junction control may need to be explored.”⁴⁰
50. The designer’s response to these fundamental problems was relatively perfunctory. The designer disagreed with the problem and recommendation, asserting it was considered that the proposed speed reduction measures are “likely” to reduce 85%ile speeds to below 25mph; the 2023 design achieves SSD; a departure from standards would be agreed; the proposed form of junction had been selected to address specific capacity concerns; Good

³⁸ M3a, pp.27, 29 (at both the UWL entry onto the mini-roundabout, Problem 4.1; and the A581 Westbound entry onto the mini-roundabout, Problem 4.2).

³⁹ M3a, p.28.

⁴⁰ M3a, p.28; repeated at M3a, p.29.

Practice Guidance states that mini-roundabouts *can* provide safety benefits; visibility requirements based on design standards at the existing junction layout are not currently achieved within the highway boundary and there is no evidence of pre-existing safety concerns; and there is another mini-roundabout on the A581 which also has restricted visibility and there is no evidence of safety concerns.⁴¹

51. Of course, many of these suppositions are highly generalised, and do not address the specific question of safety and suitability in this context at this location. Ultimately, in relation to the 2023 design, the Inspector is being asked to trust Mr. Yeates' professional judgement⁴² as to whether his team have done enough to ensure a safety issue will not arise, whilst dismissing the categorical red flag being raised by an independent safety auditor.
52. Relatedly, before the inquiry was re-opened, the MoJ invited the Inspector to consider both the 2023 design and the 2024 design and indicated that it is committed to delivering either on the basis that "both accord with design standards".⁴³ Mr. Yeates maintained that proposition in XX, apparently on the basis that seeking a 'departure from standards' was synonymous with 'according with standards'. The episode did him little credit: by his own admission, the 2023 design would require a departure from standards to be agreed with the LHA,⁴⁴ of which there is no evidence. Mr. Riley fairly characterised the extent of that departure (9m x 17.8m and 9m x 16.6m proposed, as against 9m x 35m CD 116 standard) as "substantial".⁴⁵ On any assessment⁴⁶, the 2023 design does *not* comply with relevant design standards.
53. What do we actually *know* – and not simply *assume* – about any required departures? LCC do not acknowledge the required departures in the joint position statement and do not suggest that they consider the effects of departures can be mitigated.⁴⁷ In XIC, Mr. Riley said that if he was in the LCC's shoes, he would not be satisfied with a departure from standards in this context because the proposal would be creating a series of risks

⁴¹ M3, §5.7.7; M3a p.63.

⁴² Bearing in mind his overall conclusion last time out – E4, §7.2.2.

⁴³ M10, §6.2.1.

⁴⁴ M3, p.21, §5.6; M6, §4.5.

⁴⁵ M3, p21, Table 5-3.

⁴⁶ Either linguistic or numerical.

⁴⁷ M3a, p.4.

that were unacceptable. In particular, the increase in traffic volume, combined with substantial turning movements, meant that it was essential to have good visibility to acceptable standards at this location. Overall, this is an important junction in relation to the scheme. Given this, the decision-maker is entitled to insist on the clearest of evidence that the sub-standard design would be safe. There is no such evidence.

54. The MoJ has sought to refer to 10 other roundabouts in the Lancashire area to argue that existing mini-roundabouts on the surrounding highway network with substandard visibility have a low level of recorded PIA.⁴⁸ In cross-examination, he described his selection as “*random*”, although not in a mathematical sense. In reality, his fieldwork would not stand up to any sort of scientific peer review. There appears to have been no methodology by which these roundabouts have been selected (certainly, geographical proximity⁴⁹ to one another is not one of them!) He referred to contextual comparisons between the A581/UWL junction and other locations identified and for the first time in oral evidence, started referring to details such as one being proximate to a supermarket. Even in his supporting research paper, it is wholly unclear how the full range of contextual variables have been considered by Mr. Yeates in his mini-roundabout survey.⁵⁰ The depressing reality is that this is not evidence of anything, save that those ten mini-roundabouts have low PIA records. How many other mini-roundabouts with substandard visibility have worse records? If substandard visibility does not lead to collisions, why are we worried about it at all?
55. Mr. Yeates also refers to a series of appeal decisions concerned with different locations and different concerns.⁵¹
56. From these flimsy comparisons, Mr. Yeates draws the overall principle that “*the inability of a junction to conform with visibility standards does not automatically trigger an unacceptable safety impact*”.⁵² That is a classic straw man. No-one is talking of ‘automatically triggering’ anything. But where a junction has substandard visibility, and requires a substantial departure from standards, and where that junction is proposed to

⁴⁸ M6, §4.5.13.

⁴⁹ Q12, p.2

⁵⁰ M7, Appendix C, p.224.

⁵¹ M6, §4.5.14 onwards.

⁵² M6, §4.5.19.

take a very much increased volume of HGVs for a lengthy construction period, and where the road safety auditors considered that it increased the likelihood of collisions, it ought to be of grave concern. That it does not appear to have concerned Mr. Yeates says something about his credibility here.

57. In any event, in going to the considerable time, effort and further public expense of producing the 2024 design, the MoJ seeks to address the same recommendations set out in Via's 2023 RSA that its designer previously rejected out of hand. The departure from standards is not required by (and the visibility issue falls away in respect of) the 2024 design. In reality, this is a tacit acknowledgement that the visibility issue results in the 2023 design giving rise to an unacceptable highway safety impact. Given the nature and extent of the highway safety issue identified in relation to the 2023 design, taking a preventative approach, it would have made sense for the MoJ to abandon the 2023 design at the earliest possible opportunity and go back to the drawing board. After all, given that there is a proposed design where this issue does not arise, the 2023 design is dead in the water. The MoJ's failure to do so erodes the extent to which Mr. Yeates' professional judgement can assist the Inspector in reaching a conclusion on whether the proposed mitigation at the A581/UWL junction is safe and suitable. It also sounds in costs. The 2023 design should never have been pursued. It is not safe.

(ii) *Overrunning*

58. A second highway safety issue with the 2023 design is overrunning. As addressed below, that issue is not satisfactorily resolved by the 2024 design.
59. The DfT's Mini-roundabout Good Practice Guidance indicates that overrunning of the central island is a "particular problem" associated with the use of mini-roundabouts by HGVs.⁵³ Relatedly, overrunning around corners can be an issue affecting particularly larger vehicles navigating the road network. When we talk about overrunning, we are talking about the situation where a vehicle goes into the opposing carriageway or into the centre of the road.

⁵³ M7, p.71, §4.2.8.

60. This was a problem identified in the Hydrock 2023 RSA in respect of the 2023 design.⁵⁴ From the drawings provided to the auditors⁵⁵, it was not clear to them how the “necessary” road space would be obtained for the mini-roundabout.

“Currently, large vehicles turning left from [UWL] on to the A581 overrun the opposing lane and the provided [SPA] provided (sic) shows this will also happen with the proposed solution. This could increase the risk of collisions between large vehicles turning left from [UWL] and vehicles travelling west on the A581.”⁵⁶

61. It is worth noting that the diagnosis is not simply that the problem will remain. Rather, in context, the 2023 design makes things worse: “*increase the risk of collisions*”.⁵⁷ This is unsurprising. However, the picture becomes even starker once it becomes apparent that (i) the RSA brief did not contain any NMU survey data in respect of the junction, and we now know that many cyclists pass through it; (ii) the only traffic information provided was the original transport assessment, which did not detail the construction traffic likely to pass through the junction; and (iii) auditors were not privy to forecast construction traffic flows.⁵⁸ All of the significant number of HGVs anticipated during the many months of the construction phase are proposed to pass through this junction. Especially once these factors are taken into account, in these circumstances, increased risk is a fair call.
62. In respect of the 2023 design, again, this was not a matter that the independent auditors felt could be addressed by detailed design. Rather, the recommendation was “*that an alternative junction solution such as a sheltered right lane is provided at this location*”.⁵⁹
63. The designer’s response does not refute that there is a problem with overrunning in the 2023 design, but rather disagrees with the recommendation.⁶⁰ In summary, the response is that the proposed form of junction was selected to address specific capacity concerns; the proposed highway layout provides an improvement on the existing highway layout

⁵⁴ M3a, p.17.

⁵⁵ See M3a, p. 14, §1.2.

⁵⁶ M3a, p.17, §2.2.

⁵⁷ M3a, p.17.

⁵⁸ Note GG 119 RSA at M7, A6 p.164, §4.11, §4.16, §5.6.1.

⁵⁹ M3a, p.17.

⁶⁰ M3a, p.41; p.46, §2.2.2.

for articulated HGVs turning left out of UWL; and Good Practice Guidance states that mini-roundabouts *can* provide safety benefits over other forms of junction.⁶¹

64. What the designer's response fails to do is to address the specifics of the proposed site. That the form of junction was selected for its ability to resolve *capacity* says nothing about whether that form is *safe and suitable* in this location. Any suggestion the proposed highway layout provides a technical improvement on the existing layout fails to account for the drastic change in conditions and use once operational (especially during construction phase). General potential safety benefits say nothing about the specific problem of an increased risk of collisions identified *in this location*. In short, the designer does not demur from the independent auditor's diagnosis but dismisses the prescription without good reasons. This is relying on yesterday's weather in deciding whether to carry an umbrella next week.
65. In any event, the extent of the overrunning issue in the 2023 design was vividly described by Mr. Riley in XIC. He extrapolated the MoJ's swept path analyses to demonstrate that at 5kmph, 15kmph and 25kmph, the overrunning issue exists and becomes more pronounced with speed. Even on the MoJ's own case, the drawings (without illustrative vehicles or NMUs such as cyclists in the opposing carriageway) speak for themselves.⁶² Mr. Riley described this as a "*messy and unacceptable situation*". It is hard to disagree.
66. Curiously, the Via 2023 RSA fails to identify the issue with overrunning *at all*. This is probably best explained by recognising that RSAs are both subjective and not comprehensive. Hydrock – the other road safety auditors of the 2023 design – did point this issue out, but their opinion was not sought by the MoJ as to whether the issue arises in the 2024 design. Thus, the only RSA in respect of the 2024 design comes from auditors who did not pick up the overrunning problem first time around (and nothing in the evidence provided suggests their brief included a specific request to address the previous concern). This is unsatisfactory.

⁶¹ M3a, pp.47-48.

⁶² M3a Appendix E p.54; M3a Appendix J p.100; and Mr. Riley's evidence at N5, Appendix A, p.43-48.

67. Whilst the 2024 design clearly results in an improvement on the 2023 design in respect of the overrunning issue⁶³, Mr. Riley’s evidence was that an issue with overrunning remains.⁶⁴ In particular, he suggests there “*are still vehicles that will overrun into the opposite side of the carriageway*”, and that “*some vehicles will overrun the centre of the junction*”.⁶⁵
68. In addition, the issue with overrunning continues to impede the provision of fundamental safety features in the 2024 design. The Via 2024 RSA identifies the following problem with the 2024 design: “*Collisions in junction when drivers misinterpret the road network*”.⁶⁶ In recommendation:

“The proposed traffic calming measures are fundamental to keeping drivers at low speeds which will reduce the potential for injuries of high severity, except where vulnerable two-wheelers are involved.

*It is recommended that splitter islands are incorporated into the design within the proposed hatched areas. These would add definition to the road layout and junction form, especially if they can accommodate additional signing. However, consideration will need to be given to turning movements including from private driveways...”*⁶⁷

69. There is no designer’s response report as required for stage 1 RSAs.⁶⁸ However, Mr. Yeates provided a response directly in evidence to this inquiry.⁶⁹ Nowhere in his written evidence does he take issue with the problem identified; rather, he sets out that “*there are numerous ways to address the issues raised in ‘RSA Problem 4.1’ which could be considered during the detailed design phase*”.⁷⁰

⁶³ See SPAs in respect of 2024 design at M10a Appendix F, G, H and I.

⁶⁴ N9, p.6, §2.5.

⁶⁵ N9, p.6.

⁶⁶ M10a, p.80.

⁶⁷ M10a, p.81; and as produced in relation to the 2023 RSAs.

⁶⁸ M7, p.183.

⁶⁹ M10, §3.2 - §3.3.

⁷⁰ M10, §3.2.2; although to suit his cause, he sought to evolve the point on the hoof in cross-examination.

70. The one specific aspect of the Via 2024 recommendation identified – the provision of splitter islands in proposed hatched areas – cannot be considered during the detailed design phase, or later. Mr. Eves and Mr. Riley both identified this issue.⁷¹ That is because, as Mr. Riley identified, the private driveway swept path analysis illustrates vehicles overrunning the hatched areas to make turning movements (as well as larger vehicles exiting the roundabout also overrunning hatched areas).⁷² Bluntly, if physical measures were implemented in the original or updated roundabout design, it is likely that a vehicle would come into contact with them.⁷³ These issues could only be resolved by further increasing the size of the junction.⁷⁴ Further, and in any event, they would interfere with access and egress from the private driveway giving on to the mini-roundabout in that location. So the position is that the fundamental proposed traffic calming measure specifically recommended by independent auditors is not implementable under the 2024 design and remains otherwise wholly unaddressed and unresolved.
71. In XIC, for the first time, Mr. Yeates raised the fact that splitter islands are not mandatory and their inclusion involves a “*balancing of risks*” (although of course, he could not point to anywhere in the evidence that any such balancing exercise had actually been carried out, or a principled conclusion had been reached by the MoJ’s designers).
72. Even if that is so, and the MoJ’s designers reach the wrong ‘balance’, it might be said that the LHA could intervene at a later date and seek to install splitter islands, if it transpired there was a problem at the junction. In general, that might be so.⁷⁵ However here, as Mr. Riley has demonstrated, that intervention will simply not be possible because of the physical constraints of this specific junction.
73. The Inspector is left in a wholly unsatisfactory position: the (sole) RSA recommends splitter islands; there is an obvious reason (in fact two) why splitter islands won’t work; and the MoJ is all but silent on the issue: it says they aren’t ‘mandatory’ (which is true, but nothing to the point).

⁷¹ O74, §4.8; N9, §2.5.4.

⁷² N9, §2.5.4.

⁷³ N9, §2.5.5.

⁷⁴ N9, §2.5.6.

⁷⁵ For example, M7, p.78, in a different context in nearby Leyland, the LHA installed “traffic islands with illuminated keep left bollards”, i.e., splitter islands.

74. The overrunning issue – now manifested in the issue of whether the 2024 design can adequately resolve an identified problem of collisions in the junction as drivers misinterpret the road network – remains unresolved and ‘at large’. For the above reasons, the Inspector cannot have confidence that the 2024 design provides safe and suitable mitigation in this respect.

(iii) Private driveways

75. We have largely addressed one of the main issues arising from the 2024 design, in relation to the three private driveways on the southern side of the A581.⁷⁶ That is, their presence prevents the implementation of fundamental traffic calming features recommended by independent auditors to prevent an undisputed problem of “*Collisions in junction when drivers misinterpret the road network*”.⁷⁷

76. Generally, both Mr. Eves and Mr. Riley took the view that private driveways add complexity to mini-roundabouts, when compared with mini-roundabouts without any private driveways. Mr. Yeates sought to take issue with this common-sense principle. In his view, the potential for vehicles to turn one of two clear anticipated ways around a junction (in the case of a 3-arm mini without private driveways) as opposed to the potential for vehicles to turn one of 5 varied and sometimes unanticipated ways (in the case of a mini-roundabout with three private driveways) apparently adds no complexity to the junction design or navigation *at all*. That is a surprising position to take.

77. At the very least, it must be accepted that turning in and out of private driveways makes navigation of the junction more complicated. The movements required by cars will mean that those entering or exiting the private driveways will need to cut across lanes of traffic or turn erratically through the junction.⁷⁸ Again, reference to examples elsewhere does not assist in answering whether the MoJ has sufficiently addressed this issue here, in these circumstances. What it does add is the observation that the highway authority

⁷⁶ See N9, p.2, §2.4; noting that these three private driveways serve five residential and two commercial premises.

⁷⁷ Cf. M10a, p.80-81.

⁷⁸ See M10a, Appendix G, p.54.

describes the presence of private driveways giving on to mini-roundabouts as 'issues'⁷⁹. We would agree with that.

(iv) NMUs

78. A fourth highway safety issue at the UWL/A581 junction concerns the presence of NMUs. The Council's counsel has addressed the NMU issue more widely in other locations (such as on UWL and at the ML/UWL junction).
79. As Mr. Riley described, the 2024 design does literally nothing to improve the lot of NMUs in the area. The design provides nothing for the hundreds of cyclists who use the roundabout each day, or other vulnerable road users who might use the junction. This is perhaps unsurprising, given that the MoJ did not deign to provide its data on NMUs using the junction to its auditors (or, until last week, to us).
80. Although apparently available for quite some time, only in the adjournment between the Council's and UWAG's evidence and the MoJ's evidence did the MoJ consider it worth producing data it held concerning NMUs specifically at the junction. For what it is worth it validates UWAG's own assessment of NMU use. The surprising position is that the RSA for the 2024 design was completely 'blind' both of this data on NMUs using the junction but also of the predicted volume of HGV traffic intended to use the junction. This is an integral evidential shortcoming: there is no RSA before the Inspector in relation to either scheme which has taken into account either the actual predicted massive increase in HGV use of the junction *or* the relevant NMU survey information. The straightforward point is that development will increase traffic flows at the junction; proportionately, this will increase risk to NMUs. The MoJ does not seem to have factored this into their design of the mini-roundabout at all.

⁷⁹ See M7, p.78, roundabout at Leyland.

(v) ***Other highways issues arising with the 2024 design***

Assessment of roundabout in sensible opening year

81. In the original transport assessment, standalone junction capacity modelling demonstrated that the A581/UWL is forecast to operate over acceptable thresholds of capacity in the 2025 ‘opening year without development’ during the AM peak, with an RFC of 0.90.⁸⁰ On the MoJ’s own evidence, the “acceptable threshold of capacity” is 0.85 (or 85%); any higher figure is *over* the acceptable threshold.
82. In his updated evidence, Mr. Yeates sought to reassure the inquiry that a 2028 opening year (rather than 2025) would not be problematic. He did not re-run the model for that year. He⁸¹:
- (i) Did a survey of traffic in February 2024, which is not a neutral month and should not be used for traffic surveys save with caution⁸²;
 - (ii) Used that data to compare to his previous ‘factoring’ work on the measured 2021 data (recalling that he had ‘factored’ the 2021 measured data to account for COVID-era suppression);
 - (iii) Noted that the 2024 measured data was significantly lower than the ‘factoring’ work he had done suggested for February 2024;
 - (iv) Used that observation to ‘discredit’ his own factoring work; and
 - (v) Extrapolated from that February 2024 data forward to 2028, noting that it showed lower background traffic levels in 2028 than his ‘factoring’ work had suggested.
83. Quite why this data manipulation was thought the best way to account for the fact that the prison will not open in 2025, or 2026, is not clear. This inadequate evidence is the best you have of future traffic levels. As Mr. Eves pointed out, it essentially ignores the traffic likely to come on stream very nearby from the Leyland ‘Test Track’ development (save as the very general overall increase in background traffic suggested by TEMPro). What we are left with is this surprising proposition: there is no modelling of the

⁸⁰ A35, p.45, Table 7-11 and text below.

⁸¹ M6, §5.32.

⁸² O74, §4.13, a proposition that went unchallenged in the inquiry.

performance of this junction in a future year when the prison is realistically likely to be open. There is no ‘sensitivity test’ to account for the possibility that Mr. Yeates’ convoluted ‘extrapolation’ exercise based on his February 2024 data might turn out to be wrong.

84. In any event, as Mr. Eves remarked, a 2028 assessment year remains optimistic in the extreme; a 2030 opening year would seem to be a more realistic scenario.⁸³
85. The assessment we do have indicates that operationally, the RFC is 0.87 in the AM peak under the 2025 opening year (with development) scenario, and 0.88 at in 2026, for the A581 (E) approach arm. Even with a 2025/26 opening year, the junction has an RFC greater than 0.85, i.e., above the acceptable threshold of capacity. This compares with 0.90 in the 2025 opening year without development scenario⁸⁴. At best, to the extent it is evidenced, the scheme in its operational phase is merely marginally⁸⁵ less far over the acceptable threshold. That does not necessarily render it acceptable.
86. Further, the detailed outputs in the existing priority junction for 2025 without development indicate an overall AM junction delay of 21.17s⁸⁶ (and a PM junction delay of 3.98s⁸⁷). The detailed outputs in the proposed 2024 design with development indicate an overall AM junction delay of 27.6s⁸⁸ (and a PM junction delay of 15.28s⁸⁹). Despite these being the *prima facie* conclusions from the detailed outputs supporting the MoJ’s own transport assessment, Mr. Yeates could not explain this when asked about it, or offer any explanation to suggest why that reading of the detailed outputs was in any way erroneous. We suggest the data means what it says in black and white: increased delay.
87. For completeness, the warning in the industry-standard software TRL Junctions 10 outputs set out in the MoJ’s evidence – “*mini-roundabout appears to have unbalanced flows and may behave like a priority junction; treat with caution*” also means what it says. The designer should have regard to the fact that the junction may behave like a

⁸³ O74, §4.14.

⁸⁴ A35, p.45, table 7-11.

⁸⁵ Mr. Yeates called it a ‘marginal betterment’.

⁸⁶ A35, p.390.

⁸⁷ A35, p.393.

⁸⁸ A35, p.26.

⁸⁹ A35, p.29.

priority junction (i.e., drivers on the main road may drive straight through). Of course, this might inform traffic calming measures, as reflected in Via's recommendation for splitter islands. What *was* clear was that Mr. Yeates had *not* treated this with caution: he was simply dismissive of the warning.

NVA vs construction peak

88. Finally, the noise and vibration assessment⁹⁰ upon which basis the Environmental Health Officer did not raise an objection in the Officer's Report⁹¹ sets out the parameters of the construction phase it considered. It describes how construction would likely be restricted by a standard daytime working hours restriction, i.e. work not beginning until 8am.⁹² Mr. Eves noted, in relation to the 2023 design, that this was a reasonable assumption given the proximity of residential development and the areas construction traffic passes through.⁹³ What that means is that the peak of construction traffic on the network will be the hour prior to starting work: i.e. 7am to 8am, as the vehicles arrive ready for that start.
89. However, the MoJ's modelling assumed a peak for construction traffic of 6am to 7am, based on the assertion that in fact work would begin at 7am (and contrary to the assumption in the NAVA). Why does this matter? Because the *network peak* (i.e. ordinary, non-construction related traffic on the roads) in that location is between 7am and 8am; the roads are much quieter before 7am. If the network peak and the construction peak do not coincide (as per Mr. Yeates' model) then capacity calculations are reasonable; however, if they coincide (because the NAVA-mandated start time of 8am is adhered to, and both peaks are 7am to 8am) then the effect are severe, as explained by Mr. Eves:⁹⁴ queues and delays amounting to an unacceptable highways impact.
90. Mr. Yeates sought to respond by providing a further Hydrock noise report. However, the new noise report is restricted to considering the effect of traffic noise on properties on Moss Lane (specifically, Windy Harbour), and not additional construction night-time traffic elsewhere – e.g., UWL or Dunkirk Lane or the A581. The impact of an increase

⁹⁰ A22, section 4.

⁹¹ See A97.

⁹² A22, p.12, §4.1.1; p.24, §5.1.1.

⁹³ O22, §7.2.

⁹⁴ See O22, section 7, in relation to the 2023 design.

in construction traffic in *these* locations has not been assessed.⁹⁵ It cannot be safely assumed that starting work at 7am will be acceptable in noise terms – that has simply not been considered. If it is not acceptable to do so, and work must begin no earlier than 8am, then the impacts described by Mr. Eves will come to pass. This is a yet further unsatisfactory element of the MoJ’s approach.

Conclusion on the A581/UWL junction

91. It ought not to be forgotten that the MoJ has had 18 months or more since the original inquiry to ‘fix’ the issues with its scheme. That it still has not done so is telling.
92. Aside from plain flaws evident on the material provided, the shortcomings of the information available to the inquiry also casts doubt on any confidence the Inspector can have in the effectiveness of what is proposed. Yet again, and in far too many ways, the Inspector (and Secretary of State) is essentially asked to leave the resolution of these issues to some later stage, after the grant of planning permission.
93. Finally, there is no attempt to sensitivity test the possibility (and thus implications) of any of the many underlying assumptions being proved too conservative.
94. These are not typical nit-picking points being kicked up to raise an unnecessary fuss by opponents of the scheme. Rather, these are fundamental evidential shortcomings which should intrinsically undermine the Inspector’s confidence in the adequacy of the proposed mitigation in this location. That they remain in the extraordinary circumstances of this case, nearly two years after the original inquiry closed, should say something very clear about the ability of this local network to accommodate these proposals.
95. In short, on UWL/A581:
 - (i) There is a fundamental question as to whether mini-roundabouts are appropriate mitigation in the present context, given the existing constraints.

⁹⁵ O74, §4.21.

- (ii) In no world is it plausible to suggest that the 2023 design provides safe and suitable mitigation at this location. In particular, issues with visibility and overrunning mean that the mitigation not only fails to effectively mitigate, but actively gives rise to, further highway safety concerns at this location. It should never have been suggested.
- (iii) There is no way in which the 2023 design is preferable to the 2024 design. Given the identified flaws of – and significant departures required to enable – that scheme, there is no reason why it should be entertained as a reasonable mitigation response in this location.
- (iv) The 2024 design still does not provide safe and suitable mitigation at this location. There are outstanding highway safety matters which remain unaddressed (and unresolvable in detailed design).

96. For the remaining issues, and for no reason other than efficiency, UWAG simply adopts and stands by the case advanced and articulated by the Council. We make the following, limited, further observations:

(ii) **Moss Lane/UWL**

97. There has been a lot of heat (but not necessarily much light!) about whether MfS2 or DMRB provides the starting point as the appropriate standard for SSD at junctions such as ML/UWL. Mr. Eves said that DMRB has always been a guide for measuring roads subject to higher levels of traffic, whereas MfS2 was concerned with more urban areas (“streets”). He observed that there was some gap between the two standards.⁹⁶ Mr. Eves fairly adopted a precautionary approach, suggesting that the professional highways engineer should “*err towards*” the higher standard. The point is not some slavish adherence to standards: it is to judge whether something is safe. DMRB contains higher standards *for good reason*. Faster, wider roads call for greater forward visibility. Urban streets call for less. This is somewhere in between.

⁹⁶ And see O75, HS2 appendix.

98. It appears that Mr. Yeates did not initially carry out his own measurement on forward visibility; instead, he appears to have relied on Mr. Riley's plan. Mr. Eves pointed out that this is somewhat surprising in a case where it is said there is concern about the safety of ML/UWL junction, in circumstances where there is a significant increase in vehicular use of the junction. When Mr. Yeates then *did* measure (announced for the first time during oral evidence) it was obviously unsatisfactory: substantially different to Mr. Riley's, done by reference to a plant pot, done on his own without assistance, and unrecorded. In that context, that it was a mere one metre above what is on his own case the minimum required distance should have caused alarm bells to ring.
99. This must not obscure the real point. At IR.13.22 the Inspector noted this junction, and its limited forward visibility, as an issue in the context of a substantial increase in its use as a result of the proposals. If Mr. Yeates' response *really* is to say that he has measured it, and it is one metre above the minimum forward visibility required by MfS2, that is surprising. The bottom line is that the MoJ has done nothing to improve forward visibility here.
100. A similar observation can be made about pedestrian users of this junction: as we have said, the MoJ has done nothing to improve access to the southbound bus stop or the post box, despite those being issues identified by the Inspector in L1, and despite the MoJ's scheme including the upgrading of the bus service such that it will stop at the southbound bus stop. The 2m footway resolves the issue for the northbound bus-stop (subject to resolving the placement of street furniture etc), but no more.
101. Despite the suggested improvements to the design as regards NMUs, ultimately the MoJ's proposals offer nothing to suggest that the Inspector should conclude differently from last time; an increase in the number of vehicles using the junction will create an increased risk of conflict with pedestrians; and this increased risk is not adequately mitigated.

(iii) Moss Lane traffic calming measures

102. As explained by the Council in closing, it cannot be said that the MoJ has done nothing to alleviate the concern about speeding on Moss Lane. But what it *has* done, for the reasons set out, is insufficient.

(iv) Construction phase traffic

103. At the last inquiry, the Inspector concluded that:

“The MoJ has not modelled or assessed the forecast construction traffic, neither have they demonstrated that the highway effects of the construction phase can be adequately mitigated”⁹⁷

104. We now have the numbers. They are *worse* than the position considered by the Inspector in 2022. For the reason articulated by the Council in closing, and by UWAG’s witnesses, UWL is simply not suitable for that volume of traffic, over that period of time. The absurdity of the Appellant’s position was perhaps best illustrated by its repeated reference to the photograph showing two HGVs ‘passing’ near Lostock Bridge, as if that somehow disproved everyone’s concerns. It does the opposite. One only has to watch the video from which that is taken to see the issue. It is tortuously difficult for them to pass. With 100+ *additional* HGVs using the lane, it will be unmanageable.

105. In XX of Mr. Riley, it was put to him that highways issues relating to rural environs are dealt with because they have to be; that a role of the planning system is to ensure that construction traffic is adequately mitigated; but that the planning system should not stop projects coming forward because of “*less than ideal arrangements*”. The MoJ’s leading counsel referred to the fact that up and down the country, various major projects such as High Speed 2 or East-West Rail are being carried out in rural areas.

106. That might be so. With respect, that line of questioning both underlines the fragility of the MoJ’s case (implicitly and euphemistically accepting that the proposed circumstances

⁹⁷ IR 13.33.

are “*less than ideal*”) and understates the distinctive and unique challenges arising at this site, in relation to this scheme, in this specific community.

107. This is also a good example of the point we made at the outset. Even if, contrary to all we have said so far, the view is taken that the highway safety implications of this scheme are not unacceptable, there will still be harm: the use of UWL by this vast number of HGVs for such a protracted period is *self-evidently* harmful. That harm has to go into the balance, with all the other harms, to see if very special circumstances arise. That has simply not yet been assessed. The person to make that assessment is you, once you have formed your conclusions on all the controversies. That is why UWAG asks that, whatever your conclusions on the many individual controversies, you go further than simply offering a view on whether the highway safety concerns have been addressed. We ask that you go on to re-carry out the planning balance to see if very special circumstances arise.
108. In any event, UWAG, as a ‘Rule 6’ group of local residents who live in the area and know the road network more intimately than any of the three experts who have given evidence at this inquiry, offer a unique insight into the specific highway safety concerns which still arise from the proposed scheme. UWL is not suitable for this volume of construction traffic. It is yet another reason why this scheme should be rejected.

CONCLUSION

109. In purely highways terms, this is the wrong place for the appeal proposal. The Appellant has had every chance to show that the highways implications can be made acceptable, and it has failed.
110. Overall, the appeal scheme is likely to substantially exacerbate issues associated with road safety in the local network, and the proposals still lack detail such that no decision-maker could reasonably have confidence that the suggested mitigation would have the desired effect. Accordingly, the proposal would continue to have an unacceptable impact on highway safety, contrary to national and local policy.

111. For these overarching reasons and having regard to the flashpoint locations identified and addressed in detail above, and by the Council, UWAG respectfully invite the Inspector to recommend to the SoS that the highway safety matters have not been satisfactorily resolved, such that the appeal should – **finally** – be dismissed and permission for the appeal scheme should be refused.
112. In any event, even if (contrary to all we say) you take the view that highway safety has been addressed such that is no longer unacceptable, you should then weigh any harm you *have* found to arise, along with all the other harms previously identified, and offer your recommendation as to whether on that basis, they are clearly outweighed by the benefits such that very special circumstances arise. Our conclusion, as it always has been, is that this stringent national Green Belt requirement is not met by these proposals.

JOSEF CANNON KC

MATTHEW WYARD

JACK BARBER

Counsel for UWAG

25 April 2024

Glossary

DL – Decision Letter

DMRB – Design Manual for Roads and Bridges

IR – Inspector’s Report

LCC – Lancashire County Council

LHA – Local Highways Authority

LPA – Local Planning Authority

MfS2 – Manual for Streets 2

ML – Moss Lane

NMUs – Non-motorised Users

NPPF – National Planning Policy Framework

PIA – Personal Injury Accidents

RX – Re-examination

UWAG – Ulnes Walton Action Group

UWL – Ulnes Walton Lane

XIC – Examination-in-Chief

XX – Cross-examination