

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

ALTERNATIVE SITES REBUTTAL

Land adjacent to HMP Garth and Wymott

Ministry of Justice

June 2022

1. Rebuttal

- 1.1 This Rebuttal document has been prepared by Katrina Hulse in response to the Proofs of Evidence of Mr Paul Parker and Ms Tamsin Cottle in so far as they raise relevant matters in relation to alternative sites.
- 1.2 The evidence that I have prepared and provided for this appeal is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.
- 1.3 This Rebuttal only addresses matters concerning the alternative sites, and is not to be construed as my accepting or agreeing to other arguments raised by the Council or the Rule 6 Party with regards to planning matters.

Response to Cottle §5.99

- 1.4 At §5.99 of Ms Cottle's evidence, she queries if "local authority land availability assessments (SHLAAs / SHELAAAs) have been studied as part of the alternative site search". She goes on to state that her cursory review of such documents for Lancashire authorities suggests 17 sites over 12ha which are "assumed" to be available given they would have been submitted to the relevant Council through a Call for Sites process.
- 1.5 As described at §6.5 of my Proof of Evidence (**CD/E2**), the Appellant undertook an extensive site search in 2020, which was refreshed in advance of the appeal submission in 2022.
- 1.6 As described at §7.28 of the Planning Statement (**CD/A3**), this site search was undertaken by professional agents at Cushman & Wakefield. The site search involved their circulating a requirement to over 600 agents, speaking to other commercial property agents and undertaking a desktop search of numerous online databases to identify land being marketed for sale. These are the typical and appropriate methods used by agents to search for land.
- 1.7 The approach proposed by Ms Cottle simply identifies land which is being promoted for development by a landowner (or a party with an interest in the land). It is wrong to assume that these sites would be available for the appeal scheme; in many cases, there will already be a developer associated with, and actively promoting, the site and thus the site would not be available for an alternative use.
- 1.8 A competent agent will seek to ensure that the longlist of sites only includes those which are likely available for the proposed development, as was the case for the site searches undertaken as part of the site selection for the new prison in the North West. On occasion, further discussion can result in sites being removed from the longlist because they are subsequently found to not be available for the proposed development, e.g., sites C5 and C9.
- 1.9 A Call for Sites is often one of the first stages in the process for a Council in preparing a new Local Plan. The Local Plan period typically extends across 15-20 years and site allocations will look to ensure an even trajectory of development across the entire plan period. Site promoters are typically asked in their Call for Sites submission when in the plan period their site would be available for development. Not all sites will be available in the short term, and for a range of reasons, some may only become available for development later in the plan period. It does not therefore follow that a site submitted in a Call for Sites is immediately available for development.
- 1.10 As set out in the Proof of Evidence of Mr Robin Seaton (**CD/E3**), there is an urgent need for a new prison in the North West and it is therefore imperative that the site is immediately available.

Response to Parker Appendix 3

- 1.11 At Appendix 3, Mr Parker seeks to use RAG ratings of different assessment criteria to support his assertion at §29-49 of his proof that sites A5 and A6 are preferable to the appeal site.
- 1.12 RAG ratings are not an empirical assessment method. Unless specifically stated, they are subjective, open to interpretation, do not allow for weighting of criteria which may be more significant than others, and do not allow for the different scores (red, amber or green) to be afforded different weight in an overall assessment.
- 1.13 No detail is provided in the Appendix or elsewhere in Mr Parker's proof as to how it has been determined whether a site scores red, amber or green against a criteria. No detail is provided as to how it has then been determined that the appeal site is less preferable than sites A5 ('Oldham') or A6 ('Kirkham') through an overall scoring, save for an assertion at §47 of Mr Parker's proof that these sites "better match the Secondary and Tertiary requirements compared to the appeal site".
- 1.14 I do not therefore consider that Appendix 3 and the discussion within Mr Parker's proof is reliable.
- 1.15 Nonetheless, I go on below to comment on the implications behind some of the specific RAG ratings applied for certain criteria and sites.

Row 7 – 'Good strategic access to... motorway/trunk road network'

- 1.16 At row 7 of Appendix 3, Mr Parker references the distance to Junction 3 of the M55 in relation to site A6 and shades the cell green. The assessment of Mr Yeates in Appendix B of his rebuttal agrees with this assessment (**CD/E11**).
- 1.17 In respect to access to the trunk road network, Fylde Council raised concerns in their pre-application response (**CD/J2**) with regards to highways, noting that a new access to the A583 would be required and going on to state that the A583 deliberately has a limited number of junction points to maximise its efficiency. This point is confirmed in Mr Yeates assessment at Appendix B of his rebuttal, and he gives this an amber rating. As such, I consider that the cell should not be shaded green.
- 1.18 At row 7 of Appendix 3, Mr Parker also gives access to the bus network a green rating, however Mr Yeates at Appendix B of his rebuttal (**CD/E11**) states that there is only an hourly bus service from bus service 402 with the remaining bus services only providing a daily service. Most of the site is not within a 400m walking distances of a bus stop and overall, he gives this criterion an amber rating. As such, I consider that this cell should not be shaded green.

Row 8 – 'Accessible for construction without major enhancement of transport infrastructure

- 1.19 At row 8 of Appendix 3, Mr Parker assesses accessibility for construction traffic as green, however Mr Yeates in Appendix B of his rebuttal is of the view that whilst there are strategic roads located nearby, there is no obvious local road which has adequate layout to accommodate HGVs and construction access and gives this a red rating. As such, I consider that this cell should not be shaded green.

Row 13 – 'Outside flood plans'

- 1.20 At row 13 of the table at Appendix 3, Mr Parker shows (by way of RAG colour shading) that the appeal site is less favourable than sites A6 and A5 because it is within flood zones 2 and 1, whereas sites A6 and A5 are only within flood zone 1.
- 1.21 At paragraph 2.8 of the Statement of Common Ground between the Appellant and the Rule 6 Party (**CD/C8**), it is agreed that “the majority of the site is within flood zone 1. Only a small strip along the north-west margin of the site will fall within flood zone 2. No built development is proposed in this area.”
- 1.22 As no built development is proposed in the small area of the appeal site comprising flood zone 2, I consider that the appeal site should score equally to sites A5 and A6 on this criterion.

Row 16 – ‘A suitable shape for prison development’

- 1.23 At row 16 of Appendix 3, Mr Parker suggests that the appeal site is somewhat (inferred from the amber shading) not a suitable shape for prison development due to part of the appeal site comprising a ‘sports ground’. It does not follow that the presence of an area of land last used for playing field purposes therefore means a site is an unsuitable shape for development for a prison, and indeed, I consider, as demonstrated through the submitted Design and Access Statement (**CD/A5**) and illustrative proposed site layout (**CD/A48**) that the appeal site is a suitable shape for a new prison and should therefore not be shaded amber.

Row 18 – ‘Manageable in terms of major ground conditions / contamination’

- 1.24 At row 18 of Appendix 3, Mr Parker acknowledges that site ref. A6 was an RAF base. The cell is left unshaded by Mr Parker. RAF Kirkham opened in 1940 during World War 2 and the site became the RAF’s main armament training centre in 1941¹. The RAF closed the site in 1957. There is a risk of unexploded ordnance as a consequence of the site’s previous use during World War 2, as well as there being a general contamination risk due to the site comprising previously developed land. I therefore consider that the risk from contamination should be concluded as comparable to the appeal site.

Row 19 – ‘Not prejudiced by major ecological [or] historic designations’

- 1.25 At row 19 of Appendix 3, Mr Park states the ecological and heritage designations of site A5 are unknown.
- 1.26 The western boundary of the site is within 150m of the Rochdale Canal, which is a Site of Biological Importance, Special Area of Conservation and a Site of Special Scientific Interest.
- 1.27 A Preliminary Ecological Appraisal for the site is available on the Examination website for the Places for Everyone Joint DPD (also **CD/J16**). This survey, undertaken in October 2020, identified the site as having potential for Great Crested Newts and “high value” for bats with numerous bat records in the local area. The report states that a review of local records confirmed the presence of barn owls locally as well as “a number of Section 41 species”.
- 1.28 The report concludes that a number of specie specific surveys will be required at application stage but that it is likely that any mitigation and enhancement measures can be accommodated in the site design. I consider that this is comparable to the appeal site and conclusions of the

¹ https://amounderness.co.uk/raf_kirkham_canberra_1955.html

various ecological reports submitted at planning application and appeal stage (**CD/A9-A15; E7-E9**).

- 1.29 With regards to heritage constraints at site A5, there are three Grade II listed structures (2 locks and 1 bridge) along the Canal c. 180m to the south-west of the site boundary; the setting of these assets would need to be considered within the design approach to the site.
- 1.30 I consider that Site A5 is therefore at least similar to the appeal site.
- 1.31 At row 19 of Appendix 3, Mr Parker suggests that the potential heritage impact of the development of site A6 to Ribby Hall is not significant due to local caravan park developments. Conversely, the pre-application response from Fylde Council (**CD/J2**) raises concerns (at the top of page 5) regarding the “significant impact” that “any development of this site” would have on views to, from and across site A6, exacerbated due to open space falling between the site and Ribby Hall to the west.
- 1.32 On the basis of Fylde Council’s pre-application response, I consider it reasonable to conclude that the potential harm to the setting of this heritage asset would be significant and should therefore not be rated amber.

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