

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

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

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**CLOSING SUBMISSIONS ON BEHALF OF COUNCIL**

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1. In opening, and throughout the presentation and testing of evidence, the Council have focused on five areas of specific concern (as well as the general concern of the unacceptable impact on highway safety). These were:
  - i) Ulnes Walton Lane/Moss Lane Junction
  - ii) Footway between Ulnes Walton Lane and Moss Lane
  - iii) Moss Lane Traffic Calming
  - iv) A581/Ulnes Walton Lane Mitigation
  - v) Construction Phase Assessment
  
2. The Closing will set out the Council's case for each of those five concerns (although in line with the presentation of evidence the Council will adopt the R6 Party's submissions on the A581/Ulnes Walton Lane), but it is first important to set out how the Council believe the Inspector and SoS should approach the determination of this re-opened inquiry.
  
3. As Mr Yeates accepted, the starting point is that the previous highways evidence and scheme was unacceptable in highway terms and justified refusal. The onus therefore 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).
  
4. However, the Inspector asked to be addressed on how that should relate to the planning judgment which the Inspector has to make and recommended to the SoS. The Council's

position is that there are potentially two different overarching questions which the Inspector must consider.

5. The first is whether the proposal would have an unacceptable effect on highway safety so as to trigger the ability to refuse the Scheme on highway grounds alone under NPPF 115.
6. The ‘knockout blow’ nature of 115 was agreed between planning witnesses at the previous inquiry, and there is no indication that any party is looking to resile from that proposition.
7. Furthermore, as the Inspector and SoS previously found that unacceptable safety impacts justified refusal under (as then) 111<sup>1</sup>, if those unacceptable safety impacts remain then it must compel the Inspector to recommended refusal and the SoS to accept it.
8. So, the first question is whether there are still unacceptable impacts on highway safety. In answering this question, it won’t be necessary to revisit the wider planning balance because of the ‘knock-out blow’ nature of 115 combined with the previous Decision (L1) which found said knock-out blow was landed. The onus would be on the Appellant to show otherwise.
9. However, it must be right that there is theoretically (because the Council’s case is that there are clearly unacceptable impacts) a second question which needs to be considered. This is where the Inspector were to conclude that there were adverse highway safety issues, but they did not meet the ‘unacceptable’ threshold. What should the decisionmaker do in that situation?
10. This is where regard needs to be had to the wider context of this appeal. This overall decision remains whether there are Very Special Circumstances (‘VSC’) as set out at NPPF 152 and 153. It is all encompassing because all the harms and all the benefits

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<sup>1</sup> See DL/18 as evidence that the SoS found there to be an unacceptable safety impact under 115: *“He considers that it is possible that the highway safety issues could be satisfactorily addressed such that he could be satisfied that the proposal would no longer have an unacceptable impact on highway safety in terms of paragraph 111 of the Framework”*

needs to be weighed into the balance. Once that is done the benefits must clearly outweigh the harms.

11. The Inspector and SoS have previously carried out the VSC balance on the basis of unacceptable highway safety impacts which carried substantial weight (see DL/37 – 38). But what is not currently apparent is what impacts lesser but still present highway safety impacts (perhaps ‘undesirable’ to use the SY terminology) would have on the VSC balancing exercise.
12. This would require – and the Council would submit this is the second question – the decisionmaker identifying the level of harm those adverse highway safety impact would have, the weight to be attached to the harm and then the re-carrying out of the entire VSC balance with that new level of harm.
13. The Council would therefore respectfully submit that there are potentially two overarching questions for the Inspector:
  - i) Has the Appellant established that the unacceptable highway safety impacts of this proposal which justified refusal previously under 115 no longer exist?
  - ii) If they have established this, are there still adverse highway impacts which, when the VSC balance is re-carried out in light of those impacts, mean there are no VSC.
14. For clarity, the Council’s case – and the thrust of this Closing – will be that there are clearly still unacceptable highway safety impacts which have not been addressed by the Appellant and which justify refusal under 115. The Appellant has failed to establish what they need to, and the Inspector and SoS need go no further than the first question.
15. In that context the Council will turn to the five areas of specific concern.

*Ulnes Walton Lane/Moss Lane Junction*

16. For each section the Council will set out the Inspector and SoS's concerns first, and then examine whether they have been addressed.
17. The Inspector considered these issues between 13.21 to 13.24 of L1. It is important to first note – per 13.21 – that all of the Inspector's concerns arose despite taking into account the Appellant's previous arguments as to the level of PIAs (as evidenced by the 'nevertheless at 13.22). The Appellant's continued repetition of the level of PIAs should give little comfort to the Inspector and SoS ('the Decisionmakers'). They didn't address the safety concerns before, and as SY accepted, the Appellant has not done anything new in relation to the PIAs (they have not re-carried COBALT for example) beyond bringing forward the data. PIAs are not the answer to the Decisionmakers concern.
18. The Decisionmakers concern at 13.22<sup>2</sup> were that Ulnes Walton Lane ('UW Lane') was "*a narrow 40mph country lane with several bends*" and had a particular concern that "*The junction with Moss Lane is on a bend where forward visibility looking south is restricted for vehicles turning right into Moss Lane.*". This was because of the – still accepted – increase in queuing and waiting times for traffic turning right.
19. The question for the Decisionmakers is whether the Appellant has addressed the safety risks associated with vehicles turning right into Moss Lane on a bend with limited forward visibility. The answer is a resounding no.
20. It is relevant that this point was originally missed when the Appellant first put in their Additional Evidence in March 2023 (M3)<sup>3</sup>. It is then only addressed briefly in SY 1<sup>st</sup> Proof (M6) as a 'Concern raised by CC' (rather than the Decisionmakers) at 7.2.12 (page 34) solely by reliance on the PIAs. The point only emerges to be dealt with in any detail once we get to SY Rebuttal (M9) in November 2023.
21. This may explain the stark point – rightly immediately agreed by SY – that the Appellant has taken no steps to improve the visibility for the right turning into Moss Lane. Looked at in the context of a clearly particularised existing visibility concern

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<sup>2</sup> All accepted by SY in XX

<sup>3</sup> As accepted by SY in XX

which the Decisionmakers had, and which the Appellant has an onus to address, this seems near to fatal.

22. Instead, the Appellant has sought to explain away the concern initially by reference to the PIAs and then latterly by reliance on the junction having sufficient SSD by reference to Manual for Streets 2 ('MfS2') along with the 85<sup>th</sup> percentile speed data provided by Mr Eaves in August 2023.
23. The reliance on Mr Eaves evidence by the Appellant to address a critical concern of the Decisionmakers is illustrative of the wider 'scattergun' and 'magpie-like' approach taken by the Appellants. It is important to bear in mind that the Appellant has had 15 months since the Decision to produce further evidence to address the highway issues. They have submitted evidence on six different occasions (M3, M5, M6, M8, M9 and M10) – and yet the Appellant was still producing further evidence (such as the NMU survey data for the A581/Ulnes Walton Lane junction – after KR raised how unusual it was such a survey encompass it) the week before the second week of the re-opened inquiry.
24. Alternatively, KR, on behalf of the Council, has remained consistent, clear and correct in the identification of the various flaws and omissions in the Appellant's case.
25. It is of even greater concern that SY was then supplementing that with fresh evidence in his XX. A few specific examples will be raised below but as a general observation: in an inquiry of national importance, with potential issues as critical as highway safety, it simply should not be the way in which evidence is presented and tested. The Council certainly does not suggest this was intentional – but the result has been to frustrate the parties (and the Decisionmakers) ability to scrutinise and understand the basis on which the Appellant's case is put forward to establish that this previously unsafe scheme is safe.
26. A prime example of this is in relation to the achievable SSD at the right turn into Moss Lane. Mr Riley says that it is 63m (2.1.17 of N3) based on measuring off plans. Mr Eaves measured it as 50m (O22 – 4.1, and O74: 4.18 to 4.19) based on site measurements. Mr Yeates measured it as 54m. But I can't give the Decisionmakers a

reference for that in the Core Documents. That is because the point was first revealed in XiC with the briefest of explanations.

27. When pushed in XX Mr Yeates explained that it was derived from a mix of impressions on site – including the approximated distance to a ‘plant pot’ then cross referenced with a topographical plan. In so far as the Council can test this – such an approach does not seem watertight and even Mr Yeates paused as to whether he could guarantee if such a measurement was “100% accurate’ (the relevance of which I will return to below). The failure to carry out a measurement may link to the fact that Mr Yeates confirmed the first time he revisited the relevant roads since the Decision was on 26 March 2024: i.e the second day of the re-opened inquiry and long after all the written evidence had been submitted.
28. The result of this is that the Decisionmakers are left with a broad range of achievable visibility at the turning into Moss Lane: 50m to 63m which straddle even the lowest minimum in potentially applicable guidance. Such uncertainty in any appeal would be difficult – but where the Appellant has a specific burden to address a visibility concern, the failure to definitively measure and evidence the achievable visibility is a real flaw in their case. That uncertainty alone could justify a finding that the identified highway safety issues at the junction have not been addressed.
29. But going further, the heart of the debate – given the lack of any positive mitigation to improve visibility - is about what guidance applies: MfS2 or DMRB. The ramifications don’t seem to be in dispute<sup>4</sup>: if MfS2 is appropriate then on SY calculations they would exceed the minimum 53m SSD by one. If DMRB is appropriate, then they would fall far short of the 120m minimum. The question is which applies?
30. The answer – and at least there seems to be broad agreement on this – is that neither directly applies but instead it is a matter of judgment taking account of local context. This is even set out in MfS2<sup>5</sup>.
31. Mr Riley (and Mr Eaves) have set out why they think it is more appropriate to use DMRB rather than MfS2. MfS2 is more appropriate applied to busier urban streets,

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<sup>4</sup> XX of SY

<sup>5</sup> The yellow dot for 40 mph roads at M7, page 16

while the local context for this road is (to use the terminology of the Decisionmaker) “*a narrow 40mph country lane*”.

32. It is of note – in terms of the Decisionmakers determining between the expert judgment of Mr Riley/Eaves vs Mr Yeates<sup>6</sup>) – that there is a further guidance document produced in relation to HS2 Rural Road Design Criteria (O75) which is undeniably a large infrastructure project involving significant construction traffic.
33. The Council is not asking the Decisionmakers to apply it as ‘binding’ guidance – but it is useful for verifying the expert evidence of Mr Riley and Mr Eaves. The HS2 Guidance starts at A.1 by setting out the lacuna that exists in guidance (MfS1, MsS2 and DMRB) in relation to rural roads. A lacuna eloquently explained by both Mr Riley and Mr Eaves in their XiC.
34. It goes on to set out a methodology for determining acceptable SSD at rural roads. At A.9.1 it requires the reader to determine the design speed. Here Mr Yeates accepted it would be 60kph because the 85<sup>th</sup> percentile speed is 34.7mph. Then at A.12.1 it says for rural roads with a design speed greater than 50 kph, minimum stopping sight distance values shall be in accordance with DMRB standard. I.e it supports the approach of Mr Riley and Mr Eaves and contradicts the approach of Mr Yeates.
35. Again, to be clear the Council is not saying to the Decisionmakers – apply the HS2 guidance blindly. But we are saying they should prefer the expert evidence of Mr Riley and Mr Eaves that the DMRB is the more appropriate guidance, and the SSD should be drawn from there. This joint expert evidence – as well as being more credibly presented – is then verified by the HS2 guidance. On that basis there is not sufficient forward visibility at the junction.
36. However, even if the MfS2 guidance applies – SY case is that the minimum 53m is met by the 54m he believes can be achieved. This is where we return to the accuracy point – even if SY is just ‘slightly’ out on his approximation using a plant pot then he will breach his own guidance. If the Appellant had carried out and evidenced detailed measurement that may be one thing, but a last-minute measurement (it must have been

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<sup>6</sup> Putting aside that Mr Yeates didn't apply MfS2 until he had speed data from Mr Eaves that would benefit from it (in magpie like fashion) so there is an element of the cart before the horse to his evidence, and previously Mr Yeates applied DMRB to these same roads at the last inquiry (E12: 2.4.3 – 2.4.7)

done in March 2024 when SY first visited) described in oral evidence shouldn't give the Decisionmakers confidence.

37. Therefore, the Council would submit on either sides evidence, on either sides guidance, the Decisionmakers cannot be satisfied that sufficient forward visibility can be achieved at the UW Lane/Moss Lane junction.
38. That matters – setting aside for a moment that it was an unchallenged previous concern in the Decision – because it means that the proposal will lead to an increase in southbound vehicles queuing and crossing over the northbound carriageway with insufficient visibility. SY explained that SSD is the distance that drivers need to see an obstacle in the road and stop to avoid it. It is close to implausible – as SY attempted to do by reference on a study in MfS2 rather than give his own expert view– to say that sub-standard forward visibility would not increase safety risks.
39. Look instead to Mr Riley's evidence as to why the lack of an acceptable SSD – i.e below the recommended stopping distance for obstructions - would increase the risk of collisions. Look to Mr Eaves evidence about how the nature of the turning – with one car turning across the path of another – will increase the risk of cars 'T-boning' where the side of one car is hit by the front of another. To permit such an arrangement would be to increase the risk of accidents and be an unacceptable impact in highway safety terms.
40. This point is not addressed by the proposed mitigation at Ulnes Walton Lane (and SY did not attempt to justify it on this basis) – i.e the new signs and surfacing – but the sufficiency of those measure was addressed by KR in evidence. In particular the effectiveness of the signs and friction surface is doubted given the limited amount of new signage being provided and the lack of any vertical features with the high friction surface.
41. Overall, in relation to the first specific concern of UW Lane, the clear stance of Mr Riley (and Mr Eaves) is that the Appellant has fallen far short of addressing the previous concerns of the Decisionmakers.

*The footway being provided between Ulnes Walton Lane and Moss Lane.*

42. The second area of specific concern was set out at 13.23 and 13.24 of the Decision. The Decisionmakers previously identified that the UW Lane/Moss Lane junction had several hazards that required people to walk on the verge or in the road. These were the bus stops (plural) and the post box. Given the proposal would be increasing the number of vehicles using the junction significantly (with 12 cars a minute in the AM peak) the concern was the increased risk of vehicular and pedestrian conflict at the junction.
43. The Council does recognise that the Appellant has now provided a new 2m footway to the northern bus stop and a tactile paving crossing point across Moss Lane. As set out by KR that does address the Council's concern in relation to the northern bound bus stop. But is it sufficient?
44. No for two reasons.
45. The first is the bus stop. This was a concern to the Decisionmakers previously despite, they expressly say, the low usage. The Appellant sought to further embellish the evidence for the low usage (which the Decisionmakers already accepts) by a survey which showed no one using the post-box on two days. But the Inquiry has heard personal evidence from users of the post-box (Ms Morrissey) and, as KR pointed out and SY accepted, that would still require a postman to check the post-box every day. The low usage didn't satisfy the Decisionmakers previously and it shouldn't satisfy the Decisionmakers now.
46. While the Appellant has then introduced mitigation measures to the surrounding junction – the signs and the high friction surface – we return to the expert evidence of Mr Riley. They are simply not going to be effective at reducing speeds.
47. The second is then the southern bound bus stop. This, quite simply, seems to be a point that has been missed by the Appellant – perhaps due to the manner in which it arose in the previous inquiry.
48. There is currently a bus stop on the southern bound side of UW Lane. Currently no services stop there – and crucially it was this lack of usage that Mr Yeates explained why he had no safety concerns in XiC (and confirmed in XX).

49. But this misses that as part of this proposal the Appellant is providing a s.106 payment for ‘Additional Bus Service Contribution<sup>7</sup>’ which will fund for five years turning the 112 service into a two-way service which is “*likely*”<sup>8</sup> to use the southern bound bus stop.
50. This matters because the journey of a hypothetical user from the southern bound bus stop to the prison is as bad – if not worse – than the user of the northern bound bus stop. They will have to cross over UW Lane at a bend with poor visibility, they will have to walk on the verge or carriageway to get to the bus stop. Even SY accepted that this would be “undesirable” but rather than disputing the fact that safety issues would arise, SY (as he would also do in relation to construction traffic) relied on the low likelihood of the use (and thus the risk) occurring.
51. The issue with this – setting aside that SY accepted it was “likely” the bus stop would be used again in association with money provided to make this specific proposal acceptable in planning terms – is that it is pure conjecture based on the proposition that users may use the different Willow Road bus stop. But that same point failed to convince the Decisionmakers in relation to the northern bound bus stop – so why would it convince them in relation to the southern bound bus stop? When the onus lies with the Appellant such conjecture – provided for the first time in XX highlighting that this point was missed – isn’t sufficient to provide the Decisionmakers any comfort.
52. The point is – and the Council would say it is a logical one – that the Decisionmakers found it necessary to provide a footway and safe crossing point to the northern bus stop to stop pedestrians walking in the carriageway or verge due to the increased use associated with the proposal. It must also be the case that it is necessary to do the same for the southern bound bus stop which will be brought back into use if permission is granted. To fail to do so just does half the job – a visitor can arrive safely by bus but they cannot leave safely by bus.
53. The Appellant had to satisfy the Decisionmakers that they had addressed the concern of pedestrian/vehicular conflict created by pedestrians using the bus stops (plural) and

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<sup>7</sup> Although this was only offered midway through the first public inquiry (and so after LCC made their request for a footway for the northern bound bus stop).

<sup>8</sup> SY XX

post-box and walking in the verge and carriageway. While they have addressed the issue in relation to the northern bound bus stop – they have not done so in relation to the Post Box or southern bound bus stop. The unacceptable highway safety impact remains.

#### *Moss Lane Traffic Calming*

54. The Council does recognise that the Appellant has produced additional measures to address the concern on speeding in Moss Lane. Furthermore, the Appellant has agreed to amend the raised table proposal to address one further concern that Mr Riley had (confirmed by SY in XX).

55. The issue remaining is whether the proposed mitigation measures (the Dragons Teeth, and four narrowing hatches) are sufficient to address the recognised concern of speeding on Moss Lane. As set out by Mr Riley in XiC while they attempt to improve the situation given it mostly involves painted on markings they will not be effective in addressing the Decisionmakers concern on speeding.

56. Furthermore, while SY dismisses it, fixing the poor quality surface of the road (which is suppressing speeds) without providing effective speed prevention measures will actually exacerbate the problem rather than addressing it.

57. The concerns around Moss Lane speeding remain.

#### *A581/Ulnes Walton Lane Mitigation*

58. As explained – to avoid duplication – the Council’s submissions on the unacceptability of the A581/Ulnes Walton Lane Mitigation will be addressed extensively in UWAG’s submissions.

59. However, such an approach should not be taken to be an indication of the lack of concern that the Council have – far from it, this is one of the areas of greatest concern to the Council as extensively and robustly set out by Mr Riley in XiC.

60. As Mr Riley set out there were four fundamental issues with the 2023 Design: visibility, swept path analysis (i.e overrunning), private driveways, and Non-motorised users. Any of these four would render the 2023 Design fundamentally unacceptable but together – as will be addressed in cost submissions – they render the Appellant’s continued reliance on it unreasonable.
61. Mr Riley went on to explain that – apart from visibility – the three fundamental issues remained with the 2024 Design. In particular, nothing had been done to address the presence of the three private driveways rendering this a 6-arm mini-roundabout contrary to guidance, and causing significant safety issues due to the unexpected and unusual manoeuvres that drivers will have to take to either use, or react to those using, the private driveways.
62. It is appropriate to deal with one specific point that Mr Riley addressed again and again through his evidence: the relevance of the position of Lancashire County Council. The Appellant has sought to derive support from the two position statements provided by LCC (M3a – pdf 5, M10a – pdf 72). In his XX Mr Yeates also derived support by inference from the ‘silence’ of LCC to a particular concern raised (in relation to the southern bound bus stop).
63. However, it is important to consider the quality of what we have from LCC. They have not appeared before the inquiry to have their view tested. Their position statements are high level and vague. It should cause considerable concern that LCC were seemingly willing to not object to the 2023 Design which was so fundamentally flawed and sub-standard. These concerns justify the Decisionmakers placing little to no weight on the position of LCC. It should certainly not give them any comfort that LCC have robustly considered their position.
64. While it is a matter entirely for the Decisionmaker it can be noted that a similar approach was taken by Inspector Boniface<sup>9</sup> when refusing a residential scheme based on conflict with – as then – 111 despite the local highway authorities having no objection as set out in submitted SoCG:

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<sup>9</sup> Land east of Bredon Road and Tewkesbury Road, Mitton, APP/H1840/W/22/3301732 and APP/H1840/W/22/3301742

*33. I am very aware that none of the relevant highway authorities' object to the appeal proposals. I have carefully considered their positions and attach significant weight to their professional and considered advice. However, none of the authorities were present at the Inquiry to allow for the testing of their opinions and in this case, notwithstanding the content of the statements of common ground and other written evidence, I am not satisfied that all issues have been robustly considered.*

65. The Council simply highlight this as an example of an Inspector taking the approach that we ask the Decisionmakers to take. Yes, as a statutory consultee – as we envisage the Appellant saying – you should give weight to their position. But it is crucial to ask whether that is a robust, evidenced, detailed, reliable position that has been tested – the answer to each of those questions is no.

66. This all flowed into the wider overarching submission that Mr Riley had: that this location was a fundamentally unsuitable for a mini-roundabout. The Appellant has been forced to mitigate this junction because of the impact from the proposal (and it is important not to lose sight of this fact – mitigation is a must here) – but a mini-roundabout is quite simply not a safe nor suitable way of doing so.

67. It is an example – such as construction traffic below – where the presentation of more detailed evidence (the mini-roundabout was previously theoretically suggested at the last inquiry) has confirmed the Council's (and the Decisionmakers) fears and illustrated additional safety concerns that will arise from the proposal.

68. Neither the 2023 nor 2024 Design safely mitigate the impact from the development and on that basis alone would cause unacceptable highway safety impacts.

#### *Construction Phase Assessment*

69. The Decisionmakers concern in relation to construction traffic was set out at 13.33 of Inspector's Report. It noted that all traffic would use UW Lane and Moss Lane. The HGV numbers – at that point envisaged to be up to 146 HGV movements at its height over a three-year period whose peak would be six weeks of 100 HGV movements a day – was described as significant. This was an issue because of “*the widths and length of*

*HGVs creates additional hazards on narrow roads such as UW Lane and problematic junctions like the junction between UW Lane and the A581”.*

70. The continued impact of construction traffic through the UW Lane and the A581 junction will be addressed in UWAG’s Closing. But that leaves the concern on the high numbers using UW Lane – a narrow bendy country lane.
71. Mr Yeates rightly continued to accept – like at the last inquiry – that just because construction traffic is temporary (although over long a five-year period) you don’t ignore the impact. Equally an unacceptable highway safety impact doesn’t become acceptable by the argument that it is only temporary. The Appellant is not running a case that suggests road users and residents should run the risks for five years for the sake of a prison.
72. In the context of those – rightfully – agreed points it is unclear what utility there is in ‘it’s just construction traffic which occurs with any development’ type arguments. We are examining this level of construction traffic, on this narrow bendy rural road, and if it will cause unacceptable highway safety impacts then the result should be to refuse permission.
73. Turning first to the numbers, as Mr Riley illustrated (see Appendix B of N3), just taking the Appellant’s revised modelling and creating a daily figure shows a striking increase in the previously anticipated numbers.
74. A three-year period with heights of 147 HGV movements a day, and a peak period of six weeks of 100 HGV movements a day has **become** a five-year period, with four months (88 days) of movements of between 174 – 199<sup>10</sup>, and a peak period of 20 months<sup>11</sup> within which 80 weeks<sup>12</sup> will have over 100 HGV movements a day. As Mr Riley set out at its peak that will mean an HGV every minute and a half on UW Lane.
75. As SY accepted (although it was numerically undeniable) the Appellant’s additional evidence has shown that the HGV impact is going to be worse than the Decisionmakers previously assumed.

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<sup>10</sup> Jul to October 2026

<sup>11</sup> Jun 2025 to Jan 2027

<sup>12</sup> This equates to 18 months out of the 20 months. The other 2 months are in the high 90s.

76. Furthermore, we now know that all of that HGV traffic is going to be sent down the narrow bendy country lane of UW Lane. A road which has a 7.5 tonnes limit – although not for access – because it is unsuitable for large vehicular use. Or as Mr Yeates put it in XX “*LCC don’t want that traffic using it*”. This is also a lane which is used by pedestrians – who mostly have no kerb or pavement to walk on – and is used by significant numbers of cyclists as shown in the NMU survey<sup>13</sup> (both using the Lancashire cycleway and beyond it).
77. What has the Appellant done to satisfy that putting over 100 HGVs a day for 80 weeks down this lane is safe?
78. Firstly, the Appellant sought to place some reliance on the Explore Construction Route Assessment. Setting aside the lack of ‘formalities’ (statement of truth, expert declaration), the fact it was carried out with the strongly implied request to disprove the ‘robust’ tracking software, and was carried out before the Decision was made – the contents should not bring a crumb of comfort to the Decisionmakers.
79. In effect, an HGV was driven at an unspecified time of day along the routes. The height of the analysis is that “*HGVs should pass with care during two-way traffic on Walton Ulmes Lane although is suitable. An alternate consideration would be to make exiting HGVs travel north along Walton Ulmes Ln to the B5248.*”.
80. Ignoring the error in the name of the lane, this is so high level to be useless. But even the two lines of text are not a ‘clean bill of health’ for the Appellant. In fact, given the requirement to pass with care and the suggestion of using an alternative route they hint at the potential issues with using UW Lane even in the view of Explore.
81. The Council would strongly submit – in a phrase used in a different context with SY in XX– that the Explore Report is not worth the paper it is written on.
82. Secondly, SY produced analysis (M9) to examine in more detail the narrowness of UW Lane. While SY tried to then resile from his own analysis by reference to his perception

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<sup>13</sup> M6 – page 28 and 29.

driving UW Lane (he accepted he had not measured the width), the Council will take SY at his initial word and rely on that evidence.

83. What SY analysis showed is that just under 50% of UW Lane (690 of 1.5km) is too narrow to allow two HGVs to pass. If two HGVs were to meet in one of those locations (and had not anticipated that the road was too narrow) then they would have to do one of two things: i) reverse until they found a spot to pass or ii) go off the carriageway onto the verge.
84. Mr Riley set out why this would be such a safety concern especially in a Lane used by significant levels of cyclists (for a rural area) and where pedestrians must walk in the carriageway. Critically Mr Yeates also accepted that if this occurred then it would be a safety concern. Instead – like the southern bus stop point – all of his eggs were firmly placed in the low ‘likelihood’ basket.
85. But it is a tricky argument to make when, on his own evidence, nearly half the lane is too narrow, and those narrow stretches (as indicated by the red boxes at Fig 2.7 of M9) are – after a straight stretch immediately following the A581/Ulnes Walton Lane junction – accepted to be at regular intervals along the Lane. That includes at various bends – in an accepted bendy road – where even Mr Yeates accepted, he would have a safety concern in relation to the Bridge.
86. This is likely why SY attempted to provide a mathematical model (Fig 2 -6) to show that HGVs would most likely meet on a straight stretch. In fairness to Mr Yeates he quickly acknowledged the flaws in such an artificial approach but he did not go far enough – maintaining there was some limited utility in the colourful graph, There isn’t. It assumes that HGV drivers will not only depart like clockwork in regular intervals but immediately hit 30mph and maintain that speed for the entire drive down UW Lane. That simply will not happen in the real world – even ignoring the fact the graph doesn’t account for existing HGVs.
87. Given the undeniable physical limitations of UW Lane, and the lack of confidence in the Explore Report, the Appellant in XiC reverted to their third means of satisfying the Decisionmaker: broad un-evidenced assertions.

88. These ranged from the remarkably broad (there are lots of similar roads in the UK, I once saw two HGVs pass in a road (which was not even UW Lane)) to the unhelpfully vague (I have seen higher HGV numbers using narrow roads before) to bare un evidenced assertions ('these roads have already been used for construction traffic for two prisons). In the context of a nationally important called in planning inquiry where the Appellant has the onus to satisfy an existing concern of the Inspector and the SoS: these attempts fall far short of being satisfactory. Instead, they illustrate how unsatisfactory the current proposal as to construction traffic is.
89. Equally in XX SY suggested for the first time that his concerns about the narrowness of the roads could be addressed by 'temporary management measures' in UW Lane itself (in relation to the Bridge). Setting aside this point being raised for the first time (and thus making it hard to examine the effectiveness of such measures) they are not a clear solution. This is a proposal which will have 18 months of 100 HGV movements a day down UW Lane – is it really sufficient to say, 'well we could have a banksman there for 1.5 years, or temporary traffic lights that we would have to consult with LCC on'. These were the same types of omissions that caused the Decisionmakers concern previously, and – 15 months later – they remain.
90. Again – using the HS2 guidance as a calibrating document rather than binding guidance – it is of note that it supports the concerns of Mr Riley and Mr Eaves that UW Lane is too narrow. This is because it sets out – at A.6.3 – how rural road widths should be at least 6.8m for roads where HGVs are likely to pass each other on a regular basis. UW Lane is – accordingly to Mr Eaves – only over 6m in three places and is no wider than 6.11m: i.e far below that minimum standard.
91. Where this leaves the Decisionmakers is that the level of HGV use of this narrow bendy lane which led to their concern has been significantly exceeded. The concern about narrowness has been illustrated by the Appellant's own data and shown to stretch to about 50% of the road. And what has the Appellant done to address the concern? Frankly nothing at all. Certainly nothing that can give the Decisionmakers confidence when sending one HGV every 1.5 minutes down UW Lane that this will be safe.
92. This is why the Council makes the submission that the Appellant has taken the opportunity to address the Decisionmakers concern and instead has confirmed it.

## Conclusion

93. The Inspector in the Report at 13.35 found:

*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. This weighs heavily against the proposal in the overall planning balance.*

94. Has the Inspector – and the SoS – now been given that detail and given that confidence?

It must be a resounding no. Key concerns – the right lane turning into Moss Lane, the southern bound bus stop – have been missed and remain unaddressed. New evidence has confirmed or even exceeded those previous concerns (the A581/Ulnes Walton Lane junction, Construction Traffic). What has been provided won't be effective (Moss Lane, UW Lane).

95. In a 'normal' appeal this would be sufficient to defeat the proposal. But in a re-opened appeal specifically requiring the Appellant to address the existing particularised issues of the Inspector and the SoS – such an approach is fatal.

96. The Council, UWAGs, the Inspector and the SoS highway safety concerns remain and are present in even greater scale. The Appellant has failed to satisfactorily address that the proposals would no longer have an unacceptable impact on highway safety. On that basis there is ample justification for the 'knockout blow' under 115 to be 're-dealt'.

97. In the alternative – even if the impacts are not unacceptable (and given the Decisionmakers previous findings it is hard to see how) they are still significant and should carry significant weight in the planning balance. They would be sufficient to prevent VSC arising.

98. On that basis, the Council ask the Inspector to maintain your view and ensure that the SoS reaches the right decision (for the second time).

***Piers Riley-Smith***

***26<sup>th</sup> April 2024***