Ministry of Housing,
Communities &
Local Government

Our ref: APP/D2320/W/22/3295556
Your ref: GW2 Appeal

Miss Claire Pegg
Cushman and Wakefield
1 Marsden Street
Manchester M2 1HW

3 December 2024

Dear Madam

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY THE MINISTRY OF JUSTICE
LAND ADJACENT TO HMP GARTH AND HMP WYMOTT, LEYLAND, LANCASHIRE
APPLICATION REF: 21/01028/OUTMAJ

This decision was made by Matthew Pennycook MP, Minister of State for Housing and Planning on behalf of the Secretary of State

1. I am directed by the Secretary of State to say that consideration has been given to the reports of Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC, who held a public local inquiry in July 2022 and reopened public inquiry in March-April 2024 into your client's appeal against the decision of Chorley Borough Council to refuse your client's hybrid planning application seeking: outline planning permission (with all matters reserved except for means of access, parking and landscaping) for a new prison (up to 74,531.71 sqm GEA) (Class C2A) within a secure perimeter fence following demolition of existing buildings and structures and together with associated engineering works; outline planning permission for a replacement boiler house (with all matters reserved except for access); and full planning permission for a replacement bowling green and club house (Class F2(c)) in accordance with application Ref. 21/01028/OUTMAJ dated 24 August 2021.

2. On 29 June 2022 this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

3. On 19 January 2023, a 'minded to grant' letter (ML) was issued by the then Parliamentary Under Secretary of State for Local Government and Building Safety, Lee Rowley MP, on behalf of the then Secretary of State.

Inspector's recommendation and summary of the decision

4. The Inspector recommended that the appeal be dismissed.

5. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, but disagrees with the Inspector's recommendation.

Ministry of Housing Communities & Local Government Email: PCC@communities.gov.uk
Emma Hopkins, Decision Officer
Planning Casework Unit
3rd Floor Fry Building
2 Marsham Street
London SW1P 4DF

She has decided to allow the appeal and grant planning permission. The Inspector's Report (IR) and Supplementary Report (SR) are attached, in addition to the ML of 19 January 2023. Together with this decision letter, these documents constitute the formal decision on this matter. All references to paragraph numbers, unless otherwise stated use the above abbreviations to refer to specific documents.

Procedural matters

6. ML40 stated that the appellant and other parties should be given the opportunity to provide any further evidence on highway safety, and that parties should be able to make representations on this further evidence before the Secretary of State reached a final decision on the appeal. ML40 concluded that subject to being satisfied that the highway safety issues identified by the Inspector can be satisfactorily addressed, the Secretary of State was minded to allow the appeal and grant planning permission subject to conditions.

7. Parties were notified on 6 April 2023 that the then Secretary of State had decided to reopen the Inquiry, because it was considered that new highways evidence provided on behalf of the Appellant on 1 March 2023 constituted new evidence under Rule 17 of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000. Parties were subsequently notified on 6 October 2023 that given the amount of time that had elapsed since the ML was issued on 19 January 2023, the then Secretary of State considered that the reopened inquiry should also cover any material change in circumstances, fact or policy that may have arisen since the previous inquiry.

8. The reopened Inquiry sat on 25-27 March, 23-24 and 26 April 2024. In addition to highways matters, the Inquiry also considered issues around flood risk due to the introduction of new national policy requirements during the time which elapsed between the two periods of the inquiry. It closed in writing on 28 August 2024. Details of procedures and timings are set out at SR1.1-1.22.

Matters arising since the close of the original Inquiry

9. A list of representations which have been received since the ML is at Annex A. The Secretary of State is satisfied that the issues raised do not affect her decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. Copies of these letters may be obtained on request to the email address at the foot of the first page of this letter.

10. The Flood Risk Sequential Test requirement[1], as set out in paragraph 168 of the National Planning Policy Framework (NPPF), was updated to cover all sources of flooding through an update to Planning Practice Guidance (PPG) in August 2022 as highlighted to the Inspector through a letter from Ulnes Walton Action Group (UWAG) dated 8 May 2024. The Secretary of State is satisfied that this matter was assessed during the reopened Inquiry and provides her conclusions in paragraphs 46-49 below.

11. Updated prison population projections dated 23 February 2023 were previously highlighted to parties along with a Secretary of State decision allowing a new prison near Market Harborough in Leicestershire[2] by the Planning Casework Unit on 15 November

[1] Now paragraph 027 Reference ID: 7-027-20220825 of the Planning Practice Guidance on Flood Risk and Coastal Change (https://www.gov.uk/guidance/flood-risk-and-coastal-change#the-sequential-approach-to-the-location-of-development).

[2] https://www.gov.uk/government/publications/recovered-appeal-land-adjacent-to-hmp-gartree-welland-avenue-gartree-market-harborough-ref-3300227-15-november-2023

2023. The Secretary of State notes that the appellant did not consider that the updated projections represented a material change, while the Council and UWAG responded to say they had no comments at that time (SR1.11). Further updated prison population projections dated 29 February 2024 and the Secretary of State decision to allow a new prison in Buckinghamshire[3] were highlighted to the Inspector by the appellant on 1 March 2024 (SR1.11-1.12). No comments on these matters have subsequently been received, and they were not discussed at the reopened inquiry. The Secretary of State does not consider that the prison projections dated 23 February 2023 and 29 February 2024, and the two decisions are matters which require a further reference back to parties before reaching her decision.

12. In December 2023 a revised version of the Framework was published. The Secretary of State does not consider that publication of the Framework raises any matters that would require her to refer back to the parties for further representations prior to reaching her decision on this appeal, and she is satisfied that no interests have thereby been prejudiced.

13. On 30 July 2024, the Written Ministerial Statement (WMS) 'Building the Homes we Need' (UIN HCWS48) was published, alongside the draft Framework. The Secretary of State notes that the parties were afforded the opportunity to comment on these documents and to respond to each other's comments (SR1.21) and has taken these material considerations into account in reaching her decision.

Applications for costs

14. An application for a full award of costs was made by Chorley Borough Council against the Appellant (SR1.15). An application for a full award of costs was also made by Rule 6 Party, UWAG against the Appellant (SR1.15). These applications are the subject of separate decision letters.

Policy and statutory considerations

15. In reaching her decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act (PCPA) 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

16. In this case the development plan consists of the Central Lancashire Core Strategy 2012 (CLCS), the Chorley Local Plan 2012-2026 (CLP), the Joint Lancashire Minerals and Waste Core Strategy 2009 (MWCS), and the Joint Lancashire Minerals and Waste Site Allocation and Development Management Policies Parts 1 and 2 2013 (MWSA).

17. The Secretary of State considers that relevant development plan policies include those set out at IR3.2-3.4.

18. Other material considerations which the Secretary of State has taken into account include the Framework and associated planning guidance (the Guidance).

[3] https://www.gov.uk/government/publications/recovered-appeal-land-adjacent-to-hmp-springhill-and-hmp-grendon-springhill-road-grendon-underwood-ref-3307860-30-january-2024

Emerging plan

19. The emerging plan comprises the Joint Local Plan for Central Lancashire (JLPCL) for which Regulation 18 consultation was completed in February 2023. Preparation has also begun on a new Local Plan (nLP) to replace the MWCS and MWSA.

20. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. Given the early stage of preparation the Secretary of State agrees with the parties (IR3.5) that the emerging JLPCL should be afforded limited weight. As no progress has been made on the nLP since 2018 the Secretary of State agrees with the parties that no weight should be afforded to it (IR3.5). This position is unchanged since the ML (ML12).

Main issues

Highway Safety

21. For the reasons given at SR13.3-13.7 the Secretary of State agrees with the Inspector's conclusions at SR13.4 that paragraph 115 of the Framework is a key test for this main issue, insofar as the proposed development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety.

22. At IR13.18-13.36 the Inspector identified a number of unresolved highways issues, as set out below:

    a) Moss Lane/Ulnes Walton Lane Junction: increased queuing and waiting times for traffic turning right (IR13.22); increased risk of conflict with pedestrians relating to people accessing the post box and bus stops (13.23); increased risk of vehicle and pedestrian conflicts would not be adequately mitigated (IR13.24); lack of information on traffic calming measures (IR13.24).

    b) Moss Lane: vehicles would still be tempted to speed south of the proposed traffic calming measures (IR13.27).

    c) A581/Ulnes Walton Lane Junction: no demonstrated ability to satisfactorily mitigate effects on this junction, leading to an unacceptable impact on highway safety (IR13.32).

    d) Construction phase: it has not been demonstrated that highway effects at the construction phase can be adequately mitigated (IR13.34).

    <u>(a) Moss Lane/Ulnes Walton Lane Junction</u>

23. The Inspector identified issues with the proposals for this junction in IR13.22-24. These are summarised at SR13.11 and addressed below:

24. *Issues with forward visibility for vehicles turning right into Moss Lane, with an increase in queuing and waiting times.* The Secretary of State has considered the Inspector's assessment at SR13.11-13.18 and his conclusions at SR13.22. She agrees that there is sufficient junction capacity, and agrees with the Inspector at SR13.22 that while the forward visibility for vehicles turning right into Moss Lane may not be unacceptable in

terms of meeting the minimum distances, it is restricted and undesirable. Taking these conclusions into account, she considers that there would be limited harm.

25. *The lack of detail regarding traffic calming measures.* The Secretary of State notes at SR13.19 that there are now details of proposed traffic calming measures at this junction including surface treatment and new signage warning of the bend and the speed limit. She agrees that the exact surface material and sign location can be finalised at the detailed design stage and further agrees that the proposed measures would help to warn of hazards ahead and help to address speeds to some extent.

26. The Secretary of State has taken into account the Joint Statement between the appellant and Local Highway Authority (LHA) that states that the LHA has reviewed the detailed proposals and is supportive of the additional traffic calming measures proposed along Ulnes Walton Lane (Appellant Inquiry Document M3a: Additional Highways Evidence Appendices). The Secretary of State has also taken into account the Inspector's concerns that while the measures would cover around 110m, nothing additional is proposed further south on Ulnes Walton Lane until the A581 and agrees with the Inspector at SR13.19 that given the various risks and hazards along this route this is a missed opportunity to address and improve traffic conditions. Overall, she considers that there would be limited harm.

27. *The current need to walk on the road or verges to access the post box and bus stops with increased risk of conflict between pedestrians and vehicles.* The Secretary of State agrees with the Inspector at SR13.21 that for the southbound bus stop or the post box at the Moss Lane/Ulnes Walton Lane junction there would remain an increased risk of conflict between vehicles and pedestrians. She acknowledges, as set out by the Inspector at SR13.21, that people accessing the existing prisons may well use the southbound bus stop to return to Croston. However, taking into account the low use of the post box as indicated by the appellant survey of June 2023 (SR13.20), and the Inspector's conclusion at SR13.21 that people accessing the proposed prison by bus would likely use the Willow Road bus stop in either direction of travel, she considers overall that there would be limited harm.

28. *The absence of a footway to access the northbound bus stop*. For the reasons given at SR13.20, the Secretary of State agrees with the Inspector at SR13.22 that access to the northbound bus stop has been resolved and there is no unacceptable impact on road safety.

(b) Moss Lane

29. The Inspector expressed concern in the IR that although proposed traffic calming measures would assist with traffic speeds on the approach to the junction with Ulnes Walton Lane, given the length of Moss Lane, it remains likely that vehicles would still be tempted to speed further south (IR13.27).

30. For the reasons given at SR13.8-10, the Secretary of State agrees with the Inspector at SR13.10 that the proposed measures would discourage traffic from speeding along Moss Lane. She therefore considers that this matter has been resolved and there is no unacceptable impact on road safety.

(c) A581 / Ulnes Walton Lane junction

31. The Inspector set out issues associated with this junction at IR13.28-13.32, and summarises these at SR13.23, stating that the parties agreed, and still agree, that the junction would be over-capacity with the development in place and that mitigation is needed to address this impact. The Inspector sets out that at the 2022 Inquiry, while the appellant was content to implement the LHA's preferred option of a mini roundabout, there were no details or certainty that a scheme could be delivered (SR13.23).

32. The appellant has put forward two versions of a mini roundabout design (the 2023 and 2024 designs) (SR13.24). For the reasons set out at SR13.25-13.31, the Secretary of State agrees with the Inspector's conclusion at SR13.37 that the 2023 design would have serious problems in terms of junction visibility and overrunning, and uncertain effects regarding non-motorised users, with an unacceptable impact on highway safety.

33. For the reasons set out at SR13.23-13.37, the Secretary of State agrees with the Inspector's conclusion at SR13.37 that the 2024 design addresses concerns regarding visibility and overrunning and would not cause any worsening of existing capacity issues, and sufficient traffic calming measures would avoid unacceptable effects in terms of the private driveways. The 2024 junction design, through use of more land around the junction, achieves compliant visibility splays, and would lessen the effect of overrunning (SR13.24, SR13.26-13.27). She therefore considers that the 2024 design should be provided.

34. The Secretary of State has taken account of the Inspector's comments at SR13.31 regarding the absence of survey data from the RSA process, and resulting uncertainty regarding impact on non-motorised users. Notwithstanding the Inspector's conclusion at SR13.37 that that there remains uncertainty regarding the effects on non-motorised road users due to the lack of assessment, the Secretary of State has taken into account the comment of the LHA (Joint Statement between the appellant and LHA: Appellant Inquiry Document M3a) that the in principle design would be followed up with a detailed design and a Stage 2 Road Safety Audit. Furthermore, the Inspector states at SR13.42 that Conditions 3 and 4 as drafted require works to this junction to be completed before construction of phase 4 (the prison) begins. Condition 3 requires approval of a scheme for the off-site works of highway improvement by the Local Planning Authority in consultation with the LHA, including the highways mitigation at the A581/Ulnes Walton Lane junction. The Secretary of State therefore considers that Condition 3 will satisfy the Local Planning Authority that the final details of the highway scheme/works are acceptable, and that the safety of non-motorised users is likely to be adequately secured before work commences on site. She considers therefore that the 2024 design can be made acceptable in highway safety terms. Overall, the Secretary of State considers that while this matter is not fully resolved, only limited harm would arise from the lack of assessment of the effects on non-motorised road users.

(d) Construction traffic

35. In IR13.33-13.34 the Inspector expressed concern that construction traffic had not been modelled or assessed and that it had not been demonstrated that highway effects at the construction phase can be adequately mitigated.

36. The Secretary of State has given regard to the additional evidence referenced by the Inspector at SR13.38 and supplied in the appellant's updated highways evidence of March 2023, including a routing assessment, proposed construction routes and updated vehicle forecasts.

37. For the reasons given at SR13.38-SR13.45, the Secretary of State agrees with the Inspector at SR13.45 that Condition 20, which requires the approval of a Construction Traffic Management Plan (CTMP) that would address matters such as hours of operation, routeing, daily risk assessments, and induction training, would help to reduce some of the risks and hazards. However, she further agrees that the physical limitations and hazards of Ulnes Walton Lane would remain.

38. The Secretary of State agrees with the Inspector's conclusion at SR13.47 that HGV movements during the construction period would result in adverse effects in this location, but taking into account the evidence of the LHA (Joint Statement between the appellant and LHA: Appellant Inquiry Document M3a), which states that the impact of construction traffic will not give rise to any unacceptable highway safety impacts, overall she considers that there would be limited harm. The Secretary of State's overall conclusions on the weight attaching to highway safety impacts is at paragraph 46 below.

39. The Secretary of State agrees with the Inspector at SR13.46 that no unacceptable noise effects would occur at the construction or operational stage, and that the increase in traffic movements at the construction stage is unlikely to cause unacceptable noise effects elsewhere.

Other highway safety matters

40. The Secretary of State agrees with the Inspector's conclusions at SR13.48 and IR13.49.

Conclusions on highway safety

41. A number of the highways issues which were outstanding at the time of the ML have now been resolved. As set out above, the Secretary of State considers that:

    a. Forward visibility and junction capacity at Moss Lane/Ulnes Walton Lane Junction;

    b. Traffic calming measures at Moss Lane/Ulnes Walton Lane Junction;

    c. Footway provision to access the northbound bus stop at Moss Lane/Ulnes; and Walton Lane Junction

    d. Traffic calming measures along Moss Lane

    have now been resolved and do not weigh against the scheme.

42. However, the Secretary of State considers that a number of highways matters have not been fully resolved:

    a. Risk of conflict between pedestrians and vehicles at Moss Lane/Ulnes Walton Lane Junction associated with the southbound bus stop and post box;

    b. Missed opportunity to provide further traffic calming on Ulnes Walton Lane south of Moss Lane junction;

    c. Junction design at A581/Ulnes Walton Lane Junction (based on the 2024 design) with regard to lack of assessment of impact on non-motorised users; and

d. Construction traffic impacts from HGV movements.

In each case she finds the harm to be limited.

43. In reaching her overall conclusion on highway safety, the Secretary of State has taken into account the fact that there is no objection from the LHA as statutory consultee to the latest highway evidence or mitigation proposals (SR13.6). She has also taken into account the Inspector's conclusion that notwithstanding the evidence presented by UWAG and other residents, which show multiple examples of poor traffic behaviour, congestion, tight junctions and bends, near misses, and unreported incidents, the Inspector states that it is difficult to fully verify these examples (SR13.7) and the Personal Injury Accident (PIA) data shows no clusters or patterns of PIAs in the local road network. The Secretary of State agrees with the Inspector that the PIA data is independent, objective and verified and carries significant weight, while the local evidence carries moderate weight (SR13.7).

44. Overall, the Secretary of State considers that the highways safety issues have been substantially addressed. While some issues have not been fully resolved, she considers that the remaining impacts would cause limited harm and that both individually and collectively the highway safety impacts of the proposal are not unacceptable. She therefore disagrees with the Inspector's conclusion at SR13.52 that the proposal would continue to have an unacceptable impact on highway safety.

45. The Secretary of State considers that the remaining limited harm results in conflict with aspects of policy BNE1(d), which requires that 'The residual cumulative highways impact of the development is not severe and it would not prejudice highway safety, pedestrian safety, the free flow of traffic […]'. However, she notes that paragraph 115 of the Framework states that 'Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.' She therefore considers that BNE1(d) is not fully in accordance with national policy due to the inclusion of the additional criterion 'would not prejudice highway safety, pedestrian safety, the free flow of traffic'. Overall, the Secretary of State concludes that there would be no unacceptable impact on highway safety, and that the proposal accords with the Framework in this respect.

46. The Secretary of State agrees with the Inspector that remaining adverse impacts on highway safety should be weighed in the overall balance. She considers that collectively they carry moderate weight against the proposal.

Flood risk

47. The Secretary of State notes at SR13.54 that while the national planning policy position at the time of the 2022 Inquiry did not require applicants to carry out the sequential test for areas at risk of surface water flooding, the parties accept that such a requirement now exists based on both the current PPG and the Framework. This test has not been carried out by the appellant.

48. The Secretary of State agrees with the Inspector at SR13.55 that the alternative sites exercise conducted before the 2022 Inquiry does not meet the requirements of a sequential test. However, while acknowledging the alternative site search was not carried out for this purpose, she considers that it provides some evidence of the difficulty of finding alternative sites for this development.

49. The Secretary of State notes at IR13.83, which is referenced at SR13.54, that the surface water drainage scheme for the proposal has been designed to avoid any adverse off-site effects and so there would be no worsening of any existing flooding issues. She also notes that the built form of the proposal would be located entirely within Flood Zone 1. Flooding issues were given no weight in the minded to grant letter (ML26).

50. For these reasons, while the Secretary of State has given regard to the Inspector's analysis at SR13.56-58, in the particular circumstances of this case and given the evidence provided, the Secretary of State considers that flood risk matters collectively carry moderate weight against the proposal, including harm from surface water flood risk and the harm arising from the failure to carry out the sequential test.

Green Belt openness and purposes

51. The Secretary of State's conclusions on the matters set out at ML13 are unchanged.

Character and appearance

52. The Secretary of State's conclusions on the matters set out at ML14 are unchanged.

Living conditions

53. The Secretary of State's conclusions on the matters set out at ML19 are unchanged.

The need for the development

54. As set out in ML20, the parties did not dispute at the Inquiry that the prison population is due to increase in the next decade and that the refurbishment and expansion of existing prisons would not meet all of this demand. The Secretary of State agreed at ML20 that that there is an obvious need to update existing prison facilities and the provide the right prisons in the right locations.

55. The Secretary of State agreed with the Inspector at ML20 that there are several uncertainties with the projections of prison places nationally, the future capacity of the system, and the regional capacity gap.

56. As set out in paragraph 11 of this letter, the parties did not previously provide comments on updated prison population projections. No updated evidence was provided by the parties in response to these new figures, or in response to permission being granted for a new prison in Buckinghamshire by the Secretary of State. As the evidence and the parties' positions remain unchanged on these matters, the Secretary of State's conclusions on the need for the development as set out at ML20-21 are unchanged.

Alternative sites

57. The Secretary of State's conclusions on the matters set out at ML22 are unchanged.

Economic benefits

58. The Secretary of State's conclusions on the matters set out at ML23 are unchanged.

Social benefits

59. The Secretary of State's conclusions on the matters set out at ML24-25 are unchanged.

Environmental benefits

60. The Secretary of State's conclusions on the matters set out at ML26 are unchanged.

Other matters

61. The Secretary of State's conclusions on the matters set out at ML27-32 are unchanged.

Planning conditions

62. A conclusion was not reached on conditions relating to highways matters in the ML, due to the lack of details of mitigation in relation to highway safety at that time. The Secretary of State has had regard to the Inspector's analysis at SR12.1-12.2, the recommended conditions set out at the end of the SR and the reasons for them, and to national policy in paragraph 56 of the Framework and the relevant Guidance. She notes the revisions set out at SR12.1, and that there is now only one version of Condition 4, as the parties agree that the off-site highway works need to be completed before construction of the new prison begins. She is satisfied that all conditions recommended by the Inspector in Annex 1 of the SR, including those relating to highways matters, comply with the policy test set out at paragraph 56 of the Framework and that the conditions set out at Annex B should form part of her decision.

Planning obligations

63. A conclusion was not reached on the matter of Schedule 7, paragraph 4 of the draft planning obligation, dated 23 August 2022, in the ML. The Inspector did not consider in IR12.9 that the financial contribution contained within this schedule would be effective or meet the three statutory tests. The Secretary of State has had regard to the Inspector's analysis at SR12.3-12.9, the updated planning obligation dated 18 March 2024, paragraph 57 of the Framework, the Guidance and the Community Infrastructure Levy (CIL) Regulations 2010, as amended. She notes that the principal change from the original S106 agreement, as set out in SR12.3, is the removal of a financial contribution to the A581 Corridor Improvement Scheme because the works to the A581 / Ulnes Walton Lane junction can be secured via a negatively worded condition requiring the works to be carried out before commencement of the new prison via a Section 278 agreement with the LHA. She has also taken note of the additional minor changes. The Secretary of State is satisfied that the updated obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 57 of the Framework.

Planning balance and overall conclusion

64. For the reasons given above and in ML14and ML29, the Secretary of State considers that the appeal scheme is not in accordance with BNE1(c) and HW2 of the development plan, and is in conflict with aspects of BNE1(d). She considers the appeal scheme is not in accordance with the development plan overall. She has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in line with the development plan.

65. Weighing in favour of the development is the need for the development which attracts significant weight, the benefits associated with a modern prison which attracts significant weight, the economic benefits which attract significant weight, the replacement bowling green which attracts significant weight, upgrades to Pump House Lane which attract moderate weight, and the environmental benefits which attract moderate weight. The lack

of alternative sites carries little weight. The Secretary of State has found that the proposal is in accordance with paragraph 115 of the Framework in respect of highways impacts.

66. Weighing against the proposal is the harm to the Green Belt which attracts substantial weight, the harm to the character and appearance of the area which attracts significant weight, the highway safety harm which attracts moderate weight, the negative effects from a sustainability perspective having regard to the carbon footprint of additional car journeys which attract moderate weight, the loss of the playing field which attracts moderate weight, the lack of a sequential flood test which attracts moderate weight, the heritage harm from the loss of a non-designated heritage asset which is attributed minor weight, and the loss of Best and Most Versatile agricultural land which attracts limited weight.

67. The Secretary of State concludes that, on the evidence before her, the harm to the Green Belt and the other harms she has identified are clearly outweighed by the benefits set out above. As such she concludes that very special circumstances exist which justify approval, and that thus material considerations justify a decision other than in line with the development plan.

68. Overall, in applying s.38(6) of the PCPA 2004, the Secretary of State considers that despite the conflict with the development plan, the material considerations in this case indicate that permission should be granted.

69. The Secretary of State therefore concludes that the appeal should be allowed and planning permission be granted.

Formal decision

70. Accordingly, for the reasons given above and in the ML, the Secretary of State disagrees with the Inspector's recommendation in the IR and SR. She hereby allows your client's appeal and grants, subject to the conditions set out in Annex B of this decision letter, outline planning permission (with all matters reserved except for means of access, parking and landscaping) for a new prison (up to 74,531.71 sqm GEA) (Class C2A) within a secure perimeter fence following demolition of existing buildings and structures and together with associated engineering works; outline planning permission for a replacement boiler house (with all matters reserved except for access); and full planning permission for a replacement bowling green and club house (Class F2(c)) in accordance with application Ref. 21/01028/OUTMAJ dated 24 August 2021.

71. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act (TCPA) 1990.

Right to challenge the decision

72. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the TCPA 1990.

73. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or

if the Local Planning Authority fail to give notice of their decision within the prescribed period.

74. A copy of this letter has been sent to Chorley Borough Council and the Ulnes Walton Action Group and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Emma Hopkins
Decision officer

This decision was made by Matthew Pennycook MP, Minister of State for Housing and Planning on behalf of the Secretary of State, and signed on his behalf

Annex A Schedule of representations

SCHEDULE OF REPRESENTATIONS

General representations

Party	Date
A Foster, C4 Plus	11 April 2023
Alex Chalk MP	11 October 2023
Paul Foster MP	7 October 2024
Paul Foster MP	28 October 2024

Representations in response to the Secretary of State's 'Minded to grant' letter of 19 January 2023

Party	Date
David Williams	28 January 2023
Chorley Borough Council and Ulnes Walton Action Group	9 February 2023
Cushman & Wakefield	24 February 2023
Cushman & Wakefield	1 March 2023
Ulnes Walton Action Group	2 March 2023
Ulnes Walton Action Group	7 March 2023
Cushman & Wakefield	28 March 2023
Ulnes Walton Action Group	30 March 2023

Representations received in response to the Secretary of State's recirculation letter of 1 March 2023

Party	Date
Ulnes Walton Action Group	6 March 2023
Chorley Borough Council	9 March 2023

Representations received in response to the Secretary of State's recirculation letter of 10 March 2023

Party	Date
Cushman & Wakefield	17 March 2023

Annex B List of conditions

Conditions relating to the outline parts of the permission:

1) An application for approval of the reserved matters, namely the appearance, layout, and scale of phases 1 and 4 and the appearance, layout, scale and landscaping of phase 3 of the development hereby permitted, as set out on the Site Phasing Plan, shall be made to the Local Planning Authority before the expiration of three years from the date of this permission and the development hereby permitted shall be begun two years from the date of approval of the last of the reserved matters to be approved.

2) The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Location Plan	608623-0000-PEV-GHX0011-ZZ-DR-A-9000 Rev.P05
Site Phasing Plan	608623-0000-PEV-GHX0011-ZZ-DR-A-9400 Rev.P05
Comprehensive Landscape Masterplan	608623-0000-PEV-GHX0011-XX-DR-L-0301 Rev.P06
Site Demolition Plan	608623-0000-PEV-GHX0011-ZZ-DR-A-9002 Rev.P05
Proposed New Access	GARTH-ATK-HGN-MOSS-DR-D-0001 P2

3) No part of the development under phase 4 hereby approved shall commence until a scheme for the off-site works of highway improvement has been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority.

   For the avoidance of doubt, this shall include the highways mitigation at the A581/Ulnes Walton Lane junction

4) (a) No part of the development under phase 4 hereby approved shall be commenced until the approved scheme for the construction of the off-site works of highway improvement has been constructed and completed in accordance with the scheme details.

   (b) No part of the development under phase 4 hereby approved shall be occupied until the approved scheme for the construction of the operational site access has been constructed and completed in accordance with the scheme details.

5) Prior to the commencement of the development under phase 4 hereby approved, full details of the pedestrian/cycle connection to the site from Nixon Lane shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. Thereafter, the approved connection shall be provided in accordance with the approved plan prior to the first use of phase 4.

6) The development hereby permitted shall be carried out in broad accordance with the Flood Risk Assessment (August 2021, Ref: 608623-0000-HYD-GHX0000-XX-RP-D-0001, Hydrock) and Surface Water Drainage Strategy (August 2021, Ref: 608623-0000-PEV-GHX0011-ZZ-RP-C-0503, Pick Everard).

The measures shall be fully implemented prior to the first use or occupation of any building developed under phase 4 as set out on the Site Phasing Plan and in accordance with the approved phasing of the development.

7) Prior to the commencement of the use of development within phases 3 or 4 of the development hereby permitted, or with any reserved matters relating to these phases, an operational lighting scheme shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall thereafter be implemented prior to first use of the relevant phase in line with the approved details.

8) Prior to the commencement of the development within phase 4 of the development hereby permitted, full details of the circulation routes for the area of the site within phase 4 shall be submitted to and approved in writing by the Local Planning Authority.

Conditions relating to the full parts of the permission:

9) Phase 2 of the development hereby permitted in full, as set out on the Site Phasing Plan (ref. 608623-0000-PEV-GHX0011-ZZ-DR-A-9400 Rev.P05), shall be begun not later than three years from the date of this permission.

10) The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Sections - Proposed	608623-0000-PEV-GHX0031-ZZ-DR-A-9201 Rev.P04
Site Block Plan - Proposed	608623-0000-PEV-GHX0031-ZZ-DR-A-9100 Rev.P04
Roof Plan - Proposed	608623-0000-PEV-GHX0031-R0-DR-A-9301 Rev.P05
Site Plan Utilities	608623-0000-PEV-GHX0031-ZZ-DR-E-0600 Rev.P03
Proposed Highways-Proposed Surface Water Drainage	608623-0000-PEV-GHX0031-ZZ-DR-C-0502 Rev.P02
Proposed Highways-Long Sections	608623-0000-PEV-GHX0031-ZZ-DR-C-0701 Rev.P02
Proposed Highways-General Arrangement Plan	608623-0000-PEV-GHX0031-ZZ-DR-C-0700 Rev.P02
Proposed Highways-Cross Sections	608623-0000-PEV-GHX0031-ZZ-DR-C-0702 Rev.P02
Ground Floor Plan - Proposed	608623-0000-PEV-GHX0031-00-DR-A-9300 Rev.P03
Elevations - Proposed	608623-0000-PEV-GHX0031-ZZ-DR-A-9400 Rev.P03
Drainage Details - Sheet 01	608623-0000-PEV-GHX0031-ZZ-DR-C-6501 Rev.P01
Bowling Green Landscape Proposals	608623-0000-PEV-GHX0031-XX-DR-L-0405 Rev.P03

Bowling Green External Lighting Layout – Sheet 01	608623-0000-PEV-GHX0031-ZZ-DR-E-6310 Rev.P02
Bowling Green External Lighting Layout – Sheet 02	608623-0000-PEV-GHX0031-ZZ-DR-E-6311 Rev.P02

11) Prior to the commencement of the use of phase 2 of the development hereby permitted a schedule of maintenance of the bowling green, including a programme for implementation for a minimum period of five years starting from the commencement of use of the development, shall have been submitted to and approved in writing by the Local Planning Authority. Following the commencement of use of the development, the approved schedule shall be complied with in full.

12) Prior to the commencement of phase 2 of the development hereby permitted the following documents shall have been submitted to and approved in writing by the Local Planning Authority:

(a) A detailed assessment of ground conditions (including drainage and topography) of the land proposed for the playing field which identifies constraints which could adversely affect playing field quality; and

(b) Where the results of the assessment to be carried out pursuant to (a) above identify constraints which could adversely affect playing field quality, a detailed scheme to address any such constraints shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include a written specification of the proposed soils structure, proposed drainage, cultivation and other operations associated with grass and sports turf establishment and a programme of implementation.

Prior to the commencement of the use of phase 2 of the development hereby permitted the following documents shall have been submitted to and approved in writing by the Local Planning Authority:

(c) Full details of the proposed flood lighting scheme for the bowling green.

The approved details in (b) and (c) shall thereafter be carried out in full and in accordance with the approved programme of implementation. The land shall thereafter be maintained in accordance with the scheme and made available for playing field use in accordance with the scheme.

13) All planting, seeding or turfing comprised in the approved details of landscaping set out on the Bowling Green Landscape Proposals (ref. 608623-0000-PEV-GHX0031-XX-DR-L-0405 Rev.P03) shall be carried out in the first planting and seeding seasons following the first use of the Bowling Green or club house facilities, or the completion of phase 2 of the development, whichever is the sooner, and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

14) The approved car parking provision as set out on Site Block Plan (ref. 608623-0000-PEV-GHX0031-ZZ-DR-A-9100 Rev.P04) shall have been constructed and laid out in accordance with the approved details prior to the first use of the Bowling Green or club house facilities and retained at all times thereafter specifically for this purpose.

15) The external facing materials of the bowling club buildings and structures as detailed on the approved plans shall be used and no others substituted.

16) The floodlighting to the bowling green hereby permitted shall only operate between 10:00 hours and 22:00 hours and not at any other time.

17) Notwithstanding the approved details, a fully detailed lighting scheme to include all necessary highways illumination, pedestrian footways and any other external lighting to the building shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of phase 2 of the development hereby permitted. The approved scheme shall thereafter be implemented in line with the approved details.

18) No surface water run-off from the bowling club (phase 2) element of the scheme shall at any time be directed into any nearby ponds.

General conditions:

19) Notwithstanding the landscaping details set out on the Comprehensive Landscape Masterplan (ref. 608623-0000-PEV-GHX0011-XX-DR-L-0301 Rev.P06), no development shall commence in phase 4 until a detailed scheme of soft landscaping has been submitted to and approved in writing by the Local Planning Authority. This shall include the location of all existing trees and hedgerows affected by the proposed development, details of those to be retained and details of species to be planted and planting density.

    All of the approved planting, seeding or turfing shall thereafter be carried out in the first planting and seeding seasons following the first use of the occupation of any buildings permitted under phase 4 or the completion of phase 4 of the development hereby permitted, whichever is the sooner, and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

20) Prior to commencement of each phase of development, a Construction Management Plan for that phase shall have been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. The approved Plan shall be adhered to throughout the construction period. The Plan shall provide for:

    - the parking of vehicles of site operatives and visitors;
    - the hours of operation (including deliveries) during construction;
    - the loading and unloading of plant and materials;
    - the storage of plant and materials used in constructing the development;
    - the siting of cabins;
    - the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
    - wheel washing facilities;
    - a dust management plan including measures to control the emission of dust and dirt during construction;

- a scheme for recycling/disposing of waste resulting from demolition and construction works;
- the routeing of construction vehicles and deliveries to site; and
- an engagement strategy with local residents.

21) The Outline Travel Plan (608623-0000-ATK-GHX0000-XX-RP-X-0002 P04) as agreed must be implemented in full in accordance with the timetable within it. All elements shall continue to be implemented at all times thereafter for a minimum of five years.

Prior to the first use of phase 4 of the development hereby permitted, a Full Travel Plan shall be submitted to, and approved in writing by, the Local Planning Authority. The Full Travel Plan shall be developed in accordance with the agreed Outline Travel Plan.

All elements of the Full Travel Plan shall be implemented after the first use of phase 4 of the development hereby approved and at all times thereafter for a minimum of period of five years following completion of the development.

22) No above ground development shall commence in phases 2, 3 or 4 until a detailed, final surface water sustainable drainage strategy for the relevant phase of the site has been submitted to, and approved in writing by, the Local Planning Authority.

The detailed sustainable drainage strategy shall be based upon the site-specific flood risk assessment and indicative sustainable drainage strategy submitted and sustainable drainage principles and requirements set out in the National Planning Policy Framework, Planning Practice Guidance and Defra Technical Standards for Sustainable Drainage Systems. No surface water shall be allowed to discharge to the public foul sewer(s), directly or indirectly.

Those details shall include, as a minimum:

(a) Sustainable drainage calculations for peak flow control and volume control (1 in 1, 1 in 30 and 1 in 100 + 40% climate change), with allowance for urban creep.

(b) Final sustainable drainage plans appropriately labelled to include, as a minimum:

(i) Plan identifying areas contributing to the drainage network, including surface water flows from outside the curtilage as necessary;

(ii) Sustainable drainage system layout showing all pipe and structure references, dimensions and design levels;

(iii) Details of all sustainable drainage components, including landscape drawings showing topography and slope gradient as appropriate;

(iv) Flood water exceedance routes in accordance with Defra Technical Standards for Sustainable Drainage Systems;

(v) Finished Floor Levels (FFL) in above ordnance datum (AOD) with adjacent ground levels for all sides of each building to confirm minimum 150mm+ difference for FFL;

(vi) Details of proposals to collect and mitigate surface water runoff from the development boundary; and

(vii) Measures taken to manage the quality of the surface water runoff to prevent pollution, protect groundwater and surface water, and deliver suitably clean water to sustainable drainage components.

(c) Evidence of an assessment of the site conditions to include site investigation and test results to confirm infiltrations rates and groundwater levels in accordance with industry guidance.

The sustainable drainage strategy shall be implemented in accordance with the approved details.

23) No above ground development shall commence in phases 2, 3 or 4 until a Construction Surface Water Management Plan for that phase detailing how surface water and pollution prevention will be managed during each construction phase has been submitted to and approved in writing by the Local Planning Authority.

Those details shall include for each phase, as a minimum:

(a) Measures taken to ensure surface water flows are retained on-site during construction phase(s) and if surface water flows are to be discharged they are done so at a restricted rate to be agreed with Lancashire County Council as the Lead Local Flood Authority.

(b) Measures taken to prevent siltation and pollutants from the site into any receiving groundwater and/or surface waters, including watercourses, with reference to published guidance.

The development shall be constructed in accordance with the approved details.

24) No building on phases 2, 3 or 4 (or within an agreed implementation schedule) of the development hereby permitted shall be occupied until a Verification Report and Operation and Maintenance Plan for the lifetime of that phase of the development, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved by the Local Planning Authority.

The Verification Report must demonstrate that the sustainable drainage system has been constructed as per the agreed scheme (or detail any minor variations), and contain information and evidence (including photographs) of details and locations (including national grid reference) of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and the submission of a final 'operation and maintenance manual' for the sustainable drainage scheme as constructed.

Details of appropriate operational, maintenance and access requirements for each sustainable drainage component are to be provided, with reference to published guidance, through an appropriate Operation and Maintenance Plan for the lifetime of the development as constructed. This shall include arrangements for adoption by an appropriate public body or statutory undertaker, and/or management and maintenance by a Management Company and any means of access for maintenance and easements, where applicable. Thereafter the drainage system shall be retained, managed and maintained in accordance with the approved details.

25) Prior to the commencement of the development, an updated method statement setting out Reasonable Avoidance Measures (RAMS) in relation to amphibians

and water voles throughout the course of the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The RAMS shall include pre-commencement surveys of the pond and two ditches (P34 and Ditches 1, 2 and 3) prior to their clearance and shall include timing and pumping out strategies. The development shall thereafter be carried out in full accordance with the approved RAMS.

26) No phase of development shall take place (including demolition, ground works, vegetation clearance) until a Plan for Biodiversity Management during Construction (PBMC) for that phase has been submitted to and approved in writing by the Local Planning Authority. The PBMC shall include the following:

(a) Risk assessment of potentially damaging construction activities;

(b) Identification of "biodiversity protection zones";

(c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);

(d) The location and timing of sensitive works to avoid harm to biodiversity features;

(e) The times during construction when specialist ecologists need to be present on site to oversee works;

(f) Responsible persons and lines of communication;

(g) The role and responsibilities on site of an ecological clerk of works or similarly competent person;

(h) Use of protective fences, exclusion barriers and warning signs;

(i) Details of how each RAMS integrates with the relevant phases of the implementation; and

(j) A construction lighting strategy.

27) Prior to the commencement of any works within 30m distance of the barn owl breeding (B11) and roosting site (B10) a full mitigation strategy for barn owls, which shall include timings for the implementation of measures, shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in full accordance with the approved mitigation strategy.

28) Prior to the commencement of any works within 30m of the identified maternity bat roost (building B15) a full mitigation strategy for bats, which shall include timings for the implementation of measures, shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in full accordance with the approved mitigation strategy.

29) A landscape and ecological management plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of phases 2, 3 or 4 of the development hereby approved. The content of the LEMP shall include the following:

(a) Description and evaluation of features to be managed;

(b) Ecological trends and constraints on site that might influence management;

(c) Aims and objectives of management;

(d) Appropriate management options for achieving aims and objectives;

(e) Prescriptions for management actions;

(f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);

(g) Details of the body or organisation responsible for implementation of the plan;

(h) Schedule of ongoing monitoring and remedial measures;

(i) eDNA monitoring of P39 and the newly created ponds to demonstrate successful enhancement;

(j) Schedule of biodiversity enhancement measures and timetable for delivery; and

(k) A mechanism of reporting to the Local Planning Authority/their identified agent and remediation agreement process.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.

30) Prior to the commencement of phases 2, 3 or 4 of the development a phasing plan for the delivery of the Biodiversity Net Gain habitats shall be submitted and approved in writing by the Local Planning Authority. The landscaping shall thereafter be implemented in line with the approved phasing plan.

31) No works to trees or hedgerows shall occur or building works commence between 1 March and 31 August in any year unless a detailed bird nest survey by a suitably experienced ecologist has been carried out immediately prior to clearance and written confirmation provided that no active bird nests are present which has been agreed in writing by the Local Planning Authority.

32) The development hereby approved shall be carried out in accordance with the details contained in the approved Tree Protection Plan (Ref. 13498/P03) and Arboricultural Method Statement (Ref. 13498/P04) received 24 August 2021. All remaining trees must be fully safeguarded in accordance with BS5837.2012 for the duration of the site works.

33) No development, site clearance/preparation, or demolitions shall take place in any phase on the site until the applicant, or their agent or successors in title, has secured the implementation of a programme of building recording and analysis relevant to that phase of development. This must be carried out in accordance with a written scheme of investigation, which shall first have been submitted to and approved in writing by the Local Planning Authority. The programme of works shall comprise the creation of a record of the building(s) to Level 2-3 as set out in 'Understanding Historic Buildings' (Historic England 2016). It shall include a full description of the building(s), inside and out, a drawn plan, elevations and at least one section (which may be derived from checked and corrected architect's drawings), and full photographic coverage, inside and out. The record shall also include further documentary research, putting the building(s) and its features into context. This work shall be undertaken by an appropriately qualified and

experienced professional contractor to the standards and guidance of the Chartered Institute for Archaeologists (www.archaeologists.net). A digital copy of the report and the photographs shall be placed in the Lancashire Historic Environment Record.

34) No development in phases 2, 3 or 4 of the development shall take place until:

(a) a methodology for investigation and assessment of ground contamination has been submitted to and approved in writing by the Local Planning Authority. The investigation and assessment shall be carried in accordance with current best practice including British Standard 10175:2011+A2:2017 Investigation of potentially contaminated sites - Code of Practice. The objectives of the investigation shall include identifying the type(s), nature and extent of contamination present, the risks to receptors, and the potential for migration within and beyond the site boundary;

(b) all testing specified in the approved scheme (submitted under (a)) and the results of the investigation and risk assessment, together with remediation proposals to render the site capable of development have been submitted to the Local Planning Authority; and

(c) the Local Planning Authority has given written approval to any remediation proposals (submitted under (b)), which shall include an implementation timetable and monitoring proposals. Upon completion of remediation works a validation report containing any validation sampling results shall be submitted to the Local Planning Authority.

Thereafter, the development shall only be carried out in full accordance with the approved remediation proposals.

Should, during the course of the development, any contaminated material other than that referred to in the investigation and risk assessment report and identified for treatment in the remediation proposals be discovered, then the development shall cease until such time as further remediation proposals have been submitted to and approved in writing by the Local Planning Authority.

(35) No part of the development under phase 4 hereby approved shall commence until details of the ecological and landscape mitigation for the off-site works of highway improvement at the A581 / Ulnes Walton Lane have been submitted to and approved in writing by the Local Planning Authority.

The approved ecological and landscape mitigation shall thereafter be carried out no later than the first planting and seeding seasons following the commencement of the phase 4 development. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Department for Levelling Up,
Housing & Communities

Our ref: APP/D2320/W/22/3295556
Your ref: GW2 Appeal

Miss Claire Pegg
Cushman and Wakefield
1 Marsden Street
Manchester M2 1 HW

19 January 2023

Dear Madam

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY THE MINISTRY OF JUSTICE
LAND ADJACENT TO HMP GARTH AND HMP WYMOTT, LEYLAND, LANCASHIRE
APPLICATION REF: 21/01028/OUTMAJ

This 'minded to grant' decision was made by Lee Rowley MP, the Parliamentary Under Secretary of State for Local Government and Building Safety, on behalf of the Secretary of State

1. I am directed by the Secretary of State to say that consideration has been given to the report of Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC who held a public local inquiry on 12-15, 19-20 and 22 July 2022 into your client's appeal against the decision of Chorley Borough Council to refuse your client's hybrid planning application seeking outline planning permission (with all matters reserved except for means of access, parking and landscaping) for a new prison (up to 74,531.71 sqm GEA) (Class C2A) within a secure perimeter fence following demolition of existing buildings and structures and together with associated engineering works; outline planning permission for a replacement boiler house (with all matters reserved except for access); and full planning permission for a replacement bowling green and club house (Class F2(c)) in accordance with application Ref. 21/01028/OUTMAJ dated 24 August 2021.

2. On 29 June 2022 this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed.

4. For the reasons given below, the Secretary of State has decided to give the appellant and other parties the opportunity to provide further evidence on highways issues, and allow parties to respond to any such evidence, before reaching a final decision on this appeal. Subject to being satisfied that these matters can be satisfactorily addressed, the Secretary of State is minded to allow the appeal and grant planning permission, subject

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to conditions. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Matters arising since the close of the inquiry

5. One representation has been received since the inquiry, as set out at Annex A. A copy of this representation may be obtained on request to the email address at the foot of the first page of this letter.

6. The Secretary of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate a referral back to parties.

Policy and statutory considerations

7. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

8. In this case the development plan consists of the Central Lancashire Core Strategy 2012 (CLCS), the Chorley Local Plan 2012-2026 (CLP), the Joint Lancashire Minerals and Waste Core Strategy 2009 (MWCS), and the Joint Lancashire Minerals and Waste Site Allocation and Development Management Policies Parts 1 and 2 2013 (MWSA).

9. The Secretary of State considers that relevant development plan policies include those set out at IR3.2-3.4.

10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').

Emerging plan

11. The emerging plan comprises the Joint Local Plan for Central Lancashire (JLPCL). Preparation has also begun on a new Local Plan (nLP) to replace the MWCS and MWSA.

12. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. Given the early stage of preparation the Secretary of State agrees with the parties (IR3.5) that the emerging JLPCL should be afforded limited weight. As no progress has been made on the nLP since 2018 the Secretary of State agrees with the parties that no weight should be afforded to it (IR3.5).

Main issues

Green Belt openness and purposes

13. There is no dispute that the proposal would represent inappropriate development in the Green Belt (IR13.4). While the Secretary of State agrees (IR13.5) that part of the appeal site comprises previously developed land as set out in CLP Policy BNE5, for the reasons

given at IR 13.4-13.5 the Inspector agrees that in spatial terms the proposal would cause significant harm to openness. He further agrees, for the reasons given at IR 13.6-13.7, that there would be a significant effect on openness in visual terms. For the reasons given at IR13.8 he agrees that the proposal would result in a significant conflict with the Green Belt purpose of safeguarding the countryside from encroachment. As such he agrees (IR13.9) that the proposal would have a significant harmful effect on the openness of the Green Belt and would cause significant conflict with one of the five Green Belt purposes as set out in paragraph 138 of the Framework. He further agrees (IR13.87) that this harm should attract substantial weight against the proposal.

Character and appearance

14. For the reasons given at IR13.10-13.17 the Secretary of State agrees (IR13.17) that there would be a significant harmful effect on the character and appearance of the area, contrary to CLP Policy BNE1(c). He further agrees that this carries significant weight in the overall planning balance (IR13.17).

Highway safety

15. The Secretary of State has had regard to the Inspector's analysis of highway safety at IR13.18-13.36. He notes at IR13.24 that while there is reference to reviewing and amending existing road markings at the junction, and additional measures are proposed, there are no drawings or agreements with the LHA on specific details. He further notes that the appellant does not propose to provide footways linking the northbound bus stop to the footway on Moss Lane, meaning that people would continue to walk in the road or on the verge to access bus services. For the reasons given at IR13.22-13.24, he agrees that there would be an increased risk of vehicle and pedestrian conflicts at the junction that would not be adequately mitigated. For the reasons given in IR13.27, he agrees with the Inspector that vehicles would still be tempted to speed further south on Moss Lane. He further notes that there is no design for a mini-roundabout and no modelling of the effects it would have with the development in place; and no evidence of any costings (IR13.29). The Secretary of State agrees at IR13.29 that in the absence of costings, it cannot be concluded that the financial contribution would meet the statutory tests, and like the Inspector he does not consider it can be taken into account. In addition he notes that no information has been put forward on timescales for completion of the A581 improvement scheme (IR13.30). For the reasons given at IR13.28-13.32, he agrees that it has not been demonstrated that the works would resolve capacity issues or that the financial contribution would be sufficient.

16. In terms of construction phase effects, he notes at IR13.33 that construction traffic has not been modelled or assessed by the appellant. For the reasons given at IR13.33-34 he agrees (IR13.34) that it has not been demonstrated that highway effects of the construction phase can be adequately mitigated.

17. Overall, the Secretary of State agrees that the proposal would exacerbate existing hazards and risks within the local road network, where the appellant's evidence on the proposed mitigation measures is lacking in detail and confidence that they would have the desired effects (IR13.35). As such, on the basis of the evidence before him, he agrees (IR13.35) that the proposal would have an unacceptable effect on highway safety contrary to CLP Policy BNE1(d) and paragraphs 110 (d) and 111 of the Framework. He further agrees that on this basis, this matter should carry substantial weight against the proposal (IR13.87).

18. However, the Secretary of State has taken into account that these conclusions are based largely on a lack of evidence about modelling, detailed proposals, timescales and costs. 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. He has therefore decided to give the appellant and other parties the opportunity to provide further evidence on highways issues, including in relation to an amended s.106 planning agreement, and allow parties to respond to any such evidence before reaching a final decision on this appeal. This should address the gaps in the evidence which are noted in paragraphs 15 and 16 above and any further evidence which parties consider is relevant to this matter. As the question of whether Condition 4A or 4B should be imposed turns on the question of whether the impacts of construction traffic would be appropriately mitigated (IR13.36), he further invites parties to set out their views on this matter.

Living conditions

19. For the reasons set out by the Inspector at IR 13.37-13.45, the Secretary of State agrees that there would be some adverse effect from the proposal on the living conditions of occupiers of Windy Harbour in terms of noise and disturbance from operational and construction traffic, with the potential for further adverse effects if on-street parking took place on adjoining roads (IR13.45). However, he further agrees, notwithstanding some uncertainties regarding the traffic data underpinning the noise modelling, that none of the modelled levels would equate to a significant or unacceptable adverse effect level, and thus agrees that there would be no conflict in that regards with CLP Policy BNE1(g) (IR13.45). He therefore agrees that the overall effect of the proposal on the living conditions of occupiers of nearby properties with regards to noise and disturbance would be acceptable (IR13.45).

The need for the development

20. The Secretary of State has had regard to the Inspector's analysis on the need for the development at IR13.46-13.68 and 13.71. He notes that there is no dispute between the main parties that the prison population is due to increase in the next decade and that the refurbishment and expansion of existing prisons would not meet all of this demand (IR13.46). He agrees (IR13.57) that there is an obvious need to update existing prison facilities and the provide the right prisons in the right locations. For the reasons given at IR13.48-13.56, the Secretary of State agrees at IR13.57 that there are several uncertainties with the projections of prison places nationally, the future capacity of the system, and the regional capacity gap.

21. However, the Secretary of State considers that some uncertainties are inevitable in the case of any projections, and notes that this is also accepted by the appellant (IR13.47). He has further taken into account that that the appellant's projections are based on a suite of modelling tools along with experience and judgement. They are signed off by senior leadership in the MoJ, the Home Office and the Crown Prosecution service, are subject to external scrutiny from the Treasury, and have National Statistic status (IR13.47). As such, and notwithstanding some inevitable uncertainties, the Secretary of State considers that the appellant's projections have been through a rigorous and robust process, and represent strong evidence of need. He has further taken into account the existence of a large number of Category C male prisoners with less than 24 months left on sentences, who have a North-West home address but are being held in prisons outside the region (IR13.55). Like the Inspector he considers that it is evident that prisoners in this situation would benefit from serving the resettlement stage of their

sentence closer to home, to better reintegrate into local communities (IR13.55). While he accepts that this prison would not be open in time to meet the needs of this specific cohort, he considers that it is likely that this trend would continue into the future, and considers that this strengthens the need case for the current proposal. He further notes that the parties agree that there is a specific need for new Category C resettlement prison places in the North West (IR13.46). Overall he attaches significant weight to the need for this proposal.

Alternative sites

22. For the reasons given at IR13.58-68, the Secretary of State agrees with the Inspector in giving little weight to the appellant's propositions that there is a lack of alternative sites or that there are no more appropriate sites than the appeal site.

Economic benefits

23. For the reasons given at IR13.69-13.70, the Secretary of State agrees that the proposal would result in significant employment and investment, and agrees that significant weight should attach to the economic benefits.

Social benefits

24. The Secretary of State agrees with the Inspector (IR13.71) that the provision of a modern prison would enable greater social benefits for prisoners to help with their rehabilitation and reduce reoffending rates. He agrees with the Inspector that this carries significant weight.

25. He agrees that the replacement of the bowling ground and new club house should be afforded significant weight, for the reasons given at IR13.72. For the reasons given at IR13.73 he agrees that the upgrades to Pump House Lane as a public right of way along with improvements in bus and cycle provision should be afforded moderate weight.

Environmental benefits

26. The Secretary of State agrees, for the reasons given at IR13.74, that the environmental benefits including biodiversity net gain, the re-use of previously developed land within the site and the proposed BREEAM ratings would collectively attract moderate weight. He further agrees that the absence of harm to matters as flood risk, air quality, ecology and land contamination are neutral in the planning balance.

Other matters

27. For the reasons given at IR13.75-13.76 the Secretary of State agrees that the negative effects from a sustainability perspective having regard to the carbon footprint of extra car journeys carries moderate weight against the proposal.

28. For the reasons given at IR13.77 he agrees that the loss of best and most versatile (BMV) agricultural land attracts only limited weight against the proposal. In regard to potential mineral extraction, as set out at IR13.77, he notes that the parties agree (IR6.23) that the site is located within a mineral safeguarding area and that it is not possible to extract the minerals before the development due to the location of the existing prisons. As such he concludes that as these minerals cannot be extracted, the the loss of extraction is purely theoretical and thus attracts no weight. For the avoidance of doubt, were he to agree with the Inspector on the weight to be given to this issue, he would also

agree that the need for development would outweigh any harm such that there would be no conflict with MWSA Policy M2 (IR13.77).

29. For the reasons given at IR13.80, the Inspector agrees that the loss of a playing field would be contrary to paragraph 99 of the Framework, and CLP Policy HW2, and agrees that this carries moderate weight against the proposal.

30. He agrees with the Inspector at IR13.81 and IR13.88 that the loss of a non designated heritage asset attracts minor weight against the proposal.

31. For the reasons given at IR13.78 he agrees that there are no long term ecological effects that would count against the proposal. He further agrees, for the reasons given at IR13.79, that there would be a reasonable prospect of Natural England granting a licence for the proposal.

32. For the reasons given at IR13.82-13.85 he considers that the matters set out here are neutral in the planning balance.

Planning conditions

33. The Secretary of State has given consideration to the Inspector's analysis at IR12.1-12.2, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 56 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector, other than those relating to highways matters, comply with the policy test set out at paragraph 56 of the Framework. However, given the lack of details of mitigation in relation to highways safety, the Secretary of State does not propose to reach a conclusion on conditions relating to highways matters, including 4A or 4B, at this time. He will reach a conclusion on these or any other conditions which are put forward regarding highway matters when he reaches his final determination.

Planning obligations

34. Having had regard to the Inspector's analysis at IR12.3-12.9 the planning obligation dated 23 August 2022, paragraph 57 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR12.9 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 57 of the Framework, with the exception of the A581 contribution (Schedule 7, paragraph 4). The matter of Schedule 7, paragraph 4 or any other proposed amendments to the planning obligation dealing with highway matters will be addressed when the Secretary of State makes his final decision.

Planning balance and overall conclusion

35. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with BNE1(c), BNE1(d) and HW2 of the development plan, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in line with the development plan.

36. Weighing in favour of the development is the need for the development which attracts significant weight, the benefits associated with a modern prison which attracts significant weight, the economic benefits which attract significant weight, the replacement bowling

green which attracts significant weight, upgrades to Pump House Lane which attract moderate weight, and the environmental benefits which attract moderate weight. The lack of alternative sites carries little weight.

37. Weighing against the proposal is the harm to the Green Belt which attracts substantial weight, the harm to the character and appearance of the area which attracts significant weight, the highway safety harm which attracts substantial weight, the negative effects from a sustainability perspective having regard to the carbon footprint of additional car journeys which attract moderate weight, the loss of the playing field which attracts moderate weight, the heritage harm from the loss of a non-designated heritage asset which is attributed minor weight, and the loss of BMV agricultural land which attracts limited weight.

38. The Secretary of State concludes that, on the evidence before him, the harm to the Green Belt and the other harms he has identified are not clearly outweighed by the benefits set out above. As such he concludes that very special circumstances justifying approval do not exist, and that thus material considerations do not justify a decision other than in line with the development plan.

39. However, as set out above the Secretary of State considers that the highway safety issues may be able to be resolved satisfactorily. If that were the case, he considers that benefits above would be sufficient to clearly outweigh the Green Belt harm and the remaining other harms, such that very special circumstances would exist, and that material considerations would justify a decision other than in line with the development plan.

40. The Secretary of State therefore considers, as set out in paragraph 18 above, that the appellant and other parties should be given the opportunity to provide any further evidence on highway safety, and that parties should be able to make representations on this further evidence before he reaches a final decision on this appeal. 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.

41. The Secretary of State considers that given the nature and amount of work required, a period of six weeks would be appropriate to allow this additional evidence to come forward. He therefore requests the appellant and other parties to provide any additional evidence on these matters by **2 March 2023.** Evidence put forward will then be circulated for parties for comment before the Secretary of State proceeds to his final decision. Please note that this request for further evidence is solely for the purpose stated above, and is not an invitation for any party to seek to reopen any of the other issues covered in this decision letter.

42. In the light of the above, it will not be possible to reach a final decision on this appeal by the previously advised target date of 19 January 2023. Therefore, in the exercise of the power conferred on him by paragraph 6(2) of Schedule 2 to the Planning and Compulsory Purchase Act 2004, the Secretary of State hereby gives notice that he has varied the timetable previously set and he will now issue his decision on or before 19 April 2023.

43. A copy of this letter has been sent to Chorley Borough Council and the Ulnes Walton Action Group and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Phil Barber
Decision officer

This 'minded to grant' decision was made by the Parliamentary Under Secretary of State for Local Government and Building Safety, Lee Rowley, on behalf of the Secretary of State, and signed on his behalf

Annex A Schedule of representations

General representations

Party	Date
Katherine Fletcher MP	16 November 2022

The Planning Inspectorate

Report to the Secretary of State

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Date 20 October 2022

Town and Country Planning Act 1990

Chorley Borough Council

Appeal by the Ministry of Justice

Inquiry held on 12-15, 19-20 and 22 July 2022

Land adjacent to HMP Garth and HMP Wymott, Leyland, Lancashire

File Ref: APP/D2320/W/22/3295556

Contents **Page**

1.	Procedural Matters	4
2.	The Site and Surroundings	6
3.	Planning Policy	7
4.	Planning History	9
5.	The Proposal	9
6.	Other Agreed Facts	10
7.	The Case for the Appellant	14
8.	The Case for Chorley Borough Council	30
9.	The Case for Ulnes Walton Action Group	39
10.	The Case for Interested Parties	56
11.	Written Representations	58
12.	Conditions and Obligations	59
13.	Inspector's Conclusions	61
14.	Inspector's Recommendation	78

Annex 1:	Suggested Conditions	79
Annex 2:	Appearances	91
Annex 3:	Core Documents	93

Glossary

CD	Core Document
CIL	Community Infrastructure Levy
CLCS	Central Lancashire Core Strategy 2012
CLP	Chorley Local Plan 2012-2026
CTMP	Construction Traffic Management Plan
DMRB	Design Manual for Roads and Bridges
FTE	Full-Time Equivalent
GVA	Gross Value Added
ha	Hectare
HGV	Heavy Goods Vehicle
HMP	His Majesty's Prisons
LHA	Local Highway Authority
LOAEL	Lowest Observed Adverse Effect Level
LVIA	Landscape and Visual Impact Assessment
MoJ	Ministry of Justice
MWCS	Minerals and Waste Core Strategy 2009
MWSA	Minerals and Waste Site Allocations 2013
NPPF	National Planning Policy Framework 2021
PAC	Public Accounts Committee
PIA	Personal Injury Accidents
PCU	Passenger Car Units
PPG	Planning Practice Guidance
RFC	Ratio of Flow to Capacity
S106	A legal agreement made under Section 106 of the Town and Country Planning Act 1990
SOCG	Statement of Common Ground
SoS	Secretary of State
SRBC	South Ribble Borough Council
TA	Transport Assessment
UWAG	Ulnes Walton Action Group
WHO	World Health Organisation

File Ref: APP/D2320/W/22/3295556
Land adjacent to HMP Garth and HMP Wymott, Leyland, Lancashire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline and full planning permission.
- The appeal is made by the Ministry of Justice against the decision of Chorley Borough Council.
- The application Ref 21/01028/OUTMAJ, dated 24 August 2021, was refused by notice dated 22 December 2021.
- The development proposed is a hybrid planning application seeking outline planning permission (with all matters reserved except for means of access, parking and landscaping) for a new prison (up to 74,531.71 sqm GEA) (Class C2A) within a secure perimeter fence following demolition of existing buildings and structures and together with associated engineering works; outline planning permission for a replacement boiler house (with all matters reserved except for access); and full planning permission for a replacement bowling green and club house (Class F2(c)).

Summary of Recommendation: That the appeal be dismissed.

1. Procedural Matters

1.1. The original planning application was reported to the Council's Planning Committee on 21 December 2021. Members resolved to refuse outline and full planning permission for the following reasons[1]:

1) *The proposed development would have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development on that part of the site that is previously developed and would encroach onto open countryside and is inappropriate development in the Green Belt. Substantial weight attaches to the harm to the Green Belt by reason of inappropriateness and further harm arising here by reason of the impact of the proposed development on the openness of the Green Belt and encroachment. The benefits associated with the proposed development would not clearly outweigh the resulting harm and, therefore, do not constitute, individually or cumulatively, very special circumstances required if inappropriate development is to be approved in the Green Belt in accordance with paragraph 148 of the National Planning Policy Framework.*

2) *The proposed development would have an unacceptable impact on highway safety by virtue of the increased traffic movements and inadequate highway infrastructure, contrary to paragraph 109[2] of the National Planning Policy Framework and Policy BNE1 of the Chorley Local Plan 2012 – 2026.*

3) *The potential noise nuisance and disturbance associated with the vehicular traffic movements that would be generated throughout the use of the development would result in a harmful impact on the amenity of*

[1] Core Document (CD) A100
[2] This is an erroneous reference to a paragraph in the 2019 version of the National Planning Policy Framework. The equivalent paragraph in the 2021 version is paragraph 111.

residents in the locality contrary to Policy BNE1 of the Chorley Local Plan 2012 – 2026.

1.2. On 29 June 2022, the Secretary of State (SoS) directed that he would recover this appeal for his own determination. The reasons for this direction are that the appeal involves proposals for development of major importance having more than local significance, proposals against which another Government department has raised major objections or has a major interest, and proposals for significant development in the Green Belt. These are three of the grounds set out in the guidelines for recovering appeals in the Ministerial Statement of 30 June 2008.

1.3. The Inquiry sat for 7 days on 12-15, 19-20 and 22 July 2022. The Ulnes Walton Action Group (UWAG) representing local and community views acted as a Rule 6 party at the Inquiry. The Inquiry closed in writing on 1 September 2022 once the completed and executed Section 106 (S106) agreement had been received[3].

1.4. There is a minor error in the completed and executed S106 agreement as the definition of 'development' on page 4 refers to the wrong schedule with the relevant (fifth) schedule missing. On 29 September 2022, the appellant provided a handwritten amendment to the definition on page 4 along with a copy of the missing fifth schedule[4]. However, a S106 agreement can only be varied via a deed and so it is not possible to substitute the document in CD K27 for the document in CD K28. Nevertheless, the error is not fundamental as the definition of 'development' also refers to the development proposed in 'the Application' which is set out on page 3 with the correct description. Therefore, the S106 agreement in CD K27 remains effective.

1.5. I carried out an unaccompanied pre-inquiry familiarisation visit on 11 July 2022 and an unaccompanied evening visit on 19 July 2022 to see lighting levels at night. An accompanied visit to the site and surrounding area (including parts of HMP Wymott) took place on 21 July 2022. I also carried out unaccompanied visits to land south of Stakehill Industrial Estate and land adjacent to HMP Kirkham on 14 and 18 July 2022 respectively.

1.6. The Council confirmed in a screening opinion dated 8 September 2021 that an Environmental Impact Assessment was not required for the proposed development. The Planning Inspectorate's Environmental Services Team agreed with the Council in a screening matrix dated 16 May 2022. While the proposed development falls within the definition of Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 due to its size, it would not give rise to significant environmental effects having regard to the relevant criteria in Schedule 3 of the same regulations. Accordingly, no Environmental Statement is required.

1.7. During the Inquiry, the Council confirmed that the third reason for refusal no longer formed part of its case. However, UWAG and interested parties continued to raise concerns relating to this matter and so it has been considered as part of my report.

[3] CD K27
[4] CD K28

1.8. A revised phasing plan was submitted during the Inquiry[5]. This simply clarifies that the phases would take place in numerical order as stated in other documents. This revision does not prejudice any interested party and so I have accepted it as an amended plan.

2. The Site and Surroundings[6]

2.1. The appeal site comprises 4.5ha of land surrounding HMP Garth and HMP Wymott. HMP Garth is an 850 capacity Category B men's prison and HMP Wymott is a 1,100 capacity Category C men's training prison. The site and existing prisons are on land which was formerly an army ammunition depot. Remnants of depot buildings and structures are visible in the landscape to the north of the site.

2.2. The site is located within the countryside and the Green Belt. There are no listed buildings on site and the nearest are 580m to the east and 600m to the south. The site is not in a conservation area and does not include or form part of a scheduled moment. The site is not a designated nature conservation area. The majority of the site is within Flood Zone 1 with only a small strip along the north-west margin, where no built development is proposed, in Flood Zone 2. Most of the northern part of the site is within a mineral safeguarding area.

2.3. The site is partly in agricultural use, including associated farm buildings, and partly in use for ancillary prison purposes, including a boiler house with a biomass boiler and tall flue which serves both prisons. Part of the site is open grassland, including fields to the south of the roundabout on the internal access road to the existing prisons. An L shaped belt of mature trees runs along the northern site boundary before turning southwards and separating the agricultural area from the existing boiler house.

2.4. Pump House Lane dissects the eastern part of the site, running north from Willow Road. It then splits, heading west to Ridley Lane or north to Nixon Lane. The lane is considered to be an unadopted bridleway and has been treated as a prescriptive right of way. A footpath running east-west along the southern boundary of the proposed prison between Willow Road and the existing boiler house has also been treated as an unadopted right of way for this scheme. There is a third public footpath running east-west from the internal access road roundabout to the woodland at Stanning's Folly in the southern part of the site.

2.5. Wymott Bowling Club is located on the eastern side of the site at the junction of Pump House Lane and Willow Road. A pumping station is situated just to the north of the bowling club. A former ammunitions storage building and man-made mound is located in the north-east corner of the site. Part of the site presently provides a playing field and recreation space within the perimeter fence of HMP Wymott. A residential area comprising around 130 houses adjoins the site to the east of the bowling club and to the north of Willow Road. Otherwise, the land surrounding the prison complex is predominantly agricultural. At the junction of Moss Lane and Ulnes Walton Lane is Longton Riding Club showground.

[5] CD K15
[6] Largely taken from Section 2 of the Statements of Common Ground (SOCG) (CD C7 and CD C8)

2.6. The site is a few miles to the south-west of Leyland, where the nearest junction of the M6 is located (junction 28). The larger settlements of Preston and Blackburn are located to further to the north and north-east respectively. The conurbations of Liverpool and Manchester are to the south-west and south-east respectively. The site and existing prisons are accessed via Moss Lane which also affords access to the housing referred to above. Moss Lane connects with Ulnes Walton Lane which provides a north-south route between Leyland and the A581. On the built-up edge of Leyland (Moss Side), the lane changes name to School Lane before it reaches the junction with Dunkirk Lane. The A581 connects Chorley to the A59 at Rufford.

2.7. The nearest railway station is at Croston, about three miles by road to the south-west. The station is part of the branch line between Preston and Ormskirk. It has an hourly service in each direction from early morning to late evening during the week, and less frequent services at the weekend. There is a mainline railway station at Leyland about five miles away. There is a regular hourly bus service from the existing prisons to Leyland town centre (Mondays to Saturdays) with an onward 15 minute walk to the railway station. The bus service operates a one-way loop from Leyland (Moss Side) around Croston to the prisons. There are bus stops on Willow Road and Ulnes Walton Lane.

3. Planning Policy

3.1. The adopted development plan comprises the Central Lancashire Core Strategy 2012 (CLCS), the Chorley Local Plan 2012-2026 (CLP), the Joint Lancashire Minerals and Waste Core Strategy 2009 (MWCS), and the Joint Lancashire Minerals and Waste Site Allocation and Development Management Policies Parts 1 and 2 2013 (MWSA). The parties agree that there are a number of relevant policies[7] in each document. The most pertinent to this appeal are set out below. Apart from those policies specified in the reasons for refusal, the parties agree that the proposal accords with all of the other relevant policies in the adopted development plan.

3.2. CLP Policy BNE1 is the only development plan policy referenced in the reasons for refusal. It states that planning permission will be granted for new development provided that it meets relevant design criteria. Criterion (b) requires that development would not cause harm to any neighbouring property by virtue of overlooking, overshadowing or being overbearing. Criterion (c) requires the layout, design and landscaping to be of a high quality that respects the character of the site and local area. Criterion (d) seeks, amongst other things, that the residual cumulative highways impact of the development is not severe and that it would not prejudice highway safety, pedestrian safety or the free flow of traffic. Criterion (g) requires that proposals would not cause an unacceptable degree of noise and disturbance to surrounding land uses.

3.3. The parties agree that most of the appeal site is allocated as a Previously Developed Site within the Green Belt as defined by CLP Policy BNE5 (with the exception of land to the east of Pump House Lane and land to the south of the roundabout). The policy permits the re-use, infill or redevelopment of such sites provided that a number of criteria are met including, in the case of infill, that there is no greater impact on Green Belt openness and purposes.

[7] See paragraph 6.6 in CD C7 and paragraph 4.6 in CD8 for the full list

3.4. Ridley Lane and part of Pump House Lane are allocated as part of a new cycle route between Leyland, Ulnes Walton and Croston by CLP Policy ST1 which, amongst other things, seeks to prevent development that would prejudice the implementation of such routes. CLP Policy HW2 looks to protect existing open spaces, sport and recreational facilities, unless a number of criteria can be met. Part of the appeal site is also allocated as a Mineral Safeguarding Area. MWSA Policy M2 aims to prevent to loss of minerals unless one or more criteria apply, including the need for the development outweighing the sterilisation of the resource.

3.5. Preparation has begun on a Joint Local Plan for Central Lancashire but this remains at an early stage and the parties agree it should be afforded limited weight. Preparation has also begun on a new Local Plan to replace the MWCS and MWSA but no progress has occurred since 2018 and so the parties agree that no weight should be afforded to it.

3.6. There are a number of paragraphs in the National Planning Policy Framework 2021 (NPPF) of particular relevance. NPPF paragraph 81 states that significant weight should be given to supporting economic growth and productivity. NPPF paragraph 99 sets out that existing open space, sports and recreational buildings, including playing fields, should not be built on unless specific criteria are met in (a) to (c).

3.7. NPPF paragraph 110 sets out the highway matters that should be considered when assessing development proposals including (a) appropriate opportunities to promote sustainable transport modes can be taken up; (b) safe and suitable access to the site can be achieved for all users; and (d) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree. NPPF paragraph 111 states 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. NPPF paragraph 113 notes that all developments that generate significant amounts of movement should provide a travel plan and be supported by a transport statement or assessment so that likely impacts can be assessed.

3.8. NPPF paragraph 137 states that the government attaches great importance to Green Belts and that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. NPPF paragraph 138 notes that Green Belt serves five purposes, including safeguarding the countryside from encroachment. NPPF paragraph 147 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. NPPF paragraph 148 sets out that substantial weight should be given to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. NPPF paragraphs 149 and 150 set out exceptions to inappropriate development in the Green Belt.

3.9. NPPF paragraphs 119 and 120 seek to make effective use of land including suitable brownfield land. NPPF 174(d) requires net gains for biodiversity. NPPF paragraph 203 advises that in weighing proposals that directly or indirectly

affect non-designated heritage assets, a balanced judgment will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

4. Planning History[8]

4.1. HMP Wymott was constructed in the late 1970s with replacement wings constructed in the mid-1990s. HMP Garth was completed in the late 1980s with an additional cell block added in the early 2000s. There have been various other alterations and additions to the two prisons during their lifetime.

5. The Proposal[9]

5.1. The proposal was submitted as a hybrid application seeking (i) outline planning permission for a new prison within a secure perimeter fence following demolition of existing buildings and structures together with associated engineering works, (ii) outline planning permission for a replacement boiler house, and (iii) full planning permission for a replacement bowling green and club house. The development would take place in four phases[10]. Phase 1 would entail enabling/early works including the demolition of existing on-site structures. Phase 2 would involve the construction of the new bowling green and club house. Phase 3 would see the construction of the new boiler house and relocated car park. Phase 4 would be the construction of the new prison.

5.2. For the new prison, all matters are reserved apart from means of access, parking, and landscaping. A maximum 74,532sqm of floorspace is proposed across 13 buildings laid out as suggested on the indicative plans. Indicative building parameters have also been provided[11]. The prison would include an entrance resource hub for visitors and administrative space (three storeys); a support building for administrative functions (two storeys); a central service hub for education, health, multi-faith and staff facilities (two storeys); a kitchen block (two storeys plus mezzanine); a workshop building (two storeys); a care and segregation unit (one storey); and seven 'T60' houseblocks, each with a capacity of up to 245 prisoners (four storeys).

5.3. The public areas of the prison would be the car parking area and access points to the entrance resource hub. The hub would include the gatehouse to monitor vehicles entering the secure compound, including prisoner transfers and deliveries. The secure areas of the prison would be enclosed by a perimeter fence up to 5.2m high and would comprise a steel post and weldmesh panel fence with 2.4m high steel sheet in an inner concrete apron. The fence would only be lit internally whilst CCTV cameras would be mounted on columns inside the secure perimeter. There would be various internal fences and gates separating buildings and spaces within the secure compound.

5.4. The car park for both staff and visitors would be located in front of the entrance resource hub and would provide 525 parking spaces, including 24 accessible spaces, 53 electric vehicle charging spaces, and 27 spaces for car sharing. There would a 51 space covered cycle parking area.

[8] More information can be found in Section 2 of the SOCG (CD C7 and CD C8)
[9] Largely taken from Section 3 of the SOCG (CD7 and CD8)
[10] CD K15
[11] See the table after paragraph 3.8 in CD8

5.5. A detailed landscaping strategy has been submitted. A tree screen would be retained and enhanced along the northern boundary with a larger area of woodland planting in the north-east corner of the site. There would be new ponds, wildflower meadows, grassland areas, tree planting, and hedgerows across the wider site. Land to the south and west of HMP Garth would be used for compensatory landscape planting and ecological enhancement to deliver a minimum 20% biodiversity net gain on site.

5.6. For the boiler house, all matters are reserved except for access. The existing energy centre serving both prisons is oversized and the replacement structure would be smaller in scale. It would be located further to the south on an area of hardstanding, accessed via the existing internal site road. The existing portacabin and car parking would be relocated with no loss of existing parking spaces. The replacement structure is proposed to have a footprint of 41m by 14m and extend to a maximum height of 9m. A single external flue would be no higher than 22m. The exact dimensions of the structure would be established at the reserved matters stage. There would also be two biomass pellet silos up to 5.2m high and two oil tanks up to 2m high.

5.7. The existing bowling green facilities would be removed to make way for the new prison. The replacement facilities would be provided at an early stage in the construction process, located to the south of the roundabout on the internal access road. The bowling green has been designed in accordance with national standards and would measure 40m by 40m with a 2m wide hard surface around its perimeter. Four lighting columns would be located around the green and a club house or pavilion would be sited to the east of the green with a footprint of 72sqm and a maximum height of 3.1m. The building would be timber clad with a shallow pitched roof. There would be ancillary storage buildings, spectator shelters and a car park providing 37 spaces including two disabled spaces. New hedgerows and trees are proposed around the bowling green and car park.

5.8. The proposal was amended during the application process to allow for the proposed replacement pumping station to be brought into the scope of the application rather than be subject to a future separate application by the water company. The replacement building would be located in the proposed woodland in the north-east corner of the site.

6. Other Agreed Facts[12]

6.1. Green Belt: The main parties[13] agree that the proposal represents inappropriate development in the Green Belt and that substantial weight must be afforded to the harm to the Green Belt in this case. They agree that the proposal would result in harm to Green Belt openness. They also agree that there would only be conflict with one of the five Green Belt purposes, namely safeguarding the countryside from encroachment.

6.2. Need: The main parties agree that the prison population is forecast to increase over the next 10 years, although the extent of that growth is not agreed

[12] Largely taken from Section 7 of the SOCG between the appellant and the Council (CD C7) and Section 5 of the SOCG between the appellant and Ulnes Walton Action Group (CD C8)
[13] Reference to "the main parties" in this report means the appellant, the Council, and UWAG

between the appellant and UWAG. The main parties agree that there is a need for new prisons to be constructed as the refurbishment and expansion of existing prisons cannot meet all of the forecast demand. The main parties agree that the proposal is one of four new prisons which will help to address the demand and that they need to be distributed across the country to best target the areas of greatest demand.

6.3. The main parties agree that there is a specific need for new Category C resettlement prison places in the North-West to provide prisoners with the opportunity to develop skills so they can find work and resettle into the community on release. The appellant and UWAG agree that the site search criteria are appropriate.

6.4. Socio-Economic Benefits: The main parties agree that the proposal could support 122 (gross) full-time equivalent (FTE) jobs, create 69 (net) FTE jobs and generate a gross value added (GVA) of £117.2 million within the region. The construction phase would support 37 indirect and induced jobs with an additional £35.1 million GVA. This phase would provide training opportunities for people and businesses along with apprenticeships and work placements. The appointed contractor would be obliged to meet key performance targets including 25% local spend within 25 miles of the site; £50,000 spend with voluntary, community and social enterprises; and at least one community project per year.

6.5. The main parties agree that 643 permanent jobs are forecast to be created at the prison in a wide range of roles. This equates to a total income of £14.1 million per year of which £12.98 million would be retained locally. It is also agreed that the prison expenditure would lead to indirect impacts. Based on 1,715 prisoners, there would be an annual spend of £13.7 million, of which £2.7 million would be retained locally, and 230 jobs would be supported regionally of which 46 would be at a local level. The regional supply chain spend would equate to £17.9 million supporting 299 jobs regionally. Expenditure of prison staff and visitors would equate to £10.4 million per year with 30 jobs supported.

6.6. The main parties agree that the relocated bowling green and clubhouse would represent a substantial qualitative improvement to the current facilities as it would make the facility more attractive to new members, encourage people to keep active, and create a more sustainable future for the club.

6.7. Design: The main parties agree that, while the layout and appearance of the new prison are reserved matters, the illustrative plans reflect the necessary functional form of the proposed development. UWAG agrees with the appellant that with reference to the existing two prisons, the design would not be out of keeping with the local built form. UWAG also agrees that the proposed landscaping scheme would soften and filter views of the site from public footpaths and other visual receptors

6.8. It is agreed by the main parties that the club house design is a modern and functional facility that is no larger than necessary, with the timber cladding providing a natural finish to blend visually with nearby trees. It is also agreed that the boiler house would be of a lesser scale and its relocation further towards the centre of the site would effectively screen the new built form and limit its impact on the character of the area.

6.9. Landscape and Visual Impact: The main parties agree that the proposal would be set against the backdrop of two prisons which comprise extensive and significant built form. The Council agrees with the appellant that there are no landscape designations and the site and surroundings do not comprise a valued landscape for the purposes of NPPF paragraph 174(a). The Council also agrees that the landscape and visual impact assessment has been written in accordance with national guidelines and the viewpoint locations were agreed with its landscape officer. The Council agrees that new tree planting would reduce visual impact and would compensate for the proposed tree losses while extending and diversifying the current arboricultural resource.

6.10. Transport and Access: The Council and appellant agree that the approach to the traffic surveys is satisfactory and provides a suitable baseline to assess impacts. The surveys were validated against 2019 survey data shared by the local highways authority. The two parties agree that the approach to committed developments in the Transport Assessment is acceptable. The two parties also agree that the proposal would give rise to a junction capacity issue at the A581 Southport Road / Ulnes Walton Lane junction, requiring mitigation, while a number of transport-related measures would be delivered through a S106 agreement.

6.11. Noise, Vibration and Residential Amenity: The main parties agree that there are no concerns regarding the impact of existing noise sources on the proposed development and that a suitable amenity would be achieved for prisoners. They also agree that the illustrative plans demonstrate that the proposal could be designed to avoid concerns regarding overlooking. The appellant concurs with the Council that the nearest dwellings on Wray Crescent would be suitably separated such that there would be no adverse impacts on light or outlook.

6.12. The main parties agree that the distance between the proposed site access to the new prison and the nearest windows in the side elevation of the closest dwelling (Windy Harbour) is around 30m. The appellant agrees with the Council that this provides an adequate degree of separation and that views from vehicles leaving the prison site would be fleeting and not dissimilar to existing impacts from pedestrians or vehicles passing along Moss Lane. The appellant and UWAG agree that the garden boundary and driveway entrance to Windy Harbour would be 15m from the proposed car park entrance.

6.13. The Council and appellant agree that the impact to the occupants of Windy Harbour from vehicle headlights exiting the new prison would be intermittent and restricted to specific times of day and year. They agree that this impact would not be harmful to the amenity of these occupants given the layout of the property and the proposal by the appellant to provide mitigation such as fencing or planting. Insofar as visual impacts are concerned, the two parties consider the proposal would comply with CLP Policy BNE1(b).

6.14. The appellant and UWAG agree that the Noise and Vibration Impact Assessment considered both the operational and construction phases of development, including the generation of road traffic, the siting of the car park and the location of plant equipment as well as the impact of existing noise sources.

6.15. Air Quality: The main parties agree that, subject to the proposed mitigation measures, the effects of construction dust would be effectively controlled. The parties also agree that the relocation of the boiler house would not exacerbate air quality impacts and would be likely to reduce them. They agree the impact on air quality at the operational stage including traffic would be negligible, such that no mitigation measures would be required for this stage.

6.16. Sport and Recreation: The main parties agree that the site includes a football pitch within the secure fence of HMP Wymott and that the pitch is not available for public use. The pitch would be lost to the new prison car park and not replaced, so the main parties agree this would conflict with CLP Policy HW2. The appellant and UWAG agree this would also conflict with NPPF paragraph 99. The Council and appellant agree that the pitch has not been well-used for several years and suffers from poor drainage, while its position close to the secure fence presents a security risk from 'throw overs'. The two parties agree these factors should be considered in the overall balance.

6.17. Ecology and Arboriculture: The main parties agree that the ecological surveys undertaken are comprehensive and suitably identify all protected species present at the site. They also agree that it is appropriate for the proposal to use Biodiversity Metric 2.0 rather than 3.0 due to the timescales involved. They agree that there would be a 20.08% net gain in habitats and 11.25% net gain in hedgerows, and that a programme of management and maintenance could be secured to ensure these net gains are maintained for at least 30 years. The main parties agree that the approach to protected species mitigation is broadly acceptable and capable of being secured.

6.18. The main parties agree no trees would be impacted by the bowling green or boiler house elements, while the new prison would result in the loss of low and moderate value trees and hedgerows and an area of early mature woodland. The appellant and UWAG agree that there would be a degree of harm to biodiversity in the short to medium term, but subject to mitigation, avoidance and enhancement measures being secured, the proposal would be acceptable in the long term[14].

6.19. Flood Risk and Drainage: The main parties agree the site is mostly within Flood Zone 1 and the small area within Flood Zone 2 has no built form proposed within it. They also agree that a safe means of access and egress has been demonstrated and the buildings will incorporate flood resistance and resilience measures. They agree the surface water drainage strategy contains a range of measures to ensure no adverse impact, with no objections from relevant technical consultees[15].

6.20. Heritage and Archaeology: The main parties agree that the relevant heritage assets to consider are the listed buildings at Norris Farmhouse and attached barn, the barn to the east of Littlewood Hall Farmhouse, and No 4 Nixon Court, and the non-designated heritage asset comprising the Ministry of Supply Depot. They agree the degree of separation between the site and the listed buildings is such that there would be no meaningful visual connection and thus no harm to their significance. It is agreed that the former depot has some

[14] See CD E2b for further information on ecology matters
[15] See also the appellant's note in CD K21

value and significance, with remnants visible in the surrounding landscape, and that some loss of significance would occur through the removal of one element[16]. It is agreed that the loss would be minor/low and that the harm must be taken into account in determining the proposal in line with NPPF paragraph 203.

6.21. Ground Conditions: The main parties agree the relevant site assessment did not identify any contamination that cannot be suitable controlled via mitigation measures[17].

6.22. Agricultural Land: The main parties agree there is no Grade 1 or 2 agricultural land, with 6% (2.6ha) subgrade 3a land that would be lost to the proposal. The appellant and UWAG agree this loss should be weighed in balance of any other harm while the appellant and the Council agree that the proposal would outweigh this loss.

6.23. Mineral Safeguarding: The main parties agree the site is located within a mineral safeguarding area and that it is not possible to extract the minerals before the development due to the location of the existing prisons. The appellant and UWAG agree the loss of minerals is a harm to be weighed in the balance, while the appellant and the Council agree the significant need for the development outweighs that of extracting minerals at the site. All three parties agree there would be no conflict with MWSA Policy M2.

6.24. Planning Obligations: The main parties agree there is a requirement for an S106 agreement in order to make the development acceptable.

7. The Case for the Appellant[18]

Introduction

7.1. The overwhelming benefits of the scheme, which importantly would meet the very substantial and urgent need for a new prison of this type in this location, clearly outweigh the harm. This was the conclusion reached by Council officers. Following extensive pre-application discussions and a thorough consideration of the proposal, the officers' report recommended that permission be granted. An appeal has been made because members disagreed with this expert recommendation. The proposal complies with the development plan and material considerations, in particular the NPPF, also support the grant of permission.

Green Belt policy

7.2. The site is located in the Green Belt and is identified as a major previously developed site by CLP Policy BNE5. The policy is permissive and allows redevelopment of such sites where certain criteria are met. It is common ground that the proposal does not meet these criteria. It is also agreed that as the policy is permissive only, the lack of compliance with it cannot and does not displace a conclusion that, as a matter of principle, the proposal complies

[16] See CD K20 for further information on the former depot
[17] See CD A23 and CD K6
[18] Largely taken from the appellant's closing submissions (CD K26)

with the development plan as a whole. The Council's reasons for refusal do not rely on any breach of this policy, only CLP Policy BNE1.

7.3. The relevant Green Belt policy is within the NPPF, a highly relevant material consideration in this appeal. It is agreed that the proposal should be assessed as a whole and that it is inappropriate development in the Green Belt triggering NPPF paragraphs 147 and 148. The correct approach to very special circumstances has been addressed by the courts several times[19], where it is established that they do not have to be other than commonplace. The Council's suggestion that very special circumstances will only arise where the benefits are unique is wrong. The other parties' reliance on *Chelmsford* to suggest otherwise should be treated with caution.

7.4. UWAG adopted a far more objective approach and accepted that generic benefits, such as economic benefits, are clearly capable of constituting very special circumstances. Little weight should be placed on the Council's assessment of this matter.

Openness and purposes of the Green Belt

7.5. The appellant accepts that the significant scale of the proposed built form would inevitably result in a reduction in the spatial openness of this part of the Green Belt and this must weigh against the proposal. However, it is necessary to take into account factors which limit the perceptibility and impact.

7.6. First, the majority of the site is previously developed land and there are aspects of the site which already impact on openness both spatially and visually. There are the existing built elements on site including the energy centre, associated hardstandings and storage areas, farm buildings, the disused social club building, the pumping station, Pump House Lane itself, the security fence/wall to the existing prisons, and the sports pitches and associated buildings. Beyond the site, the large-scale built form of the prisons, the adjacent residential area, and the remnant built elements of historic munitions storage also have an influence.

7.7. Second, the site is already relatively enclosed by the established woodland and tree belt along the northern boundary and through the centre of the site, other areas of mature vegetation, and the substantial built form of the existing prisons. Together with the low-lying nature of the landscape, there are limited opportunities for wide ranging or long-distance views.

7.8. Third, appropriate mitigation means the loss of openness would only be experienced from a limited number of highly localised viewpoints rather than the wider area. The mitigation would include new woodland planting on the northern boundary to bolster filtering and screening of the new built form from the north.

7.9. The parties agree that the proposal would only conflict with one Green Belt purpose, namely safeguarding the countryside from encroachment. In relation to the extent of harm here, it is relevant that the majority of the site is previously developed, which means that much of the site has already been

[19] See paragraph 29 of *R (Wildie) v Wakefield Metropolitan District Council* [2013] EWHC 2769 (Admin) (CD K26e) and paragraphs 21-32 of *Wychavon DC v SSCLG* [2008] EWCA Civ 692 (CD K26g)

encroached upon. In addition to the urban influences, level of enclosure and new landscaping planting, the extent of harm to this single purpose is limited.

Landscape character and appearance

7.10. The Council's reasons for refusal do not raise any objection in terms of the effect on character and appearance and, unlike the appellant, the Council does not rely on any expert landscape evidence. Positive pre-application meetings were held with the Council's landscape and planning officers to agree the scope of landscape and visual impact assessment (LVIA) and receive feedback on the design and mitigation. The landscape officer accepted the LVIA's findings and the report to committee was positive on this matter[20]. Given the above, it is difficult to understand how the extensive cross-examination of the appellant's landscape witness by the Council's barrister (and the lengthy section in closing) was justified. That section of the Council's case should be treated with a heavy dose of scepticism.

7.11. The site is not subjected to any national or local landscape designations and the appellant contends that the site and local context do not fully represent the published key environmental features of the wider landscape character type[21]. The physical landscape impacts in relation to landform, land use and vegetation are direct and limited to the extent of the site only. In terms of susceptibility, the local context is influenced by the existing prisons which define large lengths of the site's boundaries. There is extensive existing context for the proposed development.

7.12. The magnitude of impact is also balanced by the site's relative enclosure which restricts the potential area of influence the proposal would have (see LVIA[22] viewpoints 10 and 11). The proposal would not materially harm key environmental features of the wider landscape and the Council's objection that the proposed tree planting would not integrate is without merit. Woodland planting is characteristic of the landscape and is an appropriate means of mitigation[23]. The proposed linear planting on the northern boundary is simply an extension of the existing tree belt and the proposed pocket of woodland is a typical landscape feature. Overall, there would be a moderate adverse effect on landscape character in the short term (Year 1) which would reduce to minor to moderate adverse in the longer term (Year 15).

7.13. Visual effects have been assessed in the LVIA representative viewpoints. There are no protected key views or vistas. With regard to residential receptors, the impact on private views is limited when assessed against the baseline and taking into account the setback of properties and the setback of taller elements of the proposal. The impact does not come close to materially affecting residential amenity and the Council confirmed there would be no conflict with CLP Policy BNE1(b) in terms of privacy, outlook or light. UWAG agree at least in relation to privacy.

[20] CD A97, particularly paragraphs 338-339
[21] See CD I13 and I14 in relation to the Coastal Plain Landscape Character Type
[22] CD A25
[23] CD I14 page 82, second bullet

7.14. Recreational receptors comprise users of prescriptive footpaths. Moderate to major adverse effects would occur in the short term for users along Pump House Lane (see LVIA viewpoint 6) with the highest impacts limited to around 300m of the route through the site itself. There would be impacts for users of other prescriptive footpaths, including within the site and close to the proposed bowling green. Significant visual effects within the site are inevitable in any development proposal. The effects would reduce through mitigation planting and the sensitive design of the bowling green and club house where the Council agrees it would blend into the landscape. Some significant visual effects would remain unmitigated within the site, but this is inevitable. Overall, adverse impacts on visual receptors would be limited to recreational receptors near the site's boundaries and on the site itself and would be highly localised.

7.15. An assessment of effects on night-time views has been carried out by the appellant[24], which shows the impact of prison lighting would not be significant or out of place given the baseline of existing prisons. It would be mitigated by the use of down-lit LED lamps and the existing and proposed tree cover.

7.16. In summary, any adverse effects on character and appearance are limited and largely confined to the site itself or to locations very close to it. This significantly tempers the weight to be given to any identified harm, such that this matter does not weigh heavily against the proposal.

Highway safety

7.17. NPPF paragraph 111 states that development can only be 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. The Council is clear that its only concern in reason for refusal 2 is highway safety and not the impact on the road network or capacity. There is no allegation from any party that the impact on the network would be severe.

7.18. The application was accompanied by a detailed Transport Assessment (TA) (CD A35) and Outline Travel Plan (CD A36), with a Technical Addendum (CD A37) produced in response to the local highway authority (LHA). These documents assessed the impact on the existing network including off-site. A draft Construction Traffic Management Plan (CTMP) (CD K11) has been produced in consultation with the LHA. The above documents are supported by the evidence of the appellant's highways witness, a Chartered Member of the Institute of Logistics and Transport. This is in contrast to the Council's highway witness whose membership of the relevant professional organisations lapsed 10 years ago. The sufficiency of information in a TA is a matter for the expert judgment of the LHA[25].

7.19. The LHA has judged the development to be acceptable in highways terms, subject to appropriate mitigation being secured. This follows extensive pre-application and post submission discussions[26] and a thorough review of the

[24] CD E6
[25] See paragraphs 128 to 134 of *R (oao Hawkhurst PC) v Tunbridge Wells BC* [2020] EWHC 3019 (Admin) (CD K26c)
[26] Three pre-application meetings were held with the LHA to agree the correct scope of assessment, followed by six meetings during the determination period to discuss several topics including agreeing appropriate mitigation measures (CD A35 page 12)

reports by the LHA. The LHA is satisfied that the proposal complies with the NPPF and does not offer any objection to the grant of planning permission[27], both in terms of the construction and operational phases of development. It is well-established that the views of an LHA as a statutory consultee should be give great or considerable weight by a decision-maker and a departure from these views requires cogent and compelling reasons[28].

7.20. There is a link between highway safety and capacity in that if a road is used beyond its design limits then safety issues may occur. The good practice approach is to assess the standard of the road and compare this against the existing road safety record. The evidence here clearly demonstrates that there is no existing safety record of concern and, with appropriate mitigation, the surrounding roads would have sufficient capacity.

7.21. There were nine personal injury accidents (PIA) on surrounding roads between 2016 and 2020. To address the Council's concerns that traffic levels for 2020 were suppressed due to Covid, data for 2014-2018 has been provided which shows 10 PIAs in that period. The Council accepted this was not materially different and its earlier concern fell away. The appellant's COBALT assessment[29] forecasts 19.4 PIAs across the study area (Moss Lane, Willow Road, Ulnes Walton Lane and School Lane) in the 2016-2020 period. The baseline of 9 PIAs is considerably lower than expected considering existing network characteristics and traffic volumes. This demonstrates an existing substantial headroom in the safety capacity of the area which can safely accommodate more traffic. The Council accepted that the data shows no existing safety issues and assertions regarding alleged near misses are wholly unevidenced.

7.22. In response to the Council's criticisms, the appellant has also undertaken a COBALT assessment to forecast the anticipated number of PIAs with and without the proposal[30]. This shows that for 2025, the increase in traffic associated with the proposal would theoretically generate an additional 0.5 PIA per year. This is still well below expected levels of PIAs and such an increase would not represent an unacceptable impact. In any event, the appellant is also delivering a road improvement scheme to mitigate any impacts.

7.23. The Council agrees that the appellant's approach to traffic surveys is satisfactory and provides a suitable baseline to assess the proposal's impacts. The Council also agrees that the approach to committed developments in the TA is acceptable, contrary to the unfounded assertions made by Councillor Michael Green.

7.24. The Council's contention that the proposal would have an adverse highway safety impact is not based on existing safety records or forecasts, but purely on the increase in traffic numbers generated by the development, primarily relying on percentage increases. A far better approach would be to assess the existing capacity of each road and model the effect of projected traffic

[27] CD E4a Appendix A
[28] See paragraph 108 of *East Meon Forge v East Hampshire DC* [2014] EWHC 3543 (Admin) (CD K26b) and paragraph 65 of *Visao Ltd v SSHCLG* [2019] EWHC 276 (CD K26f)
[29] COBALT is a software tool for forecasting road accident effects
[30] CD K13

increases. The TA modelling demonstrated[31] that the B5248 Dunkirk Lane/School Lane junction, the Ulnes Walton Lane/Moss Lane junction, and the proposed site access/Moss Lane junction would all operate within capacity with the proposal.

7.25. The appellant has also assessed highway link capacity using the Design Manual for Roads and Bridges (DMRB) TA 79/99 Traffic Capacity of Urban Roads[32]. Although the guidance has been withdrawn, it is appropriate to apply it because the established principles remain true and underpin many transport planning calculations. The assessment is robust and of assistance even though the surroundings roads are more rural than urban. This is because urban characteristics tend to reduce capacity. The assessment demonstrated than none of the roads within the study area would approach their highway link capacity during the AM and PM peak periods. They would remain uncongested following the addition of the traffic generated by the proposal.

7.26. The proposal would deliver traffic calming measures along Moss Lane and Ulnes Walton Lane[33] as well as wider Section 278 works[34] which have been agreed with the LHA[35]. These measures would reduce vehicle speeds along both roads and provide a road safety benefit. They were regarded as laudable by the Council's highways witness. In terms of the Council's concerns about the safety impact of increased traffic for residents using the post box and bus stops at the Moss Lane/Ulnes Walton Lane junction, as well as users of public rights of way, the appellant's response is as follows:

a) As noted above, there would be no highway safety issue at the junction, particularly taking into account the proposed traffic calming measures and the absence of recorded accidents involving pedestrians near this junction;

b) There is an existing post box located next to the housing at the northern end of Moss Lane which is more convenient for residents and for staff and visitors to the new prison;

c) The proposal would not result in road safety issues for existing users of the bus stop. Crossing the road would not be unsafe and the frequency of pedestrians needing to cross is likely to be very low given the low use of the bus by existing residents (as indicated by one of UWAG's witnesses and the long grass around the bus stop). Staff and visitors to the new prison would use the much closer bus stop at Willow Road;

d) The appellant's evidence[36] shows that the existing crossing provision of Ulnes Walton Lane for users of the public rights of way remains appropriate given the forecast hourly traffic flow. While this evidence relies on out of date guidance, judging whether a pedestrian crossing is necessary for safety reasons by reference to traffic and pedestrian flows

[31] CD A35 section 7.3
[32] CD E12 section 2.4
[33] CD A37 Appendix B
[34] CD E4 section 2.8
[35] CD E4a Appendix A
[36] CD E12 paragraphs 2.61 to 2.67

remains appropriate in light of up to date guidance[37]. The Council's evidence does not contain any analysis to show the existing crossing situation would not be appropriate. The Council's highways witness accepted that the nature of the recreational footpaths meant that they would not attract vulnerable users.

7.27. The modelling for the A581 Southport Road/Ulnes Walton Lane junction demonstrates that the proposal would have an impact on the free flowing of the junction in the AM peak[38]. There is agreement with the LHA that the appellant's S106 contributions to help fund the construction of a wider corridor scheme along the A581, to be delivered by the LHA, including a mini-roundabout at this junction, would satisfactorily mitigate this impact. The LHA scheme is understandably not yet fully worked up, but the appellant's highway witness explained that the mini-roundabout (as publicly referenced by the LHA in its business case document to the Department for Transport) would be deliverable and successful. Notably, the LHA's justification for the mitigation is to improve network operation rather than being borne out of any highway safety concerns[39].

7.28. The capacity issues at the junction are caused by an imbalance of traffic volumes on the junction approaches. A mini-roundabout would effectively re-balance the priorities between the arms of the junction. Moreover, the construction and completion of this scheme would be secured by condition, either prior to occupation of the prison or prior to commencement of the development, depending on the decision-maker's view as to which is deemed necessary (see alternative conditions 4A and 4B). It follows that the decision-maker can be assured that the projected impact in the AM peak would not occur without the appropriate mitigation scheme being in place.

7.29. There are no objections to the design of the construction access. The LHA has considered a draft CTMP and is content that construction traffic can be adequately dealt with by mitigation in a finalised CTMP, secured by condition. Temporary construction traffic can be mitigated by temporary measures such as routing, signage, speed limits, banksmen, and managed hours. The criticism that construction traffic has not been modelled and assessed is a non-point in circumstances where, in an average construction month, the volume of such traffic is predicted to be lower than the predicted operational traffic, which has been modelled and assessed. This is the case even when each heavy goods vehicle (HGV) is counted as two vehicles[40].

7.30. While the number of construction vehicles during the peak month would be higher, this would only be for a short period of six weeks. The predicted pinch points in the road network would only occur at the peak hours and construction traffic could be managed to avoid these times. Daily construction traffic numbers in the draft CTMP are based on four weeks and 20 working

[37] CD J19 paragraph 13.1.10 and sections 13.3 and 13.4
[38] CD A35 Table 7-11
[39] CD E4a Appendix A
[40] When adjusted to take this into account, the daily number of construction vehicles taken from Table 4-2 of the draft CTMP (CD K11) is 573 (i.e. 499 + 73), which equates to 1,144 two way movements. This compares with the figure of 666 for the predicted number of vehicles at the operational stage which equates to 1,332 two way movements.

days per month, when in reality there are more construction days in a month not least due to working on Saturdays. This means the daily construction traffic in the CTMP is likely to be an overestimate. If deemed necessary, mitigation measures for operational traffic could be in place earlier to mitigate for construction traffic.

7.31. UWAG's additional highways concerns expressed by Ms Morrisey have been comprehensively rebutted. The speed surveys for Ulnes Walton Lane, with 83.91% of vehicles travelling within the speed limit, were not abnormal (and caution should be given to the reliability of the data from UWAG). Opportunities to promote sustainable transport have been taken up, including measures agreed with the LHA via S106 contributions, and the site would be accessible by a genuine choice of sustainable transport modes. The modal split assumed in the projections has been agreed with the LHA. It assumes more reliance on the car than the Chorley modal split, which itself includes a large rural area in addition to urban areas. It was thus robust and reliable. While deliveries, ambulances and ancillary vehicles are not included in the modelling, these are likely to have a negligible effect as the numbers of such trips are low and would not generally occur in the peak periods.

7.32. UWAG accepted that improvements to the bus service to HMP Garth and HMP Wymott is encouraged by CLP paragraph 4.8. As to UWAG's concerns regarding parking provision, the trip generation agreed with the LHA predicts a maximum of 499 vehicles needing car parking at any one time[41]. It represents 3 spaces per 5 staff members on site, which is appropriate provision in line with CLP Appendix A[42]. This is comfortably below the 525 spaces which would be provided. Further, the prediction is robust because it assumes that all prisoners would take up their full visitor entitlement of two visits a month, when in reality take-up is likely to be much lower[43] and the availability of virtual visiting could lower the number of in-person visits still further.

7.33. UWAG's projections of 78 more spaces being required was based on anecdotal discussions with existing prison staff whose shifts meant they were unable to car share. This was not objective or representative evidence, and even if it were, the Travel Plan is able to ensure that shift patterns be arranged to enable car sharing. The appellant would contribute towards the monitoring and enforcement of the Travel Plan. The pedestrian access to the prison would be directly from the proposed car park, meaning the closest place to park would be the car park not on the adjoining roads.

7.34. The appellant has addressed all other third party concerns. This included demonstrating that the suggestion by Katherine Fletcher MP (who notably did not object to the principle of the development) of an alternative vehicular site access located to the north-west via Ridley Lane would not achieve a safe and suitable access. There is also no justification for re-opening Midge Hall railway station. Even if it was a viable option, it is less accessible to the proposed

[41] CD A35 section 6.1

[42] Prisons are not mentioned explicitly in CLP Appendix A, but under Use Class D1 (non-residential institutions), only 1 space is required per 2 staff

[43] CD E12 paragraphs 2.2.1 to 2.2.3 notes that at four similar Category 3 resettlement prisons, the take-up of visit entitlement was not higher than 50% in 2019

prison than the existing station at Croston which is nearer and linked to the prison by a bus service.

7.35. Overall, the proposal wholly complies with CLP Policy BNE1(d) and NPPF Section 9, and there are no highway matters which weigh against the grant of permission.

Living conditions of nearby occupiers with regard to noise and disturbance

7.36. The appellant has undertaken a full assessment of the noise impacts arising from construction and operational road traffic as well as car parking, through the Noise Impact Assessment and the evidence of its noise witness. The evidence follows recognised methodology and guidance for assessing noise impacts. Neither the methodology nor the findings have been substantively challenged. The Council has confirmed that, following confirmation at the Inquiry that it did not offer any evidence to support reason for refusal 3, it has formally withdrawn this reason. It follows that the Council no longer objects on these grounds and no longer contends any conflict with CLP Policy BNE1(g).

7.37. UWAG's witness on noise has no noise expertise, her concerns are entirely unquantifiable and bear no relation to any policy or guidance. She fairly conceded that she has no basis for disputing the technical findings of the appellant's noise witness.

7.38. The appellant has undertaken noise surveys in the vicinity of the site to assess the baseline situation and has modelled the noise that would be generated by the proposal for existing sensitive receptors. This shows that the noise impact arising from construction and operational road traffic would be moderate for the property known as Windy Harbour on Moss Lane, and negligible to minor for all other residential properties.

7.39. The increases in noise levels during the daytime would be below the levels recommended by the World Health Organisation (WHO) and below the level above which adverse effects on health and quality of life can be detected (LOAEL). Road traffic noise associated with the proposal would be present and not intrusive in accordance with Planning Practice Guidance (PPG). Traffic noise during the construction phase, especially the peak period, can be suitably reduced via the CTMP.

7.40. Traffic noise associated with the proposal would not exceed the night-time LOAEL, in accordance with WHO guidance. Thus, although associated noise may be noticeable it would not be intrusive and would not result in any change in quality of life. The orientation of first floor windows in Windy Harbour is such that the internal night-time noise levels in bedrooms at this property would in reality be lower than initially assessed.

7.41. Technical evidence shows that the average and maximum noise levels associated with the proposed car park at nearby sensitive receptors would be significantly lower than guideline levels. The garden of Windy Harbour is 50m away from the car park entrance. Noise from traffic speeding along Moss Lane is not valid, not least because speeds would inevitably reduce when turning into the development access opposite Windy Harbour

7.42. Other living conditions concerns are without merit. There is nothing unusual about living on a street where people walk past and drive with headlights.

There will plainly be no unacceptable impacts on living conditions for occupants of Windy Harbour from car headlights or people walking on the street, considering the setback and orientation of the dwelling, location of habitable rooms and the ability to mitigate any limited impact by closing curtains. There is further no substantive allegation from any party as to harm to residential amenity from overlooking, overshadowing or overbearing.

7.43. Overall, the proposal would not cause an unacceptable degree of noise disturbance, either during the daytime or night-time, and there would be no conflict with CLP Policy BNE1(g). This is now common ground with the Council. There are no other factors which would unacceptably affect living conditions. Accordingly, matters relating to the effect on living conditions of nearby occupiers do not provide any justification for refusal.

Need for this development

7.44. There is a very substantial and urgent need for the development of additional, better designed, prison places in the North-West region, and the proposal would help to meet this need. This matter was addressed comprehensively in evidence by the appellant's need witness[44].

7.45. There is a large amount of common ground between the main parties on need as set out in the two SOCG[45]. Against this common ground, the dispute between the parties is considerably narrowed. The adult male prison estate is operating close to capacity. As of mid-July 2022, the estate is operating at 98.3% capacity. The projected demand for prison places will soon outstrip supply and there is a need to ensure that there are sufficient prison places of the right type to meet long-term needs.

7.46. There is also a need for new, better designed, prisons. Much of the current estate dates from the Victorian era and is difficult to operate and expensive to maintain. The current prison proposals have been designed to hold prisoners in single cell accommodation in a secure environment which enables the delivery of a regime to address their offending behaviour and offer rehabilitation.

7.47. The calculation of demand for prison projections uses a suite of modelling tools. In addition to mathematical modelling, judgment and experience play a large part. The total prison population is forecast to increase to a record high of 98,500 by March 2026[46]. As of 10 June 2022, the operational capacity of the system was 82,676 places and at the time of writing the appellant's need proof of evidence, the prison population was 80,115[47].

7.48. At a regional level, the Ministry of Justice (MoJ) estimates a capacity gap of 2,000 prison places in March 2026 that would be served by the proposed prison. In addition, as of May 2022, around 1,350 Category C men with less than 24 months sentence remaining, who had a home address in the North-West, were being held in prisons outside the region. Prisoners, particularly at the resettlement stage of their sentences, need to be held in their home region

[44] A Deputy Director within the Prison Supply Directorate in His Majesty's Prison and Probation Service, who is the Senior Responsible Owner for the new prisons programme
[45] CD C7 paragraphs 7.6 to 7.8 and CD C8 paragraphs 5.2 to 5.9
[46] CD J14 (duplicated at CD G2b)
[47] CD J13 (duplicated at CD G2f)

in order to improve chances of successfully integrating with their communities and not reoffending when released. By the time of the Inquiry, this number had risen to 1,400 and it was expected to continue to increase.

7.49. The appellant fairly acknowledged that there are inherent uncertainties in calculating these projections, given that this obviously relates to crimes which have not yet been committed. Matters such as the change in mix and types of crimes, behaviours of sentencers, efficiencies of the police, and shock events (such as the 2011 riots which resulted in 1,200 additional people in prison in a matter of weeks) are matters which are difficult to model mathematically. Nevertheless, it is crucial that these projections are made on a precautionary basis so that the system can accommodate future changing events, given the dangers that will occur if demand outstrips supply. These include the crowding of prisoners, the expense involved in the use of police cells as a spill over and the early release of prisoners.

7.50. Importantly, these projections of need are made using the best available evidence. They are signed off by senior leadership within the MoJ, the Home Office and the Crown Prosecution Service and have National Statistic status meaning that they meet the highest standards of trustworthiness, quality and public value. External scrutiny is also provided by the Treasury, who use these projections to justify signing off spending reviews.

7.51. Any deterrent effect as a result of an increase in police would not reduce the number of crimes (out of a much larger pool) which are caught. The easing of Covid restrictions in the Crown Court (which resulted in less courtrooms being available) has been lifted later than anticipated. The appellant's need witness cautioned against reliance on monthly figures as statistically unreliable and explained that this did not capture the particular capacity problems with the adult male estate. As to the House of Commons Report[48], this makes clear that the challenge of overcoming the Covid backlog is made harder by the urgent need for more prison places which is not being met. The report's criticism of delays in judicial recruitment are addressed in the MoJ's response[49] to the report and by the further significant financial investment that is being made.

7.52. The supply of prison places in the pipeline has been clearly set out. Of the 20,000 places originally planned to be delivered, 3,000 have already been delivered. Of the remaining 17,000 places, 9,000 still do not currently have planning permission. In addition, the planned new prisons are already behind expected delivery due to refusal at local level and progress through the appeal system. It would not be reasonable or prudent to simply rely on these numbers to show an ample supply.

7.53. There is no certainty that all existing prison places will remain available in the future given the huge ongoing maintenance need to keep them in operation (£250 million investment per year with £1.3 billion works that need to be done in total) and given the risk of losing places due to other events such as riots.

7.54. The grant of permission at HMP Hindley (494 places) and expansion of places at HMP Liverpool does not materially change the picture in the North-West.

[48] CD G2(d) paragraphs 4 (page 6) and 14 (page 10)
[49] CD E11

These do not serve the same catchment areas as the prisons on the appeal site. Moreover, HMP Hindley will also contain Category C training places, which cannot be used for Category C resettlement places. The reliance by the Council on such immaterial minor changes in the arithmetic in order to challenge the size of the prison proposed has the effect of acknowledging the urgent need in principle. However, without any expertise or experience, it represents a foolhardy attempt to challenge the judgment, experience, and prudence that plays a large part in projecting need, particularly given the inherent risks in the system (both in terms of increases in prison population, and loss of existing and expected supply) which the prison system needs to be able to accommodate.

7.55. Neither the Council not UWAG, who do not have any expertise in prison population forecasting, have any basis for substantively challenging the MoJ's projections, which show a very substantial and urgent need for a new Category C resettlement prison for up to 1,715 places on the appeal site.

Alternative sites

7.56. It is accepted that it is relevant to consider whether the above need can be met on an alternative site. This is because the appeal site is within the Green Belt and because the other main parties, particularly UWAG, have specifically identified two sites which they claim are relevant alternative sites (the Land south of Stakehill Industrial Estate and Land adjacent to HMP Kirkham).

7.57. In order to constitute a relevant appropriate site, plainly it must be more acceptable or more appropriate in planning terms that the current site being considered. The correct approach to the relevance of alternative sites has been addressed by the Courts. The judge in *Trusthouse Forte Hotels Ltd v Secretary of State for the Environment* [1986] 53 P&CR 293 set out a number of principles that apply to the assessment of alternative sites[50]. This analysis was recently cited with approval by the Court in *R (Save Stonehenge World Heritage Site Ltd) v Secretary of State for Transport* [2021] EWHC 2161 (Admin)[51]. Essentially the same approach was set out by the Court of Appeal in *R (Jones) v North Warwickshire Borough Council* [2001] 2 PLR 59.

7.58. Accordingly, the question for the decision-maker in this case is whether there is a more acceptable or more appropriate site elsewhere, other than the appeal site, for meeting the urgent need for a new Category C resettlement prison in this region. To be materially significant, the alternative site has to lack the drawbacks of the appeal site (in this case, its Green Belt status) and has to have "a real possibility of coming about" within the timescales necessary to meet the urgent need. The question is not whether an alternative site is "no worse than" the appeal site, which was the phrasing repeatedly used by UWAG's barrister in questioning. To the extent the phrasing was accepted by the appellant's planning witness does not affect the appellant's case which relies on the correct legal position set out in the caselaw above.

7.59. In carrying out this analysis, the reasonableness of the appellant's previous site searches at the feasibility stage and in advance of the appeal submission

[50] CD K26a page 299 principle (1) and (2) and page 301 principle (6)
[51] CD K26d paragraphs 269 and 270

are relevant to consider. However, the assessment as to whether there is a more acceptable or more appropriate site elsewhere clearly needs to be assessed at the date of this decision on this appeal. The assessment is necessarily high level and cannot realistically descend into anything like the kind of granular detail that would be appropriate if alternative planning applications were pursued and assessed.

7.60. The site selection criteria are set out in the evidence of the appellant's need witness[52] and there is common ground that these criteria are appropriate. The site search process, both at the feasibility stage and as refreshed at the appeal stage, is explained in the evidence of the appellant's planning witness[53]. At the feasibility stage in 2020, the appellant undertook an extensive site search by contacting local authorities within a 90 minute drive time of Manchester, contacting government departments, and undertaking a site search of private land interests within the 90 minute drive time. A long list of 14 sites was considered plus the land available at HMP Kirkham. Nine of these 15 sites did not meet the mandatory requirements or were not available (see Table 3 of CD E2), so were not shortlisted. The six shortlisted sites (see Table 4 of CD E2), which included the Kirkham site, were then dismissed for site specific constraints.

7.61. At the appeal stage, nine sites were shortlisted (see Table 5 of CD E2). This again included the Kirkham site and also included the Stakehill site, which had not been discovered in the 2020 site search. These nine sites were all dismissed due to site specific constraints (see Table 5 of CD E2 and CD E1).

7.62. For the sake of clarity and to help the Inquiry, the appellant's planning witness pointed out that paragraph 7.31 of the Planning Statement should be corrected[54] in order to be consistent with the evidence in her proof. There was nothing controversial about this correction which sought to clarify the process that was followed in shortlisting sites.

7.63. Neither of the alternative sites at Kirkham or Stakehill are more acceptable or more appropriate for meeting the urgent need for a new prison. Both of these sites are also in the Green Belt and so would also need to show very special circumstances. This reinforces the point that a Green Belt location is needed for the new prison development. However, these sites are clearly not more acceptable in planning terms than the appeal site, but rather are, at best, the same as the appeal site. For a site to be a relevant alternative site which attracts significant weight in this regard, one would need to show a non-Green Belt site.

7.64. For Kirkham, the appellant had a pre-application meeting with, and a formal response from, Fylde Council in 2020[55]. Fylde Council would not support a new prison in this location and its response set out several fundamental concerns.

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[52] CD E3
[53] CD E2
[54] CD A3 paragraph 7.21 second sentence should read "When considered against the mandatory requirements and availability, the shortlist was reduced to five sites and when reviewed against the secondary and tertiary requirements, all sites were ultimately dismissed as one or more significant issues arose".
[55] CD J2

This included that the site contributed to three Green Belt purposes compared to one purpose for the appeal site; reference to the significant impact on particularly sensitive views in the vicinity of Ribby Hall Village (which includes a heritage asset); and concerns that the existing access would be unlikely to be suitable for construction and operational traffic. This can be contrasted with the positive pre-application engagement with the Council in this appeal[56], which led to a positive officer recommendation.

7.65. Not only is Kirkham not more appropriate than the appeal site, but it also fares considerably worse at least in terms of a high-level assessment. It was wholly reasonable for the appellant not to pursue Kirkham following the pre-application advice. Even if it had been pursued, the indications were that it would almost certainly require an appeal. Given the urgent need for a new prison, it was sensible for the appellant not to pursue this high-risk option. The relevant witnesses for the Council and UWAG agreed with this point, although UWAG's suggestion that the appellant could have made several planning applications on more than one site is not fair and would certainly not be a good use of public money.

7.66. The timescales for pursuing an application at Kirkham now (following an appeal decision on this site) would not be appropriate to meet the urgent need for a new prison. Even if permission was granted on appeal for Kirkham, it would likely be 2030 by the time a new prison could accept prisoners.

7.67. Stakehill is a draft employment allocation as part of a wider allocation in the emerging Place for Everyone Greater Manchester combined plan. The plan has been submitted for examination with hearing sessions expected in late 2022 and spring 2023. A likely adoption date, given the complexities in the plan, would be late 2024. Any planning application submitted now would likely be refused on grounds of prematurity. The Council's planning witness agreed with this view. Waiting for the plan to be adopted before making an application (which may be protracted given the master planning and design code requirements for the allocation) would likely only result in a prison on this site accepting prisoners in 2030-31. Again, this would not be appropriate to meet the urgent need for a new prison.

7.68. Nearby roads are currently unsuitable as a primary access. A new motorway junction, as suggested by UWAG, would be extremely costly and likely involve third party land. Whilst access issues may ultimately be resolved as part of bringing forward the larger allocation, this would inevitably involve considerable investment and delay. Stakehill not more appropriate than the appeal site. Indeed, it is clearly less appropriate.

7.69. There are no more appropriate sites than the appeal site to meet the urgent need for a new prison in this region. It has been demonstrated that the development cannot be accommodated on a non-Green Belt site or a more appropriate Green Belt site, and therefore the Green Belt harms from the development would be the inevitable consequence of meeting the urgent need for such a prison anywhere in the North-West. The lack of an alternative site carries significant weight.

[56] CD A27 paragraph 3.10 third bullet

Benefits of the proposed development

7.70. The economic, social and environmental benefits that would flow from the proposal are overwhelming. The appellant rebuts the Council's argument that they are intrinsically linked to the scale of built development and should be discounted on that basis. The benefits are as much linked to the actual nature of the development (rather than its scale) and, in any event, the harm caused by the scale of development is taken into account on the other side of the balance. Consistent with NPPF paragraph 81, the appellant attributes substantial weight to the significant economic benefits, also dealt with in the unchallenged written evidence of the appellant's economics witness[57]. It is inappropriate for the other main parties to criticise the assessment of the economic benefits in closing in circumstances where the opportunity to cross-examine the appellant's economics witness was not taken up. The economic benefits include:

a) 122 gross temporary FTE jobs supported during the construction of the development, of which 10% would be for local residents;

b) Once built and operational, 643 staff are expected to be directly employed at the prison; 347 of these roles (around 54% of all jobs) could be taken by people living in Chorley and South Ribble;

c) During the construction period there would be an estimated £117.2 million GVA (gross) and construction of the proposed development could support a further £96.5 million turnover/expenditure through the supply chain, of which £32.2 million could be expected to occur at the local level; and

d) The operational spend of the prison would amount to £13.7 million, supporting 230 jobs at a regional level, and the operational regional supply chain spend would equate to £17.9 million per annum, supporting 299 jobs at a regional level.

7.71. Substantial weight should also be attributed to the social benefits which include:

a) The delivery of new prison places to meet the substantial and urgent need for new prison places in the North-West, as set out above. The robust site search has shown that there are no alternative sites which are more appropriate for the purpose of meeting this need than the appeal site;

b) The provision of safe, secure and modern facilities to deliver improved outcomes for prisoners and reduce reoffending rates. This is a significant social benefit in itself, in that the modern design of prisons (compared to older existing designs) achieves good social outcomes through transformative design;

c) The replacement bowling green would be of at least an equivalent standard, and the new club house would be a significant enhancement to the existing club house provision; and

[57] CD E2a

d) The package of measures agreed with the LHA would improve existing highway safety on surrounding roads and would enhance sustainable transport options.

7.72. Moderate weight should be attributed to the environmental benefits which include:

a) The delivery of a 20% biodiversity net gain as set out in the evidence of the appellant's ecology witness[58]. Notably, the 10% requirement in the Environment Act 2021 has not yet been brought into force and is not currently applicable as law. A net gain of just 1% would be compliant with the encouragement to provide net gains in NPPF paragraph 174(d). Viewed in this context, the delivery of a 20% biodiversity net gain on the appeal site is significant;

b) The majority of the site is previously development land, and the effective use of such previously developed land is strongly encouraged in NPPF paragraphs 119 and 120. The Council accepted this was a moderate benefit; and

c) The new prison buildings would also be highly sustainable, and would achieve BREEAM 'Excellent' rating, with endeavours to achieve BREEAM 'Outstanding'.

7.73. Finally, it is noted that there are a number of matters which are matters of agreement with the main parties and which do not weigh against the proposal. These include flooding, heritage, air quality, land contamination and ecology (which were either addressed by the appellant's witnesses on the first day of the inquiry or in written notes in response to queries from the Inspector). Whilst there is some policy conflict caused by the loss of a sports pitch, both of the other parties agreed that this is only of limited weight and no party relies on this as a material policy conflict leading to a breach of the development plan.

The benefits clearly outweigh the Green Belt harm and any other harm, constituting very special circumstances

7.74. The impacts weighing against the proposal are either limited in extent, or non-existent. When considering the impacts, it is important to bear in mind that the development cannot be accommodated on a non-Green Belt site or a more appropriate Green Belt site, and therefore the harms would be the inevitable consequence of meeting the need for such a prison anywhere in the North-West. Set against this are the overwhelming and substantial benefits that the proposal would deliver. All benefits must be weighed in the balance. The approach of the Council's planning witness of discounting certain benefits on the basis that the development is in the Green Belt or because they are generic is not a sound approach and involves double counting of Green Belt harm. Consequently, very limited weight can be given to this skewed balancing exercise.

7.75. The benefits clearly outweigh the Green Belt harm and any other harm, thus constituting very special circumstances justifying development in the Green

[58] CD E2b

Belt. This was the view reached by Council officers and is a view the appellant endorses. UWAG's planning witness accepted that, if it is concluded that the appellant's site search has been reasonable and if an urgent need for the development is demonstrated, then this would amount to very special circumstances. That is exactly the position here.

7.76. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that decisions be made in accordance with the development plan unless material considerations indicate otherwise. The proposal complies with the development plan as a whole; there is no breach of CLP Policy BNE1, which is the single policy relied on by the Council in their reasons for refusal. Thus, the clear decision in accordance with the development plan is to grant planning permission. Material considerations do not indicate otherwise; rather material considerations, in particular the relevant parts of the NPPF, further support the grant of permission. On this basis, the appellant respectfully requests that the Inspector recommend that the appeal be allowed and planning permission granted.

8. The Case for Chorley Borough Council[59]

Introduction

8.1. This is a large development in the Green Belt, an important project for the appellant, and one which has triggered considerable local interest. The significance of this proposal is reflected in the fact that it has been called in by the SoS. It is not every day that a new prison is proposed in the Green Belt. It would be expected that such a proposal would warrant the highest level of preparation to ensure that every issue was addressed, and that the proper level of scrutiny can be carried out. It is in everyone's interests that, if planning permission is granted, it is done on the most robust of bases.

8.2. However, this is not the approach the appellant has taken. Instead, for certain critical areas (transport, alternative sites, and landscape and visual impact) a lighter touch approach has been adopted. One which has meant that there are significant omissions both in the original application and in how the proposal sits today. These omissions form one of the many bases on which the Council will ask the SoS to refuse permission.

Openness and purposes of the Green Belt

8.3. It is common ground between all parties that the proposal would be inappropriate development in the Green Belt and would have some impact on openness and purposes. The question for this Inquiry is the level of the impact. The appellant and Council agree that there is a spatial and visual element to openness.

8.4. In relation to spatial openness, the approach that should be taken is volumetric i.e. how much of the site is developed before the proposal, and how much would be developed after. Given the level of additional development (on the appellant's calculation 8.41ha of agricultural field being built upon in a 10.27ha area for the new prison alone) it is unsurprising that the Council's

[59] Largely taken from the Council's closing submissions (CD K25)

planning witness found that there would be a 'significant loss' in spatial terms. This is a point now accepted by the appellant's landscape witness.

8.5. The appellant's approach to Green Belt originally formed a section of the LVIA. Green Belt and the impact on it is different from landscape and the impact on its character. Green Belt is not a landscape character designation and should not be treated in the same way. The appellant's landscape witness contended[60] that the fact the new built form of the prison would not be entirely uncharacteristic with the built form nearby had some relevance to the impact on Green Belt openness. Such a contention is highly unusual and entirely contradictory to the operation of Green Belt policy.

8.6. As set out in the NPPF, the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It is often the case that Green Belt adjoins built up areas. If harm could be minimised by developing Green Belt in a manner similar to the built development around it, then this would weaken the protection of Green Belt where it adjoins build up areas. This would frustrate at least three of the five purposes of Green Belt (NPPF paragraph 138(a), (b) and (c)).

8.7. This blurred approach also affects the appellant's stance in relation to the visual impact on openness, where they maintained a limited effect would be had. This site is not entirely visually contained. There are two public rights of way that run through it. The bowling green, clubhouse, and mitigation planting, placed into an open countryside view, would have a detrimental effect on openness as perceived from the footpath running adjacent to it. The introduction of the prison would fill a 10.27ha area of the site with an additional 8.41ha of built development.

8.8. The visual impact on openness from the new prison would not only be perceived walking north through and away from the site, on a new diverted Pump House Lane running between a prison wall and screening woodland, but also in views looking south. As is illustrated by the modelled LVIA viewpoint 6, the development would fill a previously open landscape, albeit one with low lying prison buildings, with significant and dominating built form. A screening line of trees would not mitigate this effect. There would a significant impact on visual openness.

8.9. Even if the SoS accepted that this site is visually contained, this should not be used as a way of minimising harm to the Green Belt. The appellant's landscape witness' approach is contrary to Sullivan J in relation to the 'death by a thousand cuts' impact in *R (Heath and Hampstead Society) v Camden LBC* [2007] EWHC 977 (Admin)[61]. The Green Belt is a diminishing resource which national policy has long held should be given the greatest importance. The appellant cannot avoid the fact that this proposal would have a significant harmful effect on both spatial and visual openness and so there would be a significant loss of openness overall.

[60] CD A25 paragraph 8.15

[61] CD K25b paragraph 37; the approach was cited with approval in *Turner v SSCLG* [2016] EWCA Civ 466 at paragraph 24

8.10. In relation to harm to purposes, the proposal would completely undermine the ability of the site's Green Belt purpose to assist in safeguarding the countryside from encroachment. As the appellant's landscape witness accepted, and as reflected at figure 7 of the LVIA, the north-eastern part of the site where the majority of the prison would go is countryside. The proposal would encroach into it. The same point applies to the bowling club.

8.11. The main mitigation relied upon is screening to introduce a new landscape boundary and provide a clear physical limit to the Green Belt. Setting aside the other reasons why screening is not appropriate mitigation in relation to Green Belt, the ineffectiveness of this approach is illustrated by figure 7 of the LVIA. Development would encroach beyond the woodland boundaries to the north of the new bowling club, to the north of the residential area, and to the east of the boiler house. Screening this would not minimise the harm or prevent further encroachment. The proposal would result in significant, not limited, encroachment into the countryside.

Highway safety

8.12. The issue of highway safety is one which national policy rightly highlights as an area of critical importance. An unacceptable impact on highway safety is one of the only times that a decision-maker is entitled to refuse an application without going any further (NPPF paragraph 111). It is for this reason that NPPF paragraph 113 requires TAs to assess the likely impacts of a proposal and NPPF paragraph 110(d) requires decision-makers to ensure that any significant impacts on highway safety can be cost effectively mitigated to an acceptable degree. While the latter requirement is not expressly linked to a TA, the appellant's planning witness accepted where a TA is provided it would be the natural place for it to be addressed.

8.13. If, at the time of their decision, the Inspector or SoS has a TA which does not properly assess the likely impacts of development, and/or does not provide the evidence to ensure said impacts will be mitigated (and said evidence does not exist elsewhere), the TA would be deficient. This is the case whether the deficiency relates to operational or construction traffic.

8.14. The appellant and Council accepted that if the TA is found to be deficient, and that deficiency has not been addressed by the close of the Inquiry, then that entitles the Inspector or SoS to refuse permission under NPPF paragraph 111[62]. This is because the TA and any additional information must together be sufficient to reach a judgment as to whether there would be an unacceptable impact.

8.15. The Council's case is that there would be an unacceptable impact on highway safety from the operational phase of the development. There is a critical difference between considering capacity and safety. Safety is not simply a numbers game but requires aligning those numbers with the existing characteristics and usage of a road network. The reliance on revoked government guidance in relation to road capacity reveals a misunderstanding

[62] See also *Satnam Millenium Ltd v SSHCLG* [2019] EWHC 2631 Admin, paragraphs 58-60 (CD K25a). This case concerned whether residual cumulative impacts would be severe, but there is no reason why the precautionary approach would not equally apply to unacceptable impacts on highway safety.

of the Council's concerns and illustrates that the appellant approaches the issue from the wrong perspective. The Council's evidence should be preferred.

8.16. The level of daily trips from the proposal is broadly agreed to be 1,332 (excluding ancillary traffic), which the appellant's highways witness accepted is a significant number. This significant level of trips would be placed on a local network populated by recreational walkers using the public rights of way, cyclists (including those using the Lancashire Cycleway) and equestrians from the various nearby equestrian centres. The characteristics of the road network, coupled with these existing users and the increase of trips, is what leads to an unacceptable impact on highway safety.

8.17. Numerous examples could be cited, including the high vehicle speeds on Moss Lane and the non-compliant stretch of Ulnes Walton Lane that forms part of the Lancashire Cycleway. However, the point can be illustrated by the Moss Lane and Ulnes Walton Lane junction. This junction is located where Ulnes Walton Lane bends around a corner after which, if travelling from the south, there is an interaction with vehicles from the north turning right into Moss Lane which have poor forward visibility. The junction has a post box on one side and two bus stops close by. The nearest of these currently serves the prisons and would also serve the bowling club, although there is no existing footway between them forcing people to use the verge or carriageway. This is a very busy junction where factors combine to create a series of significant risks.

8.18. The proposal would put 100% of its daily trips through this junction which would be a 48% increase in its use[63]. The appellant's own capacity modelling shows that the right turn from Ulnes Walton Lane (north) into Moss Lane would be close to capacity at 0.82 Ratio of Flow to Capacity (RFC) and with a Passenger Car Unit (PCU) queue of 4.4[64]. The queue would occur behind the bend limiting its visibility to those travelling from the south. The safety issues this raises are obvious and yet the appellant does not propose any mitigation at this junction beyond the repainting of carriageway markings, the details of which are vague.

8.19. Improvement of the Ulnes Walton Lane bus stop, with a new shelter and to be disability compliant, is perhaps laudable in isolation. However, the appellant has refused the LHA's request for a footway to link the bus stop to Moss Lane. To get to the existing prisons or the new bowling club, bus users would still have to navigate the verge or carriageway before crossing Moss Lane. This location would have in the AM peak in one direction an additional four cars a minute to a total of 12 cars a minute or once every five seconds[65], with no mitigation proposed.

8.20. Vagueness has become a defining feature of the appellant's proposed highway mitigations. Only during cross-examination was it revealed that the seemingly promised mitigation scheme for Ulnes Walton Lane south of Moss Lane[66] was

[63] CD F3 paragraph 6.1.1
[64] CD A35 Table 7-9 (anything below 0.85 RFC indicates that a junction operates within capacity for the assessed flows; anything over 1.0 RFC indicates that a junction is over capacity)
[65] CD E12 Table 2-2 middle columns "2025 Opening Year with development"
[66] CD E4 paragraph 2.8.2

not in fact proposed at all. This vagueness becomes a significant concern in relation to the A581/Ulnes Walton Lane junction. The following propositions are put forward, drawn from concessions by the appellant's highways witness:

a) The A581/Ulnes Walton Lane junction is modelled to be over capacity with the development;

b) Without mitigation there would be a significant impact;

c) There is no designed or modelled scheme before the Inquiry;

d) The appellant's TA scheme is simply illustrative and the intention is that the LHA would provide a mini-roundabout;

e) But there is no evidence from the LHA about that scheme, no evidence they have used the traffic levels in the TA, and no evidence of design or modelling;

f) It would not be just a simple re-balancing exercise of the junction; and

g) The appellant's highways witness accepted that the TA was identifying a problem without providing a solution.

8.21. This is a junction where there would be a significant impact without mitigation on the appellant's own case. It must be mitigated. If it cannot be, then planning permission should be refused. It is that central to the appellant's case. However, at the end of this Inquiry no-one can say how it would be mitigated or produce any evidence to show that it actually could be. The stance of the appellant is "trust the LHA" but there is nothing specific from the LHA other than their non-objection before the Inquiry.

8.22. The scheme has changed from the unmodelled, undeliverable illustrative one in the TA. The best information we have on the new scheme is the vague "it will be a mini-roundabout". Cross-examination of the appellant's highways witness demonstrated how that is not a straightforward solution[67]. This is a busy junction with traffic flows from multiple directions and it is entirely unclear how such a scheme would not just shift the delays and queues to other arms of the junction.

8.23. The SoS needs to have sufficient information to conclude there is a realistic prospect of such mitigation being delivered and that the sum sought via the S106 would be acceptable in planning terms. There is nothing before this Inquiry that allows the SoS to do that, beyond the fact the LHA has not objected. That is an unacceptable approach towards highway safety, an approach that renders the TA deficient, and one that justifies refusal on NPPF paragraph 111 alone.

8.24. Construction traffic is the first of three significant omissions in the appellant's case. This is not a small matter. The appellant's highways witness accepted the following points:

[67] The appellant's highway witness accepted that a mini-roundabout would delay traffic on the A581 heading west to east (which currently has priority over traffic turning into Ulnes Walton Lane) as it would be necessary to give way to the right on a roundabout.

a) An unacceptable impact on safety from construction traffic means NPPF paragraph 111 directs the SoS to refuse;

b) Neither the TA nor the highways witness' proof or rebuttal properly addressed construction traffic;

c) The appellant has not actually quantified it;

d) The best information we have on construction traffic levels is that in the peak it exceeds the operational phase in terms of daily trips;

e) Both average and peak periods would see a significant increase in HGVs;

f) The mitigation has been designed on the basis of operational traffic;

g) None of the junction modelling has assessed construction traffic;

h) HGVs pose different safety issues from cars; and

i) All construction traffic would come along Ulnes Walton Lane and pass through the Moss Lane junction.

8.25. The appellant has forecast that, for three years, there would be an average increase of 146 HGVs a day. During a six-week peak period the construction traffic would exceed the operational traffic for both cars and HGVs at 2,022 cars and 102 HGV trips. This information was only to be found in an appendix to the appellant's noise proof. This is an astounding situation, which the appellant does not seem overly concerned about. The appellant has not even fully committed to a condition requiring the off-site road mitigation to be delivered before construction begins.

8.26. On the appellant's own evidence and modelling of operational traffic, the unmitigated impact of construction traffic on these roads would cause an unacceptable impact on highway safety. If permission were to be granted, the mitigation should be secured by a pre-construction condition. Even so, that would not solve the concern regarding the higher proportion of HGVs compared to background HGV levels. HGVs cause different safety issues, including slower turning, taking up more junction capacity and a larger degrading impact on carriageways. These safety issues are entirely unaddressed by the appellant because of their failure to consider the impact of construction traffic.

8.27. All construction traffic would use the Ulnes Walton/Moss Lane junction with all its inherent safety issues. This point is not properly addressed by the appellant, thereby adding significant uncertainty to the TA which cannot be rectified on the evidence before the Inquiry. This makes the TA even more deficient, prevents the decision-maker from judging whether there would be an unacceptable impact on safety and further enforces why permission should be refused in accordance with NPPF paragraph 111.

Living conditions of occupiers of neighbouring properties

8.28. The Inspector will have the evidence of the other parties at this Inquiry, but this main issue no longer forms part of the Council's case.

Character and appearance

8.29. The appellant's original assessment was that this proposal would have a short term moderate adverse effect and a long-term minor to moderate adverse effect on the appeal site and its local landscape context[68]. However, that finding was based on the view that the north-east corner of the appeal site (north of HMP Wymott's wall and east of the boiler house) would only be of low susceptibility, being urban edge and dominated by institutional influence. The appellant's landscape witness now accepts that this part of the site actually has a moderate susceptibility due to the fact that it should be considered to be predominantly rural, which increases the adverse effect for this part of the site.

8.30. The Council believes this part of the site is one of important areas to focus on. It is the area that is not visually contained to the north, has two public rights of way running through and is predominantly rural. It is where the impact on landscape would be most felt (although the bowling club location comes a close second) and it is where the majority of the development, the prison, would be located. This clear landscape harm should not be watered down simply due to the containment of wider areas of the site such as where the new boiler house would go.

8.31. The harm to landscape character is illustrated by the modelled viewpoint 6[69], which also shows that the appellant cannot justify this scale of development in the open landscape through the use of tree screening. It is an approach directly contrary to the warning given in the Coastal Plain Landscape Character Type[70]. All these points should lift the initial identified moderate adverse landscape effect in the short term to the higher level of significant adverse[71].

8.32. Visual effects is the second of the three omissions by the appellant. Whilst it was corrected in the evidence in chief of the appellant's landscape witness, the LVIA missed the fact there are public rights of way running through the site and close to the proposed bowling club location. This is a major omission because, if the impact on those close views[72] had been assessed, a major adverse effect which could not be mitigated would have be found.

8.33. The appellant notes that adverse effects will always be higher closer to the site, but that is not a reason to dismiss them. To do so would artificially lower the visual impact a proposal would have. The appellant's point could carry some weight if a viewpoint was on a private land in the middle of a site, but these are public rights of way often overlooking open countryside which would either be entirely extinguished or diverted to run between a prison wall and trees. It is a major adverse impact which the appellant cannot ignore and yet does not seem to make any difference to the appellant's overall conclusions.

[68] CD E6 paragraphs 3.47 and 3.48
[69] CD E6 appendix 2
[70] See extract in CD A25 paragraph 4.23
[71] CD F1 paragraph 5.79
[72] Broadly viewpoints 3/4/5 (Pump House Lane) and viewpoint 1 (the east-west footpath north of HMP Wymott) in CD F1

8.34. The appellant has underplayed the visual effects by dismissing the most damaging viewpoints on the public rights of way as they run through the site. This cannot be correct. Instead, the proposal would have a significant visual effect which must be taken into account in the final balancing exercise.

Other considerations and the planning balance

8.35. The all-encompassing test is whether there are very special circumstances as set out in NPPF paragraphs 147 and 148. All the harms and all the benefits need to be weighed into the balance. Once that is done the benefits must clearly outweigh the harms and collectively be said to be very special[73]. If the benefits do not clearly outweigh the harms, so as to constitute very special circumstances, then it does not matter whether the proposal would otherwise accord with the development plan or NPPF paragraph 11; the proposal should be refused. There is one exception to this. All parties accept that application of NPPF paragraph 111 can lead to immediate refusal on highway safety grounds. An unacceptable impact could not be outweighed by benefits.

8.36. It is important to note the red herring of CLP Policy BNE5. The fact that some of the site is categorised as a previously developed site does not support this proposal nor have any relevance as the exception it enshrines is not met. The proposal is inappropriate development and therefore there is definitional harm to the Green Belt.

8.37. There would be significant harm to Green Belt openness and purposes as well as the automatic definitional harm. In terms of the weight to be given to those harms, the Council's planning witness gives the collective basket of Green Belt harm very substantial weight[74], while the appellant's planning witness now accepts that each of the three individual Green Belt harms should each carry substantial weight due to the direction of NPPF paragraph 148.

8.38. The weighting process is not quasi mathematical. Three "substantial harms" do not equal one "very substantial harm" and nor is one approach right or wrong. The application of NPPF paragraphs 147 and 148 is a matter of planning judgment, but a very high level of weight should be placed on the harm to Green Belt in line with the Government's intentions.

8.39. There would be highway harm which either solely warrants refusal, if unacceptable, or needs to be taken into account if it falls short of that level. There would be significant adverse landscape and visual effects and the Council gives this significant weight. Despite the appellant's landscape witness increasing her landscape and visual effects, the appellant's planning witness did not alter her assessment of the weight to be attached to these adverse effects, leaving it to the Inspector to consider the veracity of this position.

8.40. The central and predominant benefit relied upon is the need for the prison. The appellant's planning witness accepted that if prison need is not established or if there is an alternative site, then very special circumstances would not be made

[73] *R (Chelmsford Borough Council) v The First Secretary of State* [2003] EHWC 2978 (Admin) at paragraph 56 (CD K25c)
[74] CD F1 paragraph 5.83

out. Equally, even if need is proven it would not, by itself, constitute very special circumstances.

8.41. There are two sides to the need case, both of which must be established for the appellant to place any weight on it. The first is that there is a regional need which justifies this size of prison. If the prison is oversized, this would reduce the weight to be given to need, as the appellant would have taken up more Green Belt, generated more traffic, and caused more planning harm than is necessary to meet the need.

8.42. To save Inquiry time, the Council relies on the submissions of UWAG. At the beginning of the Inquiry, the appellant relied on the projected regional capacity gap by March 2026 of 2,000. By the time the appellant's planning witness gave her evidence, after the appellant's need witness accepted the above figure did not reflect expansion at HMP Hindley (494 cells) and potentially not HMP Liverpool (200 cells), the appellant argued that projections could go up or down and it was a more complex matter of judgment rather than simple reliance on the numbers.

8.43. The Council maintains that the placement of the proposed prison at the upper efficiency range (1,715 places across seven houseblocks) was being justified by the capacity gap of 2,000. It is now the case that, on the appellant's own best figures, the gap would be either 1,506 or 1,306 both of which would only justify the lower efficiency range figure (1,468 places across six houseblocks). As accepted by the appellant's need witness, there is no modelled, projected or existing figure which justifies this size of prison. On that basis, the appellant falls at the first need hurdle.

8.44. The second side to the need case is whether there are reasonable alternative sites. This is where we encounter the appellant's third omission. Again, this is matter dealt with by UWAG in closing, but it is remarkable that the appellant missed in their original site search Land south of Stakehill Industrial Estate, a site which the Council submits is the reasonable alternative site which the appellant claimed did not exist. The fact that Stakehill would now come up against prematurity arguments is not a sufficient justification for the appellant being let off the hook for missing it the first time, especially given the intention for it to be released from the Green Belt.

8.45. The dismissal of Land at HMP Kirkham as a further alternative was down to a pre-application response which was not as damning as first suggested. It seems now that one of the main reasons relied upon for its exclusion would have been the effect such a proposal would have on tourism.

8.46. The scrutiny that has been able to be applied to this process during the Inquiry (limited as it was by the lack of any scoring and weighting process of sites against the mandatory, secondary and tertiary considerations) has revealed that the SoS cannot have faith that there are no reasonable alternative sites. Indeed, all the evidence points to the fact there are at least two such sites. If the SoS were to find that there was a reasonable alternative site, which the appellant could or should have identified, then very special circumstances could not be made out. The Council submits that reasonable alternative sites have been identified.

8.47. Finishing with other benefits, the economic benefits are generic and ones which arise with large development of this kind. While this does not mean they should carry no weight it does minimise their weight given the danger, especially with development in the Green Belt, of larger developments justifying themselves through the ever-increasing scale of economic benefits. As set out by the Council's planning witness[75], they should be given limited weight.

8.48. The social benefits should treated with caution due to the overlap with the broader weight given to the delivery of a prison. The purported upgrading of Pump House Lane, which would run between a prison wall and screening trees, should carry no weight at all. As set out by the Council's planning witness, the social benefits should be given moderate weight.

8.49. Absence of environmental harm, such as the site not being at flood risk or there being no sensitive ecological designations, does not amount to a benefit. The projected 20% biodiversity net gains should only carry moderate weight, given the incoming national requirement to deliver 10%.

Conclusion

8.50. Overall, there are numerous routes which lead to this proposal being refused permission and the appeal dismissed, namely the unacceptable impact on highway safety, the lack of evidenced highway mitigation, the omission of construction traffic, the lack of justification for this size of prison, and the existence of alternative sites. The point can be put in a fairly simple way. This is a proposal which would cause significant harm to the Green Belt, and to landscape character, and would have an unacceptable impact on highway safety all in return for a unevidenced justification for a prison of this size in this location. It falls far short of very special circumstances and on that basis the Inspector and the SoS are requested to refuse planning permission and dismiss the appeal.

9. The Case for Ulnes Walton Action Group (UWAG)[76]

Issues for the Inquiry

9.1. The appellant needs to show that the benefits and other factors in favour of development, including need, are such that they can properly be described as 'very special' and that they 'clearly outweigh' the harms identified (NPPF paragraph 148). The appellant must meet this policy test before planning permission for inappropriate development of a Green Belt site can be granted (NPPF paragraph 147). The requirement for something 'very special' is deliberately framed in national policy. It is the cornerstone of the approach to protecting Green Belts. It requires more than 'exceptional circumstances'[77] which is already a stringent test. The words 'very special' must be given their ordinary and natural meaning[78] as agreed by the appellant's planning witness.

[75] CD F1 paragraph 5.116
[76] Largely taken from UWAG's closing submissions (CD K24)
[77] See *R (Luton BC) v Central Beds DC and Ors* [2015] EWCA Civ 537 at paragraph 54
[78] See *R (Chelmsford BC) v First Secretary of State* [2003] EWHC 2978 (Admin) at paragraphs 54-56 and 71 (CD K25c)

9.2. The proposal would lead to a significant area of Green Belt land being lost permanently to substantial built development. That sets it aside from ordinary (non-Green Belt) proposals. NPPF paragraph 137 states that the Government attaches great importance to Green Belts and notes the key characteristics of Green Belt land are its openness and permanence. The proposal would amount to a direct conflict with that fundamental aim, which is at the top of the hierarchy of priorities in the NPPF:

a) Any harm to the Green Belt is to be afforded substantial weight. Unusually, the question of weight is not left to planning judgment.

b) In the prisons context, there is no 'tilted balance' policy mechanism unlike for significantly boosting the supply of housing. In any event, Green Belt protection trumps that balance and it is clear that the preservation of permanent open Green Belts is a key strategic priority.

c) There is no mechanism in national policy to address a shortfall in prison complexes and no suggestion that the shortage should lessen the importance of protecting Green Belt land (still less that the shortage should be met on Green Belt sites). Although national criminal justice policy might aim to ensure that those in Category C resettlement prisons serve out the final months of their sentence closer to their home address, there is no related policy intervention which indicates the importance of this factor in associated planning decisions. The only sensible conclusion is that Green Belt policy is untrammelled by such aspirations.

9.3. Green Belt protection is a political choice but it has been made and reflected in national planning policy. That this proposal is in fundamental conflict with that aim is its defining feature. Ordinarily it should be refused and it is only genuinely where what can be described as very special circumstances arise that there can be any question of permission being granted.

9.4. For a large-scale and high-profile appeal, the appellant's case has at times appeared surprisingly cavalier. The TA has left out the impacts of construction traffic and the many ancillary vehicular journeys to and from the prison that already occur with the existing prisons. The assessment of need that is said to lie behind the critical gap between the supply of places and the future prison population appears to have been calculated without any (or any transparent) assessment of future supply of new prison places. The alternative sites assessments appears to have paid no regard to the criteria that were said to be the framework for that exercise, whilst leaving uncorrected until the last days of evidence a wholly misleading section of the Planning Statement dealing with the approach undertaken.

9.5. This has made it unnecessarily difficult for a Rule 6 party to engage in the proper scrutiny of the proposal at appeal. UWAG has asked for clarification and been met with dismissive replies[79]. At times it appeared as if the appellant's team had not read their carefully prepared evidence. When the approach was scrutinised in cross-examination in turned out to be based in large part on 'judgment calls' which are impossible to scrutinise rigorously. Rule 6 parties

[79] See for example the exchange at CD K9, K10 and G4b

generally can add significant value to an inquiry, but UWAG's ability to make a significant contribution here has been in spite of, rather than properly facilitated by, the appellant, which is all the more regrettable given that the appellant is part of central Government.

9.6. In many key areas, the appellant's position does not stand up to rigorous scrutiny which is what the inquiry process is for. The evidence about need is essentially incomplete; there is no assessment at all of the future capacity regionally or nationally against which to assess the projection of future population. Without that, talk of a capacity gap is no more than rhetoric and ought not to be sufficient. Similarly, the claimed absence of any reasonable alternative appeared to be based on little more than a negative pre-application advice letter from Fylde Council. That may have been disappointing to receive, but it did not, and does not, make the Kirkham site a non-runner as a reasonable alternative.

9.7. These points are developed in more detail below, but our conclusions in very broad terms are:

a) The proposal amounts to a substantial loss of open Green Belt land, in direct contravention of the national policy imperative to keep such land free from inappropriate development;

b) In addition, it would cause a range of other harms;

c) That 'basket' of harms amounts to a very substantial accumulation of harm, and clearly outweighing it would take something very special indeed;

d) While the socio-economic benefits of the proposal are significant, it is the twin propositions that there is an urgent need for these places and nowhere else they could reasonably go that elevates the case from the ordinary to the potentially very special;

e) Any rigorous analysis of the appellant's evidence on future need for these places could only conclude that it was hopelessly uncertain: the projections of need themselves appear to be way too high, and the absence of even the most rudimentary assessment of future supply makes the assessment essentially meaningless; and

f) Lastly, it is now obvious that the land next to HMP Kirkham is at least a reasonable alternative; and has obvious potential to be a much better site for this prison than the appeal site. That alone is sufficient to warrant dismissing the appeal, on the appellant's own case[80].

Definitional harm

9.8. This would be a major development including seven blocks up to four storeys in height, large enough to accommodate 245 prisoners each, with significant ancillary development. The replacement boiler house would lead to further visual impact from two 5.2m high silos and a flue extending up to 22m. The

[80] The appellant's planning witness conceded that without the 'no alternative site' component of the case, very special circumstances do not exist, with the obvious consequences that follow

relocated bowling green would lead to new built forms in previously undeveloped countryside.

9.9. Although redevelopment of previously developed sites in the Green Belt can be considered appropriate, this is only where doing so would have no greater impact on openness (NPPF paragraph 149(g)). It is agreed that this case does not meet that requirement, not least because only part of the proposed site is previously developed, and a significant part of the site is undeveloped. That which is previously developed will be replaced with something of a significantly greater impact on openness. It is thus common ground that the proposal comprises inappropriate development. Inappropriate development is harmful to the Green Belt and NPPF paragraph 148 requires that substantial weight should be given to any Green Belt harm.

Visual and spatial loss of openness

9.10. The extent to which the loss of openness would be perceptible and appreciable is a matter of planning judgment. The officer's report[81] concludes that the proposal would have a greater impact on Green Belt openness both visually and spatially given the extent of open land across the site and the scale of development proposed. UWAG's planning witness endorsed that view[82]. The appellant does not seriously contest that proposition, which is also made by the Council's planning witness.

9.11. The appellant's attempt to downplay the harm to openness by referring to similar built development in the vicinity misses the point. It may be relevant in questions of landscape character and visual impact, but Green Belts exist to prevent urban sprawl and by definition they will be found adjacent to built development. The fact that the reduction in openness occurs adjacent to built form cannot reduce the harm thereby caused. Such an approach would drive a coach and horses through Green Belt policy.

9.12. Substantial weight is required to be given to any Green Belt harm as a minimum, including proposals which reduce openness regardless of the extent of reduction, the visibility/perceptibility of the development and so on. There are significant factors which elevate the Green Belt harm above the minimum. The establishment of an industrial-scale prison complex and ancillary development must be appropriately acknowledged with a loss of 8.4ha of open land. This is a significant reduction and very substantial weight must by afforded to that loss.

9.13. Contrary to the appellant's position[83], the fact that only one of 5 purposes stated in NPPF paragraph 138 is engaged does not mitigate the fact that all parties agree the proposal would conflict with the purpose of safeguarding the countryside from encroachment. That it happens not to conflict with the others is not a factor in its favour. The proposal would involve substantial built development of an urban nature within a currently open, broadly rural area of land. There are significant areas of the site that are presently undeveloped, including grassland, especially in the north-eastern and southern parts of the

[81] CD A97 paragraph 89
[82] CD G1 section 6
[83] CD E2 paragraph 7.22

site. These areas would be encroached upon leading to a significant degree of conflict with this purpose and resulting in a high level of harm.

9.14. The proposal would be much taller than anything else on site and significant in scale compared to what is already there. It would be highly visible from some locations including the public rights of way and prescriptive footpaths. There are no significant long-range views of the site, and if this is what the appellant means about the site being 'contained' then so be it. What is clear is that to the north and east of the site there are presently open views across a pleasingly rural landscape, dotted with remnants of the former munitions depot which do nothing to detract from that rural character. Travelling down Pump House Lane from the north would permit extensive views of the new built form.

9.15. UWAG endorses in general terms the evidence given by the Council's planning witness about the visibility of the reduction in openness. In addition to the significant loss of openness in spatial terms, that loss would be highly perceptible from the public realm, albeit not from long-distance views. Overall, very substantial weight should be attached to the Green Belt harm, recognising that the proposals do substantially more than the minimum harm.

Landscape character and appearance and visual impact issues

9.16. Despite the site not being a valued landscape or subject to any specific landscape designations, there remains value in its local landscape contribution. Harm to its intrinsic character and beauty is harm to be weighed against the grant of planning permission. Unlike a non-Green Belt case, there is no need to weigh up whether this aspect would be unacceptable or a reason for refusal in its own right. All that is needed is to assess the level of harm caused and add it to the basket of harm arising.

9.17. The LVIA acknowledges residual effects on local landscape character and the wider landscape character area in the long-term. It finds the effect upon the landscape character area at completion could be 'moderate adverse' reducing to 'minor adverse' at Year 15. In respect of the local landscape character, the effect would be 'moderate adverse' at completion reducing to 'minor-moderate' adverse at Year 15. This harm is very much relevant in the planning balance. It amounts to harm lasting a generation and should be afforded appropriate weight in the balance.

9.18. The proposal includes the significant extension of built form into open countryside, with the proposed landscaping significantly changing the current open agricultural character of the existing site. The proposal not only includes the removal of open fields and hedgerows, but also includes the removal of over 21,000sqm of existing mature tree planting, albeit to be 'replaced' elsewhere. The site's character cannot be sensibly described as 'urban fringe' and one only needs to walk the site and its surroundings to see how inappropriate that is.

9.19. UWAG endorses the Council's conclusion that the appellant has underplayed the localised effect of the proposal on landscape character and overstated the efficacy of the proposed landscaping mitigation. The proposal would have a notable adverse effect on landscape character and appearance.

9.20. The new development would be visible from a range of viewpoints. From a number, the impact would be, on the appellant's own evidence, at least moderate adverse and some would be major adverse. No such impacts arise from long-range views but that is hardly a factor in the proposal's favour. What is required is an assessment of the impact on views, and here a number are significantly affected, including from public rights of way.

9.21. In addition, UWAG is particularly concerned about light pollution. The new development would not be without light spill and glow in dark hours, amounting to moderate harm in the planning balance. The appellant's visualisations did little to reassure in this regard. UWAG concludes, in line with the Council, that the harm arising from the landscape and visual impacts are greater than the LVIA suggests and, taken together, merit significant weight.

Traffic, noise and disturbance

9.22. Whilst UWAG has not taken an active part in the technical debate over highway safety, if the SoS accepts the Council's evidence that the appellant has failed to provide satisfactory evidence that no highway safety issues will arise, that is likely to be fatal to the appeal. UWAG is particularly concerned that the junction between Ulnes Walton Lane and Moss Lane, which local residents must cross to use the post box and catch the bus, is expected to take a vast number of additional vehicles, including 146 HGV movements a day for three years, without any meaningful upgrade to its safety features.

9.23. Ulnes Walton Lane is just 5.2m wide at its narrowest point, which is at the bus stop just south of the junction with Moss Lane (UWAG's measurements were not contested or challenged by the appellant). The prospect of two HGVs attempting to pass one another at this point, not unlikely given forecast volumes in the average construction month, is worrying.

9.24. Further, the junction from Ulnes Walton Lane to the A581 is modelled by the appellant to be over-capacity when the traffic generated from the proposal hits the network, causing long delays. The only answer seems to be a vague suggestion of a new mini-roundabout with, as accepted by the appellant's planning witness under cross examination, no technical work at all to show how (or if) that would ease things.

9.25. The impact of noise and disturbance from traffic generated by the proposal is another aspect of the case UWAG has sought to have taken seriously, with the focus on Windy Harbour. The noise modelling by the appellant is based on the traffic generation data produced by the TA. That excludes all ancillary trips (deliveries, ambulances, contractors and so on), and for construction traffic relies on a CTMP from another prison which the appellant points out is only in draft, is work in progress, contains too many uncertainties, and contains data which might be different for this prison.

9.26. The noise modelling also uses the modal split from the TA which is unrealistic. In reality there would be fewer people using the bus, train, bicycle or car sharing than predicted and more coming in their own car. The TA also proceeds on the basis that traffic would travel at the speed limit[84], when the

[84] CD E5 paragraph 6.2.1

TA itself shows that traffic does not presently do that along Moss Lane[85]. It is thus plainly not describing a worst case scenario.

9.27. The appellant uses the approach set out in the DMRB[86] for its noise assessment, noting that it provides a good framework for this kind of assessment[87]. It is directed specifically at the noise implications of road traffic. That framework suggests the following:

a) In the **operational phase** of the proposal, there would be an increase of 3.6dB at Windy Harbour (known as ESR3 in the noise assessment) in the daytime, which is described as moderate by the DMRB and thus a significant increase in the noise environment in the short-term;

b) However, that increase does not push the noise environment above the LOAEL set out in the DMRB (55dB). The noise level would remain below that level;

c) At night, the increase would be similar (3dB increase at ground floor and 4dB increase at first floor) which would mean that LOAEL would be exceeded;

d) The effect of exceeding LOAEL is clear from the PPG table[88];

e) The appellant suggests that this LOAEL exceedance is not a concern because the noise environment already exceeds that LOAEL. That is strictly true of the first floor but not the ground floor and the current noise environment at first floor level is only above LOAEL by 1dB, which is not perceptible to the human ear[89];

f) For this reason, the appellant then abandons the DMRB approach and considers the change in noise environment against the WHO guidelines for community noise, which suggests a higher LOAEL at night-time which would not be exceeded. The reasons for this shift were not easy to understand; the WHO guidelines address all forms of community noise whereas the DMRB is specific to road traffic noise, and if the WHO approach is to be preferred on some objective basis, it is hard to see why DMRB was used all;

g) Lastly, while it is true that Windy Harbour does not have a window at first floor directly facing Moss Lane, it has French doors at ground floor level, and even on the revised analysis of the noise environment at first floor level to take account of the fenestration, the resultant noise environment would still be above the LOAEL set out in DMRB at 42dB[90];

h) In the **construction phase** of the proposal, for the three-year construction period the average effect (scenario 4 in CD E5) would be a

[85] CD A35 paragraph 3.3.1
[86] CD H4
[87] CD E5 section 4.3
[88] See extract in CD E5 paragraph 3.4.2
[89] CD E5 paragraphs 7.2.4 and 7.2.9 (Table 8 shows the predicted figures)
[90] CD E5 Table 9

4dB increase at Windy Harbour in the daytime, again described by the DMRB as moderate and thus significant;

i) In the peak construction period (scenario 5 in CD E5), estimated to be six weeks long, there would be a 5dB increase at Windy Harbour, described by the DMRB as a major impact;

j) In both scenarios, the duration of that effect would exceed the limit set out at DMRB paragraph 3.19[91];

k) Both effects would mean the noise environment at Windy Harbour would be above the LOAEL; and

l) The answer offered by the appellant's noise witness to this major impact is to suggest a 20mph temporary speed limit for the peak construction period, which would not assist with the average construction period which is to last three years.

9.28. Because the approach is plainly not a worst case, there must be a real risk that these effects will be worse and/or more widespread. This is a further harm to be weighed in the balance.

Parking

9.29. The proposed 525 spaces would only be sufficient if the appellant is correct that some 17% of staff would access their workplace by means other than driving their car. Table 3-9 of the TA suggests that (once walking has been removed and redistributed across the other modes) some 4.5% of staff would come by bus, 1.3% by train, and 1.9% by bike (each mode being more than the percentage of Chorley residents using that mode to access their workplace).

9.30. That is self-evidently wrong. The vast majority would come by car. This is a workplace with shift patterns, with no usable railway station nearby, with a barely-used bus service that has been upgraded in the past and that upgrade abandoned for lack of use and which is accessed by a narrow lane unsuitable for all but recreational daytime cycling. UWAG suggests that 90% of staff would come by car. If that is right, and it seems eminently likely, then the proposed car park would be too full during the day[92]. The outcome would be staff parking on surrounding roads like Moss Lane and Willow Road, with the resultant noise and disturbance to those that live there.

9.31. The appellant's point about estimated visitor numbers being likely to be an over-estimate does not answer the point. Even if you cut visitor numbers by half to account for this, the car park would still be over-capacity for much of each day. Nor does the suggestion that over-providing car parking space disincentivises people to use non-car modes of travel. Often, it does, but not here. Being unable to find a car parking space would not inconvenience people who wish to drive, because they would simply park on the surrounding roads, which is free, and no less convenient. Staff from the two existing prisons do so already.

[91] CD E5 paragraph 7.3.9 and answers in cross-examination
[92] CD G2k and G2l

9.32. The appellant's noise witness accepted that if the TA underestimates the level of car use in accessing the new prison and that leads to additional parking on the surrounding roads, that would be likely to lead to a worst noise effect. If UWAG's analysis of the likely parking implications and the likely effect in terms of increased on-street parking is accepted, that is a further harm to be added to the basket.

Other identifiable harms

9.33. It is common ground[93] that the following matters also constitute harms to be added to that basket:

a) The loss of a limited amount of high-grade farmland constitutes a negative impact that would not be overcome in the future. UWAG points out that in an era of uncertain food security, that is not to be lightly dismissed;

b) There would be a loss of land safeguarded for mineral extraction;

c) There would be a loss of a substantial quantity of mature woodland. It is proposed to be replaced elsewhere but the replacement to the present level of maturity would take many years;

d) It is agreed that there would be harm to ecology in the short to medium term;

e) There would be an uncompensated loss of a playing field, albeit one not available for general public use, as identified in the objection from Sport England. It is used by inmates and staff of the existing prisons; and

f) There would be harm to the significance of a non-designated heritage asset in terms of the former Ministry of Supply Depot.

9.34. In addition, UWAG has expressed concerns about the accessibility of the site, none of which has been seriously challenged by the appellant. This is not a sustainably located site. The vast majority of journeys would be made by car, with very few indeed likely to be made by sustainable modes of transport. One can appreciate the convenience of locating new prisons adjacent to existing ones but that does not make the location sustainable from an accessibility point of view.

Conclusion on harm

9.35. This is not one of those cases where the harm to be assessed is limited to the 'definitional harm' comprised in a reduction in openness. That exists here, in that there would be a significant reduction in openness, comprised in more than 8ha of 'net' new built form where presently there is none, but there is also a very real range of other harms that would be caused by the proposal.

9.36. The permanent and irreversible loss of Green Belt land, which would not be fully mitigated through landscape, siting and design, would also be visible and perceptible. The proposal represents a noticeable encroachment of urban development into the open countryside. The totality of Green Belt harm would

[93] CD C8

be significant. The definitional harm alone must attract at least substantial weight as a matter of national policy, but over and above that are a series of other harms, adding considerable additional weight against a grant of permission. In totality, such harm should attract very substantial weight here.

Benefits

9.37. It is agreed that there are a range of social, economic and environmental benefits to the proposal. It is clear that on their own, even taking the appellant's assessment of the weight to be attached to them, they cannot amount to very special circumstances. They are respectable, significant benefits of a new prison, but on their own they are in no sense 'special'. It remains the case that those benefits appear to have been calculated by reference to a 2013 report by Peter Brett Associates[94] which uses data from three non-rural prisons, excluding the fourth prison data source on the basis that it was, like this proposal, in a rural area. That must undermine the reliability of that study as a basis for assessing the likely benefits here.

9.38. Some of the benefits relied on by the appellant, particularly under the heading 'environmental benefits', are self-evidently nothing of the sort. The prime example is the suggestion that the proposals would not lead to flooding here or elsewhere: that is a relief, but it is not a benefit of the proposal in any meaningful sense. The same analysis applies to the (claimed) minimisation of landscape and visual impact, and the mitigation of overall effect on species. That the appellant proposes to use modern and efficient building methods is laudable but not a planning benefit either. These should be set to one side.

9.39. What really matters in this regard is the proposition that there is an urgent, pressing need for prison spaces of this kind, and nowhere other than this site on which to provide them. Without them, this case has nothing special about it whatsoever. Indeed, the professional view of the appellant's planning witness is that without just the latter, the absence of a reasonable alternative site on which this need could be met, the case for 'very special circumstances' falls away. UWAG agrees.

The need for the facility

9.40. There is no dispute that there is a need for more prison places, or that there is a need for a new Category C prison in the North-West. Without more, the existence of a need for a new Category C prison in the North-West cannot constitute the very special circumstances required to clearly outweigh the totality of Green Belt harm. With a growing population, and a governmental determination to catch more criminals and send more of them to prison, there will always be a need for more prison spaces.

9.41. In this appeal, though, the question is whether this particular proposed prison, on the proposed scale, must be built at this exact Green Belt site, in order to meet the need that the appellant claims is likely to arise in the next five years. The appellant's case is that it is of 'critical importance'[95] that this prison is delivered here in order to ease (or help to ease, which seems the maximum

[94] CD J1
[95] CD K1

that can be hoped for, given that this proposal offers to deliver 1,715 places) what is said to be a 'capacity gap' in March 2026.

9.42. The first observation is that this prison will not deliver any places until Q3 of 2027[96] and so cannot assist with any capacity gap arising in March 2026. The second is that in order to assess the robustness of the claim that a 'capacity gap' will arise, one needs as a minimum some robust evidence about future need, and robust estimates of future supply. A 'gap' can only be the relationship of one of those data to the other. The third observation is that the 'gap' is said to be a regional one, arising here in the North-West. It follows that the evidence of need and capacity to support it must equally be at a regional level. The Inquiry has none of the necessary evidence.

9.43. The first aspect of need relates to the national picture. It is common ground that there is a national need for new prison spaces, and that the prison population is likely to grow into the future. UWAG's case is that the appellant overstates the urgency and extent of national need. As UWAG's evidence has shown, the appellant's case is premised on forecasted demand for numbers. Those projections have been revised down once already since 2020, and the evidence is clear that the actual growth in prison population at the national level is tracking well below that projected in 2021:

a) The population as of 10 June 2022 was 80,115 prisoners[97];

b) At the same date, the operational capacity was 82,676 places[98];

c) The increase in population in the 7 months since the projections were published (i.e., 19 November 2021) is just 535, while the operational capacity has grown by 1,772 places[99];

d) The rate at which the population has grown since November 2021 is an average of c.100 per month (to May 2022, to permit comparison with the projections), while the 'central projection' suggests growth in that same period at a rate of c.650 per month, six times the rate[100];

e) The result is that the present population (as of May 2022) was some 6,000 prisoners lower than projected by the 2020-based projections[101], and some 3,000 prisoners lower than projected by the 2021-based projections[102]; and

f) The 2021 projections suggested that the population was expected to "rise to pre-COVID levels in July 2022". The pre-COVID level was 83,654 prisoners (February 2020)[103], but the actual prison population in June 2022 was 80,115 (and will not reach pre-COVID levels by July 2022), being some 3,500 prisoners short.

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[96] CD E10 paragraph 11
[97] CD J13 (duplicated at CD G2f)
[98] *Ibid.*
[99] CD J14 (duplicated at CD G2b)
[100] Agreed with the appellant's need witness in cross-examination
[101] CD G2a
[102] CD G2b
[103] CD G2e

9.44. This is consistent with the appellant's evidence that the projections are necessarily uncertain and rely on specific factors affecting projected demand. That is understandable. Forecasting is an inexact science and highly sensitive to uncertainties. That is why forecasters often use 'sensitivity testing', to explore the possibility that their assumptions turn out not to be reliable, but that does not appear in this case.

9.45. The factors identified as being crucial uncertainties in this forecast have turned out not to be robust, to the extent that it is no surprise at all that we are so far short of the projected population at this stage:

a) The recruitment of police officers may well result in more crimes being detected, and possibly more people ultimately ending up in prison, but it may also have a deterrent effect on crime, or some types of crime. We have no sense of the regional breakdown either as to the number of officers recruited or the likely regional effect. It seems a stretch to base projected increases in prison population on this factor, which must at best be highly uncertain as to its effect on prisoner numbers (particularly on a regional basis);

b) The overall aim of Government policy must be to reduce crime, rather than just increase the rate of detection; the trend towards longer sentences must be intended (at least) to have some deterrent effect;

c) The effect of the backlog in the Crown Court is not to be underestimated. The Government's aspiration to reduce it (with the effect of increasing the prison population) was considered forensically by the Public Accounts Committee (PAC) of the House of Commons very recently. The report[104] is not happy reading;

d) The backlog was 61,000 in June 2021, up from 41,045 in March 2020 when the pandemic hit, and from 33,290 a year prior to that;

e) The aspiration is to reduce the current backlog to 53,000 by March 2025, described as a 'meagre' ambition by the PAC[105]. If that is achieved, the backlog by that time will be some 30% higher[106] than it was even before the pandemic hit;

f) The PAC consider even that 'meagre' ambition to be unlikely. Recruitment of new judges has not been going well and the plan to achieve the reduction was 'not credible'[107];

g) All of this pre-dates the ongoing industrial action by the Criminal Bar, which must be having a further negative effect on the backlog.

9.46. All of the above both explains why actual data is lagging so far behind the projections but also strongly suggests that the projection is itself over-heated. The appellant's need witness says that this is just a nine month delay in the

[104] CD G2d
[105] *Ibid.* page 5
[106] 53,000 compared to the March 2020 figure of 41,045
[107] *Ibid.* page 5

projections[108], which given the commensurate (almost, it is actually at least 15 months) delay in delivering this proposal is immaterial. This does not bear scrutiny either. The 2021 projection suggested a return to pre-COVID levels of prison population by July 2022. That has not happened but pushing that prediction back 9 months takes us to April 2023.

9.47. If there really is a nine month delay, we can expect pre-COVID levels by that date (i.e., around 83,654). If that is so, then that would be some 4,600 short of what the projection suggests would be the population at that time (i.e., 88,300 at least for March 2023). The gap between the actual and projected population would have grown. It is presently around 3,500 as set out above. All of this suggests strongly that the projected national need into the future is a significant overestimate.

Regional need

9.48. The second aspect of need is the regional picture. There are no projections of this need and the national projection has not been broken down to a regional or any other level. There is, in any event, some disagreement about the implications the claimed regional need has for the exact proposal presented in this proposal:

a) The appellant's need witness identified that, as of May 2022, around 1,350 male Category C prisoners with less than 24 months sentence remaining and who had a home address in the North-West were being held in prisons outside the region. He confirmed that this cohort would be held in the new prison. This cannot be correct given that the development, if allowed, would likely take longer than 24 months to build;

b) The proposal is for a 1,715 inmate prison on a Green Belt site. The sole reason for the proposed number of inmates is set out clearly in the appellant's evidence in that the figure equates to the maximum efficiency for construction costs and operations;

c) However, that efficiency should not be conflated with need, especially where each additional brick, slab or cell increases the level of harm to the Green Belt in respect of encroachment and impact on openness. The Council is surely correct to say that only limited weight could be afforded to any plan, such as the proposal, which extends beyond the current level of identified need;

d) In short, there is no evidence whatsoever (short of the appellant's assertions) to support the claimed regional level of need and no analysis whatsoever of the likely future capacity, whether in the North-West or at all.

9.49. That absence of any evidence at all about future capacity is extraordinary. All we know is that the operational capacity of the national prison estate was 82,676 as at June 2022 and that new places will be added to the estate at various points in the future, including:

[108] CD E10 paragraph 10

- 500 places when the 'operational headroom' (to provide flexibility and safety in terms of the use of prison accommodation)[109] of 2,500 is reduced to 2,000, perhaps in the autumn;
- 1,715 places in the Midlands when HMP Fosse Way opens, perhaps in 2023;
- 1,440 places in Yorkshire when HMP Full Sutton opens, perhaps in 2025;
- 494 places in the North-West when the expansion of HMP Hindley opens, at some point; and
- Around 200 new (refurbished) cells at HMP Liverpool, perhaps in 2026.

9.50. That is encouraging, but the exercise here is to scrutinise the central component of the case for very special circumstances, a so-called 'capacity gap' in the North-West in March 2026. That is, literally, impossible. There is no data. We know nothing of when the above places will become available, or when (or whether) other places will be expected to come forward. We do not know whether (or when) prison cells space will be lost. There is not even a 'back-of-an-envelope' estimate, year on year, whether nationally or, crucially, regionally. We are simply asked to take the appellant's word for it. That is not how this process works. The only conclusion is that the appellant's case on need is not robust and, for the Inquiry's purposes, not made out.

Lack of alternative location

9.51. The lack of a suitable alternative location is at the heart of the case for very special circumstances here. If (as UWAG consider) there are a number of potential locations for this development (even if the urgent need for them is made out), then the case changes materially. The appellant's planning witness was right to accept that this was an essential element of her case, without which it would fail.

9.52. There is no national or development plan policy on how possible sites for new prisons should be chosen or taken forward. However, this lacuna does not afford the appellant carte blanche to assert that only this site can feasibly accommodate the required new prison. To make out this aspect of its 'very special circumstances' case, the appellant must evidence that there are no other alternative sites reasonably capable of supporting the proposed development. The appellant's planning witness agreed that the question is whether there is a site which is either as good or better than the appeal site. 'As good' is sufficient to defeat the appellant's case. UWAG's case is that the appellant has failed to discharge that burden.

9.53. The appellant's case on alternative sites is at best opaque and at worst flawed. Despite multiple requests (and recourse to the Information Rights Tribunal) the appellant has never disclosed its approach to 'scoring' the candidate sites. In cross-examination of the appellant's planning witness, it was clear that it did not even embark on that process for at least some of the candidate sites (and in particular sites at Stakehill and Kirkham), or for the appeal site for comparative purposes.

[109] CD G2f

9.54. Without that information, it is impossible to critically assess the process. How are the secondary criteria weighted one against the other? How are they weighted against the tertiary criteria? How are the tertiary criteria weighted one against the other? How is an overall 'rating' or score reached to permit comparison between sites? We have no idea and consequently no idea how the appeal site compares to either the Kirkham or Stakehill sites on the appellant's own identified criteria.

9.55. Remarkably, that is precisely the criticism the appellant advances on UWAG's evidence[110], where they say the use of a red/amber/green rating system does not allow for weighting of criteria which may be more significant than others and does not allow for the different scores to be afforded different weight in an overall assessment, with no detail provided on how the appeal site is less preferable than others through an overall scoring.

9.56. The one thing we do know is that the appellant considers the appeal site to satisfy 'many of' the identified criteria[111]. It follows that it is not considered to meet them all. But which ones it does not meet, and the way in which that affects any kind of overall score, or the comparison, is entirely obscure.

9.57. Even on the evidence we do have, it is obvious that there is at least one, and probably two, sites that are reasonable alternatives to the appeal site for meeting the claimed need. The approach is, by definition, a high-level assessment. The level of detail one might reach in a planning appeal is not possible for the candidate sites. Are there constraints that rule out Stakehill or Kirkham as reasonable alternatives, in this context? We say patently not. Both are in the North-West and well above the requisite size. Both are in the Green Belt, just like the appeal site. Aside from UWAG's work, there is no assessment of either site against the identified criteria, or against the appeal site in that context:

a) For **Stakehill (Oldham)**, the key issue appears to be its draft allocation in the emerging plan for Greater Manchester ('Places for Everyone'). It is part of a much larger draft allocation for a mix of housing, employment land and associated infrastructure, as Green Belt release. That can only be in its favour as an alternative to the appeal site, which is not proposed to be removed from the Green Belt by any plan. The harm entailed in delivering a prison at Stakehill must be much-reduced in that context;

b) The appellant's pessimism about timescales was not persuasive. There is no requirement to wait until a plan is adopted before making a planning application. This appeal is made following an application for a site which is not allocated in any plan, and there is nothing unusual about a pre-emptive application relying on a draft allocation (especially where the plan is at a reasonably advanced stage). This application was determined some 4 months after it was made; the delay to this point is largely down to the appellant delaying its appeal until April 2022;

[110] CD G4c
[111] CD A3 paragraph 7.36

c) This might all be more persuasive if any attempt to engage with the local planning authority for Stakehill had been made, whether as to its compatibility with the draft allocation, likely officer support, or timescales. There has been none, despite the local planning authority drawing the site to the appellant's attention as part of the call for sites here;

d) There is no ecology, or heritage constraint that compares unfavourably with the appeal site;

e) In terms of access, the suggestion is that bus route 17, which offers a frequent and short trip to and from the centre of Manchester, could not be used because there is presently no permeability between the industrial estate to the north (where it stops) and the site. The appellant's planning witness accepted that this was not likely to be insurmountable, especially given the budget apparently available here for enhancing the bus service;

f) The access by rail is a significant improvement over the appeal site, allowing a short trip from Manchester city centre to the appeal site via a short walk from Mills Hill station;

g) Unemployment in Oldham is much higher than in Chorley (or South Ribble), meaning the contribution of new jobs would be more valuable there than here;

h) While a small point, the site does not boast a sports field and so no equivalent loss of one would be suffered;

i) Overall, Stakehill is just as good as the appeal site, offering some distinct advantages;

j) For **Kirkham**, the extraordinary position seems to be that this site was dismissed from consideration upon receipt of an unfavourable pre-application response from Fylde Council[112]. That is, on its own terms, obviously insufficient. Pre-application advice is non-binding, and the letter raises no specific insurmountable constraint. It doubts that the 'very special circumstances' case advanced here, and opposed by Chorley Borough Council here, would be sufficient;

k) Turning to the detail, the suggestion that it would prejudice the Green Belt 'purposes' relating to the setting of historic towns, and the unrestricted sprawl of large built-up areas, is not developed at all in the letter and seems objectively unsound;

l) The letter does not suggest any unacceptable (or insurmountable) constraint relating to landscape or visual impact;

m) It makes literally no reference at all to Ribby Hall[113], a listed building. That part of the case seems to have been misunderstood entirely by the

[112] CD J2

[113] The reference in the letter is to Ribby Hall Village, an upmarket holiday complex with surrounds the listed hall, and which is not a heritage asset

appellant[114], and it should not be forgotten that developing the appeal site causes harm to a non-designated heritage asset;

n) In highway capacity terms, the letter suggests early liaison with the LHA, with a list of factors to inform discussions;

o) There is no 'design' constraint identified;

p) The ecological implications are no worse than the appeal site[115];

q) The appellant's highways witness agreed in cross-examination that the access implications were no different to those at the appeal site;

r) In addition, it is better connected to the trunk road network and, crucially, to sustainable travel modes. Journeys by bus and train are considerably more appealing than at the appeal site. Unemployment is higher in Preston and Blackpool than here in Chorley and South Ribble. There is no sports field to lose.

9.58. UWAG's evidence carefully and reasonably demonstrates that there are at least two alternative sites existing in Stakehill and Kirkham, which appear to do better than the appeal site against the appellant's own criteria. Even accepting the approach and criteria set out, Stakehill and Kirkham are no worse than the appeal site. In reality, nothing raised by the appellant in this inquiry has done anything to upset that conclusion.

9.59. An urban setting is generally preferable considering the many underused or vacant brownfield sites identified on local authority registers in the North-West. This preference tallies with the appellant's own assumptions for new prison builds. Rural locations are unhelpful for staff retention and visitor access due to transport services.

9.60. There is no site in the region that is at the present stage of the appeal process so it is likely that no site could as of now deliver a prison sooner than this appeal site could, a point apparently made by way of re-examination of the appellant's planning witness. However, other sites might deliver later but cause less harm. It would be perverse if the advanced stage of the appeal process gave rise to a substantive justification for the grant of planning consent. That is not an 'advantage' of the appeal site in planning terms (especially given the state of the evidence underpinning the claim of urgent need).

9.61. There is no compelling reason for the new prison to be developed on the appeal site, rather than at alternative sites. UWAG's evidence has shown the availability of alternative sites in the appellant's site search. No weight should be attached to that proposition. Without that component of the appellant's case, no very special circumstances can, or do, arise.

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[114] And even if there is a concern about the impact on the Grade II listed Ribby Hall, for the reasons given by UWAG (CD G4) and not challenged in any meaningful way, there is no basis to treat this as any kind of constraint. The hall is surrounded by the holiday park development

[115] The discussion about the potential for it to be a foraging site for pink-footed geese led only to the conclusion, expressed by the appellant's ecology witness, that it was no different to the appeal site in ecological terms

The planning balance and conclusion

9.62. The final issue to determine is whether the benefits and other factors are such that they can be properly described as 'very special' and clearly outweigh the harms identified. If they do clearly outweigh them, then planning permission will likely follow. But the hurdle is an important one, not just to outweigh the harms but to do so 'clearly'. Although there are benefits from this proposal, the plans also cause considerable harm to a range of interests.

9.63. For all the reasons given here and also by the Council, we invite the SoS to find that the balance of competing priorities and considerations should be settled in favour of the Government's fundamental aim of keeping the Green Belt land permanently open here. Accordingly, this appeal should be dismissed.

10. The Case for Interested Parties

10.1. The following parties made representations to the Inquiry:

Councillor Mary Green – South Ribble Borough Council (SRBC)[116]

10.2. Garth and Wymott prisons hold 850 and 1200 prisoners respectively. With 1,700 more prisoners planned, that would practically double the number. Since the prisons were built in 1979 and 1988 there have been no improvements to the local area. Although local residents have embraced changes to their environment from a rural to urban feel, they have suffered from excessive speeding traffic down Ulnes Walton Lane and into Moss Side and Leyland at all times of the day, 7 days a week, as the staff work different shift patterns. This does not include deliveries, visitors' cars or taxis, or prisoner movements.

10.3. This application went before SRBC Planning Committee for consultation. After due consideration it was unanimously refused for the same reasons as Chorley (namely Green Belt, highway safety, inadequate highway infrastructure and harmful impact on the amenity of local residents). SRBC also raised other points which they felt were necessary to address if the proposal proceeded.

10.4. There would be inconvenience during the construction phase in terms of dust, mud and damage to road surfaces. There is a lack of doctors and school places for incoming staff and their families. It is strange that this prison is not being built nearer to the large cities in the North-West where most of the prisoners will come from. This is a rural area where residents expect to live peacefully. Ulnes Walton Lane is narrow and winding and has no pavements and no lighting. The development would cause a massive increase in traffic resulting in gridlock in the Dunkirk and Slater Lane areas.

10.5. SRBC suggests that infrastructure needs constructing before the start of development. The pavements need upgrading or creating. The roads need surface treatment and the carriageway narrowed to slow the traffic. All these need to be implemented as traffic control measures. The local junctions all need improving. There should be contributions to the dualling of the B5253[117] and a bus service appropriate to the needs of this scale of development.

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[116] CD K4

[117] This road connects the A582 to the north of Leyland to the A581 near Ulnes Walton and has a junction with Dunkirk Lane that leads to School Lane and Ulnes Walton Lane

Finally, SRBC suggested an amount of funding to assist with the re-opening of Midge Hall railway station to enable greater access to the prison by train. It would benefit both visitors and staff, so easing traffic problems.

10.6. In conclusion, the appellant needs to reduce the impact on the amenity of local residents if the development were to be allowed.

Councillor Michael Green – SRBC and Lancashire County Council [118]

10.7. There are some benefits from this development, namely the provision of prison places and the employment opportunities. There is a prison estate in this location, but the imposition of a very large additional prison would virtually double the number of prisoners and staff and would not be sustainable.

10.8. The decision of Chorley Borough Council is correct. This proposal would cause harm to the Green Belt to which substantial weight must be afforded. In addition to the significant reduction in openness, the scale and mass of the proposal would have an adverse impact on the character of the local area. It would have an unacceptable impact on highway safety due to the significant increase in traffic and the current inadequate highway infrastructure. The potential noise and disturbance associated with the traffic would harm the amenity of residents.

10.9. If the regional need for this new prison is accepted, it could be built anywhere in the North-West. The site is in Chorley but close to South Ribble. Neither area has low employment. There are clearly areas across the North-West with much higher levels of unemployment. Recent permissions and further proposed developments in Chorley and South Ribble will deplete an already small pool of potential local employees. Recruitment of staff is already difficult locally. The appellant has indicated that staff would be recruited from a 40-mile radius and so the weight to be afforded to any benefits for residents of Chorley and South Ribble is clearly reduced.

10.10. The rural location of the site would make it difficult to access for construction traffic, prison staff, visitors and service providers. If the appeal is successful, it is important that infrastructure improvements are made to support a significant scale of development. Ulnes Walton Lane (and School Lane further north) is a winding country lane with a lack of pavements and lighting and with dangerous bends. It is used by pedestrians, cyclists, horse-riders and farm equipment in addition to cars and HGVs. The speed limit of 40mph (20mph in the built-up area) is rarely enforced. We can promote walking and cycling, but in this rural location the reality is that over 90% of journeys would be by car, while car sharing is unlikely due to shift patterns. The impact on junctions and the highway network needs to be robustly assessed including the cumulative impacts of committed developments.

10.11. If this proposal is permitted, significant highway mitigation is needed, including improvements to the junctions of School Lane with Dunkirk Lane and Slater Lane; a contribution to the dualling of the busy A582 and B5253; traffic calming measures on Ulnes Walton Lane and School Lane to ensure speed limits are adhered to, with gateway treatments, road narrowing and a Pegasus

[118] CD K5

pedestrian crossing; and public transport improvements such as a fully funded regular bus service to Leyland, Chorley and Preston, and funding to re-open the station at Midge Hall on the Preston to Liverpool line. These improvements to transport infrastructure would make this development more sustainable and reduce the negative impact upon the amenity of local residents.

Katherine Fletcher MP

10.12. I have submitted written correspondence on this proposal already and consider that it should be rejected in its current form. There are two or three major areas that need more work. Infrastructure is the number one issue. I am aware of the proposed traffic mitigation that has been agreed with the LHA, but there is a need to look at the wider network where roads and villages would be impacted. For example, Croston is a historic village with a road not suitable for traffic, particularly HGVs. Ulnes Walton Lane is too small and narrow. It feeds into a 20-30mph zone in Leyland where accidents occur on Dunkirk Lane.

10.13. There is a lack of appropriate access from other areas and a lack of public transport options. Even with bus enhancements you would still need to use the same roads. While the proposal cannot be edited at this stage, I have discussed with Ministers the option of a north-west access to the site (via Ridley Lane) and the re-opening of Midge Hall railway station. This is not an objection in principle to the development, but the impact on highway safety is a concern. Alternative plans could be submitted and concerns responded to.

11. Written Representations

11.1. Around 150 representations were received at the application stage from local residents and statutory consultees. There were objections relating to a number of issues, including the impact on the Green Belt, the character and appearance of the area, and highway safety as outlined above. Concerns regarding the effect on the living conditions for occupiers of neighbouring properties were not just limited to noise and disturbance from traffic, but also general noise and disturbance from prison-related activities as well as effects on privacy, outlook and light. Some local residents expressed safety worries for them and their families arising from visitors and day release prisoners using the nearby bus stops. Criminal activities were also cited with illegal items being thrown or flown over the security fencing. Other concerns raised related to flood risk, with existing run-off onto Moss Lane, and the effect of local wildlife and habitats. Some commented that there was a poor level of public consultation with the wider community.

11.2. The responses from statutory consultees[119] generally raised no fundamental concerns with matters able to be addressed via conditions and/or obligations. Sport England has objected to the loss of the playing field within HMP Wymott, noting that no exceptions had been demonstrated contrary to its playing fields policy and NPPF paragraph 99. Sport England has maintained its objection regarding the loss of playing field, stating that it meets the definition of a playing field and the lack of use and poor drainage has no bearing on its lawful use. Sport England's concerns relate to prisoners being able to access

[119] CD B1 to B15

adequate sports and leisure facilities for their health and well-being. It seeks a replacement facility to compensate for the loss.

11.3. Over 100 representations[120] were received at the appeal stage from local residents as well as Katherine Fletcher MP. These representations raised many of the same issues outlined above. In addition, there were concerns relating to the carbon footprint of extra car journeys, as well as air quality and light pollution effects. There were concerns about the impact on health and well-being during the construction phase along with noise and emissions from the new boiler house and relocated pump house.

11.4. Some suggested the use of an alternative access to the site via Ridley Lane to the north-west to reduce some of the traffic concerns and mitigate the risk of relying on one access via Moss Lane. Others noted that there were inadequate staffing levels at the existing prisons and that recruitment of staff to the proposed prison would be difficult. They also noted the poor conditions within the existing prisons. Objectors also highlighted concerns with contaminated land given the previous use of the area as a munitions depot.

12. Conditions and Obligations

12.1. Following discussions at the Inquiry, the parties provided a final list of suggested conditions[121]. I have used this list to inform the schedule of conditions contained in Annex 1. Should the SoS decide to grant planning permission, I consider all of the conditions in the annex to be necessary and consistent with the tests in NPPF paragraph 56. The reasons for each condition, including why some need to be pre-commencement, are set out in the annex. The appellant has provided written agreement[122] for any pre-commencement conditions relating to the full permission element of the proposal.

12.2. With regards to Condition 4, my conclusions and recommendation that follow is that Condition 4B should be applied so that the off-site highway works would be in place before construction of the prison begins. This is to mitigate the effect on the road network of construction traffic. Should the SoS disagree, then Condition 4A would be necessary to ensure that the required off-site highway works are in place prior to the occupation of the prison.

12.3. A finalised and executed S106 agreement[123] was submitted following discussions at the Inquiry. The Council has provided a Community Infrastructure Levy (CIL) Regulation 122 Statement[124] setting out the justification for each obligation. Regulation 122 of the CIL Regulations 2010 (as amended) states that planning obligations must be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. These three statutory tests are repeated in NPPF paragraph 57.

[120] CD D1 to D134
[121] CD K23
[122] CD K26 paragraph 4
[123] CD K27
[124] CD K18

12.4. Schedules 1 to 5 of the S106 contain the site plan, phasing plan, bowling green and club house plan, the biodiversity net gain area calculation plan, and the description of development. Schedule 6 would secure the biodiversity net gain enhancements that are being advanced as a benefit of the proposal, as well as the monitoring of these enhancements. Biodiversity enhancements are supported by CLCS Policy 22 and CLP Policies BNE9 and BNE11 which seek opportunities to conserve and enhance habitats and species. Therefore, these obligations meet the three statutory tests.

12.5. Schedule 6 would also ensure the delivery and maintenance of the replacement bowling green and club house and require it to be made available to Wymott Bowling Club or any successor/alternative club prior to the existing facilities being made unavailable. This would secure the uninterrupted continuation of sports facilities and comply with NPPF paragraph 99, CLCS Policy 24 and CLP Policy HW2 which seek to protect access to sport. Therefore, this obligation meets the three statutory tests.

12.6. Schedule 7 would provide an enhanced bus service contribution to improve the frequency of the existing Preston to Croston bus service that goes via the site. It would also provide an additional bus service contribution to allow for a counter-clockwise two-way service between Preston and Croston (currently the bus does not provide a return journey to Croston and its train station). These obligations would comply with CLCS Policies 2 and 3 as well as NPPF paragraph 112 which seek to improve public transport and sustainable travel and thus would meet the three statutory tests.

12.7. Schedule 7 would also provide funding to resurface the existing cycle route between the site and Leyland via Nixon Lane with improved signage. This would enhance sustainable modes of transport and comply with CLCS Policy 3 and CLP Policy ST1. The schedule would also provide a contribution towards the monitoring of the Travel Plan by LHA to encourage the widest range of travel choices in accordance with CLCS Policy 3 and NPPF paragraph 113. Therefore, these obligations would meet the three statutory tests.

12.8. Finally, Schedule 7 would secure a financial contribution towards the A581 Corridor Improvement Scheme. This is intended to address capacity issues at the junction between the A581 and Ulnes Walton Lane. For the reasons discussed in my conclusions on highway safety, I do not consider that this contribution would be effective or meet the three statutory tests.

12.9. With the exception of the A581 contribution, all of the obligations meet the three tests set out in Regulation 122 of the CIL Regulations 2010 and NPPF paragraph 57. Therefore, they can be taken into account.

13. Inspector's Conclusions

13.1. From the evidence before me at the Inquiry, the written representations, and my inspection of the appeal site and the surrounding area, I have reached the following conclusions. The numbers in square brackets refer back to earlier paragraphs which are relevant to my conclusions

Main Considerations

13.2. The Case Management Conference took place on 19 May 2022 and identified five main issues. Following the recovery of the appeal, these have been carried forward unaltered as the following main considerations:

1) the effect of the proposal on the openness and purposes of the Green Belt;
2) the effect of the proposal on the character and appearance of the area;
3) the effect of the proposal on highway safety;
4) the effect of the proposal on the living conditions of occupiers of nearby properties with regard to noise and disturbance; and
5) whether harm to the Green Belt, and any other harm, would be clearly outweighed by other considerations (including the need for the development, the availability of alternative sites, the socio-economic benefits, and biodiversity net gain) so as to amount to the very special circumstances required to justify the proposal.

13.3. Matters relating to character and appearance were not covered in the Council's reasons for refusal. However, they were raised by the parties before the Inquiry and there has been sufficient opportunity for all parties to present and test evidence on this topic. Therefore, I have taken the topic into account as part of my report. **[7.10]**

Main Issue 1: Green Belt openness and purposes

13.4. It is common ground that the proposal would represent inappropriate development in the Green Belt as it is not covered by one or more of the exceptions in NPPF paragraphs 149 and 150. The main parties[125] also agree that it would result in harm to Green Belt openness and conflict with one of the five Green Belt purposes in NPPF paragraph 138, namely (c) "to assist in safeguarding the countryside from encroachment". The dispute between the parties relates to the level of harm and extent of conflict. **[6.1, 7.5, 8.3, 9.9]**

13.5. Part of the appeal site comprises previously developed land as set out in CLP Policy BNE5. It contains a number of structures including a boiler house, agricultural buildings, former munitions warehouse and areas of hardstanding for vehicle movements and parking. However, large parts of the site are undeveloped, including the fields and grassland between the aforementioned structures and the playing field currently associated with HMP Wymott. There would be a significant increase in built development on the northern part of the site where the entirety of the new prison would be located, while a large car park would be sited on the existing playing field. On the southern part of the

[125] The appellant, the Council, and UWAG

site, there would be a new bowls club house and car park at the top end of an existing open field. Therefore, in spatial terms, the proposal would cause significant harm to openness. **[7.6, 8.4, 8.6, 9.11, 9.12]**

13.6. In visual terms, the large and urban forms of HMP Garth and HMP Wymott immediately adjoin the site along with the housing north of Willow Road. There is also well-established planting along the northern boundary between Pump House Lane and Ridley Lane as well as along the west side of Moss Lane and adjacent to the proposed bowling club elements. The site is not highly visible across the wider area and is relatively well-contained. However, there are public footpaths through and along the boundaries of the site. Travelling along a realigned Pump House Lane to and from Leyland, it would be possible to see large parts of the new prison even once proposed vegetation has matured given the scale and footprint of the proposal.

13.7. Moreover, the view north across fields from the footpath between Willow Road and the existing boiler house would be extinguished as the route would form part of the perimeter path around the new prison blocks. The view south from the footpath between the roundabout and the woodland at Stanning's Folly would be eroded by the various elements of the new bowling club, including car parking, fencing and the club house itself, and only partly softened by proposed tree planting. The replacement boiler house would be positioned further into the site than the existing structure, but its flue could be up to 22m tall and visible above other buildings. Therefore, despite the presence of existing built form and the screening effects of existing and proposed vegetation, there would be a significant effect on openness in visual terms. The site would appear less open than it does now. **[7.6, 7.7, 8.7, 8.8, 9.14]**

13.8. Notwithstanding the existence of structures, large parts of the site are essentially rural. This is particularly the case on the northern side, with fields surrounding the agricultural and former munitions depot structures, but also to the south of the roundabout. As a consequence, given its scale and footprint, the proposal would result in a significant conflict with the Green Belt purpose of safeguarding the countryside from encroachment. **[7.9, 8.10, 9.13]**

13.9. In conclusion, the proposal would have a significant harmful effect on the openness of the Green Belt and cause significant conflict with one of the five Green Belt purposes. This harm and conflict should be weighed in the overall planning balance.

Main Issue 2: Character and appearance

13.10. As noted above, the northern and southern parts of the site contain fields interspersed with intermittent structures and footpaths/roadways. These parts of the site back onto wider open countryside which contain a patchwork of fields separated by hedgerows and the occasional larger area of woodland. As a consequence, these parts of the site have a rural character and appearance notwithstanding the nearby presence of HMP Garth and HMP Wymott and the housing north of Willow Road. In contrast, the central part of the site has an institutional character and appearance because it contains large areas of car parking associated with the two prisons along with entrance/ancillary buildings and the playing field for HMP Wymott. **[7.11, 8.29, 8.30, 9.16]**

13.11. The site shares some of the positive attributes associated with the Lancashire Coastal Plain Landscape Character Type, which is characterised as a gently undulating agricultural landscape with hedged fields. The site also shares some of the urbanising influences that detract from this landscape character type with regard to existing built form, road infrastructure and lighting. Overall, the site has a medium level of susceptibility reflecting its mix of urban and rural characteristics. **[7.11, 8.29]**

13.12. The existing site is not prominent in long distance views from the wider landscape due to intervening buildings and vegetation. Nevertheless, it can be seen in short and medium views from public rights of way such as Pump House Lane. Views across the agricultural fields in the northern part of the site can be seen from the footpath between Willow Road and the existing boiler house and the eastern end of the footpath between Pump House Lane and Ridley Lane. The footpath between the roundabout and Stanning's Folly provides views south across the adjoining field and countryside. A number of residential properties on Wray Crescent look rearwards towards the northern part of the site. The existing prisons are floodlit for security purposes which is visible from adjoining roads and footpaths at night. **[7.13, 8.32, 8.33, 9.20]**

13.13. Most of the proposed built form would be located in the northern part of the site and would result in the loss of fields either side of Pump House Lane. For the southern section of the lane, nearest to Willow Road, there would be a considerable degree of urbanisation in landscape and visual character for walkers and other users due to the extent of built form and limited landscape screening. Further north on this lane (Viewpoint 6 in the LVIA – CD A25), there would be a significant increase of built development in a countryside location that would be highly visible at Year 1 due to the scale and footprint of buildings. Vegetation planting by Year 15 would help to soften the effects and would not be out of character given the existence of woodland and hedgerows in this landscape character type. However, the development would still be noticeable above the treeline from this viewpoint due the overall height of the four storey house blocks. **[7.12, 7.14, 8.30, 8.31, 9.18, 9.20]**

13.14. The footpath between Pump House Lane and Ridley Lane would continue to be screened by the existing tree belt which would be extended along its length. Although this would restrict views of the new built form, there would be a loss of views south across the fields in the northern part of the site. The footpath between Willow Road and the existing boiler house would be extinguished along with any views it currently provides across fields to in the northern part of the site. **[7.14, 8.32, 8.33]**

13.15. The lighting of the new prison at night would be noticeable from Willow Road and Pump House Lane particularly at Year 1, although the effects can be offset through the use of appropriate lamps and would lessen over time as vegetation screening matures. Occupants of properties on Wray Crescent would be able to see the development to the rear, but these are private views and sufficient separation distance would be maintained. **[7.13, 7.15, 9.21]**

13.16. In the southern part of the site, the bowling green and club house would introduce urban fringe recreational development into a currently open field with clear views across the countryside to the south. Although the scale of development here would be limited, and some tree planting is proposed, harm

would nevertheless be caused to the landscape and visual character of this part of the site. **[7.14, 8.32]**

13.17. The proximity of built form at the existing prisons means that this is not a wholly rural site. Nevertheless, the proposal would erode the predominantly rural character of parts of the site and negatively affect views across open fields and countryside from public rights of way. Mitigation through tree planting, while not inappropriate in principle in this location, would not entirely screen the new built form even in the longer term. Therefore, I consider there would be a significant harmful effect on the character and appearance of the area, contrary to CLP Policy BNE1(c). This carries significant weight in the overall planning balance. **[7.16, 8.34, 9.17]**

Main Issue 3: Highway safety

Operational phase effects

13.18. It is common ground between the appellant and the Council that the approach to the traffic surveys is appropriate and has been validated by the LHA. It provides a suitable baseline and the TA takes into account committed development. **[6.10, 7.23, 10.10]**

13.19. The proposed prison would be accessed via Ulnes Walton Lane and Moss Lane, as is the case for the existing prisons, although there would be a separate access off Moss Lane further to the north than the existing access. In the operational phase, there is no dispute that the prison would generate around 1,330 trips per day from staff and visitors. This excludes ancillary traffic, such as deliveries and contractors, which could take place at any time of the day albeit trip numbers are likely to be much lower than for staff and visitors. **[7.31, 8.16, 9.25]**

13.20. 1,330 trips would be a significant increase in the number of daily vehicle movements. The section of Moss Lane north of the existing prisons access would see a 322% increase in traffic and the Moss Lane / Ulnes Walton Lane junction a 48% increase. However, merely relying on percentage increases as evidence of a highway safety issue is overly simplistic. It is necessary to consider any existing safety issues along with the characteristics and capacity of individual roads and junctions. **[7.24, 8.15, 8.16]**

13.21. Data provided by the appellant shows that the surrounding road network experienced around half of the expected numbers of personal injury accidents (PIA) for the periods 2014-2018 and 2016-2020 with no noticeable difference allowing for Covid suppressed traffic movements in 2020. The appellant forecasts that PIA would only increase by 0.5 per year with the proposal in place in 2025. Therefore, this indicates that the proposal would not exacerbate any safety issues insofar as PIA is concerned. The appellant has also demonstrated that Moss Lane and Ulnes Walton Lane would not exceed their link flow capacity in terms of the projected number of vehicles per hour in the AM and PM peak **[7.21, 7.22, 7.25]**

13.22. Nevertheless, there are hazards and risks associated with different parts of the local road network that are relevant to this proposal. Ulnes Walton Lane is a narrow 40mph country lane with several bends. The junction with Moss Lane is on a bend where forward visibility looking south is restricted for vehicles

turning right into Moss Lane. With the development in place, there would be an increase in queuing and waiting times for traffic turning right. This part of the junction would be close to capacity based on an estimated 0.82 RFC, with a PCU queue of 4.4 vehicles. **[8.18, 10.10]**

13.23. The junction also has a post box and bus stops either side which require users to walk on the verge or road. Although the number of people using these features is low, and there are similar facilities to the north on Willow Road, they are relied upon by residents on this section of Ulnes Walton Lane and people accessing the existing prisons. An increase in the number of vehicles using the junction (12 cars a minute in the AM peak) would create an increased risk of conflict with pedestrians. **[7.26, 8.17, 8.19, 9.22]**

13.24. The appellant's proposed traffic calming measures for either side of the junction would involve a replacement chevron sign and new coloured surface treatment at the bend to the north, and reference to reviewing and amending existing road markings at the junction. Additional measures, including further south on Ulnes Walton Lane, are said by the appellant to be similar to those found elsewhere on the lane, but there are no drawings or agreements with the LHA on specific details. Moreover, the appellant does not propose to provide footways linking the northbound bus stop to the footway on Moss Lane, meaning that people would continue to walk in the road or on the verge to access bus services. Thus, there would be an increased risk of vehicle and pedestrian conflicts at the junction that would not be adequately mitigated. **[7.26, 8.19, 8.20]**

13.25. Ulnes Walton Lane is also used by equestrians and recreational cyclists and has crossing points for walkers using public rights of way. An increase in traffic would have implications for these non-motorised users. However, such users are typically restricted to certain times of the day and week and generally dispersed. Therefore, it is unlikely that the proposal would materially worsen the risks to these users. As a consequence, there would be no need for formalised crossing points of the lane where it meets a public right of way. **[7.26, 8.16, 10.10, 10.11]**

13.26. Further north, heading into Leyland where the road becomes School Lane, the junction with the B5248 Dunkirk Lane would continue to operate within capacity as a result of this development. The appellant has put forward detailed traffic calming measures which would address traffic speeds on this part of the lane. While it is apparent that there are traffic issues in the wider area through to Leyland and the M6, it has not been shown that the proposal would worsen these issues to the extent that mitigation is needed. **[7.26, 10.5, 10.11 10.12]**

13.27. Moss Lane is straight and relatively wide and suffers from excessive traffic speeds. The proposed traffic calming measures would involve 'slow' road markings and a narrowing of the carriageway in two locations, either side of the proposed new access towards the northern end of the road. It would assist with traffic speeds on the approach to the junction, although given the length of Moss Lane, it remains likely that vehicles would still be tempted to speed further south. **[7.26, 8.17]**

13.28. The final key area of the local road network is the junction between Ulnes Walton Lane and the A581. The A581 is a busy road between Chorley and

Rufford and the LHA has identified the need for various improvements between Rufford and Euxton. This arm of the junction is almost at capacity in the AM peak now at 0.84 RFC and would be over-capacity in 2025 and 2026 with the development in place at around 1.1 RFC. Queues would increase from 6.5 PCU at present to 49.7 PCU in 2026, with delays increasing from nearly 32 seconds to over 210 seconds. **[7.27, 8.20]**

13.29. The parties agree that mitigation is needed to address this significant impact. While the appellant initially proposed a signalised junction to widen the road and provide separate space for right-hand turns, they are content with the LHA's preferred option for a mini-roundabout. The appellant has put forward a financial contribution in the S106 of over £485,000 towards the A581 improvement scheme. However, there is no design for a mini-roundabout at even an indicative level and no modelling of the effects it would have with the development in place or how it might affect the flow on other arms of the junction. There is no evidence of any costings, so the financial contribution may be either insufficient or excessive. As noted above, I do not consider that this contribution would meet the relevant statutory tests so I have not taken it into account in my assessment. **[7.27, 7.28, 8.20-8.23, 9.24]**

13.30. The appellant is satisfied with a planning condition that would prevent occupation of the new prison until all off-site highway improvement works are in place including the A581 improvement scheme. However, the scheme is subject to a business case that has been submitted to the Department for Transport. No information on this business case has been provided with this appeal, including overall costs and timescales. Condition 4 (in both options 4A and 4B) requires the completion of the scheme as a whole before commencement or occupation of the prison, but there are no details on the rest of the scheme to judge the likely completion date. **[7.28, 8.20]**

13.31. Negatively worded conditions prohibiting development or occupation authorised by a permission until a specific action has been taken should not be used where there are no prospects of the action in question being performed within the time-limit imposed by the permission[126]. Given that Condition 4A (the appellant's preferred condition) would only prevent the occupation of the new prison rather than the commencement of works for it, there is some prospect that the junction works and overall A581 scheme could be implemented first, even if that took several years. Condition 4B (the Council's preferred condition) would require the works to be carried out before the commencement of the new prison. This would be a stricter time limit for the completion of the A581 improvement scheme which reduces further the prospect of the works being carried out within the time-limit of the permission.

13.32. Nevertheless, while the LHA has no objection to the proposed mitigation works for the A581 junction, it has not been demonstrated that the works would resolve capacity issues or that the financial contribution would be sufficient. The inability to satisfactorily mitigate the effects on this junction means that the proposal would have an unacceptable impact on highway safety. **[7.19, 7.28, 8.20-8.23]**

[126] Planning Practice Guidance Reference ID: 21a-009-20140306

Construction phase effects

13.33. Construction traffic has not been modelled or assessed by the appellant, while the mitigation measures discussed above have been designed for operational traffic. All construction traffic would use Ulnes Walton Lane and Moss Lane. The appellant contends that in an average construction month the number of vehicles is predicted to be lower than the predicted operational traffic, at around 1,140 trips per day. However, this would still be a significant increase in traffic, including around 146 HGVs per day, using roads and junctions over a three-year period where there are safety and capacity concerns as outlined above. Moreover, during the peak construction period of around six weeks, there would be a greater number of vehicles journeys at over 2,000 car movements and over 100 HGV moments per day. The width and length of HGVs creates additional hazards on narrow roads such as Ulnes Walton Lane and problematic junctions like the junction between Ulnes Walton Lane and the A581. **[7.29, 8.24, 8.25, 9.22, 9.23]**

13.34. An agreed final CTMP would set out a range of measures and traffic could be managed to avoid peak hours. Furthermore, the movements could be dispersed across more days given that there could be more construction days per month than the draft CTMP allows for. However, there would still be a significant amount of traffic using a local road network where there is a need to secure adequate mitigation. As noted above, I have reservations on the extent and effectiveness of mitigation measures for different parts of the road network, including the A581 junction. Therefore, it has not been demonstrated that highway effects at the construction phase can be adequately mitigated. **[7.29, 7.30, 826]**

Conclusions on highway safety

13.35. 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. **[7.17, 7.35, 8.12-8.14, 8.27]**

13.36. In the event that the SoS decides to grant planning permission, I recommended that Condition 4B is imposed rather than Condition 4A. Given the amount of construction traffic and the potential for a similar if not worse levels of impact as operational traffic, it would be sensible to ensure that off-site highway improvements are implemented before development commences.

Main Issue 4: Living conditions

13.37. The concerns under this main issue relate primarily to the effects of traffic movements and car parking on the levels of noise and disturbance. The property most affected would be Windy Harbour, which would be opposite the proposed access from Moss Lane. The appellant has modelled the noise effects that would occur from construction and operational traffic (along with car parking) and has compared this to the baseline situation. The modelling is based on trip data from the TA and the draft CTMP and presumes that traffic adheres to the speed limit. **[7.36, 7.38, 9.25]**

13.38. The modal split in the TA assumes that the majority of trips would be by car drivers (83%) due the nature of the location. The assumption that 8% of trips would be by car passengers depends on an effective Travel Plan in a workplace where most staff work shift patterns. Improvements to the bus service and cycle routes may encourage more people away from their car, but these options will need to be convenient with staff working hours and their start location. The TA data does not include ancillary operational traffic, while the exact levels of construction traffic is not clear at this stage. As the TA notes, speeding is also an issue on Moss Lane although it is likely that traffic would be travelling at slower speeds on the approach to and from the proposed access for safety reasons. As such, the noise modelling can only be described as a best guess in terms of traffic numbers, speeds, and travel behaviour. **[7.31, 9.26, 9.30]**

13.39. At the operational phase, the modelling shows that daytime noise levels at the ground and first floor of Windy Harbour would not exceed the LOAEL recommended by the DMRB of 55dB. At night-time, noise levels are already on the DMRB LOAEL threshold of 40dB and would be exceeded by the development by around 2-5dB, depending on the elevation and floor level. The night-time noise level would not exceed the WHO recommended LOEAL of 45dB. **[7.39, 7.40, 9.27(a)-(g)]**

13.40. The DMRB guidelines are focussed on road impacts whereas the WHO guidelines look at community noise on a broader basis. Nevertheless, the modelling suggests an increase in noise levels that would be perceptible over 3dB, which at night would exceed the DRMB LOAEL and equal the WHO LOAEL. Therefore, there is likely to be some adverse effect on the living conditions of occupiers of Windy Harbour in terms of noise and disturbance from operational traffic.

13.41. At the construction phase, the modelling indicates increases in noise levels at Windy Harbour of around 4dB during the daytime for the average construction period and around 5dB for the peak period. This would not exceed the DMRB LOAEL but would still be moderate and major impacts respectively according to the DMRB. The suggested mitigation of a 20mph speed limit during the peak period would reduce the noise impact to a moderate level similar to the average period where no mitigation is proposed. The noise impacts at this phase would be perceptible to occupants of Windy Harbour but only just within the threshold for observed adverse effects. **[7.39, 9.27(h)-(l)]**

13.42. Assuming that vehicle parking for the new prison would only take place within the proposed car park, the noise generated from engines starting and doors slamming would be well below the LOEAL levels in the DMRB and WHO guidelines. The size of the car park (525 spaces) is predicted by the TA to be sufficient to accommodate the likely maximum number of staff and visitor vehicles on site at any one time (499 vehicles). This prediction is based on the TA modal split and relies on 17% of staff traveling by means other than as a car driver. As noted above, this is only a best guess and depends on the attractiveness of alternative travel options and the effectiveness of the Travel Plan. **[7.32, 7.33, 7.41, 9.29, 9.30]**

13.43. It is possible that not all prisoners would take up their full visitor entitlement of two visits a month as assumed by the TA, taking into account the option for

virtual visits amongst other things. Nevertheless, the TA indicates that visitor parking would account for a small proportion of the overall predicted number of parking spaces required. Therefore, any reduction in visitor numbers is unlikely to offset any increase in staff parking should the proportion of staff driving be higher than forecast. In the event that the car park was full, people would be likely to park on Moss Lane and other roads to the north given that there are no parking restrictions and there is plenty of available space, particularly on Moss Lane. There is no specific noise modelling for such a scenario, but this would result in some noise and disturbance for the occupiers of nearby properties including Windy Harbour. **[7.33, 9.31, 9.32]**

13.44. In terms of other living condition issues, headlights from vehicles exiting the site onto Moss Lane would be directed towards Windy Harbour. However, this could be mitigated through additional screening along the property boundary and the ability to close curtains on affected windows at night. There may be an increase in people walking past Windy Harbour, but the property is set back from the road and screening could be used to mitigate any overlooking effects. As noted above, there would be sufficient separation distance between existing properties to the north of Willow Road and proposed prison buildings to avoid material adverse effects with regard to outlook, privacy and light. Although the operation of the prison would generate noise and activity, there is little evidence to indicate that this would cause unacceptable levels of disturbance. **[6.11, 6.13, 7.42, 11.1]**

13.45. In conclusion, there would be some adverse effect from the proposal on the living conditions of occupiers of Windy Harbour in terms of noise and disturbance from operational and construction traffic, with the potential for further adverse effects if on-street parking took place on adjoining roads. Notwithstanding some uncertainties regarding the traffic data underpinning the noise modelling, none of the modelled levels would equate to a significant or unacceptable adverse effect level. In that regard, there would be no conflict with CLP Policy BNE1(g) which seeks to avoid an unacceptable degree of noise disturbance to surrounding land uses. Therefore, the overall effect of the proposal on the living conditions of occupiers of nearby properties with regard to noise and disturbance would be acceptable. **[7.43, 9.28, 9.32]**

Main Issue 5: Other considerations (including benefits)

The need for the development

13.46. There is no dispute between the main parties that the prison population is due to increase in the next decade and that the refurbishment and expansion of existing prisons would not meet all of this demand. There is also agreement that the proposed prison would form one of four regional prisons located in areas of greatest demand, and that there is a specific need for new Category C resettlement prison places in the North-West. The disagreement relates to the extent and urgency of need at both the national and regional level. **[6.2, 6.3]**

13.47. As of mid-July 2022, the adult male prison estate was operating at 98.3% capacity. The total prison population in England and Wales is projected to reach 98,500 by March 2026 from its current level of 80,115 in June 2022. As the appellant notes, these projections are based on a suite of modelling tools along with judgment and experience. They are signed off by senior leadership in the MoJ, the Home Office and the Crown Prosecution Service and have

National Statistic status. There is also external scrutiny from the Treasury who sign off spending reviews. The appellant accepts that there are inherent uncertainties in the projections as it is difficult to model changes in crimes, sentencing, police efficiencies, and extreme events such as riots. **[7.47, 7.49, 7.50, 9.44]**

13.48. It is evident that in the past couple of years, actual growth in the national prison population has lagged behind the projections. The present population is around 6,000 lower than the 2020 projections and 3,000 lower than the 2021 projections. Between November 2021 and May 2022, the prison population increased by an average of approximately 100 prisoners per month rather than the projected average of 650 per month. The 2021 projections forecast a return to pre-Covid prison population levels of around 83,600 by July 2022 but the June 2022 data shows that, in reality, it was around 3,500 places below that figure. **[9.43]**

13.49. The data covers a relatively short time period and there are inevitably fluctuations in projections from month to month. Nevertheless, the projections are based, in part, on assumptions that an increase in more than 20,000 police officers and the recovery of the criminal justice system post-Covid will result in more people going to prison. With regard to the former, it is possible that additional police officers could act a deterrent to criminal behaviour, but it is not unreasonable to assume an overall increase in crimes being detected based on the number of new officers. However, there is little data underpinning this assumption and uncertainty as to how greater detection rates would translate into more prison places. **[7.51, 9.45]**

13.50. In terms of the latter assumption, there is a significant backlog in the Crown Court as a consequence of Covid. According to the PAC report of March 2022, the backlog stood at 61,000 cases in June 2021, up from 41,000 in March 2020 and an all-time low of 33,000 in March 2019. The MoJ's plan is to reduce the backlog to 53,000 by March 2025 which would still be well above pre-Covid figures. The PAC report notes it would require a significant increase in judges to achieve the March 2025 target and casts doubt on the MoJ's recruitment plan. It is clear from the MoJ's response to the PAC report that considerable financial investment is going into reducing the backlog, but it is not clear whether the reduction will be achieved along with its resultant effect on prison places. **[7.51, 9.45]**

13.51. The appellant states that the delay in lifting Covid restrictions in Crown Courts until March 2022 has had a 9-month effect on the 2021 projections. However, even if pre-Covid prison levels are achieved by April 2023 rather than July 2022, this would still be below the 2021 projections for this date by around 4,500 places. From the evidence before me, there are uncertainties that the projected national prison population for March 2026 will be reached. **[9.46, 9.47]**

13.52. There is clearly a need to provide modern, better designed prisons to address operational and maintenance issues with the current estate that dates back to the Victorian period in places. A more appropriate prison environment, with prisoners held in the right category prisons, would undoubtedly help with rehabilitation and the rate of reoffending. It is also apparent that the current operational capacity of 82,676 is not guaranteed due to the large ongoing

maintenance programme and the risk of losing places from riots or other unknown events. **[7.46, 7.53]**

13.53. In terms of the future capacity of the prison system, the usable operational capacity can change (currently a headroom of 2,500 is allowed for but this could reduce by 500) and there are at least two other prisons due to open in the next few years in the Midlands (HMP Fosse Way) and Yorkshire (HMP Full Sutton) with around 3,000 places between them. Other new prison places are in the pipeline. Around 11,000 out of the 20,000 additional places sought by the MoJ have either been delivered already or have planning permission. Given the above uncertainties with the projected March 2026 prison population, it is not clear how urgent the national need for more prison places actually is. **[7.52, 9.49]**

13.54. At the regional level, the appellant states there is an estimated capacity gap of 2,000 prison places by March 2026, based on existing prison capacity and population projections. However, the detailed figures behind this have not been provided to be able to understand how the number of regional places might change over the next few years. This makes it difficult to verify the accuracy of this statement. **[7.48, 9.42, 9.50]**

13.55. The appellant argues that the 1,715 place (seven houseblock) capacity of the proposed prison is necessary to meet this regional gap and maximise construction and operational efficiencies. One factor in this argument is the existence of around 1,350-1,400 Category C male prisoners, with less than 24 months left on sentences, who have a North-West home address but are being held in prisons outside the region. It is evident that they would benefit from serving the resettlement stage of their sentence closer to home, to better reintegrate into local communities. Although the proposed prison, if allowed, would not be open in time to meet this specific need, it is possible than this trend would continue into the future albeit the exact figures are unknown. **[7.48, 9.2, 9.48]**

13.56. However, it is apparent that two existing prisons in the North-West are due to be expanded or refurbished, at HMP Hindley and HMP Liverpool respectively, to provide nearly an additional 700 places. Even though these works are not necessarily providing the same type of prison places as the proposal, these additional places would help to address any regional gap. It weakens the case for a prison as large as the one proposed in this location. **[7.54, 8.42, 8.43, 9.50]**

13.57. In conclusion, there is an obvious need to update existing prison facilities and provide the right prisons in the right locations. However, the appellant's case that there is a very substantial and urgent need for more prison places has not been demonstrated. There are several uncertainties with the projections of prison places nationally, the future capacity of the system, and the regional capacity gap. Therefore, while there is a need for the more prison places in a general sense, I afford only moderate weight to this consideration in the overall balance. **[7.55, 8.41, 9.40]**

The availability of alternative sites

13.58. There is common ground between the parties over the site selection criteria used by the appellant to identify potential suitable sites in the North-West. An

initial search was carried out at the pre-application stage and was refreshed at the appeal stage. While some sites passed the mandatory requirements in terms of size and location, they were all ultimately dismissed for secondary or tertiary site specific constraints. The Council and UWAG have expressed numerous complaints about the transparency of this process and the availability of information on each site. There is no detail before me on how sites compared against the criteria including the appeal site. Nevertheless, the Inquiry ultimately focussed on the appropriateness of two alternative sites at HMP Kirkham and Stakehill Industrial Estate. **[6.3, 7.60, 7.61, 8.46, 9.53-9.56]**

13.59. The appellant's argument in closing that the alternative site had to be more appropriate in planning terms than the proposed site was at odds with the appellant's case up until this point. From the planning statement[127], statement of case[128], and planning proof of evidence[129], through to the opening statement[130] and the evidence of its planning witness, the appellant's position was that there was a lack of suitable alternative sites. The argument put forward in closing is consistent with case law, but equally there is nothing before me in terms of case law to say that it would be wrong to consider a site as good as the one being proposed. Both propositions are tested in the following paragraphs in relation to the two alternative sites. **[7.56, 7.57, 7.58, 9.51, 9.52]**

13.60. Both sites are located in the Green Belt and so share the same NPPF policy tests and the need to show very special circumstances. However, that does not mean they could not be more appropriate, depending on the degree of Green Belt harm and the assessment of other relevant planning issues. It would not be necessary to find a non-Green Belt site in order to show there were no alternative or more appropriate sites. **[7.63, 8.46, 9.57]**

13.61. The Kirkham site is a 32ha largely greenfield site to the west of HMP Kirkham, adjacent to the A583 and immediately to the south of the urban area of Kirkham. The appellant received negative pre-application advice from Fylde Council in 2020, unlike the appeal site where officer advice from Chorley Council was more positive. However, a negative response alone is not sufficient and it is necessary to look at the factors underpinning that response. **[7.64, 7.66, 9.57(j)]**

13.62. Fylde Council commented that three Green Belt purposes would be affected, but Kirkham does not appear to be a large built-up area or a historic town. Therefore, purposes (a) and (d) in NPPF paragraph 138 do not appear to be applicable, only (c) regarding countryside encroachment which is the same for the appeal site. The appellant misunderstood Fylde Council's reference to Ribby Hall Village as the Grade II listed building known as Ribby Hall, when in fact it was a reference to a holiday village to the west of the site. It was clear from my site visit that the listed building is heavily screened from the site by vegetation and holiday homes such that there would be no effect on its special interest from the development of a new prison. **[7.64, 8.45, 9.57(k)(m)]**

[127] CD A3 including paragraphs 7.37 to 7.44, 9.15, 9.29 and 10.6
[128] CD C2 paragraph 5.4
[129] CD E2 paragraphs 6.4 to 6.17, 6.19, 7.68 and 10.24
[130] CD K1 paragraph 29

13.63. Fylde Council expressed concerns about the highway access off the A583, which is a bypass for Kirkham and dual carriageway past the site. However, the Council advised further pre-application discussions with the LHA on this matter. The appellant confirmed in response to my question at the Inquiry that no such discussions have taken place. **[7.64, 9.57(n)]**

13.64. Subject to those discussions, it is possible that Kirkham would have better connection to the road network than the appeal site via the A583. Kirkham has bus and train services that could be more easily accessed on foot than the appeal site. There are no absolute landscape, design or ecology constraints. A higher local unemployment rate than Chorley could mean that the scheme would provide greater local economic benefits. There would be no loss of a playing field. **[9.57(l)(o)(p)(q)(r)]**

13.65. It is understandable that the appellant pursued the appeal site over Kirkham due to the different pre-application responses and the likelihood that a planning application to Fylde Council may well have ended up at appeal. However, this proposal has ended up at appeal too and it is an insufficient argument to say that a negative letter justified ruling out Kirkham when there appear to be no insurmountable issues. The fact that starting again with an application for Kirkham would delay the delivery of a new prison does not automatically justify this proposal, which needs to be assessed on its own merits. **[7.65, 7.66, 8.45, 9.57(j), 9.60]**

13.66. The Stakehill site is a 71.8ha greenfield site to the south-east of the existing industrial estate on the Oldham and Rochdale border, bounded by the A627(M) to the east and a railway line to the west. The site is a draft employment allocation in the Greater Manchester Places for Everyone development plan as a Green Belt release. The plan's examination is underway and it may not be adopted until 2024. This would not preclude a planning application at this stage, but it could be refused on the grounds of prematurity and add delay to the delivery of a prison. It is also a very large site that would need to be properly master planned to integrate a new prison. However, its emerging development plan status indicates that the principle of development in this Green Belt location is likely to be acceptable. There has also been no discussion with the local authority on the principle of a prison development here, despite Oldham Council drawing the site to the appellant's attention. **[7.67, 8.44, 9.57(a)-(c)]**

13.67. The Stakehill site currently has limited connections to the road network, but given its promotion as a strategic employment allocation, it seems likely that access issues could be resolved, perhaps by a link road to the existing industrial estate rather than a costly new motorway junction. Such a link would also allow access to a regular bus service that serves the estate. Access to the train station at Mills Hill might be trickier, given that it would be across fields to the south, but this is comparable to the appeal site. There are no absolute ecological or heritage constraints and, like Kirkham, a higher local unemployment rate could generate greater local economic benefits. No playing field would be lost either **[7.68, 9.57(d)-(h)]**

13.68. In conclusion, from a high-level analysis, both Kirkham and Stakehill appear to be as good as the appeal site in terms of all relevant planning issues, with some advantages in terms of accessibility. There is also a reasonable prospect

that either or both sites are more appropriate than the appeal site. Therefore, I give little weight to the appellant's propositions that there is a lack of alternative sites or that there are no more appropriate sites than the appeal site. **[7.69, 8.46, 9.58, 9.61]**

Economic benefits

13.69. As set out in the two SOCG, the parties agree on the number of jobs and amount of investment that would be created by the proposal at the construction and operational stages. The appellant's data and evidence[131] underpinning these figures was not seriously challenged at the Inquiry, even though the report by Peter Brett Associates focussed more on urban prison locations than rural ones like the appeal site. To an extent, the predicted level of jobs and investment are linked to the overall size of the proposal. However, they are also due to its complex nature where prisons require various specialist buildings and staff. **[6.4, 6.5, 7.70, 8.47, 9.37]**

13.70. Chorley and South Ribble have lower unemployment rates than other parts of Lancashire and the North-West, but the appellant's economics witness notes that around 50% of people live and work in these two boroughs. Therefore, whilst it is not unreasonable to conclude that around 50% of the 640 staff would be drawn from the local area, there would also be job opportunities for people in the wider county and region. Current recruitment issues at HMP Garth and Wymott are noted, but this could relate to a number of factors relating to pay and conditions that are beyond the scope of this appeal. In summary, the proposal would result in significant employment and investment. Therefore, having regard to NPPF paragraph 81, I afford significant weight to the economic benefits. **[7.70, 10.9, 11.4]**

Social benefits

13.71. The provision of a modern prison would enable greater social benefits for prisoners to help with their rehabilitation and reduce reoffending rates. This carries significant weight by itself. However, as noted above, the extent and urgency of the need for new prison places in the North-West and the lack of alternative/more appropriate sites have not been demonstrated. These elements only carry moderate weight as a consequence. **[7.71(a)(b), 8.48]**

13.72. The replacement bowling green would be an of equivalent standard and the new club house would be of a better quality and more accessible than the existing facility. The new facilities would also be provided before the existing one is lost. Therefore, this can be afforded significant weight. **[7.71(c)]**

13.73. There would be upgrades to Pump House Lane as a public right of way along with improvements in bus and cycle provision. This would enhance sustainable transport options and improve recreational opportunities for more than just future users of the proposal. Therefore, these benefits can be afforded moderate weight in favour of the proposal. **[7.71(d), 8.48]**

[131] Economic benefits note (CD E2a) and Peter Brett Associates report (CD J1)

Environmental benefits including biodiversity net gain

13.74. Even with the forthcoming requirement in the Environment Act 2021 to provide at least 10% biodiversity net gain in all applicable development, the proposed provision of 20% biodiversity net gain is notable in light of NPPF paragraph 174(d). The re-use of previously developed land within the site finds favour in national policy at NPPF paragraphs 119 and 120. The new prison would achieve a BREEAM Excellent rating with the aim of achieving a BREEAM Outstanding rating. All of these environmental benefits carry moderate weight. The absence of harm to matters such as flood risk, air quality, ecology and land contamination carry neutral weight in the overall balance. **[7.72, 7.73, 8.49, 9.38]**

Other matters

13.75. Concerns have been raised by UWAG and interested parties about the accessibility of the site. Most of the journeys to the site would be via private car, although improvements to the bus service would provide an alternative for some people. On balance, there would be some negative effects from a sustainability perspective having regard to the carbon footprint of extra car journeys, which carries moderate weight against the proposal. **[7.31, 9.34]**

13.76. Suggestions by interested parties that an alternative access could be provided via Ridley Lane to the north-west of the site have not been tested in terms of viability or effect on traffic movements. It has also not been demonstrated that the suggested reopening of Midge Hall railway station would alter travel behaviour patterns given its distance from the site and the need to still rely on private motor transport to complete the journey from the station. I have made my assessment on the basis of the scheme as submitted. **[7.34, 10.5, 10.12, 10.13]**

13.77. Only 6% of the site area represents best and most versatile agricultural land and only at grade 3a. Despite the importance of farming, its loss would attract limited weight against the proposal. The minerals covered by the safeguarding area cannot be extracted due to the existing land uses and so their loss only attracts limited weight. The need for the development would outweigh the harm such that there would be no conflict with MWSA Policy M2. **[6.22, 6.23, 9.33]**

13.78. The loss of areas of mature woodland in the northern part of the site would be offset by replacement tree planting resulting in an overall neutral effect even though in the short-term there would be fewer trees. In a similar fashion, the loss of trees and other habitats would have a short to medium term adverse effect on ecology that would be balanced in the longer term by the proposed biodiversity net gain measures. Survey work has been carried out to identify the presence of protected species such as bats and barn owls. Conditions are proposed that would require the updating of method statements for amphibians and water volves and the submission of detailed mitigation strategies to safeguard roosting and nesting sites. New or replacement habitats would also be provided (including for the loss of a barn owl nest) that would be secured by condition. Thus, there are no long-term ecological effects that would count against the proposal. **[6.17, 6.18, 9.33, 11.1]**

13.79. Any disturbance of protected species would likely require a licence from Natural England before works could begin. The licence does not need to be provided before planning permission is granted, but there must be a reasonable prospect of the licence being issued. Having regard to the three derogation tests, it could be argued by the SoS that the proposal would be in the overriding public interest to provide additional prison spaces. It could also be argued that there is no satisfactory alternative to the proposal. Finally, the mitigation strategies can be secured by condition. As a consequence, the favourable conservation status of the affected species would be maintained. Thus, in those circumstances, I consider there would be a reasonable prospect of Natural England granting a licence for the proposal.

13.80. The proposal would result in the loss of the playing field at HMP Wymott. It has not been demonstrated that the playing field is surplus to requirements, or that it would be replaced with equivalent or better provision in a suitable location. Notwithstanding the security issues raised by the appellant and the condition of the playing field, I consider that its loss would be contrary to NPPF paragraph 99 and CLP Policy HW2. The loss of the playing field carries moderate weight against the proposal. **[6.16, 9.33, 11.2]**

13.81. One of the structures associated with the non-designated heritage asset known as the former Ministry of Supply depot would be removed as part of this proposal. Seven have already been removed as part of previous prison development. 14 structures would remain in the landscape to the north of the site which comprised a large part of the former depot. There would be minor harm as a result of the loss which would need to be weighed in the overall balance in line with NPPF paragraph 203. **[6.20, 9.33]**

13.82. The former depot use has raised concerns from some interested parties about contaminated land issues. However, the site assessment work has not identified anything insurmountable that could not be addressed via a suitably worded planning condition. Thus, this is a neutral matter in the overall balance. **[6.21, 11.4]**

13.83. It is evident that there have been surface water flooding issues on Moss Lane, based on photographs from interested parties. The appellant suggests that this is the result of topography and possible drainage failure. The surface water drainage scheme for the proposal has been designed to avoid any adverse off-site effects and so there would be no worsening of any existing flooding issues. In addition, the built form of the proposal would be located entirely within Flood Zone 1. Thus, there are no flood risk issues to be weighed in the overall balance. **[6.19, 11.1]**

13.84. Interested parties have referred to anti-social behaviour and criminal activities associated with the existing prisons and expressed fears that this would increase with an additional prison. This is a matter for the relevant authorities to address, along with concerns about the conditions for prisoners within the existing prisons. Effects of the construction phase on people's health and well-being, including dust and air pollution, can be mitigated via a management plan secured by condition. Negative air quality issues are not anticipated in the operational phase and so no mitigation is required. The illumination of the development could be controlled through a lighting condition. **[6.15, 10.4, 11.1, 11.3]**

13.85. There is little information to verify concerns that local schools and doctors would be unable to accommodate new staff and their families. Public consultation took place in June and July 2021 and was advertised to local residents beforehand[132]. It has not been demonstrated that this consultation was insufficient. **[10.4, 11.1]**

Planning balance and very special circumstances

13.86. NPPF paragraph 147 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. NPPF paragraph 148 advises that substantial weight should be given to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm arising from the proposal, is clearly outweighed by other considerations. In the parties' closing submissions, the appellant's proposition that the other considerations do not have to be unique was not contested. **[7.3, 7.4, 8.35, 9.1]**

13.87. The proposal would represent inappropriate development in the Green Belt and would result in significant harm to Green Belt openness and significant conflict with one of the Green Belt purposes. This carries substantial weight against the proposal. Significant weight should be given to the harm to the character and appearance of the area. My finding of unacceptable harm to highway safety should carry substantial weight given that NPPF paragraph 111 indicates that proposals can be refused on this basis.

13.88. Moderate weight should be afforded to the negative sustainability credentials of the site in terms of accessibility by means other than the private car. The loss of the playing field carries moderate weight, while minor weight should be given to the harm to the non-designated heritage asset. Limited weight should be attributed to the loss of agricultural land and mineral safeguarding area.

13.89. Significant weight should be afforded to the economic benefits and moderate weight afforded to the environmental benefits. Moderate weight should be given to the proposed enhancements to sustainable transport options. While the provision of a modern prison and a replacement of a bowls facility carry significant weight, the other considerations relating to urgent need and the lack of alternative or more appropriate sites only carry moderate weight. Drawing this all together, my overall assessment is that the benefits would not clearly outweigh the harm to the Green Belt and the other harms that I have identified. As a consequence, the very special circumstances necessary to justify the proposal do not exist. **[7.74-7.76, 8.50, 9.62]**

13.90. In conclusion, the proposal would harm the Green Belt, the character and appearance of the area, and highway safety. It would conflict with CLP Policies BNE1 and HW2, and NPPF paragraphs 110, 111, 147 and 148. This points towards the refusal of planning permission. **[7.76, 8.50, 9.63]**

[132] CD A27

14. Inspector's Recommendation

14.1. For the reasons set out above, I recommend that this appeal be dismissed.

14.2. Nonetheless, if the SoS is minded to disagree with my recommendation and allow the appeal, then the conditions listed in Annex 1 should be attached to any permission granted along with the obligations set out in the S106 agreement in CD K27. In these circumstances, I would recommend imposition of Condition 4B rather than Condition 4A for the reasons given above.

Tom Gilbert-Wooldridge

INSPECTOR

Annex 1: Suggested Conditions (34)

Conditions relating to the outline parts of the permission:

1) An application for approval of the reserved matters, namely the appearance, layout, and scale of phases 1 and 4 and the appearance, layout, scale and landscaping of phase 3 of the development hereby permitted, as set out on the Site Phasing Plan, shall be made to the Local Planning Authority before the expiration of three years from the date of this permission and the development hereby permitted shall be begun two years from the date of approval of the last of the reserved matters to be approved.

   Reason: To meet the requirements of Section 92 of the Town and Country Planning Act 1990 (as amended).

2) The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Location Plan	608623-0000-PEV-GHX0011-ZZ-DR-A-9000 Rev.P05
Site Phasing Plan	608623-0000-PEV-GHX0011-ZZ-DR-A-9400 Rev.P05
Comprehensive Landscape Masterplan	608623-0000-PEV-GHX0011-XX-DR-L-0301 Rev.P06
Site Demolition Plan	608623-0000-PEV-GHX0011-ZZ-DR-A-9002 Rev.P05
Proposed New Access	GARTH-ATK-HGN-MOSS-DR-D-0001 P2

   Reason: For the avoidance of doubt and in the interests of proper planning.

3) No part of the development under phase 4 hereby approved shall commence until a scheme for the off-site works of highway improvement has been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority.

   Reason: To satisfy the Local Planning Authority and Highway Authority that the final details of the highway scheme/works are acceptable before work commences on site.

4) **EITHER 4A:**

   No part of the development under phase 4 hereby approved shall be occupied until the approved scheme for the construction of the site access and the off-site works of highway improvement has been constructed and completed in accordance with the scheme details.

   For the avoidance of doubt, this shall include the construction and completion of the A581 Corridor Improvement Scheme.

Reason: In order that the traffic generated by the development does not exacerbate unsatisfactory highway conditions in advance of the completion of the highway scheme/works

OR 4B:

(a) No part of the development under phase 4 hereby approved shall be commenced until the approved scheme for the construction of the off-site works of highway improvement has been constructed and completed in accordance with the scheme details.

For the avoidance of doubt, this shall include the construction and completion of the A581 Corridor Improvement Scheme.

(b) No part of the development under phase 4 hereby approved shall be occupied until the approved scheme for the construction of the operational site access has been constructed and completed in accordance with the scheme details.

Reason: In order that the traffic generated by the development, including at the construction phases, does not exacerbate unsatisfactory highway conditions in advance of the completion of the highway scheme/works

5) Prior to the commencement of the development under phase 4 hereby approved, full details of the pedestrian/cycle connection to the site from Nixon Lane shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. Thereafter, the approved connection shall be provided in accordance with the approved plan prior to the first use of phase 4.

Reason: To ensure safe and suitable access to the development for pedestrians and cyclists.

6) The development hereby permitted shall be carried out in broad accordance with the Flood Risk Assessment (August 2021, Ref: 608623-0000-HYD-GHX0000-XX-RP-D-0001, Hydrock) and Surface Water Drainage Strategy (August 2021, Ref: 608623-0000-PEV-GHX0011-ZZ-RP-C-0503, Pick Everard).

The measures shall be fully implemented prior to the first use or occupation of any building developed under phase 4 as set out on the Site Phasing Plan and in accordance with the approved phasing of the development.

Reason: To ensure satisfactory sustainable drainage facilities are provided to serve the site in accordance with NPPF paragraphs 167 and 169, the Planning Practice Guidance, and Defra Technical Standards for Sustainable Drainage Systems.

7) Prior to the commencement of the use of development within phases 3 or 4 of the development hereby permitted, or with any reserved matters relating to these phases, an operational lighting scheme shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall thereafter be implemented prior to first use of the relevant phase in line with the approved details.

Reason: Due the presence of nearby habitat for bats.

8) Prior to the commencement of the development within phase 4 of the development hereby permitted, full details of the circulation routes for the

area of the site within phase 4 shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure safe and suitable circulation routes within the development.

Conditions relating to the full parts of the permission:

9) Phase 2 of the development hereby permitted in full, as set out on the Site Phasing Plan (ref. 608623-0000-PEV-GHX0011-ZZ-DR-A-9400 Rev.P05), shall be begun not later than three years from the date of this permission.

Reason: To meet the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended)

10) The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Sections - Proposed	608623-0000-PEV-GHX0031-ZZ-DR-A-9201 Rev.P04
Site Block Plan - Proposed	608623-0000-PEV-GHX0031-ZZ-DR-A-9100 Rev.P04
Roof Plan - Proposed	608623-0000-PEV-GHX0031-R0-DR-A-9301 Rev.P05
Site Plan Utilities	608623-0000-PEV-GHX0031-ZZ-DR-E-0600 Rev.P03
Proposed Highways-Proposed Surface Water Drainage	608623-0000-PEV-GHX0031-ZZ-DR-C-0502 Rev.P02
Proposed Highways-Long Sections	608623-0000-PEV-GHX0031-ZZ-DR-C-0701 Rev.P02
Proposed Highways-General Arrangement Plan	608623-0000-PEV-GHX0031-ZZ-DR-C-0700 Rev.P02
Proposed Highways-Cross Sections	608623-0000-PEV-GHX0031-ZZ-DR-C-0702 Rev.P02
Ground Floor Plan - Proposed	608623-0000-PEV-GHX0031-00-DR-A-9300 Rev.P03
Elevations - Proposed	608623-0000-PEV-GHX0031-ZZ-DR-A-9400 Rev.P03
Drainage Details - Sheet 01	608623-0000-PEV-GHX0031-ZZ-DR-C-6501 Rev.P01
Bowling Green Landscape Proposals	608623-0000-PEV-GHX0031-XX-DR-L-0405 Rev.P03
Bowling Green External Lighting Layout – Sheet 01	608623-0000-PEV-GHX0031-ZZ-DR-E-6310 Rev.P02

Bowling Green External Lighting Layout – Sheet 02	608623-0000-PEV-GHX0031-ZZ-DR-E-6311 Rev.P02

Reason: For the avoidance of doubt and in the interests of proper planning.

11) Prior to the commencement of the use of phase 2 of the development hereby permitted a schedule of maintenance of the bowling green, including a programme for implementation for a minimum period of five years starting from the commencement of use of the development, shall have been submitted to and approved in writing by the Local Planning Authority. Following the commencement of use of the development the approved schedule shall be complied with in full.

Reason: To ensure that the playing field is first established as a functional playing field to an adequate standard and is fit for purpose.

12) Prior to the commencement of phase 2 of the development hereby permitted the following documents shall have been submitted to and approved in writing by the Local Planning Authority:

(a) A detailed assessment of ground conditions (including drainage and topography) of the land proposed for the playing field which identifies constraints which could adversely affect playing field quality; and

(b) Where the results of the assessment to be carried out pursuant to (a) above identify constraints which could adversely affect playing field quality, a detailed scheme to address any such constraints shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include a written specification of the proposed soils structure, proposed drainage, cultivation and other operations associated with grass and sports turf establishment and a programme of implementation.

Prior to the commencement of the use of phase 2 of the development hereby permitted the following documents shall have been submitted to and approved in writing by the Local Planning Authority:

(c) Full details of the proposed flood lighting scheme for the bowling green.

The approved details in (b) and (c) shall thereafter be carried out in full and in accordance with the approved programme of implementation. The land shall thereafter be maintained in accordance with the scheme and made available for playing field use in accordance with the scheme.

Reason: To ensure that the playing field is first established as a functional playing field to an adequate standard and is fit for purpose.

13) All planting, seeding or turfing comprised in the approved details of landscaping set out on the Bowling Green Landscape Proposals (ref. 608623-0000-PEV-GHX0031-XX-DR-L-0405 Rev.P03) shall be carried out in the first planting and seeding seasons following the first use of the Bowling Green or club house facilities, or the completion of phase 2 of the development, whichever is the sooner, and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interest of the appearance of the locality.

14) The approved car parking provision as set out on Site-Block Plan (ref. 608623-0000-PEV-GHX0031-ZZ-DR-A-9100 Rev.P04) shall have been constructed and laid out in accordance with the approved details prior to the first use of the Bowling Green or club house facilities and retained at all times thereafter specifically for this purpose.

Reason: To ensure that that the site is adequately served by parking and disabled parking and that motorcycle and bicycle parking is sufficiently provided.

15) The external facing materials of the bowling club buildings and structures as detailed on the approved plans shall be used and no others substituted.

Reason: To ensure that the materials used are visually appropriate to the locality.

16) The floodlighting to the bowling green hereby permitted shall only operate between 10:00 hours and 22:00 hours and not at any other time.

Reason: In the interests of the rural character of the area, the amenity of the area, ecological impacts, and the amenity of nearby residential properties.

17) Notwithstanding the approved details, a fully detailed lighting scheme to include all necessary highways illumination, pedestrian footways and any other external lighting to the building shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of phase 2 of the development hereby permitted. The approved scheme shall thereafter be implemented in line with the approved details.

Reason: Due the presence of nearby habitat for bats.

18) No surface water run-off from the bowling club (phase 2) element of the scheme shall at any time be directed into any nearby ponds.

Reason: The existing pond is a Priority Pond and supports protected species and it is likely that the newly created ponds will colonise with great crested newts.

General conditions:

19) Notwithstanding the landscaping details set out on the Comprehensive Landscape Masterplan (ref. 608623-0000-PEV-GHX0011-XX-DR-L-0301 Rev.P06), no development shall commence in phase 4 until a detailed scheme of soft landscaping has been submitted to and approved in writing by the Local Planning Authority. This shall include the location of all existing trees and hedgerows affected by the proposed development, details of those to be retained and details of species to be planted and planting density.

All of the approved planting, seeding or turfing shall thereafter be carried out in the first planting and seeding seasons following the first use of the occupation of any buildings permitted under phase 4 or the completion of phase 4 of the development hereby permitted, whichever is the sooner, and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar

size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interest of the appearance of the locality.

20) Prior to commencement of each phase of development, a Construction Management Plan for that phase shall have been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. The approved Plan shall be adhered to throughout the construction period. The Plan shall provide for:

- the parking of vehicles of site operatives and visitors;
- the hours of operation (including deliveries) during construction;
- the loading and unloading of plant and materials;
- the storage of plant and materials used in constructing the development;
- the siting of cabins;
- the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- wheel washing facilities;
- a dust management plan including measures to control the emission of dust and dirt during construction;
- a scheme for recycling/disposing of waste resulting from demolition and construction works;
- the routing of construction vehicles and deliveries to site; and
- an engagement strategy with local residents.

Reason: In the interest of highway safety and to protect the amenities of the nearby residents.

Pre-Commencement Reason: To ensure that details relating to the construction phase are agreed before works begin.

21) The Outline Travel Plan (608623-0000-ATK-GHX0000-XX-RP-X-0002 P04) as agreed must be implemented in full in accordance with the timetable within it. All elements shall continue to be implemented at all times thereafter for a minimum of five years.

Prior to the first use of phase 4 of the development hereby permitted, a Full Travel Plan shall be submitted to, and approved in writing by, the Local Planning Authority. The Full Travel Plan shall be developed in accordance with the agreed Outline Travel Plan.

All elements of the Full Travel Plan shall be implemented after the first use of phase 4 of the development hereby approved and at all times thereafter for a minimum of period of five years following completion of the development

Reason: To ensure that the development provides sustainable transport options.

22) No above ground development shall commence in phases 2, 3 or 4 until a detailed, final surface water sustainable drainage strategy for the relevant phase of the site has been submitted to, and approved in writing by, the Local Planning Authority.

The detailed sustainable drainage strategy shall be based upon the site-specific flood risk assessment and indicative sustainable drainage strategy submitted and sustainable drainage principles and requirements set out in the National Planning Policy Framework, Planning Practice Guidance and Defra Technical Standards for Sustainable Drainage Systems. No surface water shall be allowed to discharge to the public foul sewer(s), directly or indirectly.

Those details shall include, as a minimum:

(a) Sustainable drainage calculations for peak flow control and volume control (1 in 1, 1 in 30 and 1 in 100 + 40% climate change), with allowance for urban creep.

(b) Final sustainable drainage plans appropriately labelled to include, as a minimum:

(i) Plan identifying areas contributing to the drainage network, including surface water flows from outside the curtilage as necessary;

(ii) Sustainable drainage system layout showing all pipe and structure references, dimensions and design levels;

(iii) Details of all sustainable drainage components, including landscape drawings showing topography and slope gradient as appropriate;

(iv) Flood water exceedance routes in accordance with Defra Technical Standards for Sustainable Drainage Systems;

(v) Finished Floor Levels (FFL) in AOD with adjacent ground levels for all sides of each building to confirm minimum 150mm+ difference for FFL;

(vi) Details of proposals to collect and mitigate surface water runoff from the development boundary; and

(vii) Measures taken to manage the quality of the surface water runoff to prevent pollution, protect groundwater and surface water, and deliver suitably clean water to sustainable drainage components.

(c) Evidence of an assessment of the site conditions to include site investigation and test results to confirm infiltrations rates and groundwater levels in accordance with industry guidance.

The sustainable drainage strategy shall be implemented in accordance with the approved details.

Reason: To ensure satisfactory sustainable drainage facilities are provided to serve the site in accordance with NPPF paragraphs 167 and 169, the Planning Practice Guidance and Defra Technical Standards for Sustainable Drainage Systems.

23) No above ground development shall commence in phases 2, 3 or 4 until a Construction Surface Water Management Plan for that phase detailing how surface water and pollution prevention will be managed during each construction phase has been submitted to and approved in writing by the Local Planning Authority.

Those details shall include for each phase, as a minimum:

(a) Measures taken to ensure surface water flows are retained on-site during construction phase(s) and if surface water flows are to be discharged they are done so at a restricted rate to be agreed with Lancashire County Council as the Lead Local Flood Authority.

(b) Measures taken to prevent siltation and pollutants from the site into any receiving groundwater and/or surface waters, including watercourses, with reference to published guidance.

The development shall be constructed in accordance with the approved details.

Reason: To ensure that the development is served by satisfactory arrangements for the disposal of surface water during each construction phase so it does not pose an undue flood risk on site or elsewhere; and to ensure that any pollution arising from the development as a result of the construction works does not adversely impact on existing or proposed ecological or geomorphic condition of water bodies.

24) No building on phases 2, 3 or 4 (or within an agreed implementation schedule) of the development hereby permitted shall be occupied until a Verification Report and Operation and Maintenance Plan for the lifetime of that phase of the development, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved by the Local Planning Authority.

The Verification Report must demonstrate that the sustainable drainage system has been constructed as per the agreed scheme (or detail any minor variations), and contain information and evidence (including photographs) of details and locations (including national grid reference) of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and the submission of a final 'operation and maintenance manual' for the sustainable drainage scheme as constructed.

Details of appropriate operational, maintenance and access requirements for each sustainable drainage component are to be provided, with reference to published guidance, through an appropriate Operation and Maintenance Plan for the lifetime of the development as constructed. This shall include arrangements for adoption by an appropriate public body or statutory undertaker, and/or management and maintenance by a Management Company and any means of access for maintenance and easements, where applicable. Thereafter the drainage system shall be retained, managed and maintained in accordance with the approved details.

Reason: To ensure that flood risks from the development to the future users of the land and neighbouring land are minimised, together with those

risks to controlled waters, property and ecological systems, and to ensure that the development as constructed is compliant with and subsequently maintained pursuant to the requirements of NPPF paragraph 167.

25) Prior to the commencement of the development, an updated method statement setting out Reasonable Avoidance Measures (RAMS) in relation to amphibians and water voles throughout the course of the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The RAMS shall include pre-commencement surveys of the pond and two ditches (P34 and Ditches 1, 2 and 3) prior to their clearance and shall include timing and pumping out strategies. The development shall thereafter be carried out in full accordance with the approved RAMS.

Reason: Due to the potential for disturbance of great crested newts and water voles.

Pre-Commencement Reason: To update survey information on these protected species before works commence.

26) No phase of development shall take place (including demolition, ground works, vegetation clearance) until a Plan for Biodiversity Management during Construction (PBMC) for that phase has been submitted to and approved in writing by the Local Planning Authority. The PBMC shall include the following:

(a) Risk assessment of potentially damaging construction activities;

(b) Identification of "biodiversity protection zones";

(c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);

(d) The location and timing of sensitive works to avoid harm to biodiversity features;

(e) The times during construction when specialist ecologists need to be present on site to oversee works;

(f) Responsible persons and lines of communication;

(g) The role and responsibilities on site of an ecological clerk of works or similarly competent person;

(h) Use of protective fences, exclusion barriers and warning signs;

(i) Details of how each RAMS integrates with the relevant phases of the implementation; and

(j) A construction lighting strategy.

Reason: To protect against harm to bats, great crested newts, barns owls and water voles.

Pre-Commencement Reason: To ensure that appropriate plans are in place before any works commence.

27) Prior to the commencement of any works within 30m distance of the barn owl breeding (B11) and roosting site (B10) a full mitigation strategy for barn owls, which shall include timings for the implementation of measures,

shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in full accordance with the approved mitigation strategy.

Reason: Due to the presence of barn owls.

28) Prior to the commencement of any works within 30m of the identified maternity bat roost (building B15) a full mitigation strategy for bats, which shall include timings for the implementation of measures, shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in full accordance with the approved mitigation strategy.

Reason: Due to presence of bats.

29) A landscape and ecological management plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of phases 2, 3 or 4 of the development hereby approved. The content of the LEMP shall include the following:

(a) Description and evaluation of features to be managed;

(b) Ecological trends and constraints on site that might influence management;

(c) Aims and objectives of management;

(d) Appropriate management options for achieving aims and objectives;

(e) Prescriptions for management actions;

(f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);

(g) Details of the body or organization responsible for implementation of the plan;

(h) Schedule of ongoing monitoring and remedial measures;

(i) eDNA monitoring of P39 and the newly created ponds to demonstrate successful enhancement;

(j) Schedule of biodiversity enhancement measures and timetable for delivery; and

(k) A mechanism of reporting to the Local Planning Authority/their identified agent and remediation agreement process.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.

Reason: To mitigate against the reduction in scale of the biological heritage site as a result of the development proposals and to deliver a net gain for biodiversity.

30) Prior to the commencement of phases 2, 3 or 4 of the development a phasing plan for the delivery of the Biodiversity Net Gain habitats shall be submitted and approved in writing by the Local Planning Authority. The landscaping shall thereafter be implemented in line with the approved phasing plan.

Reason: To deliver biodiversity net gain benefits at the earliest opportunity and as the development progresses.

31) No works to trees or hedgerows shall occur or building works commence between the 1st March and 31st August in any year unless a detailed bird nest survey by a suitably experienced ecologist has been carried out immediately prior to clearance and written confirmation provided that no active bird nests are present which has been agreed in writing by the Local Planning Authority.

Reason: Nesting birds are a protected species.

32) The development hereby approved shall be carried out in accordance with the details contained in the approved Tree Protection Plan (Ref. 13498/P03) and Arboricultural Method Statement (Ref. 13498/P04) received 24 August 2021. All remaining trees must be fully safeguarded in accordance with BS5837.2012 for the duration of the site works.

Reason: To safeguard the trees to be retained.

33) No development, site clearance/preparation, or demolitions shall take place in any phase on the site until the applicant, or their agent or successors in title, has secured the implementation of a programme of building recording and analysis relevant to that phase of development. This must be carried out in accordance with a written scheme of investigation, which shall first have been submitted to and approved in writing by the Local Planning Authority. The programme of works shall comprise the creation of a record of the building(s) to Level 2-3 as set out in 'Understanding Historic Buildings' (Historic England 2016). It shall include a full description of the building(s), inside and out, a drawn plan, elevations and at least one section (which may be derived from checked and corrected architect's drawings), and full photographic coverage, inside and out. The record shall also include further documentary research, putting the building(s) and its features into context. This work shall be undertaken by an appropriately qualified and experienced professional contractor to the standards and guidance of the Chartered Institute for Archaeologists (www.archaeologists.net). A digital copy of the report and the photographs shall be placed in the Lancashire Historic Environment Record.

Reason: To ensure and safeguard the recording and inspection of matters of archaeological/historical importance associated with the buildings/site.

Pre-Commencement Reason: To ensure that appropriate measures for recording and inspecting are implemented before works begin.

34) No development in phases 2, 3 or 4 of the development shall take place until:

(a) a methodology for investigation and assessment of ground contamination has been submitted to and approved in writing by the Local Planning Authority. The investigation and assessment shall be

carried in accordance with current best practice including British Standard 10175:2011+A2:2017 Investigation of potentially contaminated sites - Code of Practice. The objectives of the investigation shall include identifying the type(s), nature and extent of contamination present, the risks to receptors, and the potential for migration within and beyond the site boundary;

(b) all testing specified in the approved scheme (submitted under (a)) and the results of the investigation and risk assessment, together with remediation proposals to render the site capable of development have been submitted to the Local Planning Authority; and

(c) the Local Planning Authority has given written approval to any remediation proposals (submitted under (b)), which shall include an implementation timetable and monitoring proposals. Upon completion of remediation works a validation report containing any validation sampling results shall be submitted to the Local Authority.

Thereafter, the development shall only be carried out in full accordance with the approved remediation proposals.

Should, during the course of the development, any contaminated material other than that referred to in the investigation and risk assessment report and identified for treatment in the remediation proposals be discovered, then the development s cease until such time as further remediation proposals have been submitted to and approved in writing by the Local Planning Authority.

Reason: Due to past processes and activities at or adjacent to the application site, there is a potential for ground contamination and it is the applicants responsibility to properly address any land contamination issues, to ensure the site is suitable for the proposed end-use.

Annex 2: Appearances

For the Appellant:

Jenny Wigley KC and Anjoli Foster of Counsel, instructed by Helen Robinson of Womble Bond Dickinson.

They called:

Stephen Yeates BSC (Hons) MSc CMILT	Atkins Ltd
Eddy Goldsmith BEng MIOA	Hydrock Consultants Ltd
Katie Machin BSc PGDip CMLI	Pegasus Group
Robin Seaton	HM Prison and Probation Service
Katrina Hulse BA (Hons) MA MRTPI	Cushman & Wakefield
Claire Pegg	Cushman & Wakefield
Helen Robinson	Womble Bond Dickinson
Chris Gleed-Owen BSc PHD MCIEEM	CGO Ecology Ltd
Danny Hope BSc (Hons) MSc SiLC	Hydrock Consultants Ltd
Graham Harker BSc CEng MIAQM MIEnvSc	Ramboll UK Ltd
Rikesh Patel BA (Hons)	Pick Everard

For the Council:

Piers Riley-Smith[133] of Counsel, instructed by Alex Jackson of Chorley Borough Council.

He called:

Kevin Riley	WSP
Tamsin Cottle	Planning and Design Group
Iain Crossland	Chorley Borough Council

For Ulnes Walton Action Group (UWAG):

Josef Cannon, Matthew Wyard and Jack Barber of Counsel, instructed pro bono through Advocate.

They called:

Jackie Copley BA (Hons) MA PGCert (UD) MRTPI	Planning consultant

[133] On Day 1, Mark Howells of Counsel stood in for Mr Riley-Smith

Lynette Morrisey	UWAG
Emma Curtis	UWAG
Paul Parker	UWAG

Interested Parties who spoke at the Inquiry:

Councillor Mary Green	South Ribble Borough Council
Councillor Michael Green	South Ribble Borough Council and Lancashire County Council
Katharine Fletcher MP	Member of Parliament for South Ribble

Annex 3: Core Documents

A: Planning Application Documents	
DOCUMENTS	
A1	Application Form
A2	Covering Letter
A3	Planning Statement
A4	Draft Heads of Terms
A5	Design and Access Statement
A6	Air Quality Assessment
A7	Arboricultural Impact Assessment and Method Statement
A8	Agricultural Land Classification
A9	Ecological Impact Assessment
A10	Barn owl survey
A11	Bat activity surveys
A12	Bat Roost Surveys (Buildings)
A13	Bat Roost Surveys (Woodland)
A14	Great Crested Newt Survey
A15	Water vole survey
A16	Biodiversity Net Gain Report
A17	Biodiversity Net Gain Calculation (excel spreadsheet)
A18	Flood Risk Assessment
A19	Proposed Foul Water Drainage Strategy Report
A20	Proposed SUDS Strategy Report
A21	Proposed Surface Water Drainage Strategy Report
A22	Noise and Vibration Impact Assessment
A23	Phase I and II Geo-environmental Site Assessment
A24	Heritage Statement
A25	Landscape and Visual Impact Assessment
A26	Socio Economic Statement
A27	Statement of Community Involvement
A28	Bowling Green Building Services Report
A29	Utility Report
A30	Waste Management Strategy
A31	Archaeological Desk-Based Assessment

A32	Energy and Sustainability Statement		
A33	Appendix A - BREEAM 2018 New Construction Pre-Assessment Report		
A34	External Lighting Report		
A35	Transport Assessment		
A36	Outline Travel Plan		
A37	Transport Assessment – Technical Addendum		
A38	Response to LLFA Comments		
A39	Response to Sport England Comments		
A40	Response to United Utilities Comments		
A41	Response to Public Comments		
DRAWINGS			
A42	Topographical Survey	608623-0000-CEN-GHX0000-XX-SU-X-1000	P05
A43	Site Location Plan	608623-0000-PEV-GHX0011-ZZ-DR-A-9000	P05
A44	Site Demolition Plan	608623-0000-PEV-GHX0011-ZZ-DR-A-9002	P05
A45	Site Phasing Plan	608623-0000-PEV-GHX0011-ZZ-DR-A-9400	P04
A46	Comprehensive Landscape Masterplan	608623-0000-PEV-GHX0011-XX-DR-L-0301	P06
A47	Site Block Plan Existing	608623-0000-PEV-GHX0011-ZZ-DR-A-9001	P04
A48	Site Block Plan Proposed (superseded)	608623-0000-PEV-GHX0011-ZZ-DR-A-9100	P06
A49	Site Block Plan Proposed	608623-0000-PEV-GHX0011-ZZ-DR-A-9100	P07
A50	Site Sections Existing	608623-0000-PEV-GHX0011-ZZ-DR-A-9201	P04
A51	Site Sections Proposed	608623-0000-PEV-GHX0011-ZZ-DR-A-9200	P04
A52	Aerial View Indicative CGI	608623-0000-PEV-GHX0011-XX-SK-A-9015	P03
A53	Pedestrian Approach Indicative CGI	608623-0000-PEV-GHX0011-XX-SK-A-9016	P02
A54	External Lighting Layout - Sheet 01	608623-0000-PEV-GHX0011-ZZ-DR-E-6310	P02
A55	External Lighting Layout - Sheet 02	608623-0000-PEV-GHX0011-ZZ-DR-E-6311	P02

A56	External Lighting Layout - Sheet 03	608623-0000-PEV-GHX0011-ZZ-DR-E-6312	P01
A57	*Proposed New Access*	*Please see A35 - Transport Assessment - Appendix D*	*P2*
A58	*Proposed New Access Swept Path Analysis*	*Please see A35 - Transport Assessment - Appendix D*	*P1*
A59	Site Block Plan Existing (BC)	608623-0000-PEV-GHX0031-ZZ-DR-A-9001	P04
A60	Site Block Plan Proposed (BC)	608623-0000-PEV-GHX0031-ZZ-DR-A-9100	P04
A61	Site Sections Existing (BC)	608623-0000-PEV-GHX0031-ZZ-DR-A-9200	P03
A62	Site Sections Proposed (BC)	608623-0000-PEV-GHX0031-ZZ-DR-A-9201	P04
A63	Elevations Proposed (BC)	608623-0000-PEV-GHX0031-ZZ-DR-A-9400	P03
A64	Ground Floor Plan Proposed (BC)	608623-0000-PEV-GHX0031-00-DR-A-9300	P03
A65	Roof Plan Proposed (BC)	608623-0000-PEV-GHX0031-R0-DR-A-9301	P05
A66	Bowling Green Landscape Proposals (BC)	608623-0000-PEV-GHX0031-XX-DR-L-0405	P03
A67	Bowling Green External Lighting Layout-Sheet 01	608623-0000-PEV-GHX0031-ZZ-DR-E-6310	P02
A68	Bowling Green External Lighting Layout-Sheet 02	608623-0000-PEV-GHX0031-ZZ-DR-E-6311	P02
A69	Proposed 3D Visuals (BC)	608623-0000-PEV-GHX0031-ZZ-DR-A-9500	P04
A70	Proposed Highways General Arrangement Plan (BC)	608623-0000-PEV-GHX0031-ZZ-DR-C-0700	P02
A71	Visibility Splay Plan (BC)	608623-0000-PEV-GHX0031-ZZ-DR-C-2600	P03
A72	Proposed Highways-Long Sections (BC)	608623-0000-PEV-GHX0031-ZZ-DR-C-0701	P02
A73	Proposed Highways-Cross Sections (BC)	608623-0000-PEV-GHX0031-ZZ-DR-C-0702	P02
A74	Swept Path Analysis-Light Goods Vehicle (BC)	608623-0000-PEV-GHX0031-ZZ-DR-C-2601	P02
A75	Swept Path Analysis-Refuse Vehicle (BC)	608623-0000-PEV-GHX0031-ZZ-DR-C-2602	P02
A76	Swept Path Analysis-	608623-0000-PEV-GHX0031-ZZ-DR-	P02

	Standard Design Vehicle (BC)	C-2603	
A77	Swept Path Analysis-Fire Tender (BC)	608623-0000-PEV-GHX0031-ZZ-DR-C-2604	P02
A78	Drainage Details (BC)	608623-0000-PEV-GHX0031-ZZ-DR-C-6501	P01
A79	Proposed Highways-Proposed Surface Water Drainage (BC)	608623-0000-PEV-GHX0031-ZZ-DR-C-0502	P02
A80	Proposed Site Utilities Plan (BC)	608623-0000-PEV-GHX0031-ZZ-DR-E-0600	P03
A81	Site Block Plan Boiler House Existing (BH)	608623-0000-PEV-GHX0021-ZZ-DR-A-9001	P02
A82	Site Block Plan Boiler House Proposed (BH)	608623-0000-PEV-GHX0021-ZZ-DR-A-9100	P02
A83	Site Block Plan Car Park Existing (BH)	608623-0000-PEV-GHX0021-ZZ-DR-A-9002	P02
A84	Site Block Plan Car Park Proposed (BH)	608623-0000-PEV-GHX0021-ZZ-DR-A-9101	P02
A85	Site Sections Proposed (BH)	608623-0000-PEV-GHX0021-ZZ-DR-A-9200	P02
A86	Site Sections Existing (BH)	608623-0000-PEV-GHX0021-ZZ-DR-A-9201	P02
A87	Swept Path Analysis-Light Goods Vehicle (BH)	608623-0000-PEV-GHX0021-ZZ-DR-C-2601	P02
A88	Swept Path Analysis-Refuse Vehicle (BH)	608623-0000-PEV-GHX0021-ZZ-DR-C-2602	P02
A89	Swept Path Analysis-Standard Design Vehicle (BH)	608623-0000-PEV-GHX0021-ZZ-DR-C-2603	P02
A90	Swept Path Analysis-Articulated Heavy Goods Vehicle (BH)	608623-0000-PEV-GHX0021-ZZ-DR-C-2604	P02
A91	Swept Path Analysis-Fire Tender (BH)	608623-0000-PEV-GHX0021-ZZ-DR-C-2605	P02
A92	Proposed Highways General Arrangement Plan (BH)	608623-0000-PEV-GHX0021-ZZ-DR-C-0700	P02
A93	Visibility Splay Plan (BH)	608623-0000-PEV-GHX0021-ZZ-DR-C-2600	P03
A94	Drainage Details (BH)	608623-0000-PEV-GHX0021-ZZ-DR-C-6501	P01

A95	Boiler House & Relocated Car Park External Lighting Layout (BH)	608623-0000-PEV-GHX0021-ZZ-DR-E-6300	P03
A96	Portacabin Details and Photo Sheet (BH)	608623-0000-CUS-GHX0000-XX-RP-T-0004	P01
PLANNING COMMITTEE			
A97	Officer report to 21.12.2021 Planning Committee		
A98	Addendum to Officer report to 21.12.2021 Planning Committee		
A99	Minutes of the Planning Committee Meeting 21.12.2021		
DECISION NOTICE			
A100	Decision Notice, dated 22.12.2021		

B: Application Consultation Responses	
B1	Lancashire County Council Highways 08.12.2021
B2	United Utilities 21.12.2021
B3	Lead Local Flood Authority 04.10.2021
B4	Historic Environment Team 30.09.2021
B5	Designing Out Crime Officer 29.09.2021
B6	Environment Agency 05.10.2021
B7	Natural England 24.09.2021
B8	Waste and Contaminated Land Officer 22.09.2021
B9	Employment Skills Officer 16.09.2021
B10	CIL Officer 17.09.2021
B11	National Air Traffic Services 16.09.2021
B12	Trees Officer 30.09.2021
B13	Greater Manchester Ecology Unit 26.11.2021
B14	Sport England 04.10.2021
B15	Sport England 25.11.2021

C: Planning Appeal Documents	
C1	Planning Appeal Form
C2	Appellant Statement of Case
C3	Draft Statement of Common Ground
C4	Council Statement of Case
C5	Ulnes Walton Action Group Statement of Case

C6	Draft Heads of Terms submitted by the Appellant
C7	Appellant/Council Signed Statement of Common Ground
C8	Appellant/UWAG Signed Statement of Common Ground
C9	Final agreed S106 Agreement
C10	CIL Compliance Statement

D: Planning Appeal Representations			
D1	Rostron K-A	D68	Kennington N
D2	Augry M	D69	Lancaster A
D3	Ainsworth D	D70	Poree J (1)
D4	Ainsworth S	D71	Poree J (2)
D5	Ascroft J	D72	Poree J (2) (attachment)
D6	Barber D	D73	Smith I (1) (incomplete)
D7	Barker M	D74	Smith I (2)
D8	Barton T	D75	Lewis K
D9	Blackman E	D76	Leyland N
D10	Blinston J	D77	Maclachlan P
D11	Bond T	D78	Makepeace J
D12	Brindle K	D79	Marchbank N
D13	Brown K (1)	D80	Martin A
D14	Brown K (2)	D81	McClure P
D15	Browne D	D82	Metcalf N
D16	Brundrett J	D83	Metford A
D17	Caunce A	D84	Morgan T
D18	Chippendale A	D85	Morrissey L
D19	Chippendale A (attachment)	D86	Elliott J&R
D20	Clarke C	D87	Muench C
D21	Clarke J	D88	Muench C (attachment)
D22	Clay M	D89	Nelson B
D23	Crook B	D90	Nightingale Joanne
D24	Crooks P	D91	Nightingale John
D25	Cross J	D92	Oliver M
D26	Curtis E	D93	Owens-Crook J
D27	Curtis E (attachment)	D94	Parker C

D28	Cussens M	D95	Parker J
D29	Larbey D&I	D96	Parker L
D30	Daggers S	D97	Parker P
D31	Daniels L (1)	D98	Parker P (attachment)
D32	Daniels L (2)	D99	Porter W
D33	Dann C	D100	Pye M
D34	Dann L	D101	Robb J
D35	Ashton D	D102	Rothwell E
D36	Davies B	D103	Royle J
D37	Devlin A	D104	Royle P
D38	Duckworth L	D105	Rostron S
D39	Dutton R	D106	Scholes P
D40	Duckett E	D107	Shirtcliffe S
D41	Fairhurst H	D108	Smith D
D42	Fitchie E	D109	Steele O
D43	Fitchie E (attachment)	D110	Stevens A
D44	Fletcher K	D111	Rigby S
D45	Fletcher K (attachment 1)	D112	Sumner A
D46	Fletcher K (attachment 2)	D113	Symm S
D47	Geddes A	D114	Thomas A
D48	Gill L	D115	Thomas A (attachment)
D49	Godbold W	D116	Thompson C
D50	Greenhalgh E	D117	Tierney M
D51	Greenhalgh E (attachment)	D118	Truesdale G
D52	Grundy S	D119	Turner C
D53	Hart M	D120	Turner S
D54	Bamber H	D121	Turner S (attachment)
D55	Higgins S	D122	Walkden M
D56	Higson J	D123	Walsh J
D57	Hook R	D124	Websdell Nick
D58	Illsley P	D125	Websdell Nicola
D59	Inglis S	D126	Websdell Nicola (attachment)
D60	Isherwood E	D127	Williams D
D61	Snape J	D128	Wilson K

D62	Jackson G	D129	Withnell P
D63	Jackson G (attachment)	D130	Wright J
D64	Jackson L	D131	Wright L
D65	Gaughan J	D132	Royle J (duplicate of D103)
D66	James J	D133	Jackson G (duplicate of D62)
D67	Robb J	D134	Jackson G (attachment) (duplicate of D63)

E: Appellant Proofs of Evidence and Documents submitted before Inquiry	
E1	Site Search Outputs May 2022
E2	Planning Proof of Evidence by Ms Katrina Hulse
E2a	Planning PoE Appendix A Economic Benefits Note
E2b	Planning PoE Appendix B Ecology Note
E2c	Planning PoE Appendix C External Lighting Note
E3	Need Proof of Evidence by Mr Robin Seaton
E4	Transport Proof of Evidence by Mr Steve Yeates
E4a	Transport PoE Appendices
E5	Noise Proof of Evidence by Mr Eddy Goldsmith
E6	Landscape and Visual Matters Proof of Evidence by Ms Katie Machin
E7	Bat hibernation survey of building B15 (March 2022)
E8	Breeding Bird Survey June 2022
E9	GCN eDNA survey update June 2022
E10	Need Rebuttal by Mr Robin Seaton
E11	Need Rebuttal Appendix
E12	Transport Rebuttal by Mr Steve Yeates
E13	Noise Rebuttal by Mr Eddy Goldsmith
E14	Ecology Rebuttal by Dr Chris Gleed-Owen
E15	Economic Benefits Rebuttal by Mr Richard Cook
E16	Alternative Sites Rebuttal by Ms Katrina Hulse

F: Council Proofs of Evidence and Documents submitted before Inquiry	
F1	Proof HM Prison Wymott 3295556 Proof of Evidence of Tamsin Cottle
F2	HM Prison Wymott 3295556 Summary proof of evidence of Tamsin Cottle
F3	Land adjacent to HMP Wymott and Garth - Kevin Riley PoE - FINAL

	(002)
F4	Land adjacent to HMP Wymott and Garth - Kevin Riley - summary proof FINAL

G: UWAG Proofs of Evidence and Documents submitted before Inquiry	
G1	UWAG Planning Proof of Evidence (Jackie Copley)
G2	Emma Curtis Proof of Evidence (Need and Noise)
G2a	Appendix I. Prison_Population_Projections_2020_to_2026
G2b	Appendix II. Prison_Population_Projections_2021_to_2026
G2c	Appendix III. Police officer uplift, England and Wales, quarterly update to 31 March 2022 - GOV.UK
G2d	Appendix IV. Reducing the Backlog in criminal courts
G2e	Appendix V. Population Bulletin Monthly February 2020
G2f	Appendix VI. Population Bulletin Weekly 10 June 2022
G2g	Appendix VII. Noise and Vibration Impact Assessment produced by Hydrock
G2h	Appendix VIII. UWAG commission Noise Survey
G2i	Appendix IX. Personal Statements from local residents
G2j	Appendix X. UWAG Prison Projections Comparison
G2k	Appendix XI. UWAG Parking Allocations at WG2
G2l	Appendix XII. UWAG Parking Allocations at WG2 Summary
G3	UWAG Proof of Evidence - Accessibility & Travel (Lynette Morrissey)
G3a	Appendix 1 Wymott-web-2020
G3b	Appendix 2 Garth-Web-2019
G3c	Appendix 3 Ulnes Walton Lane Road Width (2) formatted
G3d	Appendix 4 Traffic Survey Summary
G3e	Appendix 5 2002 TRAVEL PLAN STATEMENT
G3f	Appendix 6 Sample journeys Wymott v Kirkham
G4	Proof of Evidence - Alternative Sites & Socio-Economic Statement (Paul Parker)
G4a	Appendix 1 FOI correspondence
G4b	Appendix 2 - Email response
G4c	Appendix 3 - Alternative Sites
G4d	Appendix 4 - Aerial Photos
G4e	Appendix 5 - Fylde Bird Club
G4f	Appendix 6 Wymott Ponds highest counts

G4g	Appendix 7 - Steve Barclay
G4h	Appendix 8 Screenshots
G4i	Appendix 9 prison-impact-review
G4j	Appendix 10 Berwyn-Web-2019
G4k	Appendix 11 Unemployment Statistics

H: National Planning Policy and Guidance	
H1	National Planning Policy Framework, dated July 2021
H2	Planning Policy Guidance
H3	Noise Policy Statement for England, dated March 2010
H4	DMRB LA 111 Noise and Vibration Revision 2
H5	WHO Guidelines for Community Noise, dated April 1999
H6	GLVIA3

I: Local Planning Policy, Guidance and Material Considerations	
I1	Chorley Local Plan 2012-2026 (Adopted 2015)
I2	Central Lancashire Core Strategy (Adopted 2012)
I3	Joint Lancashire Minerals and Waste Core Strategy Part 1 (2009)
I4	Joint Lancashire Minerals and Waste Core Strategy Part 2 (2009)
I5	Joint Lancashire Minerals and Waste Site Allocation and Development Management Policies Part 1 (2013)
I6	Joint Lancashire Minerals and Waste Site Allocation and Development Management Policies Part 2 (2013)
I7	Design Guide SPD (Central Lancashire) (Adopted 2012)
I8	Biodiversity and Nature Conservation SPD (Central Lancashire) (Adopted 2015)
I9	Employment Skills SPD (Central Lancashire) (Adopted 2017)
I10	Open Space and Playing Pitch SPD (Central Lancashire) (Adopted 2013)
I11	Renewable and Low Carbon Energy SPD (Chorley)
I12	Lancashire Strategic Economic Plan: A Growth Deal for the Arc of Prosperity (2014)
I13	Landscape Strategy for Lancashire - Landscape Character Assessment
I14	Landscape Strategy for Lancashire - Landscape Strategy
I15	*Not Used*

I16	*Not Used*
I17	*Not Used*
I18	*Not Used*
I19	*Not Used*
I20	Central Lancashire Rural Development SPD (October 2012)
I21	Chorley Open Space, Sports and Recreation Strategy Action Plan 2020 – 2036

J: Other Documents	
J1	Economic Impact of a New Prison, dated May 2013
J2	Pre-application response ref. AS ENQ/20/0145 (September 2020)
J3	*Kemnal Manor Memorial Gardens Ltd v First Secretary of State* [2005] EWCA Civ 835
J4	*Secretary of State for Communities and Local Government, Reigate and Banstead District Council and Tandridge District Council v Redhill Aerodrome Ltd* [2014] EWCA 1386
J5	*Wildie R (on the application of) v Wakefield Metropolitan District Council and Anor* [2013] EWHC 2769 (Admin)
J6	GMEU Notes of Pre-application meeting 20.10.2020
J7	Prison Strategy White Paper (December 2021)
J8	Conservative 2019 Manifesto
J9	HMPPS Annual Digest 2020-21
J10	Proven Reoffending Stats Quarterly Bulletin April to June 2022
J11	Economic and Social Costs of Reoffending - Analytical report (2019)
J12	HMPPS Framework Document (April 2017)
J13	Population and Capacity Briefing for Friday 10 June 2022
J14	Prison Population Projections 2021 to 2026
J15	The Social Care Needs of Short-Sentence Prisoners
J16	Stakehill (South) Preliminary Ecological Appraisal
J17	Katherine Fletcher Facebook Page Screen Grab 11.07.2022 10:38am
J18	Local Transport Note 1/95 The Assessment of Pedestrian Crossings
J19	Traffic Signs Manual – Chapter 6 Traffic Control 2019

K: Inquiry Documents	
K1	Opening Statement on behalf of the Ministry of Justice
K2	Opening Statement on behalf of Chorley Borough Council

K3	Opening Statement on behalf of UWAG
K4	Cllr Mary Green Statement
K5	Cllr Michael Green Statement
K6	Ground Investigation Report (April 2022)
K7	Wymott Ponds Search Area Boundary Plan
K8	20220426 - Initial Letter from Claire Pegg
K9	20220530-MoJ Response for Clarification
K10	20220531-UWAG Response to Site Search Outputs May2022
K11	Working Draft Construction Traffic Management Plan
K12	TA46-97
K13	Atkins Note on COBALT assessment
K14	Atkins Note on Congestion Reference Flow
K15	Revised Site Phasing Plan (ref. 608623-0000-PEV-GHX0011-ZZ-DR-A-9400 Rev.P05)
K16	Updated Conditions Schedule 18.07.2022
K17	Updated s106 agreement 18.07.2022
K18	Updated draft CIL Compliance Statement 15.07.2022
K19	21.07.2022 Site Visit Itinerary
K20	Response to Heritage Questions
K21	Response to Flood Risk and Drainage Questions
K22	Updated s106 agreement 21.07.2022
K23	Updated Conditions Schedule 21.07.2022
K24	Closing Submissions on behalf of UWAG
K25	Closing Submissions on behalf of Chorley Borough Council
K25a	*Satnam Millenium Ltd v Secretary of State for Housing, Communities and Local Government* [2019] EWHC 2631 (Admin)
K25b	*R (on the application of Heath and Hampstead Society) v Camden LBC* [2007] EWHC 977 (Admin)
K25c	*R (on the application of Chelmsford BC) v First Secretary of State* [2003] EWHC 2978 (Admin)
K26	Closing Submissions on behalf of the Ministry of Justice
K26a	*Trusthouse Forte Hotels Ltd. v Secretary of State for the Environment* [1986] 53 P&CR 293
K26b	*R (on the application of East Meon Forge and Cricket Ground Protection Association) v East Hampshire* [2014] EWHC 3543 (Admin)
K26c	*R (on the application of Hawkhurst Parish Council) v Tunbridge Wells BC* [2020] EWHC 3019 (Admin)

K26d	*R (on the application of Save Stonehenge World Heritage Site Ltd) v Secretary of State for Transport* [2021] EWHC 2161 (Admin)
K26e	*R (on the application of Wildie) v Wakefield MDC* [2013] EWHC 2769 (Admin)
K26f	*Visao Ltd v Secretary of State for Housing, Communities and Local Government* [2019] EWHC 276 (Admin)
K26g	*Wychavon DC v Secretary of State for Communities and Local Government* [2009] 1 P&CR 15
K27	Final executed S106
K28	Final executed S106 with minor manuscript amendment regarding reference to the schedule containing the description of development

The Planning Inspectorate

Report to the Secretary of State

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Date 16 September 2024

Town and Country Planning Act 1990

Chorley Borough Council

Appeal by the Ministry of Justice

Supplementary Report

Dates of Re-opened Inquiry: 25-27 March, 23-24 and 26 April 2024

Land adjacent to HMP Garth and HMP Wymott, Leyland, Lancashire

File Ref: APP/D2320/W/22/3295556

Contents **Page**

1.	Procedural Matters	4
2.	The Site and Surroundings	7
3.	Planning Policy	7
4.	Planning History	8
5.	The Proposal	8
6.	Other Agreed Facts	9
7.	The Case for the Appellant	10
8.	The Case for Chorley Borough Council	25
9.	The Case for Ulnes Walton Action Group	33
10.	The Case for Interested Parties	50
11.	Written Representations	53
12.	Conditions and Obligations	54
13.	Inspector's Conclusions	56
14.	Inspector's Recommendation	69

Annex 1:	Suggested Conditions	70
Annex 2:	Appearances	82
Annex 3:	Core Documents	84

Glossary

CBC	Chorley Borough Council
CD	Core Document
CIL	Community Infrastructure Levy
CLCS	Central Lancashire Core Strategy 2012
CLP	Chorley Local Plan 2012-2026
CTMP	Construction Traffic Management Plan
DL	Secretary of State's Minded to Grant Decision Letter (19 January 2023)
DMRB	Design Manual for Roads and Bridges
FRA	Flood Risk Assessment
ha	Hectare
HGV	Heavy Goods Vehicle
HMP	His Majesty's Prisons
HS2	High Speed 2
IR	The Inspector's first report (20 October 2022)
Kph	Kilometres per hour
LCC	Lancashire County Council
LHA	Local Highway Authority
MfS2	Manual for Streets 2
MoJ	Ministry of Justice
NPPF	National Planning Policy Framework December 2023
NMU	Non-Motorised Users
NVA	Noise and Vibration Assessment
PIA	Personal Injury Accidents
PINS	Planning Inspectorate
PCU	Planning Casework Unit
PPG	Planning Practice Guidance
RFC	Ratio of Flow to Capacity
RSA	Road Safety Audit
S106	A legal agreement made under Section 106 of the Town and Country Planning Act 1990
SOCG	Statement of Common Ground
SoS	Secretary of State
SRBC	South Ribble Borough Council
TA	Transport Assessment
TEMPro	Trip End Model Presentation Programme
UWAG	Ulnes Walton Action Group
UWPC	Ulnes Walton Parish Council
WMS	Written Ministerial Statement

File Ref: APP/D2320/W/22/3295556
Land adjacent to HMP Garth and HMP Wymott, Leyland, Lancashire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline and full planning permission.
- The appeal is made by the Ministry of Justice against the decision of Chorley Borough Council.
- The application Ref 21/01028/OUTMAJ, dated 24 August 2021, was refused by notice dated 22 December 2021.
- The development proposed is a hybrid planning application seeking outline planning permission (with all matters reserved except for means of access, parking and landscaping) for a new prison (up to 74,531.71 sqm GEA) (Class C2A) within a secure perimeter fence following demolition of existing buildings and structures and together with associated engineering works; outline planning permission for a replacement boiler house (with all matters reserved except for access); and full planning permission for a replacement bowling green and club house (Class F2(c)).

Summary of Recommendation: That the appeal be dismissed.

1. Procedural Matters

1.1. This report supplements my first report dated 20 October 2022 (hereafter referred to as IR)[1]. The two reports should be read together to fully understand the case.

1.2. The Inquiry originally sat in July 2022 following the Council's refusal of planning permission on 21 December 2021. The appeal was recovered by the Secretary of State (SoS) on 29 June 2022 and the reasons for the recovery are set out in IR paragraph 1.2. The main considerations that were discussed at the original Inquiry are set out in IR paragraph 13.2

1.3. On 19 January 2023, Lee Rowley MP acting on behalf of the SoS issued a Minded to Grant Decision Letter (DL)[2]. In the letter, the SoS noted that my recommendation was to dismiss the appeal. However, he decided to give the appellant and other parties the opportunity to provide further evidence on highways issues and allow parties the opportunity to respond to any such evidence, before reaching a final decision on this appeal. Subject to being satisfied that highways matters can be satisfactorily addressed, the SoS was minded to allow the appeal and grant planning permission, subject to conditions (DL paragraph 4).

1.4. The SoS reasoning on highway safety matters are set out in DL paragraphs 15 to 18. Paragraphs 15 and 16 set out his concerns, with paragraph 17 concluding that the proposal would have an unacceptable effect on highway safety contrary to policy. In paragraph 18, he notes that these conclusions are based largely on a lack of evidence, which led to the decision to afford the parties the opportunity to provide further evidence.

1.5. DL paragraph 40 reiterates the opportunity to provide further evidence and that the parties should be able to make representations on this evidence

[1] Core Document (CD) L1
[2] CD L1

before a final decision is reached. Paragraph 41 gave a period of 6 weeks to produce additional evidence (by 2 March 2023).

1.6. The appellant produced additional highway evidence[3] on 1 March 2023 which was forwarded to the Council and Ulnes Walton Action Group (UWAG). The Council responded on 9 March 2023 with an initial highways technical note[4], while UWAG responded on 6 March 2023 with a highways proof of evidence and appendices[5]. Both parties requested that the Inquiry be re-opened under Rule 17 (5) and (7) of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000. On 17 March 2023, the appellant confirmed that it did not object to the Inquiry being re-opened and provided initial observations on the Council's and UWAG's responses[6].

1.7. On 6 April 2023, the SoS confirmed in a letter[7] that the Inquiry would be re-opened to allow highway evidence to be submitted and properly tested. Paragraph 6 of the letter stated that "the remit of the re-opened Inquiry will be to consider such evidence on highway safety matters identified in his minded to grant letter as the parties shall put forward and is not an invitation for any party to seek to re-open any of the other issues covered in the decision letter".

1.8. I held a case management conference on 22 June 2023 with the 3 main parties. The scope of the re-opened Inquiry is set out in paragraphs 4 to 8 of my summary note[8]. The deadline for additional proofs was set for 22 August 2023 and these were duly submitted by the parties[9].

1.9. The Inquiry was due to re-open on 19 September 2023. However, due to availability issues, this re-opening date was postponed and rearranged for 25 March 2024. A rebuttal proof and appendices[10] were provided by the appellant in November 2023. Given the passage of time, I allowed the main parties the opportunity to provide updated proofs of evidence 4 weeks before the Inquiry re-opened. These were submitted in February 2024[11].

1.10. In their updated proof of evidence, the appellant presented an alternative scheme for the A581 / Ulnes Walton Lane junction based on the acquisition of additional land at this junction. The Council and UWAG objected[12] to the inclusion of this scheme on the basis that it represented a fundamental change and would cause procedural unfairness if accepted. In an email to the main parties dated 4 March 2024, I accepted the alternative scheme due to the exceptional circumstances of acquiring additional land but allowed an extra week for the submission of rebuttal proofs. The appellant had no objection to

[3] CD M1, M2 and M3
[4] CD N1 and N2
[5] CD O1 to O21
[6] CD M4 and M5
[7] CD L2
[8] CD L3
[9] CD M6, M7 and M8, N3 and N4, and O22 to O70
[10] CD M9
[11] CD M10 and M10a, N5 and N6, and O71
[12] CD N8 and O73

this response[13]. The Council and UWAG submitted rebuttal proofs[14] on 19 March 2024.

1.11. A letter dated 15 November 2023 from the Planning Casework Unit was sent to the main parties for comments on 17 November 2023. The letter drew attention to updated prison population projections and a SoS decision allowing a new prison near Market Harborough in Leicestershire. The Council and UWAG responded[15] to say that they had no comments at that time. The appellant's response[16] dated 30 November 2023 noted that the updated projections did not represent a material change while the SoS decision did not warrant the production of any new evidence.

1.12. The appellant wrote to the Planning Inspectorate on 1 March 2024[17] to highlight the latest set of prison population projects and a SoS decision allowing another new prison, this time in Buckinghamshire. The appellant maintained the same position on these two matters as they had done in the 30 November 2024 letter.

1.13. An updated Section 106 (S106) agreement was completed and executed on 18 March 2024 and submitted to the Inquiry along with an updated Community Infrastructure Levy Compliance Statement from the Council[18]. Amendments to the suggested planning conditions were provided at the Inquiry[19]. These documents are discussed below.

1.14. Before and during the original Inquiry in July 2022, I carried out several site visits to the local area. Due to the additional highway evidence and the passage of time, I conducted an additional unaccompanied site visit on 29 and 30 April 2024.

1.15. At the end of the Inquiry, applications for costs were made by the Council and UWAG against the appellant. These applications are the subject of separate reports. Due to the timing of the applications, the appellant was unable to provide an oral response. Therefore, the Inquiry was kept open after the last sitting day of 26 April 2024 to allow the costs process to complete. The intention was that the Inquiry would close in writing on 10 May 2024 or shortly thereafter.

1.16. However, on 8 May 2024, Ulnes Walton Parish Council (UWPC) brought to my attention a local appeal decision[20] regarding flood risk matters. UWPC contended that, following a recent court judgment[21], it is now necessary for the proposed development to carry out a sequential test in respect of surface water flooding.

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[13] CD M14
[14] CD N9 and O74 to O76
[15] CD N7 and O72
[16] CD M12
[17] CD M13
[18] CD Q5 and Q6
[19] CD Q7
[20] CD Q20a and 20b
[21] *Mead Realisations and Redrow Homes Limited v SSLUHC* [2024] EWHC 279 (Admin)

1.17. I sought the views of the main parties on this matter, which were duly received[22] by 20 May 2024. Based on these responses, I informed the parties by email dated 22 May 2024 that the appellant should carry out a sequential test to ensure that policy requirements are followed. I required the appellant to produce a methodology and timeframe to be shared with the Council and UWAG to minimise areas of disagreement. I requested that the methodology defined the area of search, the approach to reasonably available sites, and how all sources of flood risk and climate change would be considered.

1.18. A deadline of 5 June 2024 was set for receipt of the methodology and timeframe. I clarified that the Inquiry would remain open until the matter had been fully addressed. The deadline was extended on 28 May 2024 to 19 June 2024 due to the availability of the appellant's legal advisers.

1.19. On 11 June 2024, the appellant asked for additional time to respond to my requests due to the restrictions afforded by the pre-election period associated with the general election that was called on 22 May 2024. I replied on 14 June 2024 and agreed to an extension of time until 19 July 2024. While I noted the political sensitivities of discussing any site specific matters before the general election, I encouraged the parties to discuss the general methodological approach and potential timeframe before then with an update by 1 July 2024. However, the appellant considered that this was not possible.

1.20. On 22 July 2024, the appellant wrote[23] to the Planning Inspectorate to state that they would not be carrying out a sequential test for several reasons. The Council and UWAG were afforded until 6 August 2024 to respond to this letter, and the appellant had until 20 August 2024 to provide any final comments. The parties' cases on flood risk matters are set out below.

1.21. The parties were afforded the opportunity to comment on the written ministerial statement (WMS) and draft National Planning Policy Framework (NPPF) which were published jointly on 30 July 2024. They were also afforded the opportunity to respond to each other's comments. The appellant and UWAG provided comments on these documents, which are set out below. The Council did not provide any comments.

1.22. The Inquiry closed in writing on 28 August 2024 once any outstanding comments from the parties had been received and checked.

2. The Site and Surroundings

2.1. There have been no material changes to the site and its surroundings since my first report. Please refer to IR paragraphs 2.1 to 2.7 for further information.

3. Planning Policy

3.1. There have been no material changes to the adopted development plan since my first report. Please refer to IR paragraphs 3.1 to 3.5 for further information. There have been two revisions to the NPPF since my first report. The most recent is dated December 2023. There have been no substantive

[22] CD Q21, Q22a, Q22b, Q23
[23] CD Q24

changes to any of the NPPF paragraphs references in IR paragraphs 3.6 to 3.9 other than amended paragraph numbers.

3.2. Considering the late representation regarding flood risk matters (see paragraph 1.16 above), it is necessary to set out the current national policy approach to such matters.

3.3. NPPF paragraph 165 states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, and that where development is necessary in such areas, it should be made safe for its lifetime without increasing flood risk elsewhere.

3.4. NPPF paragraph 168 sets out the aim of the sequential test which is to steer new development to areas with the lowest risk of flooding from any source. Development should not be permitted if there are reasonably available sites appropriate for the proposal in areas with a lower risk of flooding.

3.5. The Planning Practice Guidance (PPG) sets out further information on the sequential approach to the location of development[24]. PPG paragraph 023, amongst other things, states that avoiding flood risk through the sequential test is the most effective way of addressing flood risk because it places the least reliance on measures like flood defences, flood warnings and property level resilience features. Even where a flood risk assessment (FRA) shows that the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied.

4. Planning History

4.1. Please see IR paragraph 4.1 and footnote 8 for more information on the site's planning history.

5. The Proposal

5.1. Please see IR paragraphs 5.1 to 5.8 for details of the proposal. For details of the proposed off-site mitigation works relating to the Ulnes Walton Lane / Moss Lane junction, and Moss Lane itself, please refer to Appendices B and C in CD M9 respectively. Appendix B shows the proposed traffic calming at the junction, including new signage and surface treatment, along with a new 2m footway between Moss Lane and the northbound bus stop on Ulnes Walton Lane. Appendix C shows the proposed traffic calming on Moss Lane including a raised table at the access to the existing prisons and various road markings.

5.2. There are two designs for the A581 / Ulnes Walton junction, both involving mini roundabouts. The first design was presented in March 2023 (the 2023 design) in CD M3a Appendix J and includes a raised table at the junction, speed cushions on the A581, three new lighting columns on the Ulnes Walton Lane approach, relocated speed limit signs on Ulnes Walton Lane to extend the 30mph zone, a reduced inscribed central diameter and dragon's teeth on all approaches.

[24] Reference ID: 7-025-20220825 to 7-030-20220825

5.3. A second design was submitted in February 2024 (the 2024 design) in CD M10a Appendix A. It shows similar features to the 2023 design. The principal differences between the two designs are that the appellant has secured control of more land around the junction with a view to addressing visibility splay issues, and the roundabout is larger in diameter.

6. Other Agreed Facts

6.1. IR paragraphs 6.1 to 6.24 set out the common ground between the main parties at the start of the original Inquiry. In preparation for the re-opened Inquiry, the parties produced highway-specific statements of common ground[25] which are summarised below.

6.2. Study Area: The main parties agree that the study area remains the area adopted in the original Transport Assessment (TA) and the proposed construction routes.

6.3. Traffic Surveys and Committed Development: The main parties agree that the appellant's traffic surveys from March 2021 were validated against pre-Covid survey data by Lancashire County Council (LCC) as the local highway authority (LHA). They also note that IR paragraph 13.18 notes that the traffic surveys provide a suitable baseline, and the TA takes into account committed development.

6.4. Trip Generation: The main parties agree that the prison would generate around 1,330 trips per day from staff and visitors, excluding ancillary traffic such as deliveries and contractors which could take place at any time of the day.

6.5. Traffic Analysis: The appellant and the Council agree that the trip generation and assignment set out in the TA are appropriate, along with traffic growth factors and future year traffic scenarios.

6.6. Road Safety: The appellant and the Council agree that the appellant's data in CD E4 provides a suitable assessment of the existing personal injury accident (PIA) data. They also agree that the COBALT assessments presented at the original Inquiry did not forecast an increase in PIA from operational traffic.

6.7. Mitigation: The appellant and the Council agree on the highway improvement scheme shown in Appendix B of CD A37 except for the proposed works along Ulnes Walton Lane within the vicinity of the junction with Moss Lane.

6.8. Link Capacity and Junction Capacity: The main parties agree the link capacity on unconstrained sections of Ulnes Walton Lane and Moss Lane would not be exceeded by operational traffic. They also agree that the junctions between the site access and Moss Lane, and Ulnes Walton Lane and Dunkirk Lane (B5248) would operate safely with the development in place.

6.9. Public Rights of Way: The appellant and the Council agree that there is no need for formalised crossing points on Ulnes Walton Lane where it meets a public right of way.

[25] See Section 2 in CD P1 and P2 (Section 3 in each document contains matters in issue)

6.10. Footway between Ulnes Walton Lane and Moss Lane: The appellant and UWAG agree that a 2-metre-wide footway along Ulnes Walton Lane and the southern section of Moss Lane providing a pedestrian route between the site and the bus stop on the western side of Ulnes Walton Lane north of the Moss Lane junction is required for highway safety reasons.

6.11. Sustainable Transport: The appellant and the Council agree that mitigation measures will be delivered via a S106 contribution to facilitate improved access by the 112 bus service and that a cycleway contribution will be paid. They also agree that no improvement measures or contributions are required at Croston railway station due to the minimal number of forecast trips by rail.

6.12. Travel Plan: The appellant and the Council agree on the submitted Travel Plan and that a one-off S106 contribution will be provided to monitor and appraise the Travel Plan for a period of 5 years.

6.13. Development Access: The main parties agree that the formation of a temporary construction access to the public highway along Moss Lane and its subsequent alteration to a permanent access would not cause any highway concerns in terms of the access itself and that the access can be achieved through a Section 278 agreement with the costs borne by the appellant.

6.14. Internal Site Layout and Car Parking: The appellant and the Council agree that the amount of car parking proposed is sufficient to satisfy demand from the proposed development.

6.15. Consultation with LHA: The main parties agree that the LHA has been consulted throughout the application process and offered no objection to the planning application. Furthermore, following the submission of additional highway evidence, the LHA continues to have no objections.

7. The Case for the Appellant[26]

Introduction

7.1. The appellant'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 SoS's minded to grant letter stated that subject to being satisfied that the highway safety issues can be addressed, the SoS is minded to allow the appeal and grant planning permission subject to conditions. The letter reopening the Inquiry was clear that no other issues should be addressed. The Inspector should conclude on highway safety issues only and not consider a wider balance on which no party has re-given evidence. All parties agreed not to produce any new planning evidence and so it is wholly inappropriate for UWAG and the Council to suggest that the Inspector should make a recommendation on the wider planning balance.

7.2. The evidence at this reopened Inquiry has shown that the highway issues identified by the Inspector and the SoS have been comprehensively addressed. There are several overarching points to make at the outset:

[26] Largely taken from the appellant's closing submissions (CD Q15) unless stated otherwise

(a) The overarching national policy test is NPPF paragraph 115. No party at this appeal alleges that the residual cumulative impacts on the road network would be severe. The only question is whether the development, taken together with the suite of mitigation measures, will cause an unacceptable impact on highway safety.

(b) This test 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 is whether that level of risk would be exacerbated to an unacceptable degree from an undesirable but acceptable risk.

(c) Whether an impact becomes unacceptable is a matter of judgment for the decision-maker. It is a sliding scale and not a binary or absolute decision. Different experts and 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 cause accident risks, but also an assessment of the likelihood and frequency of each of those hazards or risks materialising, and where that sits on the scale of acceptability. It cannot be a case of simply relying on worst-case scenarios.

(d) The Inspector and SoS set out their concerns, both as to impacts not being adequately mitigated and the lack of information. Highways issues have been explored in huge detail with thousands of pages of evidence and many hours of live evidence. All appropriate design standards have been met and no material safety concerns remain. The Council and UWAG have failed to stand back and objectively assess the new evidence. They have majored on tiny issues or relied on unrealistic worst-case scenarios (for example, alleging a heavy goods vehicle (HGV) would turn round a mini roundabout at 15 or 25kph or alleging that HGV drivers would behave wholly irrationally on Ulnes Walton Lane). The appellant's witness was credible and reasonable and on any objective assessment there is now more than sufficient evidence available and fundamentally no unacceptable highway safety impact.

(e) PIA data is highly relevant. It is not the only consideration and there still needs to be assessment of risks. However, the data is crucial. Most accidents occur due to human error, but where there is a cluster or pattern of PIAs on a certain part of the road network, this can indicate an issue in road design or geometry which is contributing to PIAs. There is extensive PIA evidence for the agreed study area. The data originally spanned 2014-2018 and 2016-2020 and, together with the COBALT forecast assessment, shows that there are no existing PIA concerns, and that the proposal would not exacerbate any safety issues as far as PIA is concerned[27]. There is also now the recent 2018-2022 data[28] which is materially similar and reinforces the same point.

[27] CD L1 – IR paragraph 13.21; CD A35 page 21; CD E12 page 4

(f) PIA data is independent, objective and verified. It can be given significant weight. In contrast, UWAG and other residents have introduced evidence of so-called near misses and other accidents and incidents. The concept of near miss is highly subjective. UWAG did not put forward any national or local 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 near misses and actual accidents. UWAG also disclosed that their evidence was from people who object to the proposal and that everything was received at face value with no verification. This was not an independent, evidence gathering process. In many cases it is impossible to tell who/where the evidence came from including dates and times[29]. This evidence should be given very little weight. Even UWAG's professional highway witness agreed he could not verify any of this evidence and did not seek to rely on it.

Moss Lane

7.3. 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. The sole issue now is the traffic speeds on Moss Lane itself and the effectiveness of the proposed traffic calming. The findings from the original Inquiry show that the issue in contention is focused on the south of the lane.

7.4. Having examined the original mitigation (which included 'slow' road markings and a narrowing of the carriageway either side of the proposed site access towards the north of Moss Lane), the Inspector found that these would assist with traffic speeds approaching the access[30]. However, he found that vehicles would still be tempted to speed further south based on the length of Moss Lane and this concern was shared by the SoS[31].

7.5. The appellant has taken these concerns into account and has directly responded by proposing traffic calming measures along the entire length of Moss Lane. It is unfair to say that the measures have not changed much since the initial proposals. The measures now additional include dragon's teeth marking to indicate vehicles are entering a traffic calmed area, a raised table at the existing access to the prison, and four traffic calming features with hatching to narrow the carriageway. 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.

7.6. These measures would materially reduce vehicle speeds along the length of Moss Lane and create a gateway feature at either end. The Council's witness accepted that the raised table would reduce speeds and address concerns at the southern end of Moss Lane. The appellant's witness was not cross-examined in relation to Moss Lane at all.

[28] CD Q1
[29] See for example, CD O10 and CD O13
[30] CD L1 – IR paragraph 13.27
[31] CD L1 – DL paragraph 15

7.7. The only issue identified in the 2023 Road Safety Audit (RSA) by Hydrock was that the poor road surface condition could reduce the longevity of proposed road markings. The appellant has agreed with the recommendation to improve the surface of Moss Lane before the mitigation measures are delivered. The 2023 RSA by VIA did not identify any concerns with Moss Lane. The LHA has confirmed its support for the measures to reduce speeds and agreed that the works would be delivered via a Section 278 agreement and subject to further detailed design and associated RSA at each stage.

7.8. The speeding concern has been fully addressed. The proposal will not exacerbate any issues and the mitigation will provide a betterment compared to the existing situation. The Council's witness' residual concerns do not carry any weight against the scheme as follows:

(a) He contended that there would still be a risk of speeding towards the north of Moss Lane. However, the Inspector's only concern was to the south and there is no good reason for a different conclusion to be reached now.

(b) He claimed that the poor road surface suppresses speed and that repairing the road surface will increase speeds. However, there is no data or research put forward to support this point and the modern suspension on vehicles means that the poor surface is unlikely to supress speeds in any event. Moreover, the surface will be improved due to a recommendation in the RSA (which raised no concern about suppressed speeds) to ensure the longevity of road markings.

(c) He confirmed that his original technical concern about the length of the raised table and long vehicles had been addressed and resolved by a revised plan showing a larger raised table.

7.9. Overall, it is accepted there are no pre-existing PIA records of any accidents on Moss Lane. The enhanced traffic calming measures will mitigate any impact of the new prison on Moss Lane users with no unacceptable highway safety impacts. The measures will serve as a betterment to the existing situation.

Ulnes Walton Lane, junction with Moss Lane and new footway

7.10. Pedestrians and other non-motorised users (NMU): The IR was concerned about the lack of a footway along Moss Lane to the existing northbound bus stop on Ulnes Walton Lane, with people walking on the verge or road to access facilities and the increased risk of pedestrian conflict[32]. The SoS agreed that the risk would not be adequately mitigated[33]. It is relevant that the Inspector accepted that the proposal would not materially worsen risks to walkers using public rights of way and there was no need for formalised crossing points of the road[34].

7.11. The appellant now proposes a 2-metre wide footway between the bus stop and Moss Lane including tactile paving and a step free crossing point. The footway

[32] CD L1 – IR paragraphs 13.23 – 13.24
[33] CD L1 – DL paragraph 15
[34] CD L1 – IR paragraph 13.25

can comfortably accommodate street furniture too. The appellant has already agreed to upgrade the existing bus stop to a high-grade disability compliant standard. These works would be delivered by a Section 278 agreement with the LHA and would be subject to detailed design and RSA at each stage. Neither of the 2023 RSAs identified any problems here and the LHA also did not raise any concerns.

7.12. The Council's witness accepts the footway provides a safe and acceptable route to the bus stop and that the footway is a benefit over and above the existing situation. The footway addresses concerns about pedestrian and vehicle conflict at the junction. The Council's remaining concerns relate to the post box and a new concern relating to the southbound bus stop.

7.13. The number of people walking in this area to use these facilities is very low and no evidence demonstrates they are well-used. A local resident speaking on the first day of the re-opened Inquiry said she had only ever walked on Ulnes Walton Lane once and never would again. There are no recorded PIAs at this location and no suggestion of any other incident involving pedestrians. The NMU survey[35] shows there were only 11 and 23 pedestrian movements along Ulnes Walton Lane on Thursday 8 June and Saturday 10 June 2023 respectively, which were dispersed throughout the day and none of which coincided with the AM and PM peak times.

7.14. None of the pedestrians observed used the post box, which makes sense as there is an existing post box in Wymott village which is far more convenient for residents to use. There is also plenty of space at the junction into Moss Lane for a post office van to stop to empty the post box. The very limited use of the post box does not present an unacceptable highway safety impact.

7.15. There is presently no southbound bus service and the bus stop itself is infrequently used. The appellant will contribute money to upgrade the bus service to travel both ways, but future users travelling to and from the new prison will use the new stop on Willow Road directly outside the new entrance. The bus service when travelling northbound 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 opposite the prison. The attempt to rely on this bizarre hypothetical to maintain an argument that there would be conflicts between pedestrians and vehicles was totally divorced from reality. The southbound bus stop will remain infrequently used and there will be no material worsening in risk which comes anywhere close to an unacceptable impact on highway safety.

7.16. The Inspector previously found that equestrians and recreational cyclists are typically restricted to certain times of the day and week, and generally dispersed. Therefore, it is unlikely that the proposal would materially worsen the risk to these users[36]. The NMU survey supports this, with moderate cycle usage spread through the day and extremely low numbers of equestrians. Of the three livery stables on Ulnes Walton Lane, one does not offer any hacking out on Ulnes Walton Lane at all and another has an all-weather track onsite to

[35] CD M6 section 5.4
[36] CD L1 – IR paragraph 13.25

accommodate hacking out. The PIA data does not record any accidents involving equestrians. The proposal would not materially worse any risks to NMU.

7.17. Vehicles: There are no recorded PIAs at the junction. It is common ground that the link capacity of Ulnes Walton Lane will not be exceeded with the development in place. The Inspector's concerns at the original Inquiry related to existing hazards and risks associated with the junction, queuing and waiting times, and the lack of drawings on specific mitigation details to the south of the junction.

7.18. The appellant has now drawn up a new scheme of traffic calming, including new chevron warning signs on yellow backing boards, additional 40mph repeater signs on Ulnes Walton Lane, new high friction surfacing through the junction, and new advanced signage on yellow backing boards[37]. These works cover around 115m. These measures are complimentary to the extensive traffic calming to the north. It has been agreed with the LHA that the works will be delivered by a Section 278 agreement and subject to detailed design and RSAs at each stage.

7.19. The 2023 Hydrock RSA did not identify any issues with the mitigation. The 2023 VIA RSA made recommendations on the location of signage and carriageway surfacing, which the appellant agrees with and will address at the detailed design stage. The LHA confirms its support too.

7.20. The forward visibility for drivers turning right into Moss Lane is part of an existing road geometry. There is no PIA data at this location which indicates no current safety concerns with forward visibility. The speed indicative device on Ulnes Walton Lane is not evidence of a road safety issue. Most devices are funded and requested by parish councils and do not have to be located on roads with existing issues. Neither 2023 RSA identified any problems with forward visibility. Existing vehicle speeds on Ulnes Walton Lane are below the 40mph speed limit and there is no evidence of speeding. Vehicles are likely to be slowing down at the bend already, and this is before the proposed traffic calming is implemented.

7.21. The forward visibility complies with the relevant Manual for Streets 2 (MfS2) guidance. Using UWAG's 85th percentile vehicle speed data for Ulnes Walton Lane, the stopping site distance (SSD) required here is 53m[38]. The Council's witness measured it to be 63m and the appellant adopts 54m Either way, the achieved forward visibility meets the MfS2 standards and there is no existing PIA concern. The standards in MfS2 and the measured speeds are new evidence before this re-opened Inquiry.

7.22. The Council's argument that the Design Manual for Roads and Bridges (DMRB) should be used here with a SSD of 120m is without merit. The MfS2 wording is clear in that MfS2 is the starting point here rather than DMRB. Having regard to MfS2[39], it is common ground that Moss Lane, Ulnes Walton Lane and the

[37] CD M9 page 32
[38] CD M9 Figure 2-2
[39] CD M7 Appendix A.1 paragraphs 1.3.2, 1.3.6 and 1.3.7

A581 are all non-trunk roads and that speeds on Ulnes Walton Lane are below 40mph. The SSD in MfS2 are the appropriate standards to apply here. Any judgment to apply MfS2 or DMRB must be informed by the clear wording in MfS2.

7.23. The DMRB can be of help for detailed technical points of highway design where MfS2 is silent or insufficient[40]. However, MfS2 provides directly relevant standards on SSD for non-trunk roads which are below 40mph. There is nothing rare or exceptional to justify disapplying MfS2 for DMRB and neither the Council nor UWAG have provided evidence that justifies MfS2 is not applicable. DMRB standards are significantly higher than MfS2 and have been designed for motorways and all-purpose trunk roads. One of the main reasons for actual speeds being below 40mph here is due to the road curvature. An overprovision of forward visibility would lead to increased speeds.

7.24. The outputs from the Junction 10 software[41] show that this junction will operate within capacity in all assessment scenarios. The capacity analysis is robust for a number of reasons. The recent and undisputed February 2023 surveys show that traffic flows have decreased below the TA figures and thus the higher traffic flows used to inform the analysis are overly robust. If the opening year is 2028 or 2030, the higher TA figures more than accommodate for this[42]. The use of 85th percentile speeds means there is a 15% tolerance in the analysis which accounts for higher peaks during certain times.

7.25. UWAG's argument that the predicted traffic data had not taken account of emergency service vehicles attending the site was misleading. The recent data obtained in February 2024[43] clearly states it only relates to the number of telephone calls and not the number of vehicles attending the prison. This erroneous approach was only elicited in cross-examination. This was a prime example of the opposing parties being so opposed to the development to the point of not adopting a fair or objective approach to the evidence.

7.26. 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

7.27. It is agreed that this junction is forecast to operate over acceptable thresholds of capacity with the development and so mitigation is required. At the original Inquiry, the LHA had requested a S106 contribution to assist with the development of a wider A581 corridor scheme which would include a new mini roundabout at this junction. The appellant had been in consultation with the LHA throughout the process and agreed to the contribution and proposed a Grampian condition. Due to the lack of design and the modelling of effects and

[40] CD M7 Appendix A.1 paragraph 1.3.3
[41] CD A35 Table 7-9, which shows an RFC of 0.82 and Passenger Car Unit queue of 4.4
[42] CD M6 pages 24-27
[43] CD O71

costings, the Inspector and SoS found the contribution would not meet the statutory tests such that the works would resolve capacity issues or provide satisfactory mitigation or that the contribution would be sufficient.

7.28. There is now a significant increase in certainty as to the design of the proposed mini roundabout and a modelling of the effects with the development in place. A design has initially been proposed to be delivered within highway boundaries (the 2023 design) and was developed in full consultation with the LHA and received their full support as acceptable mitigation.

7.29. The appellant has now successfully secured land beyond the control of the LHA and has duly updated the design (the 2024 design). This design is similar to the 2023 design and includes the provision of a raised table, speed cushions along the A581, three lighting columns, speed limit signs and dragon's teeth on all approach arms[44]. Both designs are acceptable, but the 2024 design would be preferred. The roundabout would be delivered through the Section 278 process with the LHA with further detailed design and RSAs. The Council would also play a part through the relevant conditions discharge process. The purchased land will be adopted by the LHA to ensure sight lines are kept open.

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

(a) Objections to the principle of a mini roundabout in this location are unfounded. It is desirable in principle. The good practice guidance[45] explains that mini roundabouts are an accident remedial measure, performing better in safety terms than signalled junctions and T-junctions.

(b) It is a solution preferred by the LHA who have implemented a large number in the vicinity. The appellant gave several examples, chosen because they are comparable to the proposed location, in that they include private driveways, have 3 or 4 arms, on bus routes and/or used by HGVs. They show that the LHA has a track record of successfully delivering similar junctions which have very low accident records.

(c) The traffic flows on this junction comply with the good practice guidance on side road traffic. 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. The side road flow as a percentage of the main road flow would be 81% which would exceed the minimum of 10-15% suggested in the guidance[46]. The Council's witness conceded his argument on traffic flows and agreed there was not a significant imbalance between the Ulnes Walton Lane arm and the A581 arms. The Council's barrister sought to rely on a warning in the modelling software[47] but this is a different calculation which bears no relation to the issues raised in the

[44] As noted in paragraph 5.3 above, the principal differences between the two designs are that the appellant has secured control of more land around the junction with a view to addressing visibility splay issues, and the roundabout is larger in diameter.
[45] CD M7 page 55
[46] CD Q11
[47] CD M10a page 56

good practice guidance[48] which is focused on side road flow both ways as a percentage of major road flow.

(d) The proposed visibility in the 2024 design conforms with all MfS2 standards without reliance on the departure process. MfS2 permits a departure process and it has been agreed with the LHA that this was appropriate for the visibility measurements for the 2023 design. The Council's witness accepted that the proposed visibility with the 2024 design is wholly compliant with standards and that any previous visibility concerns with the 2023 design had fallen away.

(e) It is common ground between the appellant and the Council that the mini roundabout will be comfortably within capacity during both the operational and construction periods. As noted above, the TA junction analysis is overly robust given it uses higher traffic flows than the February 2023 surveys. Issues of capacity and reductions in delays are important when considering highway safety and driver frustration.

(f) The mini roundabout with development will represent an improvement in the 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 the A581 into Ulnes Walton Lane will have a Ratio to Flow Capacity (RFC) of 90% with a queue of 9.5 vehicles on the A581 and a junction delay of 75 seconds. The RFCs for the mini roundabout will be below 90% with an overall delay of 69 seconds with development[49]. A development is only required to mitigate its own impact, not solve all existing problems. The proposal will mitigate its impact and provide some betterment.

(g) Swept path analysis has been undertaken for larger vehicles including a maximum legal length articulated vehicle, based on the existing junction and the 2024 design[50]. It demonstrates that the 2024 design provides an improvement in terms of vehicle tracking. Large vehicles currently overrun into the opposing lane when negotiating the junction. In the proposed design, large vehicles will need to use some of the hatched area, which is permitted, but will not overrun the opposite lane. The high speeds relied on by the Council for turning vehicles were unrealistic. The 2024 RSA identified no problems relating to swept paths.

(h) The good practice guidance[51] indicates the use of mini roundabouts by HGVs does not cause any safety problems and only identified the issue of HGV use leading to rapid wear of road markings, an issue which can be maintained at this site. UWAG's point that the 2024 RSA did not consider construction traffic goes nowhere; there will be no overrunning, the junction will operate within capacity during the construction phases, and the guidance does not identify any safety concerns with HGVs.

[48] CD M7 page 56
[49] CD M10 page 12; A35 page 45
[50] See CD M10a page 14 onwards
[51] CD M7 page 71, paragraph 4.2.8

(i) The 2024 RSA[52] recommends that splitter islands are considered for the 2024 design to ensure the mini roundabout is conspicuous. The appellant's witness explained that, having regard to the use of private driveways, such islands should not be introduced. There are many measures that can be used to make the roundabout conspicuous. The proposed raised table gives vertical notification and map type signs and 'new road layout' signs could be introduced via the detailed design stage as suggested by the 2024 RSA.

(j) The 2024 RSA reviewed a drawing revision P5 of the 2024 design rather than revision P6 which is before this Inquiry. However, a comparison between the two shows that they contain the same 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.

(k) The argument that private driveways constitute 'arms' of a mini roundabout so that the proposed design is actually a '6-arm' roundabout contrary to the good practice guidance[53] was bizarre. Private driveways are obviously not arms. 'Arms' are not defined in the guidance, but it clearly only relates to parts of the highway over which the public can pass and repass. The examples in the guidance show that arms are treated separately from driveways. Moreover, the local examples show that the LHA have implemented 3 and 4 arm roundabouts with private driveways, and this has never been identified as a problem. The proposed roundabout would serve as a betterment for users of the private driveways as the traffic calming will slow vehicles down compared to the unimpeded A581. The private driveways already exist, and the proposal will create a safer junction.

(l) Finally, there is no material concern relating to NMUs at the proposed roundabout. The good practice guidance identifies no problems for pedestrians at mini roundabouts[54] and that moderate use by cyclists causes little concern. The NMU survey shows moderate use here and nowhere near the example of large numbers of cyclists in university towns. The survey also shows extremely low use by equestrians which is further backed up by the levels of hacking out at nearby stables. No questions were put to the appellant's witness on the issue of NMUs at the mini roundabout and so it is inappropriate for UWAG to have included points on this issue in closing. No weight should be given to those points in these circumstances. Neither the Council nor UWAG sought to re-call their witnesses to address the NMU survey data in relation to this junction nor did they put any questions to the appellant's witness on this.

7.31. Overall, there is sufficient information on the proposed design and modelling of effect of the proposed mini roundabout. The clear evidence shows that it will

[52] CD M10a page 81
[53] CD M7 page 59 which says junctions with 5+ arms are unlikely to be suitable for mini roundabouts
[54] CD M7 page 71 paragraph 4.2.7

operate suitably and safely and there will not be any unacceptable highway safety issues.

Construction traffic

7.32. The concern by the Inspector and SoS was that construction traffic had not been modelled or assessed. The appellant has now provided additional evidence including a route assessment, updated construction forecasts, standalone junction capacity modelling, and a summary of the measures contained in the Working Draft Construction Traffic Management Plan (CTMP).

7.33. The forecasts show the number of construction-related vehicles during an average construction month, including 61 HGVs per day arriving on site, and the number during the combined construction peak month, including 64 HGVs per day arriving on site[55]. Ulnes Walton Lane already has HGVs, buses and farm vehicles and the impact of additional HGVs should be judged in this context. The 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 based on undesirability, especially given the necessity of a temporary construction period for any large development. The question is whether traffic will cause unacceptable impacts.

7.34. The junctions have all been tested and shown to have capacity to accommodate the temporary level of demand. 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 the risk of accidents. The swept path analysis for the new mini roundabout shows the new junction will provide sufficient space to avoid large vehicles crossing opposing streams and will provide a betterment over the existing situation.

7.35. The appellant has produced additional noise evidence[56] considering the revised timings for construction traffic starting at 6am. This evidence concludes that there will be no exceedances of noise thresholds. This does not change the original conclusion that there will be no unacceptable impacts in terms of noise. The assessment was done in respect of the closest property (Windy Harbour) and so represents a worst-case scenario. This additional evidence has not been challenged by the other parties.

7.36. Explore, who are construction logistics and haulage specialists, have produced a report assessing the initially proposed construction routes. The experienced drivers undertook a real-world assessment, 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 (the appellant's preferred routes) keeping to the road and without impacting or overrunning any kerb line. These 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 due to the expertise of the drivers, compared to UWAG's witness Mr Parker who does not claim any relevant expertise.

[55] CD M3 Table 6-1
[56] CD M9 page 49

7.37. There will be times when HGVs will inevitably need to pass each other on Ulnes Walton Lane, which already happens given its current use. The passing of HGVs, both currently and with the development, does not result in an unacceptable safety impact. Where the road is wide enough, professional drivers will be able to pass each other slowly as shown by UWAG's images[57]. 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 real life practice. Drivers will avoid that situation by anticipating and waiting where necessary at pinch points. There is also nothing inherently unsafe in HGVs passing cyclists. Either the driver will be able to safely overtake the cyclist or will stay at a safe distance behind. This driver interaction is common on rural roads and accounted for in the Highway Code. None of the recorded PIAs have involved any HGVs.

7.38. The appellant has used tracking software to identify where the width of Ulnes Walton Lane is potentially too narrow for two HGVs to pass each other[58]. This is a very robust assessment based on the software and drivers will be able to manoeuvre much more on the ground in reality. As shown by the above UWAG images, an HGV and a bus, and an HGV and a fire engine, pass each other on Lostock Bridge, which is one of the areas identified on the tracking software as too narrow. Vehicles can pass safely if they go slowly, and this is what professional drivers will do. In relation to Lostock Bridge, there is more than sufficient visibility for traffic travelling in both directions[59].

7.39. Condition 20 will require a CTMP for each phase of the development to be submitted and approved by the Council to control a range of construction matters including parking, hours of operation, and routeing. The draft CTMP[60] shows the detailed content and suite of controls that can be secured, including the requirement for a works supervisor responsible for general construction management, a daily risk assessment for traffic, knowledge and experience for all construction personnel, defined routes for traffic, parking and loading measures, road safety measures, and induction training for HGV drivers. Temporary traffic lights could also be used to manage any pinch points.

7.40. Both the Council and UWAG placed heavy reliance on the High Speed 2 (HS2) Rural Road Design Criteria document[61]. The appellant's witness did not give this document any weight as it was essentially an internal document written by a developer for a different project. The Council and UWAG have misread the document in any event. The reference to minimum rural road widths in paragraphs A.6.1 to A.6.3 is aimed at new rural roads which are created, rather than where construction is routed down existing two-lane roads. UWAG's witness Mr Parker gave evidence of PIA data for the wider construction routes but accepted he did not have the relevant expertise to analyse this information. There is nothing unusual about these figures given the stretch of roads involved and they do not disclose any pattern or clusters of accidents.

[57] CD O38 photos A10, A12 and A16
[58] CD M9 page 14
[59] CD M6 page 57
[60] CD K11
[61] CD O75

7.41. Overall, the temporary impact of construction traffic is a necessary part of the delivery of a 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 on highway safety

7.42. For the reasons set out above, the appellant respectfully asks that the Inspector finds the highway safety issues have been satisfactorily addressed.

Flood risk matters: the appellant's response to UWPC email of 8 May 2024 [62]

7.43. At the time that the planning application was prepared, determined by the Council and the first Inquiry held, the planning policy position was that the sequential test with regards to flood risk was only required for areas in flood zones 2 or 3. It was common ground that most of the site was flood zone 1 with no built development proposed in flood zone 2. The relevant section of the PPG was amended in August 2022.

7.44. We accept that the site includes some areas which are at medium and high risk of surface water flooding, but the majority is at low or no risk of such flooding. The higher risk areas are associated with ditches and local depressions. The surface water flood risk has not changed since the application was prepared in 2021. However, we accept that the PPG would require a sequential test to be met with regard to surface water flooding.

7.45. We contend there is limited conflict with the PPG and that limited weight is attached to this conflict for the following reasons:

(a) It has been found by the SoS that there is an urgent need for the proposed development to which significant weight is attached;

(b) It is common ground between all parties that the proposed surface water drainage strategy comprises a range of measures to ensure that there is no adverse impact, which was also agreed by the Inspector;

(c) The particular circumstances of this case, namely the length of time since the planning application was first prepared and the late stage this is now being raised at. The original flood risk assessment, and site search prepared for reasons relating to the appeal site being in the Green Belt, were both undertaken prior to the PPG being amended;

(d) Notwithstanding the limited weight afforded by the SoS to the alternative sites discussed at the 2022 Inquiry, we would highlight that both the main alternative sites examined at that time (Kirkham and Stakehill) contain similar localised areas of medium and high risk surface water flooding.

7.46. We note that the alternative site exercise carried out before the 2022 Inquiry does not necessarily meet the PPG requirements in full. However, in the particular circumstances and the matters already established between the

[62] CD Q21

parties and the SoS, we contend that very limited weight should be accorded to any conflict.

Flood risk matters: the appellant's letter dated 22 July 2024 [63]

7.47. The appellant has a strong rationale and time imperative to not undertake a sequential test at this late stage and will accept the consequential effect that this approach may have on the recommendation submitted by the Inspector. This decision is based on the following considerations:

(a) The timeline of this appeal is distinct from the appeal decision 3326187[64] and the attached appeal decision 3329702[65]. In both these appeal cases, the planning applications were submitted after the August 2022 change to the PPG and so it is expected that they should have been supported by a sequential assessment that considered surface water flooding. The application submission, appeal submission and first Inquiry for the proposed development were all prior to August 2022.

(b) There is an increasingly urgent need for the proposed new prison development. The government has committed to continuing the prison building programme and has set out temporary measures to reduce the proportion of certain custodial sentences served in prison from 50% to 40%. This highlights the urgent need for more prison capacity and the appellant considers it imperative therefore that a decision on this appeal is made in the shortest possible timeframes.

(c) The request to undertake a sequential assessment is likely to result in a very significant delay. We anticipate that it will take around 6 months to undertake the site search, the other appeal parties to then provide submissions on this, and the appellant to respond. It is unlikely that the site search can be conclusively dealt with through written submissions and so a third Inquiry is very likely to be called for. Based on availability issues, this could add a further 6-12 months. A 12 month delay is not unrealistic to allow for the sequential assessment to be dealt with. Such a delay will cause real harm in terms of meeting the need for the proposed development.

(d) Whilst we appreciate the PPG requirement for the sequential test to be undertaken, it is agreed between all parties (reinforced by the relevant technical consultees) that the draft drainage strategy is such that the development will not result in any adverse impact to surface water flooding, and thus the actual risk of harm in this case is low.

7.48. The appellant accepts that there remains a policy breach, but in these specific circumstances, it should be attributed limited weight in the overall planning balance. It is a well-established legal principle[66] that a policy requirement should not be elevated to a legal requirement. Thus, the consequences of, and

[63] CD Q24
[64] CD Q20b
[65] CD Q25
[66] *Mead Realisations Ltd and Redrow Homes v SSLUHC* [2024] EWHC 279 (Admin) paras 111 to 115

weight to be accorded to, a policy conflict is a matter of judgment for the decision maker, taking into account all other material considerations.

Flood risk matters – final comments from the appellant dated 20 August 2024 [67]

7.49. The appellant continues to rely on its 22 July 2024 letter. We note that the Council rightly agrees that the draft drainage strategy is such that the development would not result in any adverse impact to surface water flooding, which is considered to support the appellant's case that limited weight should be attached to the policy conflict.

7.50. Both the Council and UWAG contend that permission should be refused because of the lack of a sequential test. That is not correct. For the reasons set out in the 22 July 2024 letter, this is a matter which should be weighed in the overall planning balance. As set out in the letter, in these specific circumstances, the matter should be attributed limited weight in the overall planning balance. The consequences of, and weight to be accorded to, a policy conflict, as well as whether any harm is outweighed by the significant planning benefits of the proposed development, are all matters of judgement for the decision maker.

The appellant's comments on the WMS and draft NPPF published 30 July 2024 [68]

7.51. Both the draft NPPF and the WMS are material considerations. The draft NPPF is subject to consultation which limits the weight it can be given, but it should still receive material weight. The WMS indicates the direction of travel of national planning policy, which itself should receive significant weight.

7.52. Of relevance, the draft NPPF proposes changes to existing paragraph 115 to include reference to 'in all tested scenarios' when deciding whether to prevent or refuse development on highway grounds. The effect of this proposed change is to ensure that the worst-case scenario should not necessarily be determinative. Rather, for a refusal to be justified on highway grounds, there will need to be unacceptable highway safety impacts or severe residual cumulative impacts on the road network in all tested scenarios. The evidence presented by the appellant demonstrates that the traffic flows analysed in the TA are higher than current traffic flows. Therefore, even on a worst-case scenario, there are no unacceptable impacts.

7.53. The draft NPPF also proposes changes to existing paragraph 100 to state that significant weight should be placed on the importances of new public service infrastructure. This includes criminal justice accommodation. The SoS has already attached significant weight to the need for the proposal, but the new wording proposed further elevates the importances of the delivery of public infrastructure which should have a material impact on the planning balance.

7.54. The WMS emphasises the need to building more of the infrastructure that underpins modern life. Clearly new prisons are an integral part of such infrastructure, and the urgent provision of new, modern prison places remains of critical national importance.

[67] CD Q31
[68] CD Q29

8. The Case for Chorley Borough Council[69]

Introduction

8.1. The starting point is that the previous highways evidence and scheme was unacceptable in highways 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 proposal previously have now been addressed. If they cannot, then permission will be refused.

8.2. The Inspector asked to be addressed on how that should relate to the planning judgement which he has made and recommended to the SoS. The Council's position is that there are potentially two different overarching questions.

8.3. 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 paragraph 115. The 'knockout blow' nature of that paragraph was agreed between the parties at the previous Inquiry and there is no indication that any party is looking to resile from that position. Furthermore, as the Inspector and SoS previously found that unacceptable safety impacts justified refusal[70], if those impacts remain then it must compel the Inspector to recommend refusal and the SoS to accept it. It would not be necessary to revisit the wider planning balance because of the 'knockout blow' combined with the previous DL.

8.4. Theoretically, there is a second question which needs to be considered, where the Inspector concludes the adverse highway safety issues do not meet the unacceptable threshold. This is where regard needs to be had to the wider context of the appeal and whether there are very special circumstances as set out at NPPF paragraphs 152 and 153. All the harms and all the benefits need to be weighed in the balance. The benefits must clearly outweigh the harms.

8.5. The Inspector and SoS have previously carried out the balance on the basis of unacceptable highway safety impacts which carried substantial weight, but what is not apparent is what impact lesser but still present highway safety impacts would have on the balance. The Council submits the decision-maker should identify the level of highway safety harm, the weight to be attached to that harm, and then re-carry out the entire balance.

8.6. For clarity, the Council's case is that there are clearly still unacceptable highway safety impacts which have not been addressed by the appellant and which justify refusal under NPPF paragraph 115. The appellant has failed to establish what they need to, and the Inspector and SoS need go no further than the first question.

Ulnes Walton Lane / Moss Lane junction

8.7. The Inspector considered these issues between IR paragraphs 13.21 to 13.24. All his concerns arose despite taking into account the appellant's previous

[69] Largely taken from the Council's closing submissions (CD Q14) unless stated otherwise
[70] CD L1 – DL paragraph 18

arguments as to the level of PIAs (as evidenced by the 'nevertheless' at IR paragraph 13.22). The appellant's continued repetition of the PIA levels should give little comfort to the decision-maker. They did not address the safety concerns before, and the appellant has not done anything new in relation to the PIAs beyond bringing forward the data. PIAs are not the answer.

8.8. The concerns at IR paragraph 13.22 were that Ulnes Walton Lane was a narrow 40mph country lane with several bends, and that the junction with Moss Lane is on a bend where forward visibility looking south is restricted for vehicles turning right into Moss Lane. The appellant accepted the latter is a concern due to the increase in queuing and waiting times at this junction.

8.9. This point was originally missed by the appellant in their additional evidence in March 2023. It is then only addressed briefly in the proof of the appellant's witness in August 2023 as a concern only raised by the Council solely by reliance on the PIAs. The point is only dealt with in any detail in the rebuttal proof in November 2023.

8.10. The appellant has taken no steps to improve the visibility for the right turning into Moss Lane. Given the concerns of the Inspector and SoS, which the appellant had an onus to address, this seems near fatal. 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 MfS2 along with 85th percentile speed data from UWAG.

8.11. The reliance on UWAG evidence is illustrative of the wider 'scattergun' and 'magpie-like' approach of the appellant. They had 15 months since the DL to produce further evidence to address highway issues. They have submitted evidence on six different occasions (CD M3, M5, M6, M8, M9 and M10) and yet were still producing further evidence such as NMU survey data at the A581 junction the week before the second week of the re-opened Inquiry. Alternatively, the Council has remained consistent, clear and correct in identifying various flaws and inconsistencies in the appellant's case.

8.12. It is of greater concern that the appellant's witness was supplementing that with fresh evidence in cross-examination, which should not be done in an Inquiry of national importance on issues as critical as highway safety. The Council does not suggest this was intentional, but it has affected the parties' ability to scrutinise and understand the appellant's case.

8.13. A prime example relates to the achievable SSD at the right turn into Moss Lane. The Council and UWAG set out their measurements in their proofs (63m for the Council measured off plan and 50m for UWAG measured on site). The appellant's measurement of 54m is not in the core documents as it was only revealed during evidence in chief. Their witness explained it derived from impressions on site and the approximate distance to a plant pot, cross referenced with a plan. Such an approach does not seem watertight and even the witness could not guarantee the accuracy. The failure to carry out a measurement might relate to the fact the witness only revisited the roads for the first time since the DL on 26 March 2024 once the Inquiry had re-opened.

8.14. There is a broad range of achievable visibility at the Moss Lane turning from 50m to 63m. Such uncertainty in any appeal would be difficult, but where the appellant has a burden to address a concern, the failure to definitively

measure and evidence the visibility is a real flaw in their case. Going further and at the heart of the debate, given the lack of any mitigation to improve visibility, is about what guidance applies. If MfS2 is appropriate, on the appellant's calculations they would exceed the minimum 53m SSD by one metre. If DMRB is appropriate, they would fall far short of the 120m minimum.

8.15. There is broad agreement that neither directly applies but instead it is a matter of judgment taking account of local context. This is even set out in MfS2[71]. MfS2 is more appropriately applied to busier urban streets while the local context for this road is a narrow 40mph country lane. The appellant did not apply MfS2 until they had UWAG's speed data and previously applied DMRB to these same roads at the last Inquiry[72].

8.16. There is a further guidance document produced known as the HS2 Rural Road Design Criteria[73] which relates to a large infrastructure project involving significant construction traffic. The Council is not asking to apply it as binding guidance, but it is useful for verifying the evidence. The guidance notes the gap that exists in guidance at A.1 in relation to rural roads and sets out a methodology for determining acceptable SSD. The appellant accepted the design speed based on A.9.1 would be 60kph due to the 85th percentile speed of 34.7mph. At A.12.1 it says for such design speeds, the SSD should be in accordance with DMRB (120m).

8.17. We say the decision-maker should prefer the Council and UWAG's evidence that the DMRB is more appropriate for SSD, which is verified by the HS2 guidance. On that basis, there is insufficient forward visibility here. Even if MfS2 applies, the doubts regarding the accuracy of the appellant's measurements means that the visibility could be in breach of MfS2 too.

8.18. This matters because it means the proposal will lead to an increase in southbound vehicles queuing and crossing over the northbound carriageway with insufficient visibility. SSD is the distance drivers need to see an obstacle in the road and stop to avoid it. It is close to implausible to say that substandard forward visibility would not increase safety risks. There would be an increased risk of collisions including the side of one car being hit by the front of another. To permit such an arrangement would increase the risk of accidents and be an unacceptable impact in highway safety terms.

8.19. This point is not addressed by the proposed mitigation here and the appellant did not attempt to justify it on this basis. The sufficiency of the new signs and surfacing was addressed by the Council's witness in evidence[74]. In particular, the effectiveness of these measures is doubted given the limited amount of new signage being provided and the lack of any vertical features within the high friction surface. Overall, on this junction, the appellant has fallen far short of addressing previous concerns.

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[71] The yellow dot for 40mph roads at CD M7, page 16, which states that the application of MfS2 advice for SSD on speed limits of 40mph and above is subject to local context

[72] CD E12 paragraphs 2.4.3 to 2.4.7

[73] CD O75

[74] CD N3/N5 paragraphs 2.1.4 onwards

The footway being provided between Ulnes Walton Lane and Moss Lane

8.20. The second area of concern was set out at IR paragraphs 13.23 and 13.24. The junction has several hazards that required people to walk on the verge or in the road in terms of the bus stops 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.

8.21. The new 2m footway to the northern bus stop and a tactile paving crossing point across Moss Lane addresses the concerns in relation to the northern bus stop. However, the post box was a concern to the decision-makers despite the low usage. The appellant sought to further embellish the evidence for low usage with a survey showing no use on two days, but there is personal evidence of use from UWAG witnesses, and it is accepted that the post box still needs checking daily. The low use did not satisfy the decision-maker last time and it should not do so now. The signs and high friction surface will not be effective at reducing speeds.

8.22. The southbound bus stop appears to have been missed by the appellant. The stop currently has no services, and it was this lack of usage that explained the appellant's lack of safety concerns. However, the appellant is providing a S106 payment for additional bus services (to make this specific proposal acceptable in planning terms) that will fund for 5 years turning the 112 service into a two-way service which is likely to use the southbound stop.

8.23. This matters because the journey of a hypothetical user from the southbound stop to the prison is as bad, if not worse, than for the user of the northbound stop. They will have to cross Ulnes Walton Lane at a bend with poor visibility and walk on the verge or carriageway to get to the stop. Even the appellant's witness said this was undesirable, although they relied on the low likelihood of the use and the risk occurring. The issue with this is that it is pure conjecture based on the proposition that users may use the different Willow Road bus stop. That point failed to convince the Inspector or SoS in relation to the northbound stop so why would it convince them in relation to the southbound stop.

8.24. The Inspector and SoS found it necessary to provide a footway and safe crossing point to the northbound stop, so it must also be the case that it is necessary to do the same for the southbound stop if brought back into use. Failure to do so just does half the job. A visitor can arrive safely by bus but cannot leave safely by bus. The concern of pedestrian/vehicular conflict has not been fully addressed. The unacceptable highway safety impact remains.

Moss Lane traffic calming

8.25. The appellant has produced additional measures to address speeding concerns on Moss Lane and has agreed to amend the raised table proposal to address one further concern the Council had. The issue remaining is whether the proposed mitigation measures (dragon's teeth and four narrowing hatches) are sufficient to address the speeding concerns. Given they mostly involve paint marking, they will not be effective. Fixing the poor quality road surface, which supresses speeds, without providing effective speed prevention measures, will exacerbate the problem rather than address it. The concerns remain.

A581 / Ulnes Walton Lane mitigation

8.26. To avoid duplication, the Council's submissions on this issue will be addressed extensively in UWAG's submissions. This should not be taken as an indication of less concern. This is one of the areas of greatest concern to the Council as extensively and robustly set out by our witness in evidence in chief.

8.27. There were four fundamental issues with the 2023 design (visibility, overrunning, private driveways, and NMUs). Any of these four would render the design unacceptable but together, they render the appellant's continued reliance on it unreasonable. Apart from visibility, three fundamental issues remain with the 2024 design. Nothing has been done to address the three private driveways rendering this a 6-arm mini-roundabout contrary to guidance and causing significant safety issues due to unexpected and unusual manoeuvres that drivers will take to use or react to those using the driveways.

8.28. The appellant has sought to derive support from the two position statements provided by the LHA[75] and the silence of the LHA to a particular concern raised (the southbound bus stop). However, consider the quality of what we have from the LHA. They have not appeared at the Inquiry to have their views tested. The statements are high level and vague. It is concerning that the LHA were seemingly willing not to object to the 2023 design which was so fundamentally flawed and substandard. Little to no weight should be placed on the LHA's position. It can be noted that a similar approach was taken by another Inspector when refusing a residential scheme based on conflict with NPPF paragraph 111 (as was) despite no objection from the LHA[76]. As a statutory consultee, 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.

8.29. The wider submission is that this location is fundamentally unsuitable for a mini roundabout. The appellant has been forced to mitigate this junction because of the proposal's impact, but a mini roundabout is not a safe or suitable way of doing so. It is an example where the presentation of more detailed evidence (the roundabout was previously theoretical at the last Inquiry) has confirmed fears and illustrated additional safety concerns that will arise. Neither the 2023 nor the 2024 design safely mitigate the development's impact and on that basis alone would cause unacceptable highway safety impacts.

Construction phase impacts

8.30. The concerns relating to construction traffic were set out in IR paragraph 13.33, which noted that all traffic would use Ulnes Walton Lane and Moss Lane. The HGV numbers, at that point envisaged to be up to 146 movements at its height over a three-year period whose peak would be 6 weeks of 100 movements a day was described as significant. This was based on the widths and lengths of HGVs creating additional hazards on narrow roads such as Ulnes Walton Lane and problematic junctions like with the A581.

[75] CD M3a page 5; CD M10a page 72
[76] CD Q16b paragraph 33

8.31. UWAG address the impact of construction traffic at the A581 junction, but there is also the concern of traffic using Ulnes Walton Lane. The appellant accepted that just because construction traffic is temporary (although over a long five-year period) you do not ignore the impact. An unacceptable highway safety impact does not become acceptable because it is only temporary. The appellant is not saying that road users and residents should run the risks for five years for the sake of a prison. It is unclear what utility there is in the argument that 'it's just construction traffic which occurs with any development'. If the traffic causes unacceptable highway safety impacts, the result should be to refuse permission.

8.32. As the Council illustrated[77], taking the appellant's revised modelling and creating a daily figure shows a striking increase in the previously anticipated numbers. A three year period has become a five year period with four months (88 days) of movements between 174-199 (July to October 2026) and a peak period of 20 months (June 2025 to January 2027) within which 80 weeks will have over 100 HGV movements a day. At its peak that means an HGV every minute and a half on Ulnes Walton Lane. The appellant accepted the additional evidence shows the HGV impact is going to be worse than previously assumed.

8.33. Furthermore, all that HGV traffic will use Ulnes Walton Lane, a road with a 7.5 tonne limit (expect for access) because it is unsuitable for large vehicle use. This is also a lane used by pedestrians with mostly no kerb or pavement to walk on, and by significant numbers of cyclists as shown on the NMU survey[78] using the Lancashire Cycleway and beyond.

8.34. The appellant has sought to place some reliance on the Explore Construction Route Assessment[79]. 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 DL was issued, should not bring any comfort to the decision-maker. 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 Ulnes Walton Lane and that an alternative route to the north via the B5248 (Dunkirk Lane) should be considered. This is high-level and useless and not a clean bill of health, and hints at the potential issues with using Ulnes Walton Lane.

8.35. The appellant produced analysis of the narrowness of the lane[80]. It shows that just under 50% (690m 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 either reverse until they found a spot to pass or go off the carriageway onto the verge. This would be a safety concern based on the use of the lane by cyclists and pedestrians.

8.36. The appellant sought to emphasise the low likelihood of such incidents, but nearly half the lane is too narrow and those narrow stretches, after a straight section following the A581, are at regular intervals along the lane. This

[77] CD N3 Appendix B
[78] CD M6 page 28 and 29
[79] CD M3a Appendix N
[80] CD M9 Figure 2-7 page 14

includes at various bends where even the appellant accepted there would be a safety concern in relation to the bridge. The appellant provided a model to show that HGVs would most likely meet on a straight stretch although acknowledged the flaws in such an approach. It assumes that HGV drivers will not only depart like clockwork in regular intervals, but immediately hit 30mph and maintain that speed along the lane. That will not happen in the real world, even ignoring the fact that the model does not account for existing HGVs.

8.37. Given the physical limitations of Ulnes Walton Lane and the lack of confidence in the Explore Construction Route Assessment, the appellant's witness reverted to broad unevidenced assertions. These ranged from the broad ('there are lots of similar roads in the UK'; 'I once saw two HGVs pass in a road'), to the unhelpfully vague ('I have seen higher numbers using narrow roads before'), to bare assertions ('these roads have already been used for construction traffic for the 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.

8.38. The appellant's witness suggested in cross-examination for the first time that the narrowness of the road could be addressed by temporary management measures in relation to the bridge. Set aside this point being raised for the first time and thus making it hard to examines the effectiveness of such measures, they are not a clear solution. The proposal will have 18 months of 100 HGV movements a day. Is it sufficient to say we could have a banksman there for 1.5 years or temporary traffic lights that we would have to consult with the LHA on? These were the same types of omissions that caused concern previously and 15 months later they remain.

8.39. Using the HS2 guidance as a calibrating document rather than binding guidance, it supports the Council's and UWAG's concerns that the road is too narrow. At A.6.3 it sets out that rural road widths should be at least 6.8m for roads where HGVs are likely to pass regularly. Ulnes Walton Lane is only over 6m in three places and no wider than 6.11m. The level of HGV usage on this lane which led to the Inspector and SoS' concerns has been significantly exceeded and the concern about narrowness has been illustrated by the appellant's own data. The appellant has done nothing to give the decision-maker confidence when sending one HGV every 1.5 minutes down Ulnes Walton Lane that this will be safe. The concerns have been confirmed.

Conclusion on highway safety

8.40. Have the Inspector and SoS now been given the detail and confidence sought in IR paragraph 13.35? It must be a resounding no. Key concerns, the right lane turn into Moss Lane, the southbound bus stop, have been missed and remain unaddressed. New evidence has confirmed or exceeded previous concerns (the A581 junction, construction traffic). What has been provided will not be effective (Moss Lane and Ulnes Walton Lane traffic calming).

8.41. In a normal appeal this would be sufficient to refuse the proposal. But in a re-opened appeal specifically requiring the appellant to address the existing particularised issues of the Inspector and SoS, such an approach is fatal. Highway safety concerns remain and are present at an even greater scale. The appellant has failed to satisfactorily address that the proposal would not have

an unacceptable impact on highway safety and there is ample justification for the knockout blow under NPPF paragraph 115.

8.42. In the alternative, even if the impacts are not unacceptable, they are still significant and should carry significant weight in the planning balance. They would be sufficient to prevent very special circumstances arising. On that basis, the Council asks the Inspector to maintain his view and ensure that the SoS reaches the right decision (for the second time).

Flood risk matters: the Council's response to UWPC email of 8 May 2024 [81]

8.43. Having reviewed the surface water flooding data[82] held by the Council and the Flood Risk Assessment (CD A18) submitted by the appellant, it is clear that the appeal site falls within an area identified as being susceptible to surface water flooding. The Council therefore agrees that a sequential test should be applied to the proposal in line with NPPF paragraph 168 and is a material consideration in this instance.

8.44. Despite the late stage at which the UWPC representation has been received and the absence of a sequential test having been identified, it is the Council's view that this requirement must be taken into consideration given that the matter has been identified prior to any decision having been taken.

Flood risk matters: the Council's response to the appellant's letter of 22 July 2024 [83]

8.45. The appellant accepts that a sequential test should have been required and carried out in relation to the proposed development, and that there remains a policy breach without one. Although the Council agrees that the draft drainage strategy is such that the development would not result in any adverse impact to surface water flooding, the need to carry out a sequential test is a necessary procedure that must be taken into consideration given that the susceptibility of the site to surface water flooding and the subsequent requirement for a sequential assessment has been identified prior to any decision on the appeal having been taken.

8.46. Without having been subject to a sequential test, sequentially preferable alternatives have not been considered, and therefore the sequential test is failed. The NPPF is clear that when a site is identified as being at risk of flooding and it fails the sequential test then that development should be refused. The Inspector cannot therefore arrive at any other reasonable conclusion. To do so would leave the decision maker at risk of legal challenge.

8.47. The Council trusts that the Inspector will remain of the view that a sequential test must be carried out in relation to the appeal proposal, and should this not be provided the Council anticipates that the only course of action would be to refuse planning permission given this additional substantially weighted harm is both a further 'knockout blow' issue (similar to highways under NPPF paragraph 115) and needs to be weighed in the overall balance in consideration of whether very special circumstances have been demonstrated.

[81] CD Q22a
[82] CD Q22b
[83] CD Q26

9. The Case for Ulnes Walton Action Group (UWAG)[84]

Introduction

9.1. UWAG's sense of dissatisfaction with the proposal has only been compounded by this re-opened Inquiry. Too many gaps, uncertainties and concerns remain unresolved, and this scheme should be refused. A self-evidently unsatisfactory scheme for a mini roundabout has been promoted in 2023 in the face of serious concerns from two RSAs and then at the 11th hour, a further scheme which also causes RSA concerns has also been promoted, but with no acknowledgement that the 2023 design was flawed.

9.2. The appellant's proposal remains unsatisfactory and the concerns expressed in the IR and endorsed by the SoS remain unresolved as follows:

(a) No change to visibility issues for the Ulnes Walton Lane / Moss Lane junction. The appellant has only measured by eye using a plant pot for reference and that is only 1m above the minimum required by MfS2. If the Council and UWAG are right that judgment is required and some reference to DMRB, then the visibility is grossly insufficient. The lack of PIAs did not help last time and the proposal will dramatically increase the number of vehicles using this junction.

(b) Concerns about the post box and bus stops near the above junction have only been addressed for the northbound bus stop. The post box is used, while the southbound bus stop would form part of the proposed service upgrade. Street furniture and signage could impinge on the 2m footway for the northbound bus stop with no drawing to show the detail.

(c) Concerns regarding speeding on Moss Lane have only been met by painted markings on the road apart from a raised table at the southern end, despite the proposal removing the poor road surface that suppresses speeds.

(d) The 2023 mini-roundabout design for the A581 / Ulnes Walton Lane junction has attracted concerns in the two RSAs, which essentially recommended the appellant think again about the appropriateness of such an option here. The design failed to accord with accepted design standards on visibility and it remains an unacceptable form of mitigation for this junction.

(e) The redesigned 2024 design appears to increase the overall junction delay compared to the 2025 without-development scenario. Whilst it improves the unacceptable RFC for the AM peak compared to the 2025 without development, it does so only marginally and does not bring it below the acceptable threshold of 0.85.

(f) The RSA for the 2024 design recommends splitter islands to assist with definition, which has been dismissed as unnecessary by the appellant. It is self-evidently impossible to use splitter islands due to the private driveways on the roundabout. Whether or not these constitute arms

[84] Largely taken from UWAG's closing submissions (CD Q13) unless stated otherwise

should not obscure the reality that their presence adds significant complexity to an already challenging junction.

(g) The selection of 10 mini-roundabouts across the county appears to be random. The low PIA record at each is used to provide comfort that this mini roundabout in this location, on the county cycling route and featuring a significant number of cyclists each day, and also due to take the entirety of construction traffic from the 5-year construction period of a national-scale project, will be fine.

(h) Since the minded to grant decision letter, it has been confirmed that the HGV traffic volume will be greater and for longer than the numbers on which that assessment was based: the position has got worse. In response we have diagrams confirming that two HGVs cannot pass safely for extensive stretches of Ulnes Walton Lane; we have a vehicle tracking output report for 3 construction routes that will not be used[85] and we have a very high-level report from someone who drove an HGV one-way along routes 4 and 5 at some unspecified point on one day and professed the route to be suitable. We have the appellant's highways witness reassure us that construction traffic uses narrow roads all over the country; that he once saw two HGVs pass one another on a road somewhere else; and that you cannot only locate new prisons at the end of A roads[86]. None of that should be given any credence and is completely inappropriate in this context.

9.3. The entire purpose of this Inquiry is to give the appellant the opportunity to resolve those parts of its case that were found to be unsatisfactory last time. UWAG accepts it has resolved two of those concerns in terms of visibility at the A581 / Ulnes Walton Lane junction, and pedestrian access to the northbound bus stop on Ulnes Walton Lane. The remainder are unresolved and if the Inspector agrees, then the recommendation must remain the same: the highways implications of this proposal are unacceptable.

Preliminary Issue (1): The role of the planning system

9.4. Highway safety is critically important in planning appeals as one of the few areas of national policy which justified immediate refusal of a scheme where it has an unacceptable impact. These closing submissions provide the community perspective on the unacceptable impact the proposal will have, contrary to national and local policy, and summarise why the technical objections of UWAG and the Council should be preferred to the appellant's case.

Preliminary Issue (2): The Inspector's previous recommendation

9.5. Having considered the wide range of issues and reached conclusions on each, the Inspector recommended the appeal be dismissed. His reasons included the unacceptable effect on highway safety, but that overall, the benefits of the

[85] CD M9 Appendix H

[86] On the location of prisons near major roads, see Kirkham which UWAG remains convinced is a preferrable site for this project.

scheme did not clearly outweigh the harms, taken together, such as to amount to very special circumstances[87].

9.6. All of the other main conclusions remain unchallenged and several of them militate strongly against the grant of permission; there would be a significant harmful effect on Green Belt openness and significant conflict with one of the five Green Belt purposes to be weighed in the overall balance[88]; there would be significant harmful effect on the character and appearance of the area, contrary to policy and carrying significant weight in the balance[89]; the urgent need and lack of alternative sites was essentially rejected and only attracted moderate weight; and overall very special circumstances do not exist[90].

9.7. The scope of the reopened Inquiry is unusually focussed. There is no basis to impugn the above judgments. The SoS has asserted that if highway safety matters are resolved then very special circumstances would exist and justify a decision contrary to the development plan[91] . However, at no point has the SoS has the benefit of the Inspector's privileged position as expert tribunal. The Inspector is entitled (indeed required) to offer a view as to the outcome of the key test (whether the harms are clearly outweighed) in light of his new conclusions on the highways position. Would very special circumstances exist if the highway concerns were fully addressed? What if they were partially addressed? This is the key planning judgment: is the totality of the harm, including any remaining highway safety harm following this Inquiry, clearly outweighed such that very special circumstances arise. UWAG says not, but either way, the SoS should have the Inspector's view on that question.

Preliminary Issue (3): Approach to the SoS' letter and the Inspector's previous findings

9.8. The Inspector and the SoS reached conclusions diametrically opposed to the appellant who at the July 2022 Inquiry said the proposal would not have an adverse impact on highway safety, let alone an impact that could be reasonably described as unacceptable[92]. The Inspector's conclusions[93] were mirrored by the SoS in terms of exacerbating existing hazards and risks, with a lack of detail and confidence in mitigation measures and an unacceptable effect on highway safety contrary to policy which carries substantial weight against the proposal[94]. Nevertheless, the SoS has given the appellant another shot at resolving things and has said that subject to satisfactorily addressing highway safety issues he was minded to allow the appeal.

9.9. The appellant once again seeks to deny any unacceptable effect on highway safety. The onus is on the appellant to show that all unacceptable effects have been resolved. It is not enough for them to say that the proposal is better than

[87] CD L1 – IR 13.89
[88] CD L1 – IR 13.9
[89] CD LI – IR 13.17
[90] CD L1 – IR 13.89
[91] CD L1 – DL paragraph 39
[92] CD E4, paragraph 7.2.2
[93] CD L1 – IR paragraph 13.35
[94] CD L1 – DL paragraphs 15-17

before and therefore permission should be granted because it is important that the prison gets built. The appellant has dropped approaches previously advanced and changed tack by providing additional evidence with new or alternative mitigation responses. For the A581 junction this has happened twice since the last Inquiry, with the second design an acknowledgement that the first design fell short of what was required.

9.10. Three broad questions need to be asked when considering whether the identified highway safety concerns have been satisfactorily addressed by the new evidence and designs:

(a) First, would the proposal exacerbate existing hazards and risks within the local road network?

(b) Second, does the evidence presented at the Inquiry remain lacking in detail, or is it otherwise defective such that the decision-maker cannot have confidence that the proposed mitigation would have the desired effect?

(c) Third, would the proposal have an unacceptable effect on highway safety, contrary to national and local policy?

Preliminary Issue (4): Approach to the local highway authority (LHA)

9.11. Transport assessments are intended to provide a sufficient and satisfactory basis for considering highway impacts. It requires a number of assumptions and professional judgments. There is significant scope for disagreement. Those undertaking assessments generally apply a precautionary approach, making conservative assumptions to show a robust outcome and worst case scenarios.

9.12. The LHA continues to have no objection to the proposed mitigation. While proper respect should be given to the opinions of statutory consultees, with clear and cogent reasons given for any departure, it does not mean that decision-makers should simply defer to those consultees and are not entitled to disagree with them. The reliance on the LHA is hopeless because:

(a) The LHA waved through the 2022 scheme despite the Council, the Inspector, and the SoS each concluding unacceptable highway safety issues and a conflict with policy.

(b) The LHA waved through the 2023 mini roundabout design which is fundamentally and fatally flawed, and the appellant seems to have now all but abandoned it.

(c) It is not clear if the LHA has properly grappled with the issues raised by the Council and UWAG in reaching their conclusion.

(d) The LHA has not been present at the Inquiry for the testing of their opinions or professional judgments.

(e) In any case, the LHA does not have the full details before it and the appellant is relying on further critical details being provided and duly rubber-stamped at a later stage.

9.13. There is ample justification to support the Inspector in once again departing from the LHA's conclusions. It all comes down to the evidence and what it

shows rather than deference to the LHA. What matters is whether the material before this Inquiry is sufficiently precautionary, robust and comprehensive to address existing highway safety concerns. UWAG says that it is not.

Preliminary Issue (5): A holistic approach to highway safety, and not a box-ticking standards compliance exercise, is required

9.14. The IR noted the significant increases in daily vehicle movements but recognised that merely relying on percentage increases is overly simplistic and it is necessary to consider existing safety issues, noting hazards and risks associated with different parts of the local road network[95]. The parties disagree on which set of standards should be applied. That requires resolution but should not obscure the safety question. Compliance with standards can provide evidence of addressing highway safety matters, but it is not interchangeable. The Inspector must make a series of professional judgments, informed by expert views and other witnesses, before reaching an overall conclusion.

9.15. It is not the time to 'kick the can' further down the road to detailed design. In some instances (such as overrunning), appropriate mitigation will not be possible by that stage. Detailed design may address some issues, but this would require the decision-maker to trust the appellant's judgment. The appellant has had months to produce its evidence and proposals. That these have still been emerging, incrementally, even into this year and even at the Inquiry indicates an ad-hoc approach to the provision of design responses to safety concerns. The Inspector needs to have confidence in the safety and suitability of the proposal before him. That was the point of re-opening the Inquiry.

Matters in Issue between the appellant and both the Council and UWAG

9.16. Unless expressly stated, UWAG endorses and stands behind the Council's case on highway matters. As well as general highway safety concerns, there are several specific concerns. UWAG has liaised with the Council to try and avoid duplication in closing submissions. Accordingly, UWAG's submissions focus on the A581 / Ulnes Walton Lane junction. Having seen an advance draft copy, UWAG wholeheartedly endorses and adopts the position adopted by the Council in their closing submissions.

The A581 / Ulnes Walton Lane roundabout scheme – general points

9.17. The indicative risk and evidential shortcomings associated with this aspect of the proposed mitigation, given the centrality of the location in the context of the construction phase, is enough to justify a recommendation of refusal on its own. The junction is nearly at capacity and would, if unimproved, be well over capacity with the development in place. The parties agree that mitigation is needed to address this significant impact.

9.18. At the last Inquiry, the appellant initially proposed a signalised junction to widen the road and provide separate space for right hand turns, then suggested that the LHA's preferred option, a mini roundabout, could be provided. The safety and appropriateness of such an option was disputed by

[95] CD L1 – IR paragraphs 13.20 and 13.21

the Council at the time, yet the appellant's previous evidence was that even the initial option would not have an adverse impact on highway safety. The appellant's witness accepted under cross-examination at this Inquiry that his previous conclusion, as set out in the appellant's previous closings, was wrong.

9.19. The Inspector noted the roundabout was without any indicative design, modelling of effects, assessment of traffic flow, or evidence of costings, and that the proposed mitigation measures were lacking in detail and confidence that they would have the desired effect[96]. Since then, the appellant has provided two schemes. The first was presented in additional evidence in March 2023 (the 2023 design). Despite the Inquiry's protracted procedural history and extensive rescheduling, the second (the 2024 design) was only sprung on the other parties at the last minute and without satisfactory explanation, in the appellant's addendum proof of February 2024, despite being in the works from at least September 2023[97].

9.20. The principal difference between the two designs is that the appellant has secured control of more land around the junction to address visibility splay issues and provide a larger roundabout. In pure junction capacity terms, both designs would mitigate the additional traffic to some degree (although the detailed outputs appear to suggest that the 2024 design adds to overall junction delay). The principal issue is whether the schemes would provide safe and suitable mitigation. This calls for a considerable amount of judgment and is not simply a matter of compliance with standards equals safe. It depends on context with a range of variables at play.

9.21. If permission is granted, since all other routes are broadly inappropriate for the nature and volume of traffic envisaged, the junction will inevitably carry all the construction traffic including the significant HGV increase. At the re-opened Inquiry, the picture is worse than initially thought, with over 100 HGVs per day for a period of 80 weeks and around 200 HGVs per day at peak construction[98].

9.22. The Mini Roundabout Good Practice[99] guide says the use of such junctions does not cause any particular problems for HGVs except the overrunning of the central island at smaller sites and that a large number of turning manoeuvres can lead to the rapid wear of road markings[100]. This is not the green light the appellant seems to think it is. Firstly, general problems remain, such as visibility, the viability of implementing fundamental traffic calming measures identified in the RSAs, the presence of private driveways, and whether the proposal safely and suitably accommodates NMUs. Secondly, there is the particular problem of overrunning. Thirdly, the more HGVs that use a mini roundabout, the greater the chance of two doing so at the same time and the risk of conflict with each other and with more vulnerable road users.

[96] CD L1 – IR paragraphs 13.29 and 13.32
[97] Drawing P6 (CD M3a page 4), which is the 2024 design, is dated September 2023 with amendments dated from October 2023
[98] CD N5 Appendix B, page 52
[99] CD M3a Appendix G
[100] CD M7 Appendix A.2, page 71, paragraph 4.2.8

9.23. Specific issues are discussed below. The Council's witness considered that any one of these issues rendered the 2023 design unacceptable. It should have been shelved earlier. The 2024 design represents an improvement in several key respects although that does not mean it is a safe and suitable proposal in context. An improvement is the least we might hope for given the apparently substantial additional work, cost and time spent in producing the latest iteration. The appellant's witness accepted that the 2023 design is not better than the 2024 design in any material respect and if the 2024 design is not safe, then the 2023 design is not safe. That the witness continues to defend the 2023 design as a suitable alternative solution, damages his credibility.

The A581 / Ulnes Walton Lane roundabout scheme - visibility

9.24. One of the key problems in the VIA 2023 RSA of the 2023 design is that drivers entering a mini roundabout with insufficient visibility to the right are likely to be involved in collisions with previously unseen vehicles emerging from other limbs[101]. Resolving the issue of visibility is one of the fundamental prerequisites of ensuring the junction design is safe and suitable. Due to visibility issues on the Ulnes Walton Lane and A581 Westbound entries, the RSA recommended a fundamental redesign of the junction[102].

9.25. The design response was relatively perfunctory and disagreed with the problem and recommendation. It asserted that the proposed speed reduction measures are likely to reduce 85th percentile speeds to below 25mph; that the design achieves safe stopping distances; that a departure from standards would be agreed; that capacity concerns would be addressed; that good practice guidance states that mini roundabouts can provide safety benefits; that visibility requirements at the existing junction are not achieved with no safety concerns; and that the same applies at another roundabout on the A581[103]. Many of these suppositions are highly generalised and do not address the specific context. The Inspector is being asked to trust the appellant while dismissing the independent safety auditor.

9.26. Before the Inquiry re-opened, the appellant stated they were committed to delivering either scheme on the basis that both accord with design standards. This was maintained during cross-examination on the basis that seeking a departure from standards was according with the standards. There is no evidence that the LHA would agree a departure. The extent of departure (9m x 17.8m and 9m x 16.6m against the required 9m x 35m) is substantial[104]. The increase in traffic volume combined with substantial turning movements means that it is essential to have good visibility to acceptable standards at this location. The clearest of evidence that the sub-standard design would be safe should be provided, but there is no such evidence.

9.27. The reference to 10 other roundabouts in Lancashire with substandard visibility and low levels of PIA was not based on any methodology or clarity in terms of contextual variable. The appellant's witness described the selection as random

[101] CD M3a pages 27 and 29 (Problems 4.1 and 4.2)
[102] CD M3a pages 28 and 29
[103] CD M3 paragraph 5.7.7 and CD M3a page 63
[104] CD M3 paragraph 5.6, CD M3a Appendix L and CD M6 paragraph 4.5

and for the first time in oral evidence started referring to details such as the proximity of a supermarket. These roundabouts do not prove anything. It is unclear how many others with substandard visibility have worse PIA records.

9.28. From these flimsy comparisons, the appellant draws the overall principle that the inability of a junction to conform with visibility standards does not automatically trigger an unacceptable safety impact. However, where a junction has substandard visibility and requires a substantial departure from standards, with an increase volume of HGVs for a lengthy construction period, and where the RSA identifies an increased likelihood of collisions, it should be of grave concern.

9.29. In producing the 2024 design, the appellant seeks to address the VIA 2023 RSA recommendations that it previously rejected. No departure from standards is required and the visibility issue falls away. This is a tacit acknowledgement of the 2023 design causes unacceptable highway safety impacts. It should have been abandoned at the earliest opportunity. The failure to do so erodes the extent to which the professional judgement of the appellant's witness can assist the Inspector.

The A581 / Ulnes Walton Lane roundabout scheme - overrunning

9.30. As noted in the good practice guide above, overrunning around corners can be an issue affecting particularly large vehicles navigating the road network. This is where a vehicle goes into the opposing carriageway or into the centre of the road. This problem was identified by the Hydrock 2023 RSA for the 2023 design. It was not clear how the necessary road space would be obtained for the mini roundabout[105], with the design potentially increasing the risk of collisions. The picture becomes starker once it becomes apparent that the RSA brief did not contain any NMU survey data for the junction, the only traffic information was from the original TA which did not detail the likely construction traffic, and the auditors were not aware of forecast construction traffic flows. The RSA recommendation was an alternative junction solution.

9.31. The appellant's response did not refute the problem of overrunning with the 2023 design, but disagreed with the recommendation, noting that the proposed form of junction addresses capacity concerns, provides an improvement for articulated HGVs turning left out of Ulnes Walton Lane, and that good practice guidance states that mini roundabouts can provide safety benefits over other forms of junction. It said nothing about whether the form of junction is safe and suitable. Technical improvements on the existing layout ignore the change in conditions and use once the junction is operational, especially during the construction phase.

9.32. The extent of overrunning was described by the Council's witness during evidence in chief, who demonstrated that at 5kph, 15kph and 25kph the issue exists and becomes more pronounced with speed. The drawings speak for themselves[106]. The VIA 2023 RSA did not identify an overrunning issue, probably best explained by recognising that RSAs are subjective and not

[105] CD M3a page 17 paragraph 2.2
[106] CD M3a Appendix E page 54 and Appendix J page 100; CD N5 Appendix A pages 43-48

comprehensive. The opinion of Hydrock was not sought for the 2024 design, only VIA. This is unsatisfactory.

9.33. The 2024 design is an improvement in terms of overrunning[107], but the issue remains based on the Council's evidence[108]. The issue continues to impede the provision of fundamental safety features. The VIA 2024 RSA notes the problems of collisions in junction when drivers misinterpret the road network and recommends that traffic calming measures are fundamental including splitter islands within the proposed hatched areas to add definition to the road layout[109].

9.34. There is no design response as required for stage 1 RSAs. The appellant's witness in his evidence to the re-opened Inquiry takes no issue with the problem raised but states that there are numerous ways to address it at the detailed design stage. The provision of splitter islands cannot be considered at this stage because the private driveway swept path analysis shows vehicles overrunning the hatched areas to make turning movements, as well as larger vehicles exiting the roundabout. If such measures were implemented in either the 2023 or 2024 design, it is likely that a vehicle would encounter them, and this could only be resolved by increasing the size of the junction[110]. They would interfere with the private driveways in any event. The fundamental proposed traffic calming measure recommended by the RSA is not implementable and the issue is unaddressed and unresolved.

9.35. During evidence in chief, the appellant's witness said that splitter islands are not mandatory and their inclusion involves a balancing of risks. Even if that is so, and the appellant reaches the wrong balance, it might be said that the LHA could seek to install splitter islands at a later date. However, that intervention will not be possible here because of the physical constraints. The Inspector is left in an unsatisfactory position. The RSA recommends splitter islands, but there are obvious reasons why this would not work, and the appellant is all but silent on the issue. The overrunning issue and whether the 2024 design can adequately resolve an identified position of junction collisions remains unresolved and at large. The Inspector cannot have confidence that the 2024 design provides safe and suitable mitigation.

The A581 / Ulnes Walton Lane roundabout scheme – private driveways

9.36. As noted above, the presence of 3 private driveways prevents the implementation of fundamental traffic calming features. Private driveways add complexity to mini roundabouts. According to the appellant, the potential for vehicles to turn one of two clear anticipated ways around a junction (in the case of 3-arm roundabout without private driveways) as opposed to the potential for vehicles to turn one of 5 varied and sometimes unanticipated ways (in the case of a roundabout with 3 private driveways) apparently adds no complexity to junction design or navigation. That is surprising.

[107] CD M10 Appendices F, G, H and I
[108] CD N9 paragraph 2.5
[109] CD M10a pages 80 and 81
[110] CD N9 paragraphs 2.5.4 to 2.5.6

9.37. At the very least, it must be accepted that private driveways make navigation more complicated. The movements required by cars will mean that those entering or exiting the driveways will need to cut across traffic lanes or turn erratically through the junction. Reference to examples elsewhere does not assist in answering whether the appellant has sufficiently addressed this issue here in these circumstances.

The A581 / Ulnes Walton Lane roundabout scheme – non-motorised users

9.38. As the Council's witness describes, the 2024 design does nothing to improve things for NMUs and nothing for the hundreds of cyclists who use the junction each day, or other vulnerable road users who might. This is perhaps unsurprising given that the appellant did not provide its data on NMUs using the junction to the RSA auditors. Only in the adjournment between the Council and UWAG's evidence and the appellant's evidence did the appellant provide this data[111]. It validates UWAG's assessment of NMU use. The 2024 RSA was blind both of this data but also the predicted volume of HGV traffic at this junction. This is an integral evidential shortcoming. There is no RSA before the Inspector in relation to either design which has considered this information. The development will increase traffic flows and increase risk to NMUs, but this does not appear to have been factored into the designs.

The A581 / Ulnes Walton Lane roundabout scheme – assessment of roundabout in sensible opening year

9.39. In the original TA, the capacity modelling shows the junction forecast to operate over acceptable thresholds in the 2025 'opening year without development' during the AM peak with an RFC of 0.90[112]. The appellant's witness sought to reassure the Inquiry that a 2028 opening year would not be problematic. He did a survey of traffic in February 2023 which is not a neutral month. He used that data to compare to his previous factoring work on the measured 2021 data and noted that the 2023 measured data was significantly lower than the factoring work he had done for February 2023. He then used that observation to discredit his own factoring work and extrapolated from February 2023 to 2028. He noted that it showed lower background traffic levels in 2028 than suggested.

9.40. Quite why this data manipulation was though the best way to account for the fact the prison will not open in 2025 or 2026 is not clear. This evidence is the best we have of future traffic levels. It ignores traffic likely to come from nearby housing development (Leyland Test Track) save the very general overall increase in background traffic suggested by TEMPro. There is no modelling of junction performance in a future year when the prison is realistically likely to be open (2030 is more realistic) and no sensitivity test to account for the possibility that the appellant's extrapolation exercise might be wrong.

[111] CD Q8 and Q9
[112] CD A35 Table 7-11 page 45

9.41. The assessment[113] indicates that operationally the RFC is 0.87 in the AM peak under the 2025 opening year (with development) scenario and 0.88 in 2026 for the A581(E) approach. This is above the acceptable threshold of capacity. Compared to the above RFC of 0.90, the scheme is merely marginally less far over the threshold, which does not necessarily render it acceptable.

9.42. The detailed outputs in the existing priority junction for 2025 without development indicate an overall AM junction delay of 21.17 seconds and a PM junction delay of 3.98 seconds[114]. The detailed outputs for the proposed 2024 design with development indicate an overall AM junction delay of 27.6 seconds and a PM junction delay of 15.28 seconds[115]. The appellant's witness could not explain this when asked or suggest that the reading of the detailed outputs was erroneous. The data means what it says: increased delay.

9.43. The warning in the software outputs ('mini roundabout appears to have unbalanced flows and may behave like a priority junction') also means what it says. The designer should have regard to the fact that drivers on the main road might drive straight through. This might inform traffic calming measures such as splitter islands. The appellant was dismissive of the warning.

The A581 / Ulnes Walton Lane roundabout scheme – noise and vibration assessment versus construction peak

9.44. The noise and vibration assessment (NVA) sets out the parameters of the construction phase it considered, with work not beginning until 8am[116]. This was a reasonable assumption given the proximity of residential development and the areas construction traffic would pass through. This means that the peak of construction traffic on the network would be the hour beforehand (7am to 8am). However, the appellant's modelling assumed a peak of 6am to 7am based on assertion that work would begin at 7am contrary to the NVA. This matters because the ordinary network peak in this location is between 7am and 8am and the roads are much quieter before 7am. If the network and construction peaks do not coincide, then capacity calculations are reasonable. However, if they coincide because the NVA start time of 8am is adhered to, then the effects are severe with queues and delays causing an unacceptable highways impact[117].

9.45. The appellant provided a further noise report, but this is restricted to considering effects on properties on Moss Lane (specifically Windy Harbour) and not additional construction night-time traffic elsewhere (Ulnes Walton Lane, Dunkirk Lane or the A581). The impact of an increase in construction traffic has not been assessed. It cannot be safely assumed that starting work at 7am will be acceptable in noise terms as it has not been considered. If work must begin no earlier than 8am, then the impacts described above will occur.

[113] CD M10 Table 2-1 page 12
[114] CD A35 pages 390 and 393
[115] CD M10a pages 26 and 29
[116] CD A22 paragraphs 4.1.1 and 5.1.1
[117] CD O22 Section 7

The A581 / Ulnes Walton Lane roundabout scheme - conclusions

9.46. The appellant has had 18 months to fix the issues with its scheme. Aside from the flaws in the evidence provided, the shortcomings of the information available to the Inquiry casts doubt on any confidence in the effectiveness of what is proposed. The Inspector and SoS are essentially asked to leave the resolution of these issues to some later stage after the grant of permission. There is no attempt to sensitivity test the possibility of any of the main underlying assumptions proving to be too conservative.

9.47. In short, on the A581 / Ulnes Walton Lane junction, there is a question as to whether mini roundabouts are appropriate mitigation in the present context given the existing constraints. It is not plausible to suggest that the 2023 design is preferrable or that it provides safe and suitable mitigation with visibility and overrunning issues in particular. The 2024 design does not provide safe and suitable mitigation with outstanding matters which remain unaddressed and unresolvable in detailed design.

Moss Lane / Ulnes Walton Lane

9.48. There has been a lot of debate about whether MfS2 or DMRB provides the starting point as the appropriate standard for SSD at junctions like Moss Lane and Ulnes Walton Lane. DMRB has always been a guide for measuring roads subject to higher levels of traffic, whereas MfS2 is concerned with more urban areas or streets. There is some gap between the two standards. UWAG's highways witness adopted a precautionary approach suggesting the highways engineer should err towards the higher standard to judge whether something is safe. DMRB contains higher standards for good reasons. Faster wider roads call for greater forward visibility and urban streets call for less. This is somewhere in-between.

9.49. The appellant initially appears to have relied on the Council's measurement which is surprising where there is concern about the safety of a junction in circumstances where there is a significant increase in vehicular use. When the appellant did measure, announced for the first time in oral evidence, it was unsatisfactory, substantially different to the Council, done by reference to a plant pot, done without assistance and unrecorded. That it was a mere one metre above what is on the appellant's own case the minimum required distance should have caused alarm bells to ring.

9.50. This must not obscure the real point. The Inspector noted this junction and its limited forward visibility, as an issue in the context of a substantial increase in its use as a result of the proposal[118]. If the appellant's response if to say they have measured it and it is one metre above the minimum forward visibility required by MfS2, that is surprising. The appellant has done nothing to improve forward visibility here.

9.51. A similar observation can be made about pedestrian users of this junction. The appellant has done nothing to improve access to the southbound bus stop or the post box despite those being issues identified by the Inspector and despite

[118] CD L1 – IR paragraph 13.22

the appellant's scheme including the upgrading of the bus service. The 2m footway resolves the issue for the northbound bus stop but no more. The proposal offers nothing to suggest the Inspector should conclude differently from last time. An increase in the number of vehicles using the junction will create an increased risk of conflict with pedestrians and this risk is not adequately mitigated.

Moss Lane traffic calming measure

9.52. As explained by the Council, it cannot be said that the appellant has done nothing to alleviate the concerns about speeding on Moss Lane, but what it has done, for the reasons set out, is insufficient.

Construction phase traffic

9.53. At the last Inquiry, the Inspector concluded that the appellant has not modelled or assessed the forecast construction traffic or demonstrated that the highway effects of the construction phase can be adequately mitigated[119]. The numbers we now have are worse than considered in 2022. Ulnes Walton Lane is simply not suitable for that volume of traffic over that period of time. The absurdity of the appellant's position was perhaps best illustrated by reference to the photograph showing two HGVs passing near Lostock Bridge[120]. One only has to watch the video from which that is taken to see the issue[121]. It is tortuously difficult for them to pass. With 100+ additional HGVs using the lane, it will be unmanageable.

9.54. It was put to the Council's witness that highway issues relating to rural areas are dealt with because they have to be, and that the role of the planning system is to ensure that construction traffic is adequately mitigated but should not stop a project coming forward because of less than ideal arrangements. While various major projects like HS2 or East-West Rail are being carried out in rural areas, that line of question both underlines the fragility of the appellant's case (but accepting it is less than ideal) and understates the distinctive and unique challenges arising at this site, in relation to this scheme, in this specific community.

9.55. This is a good example of the point we made at the outset. Even if the view is taken that the highway safety implications of the scheme are not unacceptable, there will still be harm. The use of Ulnes Walton Lane by this number of HGVs for such a protracted period is self-evidently harmful. That harm has to go into the balance, along with all the other harms, to see if very special circumstances arise. That has simply not yet been assessed. The person to make that assessment is the Inspector. That is why UWAG asks that, whatever his conclusions on individual points, the Inspector goes further than simply offering a view on whether the highway safety concerns have been addressed. We ask that the Inspector re-carries out the planning balance to see if very special circumstances arise.

[119] CD L1 – IR paragraph 13.33
[120] CD O38 photos A12 and A16
[121] CD O52 and O55

9.56. UWAG, as a group of local residents who live in the area and know the road network more intimately than any of the 3 experts who have given evidence at this Inquiry, offer a unique insight into the specific highway safety concerns which will still arise from the proposed scheme. Ulnes Walton Lane is not suitable for this volume of construction traffic and it is yet another reason why this scheme should be rejected.

Conclusion on highway safety

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

9.58. For these overarching reasons and having regard to the flashpoint locations identified and addressed in detail above, and by the Council, UWAG respectfully invite the Inspector to recommend to the SoS that the highway safety matters have not been satisfactorily resolved, such that the appeal should – finally – be dismissed and permission for the appeal scheme should be refused.

9.59. Even if highway safety has been addressed such that it is no longer unacceptable, the Inspector should then weigh any harm found to arise, along with all the other harms previously identified, and offer a recommendation as to whether on that basis, they are clearly outweighed by the benefits such that very special circumstances arise. Our conclusion, as it always has been, is that this stringent national Green Belt requirement is not met by this proposal.

Flood risk matters: UWAG's response to UWPC's email of 8 May 2024 [122]

9.60. The reference to any form of flooding in NPPF paragraph 168 includes surface water flood risk. The appellant appears to accept that the PPG requires a sequential test to be carried out. The requirement is not limited (if it indeed ever was) to cases of fluvial flood risk. The appellant accepts that some parts of the appeal site are at medium and high risk of surface water flooding.

9.61. That reading of the national policy position appears consistent with case law[123]. In that case, the submission that the PPG was subservient to, or less important than, the NPPF (specifically in relation to flood risk assessment) was rejected. As such, it appears common ground that national policy requires the carrying out of a sequential test before permission for this proposal can be granted. The appellant suggests that the failure to carry out a sequential test represents a limited conflict with the PPG and should attract limited or very limited weight. Neither proposition makes any sense to UWAG.

[122] CD Q23

[123] *Mead Realisations Ltd and Redrow Homes v SSLUHC* [2024] EWHC 279 (Admin) at paragraph 62

9.62. Firstly, the requirement to carry out a sequential test is the centrepiece of national policy on flood risk. It is how national policy seeks to direct development away from areas of high risk of flooding. To fail to carry out a sequential test where one is required is a direct and significant breach of national policy. It is not a limited conflict.

9.63. Secondly, it is a requirement to carry out a procedure rather than an end in itself. Carrying out a sequential test is intended to show whether the proposed development satisfies the policy imperative to locate development away from areas at most risk of flooding. In that context, the failure to do a test when one is required cannot carry limited weight. It amounts to a fundamental failure to demonstrate compatibility with national policy on flood risk.

9.64. Third, the appellant's case to the reopened Inquiry was to consider only the question of highway safety. It resisted, in strident terms, that the Inspector might revisit any of the matters of planning balance or weight arising. The appellant now invites the Inspector to revisit the planning balance and consider what weight to give to the absence of a sequential test in direct breach of national policy.

9.65. The Inspector should either (a) accept UWPC's representation and the parties' response, and simply alert the SoS to the absence of a sequential test in circumstances where it is common ground that national policy requires one, or (b) require the appellant to carry out a sequential test.

9.66. The claimed urgent need for the development is a matter for the planning balance. It is not to be revisited by the Inspector on the appellant's own case. It cannot, in any event, affect the weight given to this issue. It might, in theory, be judged to outweigh the failure to carry out a requirement of national policy, but that is a matter for the planning balance.

9.67. The surface water drainage strategy is not relevant to the question of whether there are other alternative locations for this development which are at lower risk of flooding.

9.68. The length of time since the application and the stage presently reached is not an answer to this failure. In any event, the appellant has not been slow in advancing new or additional matters despite the late stage of proceedings. If the point requires answering, it requires answering whatever the stage.

9.69. The reference to the alternative sites at Kirkham and Stakehill is misconceived and rather underlines the point. Sequential testing would be required of those sites too, were they to be promoted for a new prison. The sequential test would show, at least in relation to surface water flood risk, which of the three sites is preferable.

9.70. UWAG deprecates any further delay but wishes the decision on this appeal to be made robustly and in the context of full and complete information. Given the apparent agreement that a national policy requirement on flood risk assessment has been neglected, UWAG suggests that the Inspector takes one of the two courses set out in paragraph 9.65 above.

Flood risk matters: UWAG's response to the appellant's letter of 22 July 2024 [124]

9.71. The question of flood risk is a real issue with the appellant's scheme. The request for a sequential test to be carried out was made by the Inspector on 22 May 2024 and was made because the issue "concerns a relevant planning matter that needs to be addressed to ensure that a robust decision can be made on the appeal proposal, regardless of the length of time that has elapsed since the application was submitted". As previously noted by PINS, "it would not be sufficient to simply note the absence of a sequential test in [the Inspector's] report".

9.72. This is precisely what the appellant now invites the Inspector to do. Having been given the opportunity at a late stage to demonstrate that it is not an issue of concern, the appellant has chosen not to attempt that exercise. The consequential effect of this decision is that it cannot be said with any degree of certainty that the appeal site represents the lowest risk area for this development or that development in current and future medium and high flood risk areas will be avoided. That is what national policy in the PPG requires.

9.73. The appellant accepts that the appeal site includes areas which are at medium and high risk of surface water flooding and accepts that the August 2022 PPG and thus current PPG would require a sequential test to be met with regards to surface water flooding.

9.74. While it is no substitute for a sequential test, inquiry document CD E1 provides a list of shortlisted sites which, amongst other things, identified two possible alternative sites at A5 (Stakehill) and A6 (HMP Kirkham). The appellant has asserted that both sites contain similar localised areas of medium and high risk surface water flooding. A cursory comparison of the flood risk maps suggests Stakehill has a significantly smaller area subject to surface water flooding compared to the appeal site, whilst a comparison with Kirkham requires more detailed examination.

9.75. Other potential sites in CD E1 have been previously dismissed on the basis that they are not owned by the appellant, but the PPG makes clear that lower-risk sites do not need to be owned by the appellant to be considered reasonably available. Any robust sequential test would consider the comparative flood risk environment on these sites too.

9.76. The consequential effect of not providing evidence to show that flood risk is no bar to the proposed development is a recommendation that planning permission is refused for this reason, notwithstanding the conclusions on other issues.

9.77. The appellant accepts a policy breach and submits that this should be attributed limited (presumably negative) weight in the overall planning balance. Yet the appellant provides no indication of how the Inspector is supposed to deal with that concession. Should he, for example, invite all parties to provide updated planning evidence in respect of the overall balance? This is a Green Belt case: the question being whether the harms (including,

[124] CD Q27

presumably, this additional policy breach) are clearly outweighed such that very special circumstances arise.

9.78. UWAG remains of the view that the Inspector should give the SoS the benefit of his considered conclusions, not only on the highway safety issues, but the consequential effect of those conclusions on the overall planning balance. That is even more necessary given that the appellant now accepts there is a further harm relevant to its case, namely the absence of evidence that the site is sequentially preferrable to any alternative site.

9.79. The appellant's own internal justification for declining to do as the Inspector asked and provide evidence of a sequential test is not relevant to the recommendation. However, as to what the appellant has said on the matter, the timeline of this appeal set out in part (i) of its 22 July 2024 letter is irrelevant. The question is what the PPG at the point of recommendation or decision indicates is necessary or required to ensure that a robust decision is made. What was said previously is nothing to the point.

9.80. As to the need for prison development in part (ii) of the appellant's July letter, this was examined exhaustively at the first inquiry and has not been re-opened. No further evidence has been presented or tested. Any imperative for a fast decision should not serve as a pretext for cutting corners or producing anything other than a robust decision. The present issues are a relevant planning matter than needs to be addressed.

9.81. The appellant's additional points on delay in part (iii) of its July letter are highly speculative and are irrelevant when a robust decision is required. The complaint of delay jars somewhat with the fact that the appellant took until now to say it does not intend to produce a sequential test when the request was made by the Inspector on 22 May 2024.

9.82. The appellant's reference to actual risk of harm being low in part (iv) of its July letter does not exclude or negate the requirement for a sequential test in the PPG or provide an alternative route to a robust decision being made. The PPG is clear that sequential testing is the route to sustainable decision-making and ensuring that the development is directed to areas of lowest flood risk from all sources.

9.83. Paragraph 26 of the appeal decision[125] submitted by the appellant is prescriptive stating that "the NPPF is clear that when a site is identified as being at risk of flooding and it fails the sequential test, that development should be refused". In this case, where the robustness of the decision will be heavily scrutinised, the Inspector is urged to report to the SoS that it must be assumed that the site fails the sequential test, or at least that there is no evidence, as a matter of the appellant's own election, that it passes it. The failure even to engage with sequential testing of the site for flood risk, where national policy makes clear that such an approach is required, is a further freestanding reason to reject this flawed and unsustainable scheme.

[125] CD Q25

UWAG's comments on the WMS and draft NPPF published 30 July 2024 [126]

9.84. The draft NPPF is no more than a draft for consultation. It is unlikely to attract any more than very little weight now and is subject to change. UWAG do not consider there are any provisions in the draft that would require specific submissions in respect of this appeal, which should continue to be determined against the current NPPF. Should the NPPF be amended prior to the appeal's determination, UWAG reserves the opportunity to comment on any relevant changes.

9.85. The WMS is entitled 'Building the homes we need' and focuses on residential development which is not relevant to this appeal. On that basis, UWAG does not wish to make any submissions upon its contents.

UWAG's observations on the appellant's comments on the WMS and draft NPPF [127]

9.86. The appellant's letter invites the Inspector to attribute 'material' weight to the draft NPPF and 'significant' weight to the WMS. UWAG consider this to be misguided, and instead invite the Inspector to adopt the approach set out in our comments on the WMS and draft NPPF.

9.87. The appellant is wrong to suggest that the WMS is directed at, or includes consideration of, new prisons. The WMS is concerned with residential development to which prisons are irrelevant. Where examples of public infrastructure are given, those are associated with residential development, or where concerning more strategic development, there is reference to proposals to expand the Nationally Significant Infrastructure Project regime. There is no reference in the WMS to prisons. The WMS is not relevant to the appeal and there is no good basis to suggest it should be ascribed significant weight in the planning balance.

10. The Case for Interested Parties

10.1. The following parties made representations to the Inquiry which are summarised below:

Councillor Craige Southern – Chorley Borough Council (CBC)

10.2. Any route to this development creates bottlenecks for traffic. The proposal would provide local employment, but staff would also travel further. There is no infrastructure such as footpaths. The mini roundabout would shift problems elsewhere. There is only one house on Moss Lane, so it is unclear why the proposed access would be directly opposite. There are several stables which causes issues for horses and equestrians.

Councillor Paul Foster – Leader of South Ribble Borough Council (SRBC)

10.3. SRBC supports the position of CBC and had concerns regarding construction traffic. Ulnes Walton Lane is rural and leads to an urban area to the north. 50% of traffic via School Lane and Dunkirk Lane is not suitable. HGVs will be tempted to use this route and it is unclear how you can physically stop them

[126] CD Q28
[127] CD Q30

from doing so. There is already severe congestion heading towards the M6. There is lots of new housing being developed nearby at the former test track site and elsewhere. Plans to dual the A582 around Leyland have been shelved. The bridge over the River Yarrow between Ulnes Walton and Eccleston is not wide enough for two-way HGV traffic. Councillor Foster records that he was nearly knocked off his bicycle recently.

Councillor Mary Green – SRBC

10.4. The MoJ did nothing previously to address the highway impact of the existing prison development. There would be terrible effects if nothing is done to address impacts from this proposal. There is excessive speeding on Ulnes Walton Lane and no pavements or lighting. Traffic pollution already occurs along the lane. It is a rural location with mists coming off the adjoining fields. Where Ulnes Walton Lane meets the urban edge of Leyland there is a bus stop for school children and a public footpath that crosses the road, but no formal crossing point. Shift patterns at the prison do not allow for car sharing. Staff use the local roads during lunch breaks. New housing developments might mean more staff living nearby. Deliveries to prisons take place regularly. Visitors come by car, taxi and train. There is a need to re-open Midge Hall railway station.

Councillor Michael Green – SRBC and LCC

10.5. Doubling the existing number of prisoners (2,000) would be unsustainable with issues at construction and operational phases. There would be difficulties for deliveries, service providers, and emergency vehicles to access the site. Speed limits are rarely enforced by the police. Most people will drive to the site and traffic movements will occur north and south along Ulnes Walton Lane. There is a need to assess the cumulative effects from new housing developments. There is a lack of traffic calming measures on Ulnes Walton Lane despite it being used for recreational purposes. The A582 around Leyland is busy during peak periods. Public transport is insufficient with buses not regular or adequate. Measures needed include A582 dualling, bus improvements, pedestrian crossings, and the reopening of Midge Hall train station.

Councillor Paul Dodenhoff – UWPC

10.6. UWPC have long campaigned for road safety and paid for speed indicator devices on Ulnes Walton Lane and the A581. Roads are getting busier, and the existing prisons and housing developments do not help on essentially rural roads. The A581 through Ulnes Walton has a narrow carriageway and pavements with various businesses. It can take over 10 minutes to leave private driveways onto the A581. There is not enough capacity for another prison. Driver behaviour is a big issue with overtaking, kerb mounting and so on. It is unconvincing that a mini roundabout at the A581 is appropriate due to congestion at peak times, the impact on cyclists, and the effects on driveways next to the junction. Fatalities are possible and there was a death on New Lane in 2015.

Councillor Nicola Watkinson – UWPC

10.7. There is a weight limit on Ulnes Walton Lane for a good reason, with bends, a narrow carriageway, farm vehicles, and overhanging trees. HGVs are not

monitored. Drivers use their horns to check for oncoming traffic. Grass verges get damaged. Vertical traffic calming measures such as speed bumps would cause noise and disturbance. Horizontal measures such as road narrowing would be preferred. The back road to HMP Garth has been used for previous works to the prisons. Hi-visibility jackets are needed during term-time for children to access the bus stops. Care staff walk on the road to access homes. It is not possible to walk dogs from one's own home. Buses would no longer turn at Wymott if the development goes ahead. Buses are not viable or useful due to limitations. There are 36 properties under one postcode, named rather than numbered, but a sat nav takes you to one point only. There are no mains gas or sewers so there is reliance on oil and septic tank deliveries. There is flooding on the road if culverts fail which causes driving problems. There has been an increase in emergency vehicles using Ulnes Walton Lane.

Alan Whittaker – Clerk to Heskin Parish Council [128]

10.8. Heskin Parish Council supports UWAG, UWPC and CBC. There are highway risks within a 2-3 mile radius including the junctions of New Lane and Lydiate Lane. New Lane has no pavement, with a 60mph, poor visibility at the junction, and a narrow bridge at the southern end into Eccleston. The route to the M6 via Eccleston would be the most attractive but there are various speed limits, parked cars, and accidents. The multi-year construction period would cause much disruption if this route was used [Route 2]. There is also limited road capacity in Croston.

Wendy Porter – Local resident

10.9. Accident data does not reflect near misses and collisions at junctions. Vulnerable road users use Ulnes Walton Lane regularly and there are blind bends for cyclists and horse riders. More people use the road for walking than claimed and there are groups of cyclists. Drivers do not realise that there is housing at the end of Moss Lane. The need for prison spaces is understood, but not here. MoJ have previously sold land at this site. The proposed mitigation measures and the views of the LHA are unconvincing.

Bev Davies – Local resident

10.10. Ulnes Walton Lane is not safe for pedestrians and the bridge over the River Lostock is dangerous. The school to the north on School Lane gets very busy. Alternative sites should be sought. Re-opening Midge Hall station would have traffic issues.

David Batty – Local resident

10.11. There is concern over the accuracy of the number of parking spaces needed and the estimated level of traffic. The original car parks for the existing prisons have had to be enlarged multiple times and vehicles still park on the road. HMP Berwyn only opened in 2017 but its car park has been enlarged too. The amount of parking proposed for the new prison seems to be based on the available space without knocking down existing buildings, rather than the actual number of vehicles likely to visit the development.

[128] Mr Whittaker is also a CBC and LCC councillor

11. Written Representations[129]

11.1. 6 representations were received in August 2023 in the run-up to the initial re-opening date of 19 September 2023. A further 18 representations were received in March 2024 before the rearranged opening date of 25 March 2024, generated in part by the appellant writing to local residents about the alternative scheme for the A581 / Ulnes Walton Lane junction[130]. Finally, another 8 representations[131] were received in April 2024 before the Inquiry resumed after the Easter break.

11.2. Most of these representations focused on traffic concerns covered by the main parties, including congestion, speeding, pollution, noise, emergency service vehicle movements, the safety of pedestrians, school children, cyclists and horse riders, and damage to drains, walls and verges from vehicles. Concerns were expressed about the effect of construction works on traffic movements, including from the works to install proposed road improvements. Comments were also made on the ineffectiveness of proposed traffic calming, bus improvement and travel plan measures, the condition of the roads in wet weather and at night, and the effect of mud, floodwater and/or livestock on the roads. One representor requested the installation of pavements and a 30mph speed limit on New Lane in Eccleston to address traffic problems.

11.3. Representors highlighted the concerns of the Police with the local road infrastructure and challenged the timing of road surveys, claiming they had not been done during prison shift changes. There was criticism of the TA with alleged out of date data and a lack of sufficient future modelling, along with queries on the modal split and the different timings of school rush hour. References were made to accidents and incidents beyond those recorded as PIA following police callouts. One representor described the likely experience of an HGV driver using Ulnes Walton Lane and the potential problems. Others referred to existing rat running issues along routes like Slater Lane. Another highlighted concerns with the capacity of the proposed car parking area.

11.4. Comments were also expressed on increased sewer and water demands, worries about anti-social behaviour arising from a third prison, the adequacy of public consultation, and the need to look for alternative sites. One person said they had no objection to the proposal and noted that Nixon Lane could be used for construction traffic, the new prison would provide work for local people, and that a third prison was part of the original plans in the 1970s.

11.5. As noted above, UWPC submitted a late representation and recent appeal decision[132] by email on 8 May 2024 which I accepted after consulting with the main parties. It related to flood risk and noted that parts of the site are identified in the FRA as being of medium or high risk of surface water flooding. The appeal decision at paragraphs 26 and 27 makes it clear that as a matter of government policy, when a site is at risk of flooding from any source, it would need to first satisfy a sequential test. The proposal has not been subject to any

[129] CD P5 to P36
[130] CD P3 and P4
[131] CD P29 to P36
[132] CD Q20a and Q20b

form of sequential test and so should the SoS decide to confirm his original minded to grant letter, this would be directly contrary to government policy.

12. Conditions and Obligations

12.1. My first report contains 34 suggested conditions in Annex 1. Due to the additional highway evidence, revisions to Conditions 3 and 4 have been proposed by the parties, along with a new Condition 35[133]. Annex 1 contains these amended/additional conditions along with all the other conditions from the first report for ease of reference. Minor changes have been made to the reasoning for some conditions to reflect changes in the numbering of NPPF paragraphs. There is now only one version of Condition 4, as the parties agree that the off-site highway works need to be completed before construction of the new prison begins.

12.2. Should the SoS decide to grant planning permission, I consider all the conditions in Annex 1 of this report to be necessary and consistent with the tests in NPPF paragraph 56. The reasons for each condition, including why some need to be pre-commencement, are set out in the annex. The appellant has already provided written agreement[134] for any pre-commencement conditions relating to the full permission element of the proposal.

12.3. An updated S106 agreement[135] was completed and executed on 18 March 2024 before the Inquiry reopened. The principal change from the original S106 agreement is the removal of a financial contribution to the A581 Corridor Improvement Scheme. This is because the works to the A581 / Ulnes Walton Lane junction can be secured via a negatively worded condition requiring the works to be carried out before commencement of the new prison via a Section 278 agreement with the LHA. There are minor changes including a new clause 3.4 which states that the updated S106 replaces the original S106 agreement in its entirety and the original agreement shall no longer be valid and shall cease to have effect.

12.4. The Council has provided a CIL Regulation 122 Statement[136] setting out the justification for each obligation. Regulation 122 of the CIL Regulations 2010 (as amended) states that planning obligations must be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. These three statutory tests are repeated in NPPF paragraph 57.

12.5. Schedules 1 to 5 of the S106 contain the site plan, phasing plan, bowling green and club house plan, the biodiversity net gain area calculation plan, and the description of development. Schedule 6 would secure the biodiversity net gain enhancements that are being advanced as a benefit of the proposal, as well as the monitoring of these enhancements. Biodiversity enhancements are supported by Central Lancashire Core Strategy (CLCS) Policy 22 and CLP Policies BNE9 and BNE11 which seek opportunities to conserve and enhance

[133] CD Q7
[134] CD K26 paragraph 4
[135] CD Q5
[136] CD Q6

habitats and species. Therefore, these obligations meet the three statutory tests.

12.6. Schedule 6 would also ensure the delivery and maintenance of the replacement bowling green and club house and require it to be made available to Wymott Bowling Club or any successor/alternative club prior to the existing facilities being made unavailable. This would secure the uninterrupted continuation of sports facilities and comply with NPPF paragraph 103, CLCS Policy 24 and CLP Policy HW2 which seek to protect access to sport. Therefore, this obligation meets the three statutory tests.

12.7. Schedule 7 would provide an enhanced bus service contribution to improve the frequency of the existing Preston to Croston bus service that goes via the site. It would also provide an additional bus service contribution to allow for a counterclockwise two-way service between Preston and Croston (currently the bus does not provide a return journey to Croston and its train station). These obligations would comply with CLCS Policies 2 and 3 as well as NPPF paragraph 116 which seek to improve public transport and sustainable travel and thus would meet the three statutory tests.

12.8. Schedule 7 would also provide funding to resurface the existing cycle route between the site and Leyland via Nixon Lane with improved signage. This would enhance sustainable modes of transport and comply with CLCS Policy 3 and CLP Policy ST1. The schedule would also provide a contribution towards the monitoring of the Travel Plan by the LHA to encourage the widest range of travel choices in accordance with CLCS Policy 3 and NPPF paragraph 117. Therefore, these obligations would meet the three statutory tests.

12.9. Schedules 8 and 9 contain the Council's and the County Council's covenants regarding the discharge of obligations and the spending of contributions. All the obligations set out in the updated S106 agreement dated 18 March 2024 meet the three tests set out in Regulation 122 of the CIL Regulations 2010 and NPPF paragraph 57. Therefore, they can be taken into account.

13. Inspector's Conclusions

13.1. From the evidence before me at the re-opened Inquiry, the written representations, and my further inspection of the appeal site and the surrounding area, I have reached the following conclusions. The numbers in square brackets refer to earlier paragraphs in this report which are relevant to my conclusions.

Highway safety

Overarching points

13.2. Both my first report (IR) and the SoS minded to grant letter (DL) set out various concerns relating to highway safety at IR paragraphs 13.18 to 13.36 and DL paragraphs 15 to 18. Both concluded that the proposal would exacerbate existing hazards and risks within the local road network, where the appellant's evidence on the proposed mitigation measures was lacking in detail and confidence that they would have the desired effects. Thus, the proposal was considered at the time to have an unacceptable effect on highway safety. The purpose of the reopened Inquiry has been to consider whether further evidence on highway matters is sufficient to avoid an unacceptable effect. **[7.1, 8.1, 8.3, 9.3, 9.8-9.10, 9.14, 9.15]**

13.3. Regard should again be had to the development plan, with any decision made in accordance with the plan unless material considerations indicate otherwise. Policy BNE1(d) of the Chorley Local Plan 2012 (CLP) seeks, amongst other things, that new development does not prejudice highway safety, pedestrian safety or the free flow of traffic. **[3.1]**

13.4. NPPF paragraph 115 is a key test for this main issue, insofar as the proposed development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety. If the paragraph is not passed, this is a strong indication against the grant of planning permission. There is a need to consider a range of matters to conclude against this paragraph, including the likelihood and frequency of hazards and risks. The paragraph allows for acceptable impacts on highway safety, to the extent that there may be some undesirable effects but not unacceptable ones. However, even if the paragraph is passed, there is still a need to consider the weight to any undesirable and negative effects in the overall balance before making a final decision on the proposal. **[7.2(a)(b)(c), 8.3, 9.8]**

13.5. There has been considerable additional evidence on highway matters produced since the SoS minded to grant letter, which has been tested in detail at the reopened Inquiry. It is important as the decision-maker to strike a balance between compliance with design standards and guidance on the one hand, and professional judgments and local observations on the other. This may necessitate looking at seemingly tiny details and alleged worst-case scenarios to robustly test the evidence. There would be a detailed design process if planning permission is granted, but there needs to be sufficient confidence in the highway safety effects at this stage. **[7.2(c)(d), 9.14, 9.15]**

13.6. As with the 2022 Inquiry, there is no objection from the LHA to the latest highway evidence or mitigation proposals. However, provided that clear and cogent reasons are set out in a report or decision, it is acceptable for a

decision-maker to reach a different position to a statutory consultee on any proposal. The input from the LHA at both the 2022 Inquiry and the reopened Inquiry has been limited to written statements. It remains open for the decision-maker to disagree with the LHA if there are reasons for doing so. **[8.28, 9.11-9.13]**

13.7. The appellant relies on PIA data, which I accept is independent, objective and verified and carries significant weight. It is evident that there are no clusters or patterns of PIA in the local road network. However, it is also apparent from UWAG and other residents that there are multiple examples of poor traffic behaviour, congestion, tight junctions and bends, near misses, and unreported incidents. It is difficult to fully verify these examples, but from the photographs, videos and personal statements I have seen, it is clear that Ulnes Walton Lane and the surrounding area does experience a range of traffic problems that do not always translate into specific PIA incidents. Thus, while these examples do not carry as much weight as PIA data, I nevertheless afford them moderate weight. **[7.2(e)(f), 8.7, 10.3, 10.6, 10.7, 10.9, 11.2, 11.3]**

Moss Lane

13.8. My concerns with Moss Lane following the 2022 Inquiry are set out in IR paragraph 13.27. I considered that the proposed traffic calming measures involving 'slow' road markings and a narrowing of the carriageway in two locations either side of the proposed new prison access would assist with traffic speeds on the approach to the junction. However, I found that given the length of Moss Lane, vehicles would likely be tempted to speed further south. **[7.3-7.4]**

13.9. The latest traffic calming measures for Moss Lane now include four locations with 'slow' road markings and carriageway narrowing; two locations still either side of the proposed access and two locations between the proposed access and the existing prison access. A raised table would be provided at the junction between Moss Lane and the existing access. Dragon's teeth road markings are also proposed at either end of Moss Lane. **[7.5, 8.25]**

13.10. While most of the latest measures involve paint markings, the increased amount and frequency of such markings would provide further assistance with traffic speeds on the approach to the proposed access in the northern half of Moss Lane. The measures would also help to curtail traffic speeds further south, particularly in terms of the raised table. The current road surfacing is poor and may suppress vehicle speeds. However, I am satisfied that once resurfaced, the measures would discourage traffic from speeding along Moss Lane. Therefore, in conclusion on Moss Lane itself, there would be no unacceptable impact on highway safety. **[7.6-7.9, 8.25, 9.2(c), 9.52]**

Ulnes Walton Lane / Moss Lane junction

13.11. Ulnes Walton Lane remains a narrow 40mph country lane with several bends. My concerns with the junction at Moss Lane following the 2022 Inquiry are set out in IR paragraphs 13.22 to 13.24. I identified issues with forward visibility for vehicles turning right into Moss Lane from Ulnes Walton Lane, with an increase in queuing and waiting times for such vehicles. I noted the current need to walk on the road or verges to access the post box and bus stops either side of the junction and the increased risk of conflict with pedestrians from

more vehicles using the junction with the development in place. I considered the lack of detail regarding traffic calming measures and the absence of a footway to access the northbound bus stop would not adequately mitigate the risk of pedestrian and vehicle conflict. **[7.10, 7.17, 8.8, 8.9, 8.20, 9.50]**

13.12. Vehicles: The debate regarding forward visibility has focussed on which standards are more applicable: MfS2 or the DMRB. It is not disputed that the 85th percentile traffic speeds are below 40mph in this location based on UWAG's traffic survey work. This would require an SSD of 53m based on MfS2 as advocated by the appellant or an SSD of 120m based on the DMRB as advocated by the Council and UWAG. The forward visibility has been measured off plan as 63m by the Council, on site as 54m by the appellant, and on site as 50m by UWAG. **[7.20, 7.21, 8.10, 8.13-8.15, 8.17, 9.48, 9.49]**

13.13. MfS2 paragraph 1.3.2 makes it clear that as a starting point for any scheme affecting non-trunk roads (as is the case with this appeal), designers should start with MfS. Paragraph 1.3.6 states that it is only where actual speeds are above 40mph for significant periods of the day that DMRB parameters for SSD are recommended, with actual speed measurements undertaken where there is doubt. Paragraph 1.3.7 states that in rural areas many parts of the highway network are subject to the national speed limit but have traffic speeds significantly below 60mph. Where speeds are lower than 40mph, MfS SSD parameters are recommended. These two paragraphs essentially explain what is meant by the yellow dot in Table 1.1 for SSD in speed limits of 40 or 50+mph and the need to have regard to local context. **[7.22, 7.23, 8.15]**

13.14. The HS2 Rural Road Design Criteria notes the gap between Manual for Streets (the first version) and the DMRB which it claims has been partly addressed by MfS2 although also notes that MfS2 is principally focussed on busier urban streets. At section A.9, the HS2 document indicates that based on an 85th percentile speed of between 34-40mph, the design speed for a rural road is 60kph. Paragraph A.12.1 says that for rural roads with a design speed greater than 50kph, minimum SSD values should accord with the DMRB. **[8.16]**

13.15. However, MfS2 remains the starting point for any non-trunk road. I consider that the specific approach in MfS2 to SSD in rural areas addresses the perceived gap between the first Manual for Streets and the DMRB for this issue. Moreover, while the HS2 document provides some helpful context, it is intended for a specific national infrastructure project and in some sections (such as carriageway width) focusses on the provision of new rural roads which is not applicable here. With observed 85th percentile speeds of 34.7mph, it is reasonable for MfS2 to apply in terms of SSD rather than the DMRB. **[7.40, 8.15-8.17, 9.48]**

13.16. The parties' SSD measurements differ by up to 13m. Although the Council's is comfortably above the 53m MfS2 requirement, it was measured off plan only. The other two measurements were done on site and are numerically closer together. Thus, they are preferable. The appellant's measurement is only just above the requirement and UWAG's is slightly below. Even using MfS2, neither give me great comfort nor dissuade me from my previous finding that forward visibility looking south for vehicles turning right into Moss Lane is restricted. This means that approaching vehicles are often only seen just as

drivers make the turn and there remains a risk of collision. The latest traffic calming measures (discussed below) are also an indication that there are hazards at this junction due to speeds and the bend. Thus, the forward visibility may not be unacceptable based on the appellant's measurement and MfS2, but neither is it desirable. **[7.21, 8.13, 8.14, 8.18, 9.2(a), 9.49, 9.50]**

13.17. IR paragraph 13.22 notes that the junction is close to capacity based on an estimated 0.82 RFC and a Passenger to Car Unit queue of 4.4 vehicles for the right-hand turn into Moss Lane. These figures from the TA have not been updated, but the appellant's traffic surveys from February 2023 show lower flows than recorded for the TA. When extrapolated forward to a more likely opening date of 2028 (rather than the anticipated opening year of 2025 in the TA), the flows with the development in place would be lower than the TA indicates. This indicates the robustness of the TA, although there is some concern about the representative nature of February as a neutral month for traffic survey. Nevertheless, sufficient junction capacity does not fully address my concerns about forward visibility for turning vehicles. **[7.17, 7.24, 9.39, 9.40]**

13.18. It is evident that multiple emergency vehicles visit the existing two prisons each month and that such numbers would likely increase with the proposed prison. The data obtained by UWAG is unclear because it interprets the number of emergency calls from the existing prisons as representing the number of vehicles, which might not always be the case. However, emergency vehicles travelling at speed along Ulnes Walton Lane and making the turn into Moss Lane are at risk from collision due to the restricted visibility at this junction. **[7.25]**

13.19. Unlike the 2022 Inquiry, there are now details of proposed traffic calming measures at this junction including surface treatment and new signage warning of the bend and the speed limit. I agree that the exact surface material and sign location can be finalised at the detailed design stage. The proposed measures would help to warn of hazards ahead and help to address speeds to some extent. However, while the measures would cover around 110m, nothing additional is proposed further south on Ulnes Walton Lane until the A581 junction. IR paragraph 13.24 does not set a limit to how far south further measures should go. Given the various risks and hazards along this route (see the discussion on construction traffic below), this is a missed opportunity to address and improve traffic conditions. **[7.18, 7.19, 7.20, 8.18, 8.19, 10.5]**

13.20. Pedestrians: The provision of a 2m footway from Moss Lane to the northbound bus stop of Ulnes Walton Lane (and a crossing point on Moss Lane) addresses my previous concern about the risk of vehicular conflict with pedestrians. There would be enough width in the footway to accommodate signage and a cabinet box and provide space for people with wheelchairs or pushchairs to move safely. However, nothing has been proposed to address access to the post box on the other side of the junction or access to the southbound bus stop. The appellant's survey of June 2023 notes the low use of the post box. However, IR paragraph 13.23 already acknowledged the level of use but recognised these features are relied upon by residents on this part of

Ulnes Walton Lane and people accessing the existing prisons. **[7.11-7.14, 8.21, 9.2(b), 9.51]**

13.21. It is common ground that the southbound bus stop would be brought back into use as part of the appellant's S106 additional bus service contribution to provide two-way services between Preston and Croston. I have already found that this contribution would meet the statutory tests. People accessing the proposed prison by bus would likely use the Willow Road bus stop in either direction of travel. However, people accessing the existing prisons may well use the southbound bus stop to return to Croston. They would have to cross Ulnes Walton Lane with its increased traffic flows and then either walk on the road or on a grass verge to reach the bus stop. Accessing the post box would require crossing a busier junction to stand on a grass verge. Therefore, for the southbound bus stop or the post box, there would remain an increased risk of conflict between vehicles and pedestrians. **[7.15, 8.22-8.24, 9.2(b), 9.51]**

13.22. Concluding on the Ulnes Walton Lane / Moss Lane junction, while the forward visibility for vehicles turning right into Moss Lane may not be unacceptable in terms of meeting the minimum distances, it is restricted and undesirable. There is sufficient junction capacity and some traffic calming measures proposed to tackle speeds and manoeuvres, but a missed opportunity to address additional traffic calming measures further south along Ulnes Walton Lane. Access to the northbound bus stop has been resolved, but nothing has been provided for the post box and southbound bus stop despite previous concerns, which indicates an unacceptable impact on highway safety insofar as this element is concerned.

A581 / Ulnes Walton Lane junction

13.23. IR paragraphs 13.28 to 13.32 set out my concerns with the A581 / Ulnes Walton Lane junction following the 2022 Inquiry. The parties agreed, and still agree, that the junction would be over-capacity with the development in place and that mitigation is needed to address this impact. While the appellant was content to implement the LHA's preferred option of a mini roundabout, there were no details or certainty that a scheme could be delivered. **[7.27, 9.17-9.19]**

13.24. As noted above, the appellant has put forward two versions of a mini roundabout design (the 2023 and 2024 designs). The 2023 design has not been withdrawn by the appellant and so I have considered it alongside the 2024 design. The two designs are similar, but the 2024 design makes use of more land around the junction to address visibility issues and achieve a larger roundabout. The parties disagree about the designs on several points outlined below. **[7.28, 7.29, 8.29, 9.19, 9.20, 9.22, 9.23]**

13.25. <u>Junction visibility:</u> The 2023 design would have only around 50% of the required visibility splays in either direction from Ulnes Walton Lane onto the A581. The existence of other roundabouts in the county with substandard visibility does not provide much reassurance as it is not clear why or when such junctions were installed. The substandard visibility would have an unacceptable effect on highway safety as there would be insufficient time to see and react to oncoming traffic. The 2024 design, due to the additional land take, would achieve compliant visibility splays. The parties agree there would

be no unacceptable visibility concerns and I have no reason to disagree. **[7.30(d), 9.2(d), 9.24-9.29]**

13.26. Overrunning: The Hydrock RSA for the 2023 design identified concerns with larger vehicles overrunning into the opposing carriageway due to the lack of necessary road space. While vehicles are unlikely to be travelling above 15kph while navigating the mini roundabout, even at 5kph the swept path analysis shows overrunning. The existing junction also causes overrunning, but the new junction would be used by a significant number of HGVs during the five year construction period and more traffic overall during the operational phase including larger vehicles. There would be an increased risk of vehicle collision and so it would not be accurate to say the 2023 design would result in a betterment over the existing situation or to justify the risk through reference to capacity improvements. Thus, the 2023 design would have an unacceptable effect in terms of overrunning. **[9.30-9.32]**

13.27. The 2024 design would lessen the effect of overrunning with even the largest vehicles not straying into the opposing carriageway. Articulated lorries would, however, still overrun the hatched area turning left from Ulnes Walton Lane onto the A581. The RSA for the 2024 design recommends splitter islands on the hatched area to provide better definition of the mini roundabout to reduce driver confusion and avoid collisions. This would conflict with the above left turn manoeuvre though. However, better definition can be achieved through the proposed use of a raised table along with appropriate signage. There might be some erosion of road markings through HGV use, but this can be periodically repainted. Therefore, the 2024 design would have an acceptable effect with regards to overrunning. **[7.30(g)(h)(i), 9.2(f), 9.33-9.35]**

13.28. Private driveways: There are several properties to the south of the junction with private driveways onto the A581. A mini roundabout would change the junction priorities with all vehicles needing to give way to the right. With both the 2023 and 2024 designs, vehicles accessing or egressing the driveways would need to carry out awkward manoeuvres across the roundabout. It is another reason why splitter islands would not be appropriate as they would block some of these manoeuvres altogether. **[7.30(i), 9.36]**

13.29. While good practice guidance discourages mini roundabouts with more than 5 arms, driveways do not function in the same way as roads and therefore do not constitute arms. There are multiple examples of mini roundabouts with private driveways across Lancashire and I visited 10 during my site visit. No two examples were identical. Some properties had more buffer space between the driveway and the roundabout. Some of the junctions were in seemingly quieter residential locations. However, they demonstrate that it is possible for driveways and mini roundabouts to coexist. **[7.30(b), 9.2(g)]**

13.30. The driveways are already there and make difficult manoeuvres on and off the A581. No junction solution would be problem-free. Proposed traffic calming measures including the raised table, and the need for traffic to give way to the right, means that vehicles are likely to be travelling more slowly and cautiously. Therefore, while there is the potential for confusion and collisions at the proposed junction, I do not consider that either the 2023 or the 2024 design to be unacceptable in relation to private driveways. **[7.30(b)(k), 8.27, 9.2(f)(g), 9.37]**

13.31. Non-motorised users (NMU): Although the 2023 design was subject to two RSAs in February 2023, an NMU survey of Ulnes Walton Lane including this junction was only carried out in June 2023. The survey data does not appear to have been subsequently provided to the auditors, including the RSA of the 2024 design. While there were no equestrians and few pedestrians crossing the junction during the two survey dates, there were 243 cycle movements on a Thursday and 372 on a Saturday (between 7am and 7pm). Ulnes Walton Lane forms part of the Lancashire Cycleway and is popular with recreational cyclists. These numbers may not match the levels of cyclists seen in some urban areas, but they are sufficiently frequent and likely to be concentrated at key times to present a hazard and risk to the junction. The absence of the survey data from the RSA process creates uncertainty as to whether the junction in either design would have an acceptable effect on highway safety. **[7.16, 7.30(l), 9.38]**

13.32. Capacity modelling: Mini roundabouts can have unbalanced arms, where a side road might have significantly fewer traffic movements resulting in traffic on the main road assuming they still have priority at the junction and failing to give way. The modelled traffic flows to and from Ulnes Walton Lane would represent 81% of the A581 flow in the AM peak, which would be significantly more than the minimum 10-15% recommended in the good practice guidance. The total daily vehicle movements would be around 4,000 per day, again significantly higher than the good practice guidance minimum of 500 per day for side roads. Although there is a warning in the modelling software about unbalanced arms, this is based on a different calculation looking at the total approach flows rather than the proportion of traffic turning. **[7.30(c), 9.43]**

13.33. IR paragraph 13.28 notes that the existing right-hand turn from the A581 into Ulnes Walton Lane in the AM peak at the 2021 baseline is almost at capacity at 0.84 RFC and would be over-capacity in 2025 and 2026 with the development in place at around 1.1 RFC. Queues at this turn in the AM peak would increase from nearly 32 seconds to over 210 seconds by 2026. Even without the development, by 2025 the turn would be over acceptable capacity thresholds at 0.90 RFC according to the TA. **[7.30(e)(f), 9.39]**

13.34. The modelling for the 2024 design indicates that in the 2025 opening year with development, the right turn from the A581 into Ulnes Walton Lane would be just under capacity at 0.83 RFC and the left turn from the A581 would be over acceptable capacity thresholds at 0.87 RFC (this appears due to the left turn approach needing to give way to the right on the mini roundabout where it currently has priority). Nevertheless, these RFC figures demonstrate that the mini roundabout would function better than the existing junction with the development in place (1.1 RFC). There would be some increase in overall junction delay in 2025 with the development in place (27.6 seconds in the AM peak and 15.28 seconds in the PM peak) compared to junction delay in 2025 without the development (21.17 seconds in the AM peak and 3.98 seconds in the PM peak). However, compared to the forecast delay of over 210 seconds by 2026 for the existing right-hand turn with the development in place, this increase of a few seconds would not be unacceptable. **[7.30(f), 9.2(e), 9.41, 9.42]**

13.35. The February 2023 traffic survey carried out by the appellant revealed lower traffic flows than the measured 2021 data which appears in the TA. However,

while February is not a typical month for survey work, the TA has continued to be used as part of the appellant's assessment of capacity which provides additional robustness to the above findings. Using the 2023 data and traffic growth factors from TEMPro, the appellant has extrapolated forward the AM and PM peaks to the development being in place in 2028 rather than 2026. This shows that the peaks in 2028 would be lower than the forecast 2026 peaks in the TA. Even if the development is not in place until 2030, the peaks are unlikely to exceed the forecast TA 2026 peaks. Therefore, the lack of modelling of junction performance for 2030 is not unacceptable. Nearby housing development such as Leyland Test Track will have been accounted for in the TEMPro data. **[7.27, 7.30(e), 9.39, 9.40]**

13.36. The capacity modelling assumes the standard AM peak is between 7 and 8am, with the peak for construction traffic falling between 6 and 7am as work would begin on site at 7am. If the construction traffic peak was at the same time as the standard peak because construction work could not start until 8am, then the effect on the junction would be much worse with RFCs above 1. However, updated noise assessment work by the appellant demonstrates that the effect of vehicles arriving on site from 6am would not have an unacceptable effect on nearby properties in terms of noise. Therefore, it seems probable that the two peaks can be kept separate, and the junction capacity effects would be acceptable **[7.35, 9.44]**

13.37. Concluding on the A581 / Ulnes Walton Lane junction, the principle of a mini roundabout in this location is not out of the question and it depends on the design and assessment of effects. The 2023 design would have serious problems in terms of junction visibility and overrunning, and uncertain effects regarding NMUs. Therefore, it would have an unacceptable impact on highway safety. The 2024 design addresses concerns regarding visibility and overrunning and would not cause any worsening of existing capacity issues. Sufficient traffic calming measures would avoid unacceptable effects in terms of the private driveways. However, there remains uncertainty regarding the effects on NMUs due to the lack of assessment. Therefore, it is not possible to conclude that the design would be acceptable. **[7.30(a), 7.31, 8.29, 9.23, 9.46, 9.47]**

Construction traffic

13.38. IR paragraphs 13.33 and 13.34 noted that construction traffic had not been modelled or assessed. Concern was expressed that a significant amount of traffic would be using a local road network where there is a need to secure additional mitigation, with reservations regarding the extent and effectiveness of the proposed mitigation measures. Additional evidence has now been provided by the appellant and tested at the reopened Inquiry. It is accepted by all parties that although the construction period is temporary, it will last for a considerable period and the impacts cannot simply be ignored. The dispute focuses on whether those impacts would be unacceptable. **[7.32, 7.33, 8.30, 8.31, 9.53]**

13.39. At the 2022 Inquiry, the construction period was forecast to last for three years with around 146 HGVs per day and a six-week peak construction period with over 2,000 car movements and 100 HGV movements per day. The construction period is now forecast to take five years, with four months of HGV

movements of between 174-199 a day and a 20-month peak period within which 80 weeks will have over 100 HGV moments at day[137]. This equates to an HGV every minute and a half on Ulnes Walton Lane. **[7.33, 8,30, 8.32, 9.2(h), 9.53]**

13.40. All construction traffic would use Ulnes Walton Lane and Moss Lane. Alternative routes such as via Nixon Lane may have been used for the construction of the existing prisons, but these are not being considered now. Five potential routes between the M6 and the site have been assessed by a specialist logistics company driving each route with large vehicles. The first three routes have effectively been ruled out due to the need for traffic to pass through congested residential or retail areas in places like Leyland, Eccleston and Heskin with tight junctions and bridges. I have no reason to disagree having driven these three routes. **[7.36, 8.34, 10.3, 11.4]**

13.41. Routes 4 and 5 would avoid the above areas of congestion and would both approach the site via the A581 and the southern half of Ulnes Walton Lane. However, based on the evidence presented and my experience of driving both routes, Route 4 would still need to travel through a busy residential and retail area along Balshaw Lane in Euxton. Route 5 would experience peak hour congestion on the A582 and the B5253 but it is a relatively wide and residential-free route as far as Ulnes Walton and so could be considered as the most preferable option between the M6 and the A581. Apart from using Leyland Lane rather than Dunkirk Lane, most of Route 5 is the same as Route 3 and has also been subject to a vehicle tracking exercise. **[7.36, 8.34, 9.2(h)]**

13.42. Route 5 (and 4) would require traffic to navigate the A581 / Ulnes Walton Lane junction before heading up to Moss Lane. Conditions 3 and 4 as drafted in Annex 1 to this report require works to this junction to be completed before construction of phase 4 (the prison) begins. As noted earlier, the 2024 design would largely accommodate HGV manoeuvres based on the swept path analysis. The effects of construction traffic on the junction's capacity are modelled to be similar to the effects of operational traffic described above. However, the lack of assessment of potential issues for non-motorised users, especially cyclists, is concerning as stated above. **[7.34, 9.21, 9.22]**

13.43. Ulnes Walton Lane itself is subject to a 7.5 tonne vehicle limit except for access. It is narrow in several places and no wider than 6.11m. The advice in the HS2 Rural Road Design Criteria that two-way rural roads should be at least 6.8m wide applies to new roads only. Nevertheless, even based on the appellant's own analysis, nearly 50% of the 1.5km section of Ulnes Walton Lane between the A581 and Moss Lane is too narrow for two HGVs to pass. Like any traffic movement, HGVs will not depart at strict intervals or travel at the same speeds. Thus, it is likely that at a rate of one HGV movement every 90 seconds along a 1.5km section of road, larger vehicles risk meeting each other head-on, particularly as the road is already used by tractors, buses, delivery lorries and emergency services. **[7.38, 8.33, 8.35, 8.39, 9.2(h)]**

[137] The appellant's figures in paragraph 7.33 refer to one-way movements whereas the figures here are overall totals.

13.44. Footage from UWAG and other residents shows that locations such as Lostock Bridge are passable, but only just and at very slow speeds. Forward visibility is restricted in places making it difficult to react. Hopefully drivers would be able to stop and give way as appropriate but even this creates hazards, especially around bends. The overtaking of non-motorised users would be challenging, although drivers are required by the Highway Code to maintain a safe distance behind if unable to overtake properly. The lack of PIA does not obscure the difficulties large volumes of HGVs would experience travelling along Ulnes Walton Lane and the risks that would increase for other road users. **[7.37, 7.38, 8.36, 9.53]**

13.45. Mitigation measures for construction traffic include junction improvements at the A581 and Moss Lane ends of Ulnes Walton Lane, although these measures are not without their limitations in terms of assessment of non-motorised users and the extent of forward visibility respectively. No physical mitigation measures are proposed along the 1.5km section of Ulnes Walton Lane between these two junctions. Temporary traffic lights for places like Lostock Bridge have not been fully assessed or discussed with the LHA and could potentially need to be operational for up to five years. Condition 20 requires the approval of a CTMP that would address matters such as hours of operation, routeing, daily risk assessments, and induction training. This would help to reduce some of the risks and hazards, but the physical limitations and hazards of Ulnes Walton Lane would remain. **[7.39, 8.38, 9.54, 10.3]**

13.46. IR paragraphs 13.37 to 13.45 and DL paragraph 19 considered noise and disturbance effects and concluded no unacceptable effects would occur at the construction (or operational) stage. The noise assessment has been updated to account for earlier start times for construction traffic. No unacceptable effects on Windy Harbour have been identified. The updated assessment does not look beyond Moss Lane and the junction with Ulnes Walton Lane. However, these are quieter residential locations than properties along the main road such as the A581 and so the increase in traffic movements at the construction stage is unlikely to cause unacceptable noise effects elsewhere **[7.35, 9.45]**

13.47. Concluding on construction traffic, Ulnes Walton Lane is not unique as a narrow country lane either locally or nationally. Neither is a rural location such as this for a proposed large-scale regional or national infrastructure project. However, based on the number of HGV movements over a lengthy construction period, where several hazards and risks exist, the impacts on highway safety could be regarded as unacceptable. Even if the SoS disagrees, there would be adverse effects that should be afforded significant weight against the proposal. **[7.41, 8.37, 9.2(h), 9.54, 9.55, 9.56]**

Other highway safety matters

13.48. As noted in IR paragraph 13.76, it has not been demonstrated that the suggested reopening of Midge Hall railway station would alter travel behaviour patterns given its distance from the site and the need to still rely on private motor transport to complete the journey from the station. However, improvements to bus services via S106 contributions would help to provide better public transport access to the prisons. While there is a desire to dual the A582 and address congestion to and from the M6, there is little evidence to

show that this proposal would materially worsen such problems. **[10.2, 10.3, 10.4, 10.5, 10.8, 10.10]**

13.49. Flood water on roads such as Ulnes Walton Lane creates additional hazards, although this is an existing issue for the LHA to resolve through highway drainage solutions. The proposal has been designed to provide sufficient parking on site to meet demand notwithstanding the concerns regarding overspill parking onto Moss Lane and other local roads. There is no substantive evidence to demonstrate that the TA is out of date or that the modelling and modal splits are insufficient. **[10.7, 10.11, 11.2, 11.3]**

Conclusions on highway safety

13.50. Some of my previous concerns following the 2022 Inquiry have now been addressed in relation to Moss Lane traffic calming, access to the northbound bus stop on Ulnes Walton Lane, and junction capacity turning right into Moss Lane. While the 2023 design for the A581 / Ulnes Walton Lane would have an unacceptable impact on highway safety, the 2024 design is generally acceptable apart from uncertainties relating to the effects on non-motorised users of the junction.

13.51. However, there are several areas of concern chiefly relating to Ulnes Walton Lane itself. Traffic calming measures are limited to the A581 and Moss Lane junctions but there are hazards with bends and poor visibility between the two. Some mitigation has been proposed for the right turn into Moss Lane, but there is no mitigation proposed for access to the post box or southbound bus stop despite this being raised as an issue previously. Significant levels of construction traffic over a lengthy period along Ulnes Walton Lane creates several risks between HGVs and other more vulnerable road users, particularly cyclists who use the lane regularly. The lack of PIA data does not invalidate multiple incidents and near misses presented by UWAG and other residents. **[8.40, 9.57]**

13.52. In conclusion, while the proposed mitigation measures have improved some of the highway impacts associated with the proposed development, there remain unmitigated and uncertain effects that would exacerbate existing hazards and risks within the local road network. Therefore, I find that the proposal would continue to have an unacceptable impact on highway safety contrary to CLP Policy BNE1(d) and NPPF paragraph 115. This weighs heavily against the proposal in the overall planning balance. **[7.42, 8.41, 9.58]**

13.53. Even if the SoS disagrees and considers the impacts are acceptable, there would still be several notable adverse effects on highway safety associated with the proposed development. This would need to be weighed in the overall balance. **[8.42, 9.59]**

Flood Risk

13.54. While the national planning policy position at the time of the 2022 Inquiry did not expressly require proposals to carry out the sequential test for areas at risk of surface water flooding, the parties accept that such a requirement now exists based on the current PPG and NPPF. Even though, as noted by IR paragraph 13.83, the surface water drainage scheme indicates there would be no worsening of any existing flooding issues, the PPG now states that the

sequential test still needs to be satisfied. **[3.3-3.5, 7.43, 7.44, 7.45(b), 7.47(d), 7.49, 8.43-8.45, 9.60, 9.61, 9.67, 9.73, 9.79, 9.82]**

13.55. This necessity was reflected in my instructions of 22 May 2024 requiring a sequential test to be carried out. The delay in the appellant's response to these instructions was influenced by the general election, but it is now clear that they do not intend to carry out such a test. The alternative sites exercise conducted before the 2022 Inquiry does not meet the requirements of a sequential test, even if it suggests that at least the Stakehill site has less surface water flood risk. **[7.45(d), 7.46, 9.63, 9.69, 9.71, 9.72, 9.74, 9.75]**

13.56. The sequential test is a policy requirement rather than a legal one. However, the failure to carry out the test still requires the decision maker to afford weight to any policy conflict. That weight should not be influenced by the lateness of the realisation that a sequential test was needed. It is unfortunate that the need for a test was not identified sooner, but policy requirements can change at any point, and in this case the change had been in place since August 2022. **[7.48, 7.50, 9.68, 9.79]**

13.57. The IR and DL already address the need for the development and the SoS has attributed significant weight to this need. The matter has not been re-assessed at the reopened Inquiry but it is likely that the need has not decreased. It is also possible that a sequential test could take many months to complete, although the absence of any specific methodology or timeframe from the appellant, despite my request, makes it hard to quantify precisely. However, questions of need and timescales could apply to any form of development and should be considered as part of the planning balance. They should not be used to diminish the weight to be given to the lack of a sequential test. **[7.45(a)(c), 7.47(a)(b)(c), 9.66, 9.80, 9.81]**

13.58. The sequential test is a requirement of national policy. The absence of a test means that it is not possible to conclude that there are no sequentially preferable and reasonably available sites to the appeal site in terms of flood risk matters. Therefore, the policy conflict should be afforded substantial rather than limited weight against the proposed development. This is particularly because NPPF paragraph 168 states that development should not be permitted if there are reasonably available sites appropriate for the proposal in areas with a lower risk of flooding. **[7.46, 7.49, 8.46, 8.47, 9.61-9.63, 9.76, 9.77, 9.83]**

Other Matters

13.59. Concerns regarding the public consultation process, the potential for increased demands on local services, and the effects of anti-social behaviour, have been addressed in my first report along with matters relating to employment benefits[138]. Even if a third prison was part of the original 1970s plans, this proposal needs to be assessed now on its own merits. **[11.4]**

[138] CD L1 paragraphs 13.69, 13.70, 13.84 and 13.85

13.60. The draft NPPF and the WMS published on 30 July 2024 are material considerations. The weight to be afforded to the draft NPPF is limited by virtue of its consultation status and potential to be amended before final publication. In contrast, the WMS can be afforded significant weight as it is a statement from government setting out its intentions for the planning system with a particular focus on the provision of housing. **[7.51, 9.84-9.86]**

13.61. The proposed replacement to existing NPPF paragraph 115 would only allow development to be prevented or refused on highway grounds 'in all tested scenarios'. I have not been presented with the rationale for this additional wording, but I am satisfied that the highway evidence before me has been thoroughly tested by the parties and that unacceptable safety impacts remain. **[7.52]**

13.62. The proposed replacement to existing NPPF paragraph 100 would add the words 'significant weight should be placed on the importance of new public service infrastructure' including criminal justice accommodation. However, the SoS in DL paragraph 21 had already given significant weight to the need for the proposal. The proposed wording merely reinforces this position, rather than elevates the weight any higher. **[7.53]**

13.63. The WMS sets out the need to build more of the infrastructure that underpins modern life alongside building more houses. It is clear from the wording that such infrastructure is not just related to housing as the WMS talks about commercial and renewable energy developments. Therefore, new prisons could legitimately form part of the country's infrastructure. However, it remains necessary to assess any proposal against a wide variety of planning matters to determine whether a scheme should be built in a specific location. **[7.54, 9.85, 9.87]**

Planning balance

13.64. The appellant believes that this report should confine itself to whether highway safety issues have been satisfactorily resolved. It is true that the DL confirms that the SoS is minded to grant planning permission and allow the appeal if such issues can be addressed. However, as the Council and UWAG argue, it is important to consider how the planning balance is affected by a change in the position on highway safety matters. This does not require any fresh evidence to be tested, but to have regard to previous findings on a range of issues. **[7.1, 8.2, 9.7]**

13.65. My conclusions on highway safety have found that unacceptable impacts still occur, and that the proposal would be contrary to the development plan. As before, substantial weight should be given to this finding given that NPPF paragraph 115 indicates that proposals can be refused on this basis. However, if the SoS disagrees with my conclusions and considers the highway safety impacts would be acceptable, then any adverse effects would still need to be weighed in the overall balance. Significant weight should still be afforded against the proposal based on the adverse highway impacts. **[8.4-8.6, 9.4]**

13.66. The weight afforded to other negative effects as set out in IR paragraphs 13.87 and 13.88 remain the same. They include substantial weight for Green Belt harm and significant weight for the harm to the character and appearance of the area. Substantial weight should also now be afforded to the lack of a

sequential test and the ability to demonstrate that there are no sequentially preferable and reasonable available sites for this proposal in flood risk terms.

13.67. The weight given to the proposal's benefits are set out in IR paragraph 13.89 and include significant weight to economic matters and the provision of a modern prison and replacement bowls facility. The SoS in DL paragraph 21 also considered that significant weight should be given to the need for the proposal. **[9.5, 9.6]**

13.68. Consideration needs to be given as to whether the above benefits clearly outweigh the harm to the Green Belt and the other identified harms to decide if the very special circumstances necessary to justify the proposal exist. If there are still unacceptable impacts on highway safety, then very special circumstances certainly would not exist. Even if there are no unacceptable highway safety impacts, it is my view that the overall harms would not be clearly outweighed by other considerations so as to amount to very special circumstances necessary to justify the proposal, bearing in mind the additional weight against the proposal now in flood risk terms. **[8.4, 8.5, 9.7]**

13.69. In conclusion, the proposal would harm the Green Belt, the character and appearance of the area, highway safety, and flood risk. It would conflict with CLP Policies BNE1 and HW2, and NPPF paragraphs 115, 152, 153, 165 and 168. This points towards the refusal of planning permission.

14. Inspector's Recommendation

14.1. For the reasons set out above, I recommend that this appeal be dismissed.

14.2. Nonetheless, if the SoS is minded to disagree with my recommendation and allow the appeal, then the conditions listed in Annex 1 should be attached to any permission granted along with the obligations set out in the S106 agreement in CD Q5.

Tom Gilbert-Wooldridge

INSPECTOR

Annex 1: Suggested Conditions (35)

Conditions relating to the outline parts of the permission:

1) An application for approval of the reserved matters, namely the appearance, layout, and scale of phases 1 and 4 and the appearance, layout, scale and landscaping of phase 3 of the development hereby permitted, as set out on the Site Phasing Plan, shall be made to the Local Planning Authority before the expiration of three years from the date of this permission and the development hereby permitted shall be begun two years from the date of approval of the last of the reserved matters to be approved.

   Reason: To meet the requirements of Section 92 of the Town and Country Planning Act 1990 (as amended).

2) The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Location Plan	608623-0000-PEV-GHX0011-ZZ-DR-A-9000 Rev.P05
Site Phasing Plan	608623-0000-PEV-GHX0011-ZZ-DR-A-9400 Rev.P05
Comprehensive Landscape Masterplan	608623-0000-PEV-GHX0011-XX-DR-L-0301 Rev.P06
Site Demolition Plan	608623-0000-PEV-GHX0011-ZZ-DR-A-9002 Rev.P05
Proposed New Access	GARTH-ATK-HGN-MOSS-DR-D-0001 P2

   Reason: For the avoidance of doubt and in the interests of proper planning.

3) No part of the development under phase 4 hereby approved shall commence until a scheme for the off-site works of highway improvement has been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority.

   For the avoidance of doubt, this shall include the highways mitigation at the A581/Ulnes Walton Lane junction

   Reason: To satisfy the Local Planning Authority that the final details of the highway scheme/works are acceptable before work commences on site.

4) (a) No part of the development under phase 4 hereby approved shall be commenced until the approved scheme for the construction of the off-site works of highway improvement has been constructed and completed in accordance with the scheme details.

   (b) No part of the development under phase 4 hereby approved shall be occupied until the approved scheme for the construction of the operational site access has been constructed and completed in accordance with the scheme details.

Reason: In order that the traffic generated by the development, including at the construction phases, does not exacerbate unsatisfactory highway conditions in advance of the completion of the highway scheme/works

5) Prior to the commencement of the development under phase 4 hereby approved, full details of the pedestrian/cycle connection to the site from Nixon Lane shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. Thereafter, the approved connection shall be provided in accordance with the approved plan prior to the first use of phase 4.

Reason: To ensure safe and suitable access to the development for pedestrians and cyclists.

6) The development hereby permitted shall be carried out in broad accordance with the Flood Risk Assessment (August 2021, Ref: 608623-0000-HYD-GHX0000-XX-RP-D-0001, Hydrock) and Surface Water Drainage Strategy (August 2021, Ref: 608623-0000-PEV-GHX0011-ZZ-RP-C-0503, Pick Everard).

The measures shall be fully implemented prior to the first use or occupation of any building developed under phase 4 as set out on the Site Phasing Plan and in accordance with the approved phasing of the development.

Reason: To ensure satisfactory sustainable drainage facilities are provided to serve the site in accordance with NPPF paragraphs 172 and 174, the Planning Practice Guidance, and Defra Technical Standards for Sustainable Drainage Systems.

7) Prior to the commencement of the use of development within phases 3 or 4 of the development hereby permitted, or with any reserved matters relating to these phases, an operational lighting scheme shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall thereafter be implemented prior to first use of the relevant phase in line with the approved details.

Reason: Due the presence of nearby habitat for bats.

8) Prior to the commencement of the development within phase 4 of the development hereby permitted, full details of the circulation routes for the area of the site within phase 4 shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure safe and suitable circulation routes within the development.

Conditions relating to the full parts of the permission:

9) Phase 2 of the development hereby permitted in full, as set out on the Site Phasing Plan (ref. 608623-0000-PEV-GHX0011-ZZ-DR-A-9400 Rev.P05), shall be begun not later than three years from the date of this permission.

Reason: To meet the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended)

10) The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Sections - Proposed	608623-0000-PEV-GHX0031-ZZ-DR-A-9201 Rev.P04
Site Block Plan - Proposed	608623-0000-PEV-GHX0031-ZZ-DR-A-9100 Rev.P04
Roof Plan - Proposed	608623-0000-PEV-GHX0031-R0-DR-A-9301 Rev.P05
Site Plan Utilities	608623-0000-PEV-GHX0031-ZZ-DR-E-0600 Rev.P03
Proposed Highways-Proposed Surface Water Drainage	608623-0000-PEV-GHX0031-ZZ-DR-C-0502 Rev.P02
Proposed Highways-Long Sections	608623-0000-PEV-GHX0031-ZZ-DR-C-0701 Rev.P02
Proposed Highways-General Arrangement Plan	608623-0000-PEV-GHX0031-ZZ-DR-C-0700 Rev.P02
Proposed Highways-Cross Sections	608623-0000-PEV-GHX0031-ZZ-DR-C-0702 Rev.P02
Ground Floor Plan - Proposed	608623-0000-PEV-GHX0031-00-DR-A-9300 Rev.P03
Elevations - Proposed	608623-0000-PEV-GHX0031-ZZ-DR-A-9400 Rev.P03
Drainage Details - Sheet 01	608623-0000-PEV-GHX0031-ZZ-DR-C-6501 Rev.P01
Bowling Green Landscape Proposals	608623-0000-PEV-GHX0031-XX-DR-L-0405 Rev.P03
Bowling Green External Lighting Layout – Sheet 01	608623-0000-PEV-GHX0031-ZZ-DR-E-6310 Rev.P02
Bowling Green External Lighting Layout – Sheet 02	608623-0000-PEV-GHX0031-ZZ-DR-E-6311 Rev.P02

Reason: For the avoidance of doubt and in the interests of proper planning.

11) Prior to the commencement of the use of phase 2 of the development hereby permitted a schedule of maintenance of the bowling green, including a programme for implementation for a minimum period of five years starting from the commencement of use of the development, shall have been submitted to and approved in writing by the Local Planning Authority. Following the commencement of use of the development, the approved schedule shall be complied with in full.

Reason: To ensure that the playing field is first established as a functional playing field to an adequate standard and is fit for purpose.

12) Prior to the commencement of phase 2 of the development hereby permitted the following documents shall have been submitted to and approved in writing by the Local Planning Authority:

(a) A detailed assessment of ground conditions (including drainage and topography) of the land proposed for the playing field which identifies constraints which could adversely affect playing field quality; and

(b) Where the results of the assessment to be carried out pursuant to (a) above identify constraints which could adversely affect playing field quality, a detailed scheme to address any such constraints shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include a written specification of the proposed soils structure, proposed drainage, cultivation and other operations associated with grass and sports turf establishment and a programme of implementation.

Prior to the commencement of the use of phase 2 of the development hereby permitted the following documents shall have been submitted to and approved in writing by the Local Planning Authority:

(c) Full details of the proposed flood lighting scheme for the bowling green.

The approved details in (b) and (c) shall thereafter be carried out in full and in accordance with the approved programme of implementation. The land shall thereafter be maintained in accordance with the scheme and made available for playing field use in accordance with the scheme.

Reason: To ensure that the playing field is first established as a functional playing field to an adequate standard and is fit for purpose.

13) All planting, seeding or turfing comprised in the approved details of landscaping set out on the Bowling Green Landscape Proposals (ref. 608623-0000-PEV-GHX0031-XX-DR-L-0405 Rev.P03) shall be carried out in the first planting and seeding seasons following the first use of the Bowling Green or club house facilities, or the completion of phase 2 of the development, whichever is the sooner, and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interest of the appearance of the locality.

14) The approved car parking provision as set out on Site Block Plan (ref. 608623-0000-PEV-GHX0031-ZZ-DR-A-9100 Rev.P04) shall have been constructed and laid out in accordance with the approved details prior to the first use of the Bowling Green or club house facilities and retained at all times thereafter specifically for this purpose.

Reason: To ensure that that the site is adequately served by parking and disabled parking and that motorcycle and bicycle parking is sufficiently provided.

15) The external facing materials of the bowling club buildings and structures as detailed on the approved plans shall be used and no others substituted.

Reason: To ensure that the materials used are visually appropriate to the locality.

16) The floodlighting to the bowling green hereby permitted shall only operate between 10:00 hours and 22:00 hours and not at any other time.

Reason: In the interests of the rural character of the area, the amenity of the area, ecological impacts, and the amenity of nearby residential properties.

17) Notwithstanding the approved details, a fully detailed lighting scheme to include all necessary highways illumination, pedestrian footways and any other external lighting to the building shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of phase 2 of the development hereby permitted. The approved scheme shall thereafter be implemented in line with the approved details.

Reason: Due the presence of nearby habitat for bats.

18) No surface water run-off from the bowling club (phase 2) element of the scheme shall at any time be directed into any nearby ponds.

Reason: The existing pond is a Priority Pond and supports protected species and it is likely that the newly created ponds will colonise with great crested newts.

General conditions:

19) Notwithstanding the landscaping details set out on the Comprehensive Landscape Masterplan (ref. 608623-0000-PEV-GHX0011-XX-DR-L-0301 Rev.P06), no development shall commence in phase 4 until a detailed scheme of soft landscaping has been submitted to and approved in writing by the Local Planning Authority. This shall include the location of all existing trees and hedgerows affected by the proposed development, details of those to be retained and details of species to be planted and planting density.

All of the approved planting, seeding or turfing shall thereafter be carried out in the first planting and seeding seasons following the first use of the occupation of any buildings permitted under phase 4 or the completion of phase 4 of the development hereby permitted, whichever is the sooner, and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interest of the appearance of the locality.

20) Prior to commencement of each phase of development, a Construction Management Plan for that phase shall have been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. The approved Plan shall be adhered to throughout the construction period. The Plan shall provide for:

- the parking of vehicles of site operatives and visitors;
- the hours of operation (including deliveries) during construction;
- the loading and unloading of plant and materials;
- the storage of plant and materials used in constructing the development;

- the siting of cabins;
- the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- wheel washing facilities;
- a dust management plan including measures to control the emission of dust and dirt during construction;
- a scheme for recycling/disposing of waste resulting from demolition and construction works;
- the routeing of construction vehicles and deliveries to site; and
- an engagement strategy with local residents.

Reason: In the interest of highway safety and to protect the amenities of the nearby residents.

Pre-Commencement Reason: To ensure that details relating to the construction phase are agreed before works begin.

21) The Outline Travel Plan (608623-0000-ATK-GHX0000-XX-RP-X-0002 P04) as agreed must be implemented in full in accordance with the timetable within it. All elements shall continue to be implemented at all times thereafter for a minimum of five years.

Prior to the first use of phase 4 of the development hereby permitted, a Full Travel Plan shall be submitted to, and approved in writing by, the Local Planning Authority. The Full Travel Plan shall be developed in accordance with the agreed Outline Travel Plan.

All elements of the Full Travel Plan shall be implemented after the first use of phase 4 of the development hereby approved and at all times thereafter for a minimum of period of five years following completion of the development

Reason: To ensure that the development provides sustainable transport options.

22) No above ground development shall commence in phases 2, 3 or 4 until a detailed, final surface water sustainable drainage strategy for the relevant phase of the site has been submitted to, and approved in writing by, the Local Planning Authority.

The detailed sustainable drainage strategy shall be based upon the site-specific flood risk assessment and indicative sustainable drainage strategy submitted and sustainable drainage principles and requirements set out in the National Planning Policy Framework, Planning Practice Guidance and Defra Technical Standards for Sustainable Drainage Systems. No surface water shall be allowed to discharge to the public foul sewer(s), directly or indirectly.

Those details shall include, as a minimum:

(a) Sustainable drainage calculations for peak flow control and volume control (1 in 1, 1 in 30 and 1 in 100 + 40% climate change), with allowance for urban creep.

(b) Final sustainable drainage plans appropriately labelled to include, as a minimum:

(i) Plan identifying areas contributing to the drainage network, including surface water flows from outside the curtilage as necessary;

(ii) Sustainable drainage system layout showing all pipe and structure references, dimensions and design levels;

(iii) Details of all sustainable drainage components, including landscape drawings showing topography and slope gradient as appropriate;

(iv) Flood water exceedance routes in accordance with Defra Technical Standards for Sustainable Drainage Systems;

(v) Finished Floor Levels (FFL) in above ordnance datum (AOD) with adjacent ground levels for all sides of each building to confirm minimum 150mm+ difference for FFL;

(vi) Details of proposals to collect and mitigate surface water runoff from the development boundary; and

(vii) Measures taken to manage the quality of the surface water runoff to prevent pollution, protect groundwater and surface water, and deliver suitably clean water to sustainable drainage components.

(c) Evidence of an assessment of the site conditions to include site investigation and test results to confirm infiltrations rates and groundwater levels in accordance with industry guidance.

The sustainable drainage strategy shall be implemented in accordance with the approved details.

Reason: To ensure satisfactory sustainable drainage facilities are provided to serve the site in accordance with NPPF paragraphs 172 and 174, the Planning Practice Guidance and Defra Technical Standards for Sustainable Drainage Systems.

23) No above ground development shall commence in phases 2, 3 or 4 until a Construction Surface Water Management Plan for that phase detailing how surface water and pollution prevention will be managed during each construction phase has been submitted to and approved in writing by the Local Planning Authority.

Those details shall include for each phase, as a minimum:

(a) Measures taken to ensure surface water flows are retained on-site during construction phase(s) and if surface water flows are to be discharged they are done so at a restricted rate to be agreed with Lancashire County Council as the Lead Local Flood Authority.

(b) Measures taken to prevent siltation and pollutants from the site into any receiving groundwater and/or surface waters, including watercourses, with reference to published guidance.

The development shall be constructed in accordance with the approved details.

Reason: To ensure that the development is served by satisfactory arrangements for the disposal of surface water during each construction phase so it does not pose an undue flood risk on site or elsewhere; and to ensure that any pollution arising from the development as a result of the construction works does not adversely impact on existing or proposed ecological or geomorphic condition of water bodies.

24) No building on phases 2, 3 or 4 (or within an agreed implementation schedule) of the development hereby permitted shall be occupied until a Verification Report and Operation and Maintenance Plan for the lifetime of that phase of the development, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved by the Local Planning Authority.

The Verification Report must demonstrate that the sustainable drainage system has been constructed as per the agreed scheme (or detail any minor variations), and contain information and evidence (including photographs) of details and locations (including national grid reference) of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and the submission of a final 'operation and maintenance manual' for the sustainable drainage scheme as constructed.

Details of appropriate operational, maintenance and access requirements for each sustainable drainage component are to be provided, with reference to published guidance, through an appropriate Operation and Maintenance Plan for the lifetime of the development as constructed. This shall include arrangements for adoption by an appropriate public body or statutory undertaker, and/or management and maintenance by a Management Company and any means of access for maintenance and easements, where applicable. Thereafter the drainage system shall be retained, managed and maintained in accordance with the approved details.

Reason: To ensure that flood risks from the development to the future users of the land and neighbouring land are minimised, together with those risks to controlled waters, property and ecological systems, and to ensure that the development as constructed is compliant with and subsequently maintained pursuant to the requirements of NPPF paragraph 174.

25) Prior to the commencement of the development, an updated method statement setting out Reasonable Avoidance Measures (RAMS) in relation to amphibians and water voles throughout the course of the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The RAMS shall include pre-commencement surveys of the pond and two ditches (P34 and Ditches 1, 2 and 3) prior to their clearance and shall include timing and pumping out strategies. The development shall thereafter be carried out in full accordance with the approved RAMS.

Reason: Due to the potential for disturbance of great crested newts and water voles.

Pre-Commencement Reason: To update survey information on these protected species before works commence.

26) No phase of development shall take place (including demolition, ground works, vegetation clearance) until a Plan for Biodiversity Management during Construction (PBMC) for that phase has been submitted to and approved in writing by the Local Planning Authority. The PBMC shall include the following:

(a) Risk assessment of potentially damaging construction activities;

(b) Identification of "biodiversity protection zones";

(c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);

(d) The location and timing of sensitive works to avoid harm to biodiversity features;

(e) The times during construction when specialist ecologists need to be present on site to oversee works;

(f) Responsible persons and lines of communication;

(g) The role and responsibilities on site of an ecological clerk of works or similarly competent person;

(h) Use of protective fences, exclusion barriers and warning signs;

(i) Details of how each RAMS integrates with the relevant phases of the implementation; and

(j) A construction lighting strategy.

Reason: To protect against harm to bats, great crested newts, barns owls and water voles.

Pre-Commencement Reason: To ensure that appropriate plans are in place before any works commence.

27) Prior to the commencement of any works within 30m distance of the barn owl breeding (B11) and roosting site (B10) a full mitigation strategy for barn owls, which shall include timings for the implementation of measures, shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in full accordance with the approved mitigation strategy.

Reason: Due to the presence of barn owls.

28) Prior to the commencement of any works within 30m of the identified maternity bat roost (building B15) a full mitigation strategy for bats, which shall include timings for the implementation of measures, shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in full accordance with the approved mitigation strategy.

Reason: Due to presence of bats.

29) A landscape and ecological management plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of phases 2, 3 or 4 of the development hereby approved. The content of the LEMP shall include the following:

(a) Description and evaluation of features to be managed;

(b) Ecological trends and constraints on site that might influence management;

(c) Aims and objectives of management;

(d) Appropriate management options for achieving aims and objectives;

(e) Prescriptions for management actions;

(f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);

(g) Details of the body or organisation responsible for implementation of the plan;

(h) Schedule of ongoing monitoring and remedial measures;

(i) eDNA monitoring of P39 and the newly created ponds to demonstrate successful enhancement;

(j) Schedule of biodiversity enhancement measures and timetable for delivery; and

(k) A mechanism of reporting to the Local Planning Authority/their identified agent and remediation agreement process.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.

Reason: To mitigate against the reduction in scale of the biological heritage site as a result of the development proposals and to deliver a net gain for biodiversity.

30) Prior to the commencement of phases 2, 3 or 4 of the development a phasing plan for the delivery of the Biodiversity Net Gain habitats shall be submitted and approved in writing by the Local Planning Authority. The landscaping shall thereafter be implemented in line with the approved phasing plan.

Reason: To deliver biodiversity net gain benefits at the earliest opportunity and as the development progresses.

31) No works to trees or hedgerows shall occur or building works commence between 1 March and 31 August in any year unless a detailed bird nest survey by a suitably experienced ecologist has been carried out immediately prior to clearance and written confirmation provided that no active bird nests are present which has been agreed in writing by the Local Planning Authority.

Reason: Nesting birds are a protected species.

32) The development hereby approved shall be carried out in accordance with the details contained in the approved Tree Protection Plan (Ref. 13498/P03) and Arboricultural Method Statement (Ref. 13498/P04) received 24 August

2021. All remaining trees must be fully safeguarded in accordance with BS5837.2012 for the duration of the site works.

Reason: To safeguard the trees to be retained.

33) No development, site clearance/preparation, or demolitions shall take place in any phase on the site until the applicant, or their agent or successors in title, has secured the implementation of a programme of building recording and analysis relevant to that phase of development. This must be carried out in accordance with a written scheme of investigation, which shall first have been submitted to and approved in writing by the Local Planning Authority. The programme of works shall comprise the creation of a record of the building(s) to Level 2-3 as set out in 'Understanding Historic Buildings' (Historic England 2016). It shall include a full description of the building(s), inside and out, a drawn plan, elevations and at least one section (which may be derived from checked and corrected architect's drawings), and full photographic coverage, inside and out. The record shall also include further documentary research, putting the building(s) and its features into context. This work shall be undertaken by an appropriately qualified and experienced professional contractor to the standards and guidance of the Chartered Institute for Archaeologists (www.archaeologists.net). A digital copy of the report and the photographs shall be placed in the Lancashire Historic Environment Record.

Reason: To ensure and safeguard the recording and inspection of matters of archaeological/historical importance associated with the buildings/site.

Pre-Commencement Reason: To ensure that appropriate measures for recording and inspecting are implemented before works begin.

34) No development in phases 2, 3 or 4 of the development shall take place until:

(a) a methodology for investigation and assessment of ground contamination has been submitted to and approved in writing by the Local Planning Authority. The investigation and assessment shall be carried in accordance with current best practice including British Standard 10175:2011+A2:2017 Investigation of potentially contaminated sites - Code of Practice. The objectives of the investigation shall include identifying the type(s), nature and extent of contamination present, the risks to receptors, and the potential for migration within and beyond the site boundary;

(b) all testing specified in the approved scheme (submitted under (a)) and the results of the investigation and risk assessment, together with remediation proposals to render the site capable of development have been submitted to the Local Planning Authority; and

(c) the Local Planning Authority has given written approval to any remediation proposals (submitted under (b)), which shall include an implementation timetable and monitoring proposals. Upon completion of remediation works a validation report containing any validation sampling results shall be submitted to the Local Planning Authority.

Thereafter, the development shall only be carried out in full accordance with the approved remediation proposals.

Should, during the course of the development, any contaminated material other than that referred to in the investigation and risk assessment report and identified for treatment in the remediation proposals be discovered, then the development shall cease until such time as further remediation proposals have been submitted to and approved in writing by the Local Planning Authority.

Reason: Due to past processes and activities at or adjacent to the application site, there is a potential for ground contamination and it is the applicants responsibility to properly address any land contamination issues, to ensure the site is suitable for the proposed end-use.

(35) No part of the development under phase 4 hereby approved shall commence until details of the ecological and landscape mitigation for the off-site works of highway improvement at the A581 / Ulnes Walton Lane have been submitted to and approved in writing by the Local Planning Authority.

The approved ecological and landscape mitigation shall thereafter be carried out no later than the first planting and seeding seasons following the commencement of the phase 4 development. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: To satisfy the Local Planning Authority that the ecological and landscape mitigation for the specified highway junction works are acceptable before work commences on site.

Annex 2: Appearances

For the Appellant:

Jenny Wigley KC and Anjoli Foster, Counsel, instructed by Helen Robinson of Womble Bond Dickinson.

They called:

Stephen Yeates BSC (Hons) MSc CMILT	Atkins Ltd
Katrina Hulse	Cushman & Wakefield

For the Council:

Piers Riley-Smith, Counsel, instructed by Alex Jackson of Chorley Borough Council.

He called:

Kevin Riley	WSP
Iain Crossland	Chorley Borough Council

For Ulnes Walton Action Group (UWAG):

Josef Cannon KC, Matthew Wyard and Jack Barber, Counsel, instructed pro bono through Advocate.

They called:

Graham Eves BSc CEng MICE MCIHT	PFA Consulting
Lynette Morrisey	UWAG
Emma Curtis	UWAG
Paul Parker	UWAG

Interested Parties who spoke at the Inquiry:

Councillor Craige Southern	Chorley Borough Council
Councillor Paul Foster	South Ribble Borough Council
Councillor Mary Green	South Ribble Borough Council
Councillor Michael Green	South Ribble Borough Council and Lancashire County Council
Councillor Paul Dodenhoff	Ulnes Walton Parish Council
Councillor Nicola Watkinson	Ulnes Walton Parish Council

Councillor Alan Whittaker	Heskin Parish Council, Chorley Borough Council and Lancashire County Council
Wendy Porter	Local resident
Bev Davies	Local resident
David Batty	Local resident

Annex 3: Core Documents

Please refer to IR Annex 3 for Core Documents A to K

L: Planning Casework Unit (PCU) / Planning Inspectorate (PINS) 2024 Inquiry Documents	
DOCUMENTS	
L1	Minded to Grant Decision Letter and Inspector's Report
L2	PCU Inquiry Re-opening Letter (6 April 2023)
L3	Case Management Conference Summary Note (23 June 2023)
L4	PCU Letter re Prison Data and Appeal Decision (15 November 2023)
L5	PINS email regarding CD L4 (4 December 2023)
L6	PINS email regarding addendum evidence (4 March 2024)

M: Appellant 2024 Inquiry Documents	
M1	Appellant Covering Letter (1 March 2023)
M2	Revised Draft Section 106 Agreement (superseded)
M3	Appellant Additional Highways Evidence (March 2023)
M3a	Appellant Additional Highways Evidence Appendices (March 2023)
M4	Appellant Covering Letter (17 March 2023)
M5	Appellant Response to Council and UWAG Evidence (March 2023)
M6	Steve Yeates Transport Proof of Evidence Volume 1 (August 2023)
M7	Steve Yeates Transport Proof of Evidence Volume 2 (August 2023)
M8	Transport Rebuttal to Representations (September 2023)
M9	Transport Rebuttal to Council and UWAG (November 2023)
M10	Steve Yeates Addendum Proof of Evidence Volume 1 (February 2024)
M10a	Steve Yeates Addendum Proof of Evidence Volume 2 (February 2024)
M11	Final Draft Section 106 Agreement with manuscript amendments
M12	Response to CD L4 PCU Letter (30 November 2023)
M13	Letter to Inquiry (1 March 2024)
M14	Letter to Inquiry (5 March 2024)
M15	Response to CD P29

N: Local Planning Authority 2024 Inquiry Documents	
N1	Letter from Council to PCU (9 March 2023)
N2	WSP Technical Note (08 March 2023)

N3	Kevin Riley Transport Proof of Evidence (August 2023)
N4	Kevin Riley Transport Proof of Evidence Summary (August 2023)
N5	Kevin Riley Transport Proof of Evidence Updated (February 2024)
N6	Kevin Riley Transport Proof of Evidence Summary Updated (Feb 2024)
N7	Response to CD L4 PCU Letter (1 December 2023)
N8	Letter to Inquiry (1 March 2024)
N9	Rebuttal Proof of Evidence (March 2024)

O: Ulnes Walton Action Group 2024 Inquiry Documents	
O1	Letter to PCU (6 March 2023)
O2	**Highway Safety Proof of Evidence (March 2023)**
O3	Proof Appendix 1 – Road Traffic Collision Moss Lane
O4	Proof Appendix 2 – Road Traffic Collision Lostock Bridge
O5	Proof Appendix 3 - Tractor
O6	Proof Appendix 4 - HGVs
O7	Proof Appendix 5 - Showground
O8	Proof Appendix 6 - Parking
O9	Proof Appendix 7 – HMP Full Sutton
O10	Proof Appendix 8 – Accidents Schedule 1
O11	Proof Appendix 8 – Accidents Schedule 2
O12	Proof Appendix 9 - Flooding
O13	Proof Appendix 10 - Sample Residents Statements
O14	Proof Appendix 11 - Road Widths
O15	Proof Appendix 12 – Resident's Letter to the Press in mid 1990s
O16	Proof Appendix 13 - Video Footage of Resident Walking to Postbox
O17	Proof Appendix 14 - Traffic at Southport Road (A581) Junction
O18	Proof Appendix 15 - School Bus Negotiating Bridge
O19	Proof Appendix 15 - School Bus Negotiating Bridge (duplicate)
O20	Proof Appendix 16 - School Bus Travelling South
O21	Proof Appendix 17- The New Prison at HMP Full Sutton
O22	**Graham Eves Proof of Evidence (August 2023)**
O23	Graham Eves Proof of Evidence Appendices
O24	Graham Eves Proof of Evidence Summary
O25	**Paul Parker Proof of Evidence Logistics Routes Assessment (August 2023)**

O26	Paul Parker Proof of Evidence Summary
O27	Paul Parker Appendix 1 – Logistics Route 1
O28	Paul Parker Appendix 2 – Logistics Route 2 start
O29	Paul Parker Appendix 2 – Logistics Route 2 continued
O30	Paul Parker Appendix 3 – Logistics Route 3
O31	Paul Parker Appendix 4 – Logistics Route 4
O32	Paul Parker Appendix 5 – Logistics Route 5
O33	Paul Parker Appendix 6 – Logistics Routes Compared
O34	Paul Parker Video Transcript for Appendices 1-5
O35	**Lynette Morrissey Proof of Evidence Highway Safety (August 2023)**
O36	Lynette Morrissey PoE Summary
O37	Lynette Morrissey PoE Appendix 1 – Summary of Highways Issues
O38	Lynette Morrissey PoE Appendix 2 – Schedule and Evidence of Incidents since March 2023
O39	Lynette Morrissey PoE Appendix 3 – Schedule and Evidence of Accidents since March 2023
O40	Lynette Morrissey PoE Appendix 4 – Schedule and Evidence of Traffic Usage since March 2023
O41	Lynette Morrissey PoE Appendix 5 – Equestrian Usage in and around Ulnes Walton
O42	Lynette Morrissey PoE Appendix 6 – Cyclist Usage in and around Ulnes Walton
O43	Lynette Morrissey PoE Appendix 7 – Highway Safety – School Lane
O44	Lynette Morrissey PoE Appendix 8 – Statements from School Crossing Patrol Staff
O45	Lynette Morrissey PoE Appendix 9 – Emergency Call-Outs
O46	Lynette Morrissey PoE – Video A1(1) Bus Turning
O47	Lynette Morrissey PoE – Video A1(2) Bus Turning
O48	Lynette Morrissey PoE – Video A2 Old School to A581
O49	Lynette Morrissey PoE – Video A5 Millers Farm
O50	Lynette Morrissey PoE – Video A7 Tractor and Trailer
O51	Lynette Morrissey PoE – Video A9 Lorry Reversing
O52	Lynette Morrissey PoE – Video A12 HGV and Bus Passing on Bridge
O53	Lynette Morrissey PoE – Video A13 Speeding Car, Moss Lane
O54	Lynette Morrissey PoE – Video A15 Bus Turning into School Lane
O55	Lynette Morrissey PoE – Video A16 Fire Engine

O56	Lynette Morrissey PoE – Video A17 Car Emerging
O57	Lynette Morrissey PoE – Video C4 Horse Riders, Cyclists, Motorcyclist
O58	Lynette Morrissey PoE – Video C5 Cyclists, Runner
O59	Lynette Morrissey PoE – Video C6 Bowser
O60	Lynette Morrissey PoE – Video C7 Horse Riders
O61	Lynette Morrissey PoE – Video C8 Pushchair
O62	Lynette Morrissey PoE – Video C9(1) HGV and Car
O63	Lynette Morrissey PoE – Video C9(2) HGV and Car
O64	Lynette Morrissey PoE – Video C11 New Lane to Ulnes Walton Lane
O65	Lynette Morrissey PoE – Video C13 Horse Rider and Cyclist
O66	Lynette Morrissey PoE – Video C15(1) From Longmeaneygate
O67	Lynette Morrissey PoE – Video C15(2) School Lane to Slater Lane
O68	Lynette Morrissey PoE – Video C15(3) From Wheatfield to Dalbank
O69	Lynette Morrissey PoE – Video C15(4) Dalbank to Home
O70	Lynette Morrissey PoE – Video C16 Groups of Cyclists
O71	**Emergency Vehicle Attendance Proof of Evidence (Feb 2024)**
O72	Response to CD L4 PCU Letter (20 November 2023)
O73	Letter to Inquiry (1 March 2024)
O74	**Graham Eves Rebuttal Proof of Evidence (March 2024)**
O75	Rebuttal Proof of Evidence Appendix 1
O76	Rebuttal Proof of Evidence Appendix 2

P: Other 2024 Inquiry Documents	
P1	MOJ/UWAG Highways Statement of Common Ground (June 2023)
P2	MOJ/Council Highways Statement of Common Ground (June 2023)
P3	MOJ letter to Southport Road residents (7 March 2024)
P4	MOJ letter to Wymott residents (11 March 2024)
P5	Tennant R comments submitted to MOJ (March 2024)
P6	Symonds P comments submitted to MOJ (March 2024)
P7	Noone J representations (August 2023)
P8	Plunkett M representations (August 2023)
P9	Webb M representations (August 2023)
P9a	Webb M photos (August 2023)
P10	Ainsworth S representations (August 2023)
P11	Alty R representations (August 2023)

P12	Jackson K representations (August 2023)
P13	Williams D representations (March 2024)
P14	Dodenhoff P representations (March 2024)
P15	Dodenhoff P (2) representations (March 2024)
P16	Shaw C representations (March 2024)
P17	Casey S representations (March 2024)
P18	Bamber D representations (March 2024)
P19	Rees C representations (March 2024)
P20	Wright L representations (March 2024)
P21	Duckworth L representations (March 2024)
P22	Williams D (2) representations (March 2024)
P23	Nightingale J representations (March 2024)
P24	Cross L representations (March 2024)
P25	Fletcher P representations (March 2024)
P26	Websdell D representations (March 2024)
P27	Taylor D representations (March 2024)
P28	Bond T representations (March 2024)
P29	Williams D representations (April 2024)
P30	Williams D (2) representations (April 2024)
P31	Watkinson N representations (April 2024)
P32	Batty D statement to Inquiry (April 2024)
P33	Websdell N representations (April 2024)
P34	Bond T representations including Facebook posts (April 2024)
P35	Crook O and R representations (April 2024)
P36	Kennington N representations (April 2024)

Q: Documents submitted during the 2024 Inquiry	
Q1	AtkinsRéalis Note on Updated Collision Analysis (March 2024)
Q2	Opening Statement on behalf of MoJ
Q3	Opening Statement on behalf of CBC
Q4	Opening Statement on behalf of UWAG
Q5	Signed Section 106 Agreement (dated 18 March 2024)
Q6	CIL Compliance Statement (March 2024)
Q7	Updated Conditions Schedule (17 April 2024)
Q8	NMU Survey Summary - Site 7 (A581)

Q9	NMU Survey Details – Site 7 (A581)
Q10	Complete version of Appendix B to CD N3/N5
Q11	A581/Ulnes Walton Lane – Side Arm Flow Comparison
Q12	Mini Roundabout Locations
Q13	Closing submissions on behalf of UWAG
Q14	Closing submissions on behalf of CBC
Q15	Closing submissions on behalf of MoJ
Q16a	Costs application from CBC against MoJ
Q16b	Appeal decisions APP/H1840/W/22/3301732 and 3301742
Q17	Costs application from UWAG against MoJ
Q18	Reply from MoJ regarding CBC's costs application
Q19	Final comments from UWAG regarding their costs application
Q20a	Ulnes Walton Parish Council representation on flood risk matters
Q20b	Appeal decision APP/A2335/W/23/3326187
Q21	Appellant's response to flood risk matters (May 2024)
Q22a	Council's response to flood risk matters (20 May 2024)
Q22b	Surface water flooding map of appeal site
Q23	UWAG's response to flood risk matters (16 May 2024)
Q24	Appellant's letter dated 22 July 2024 on flood risk matters
Q25	Appeal decision APP/D2320/W/23/3329702
Q26	Council's response to flood risk matters (1 August 2024)
Q27	UWAG's response to flood risk matters (1 August 2024)
Q28	UWAG's comments on the draft NPPF and WMS (7 August 2024)
Q29	Appellant's comments on the draft NPPF and WMS (8 August 2024)
Q30	UWAG's response to Q29
Q31	Appellant's response to Q26 and Q27

Ministry of Housing, Communities & Local Government

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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, King's Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.