LAND ADJACENT TO HMP GARTH AND WYMOTT

MINISTRY OF JUSTICE

REOPENED INQUIRY

APPELLANT'S CLOSING SUBMISSIONS

Introductory point

1. An issue raised by the Inspector is whether he should only confine himself to a conclusion on highways issues, or whether it is necessary for him to also revisit his original recommendation as to the grant or otherwise of planning permission. The Inspector asked for the parties' views on this. The MoJ's position is that the Inspector should only confine himself to addressing the question of whether the highway safety issues have been satisfactorily addressed, and should not revisit his overall recommendation. The minded to grant letter from the Secretary of State stated that subject to being satisfied that the highway safety issues identified by the Inspector can be satisfactorily addressed, the Secretary of State is minded to allow the appeal and grant planning permission subject to conditions; and the letter reopening the inquiry was clear that no issues other than highway safety should be addressed. On this basis, the Inspector should only confine himself to reaching a conclusion on whether highway safety issues have been addressed, rather than addressing a wider balance on which no party has re-given evidence. All parties agreed not to produce any new planning evidence, and in those circumstances, it is wholly inappropriate for UWAG and the Council to suggest that the Inspector should make a recommendation based on a wider planning balance.

Overarching points

2. The evidence at this reopened inquiry has shown that the highway issues originally identified by the Inspector and the Secretary of State have been comprehensively addressed. We make several points at the outset before the detailed points are analysed.

    i. The overarching national policy test is in paragraph 115 of the NPPF. This is clear that development should only be "*prevented or refused on highway grounds if*

there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe." No party at this appeal alleges that the residual cumulative impacts on the road network would be severe. Therefore, the only question is whether the development, together with the suite of mitigation measures, will cause an "*unacceptable impact on highway safety*". There are two points to make here.

ii. First, that the national policy test clearly implies that there can be *acceptable* impacts on highway safety which can be tolerated within the planning system. There is an inherent risk associated with all use of motorised vehicles on the public road network, and there are particular risks associated with any part of the road network. The question for the decision maker is whether that level of risk would be exacerbated to an unacceptable degree. There is a difference between undesirable but *acceptable* risks, and *unacceptable* risks.

iii. Second, the question as to whether the impact on highway safety becomes something which is "*unacceptable*" is clearly a matter of judgment for the decision-maker. It is a sliding scale and not a binary or absolute decision. Different transport experts and different decision makers may reasonably reach different judgments along that sliding scale. A reasonable conclusion would need to have considered a number of matters of fact and degree, including considering hazards that may give rise to a risk of accident, but also an assessment of the likelihood and frequency of each of those hazards or risks materialising, and where that risk and likelihood sits on the sliding scale of acceptability. It cannot be a case of simply relying on hypothetical worst-case upon worst-case scenarios.

iv. The Inspector and Secretary of State set out very clearly what their concerns were in relation to highway effects, both as to impacts not being adequately mitigated and lack of information. The reopened inquiry has now meant that highways issues have been explored in a huge amount of detail, with thousands of pages of evidence and many hours of live evidence. As will be explained in this closing, all of these issues originally identified by the Inspector have now been comprehensively addressed by the new evidence that has been put forward by the MoJ, showing that all appropriate design standards have been met and no material safety concerns remain. Both the Council and UWAG are so set on

continuing to steadfastly object to this scheme, that they have failed to stand back and objectively assess the new evidence. The objecting parties have majored in on tiny issues or have had to resort to relying on unrealistic hypothetical worst-case scenarios in order to try to maintain that there is a remaining highway safety concern (for example, alleging that an HGV would turn round a mini roundabout at 15 or 25kmph which is totally unrealistic; or alleging that a professional and qualified HGV driver would behave wholly irrationally when driving on Ulnes Walton Lane). This is not a reasonable or appropriate approach. Mr Yeates was credible and reasonable, and on any objective assessment, there is now more than sufficient evidence available and fundamentally there is no unacceptable highway safety impact.

v. A highly relevant piece of information in assessing highway safety is recorded Personal Injury Accident ("PIA") data. Of course this is not the only consideration, and there still needs to be an assessment of whether a proposed development will unacceptably increase risks. However, as explained by Mr Yeates, PIA data is crucial. Most accidents occur due to instances of human error, but where there is a pattern or cluster of PIAs on a certain part of the road network, this can indicate that there is an issue in the road design or road geometry which is contributing to PIAs. There is extensive recorded PIA evidence available for the agreed study area. The data originally spanned from 2014-2018 and 2016-2020.[1] This showed limited numbers of accidents, no fatalities and no pattern or cluster of accidents. As accepted at the last inquiry this data, together with the COBALT forecast assessment, shows that there are no existing PIA concerns and "*that the proposal would not exacerbate any safety issues insofar as PIA is concerned*".[2] Additionally, there is now the recent 2018-2022 data which is materially similar and further reinforces the same point.[3]

vi. PIA data is independent, objective and verified evidence and can be given significant weight. In contrast, UWAG and other local residents have sought to introduce evidence of so-called 'near misses' and other 'accidents' and 'incidents'. The concept of 'near misses' is highly subjective (one person's idea of a 'near miss' will be very different to another person's 'near miss') and UWAG did

[1] See the Inspector's report at paragraph 13.21 of L1, and A35 at page 21 and E12 at page 4.
[2] Paragraph 13.21 of the Inspector's report at L1.
[3] See Q1.

not put forward any national or local highways guidance or appeal decisions which endorse giving any weight to 'near miss' data. There is also no evidence as to what correlation can be made between highly subjective 'near misses' and actual accidents occurring. Added to this, Ms Morrisey disclosed that the evidence as to UWAG's accidents/incidents/near misses was gathered from people who were all in objection to the new prison development, in order to support the campaign objecting to the appeal; and she explained that UWAG had taken everything they received at face-value and did not carry out a process of verification. This was clearly not an independent evidence-gathering process. In addition, in many instances it is impossible to tell who/where the evidence came from, including details as to dates and times.[4] This evidence should be given very little weight, and even UWAG's professional witness Mr Eves sensibly agreed that he could not verify any of this evidence and he did not seek to rely on it.[5]

Moss Lane

3. It is common ground that the junction of the site access and Moss Lane will operate safely and suitably and that the link capacity of Moss Lane will not be exceeded.[6] Therefore, the sole issue for the reopened inquiry for Moss Lane is the traffic speeds on Moss Lane itself and the effectiveness of the proposed traffic calming measures. Indeed, the findings from the original inquiry show that the issue in contention is in fact focussed on the south of Moss Lane.

4. Having examined the mitigation measures that were originally proposed (which included 'slow' road markings and a narrowing of the carriageway either side of the new proposed access towards the north of Moss Lane), the Inspector had found that these would indeed "*assist with traffic speeds on the approach to the junction*".[7] The concern of the Inspector however was that given the length of Moss Lane "*it remains likely that vehicles would still be tempted to speed further south*". The Secretary of State reiterated that this was the specific concern for Moss Lane, stating that: "*he agrees with the Inspector that vehicles would still be tempted to speed further south on Moss Lane*."[8] Therefore, the question is whether the mitigation measures now proposed by the MoJ adequately addresses this

[4] See, for example, the table at O10 and the residents statements at O13.
[5] His answer in cross-examination.
[6] See the SoCGs at P1 (paragraph 2.4.3 and 2.5.2) and P2 (paragraphs 2.7.3 and 2.7.5)
[7] Paragraph 13.27 of Inspector's Report at L1.
[8] Paragraph 15 of the Secretary of State decision at L1.

concern relating to speeding further south on Moss Lane. Notably, the speed surveys that have recorded speeds on Moss Lane have all been positioned at the south of Moss Lane.

5. The Appellant has carefully taken these concerns into account and has directly responded to the concern by now proposing enhanced traffic calming measures along the entire length of Moss Lane.[9] The allegation from the Council that the mitigation measures have not changed much from the initial proposals is unfair. The suite of mitigation proposed now additionally includes:

   i) 'Dragons teeth' markings to indicate vehicles are entering a traffic calmed area;

   ii) A raised table at the existing access to the prison; and

   iii) Four traffic calming features with hatching to narrow the carriageway.

6. It is noted that the updated noise evidence confirms that the introduction of new vertical traffic calming would not change the conclusions of the original Noise and Vibration Impact Assessment.[10]

7. These measures would materially reduce vehicle speeds along the whole length of Moss Lane and create a 'gateway' feature at either end to make it clear to drivers that they are entering a traffic calming corridor. The raised table to the south of Moss Lane will be particularly effective at reducing speeds, and indeed advice from the Department for Transport is that raised junctions are amongst the most effective measures at limiting vehicle speeds and reducing accidents. In his evidence to the inquiry, Mr Riley for the Council importantly accepted that "*the raised table will reduce speed at the southern end of Moss Lane*"[11] and that the raised table "*has addressed the concern on the south of Moss Lane*".[12] And tellingly Mr Yeates was not cross-examined by the Council or UWAG in relation to Moss Lane at all.

8. The only issue identified on Moss Lane in the first Stage 1 Road Safety Audits ("RSA") by Hydrock was that the poor road surface condition could reduce longevity of proposed road markings, and it was recommended that the road surface be improved before any road markings are applied.[13] In the designer's response, Atkins addressed this by stating that the MoJ has agreed to re-surface Moss Lane before delivering the mitigation

[9] See the plan at electronic page 34 of M9.
[10] M3a at electronic page 87.
[11] Mr Riley answers in examination in chief.
[12] Mr Riley answers in cross-examination.
[13] M3a at electronic page 16.

measures.[14] The second Stage 1 RSA by VIA did not identify any concerns with the Moss Lane traffic calming proposals.[15]

9. LCC have also reviewed the revised traffic calming measures at Moss Lane and have confirmed their support for these measures and their view that these measures will be effective in reducing speeds.[16] It has been agreed with LCC that these works would be delivered via a section 278 agreement with LCC. It follows that these measures will be subject to further detailed design and associated RSAs at each appropriate stage of the design.

10. On this basis, the main issue in relation to Moss Lane, namely the concern relating to speeding towards the south of Moss Lane, has been fully addressed and should now fall away. The proposed development will not exacerbate any speeding issues and indeed the proposed mitigation measures will provide a betterment compared to the existing situation.

11. Mr Riley's residual concerns in relation to Moss Lane do not carry any weight against the scheme:

    i) He contended that even if speeding to the south of Moss Lane has now been addressed, there would still be a risk of speeding towards the north of Moss Lane. However, as explained above the Inspector previously accepted that the 'slow' road markings and a narrowing of the carriageway would assist with traffic speeds to the north of Moss Lane, and the only concern raised was speeding to the south. There is no good reason for a different conclusion to be reached now, and in fact there are now enhanced traffic calming measures along the whole length of Moss Lane, including 'dragon's teeth' and additional road narrowing, which effectively mitigate any risks of speeding along the entire length of the road. Mr Yeates explained that applying these markings to the surface of the road is entirely within Department for Transport guidance and research shows that measures such as this work.

    ii) Mr Riley claimed that the poor road surface currently suppresses speed, and that repairing the road surface will increase speeds. There is no data or research put forward to support this point, and modern suspension on vehicles means that the

[14] M3a at electronic page 46.
[15] M3a at electronic page 33.
[16] M3a at electronic page 5.

poor road surface is currently unlikely to suppress speeds in any event. Moreover, as explained above, the road surface is being improved due to a recommendation in the first RSA (which raised no concern as to poor road surface suppressing speeds currently), in order to ensure the longevity of road markings, and therefore this improvement is fully justified.

iii) Finally, Mr Riley confirmed that his original technical concern as to the length of the raised table and long vehicles[17] had been addressed by the recent plan of the traffic calming measures showing the larger raised table, and therefore had now fallen away.

12. Overall, there are no pre-existing PIA records of any accidents on Moss Lane – an issue fully accepted by both Mr Riley and Mr Eves.[18] In addition, the enhanced traffic calming measures proposed will mitigate any impacts of the new prison for users of Moss Lane and there will certainly not be any unacceptable impacts on highway safety. Indeed, the measures will serve as a betterment to the existing situation.

Ulnes Walton Lane, junction with Moss Lane and new footway

13. There are two aspects to address here: i) pedestrians and other non-motorised users, and ii) vehicles.

i) Pedestrians and other non-motorised users

14. The scheme originally considered by the Inspector did not include a footway along Moss Lane to the existing northbound bus stop on Ulnes Walton Lane. This led to the Inspector's specific concern in the decision letter that people will walk on the verge or road to access facilities, and there would be an increased risk of vehicle and pedestrian conflict.[19] The Secretary of State agreed that based on the evidence at the time, "*there would be an increased risk of vehicle and pedestrians conflicts at the junction that would not be adequately mitigated*".[20] Apart from this issue of pedestrians using facilities, it is relevant that the Inspector accepted it was unlikely that the proposal would materially worsen risks to walkers using public rights of way and that there would be no need for formalised crossing points of the road where it meets a public right of way.[21]

[17] Paragraph 4.1.11 of his proof at N3.
[18] Answers from both professional witnesses in cross-examination.
[19] Paragraphs 13.23-13.24 of L1.
[20] Paragraph 15 of the Secretary of State decision at L1.
[21] Paragraph 13.25 of L1.

15. The MoJ has taken on board these concerns and now, in addition to the proposed traffic calming measures, also proposes a new 2-metre wide footway along Ulnes Walton Lane, from the existing northbound bus stop on Ulnes Walton Lane to the existing access junction for the new prison.[22] This includes tactile paving and a step free crossing point to allow pedestrians to cross Moss Lane and access the existing footway on the western side of the road. Mr Yeates explained that the new 2-metre footway can comfortably accommodate street furniture too. The MoJ has also already agreed to upgrade the existing bus stop to a high-grade disability compliant standard to include provision of a raised kerb, boarding platform, new shelter and required carriageway markings, which the new footway would lead to.

16. It is agreed with LCC that these works would be delivered via a section 278 agreement with LCC. Therefore, the additional highways measures proposed would be subject to detailed design and the associated RSAs required at each appropriate stage of the design. Neither of the Stage 1 RSAs identified any problems in relation to this proposed scheme, and LCC also do not raise any concerns.[23]

17. Mr Riley now accepts that the proposed footway provides a safe and acceptable route for users of the northbound bus stop, and he accepts that the footway is a benefit of the scheme over and above the existing situation.[24] The provision of the footway now addresses this key part of the Inspector and Secretary of State's concern as to conflict between pedestrians and vehicles at the junction. Mr Riley's remaining concerns relate to the post box, and a new concern now raised as to the southbound bus stop.

18. In general, the number of people walking in this area to use these facilities is very low, and none of the evidence demonstrates that these are well-used facilities. Beverley Davies, a local resident who spoke on the first day of the reopened inquiry, also said that she had only ever walked on Ulnes Walton Lane once and that she never would again. In addition, there are no recorded PIAs at all at this location and no suggestion by any objector of any other incident at this location involving pedestrians.

19. Since the last inquiry, Mr Yeates has now commissioned Non-Motorised User ("NMU") surveys (in June 2023), to specifically record pedestrian, cyclist and equestrian

[22] See the plan at M9, electronic page 32.
[23] M3a at electronic page 5.
[24] Mr Riley answers in cross-examination.

movements along Ulnes Walton Lane. The surveys were undertaken over a 12-hour period on Thursday 8 June and Saturday 10 June 2023.[25] The weather was fine on both days.

20. The NMU survey shows that there were only 11 and 23 daily pedestrian movements along Ulnes Walton Lane on Thursday 8 June and Saturday 10 June respectively, which were dispersed throughout the day and none of which coincided with the AM and PM peak times for the new prison. In addition, none of the pedestrians were observed using the post box throughout the survey periods. This entirely makes sense, as there is already an existing post box located within Wymott Village which is far more convenient for those residents to use. Mr Yeates also explained that there is a wide bellmouth in the curve of the entrance into Moss Lane which means that there is plenty of space for a post office van to stop to empty the post box. The very limited use of the post box, which Mr Yeates pointed out had likely been there for decades, does not present an unacceptable highway safety impact.

21. In relation to the southbound bus stop, there is presently no southbound bus service and the bus stop itself is currently infrequently used. Even Ms Morrisey acknowledged that she had never seen this bus stop being used.[26] The MoJ will be contributing money to upgrade the bus service to travel both ways. Nevertheless, future users travelling to and from the new prison will obviously use the new bus stop on Willow Road, which will be directly outside the new entrance, rather than using the southbound bus stop on Ulnes Walton Lane in any event. The bus service when travelling northbound, will travel up and down Moss Lane, before reaching the northbound bus stop on Ulnes Walton Lane; and when travelling southbound, will travel up and down Moss Lane, before reaching the southbound bus stop on Ulnes Walton Lane. It is inconceivable that someone would choose not to get off the bus at the stop opposite the prison, and instead would wait for the bus to drive back onto Ulnes Walton Lane, to get off there and walk back up Moss Lane. Mr Riley Smith's attempt to rely on this bizarre hypothetical, in order to maintain an argument that there would be conflicts between pedestrians and vehicles, was totally divorced from reality.[27] The southbound bus stop on Ulnes Walton Lane will remain infrequently used, and there will be no material worsening in risk which comes anywhere close to an unacceptable impact on highway safety.

[25] Section 5.4 of Mr Yeates proof at M6.
[26] Ms Morrisey answers in examination in chief.
[27] In his cross-examination of Mr Yeates.

22. In relation to other NMUs, i.e. equestrians and recreational cyclists, the Inspector previously found that such users are typically restricted to certain times of the day and week and generally dispersed, and that therefore, it is unlikely that the proposal would materially worsen the risks to these users.[28] The NMU survey[29] commissioned by Mr Yeates further supports this, with moderate cycle usage dispersed through the day and extremely low numbers of equestrians. Evidence from Ms Morrissey showed that of the three livery stables on Ulnes Walton Lane, one does not offer any 'hacking out' at all on Ulnes Walton Lane and another has an all-weather track onsite to accommodate 'hacking out' on site; this corroborates the low equestrian usage of the road.[30] The PIA data record does not involve any accidents involving equestrians at all, and equally the proposed scheme would not materially worsen any risks to NMUs.

ii) <u>Vehicles</u>

23. There is a history of some individual vehicle accidents at different points along Ulnes Walton Lane[31], but the recorded PIAs do not disclose any pattern or clusters of accidents which might indicate any concern with the design or road geometry of Ulnes Walton Lane or the Ulnes Walton Lane/Moss Lane junction. Indeed there were no recorded PIAs at that junction *at all*. It is also common ground that the link capacity on Ulnes Walton Lane will not be exceeded with the development in place.[32] The Inspector's concerns at the original inquiry related to existing hazards and risks associated with the junction of Ulnes Walton Lane and Moss Lane, queuing and waiting times and the lack of drawings on specific mitigation details to the south of the junction, based on the drawing before the inquiry at the time.[33]

24. Taking on board the Inspector and Secretary of State's concerns, the MoJ has now drawn up a new scheme of traffic calming at the junction, including new chevron warning signs on yellow backing boards, additional 40mph repeater signs along Ulnes Walton Lane, new high friction surfacing through the junction, and new advanced signage on yellow backing boards.[34] These works cover a distance of around 115m. These traffic calming measures

[28] Paragraph 13.25 of L1.
[29] M7 at electronic page 356 onwards.
[30] Paragraphs 18 and 19 of Ms Morrissey proof at O35.
[31] But none at the junction with Moss Lane
[32] P1 at paragraphs 2.4.3 and P2 at paragraph 2.7.3.
[33] See the original drawing at M7, page 367 and E4a, page 23; which did not detail mitigation measures to the south of the junction on Ulnes Walton Lane.
[34] See revised plan at M9 at electronic page 32.

are complimentary to the extensive traffic calming to the north, the effect of which is not disputed. Again, it has been agreed with LCC that these works will be delivered by a section 278 agreement, and these works therefore will be subject to detailed design and relevant RSAs at each design stage. The revised drawing for the mitigation measures on Ulnes Walton Lane clearly deals with the Inspector and Secretary of State's original concerns that the drawing did not originally show traffic calming to the south of the junction. It became clear during Mr Yeates' cross-examination, that Mr Riley Smith had misread the plans, leading to him mistakenly alleging that the new plan does not show anything differently to the south of the junction. Mr Yeates explained that the correct position is that the new plan[35] shows new high friction surfacing, new 'bend ahead' signs and new speed limit repeater signs to the south of the Ulnes Walton Lane/Moss Lane junction, none of which were present on the plan before the original inquiry.[36]

25. The Stage 1 RSA by Hydrock did not identify any issues with the mitigation scheme. The Stage 1 RSA by VIA did make recommendations relating to detailed issues as to the location of proposed signage and carriageway surfacing. The MoJ agrees with these recommendations and has confirmed that the exact location of the proposed signage and the details of the carriageway surfacing will be confirmed during the detailed design stage. LCC also confirmed their support for these proposals.[37]

26. One of the remaining areas of dispute on Ulnes Walton Lane is the forward visibility issues for drivers turning right into Moss Lane. This is of course a part of the road geometry which is already existing. There is no history of recorded PIA at this location, which indicates that there is not a current road safety concern with the forward visibility in this location. Mr Riley relied on the existence of a Speed Indication Device ("SpID") on Ulnes Walton Lane as evidence of speeding concerns by LCC. Mr Yeates has explained that the vast majority of SpIDs are funded and requested by Parish Councils and there is no requirement for them to present any evidence of an existing road safety issue or for the local highway authority to have a road safety concern. Therefore, its presence is not evidence of a road safety issue. Further, neither of the RSAs identified any problems associated with forward visibility.

[35] M9, page 32.
[36] M7, page 367 and E4a, page 23.
[37] M3a electronic page 6.

27. In addition, the vehicle speed data provided by Mr Eves on behalf of UWAG, which has now been provided since the original inquiry, shows that existing vehicle speeds on Ulnes Walton Lane are below the 40mph speed limit.[38] Mr Riley did not provide any evidence of vehicles speeding in this location, and in cross-examination he confirmed that he did not challenge this speed data and he agreed that vehicles would likely be "*slowing down at the bend*". This is all before the traffic calming proposed in the scheme is implemented, which will further reduce speeds.

28. Moreover, Mr Yeates has explained that the forward visibility in this location complies with the relevant guidance in Manual for Streets 2 ("MfS2"). Using the 85th percentile vehicle speed data for Ulnes Walton Lane provided by Mr Eves, the site stopping distance required here is 53 metres.[39] Mr Riley measures that the forward visibility for drivers turning right into Moss Lane is 63 metres, and Mr Yeates adopts a more conservative measurement of 54 metres. Either way the achieved forward visibility meets the MfS2 standards, and there is clearly no existing PIA concern. Notably this evidence as to what the standards in MfS2 are and the measured speeds on Ulnes Walton Lane is all new evidence before this re-opened inquiry that was not considered previously.

29. Mr Riley's argument that the guidance in Design Manual for Roads and Bridges ("DMRB") should be used here (which he says would require a site stopping distance of 120 metres) is totally without merit. The wording in MfS2 could not be clearer in saying that MfS2 is the starting point here rather than DMRB. MfS2 itself states that "*[i]t is therefore recommended that as a starting point for any scheme affecting non-trunk roads, designers should start with MfS.*"[40] MfS2 goes on to say that "*It is only where actual speeds are above 40mph for significant periods of the day that DMRB parameters for SSD are recommended. Where speeds are lower, MfS parameters are recommended*"[41] and further reiterates "*[a]gain in these situations where speeds are lower than 40mph, MfS SSD parameters are recommended*." It is common ground that Moss Lane, Ulnes Walton Lane and the A581 are all non-trunk roads, and it is common ground (as explained above) that speeds on Ulnes Walton Lane are below 40mph. On this basis, frankly it is obvious that the site stopping distances in MfS are the appropriate standards to apply here. Any

[38] Table 2-1 of Mr Yeates rebuttal proof at M9.
[39] Figure 2-2 of Mr Yeates rebuttal proof at M9.
[40] M7, page 16 at paragraph 1.3.2 of MfS2.
[41] M7, page 16 at paragraph 1.3.6 of MfS2. Also see the same point made in relation to rural areas at para 1.3.7 of MfS2.

judgment as to whether to apply MfS or DMRB must be informed by this clear wording within MfS.

30. Mr Yeates explained that DMRB can be of assistance for detailed technical points of highway design where MfS is silent or is not sufficient (e.g. sign locations or specific geometry points). This approach is exactly reflected in MfS2 which explains that DMRB can be used for technical guidance on specific aspects, and that in these circumstances "*[i]t is further recommended that DMRB or other standards and guidance is only used where the guidance contained in MfS is not sufficient or where particular evidence leads a designer to conclude that MfS is not applicable*."[42] However, in the present case, MfS is not silent or insufficient on the relevant issue. MfS2 provides directly relevant standards on site stopping distances for non-trunk roads which are below 40mph, which applies squarely to the Ulnes Walton Lane/Moss Lane junction. There is nothing rare or exceptional in this local context which justifies disapplying MfS2, and instead using DMRB; and neither the Council nor UWAG have pointed to any particular evidence that justifies a conclusion that MfS is not applicable. DMRB standards are significantly higher than MfS and have been designed for motorways and all-purpose trunk roads, which is not appropriate in this local context. In fact, Mr Yeates explained that one of the main reasons for actual speeds being below 40mph on Ulnes Walton Lane is because of the curvature of the road, and that an overprovision of forward visibility in this location would have the disadvantage of leading to increased speeds.

31. A further issue raised by Mr Eves relates to capacity of the junction and waiting times. The outputs from the Junction 10 software show that this junction will operate within capacity in all assessment scenarios. Mr Yeates also explained that the capacity analysis he relies on is robust for a number of reasons. The recent surveys commissioned in February 2023 show that the traffic flows have decreased below the figures used in the Transport Assessment, and thus the higher traffic flows used to inform the junction capacity analysis in the Transport Assessment are overly robust. No party disputed what the observed 2023 flows showed. This also means that if the opening year is 2028, or even 2030, the higher figures used in the Transport Assessment more than accommodate for this.[43] Mr Yeates also explained that his approach of using the 85th percentile speed

[42] M7, page 16 at paragraphs 1.3.3 of MfS2.

[43] See Mr Yeates proof at M6, pages 24-27. Mr Yeates explained in examination in chief that this analysis relates to the A581/Ulnes Walton Lane junction, but that the lack of side roads affecting traffic flow between the two junctions means that this data reflects the traffic corridor as a whole.

means that there is a 15% tolerance 'baked in' to the analysis, which accounts for higher peaks during certain times.

32. Ms Curtis' argument[44] that the predicted traffic data had not taken account of the number of emergency service vehicles which would attend the site was hopeless and thoroughly misleading. The recent FOI data that she had obtained in February 2024 clearly states that it relates only to the number of telephone calls, not the number of instances in which a vehicle attended the prison.[45] The number of telephone calls is clearly higher than the number of vehicles actually attending. However, in her calculations Ms Curtis chose to misleadingly portray this higher number as representing vehicles actually attending, and used this to manipulate the data so as to dramatically increase the predicted number of vehicles. This erroneous approach was only elicited in cross-examination, during which Ms Curtis admitted that she had realised her misleading use of the data after she submitted her evidence but chose not to 'come clean' during her examination in chief – remarkably maintaining her misleading position even in direct response to a question from the Inspector. This was a prime example of the approach of the objecting parties at this appeal being so steadfastly opposed to the development, at the sacrifice of not adopting a fair or objective approach to the evidence.

33. Overall, the enhanced suite of mitigation measures now proposed along Ulnes Walton Lane and at the junction with Moss Lane adequately mitigates any increased risk of vehicle and pedestrian conflicts caused by the development; and again, provides a betterment over and above the existing situation. There is no unacceptable impact on highway safety.

A581 and Ulnes Walton Lane junction

34. It is agreed that this junction is forecast to operate over acceptable thresholds of capacity with the development and therefore mitigation at this junction is required. At the original inquiry, LCC had requested a section 106 contribution to assist with the development of a wider corridor scheme along the A581, which would include a new mini roundabout at the A581/Ulnes Walton Lane junction. A mini roundabout design was the clear preferred mitigation solution by LCC. The MoJ had been in consultation with LCC throughout the process and acted reasonably in accordance with this request and agreed to the

[44] At O71.
[45] O71 page 8.

contribution, and further proposed a Grampian condition at the original inquiry to ensure development would not begin before the mini roundabout had been implemented.

35. However, due to the lack of design, and lack of modelling of effects and costings, the Inspector found that the section 106 contribution would not meet the statutory tests. Consequently, the Inspector found that it had not been demonstrated that the works would resolve capacity issues or that the financial contribution would be sufficient, and therefore it had not been shown that the impacts could be satisfactorily mitigated, and the Secretary of State agreed.

36. The MoJ has conscientiously taken these concerns into account and there is now a significant increase in certainty as to the design of the proposed mini roundabout and as to modelling of effects with the development in place for this reopened inquiry. As shown in Mr Yeates' evidence, a mini roundabout design had initially been proposed to be delivered within highway boundaries (referred to at the reopened inquiry as "the 2023 design").[46] The 2023 design was developed in full consultation with LCC and received their full support as an acceptable mitigation solution.[47]

37. However, the MoJ has now successfully secured land beyond the control of LCC, and as a result of this has duly updated the mini roundabout design (referred to as "the 2024 design").[48] The 2024 design, similar to the 2023 design, includes the provision of a raised table, speed cushions along the A581, three lighting columns, speed limit signs and 'dragons teeth' on all approach arms. As Mr Yeates explained in evidence, both the 2023 and 2024 schemes are acceptable, but the 2024 scheme would be the preferred mitigation solution. The mini roundabout would be delivered through the section 278 process with LCC, which would involve further points of detailed design and further RSAs. Mr Crossland confirmed that the Council would also play a part in this through the relevant conditions discharge process. The land which the MoJ has purchased will also be adopted by LCC to enable them to have control to ensure sight lines are kept open.

38. The main points in relation to the proposed mini roundabout are as follows:

    i. Mr Riley's objections to the principle of a mini roundabout in this location are unfounded. The implementation of a mini roundabout in this location is clearly desirable in principle. The Mini Roundabouts Good Practice Guidance explains

[46] This is the mini roundabout design discussed in M3, M6 and M9.
[47] M3a page 5.
[48] See Mr Yeates addendum proof at M10.

that mini roundabouts are an accident remedial measure, performing better in safety terms than signalled junction and T-junctions.[49]

ii. A mini roundabout solution was clearly preferred by LCC, who have implemented a large number of mini roundabouts in the vicinity. Mr Yeates gave a number of examples of various mini roundabouts in Lancashire (and indeed there are many more in the vicinity). He explained that these examples were chosen because they are broadly comparable to the proposed location, in that they include private driveways, are 3 or 4 arm roundabouts, on bus routes and/or are used by HGVs. These examples show that LCC has a track record of successfully delivering similar mini roundabouts, which have very low accident records, and which can give the Inspector confidence in the implementation of the proposed mini roundabout in this location.

iii. The traffic flows on this junction complies with the guidance in the Good Practice Guidance on side road traffic.[50] The traffic flow in and out of Ulnes Walton Lane with the development would not be below 500 vehicles per day (at around 4,000 per day). In addition, as shown by the calculations at Document Q11, the side road flow as a percentage of the main road flow would be 81%, which would comfortably exceed the minimum of 10-15% suggested in the Guidance. In cross-examination Mr Riley conceded his argument on the traffic flows and accepted that there was not a significant imbalance between the predicted flow on the Ulnes Walton Lane arm and the A581 arms. Following some debatable leading questions, Mr Riley Smith tried to resurrect this argument by relying on a warning in the modelling software,[51] however Mr Yeates explained that this was a different calculation which did not bear any relation to the issues raised in the guidance set in the Good Practice Guidance[52], which is focussed on side road flow (including vehicles entering and emerging from the side road) as a percentage of major road

[49] M7, at page 55.
[50] See the traffic flow diagram at M10, page 8.
[51] M10a, page 56. See also Q11.
[52] M7 at page 56: "…. side road flow should be a minimum of 10 – 15% of the major road flow. A lower flow limit is prescribed because difficulties can result from their use at lightly trafficked side roads, where emerging vehicles or turning movements are expected; if side road flows are too low then the main road will effectively operate under free flow conditions."

flow.[53] As with much of his evidence, Mr Yeates was not challenged on any of this in cross-examination.

iv. In relation to the 2024 design, the proposed visibility conforms with all standards set out in MfS, without reliance on the departure process. Mr Yeates explained that MfS permits a departure process within its guidance, and it had been agreed with LCC that this was appropriate for the visibility measurements for the 2023 design. However, in any event, Mr Riley confirmed that any visibility concerns he previously had in relation to the 2023 design had now fallen away, and he accepted that the proposed visibility with the 2024 design is wholly compliant with standards.[54]

v. It is common ground between the MoJ and the Council that the mini roundabout will be comfortably within capacity during both the operational and construction periods. As referred to above, Mr Yeates explained that the junction analysis in the Transport Assessment is overly robust, given it uses traffic flows which are higher than recorded in the February 2023 surveys. Mr Riley confirmed that he did not take any issue with the robustness of this analysis, and he withdrew his previous concerns in relation to capacity.[55] As Mr Yeates explained, issues of capacity and reductions in delays are important considerations too when considering highway safety and issues of driver frustration.

vi. In fact, My Yeates' evidence showed that the mini roundabout, with development, will actually represent an improvement in capacity of the current junction, without development. In 2025, even without development, the existing junction will operate over capacity. During the AM Peak the right turn from A581 into Ulnes Walton Lane will have an RFC of 90%. There will be a queue of 9.5 vehicles on the A581 and there will be a delay across the junction of 75 seconds. The RFCs for the proposed mini-roundabout will be below 90%, with an overall delay of 69 seconds.[56] A development is only required to mitigate its own impact, not solve all existing problems; and the mitigation proposed with the development will wholly

[53] See Q11.
[54] Mr Riley in examination in chief.
[55] Mr Riley answer in cross-examination, he withdrew his concerns on capacity in section 2.8 of N9.
[56] See M10 at page 12, and A35 at page 45.

mitigate its impact and provide some betterment. Mr Riley confirmed that he did not dispute that the mini roundabout would offer a betterment.[57]

vii. Swept path analysis has been undertaken for a number of larger vehicles, including a maximum legal length articulated vehicle, based on the existing highway layout and based on the 2024 mini roundabout design.[58] This analysis demonstrates that the 2024 mini roundabout provides an improvement compared to the existing situation in terms of vehicle tracking. Large vehicles currently overrun into the opposing lane when negotiating the junction.[59] In the proposed design, large vehicles will need to use some of the hatched area (which is permitted) but do not overrun the opposite carriageway at all. The high speeds relied on by Mr Riley for large vehicles turning in his tracking diagrams were totally unrealistic. The RSA for the 2024 design did not identify any problems relating to swept paths.[60]

viii. Notably, the Good Practice Guidance[61] indicates that the use of mini roundabouts by HGVs does not cause any safety problems, and it only identifies the issue of HGV use leading to the rapid wear of road markings (an issue which can be maintained at this site). Accordingly, UWAG's point that the RSA for the 2024 design did not consider construction traffic goes absolutely nowhere – the large vehicle swept paths show no overrunning into the opposite carriageway, it is agreed that the junction will operate within capacity during the construction period, and the Good Practice Guidance does not identify any safety concerns with HGVs using mini roundabouts.

ix. The RSA for the 2024 design[62] identified a need to ensure that the new mini roundabout is conspicuous and recommended that splitter islands be incorporated into the design for this reason, subject to consideration as to use of the private driveways. Mr Yeates explained that having considered the use of the private driveways, he did not consider that this should be introduced. Nevertheless, he explained that there are a multitude of measures which can be used to ensure drivers are notified of a mini roundabout. The purpose of ensuring

[57] Mr Riley answer in cross examination.
[58] See M10a page 14 onwards.
[59] M10a, page 14.
[60] M10a page 80 onwards.
[61] M7 at page 71, paragraph 4.2.8.
[62] M10a, page 81.

that the mini roundabout is conspicuous here is already achieved with the proposed design by the traffic calming measures on the approach to the mini roundabout, including a raised table, giving vertical notification. Mr Yeates also mentioned that map type signs and 'new road layout' signs could be introduced as part of the detailed stage of design, and it is noted that the RSA also suggested this as an alternative measure of ensuring drivers are notified of the mini roundabout.[63]

x. It is noted that the RSA for the 2024 design reviewed a drawing revision P5 of the design, rather than the drawing revision P6 which is before this inquiry. However, absolutely nothing turns on this. A comparison between the two[64] shows that they contain exactly the same mini roundabout design, with a tiny change in a note relating to the 85th percentile speed used for one visibility splay, which is of no consequence to the RSA review.

xi. Mr Riley's argument that private driveways constitute 'arms' of a mini roundabout, so that the proposed roundabout is actually a '6-arm roundabout' which is contrary to the Good Practice Guidance,[65] has to be one of the most bizarre arguments ever advanced by a professional witness at a public inquiry. Private driveways are obviously not 'arms' of a mini roundabout. 'Arms' is not defined in the Good Practice Guidance (probably because the point is so obvious), but it clearly only relates to parts of the highway over which the public at large can pass and repass. The examples given in the Good Practice Guidance also explicitly shows that the guidance treats 'arms' of a roundabout separate from private driveways.[66] Moreover, the examples of other mini roundabouts in the vicinity put forward by Mr Yeates show LCC have implemented 3 and 4 arm roundabouts with private driveways, and this has never been identified as a problem by LCC. Mr Yeates further explained that the mini roundabout would serve as a betterment for users of the private driveway compared to the existing situation, in that the traffic calming would slow vehicles down compared to the currently unimpeded A581. The private driveways exist already at the existing junction – they are not

[63] M10a, page 81.
[64] M10a, pages 4 and 85.
[65] M7 at page 59, which says junctions with five arms or more are unlikely to be suitable for mini roundabouts.
[66] See, for example, page 78 of M7 where the roundabout is described as a "3-arm" junction, with "private driveways" referred to separately.

created by this proposed development (although from the other parties' rhetoric one could be forgiven for thinking that they were!). The proposed mini roundabout and traffic calming will create a safer junction for users of those private driveways, as compared with the existing T junction.

xii. Finally, there is no material concern relating to NMUs at the proposed mini roundabout. The Good Practice Guidance says that no problems have been noted for pedestrians at mini roundabouts.[67] The Guidance also says that moderate use by cyclists causes little concern. The NMU survey shows that such moderate use takes place here and is nowhere near the example of large numbers of cyclists in university towns. As explained above, the NMU survey showed extremely low use by equestrians, which was further backed up by the evidence by Ms Morrisey as to the level of 'hacking out' by the nearby stables. It is notable that no questions *at all* were put to Mr Yeates on the issue of NMUs at the mini roundabout, and it is accordingly inappropriate for UWAG to have included points on this issue in closing. No weight should be placed on those points in these circumstances. Further in relation to the NMU survey data, which was admittedly provided late in relation to this junction, neither the Council nor UWAG sought to re-call their witnesses to address it (an offer made by the Appellant's Counsel), nor did they ask any questions of Mr Yeates in relation to it.

39. Overall, there is now sufficient information as to the proposed design and modelling of effects of the proposed mini roundabout, and the clear evidence shows that it will operate suitably and safely, and there will plainly not be any unacceptable highway safety issues.

Construction traffic

40. The concern by the Inspector and Secretary of State originally was that the construction traffic had not been modelled or assessed. The MoJ has now provided additional evidence in relation to the construction phase impacts, including a routing assessment, updated construction forecasts, standalone junction capacity modelling and a summary of the measures contained in the Working Draft CTMP.

41. The construction forecasts show the number of construction-related vehicles during an average construction month (including 61 HGVs per day arriving at the site) and the number during the combined construction peak month (induing 64 HGVs per day arriving

[67] M7 at page 71, paragraph 4.2.7.

at the site).[68] Ulnes Walton Lane already has HGVs, buses and farm vehicles using the road, and the impact of the additional HGVs should be judged in this context. It is accepted that this number of HGVs along the network may well be undesirable for people, particularly during the peak construction months. However, the planning system does not refuse development on highway terms based on undesirability; especially given the necessity of a temporary construction period for any large development. The key question is whether the temporary construction period traffic will cause unacceptable highway safety impacts. The answer is a resounding no.

42. The junctions have all been tested and shown to have capacity to accommodate this temporary level of demand. As explained above, capacity has an important link to highway safety. In addition, all the road safety mitigation measures will be implemented before the construction period begins, which will bring a safety benefit in reducing speeds and reducing risks of accidents. The swept path analysis for the new mini roundabout also shows that the new proposed junction will provide sufficient highway space to avoid large vehicles crossing opposing vehicle streams (and will provide a betterment over the existing situation in this regard).

43. In response to a point raised by Mr Eves in evidence, the MoJ has produced additional noise evidence from Hydrock[69] considering the revised timings for construction traffic starting at 7am, and this concludes that there will be no exceedances of noise thresholds, and this does not change the original conclusion that that there will be no unacceptable amenity impacts in terms of noise. The noise assessment rightly was done in respect of Windy Harbour, which is the closest residential property and so represents a worst-case scenario, demonstrating that there would also be no unacceptable impact elsewhere either. This additional noise evidence has not been challenged by either the Council or UWAG.

44. Explore, who are construction logistics and haulage specialists, have produce a report assessing the initially proposed construction routes. The experienced drivers undertook a real-world assessment on the ground, driving an HGV and a 45ft Standard Flat Trailer (with escort vehicle) along the routes. Their conclusion was an HGV was able to drive routes 4 and 5 keeping to the road and without impacting or overrunning any kerb line, and the MoJ has confirmed that routes 4 and 5 are the preferred routes that will be used. These

[68] M3 at Table 6-1.
[69] M9 at page 49.

routes will not pass through many of the areas which interested parties raised concerns about (e.g. Eccleston and Heskin). Significant weight should be given to this report given the expertise of the drivers, compared to that of Mr Parker, who does not claim any relevant expertise.

45. It is acknowledged that there will be times where HGVs will inevitably need to pass each other on Ulnes Walton Lane, which already happens on this road given its use by HGVs, buses and farm vehicles currently. The passing of HGVs (both currently and with the development) does not result in an unacceptable safety impact. In many instances, where the road is wide enough, professional drivers will be able to pass by each other slowly. As is already helpfully shown in UWAG's images.[70] Alternatively, one vehicle will stop to enable the other to *pass*. The suggestion that HGVs will have to repeatedly reverse or leave the carriageway to avoid each other is wholly unrealistic and ignores the practice of HGV drivers in real life. As Mr Yeates explained, HGVs will be able to *avoid* that situation by anticipating and waiting where necessary at pinch points. There is also nothing inherently unsafe in the passing of HGVs and cyclists. Either the HGV driver will be able to safely overtake the cyclist or will stay at a safe distance behind. This driver interaction is a common occurrence up and down the country on rural roads and, as explained by Mr Yeates, is all accounted for in the Highway Code. Notably, Mr Yeates said that none of the recorded PIAs have involved any HGVs.

46. In relation to potential pinch points on Ulnes Walton Lane, Mr Yeates has used tracking software to identify where the width of Ulnes Walton Lane is potentially too narrow for two HGVs to pass eachother.[71] However, this is a very robust assessment based on plan, and in reality, drivers will be able to manoeuvre much more on the ground. This is perfectly demonstrated by UWAGs images.[72] These show an HGV and a bus, and a fire engine and an HGV passing each other on the Lostock bridge, which falls squarely into one of the areas identified on the tracking software as being too narrow to accommodate this. In cross-examination Ms Morrissey fairly accepted that vehicles such as these can pass each other safely as long as they go slowly – and this is exactly what professional HGV drivers will do. Mr Yeates also gave evidence that in relation to Lostock bridge there is more than sufficient visibility for traffic travelling in both directions.[73]

[70] See O38, photos A10, A12 and A16.
[71] M9 at page 14.
[72] O38, photos A12 and A16.
[73] Page 57 of M6.

47. Condition 20 will require a CTMP for each phase of the development to be submitted and approved by the Council, which will be required to control a range of construction matters, including parking, hours of operation and routing. The Draft CTMP[74] shows the detailed content and suite of controls that can be secured. This includes the requirement for a works supervisor responsible for general construction management, a daily risk assessment for construction traffic, knowledge and experienced for all construction personnel, defined routes for construction traffic, parking and loading measures, road safety measures, and induction training for HGV drivers (including highway safety concerns, adherence to speed limits and instructions on how to pull over safely to alleviate long traffic platoons). Mr Yeates also explained that other measures could include, for example, temporary traffic lights to manage any pinch points.

48. Both the Council and UWAG placed heavy reliance on the HS2 Rural Road Design Criteria document.[75] Primarily, Mr Yeates explained that he did not give this document any weight as it was essentially an internal document written by a developer for a different project. In any event, both the Council and UWAG had misread the document. The reference to minimum rural road widths that they relied upon is aimed at new rural roads which are created, rather than where construction is routed down existing two-lane roads.[76] Mr Parker also gave evidence of the PIA data for the wider construction routes, but he accepted that he did not have the relevant expertise to analyse this information[77] and Mr Yeates explained that there was nothing unusual about these figures given the stretch of roads involved, and these did not disclose any pattern or clusters of accidents.

49. Overall, the temporary impact of construction traffic is a necessary part of the delivery of large development. There are many construction projects all over the country that will require construction routes through rural areas. The temporary impact of this construction traffic may well be undesirable for some, but it certainly does not result in an unacceptable highway safety impact.

Conclusion

50. For the reason set out above, the MoJ respectfully ask that the Inspector find that the highway safety issues have been satisfactorily addressed.

[74] K11.
[75] O75.
[76] Paragraphs A.6.1-A.6.3.
[77] Cross-examination of Mr Parker

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