

# TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

## PROOF OF EVIDENCE

## PLANNING

Land adjacent to HMP Gartree

Ministry of Justice

September 2022

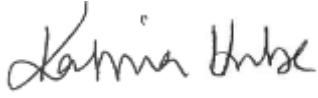
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## 1. Experience

- 1.1 My name is Katrina Hulse and I have a BA (Hons), an MA in Town and Regional Planning, and a Post Graduate Diploma in Law. I am a Chartered Member of the Town Planning Institute, and I am also an unregistered Member of the Bar of England and Wales.
- 1.2 I am a partner at Cushman & Wakefield and head of the Yorkshire and North East planning team based in the Leeds office. Cushman & Wakefield are a real estate company, which operates both in the UK and globally.
- 1.3 I am the planning lead for the Ministry of Justice contract at Cushman & Wakefield and over the last 2 years have advised the Ministry of Justice on planning matters in relation to prison expansion both in terms of new prisons and existing prison capacity.
- 1.4 I have been instructed by the Ministry of Justice ('the Appellant') to provide expert evidence on the planning case for a new prison on land adjacent to HMP Gartree, Market Harborough ('the Site') that has been refused planning permission by Harborough District Council ('the Council') **(CD/A75)**.
- 1.5 I have over twenty years' experience working in planning consultancy and advise both private and public sector clients on a range of town planning related matters. I have worked on projects in a range of sectors and have advised the MOJ on a number of sites in England regarding their suitability to be brought forward for new prisons. In addition, I also advise the MOJ on planning strategies on the delivery of additional accommodation and facilities within existing prisons.
- 1.6 I have advised clients on developments across the United Kingdom, particularly large scale contentious schemes including development in the countryside.
- 1.7 I also advise clients on the promotion of strategic sites through the development plan process.
- 1.8 I have visited the Site which is the subject of this appeal and I am acquainted with the local area and understand the range of issues that the development proposal gives rise to.
- 1.9 The evidence I have prepared and provided for this appeal is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.

<b>Signed</b>	
<b>Name</b>	Katrina Hulse
<b>Position</b>	Partner
<b>Date</b>	6 <sup>th</sup> September 2022

## 2. Introduction

2.1 The appeal proposal is against the refusal of the Council to grant planning permission to the Appellant for an outline planning application (all matters reserved except for means of access and scale) for the construction of a new Category B prison of up to 82,555 sq.m within a secure perimeter fence, together with access, parking, landscaping and associated engineering works. The appeal proposal was refused by Members at Planning Committee on the 7<sup>th</sup> April 2022, against the recommendation in the Officer report to Committee (**CD/A72**) to approve, for the following reason:

1. *The proposed development is unsustainable by virtue of its location and by virtue of its size, scale and design would have a harmful impact on the character and appearance of the countryside and Area of Separation. The benefits associated with the proposed development would not outweigh this harm and the proposal is therefore contrary to Harborough Local Plan policies GD1 & GD3 and Lubenham Neighbourhood Plan policies LNP01, LNP16 and LNP19.*

2.2 The appeal proposal was submitted to the Planning Inspectorate (PINS) on the 31<sup>st</sup> May 2022 and was given a start date of 22<sup>nd</sup> June 2022. Following the submission of the appeal the Gartree Action Group ('GA') wrote to PINS requesting that they become a Rule 6 Party. PINS agreed to this request and confirmed their status on the 20<sup>th</sup> July 2022.

2.3 The Council in their Statement of Case (**CD/C4**) identify the following key issues raised by the appeal:

- Accessibility of the site by alternative transport modes
- Harmful impact on the character and appearance of the countryside and Area of Separation due to size, scale and design
- Benefits do not outweigh harms

2.4 GA in their Statement of Case (**CD/C5**) have raised points relating to the following issues:

- Landscape harm
- Accessibility of the site
- Need for a new prison on this site
- Site selection
- Social and economic benefits

- Planning Balance

2.5 Having carefully considered the relevant policies I accept that the appeal proposal is in conflict with Policy GD3 of the Harborough Local Plan (HLP), in that prisons are not listed in the policy criteria as a permitted form of development in a countryside location, however I consider that the appeal proposal is in accordance with the Development Plan taken as a whole. Additionally, there are significant material considerations that further support the grant of planning permission.

2.6 If contrary to my position, the Inspector is of the view that the appeal proposal is not in accordance with the Development Plan, taken as a whole, I consider that the material considerations identified in my evidence would strongly justify the grant of permission contrary to the Development Plan.

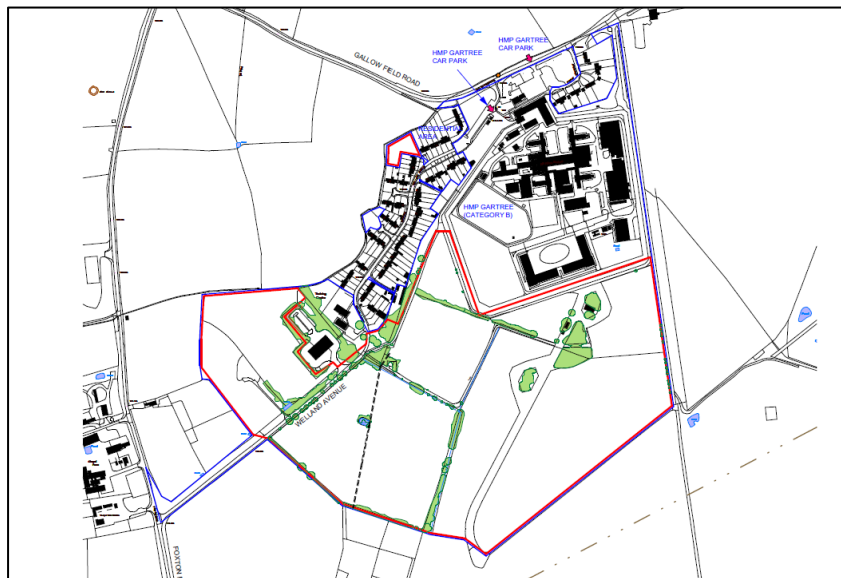
2.7 In my assessment of the appeal proposal I will rely on expert evidence on the following areas that are in issue with the Council and GA:

- Landscape and Visual impact will be covered by the evidence of Ms Katie Machin of Pegasus **(CD/E3)**
- Accessibility will be covered by the evidence of Mr Duncan Cartwright of Atkins **(CD/E5)**
- Socio-economic impacts will be covered by Mr Richard Cook of Pegasus **(CD/E4)**
- Need and Site Selection will be covered by Mr James Smith of the Ministry of Justice **(CD/E2)**

### 3. Site Description

3.1 In this section I provide a description of the surrounding Site context, the nature of the land uses and of the appeal Site itself. Further details of the Site and the surrounding area and an analysis of the Site context are contained within the Design and Access Statement that accompanied the planning application **(CD/A7)**.

3.2 The Site comprises of 28.9ha of land to the south of HMP Gartree. The redline boundary the subject of the Appeal is shown in Figure 1 with the remaining land in the Appellant's control edged blue.



**Figure 1: Site Area**

3.3 The Site and adjacent existing prison are situated on land which was formerly part of RAF Market Harborough.

3.4 There are no listed buildings on the Site or in close proximity to it. The Site is not in a conservation area, nor does it include or form part of a Scheduled Monument. The Site is not a designated nature conservation site (i.e SSSI, local nature reserve).

3.5 The Site is not within a Coal Mining Reporting Area.

3.6 The Site is within flood zone 1.

#### **New Prison**

3.7 The Appeal scheme will be located on land to the south, south west and west of HMP Gartree. The Site comprises three land parcels (see Figure 2 below). Parcel 1 comprises farmland to the east of Welland Avenue. Parcel 2 is open space to the north west of Welland Avenue and



Parcel 3 is an area of open space which has been identified as having potential for amenity/play space for the Gartree estate.

- 3.8 The land to the south of HMP Gartree and east of Welland Avenue (Parcel 1) is currently in use as farmland with isolated trees and hedgerows. There is a beck running through the Site (which will be diverted as part of the appeal proposal). To the east is an internal access road leading to the existing prison with farmland beyond this. To the south of Parcel 1 is farmland and to the west is Welland Avenue (with land parcel 2 beyond this) and the Gartree estate – a collection of houses formerly in the MOJ’s ownership and connected to HMP Gartree but now in private ownership. Parcel 1 is largely flat with a gentle slope on the west side.
- 3.9 The land parcel to the north west of Welland Avenue (Parcel 2) is open space used informally for recreation by the neighbouring Gartree Estate. To the east of this land is a large storage depot (related to HMP Gartree) with the former Prison Officer’s Club and training facility beyond this. To the north is a public footpath (to be retained) and to the west is farmland.
- 3.10 Parcel 3 comprises a small parcel of land within the Gartree Estate. This land has been identified as having potential for an informal play space/recreational space for the estate and is included in the redline boundary for the Site.



**Figure 2: Land Parcels**

## **Surrounding Area**

- 3.11 The Site is situated in the countryside approximately 5.1km north west of Market Harborough. Junction 20 of the M1 is approximately 18.3km to the south west of the Site. Lubenham village is situated approximately 1.9km to the south of the Site. Foxton village is situated 2.4km to the north west of the Site (via highway routes).

3.12 The Site access is via Welland Avenue (a private road) via Foxtan Road. Welland Avenue from Foxtan Road to the Gartree estate is owned by the MOJ (see Figure 1 above). The section of Welland Avenue running through the Gartree estate is in multiple ownerships.

3.13 The closest railway station to the Site is Market Harborough (5.7km). This provides mainline services to London and the south east as well as the midlands and north. There is a bus service from Market Harborough railway station to HMP Gartree.

## Planning History

3.14 HMP Gartree opened in 1965. The applications of relevance to the Appeal are set out in Table 1 below and identify applications related to the operational use of HMP Gartree

Application Reference	Validation Date	Description of Development	Date of Decision	Decision
21/02128/FUL	6/12/21	Erection of a 4 storey houseblock for up to 247 prisoners, 2 storey workshop, extension to segregation unit, kitchen extensions, extension to sports hall, MUGA pitch and extension to existing staff car park (59 spaces), HM Prison, Welland Avenue, Gartree.	N/A	Application withdrawn.
08/00149/GOV	01/2/08	Modernisation of existing accommodation block (D Wing) revised scheme of 07/00128/GOV.	28/03/08	Approved
07/00128/GOV	25/1/07	Erection of a 4 storey extension to accommodation block	14/06/07	Approved
05/01803/GOV	29/11/05	Erection of single storey extension to visitor's centre, extension to existing staff car park, construction of visitors car park, erection of extension to sports hall (revised scheme of 04/01148/GOV)	17/1/06	Deemed Approval
04/01148/GOV	13/7/04	Erection of additional ancillary buildings including two storey visitors centre/staff locker building, two storey extension to sports hall, extension to stores, new garage, new two storey education/workshop, new single storey kitchen building, two storey extension to administration building, creation of new visitors car park and replacement of existing perimeter wall with a double fence line.	7/9/04	Approved

Application Reference	Validation Date	Description of Development	Date of Decision	Decision
02/00883/GOV	04/9/03	Erection of additional living accommodation (revisions to 02/00883/GOV),		No Decision Issued
02/00883/GOV	10/6/02	Erection of additional living accommodation.	2/8/02	Approved

**Table 1: Planning History**

## 4. Appeal Proposal

### Description of Development

4.1 The description of the proposed development is:

*Outline planning application with all matters reserved except for means of access and scale for the construction of a new Category B prison of up to 82,555 sqm GEA within a secure perimeter fence together with access, parking, landscaping and associated engineering works on land adjacent to HMP Gartree, Gallow field Road, Market Harborough, Leicestershire LE16 7RP'*

4.2 The new prison will be located on land to the south of HMP Gartree. The indicative site layout shown on the Comprehensive Landscape Masterplan (Drawing No.661277-0000-PEV-GTX0011-XX-DR-L-031) **(CD/A50)** demonstrates how these buildings are likely to be laid out across the Site. A summary of the buildings and their indicative parameters are set out in Table 2 below.

4.3 Ancillary development including car parking (circa 523 spaces), cycle shelters, internal road layout and perimeter fencing totalling 1,463 linear metres enclosing a secure perimeter area of 11.69 ha also forms part of the appeal proposal.

Building	Number of buildings proposed	Indicative Building Parameters	
		GEA (sqm)	Storeys
Entrance Resource Hub (ERH)	1	4729	3
Support Building	1	797	2
Central Services Hub	1	5668	2
Kitchen	1	2393	2 (with mezzanine)
Workshops	2	13,308	2
Care and Separation Unit (CASU)	1	1125	1
Houseblocks	7	53,122	4
<b>Total</b>	<b>14</b>	<b>81,143</b>	

**Table 2 – Indicative Floorspace Areas**

4.4 The new prison will be designed and built to be highly sustainable and to exceed local and national planning policy requirements in terms of sustainability. The Energy and Sustainability Statement **(CD/A14)** submitted in support of the appeal proposal confirms the MOJ's sustainability aspirations for their new prisons and include targeting near zero carbon operations, 10% biodiversity net gain, and at least BREEAM 'excellent' certification, with endeavours to achieving BREEAM 'outstanding'.

- 4.5 The site is broadly split into the public zone and the secure area. The public zone comprises the car parking area and pedestrian access points up to the entrance plaza outside the ERC.
- 4.6 The secure compound of the Site will be enclosed by a perimeter fence of 5.2m in height. The fence will comprise of a steel post and weldmesh panel fence with a 2.4m high steel sheet in an inner concrete apron.
- 4.7 The fence will not be externally lit but will instead be lit internally with CCTV cameras mounted on columns inside the secure perimeter.
- 4.8 The ERH forms part of the external secure line and includes the gatehouse that monitors vehicles entering the secure compound including prisoner transfers and deliveries to the facilities on site such as the kitchen or workshop. There will be various internal fences and gates separating buildings and creating zones within the secure compound. The illustrative site layout plan **(CD/A48)** provides an indicative layout, however the detailed layout will be confirmed as part of a reserved matters application.
- 4.9 The Site access will be located off Welland Avenue. The entrance has been designed to ensure suitable visibility splays are achieved for all vehicles leaving the Site. The position of the Site access has been located as far away as possible from the residential development on Welland Avenue ('the Gartree Estate') in order to minimise impacts from vehicular traffic.
- 4.10 The car park for both visitors and staff will be located in front of the ERH. It will provide 523 parking spaces, which has been calculated on the basis of assumptions over staff and visitor numbers based on evidence from other prison facilities as well as consideration of shift patterns, the availability of public transport and anticipated modal split of travel by staff.
- 4.11 The car park will include 16 accessible car parking spaces located close to the entrance building, 53 electric vehicle charging spaces and 27 spaces set aside for car sharing users.
- 4.12 A 51-space covered cycle parking area will be located on the plaza outside the entrance building.
- 4.13 The Site's redline boundary includes land to the north of Welland Avenue which will form part of the area of net biodiversity gain (BNG). An additional area of BNG is located in a triangular area north of the proposed houseblocks. In total the appeal proposal would deliver a minimum of 10% BNG.
- 4.14 A small parcel of land located within the north west of the Gartree estate is also within the redline boundary. This land is within the ownership of the MOJ and will deliver a play area for community use.

## 5. Planning Policy Context

### The Development Plan

- 5.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that an application for planning permission shall be determined in accordance with the development plan unless material considerations indicate otherwise.
- 5.2 The development plan for Harborough District Council comprises:
- Harborough Local Plan 2011-2033 (adopted April 2019) **(CD/I1)**
  - Lubenham Neighbourhood Development Plan (2016 – 2031) (adopted March 2017) **(CD/I2)**.
- 5.3 The National Planning Policy Framework (the Framework 2021) **(CD/H1)** is also a material consideration in the determination of this appeal. Development Management Supplementary Planning Document (SPD) (December 2021) **(CD/I3)** is also a material consideration in the determination of this appeal.

### Development Plan Policies not in issue

- 5.4 There are a number of development plan policies that are relevant to the appeal proposal but that are not cited in the reasons for refusal. The relevant policies not in issue with the Council are set out below.

#### Harborough Local Plan 2011 - 2033

- 5.5 The Harborough Local Plan (HLP) **(CD/I1)** was adopted in April 2019 and sets out the spatial strategy for the Harborough District. The HLP *'....explains how much and what types of development will take place, where it will be built and how and when it will be delivered* (paragraph 1.1.5). Relevant policies not in issue with the Council are set out below:
- Policy HC1 Built Heritage
  - Policy CC1 Mitigating Climate Change
  - Policy CC3 Managing Flood Risk
  - Policy CC4 Sustainable Drainage
  - Policy IN1 Infrastructure Provision
  - Policy IN2 Sustainable Transport

- G12 Local Green Space
- Policy G14 Biodiversity and Geodiversity.

5.6 The following policies although not cited on the Council's decision letter (**CD/A75**) are noted as being relevant in the Council's Statement of Case (**CD/C4**).

5.7 Policy SS1 Settlement Hierarchy - This policy sets out the spatial strategy for Harborough District. Criterion f) is relevant to the appeal proposal and relates to other villages, rural settlements and the countryside and is at the bottom of the settlement hierarchy. In such locations development will be strictly controlled.

5.8 Policy GD2 Settlement Development – This policy identifies in what locations development will be permitted over and above allocated sites (built up area of Market Harborough, Key Centres, the Leicester Principal Urban Area (PUA), Rural Centre and Selected Rural Villages). In addition, sites adjoining the existing or committed built up area of Market Harborough, Key Centres, the Leicester PUA, Rural Centres and Selected Key Villages will be permitted subject to a number of criteria.

5.9 Gartree is not identified in any category in the Council's settlement hierarchy and I consider that this particular policy is of limited relevance to the appeal proposal.

5.10 Policy GD5 Landscape Character - Development should be located and designed so that it is sensitive to its landscape setting and landscape character and will be permitted where it:

- a. Respects and where possible enhances local landscape, the landscape setting of settlements, and settlement distinctiveness
- b. Avoids the loss of, or substantial harm to, features of landscape importance
- c. Safeguards important public views, skylines and landmarks; and
- d. Restores or provides equivalent mitigation for damaged features and/or landscapes that would be damaged or degraded as a result of the development.

Fig A.4 identifies the site as being within the Welland Valley landscape character area.

5.11 Policy GD6 Areas of Separation – this policy controls development in Areas of Separation between Great Bowden and Market Harborough, and Bittewell, Lutterworth and Magna Park. It is referenced in the Council's Statement of Case; I do not consider that it is relevant to the appeal proposal as it is the AOP (Policy LNP01) in the Lubenham Neighbourhood Plan that is of relevance to the appeal proposal.

5.12 Policy GD8 Good Design in Development - Development will be permitted where it achieves a high standard of design including meeting a number of criteria listed in the policy. The following criteria are relevant to the appeal proposal:

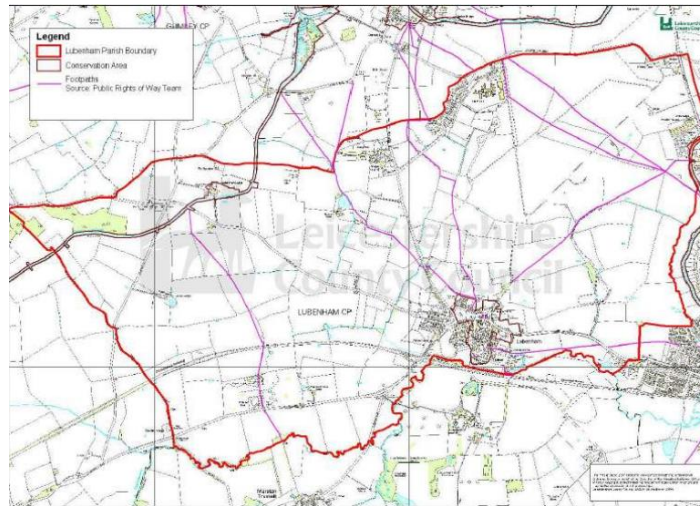
- a. Where appropriate being individual and innovative, yet sympathetic to the local vernacular, including in terms of building materials
- b. Respecting the context and characteristics of the individual site, street scene and the wider local environment to ensure that it is integrated as far as possible into the existing built form
- c. Being designed to minimise impact on the amenity of existing and future residents by:
  - i. Not having a significant adverse effect on the living conditions of existing and new residents through loss of privacy, overshadowing and overbearing impact, and
  - ii. Not generating a level of activity, noise, vibration, pollution or unpleasant odour emission, which cannot be mitigated to an appropriate standard and so would have an adverse impact on amenity and living conditions
- g. Minimising pollution from glare or spillage of light from external lighting
- i. protecting and enhancing existing landscape features, wildlife habitats and natural asset
- l. Ensuring safe access, adequate parking and servicing areas
- m. Ensuring the safe, efficient and convenient movement of all highway users

5.13 Although not set out in the Council's Statement of Case or cited as a policy in the reason for refusal, I note that the Officer report references Policy BE1 Provision of new business development and concludes that the Site would not be judged to be a sustainable location for new business development and in this regard would be contrary to this policy, however in respect of BE1.1 – Scale and Distribution the Officer concluded that *'the proposed development is in accordance with the spirit and intentions of Policy BE1.1...(p.99 of CD/A72)*.

### **Lubenham Neighbourhood Plan**

5.14 The Site sits within the defined Lubenham Neighbourhood Development Plan area. Figure 3 below shows the extent of the Neighbourhood Plan area.





**Figure 3: Lubenham Neighbourhood Plan Area**

5.15 The following relevant policies in the Lubenham Neighbourhood Plan are not in issue with the Council:

- Policy LNP12 – Provision of Travel Plans for new large scale, business residential and school development within the Neighbourhood Plan area
- Policy LNP13 – installation of electric vehicle charging points at appropriate locations
- Policy LNP14 – inclusion of measures to protect and enhance the natural environment and biodiversity of the area

### **Development Plan Policies in Issue**

5.16 In this section I review the policies that are cited in the single reason for refusal on the Council's decision notice, namely HLP policies GD1 and GD3, and LNP policies LNP01, LNP16 and LNP19, and assess the compliance of the appeal proposal against those policies.

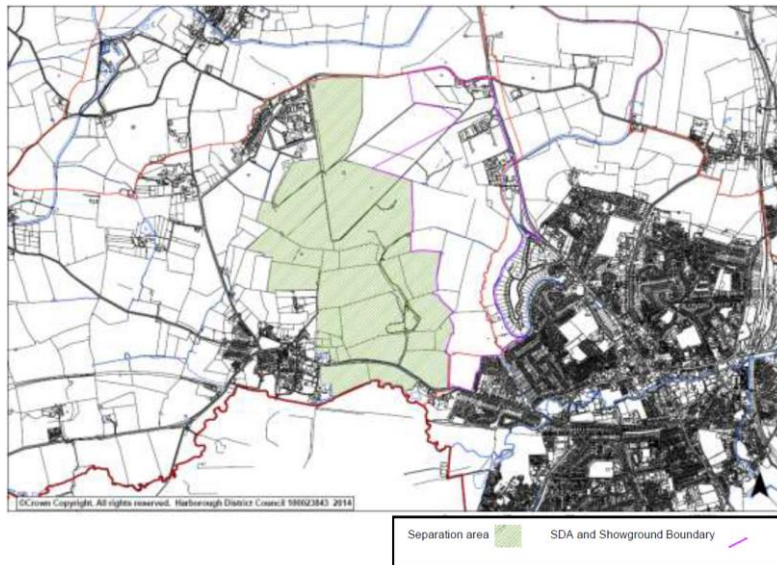
5.17 Policy GD1 Achieving Sustainable Development – this policy reflects the policies in the Framework and states that the Council will take a positive approach that reflects the presumption in favour of sustainable development as set out in the Framework. The Council will work proactively and collaboratively with applicants to find joint solutions so that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions of the District. Criteria 2 and 3 of the policy reiterate paragraphs 11c) and 11d) of the Framework.

5.18 I consider that the appeal proposal complies with the thrust of this policy. The Appellant worked proactively with the Council prior to submitting the planning application process and through the determination process, with Officers making a positive recommendation in the report to Planning Committee (**CD/A72**). Although there is conflict with Policy GD3 in respect of the

location of the appeal proposal, the appeal proposal is in accordance with a wide range of relevant policies in the HLP and the LNP and I consider that it accords with the Development Plan read as a whole.

- 5.19 Policy GD3 Development in the Countryside - this is a permissive policy that allows development outside of settlements and urban areas (except for Green wedges) where it is required for certain purposes - criterion e) - necessary for the continuation of an existing enterprise, facility or operation that is compatible with its setting in the countryside l) other uses which justify and are compatible with a countryside location.
- 5.20 In the supporting text of Policy GD3, paragraph 4.5.1 states that it is important that the countryside is protected from unacceptable development that would harm its intrinsic value and rural character. Certain forms of development are necessary to support rural life and maintain or enhance the rural economy. The policy strikes a suitable balance between encouraging a thriving rural economy, maintaining and, where possible, improving the sustainability of smaller rural settlements, and conserving the character of the District's much valued countryside.
- 5.21 I acknowledge that the appeal proposal is in conflict with Policy GD3 as the appeal proposal is outside any defined settlement development limits and as such is within the countryside in policy terms and does not fall within any of the categories of development that are permissible in the open countryside. The Site is not allocated for any land use on the Local Plan Proposals Map.
- 5.22 Policy LNP01 – this policy states that the open character of the Lubenham and Gartree Area of Separation, as defined on Map 2 (see Figure 4) below, shall be maintained, to preserve a visual separation from the settlement of Market Harborough and retain the distinctive character and separate identities of Lubenham and Gartree. Development will only be permitted in this area if it satisfies two criteria, namely:
- a) It would not diminish the physical or visual separation between built up areas associated with these settlements; and
  - b) It would not compromise, either alone or in conjunction with other existing or proposed development, the effectiveness of the Area of Separation in protecting the identity and distinctiveness of these settlement.

Development proposals within the Area of Separation must be accompanied by an analysis and proposals for mitigation of likely impact on settlement setting and the objective of visual separation, giving specific attention to use of location, design and landscaping appropriate to the character of the area.



Map 2

**Figure 4: Lubenham and Gartree Area of Separation**

5.23 Ms Machin summarises in her evidence **(CD/E3)** that the main functions of the AoS is to:

- Preserve the physical separation between the settlements of Gartree, Lubenham and Market Harborough
- Preserve the visual separation between the settlements of Gartree, Lubenham and Market Harborough, and
- Retain the distinctive character and separate identities of Gartree and Lubenham

5.24 Ms Machin confirms in her evidence **(CD/E3)** that the appeal proposal only results in a minor incursion into the AoS (approximately 2.8% of the total AoS) and whilst it would be reduced to an extent, the physical separation of Gartree and Lubenham, and Gartree and Market Harborough, will be maintained.

5.25 In respect of visual separation, Ms Machin concludes that there are no locations where the appeal proposal would result in visual coalescence of the two settlements, and with the development in place the open views across the agricultural landscape will remain.

5.26 In respect of the distinctive character and separate identities of Gartree and Lubenham, Ms Machin concludes in her evidence that the separate identities will remain intact and the impacts on the setting of Lubenham are very limited as there is no physical or visual relationship between the appeal site and Lubenham.

5.27 I conclude on the basis of Ms Machin's evidence and my own professional judgment that the appeal proposal accords with Policy LNP01

5.28 Policy LNP 16 - this policy states that proposals for new business/employment development should:

- a) Be of a scale, density and design appropriate to its setting such that it would not cause damage to the qualities, character and amenity of the area and its residents
- b) Include the provision of adequate vehicle and cycle parking, turning and manoeuvring space;
- c) Incorporate safe and inclusive design and access suitable for all;
- d) Include/encourage links to existing walking and cycling networks
- e) On larger developments include a framework sustainable travel plan, and
- f) On larger developments explore opportunities for inclusion of electric vehicle charging points

5.29 The appeal proposal is located immediately adjacent to the existing HMP Gartree prison, located north of the Site. The appeal proposal is of a similar scale and density to the existing prison. The design of the proposal is institutional in appearance and would be similar in character to HMP Gartree, which provides the immediate context. The proposed woodland planting along the eastern, south eastern and south western part of the Site will assist in filtering views from the south, east and west (as confirmed in Ms Machin's evidence **CD/E3**). The appeal proposal would result in a loss of trees and hedgerows within the Site, however the landscape masterplan submitted in support of the appeal proposal (**CD/A50**) demonstrates that as part of the green infrastructure strategy and biodiversity enhancements, a variety of new habitats will be introduced as part of the appeal scheme.

5.30 Although I acknowledge that the appeal proposal will result in change to the character of the Site from agricultural to an institutional prison, I consider that the development proposal can be accommodated within the Site without resulting in significant harmful impacts on the character and qualities of the area and the proposed green infrastructure strategy and mitigation proposed I consider will assist in mitigating any harm. I therefore consider that the appeal proposal complies with the first part of criterion a) of Policy LNP16.

5.31 The appeal proposal would not have an unacceptable impact on the amenity of the area or its residents. The nearest residential development is the Gartree Estate located to the north west of the appeal proposal. Nos 42 – 68 Welland Avenue have rear elevations facing towards two of the new houseblocks with separation distances of between 160 metres and 250 metres. There are existing trees along this western boundary of the Site and further tree planting is proposed within the northern area of the Site that will provide further screening between these properties and the houseblocks. Although I acknowledge that there will be a change in outlook

for these properties, I consider that there will not be any overbearing impacts due to the separation distances, or any loss of privacy.

- 5.32 No. 76 Welland Avenue has a side elevation facing one of the new houseblocks, however there is a separation distance in excess of 120 metres with intervening existing trees and additional tree planting as part of the appeal proposal. I do not consider that there will be any overbearing impacts due to the separation distances, or any loss of privacy.
- 5.33 In respect to the proposed play area for community use there are a small number of properties which may be affected by the use of this area as a formal play area. I understand that the area is currently used informally by the local community and details regarding the siting of equipment would need further consideration at the Reserved Matters stage. However, the provision of such play areas often referred to as 'Locally Equipped Area for Play or LEAP' are common features on new residential estates. I do not consider that this provision would have an impact on residential amenity.
- 5.34 I accept that during the construction phase there would be some minor impacts on residential amenity, including the potential for short-term increases in noise levels (**CD/A31** paragraph 4.1.1 Noise Impact Assessment) however these can be limited through appropriate conditions being attached to any permission. In the Officer report to committee no weight was given to residential amenity in the planning balance (p.235, **CD/A72**). In my assessment I would give limited weight against the proposal to this harm rather than no weight as assessed by the Officer as there are some impacts, albeit short-term.
- 5.35 The existing dominant noise source at the Site is from road traffic noise throughout the daytime and night-time periods, however this is below guidelines and therefore the Noise Assessment (**CD/A31**) concludes that no specific mitigation is required for outdoor living areas or within habitable rooms or education spaces. Noise from traffic generated from the operation of the new prison is concluded to have a minor impact in the short term and negligible impact in the long term and requires no specific mitigation. At the detailed design stage appropriate low noise plant will be used with proprietary attenuation measures to ensure no unacceptable noise impacts from plant. I therefore consider based on the conclusions of the Noise Assessment (**CD/A31**) there will be no unacceptable impacts from noise during the operational period on existing residents or future residents of the prison.
- 5.36 I conclude that the appeal proposal complies with the second part of criterion a) of Policy LNP16 and no harmful impacts on the amenity of the area or its residents will arise.
- 5.37 The capacity of the car park (circa 525 spaces) is considered to be sufficient provision for the size of the prison. Of these spaces 16 will provide disabled parking space in line with guidance within the Leicestershire Highways Design Guide.

- 5.38 As part of the proposals secure cycle parking will be provided. There is no detailed guidance on cycle parking for this particular land use in the Leicestershire Highways Design Guidance. The Transport Assessment submitted in support of the appeal (**CD/A10**) undertook a cycle parking accumulation exercise and, based on the predicted number of cycle trips this equates to 14 cycles, however in order to encourage a modal shift toward sustainable transport 51 cycle spaces are proposed. The appeal proposal would provide 53 EV charging points, which equates to 10% of the total car parking capacity and is in accordance with BREEAM Tra02. The level of car parking has been informed by the operational requirements for a prison of this size (there is no standard in the Leicestershire Highway Design Guide for prisons) and is based on the Appellant's experience in designing new prisons elsewhere where planning permission has been granted, for example HMP Five Wells in Wellingborough. It is also informed by Leicestershire Highways Design Guidance and the number of EV charging points meets with BREEAM standards. No comments have been received from the Highway Authority to suggest that the design of the car park is below standard and on this basis I conclude that it includes sufficient space for turning and manoeuvring. I consider that the design of the car park and the numbers of car and cycle parking provision meet the operational requirements of the proposed new prison, comply with other guidance and standards where it is available and comply with criterion b) of Policy LNP16.
- 5.39 The appeal proposal has been designed to ensure that the new prison can operate in accordance with the guidance and technical standards that the prison service has published. The Site will be accessible to all users including visitors to the Site. The appeal proposal will provide 16 accessible car parking spaces to be located close to the Entrance Resource Hub. Safe access to, from and around the Site can be achieved with appropriate visibility provided. I conclude that the design of the appeal proposal complies with criterion c) of Policy LNP16.
- 5.40 A financial contribution of £102,898 for improvements to the Foxton School to Swingbridge Street section of footpath A22 would be secured through a section 106 agreement. This contribution was requested from LCC in order to encourage parents dropping off children at Foxton Primary School to park on Swingbridge Street, Foxton and use this part of the public right of way as LCC recognise that there will be an increase in traffic passing the school frontage on Gallowfield Road.
- 5.41 It is also proposed to provide traffic calming measures along the southern extent of Welland Avenue (to the south of the proposed access) to control the speeds of traffic accessing and egressing the Site and to discourage staff and visitors from turning right and utilising the residential part of Welland Avenue. These measures will ensure that the northern extent of Welland Avenue remains attractive and safe for pedestrians. I consider that these measures ensure compliance with criterion d) of Policy LNP16.
- 5.42 A sustainable Travel Plan is submitted in support of the appeal proposal (**CD/A11**) and includes a range of measures for both staff and visitors to encourage the uptake of sustainable

travel. I consider that in this respect the appeal proposal complies with criterion e) of Policy LNP16.

5.43 As set out above the appeal proposal provides 53 EV charging points and I therefore consider that it is in compliance with criterion f) of Policy LNP16.

5.44 I consider that the appeal proposal conforms to Policy LNP16 of the LNP.

5.45 Policy LNP 19 – this policy relates directly to the Gartree Estate and states that limited and small-scale employment/business development may be supported on environmentally acceptable sites in Gartree only if the resultant effect will involve:

- a) Conversion and re-use of appropriately located and structurally robust existing buildings
- b) No adverse impact upon living conditions of nearby residents from nuisance or disturbance caused by odour, noise, vibration or traffic movement
- c) Retention of rural/community services/facilities, land based businesses or positive farm diversification without harm to their viability and vitality
- d) Provision/enhancement of links to community facilities/services through the improvement of roads and pathways in and around the settlement at a level proportionate to the anticipated impact development proposed.

5.46 I acknowledge that the appeal proposal is not a small scale business/employment use nor does it involve the conversion or re-use of existing buildings, the provision of rural/community services/facilities, land based businesses or positive farm diversification. I conclude that the appeal proposal is in conflict with Policy LNP19.

### **National Planning Policy Framework (2021)**

5.47 The Framework (**CD/H1**) sets out the Government's planning policies for England and how these are expected to be applied. Policies in Chapters 3, 4, 5, 7, 10, 11, 13, 14, 16 and 17 either contain policies not relevant to this appeal or policies that are relevant but not in issue with the Council. Details of these policies are contained within the Planning Statement submitted in support of the application proposal (**CD/A2**). Those policies that relate to matters in issue with the Council are considered below.

5.48 Paragraph 7 of the Framework states that *'the purpose of the planning system is to contribute to the achievement of sustainable development'*. At a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs.

- 5.49 Paragraph 8 defines the scope of sustainable development and includes economic, social and environmental dimensions. These dimensions are not mutually exclusive and should be considered together so that opportunities can be taken to secure net gains across each of the different objectives.
- 5.50 A key thread which runs throughout the Framework is the presumption in favour of sustainable development. Paragraph 9 states that planning policies and decisions should play an active role in guiding development towards sustainable solutions, taking into account local circumstances to reflect the character, needs and opportunities of each area.
- 5.51 Paragraph 11 of the Framework sets out the principles of the 'presumption in favour of sustainable development'. For decision-taking this means:
- Approving development proposals that accord with an up-to-date development plan without delay; or
  - Where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date, granting permission unless:
    - i. The application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed<sup>1</sup> or
    - ii. Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
- 5.52 Paragraph 81 states that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt and significant weight should be placed on the need to support economic growth and productivity.
- 5.53 Paragraph 96 of the Framework states that to ensure faster delivery of other public service infrastructure such as further education, colleges, hospitals and criminal justice accommodation, local planning authorities should also work proactively and positively with promoters, deliver partners and statutory bodies to plan for required facilities and resolve key planning issues before applications are submitted.
- 5.54 Paragraph 105 states that the planning system should actively manage patterns of growth in support of the objectives set out in paragraph 104. Significant development should be focused

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<sup>1</sup> The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 180) and/or designated as Sites of Special Scientific Interest, land designated as Green Belt, Local Green Space, An Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 67); and areas at risk of flooding or coastal change.



on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport mode. The Framework however does recognise that the opportunities to maximise sustainable transport solutions will vary between urban and rural area, and this should be taken into account in both plan-making and decision-making.

- 5.55 Paragraph 111 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.
- 5.56 Paragraph 127 states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.
- 5.57 Paragraph 130 states that developments should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users, and where crime and disorder, and the fear of crime do not undermine the quality of life or community cohesion and resilience.

## 6. Additional Material Considerations

6.1 In addition to the NPPF I consider the following to be material to the determination of this appeal

- Need for a new prison
- Lack of alternative sites
- Benefits of the appeal scheme – economic, social and environmental

6.2 Although in my opinion the appeal proposal complies with the development plan read as a whole, I consider that in addition the above material considerations further support the grant of planning permission for the appeal proposal.

### The Need for the Prison

6.3 The need for a new Category B prison in the Midlands is set out in the evidence of Mr James Smith **(CD/E2)**. This shows that there is a significant national need for new prison places, including Category B Training. Category B prisons hold some of the highest risk prisoners who can only be held in prisons with appropriate security, infrastructure and resourcing. Historically, there has been an imbalance between the category of prisoners and the types of prisons in which they are held. Such imbalances result in some prisoners held in a higher security category prison than they have been assessed for and which does not perform the function which they need. Not only is this poor value for money as the higher categories cost more per prisoner place, but they offer more limited opportunities for prisoners to engage in appropriate training that will ultimately assist their rehabilitation.

6.4 More specifically there is an identified need for Category B prison places and the evidence of Mr **Smith (CD/E2)** demonstrates that without the delivery of a new Category B prison the demand for places will outstrip supply in the near future.

6.5 The clear and compelling need for a new Category B prison in this location justifies the approval of the appeal scheme notwithstanding its countryside location. The Framework supports the faster delivery of public service infrastructure, including criminal justice accommodation (paragraph 96 and 97 of the Framework) and significant weight should be given to this policy support.

### Site Search

6.6 Whilst the Appellant does not accept that it has to demonstrate that there are no alternative sites that could accommodate the Appeal Scheme, it is nonetheless relevant to note that the Appellant's site search has shown that there are no other suitable sites. Details of the decision making process that has informed this are appended to Mr Smith's evidence **(CD/E2)**.

- 6.7 I would draw the Inspector's attention to Lutterworth Road (A4304) adjacent to Junction 20 of the M1. This site was brought to the attention of C&W by the Officer dealing with the Gartree planning application following receipt of the MOJ's letter sent to local authorities in May 2022. Having reviewed this site I would conclude that it is not an appropriate site for a new prison as the wider site area forms part of a strategic development area (Policy L1) delivering 2,700 dwellings, two schools and B8 employment uses. Outline planning permission has already been granted for these uses on the 17<sup>th</sup> May 2022, including the necessary road infrastructure, under planning permission ref 19/00250/OUT. To successfully develop a new prison in this location would require a new planning permission for this use and there is no certainty that such a proposal would be supported by Harborough Council. The MOJ have spent a considerable amount of time and money developing the scheme for a new prison at Gartree, on land that they own. The advantage of this is that there is no requirement to purchase the Site, making it good value for money for the public purse. Pursuing an alternative site at this stage not in their ownership is not only uncertain in planning outcomes, but even if the landowner, Leicestershire County Council, would be willing to sell the site to the MOJ the time taken to acquire the site could result in further significant delays. This site is located in a prime position for logistics development and in my experience sites on the M1 corridor are hugely sought after by logistics developers and operators and attract premium values. I consider therefore that such a site would be unaffordable to the MOJ and does not represent a realistic proposition.
- 6.8 To conclude, there is no requirement in policy terms to demonstrate that there are alternative sites. There were no alternative private sector sites available in 2020, or subsequently that could deliver a new Category B prison that would provide the additional prison places in the timescales necessary to meet the MOJs programme. Even if an alternative site were available, it would not represent best value for the public purse. In any event, I consider that the significant benefits delivered by the appeal scheme would further justify the grant of planning permission for the appeal scheme.

### **Benefits of the Appeal Scheme**

- 6.9 There are a number of economic, social and environmental benefits that in addition to the imperative need for prison places would outweigh the conflict with the development plan.

#### **Economic Benefits**

- 6.10 The appeal proposal would bring with it a number of positive economic benefits both in the construction phase and operational phase of the development and over the lifetime of the development. Paragraph 81 of the Framework states that significant weight should be placed on the need to support economic growth. Mr Cook's evidence sets out in detail the social and economic benefits that would be delivered as part of a new prison **(CD/E4)**.

6.11 The following are considered to be the key economic benefits that the District would enjoy as a result of a new prison in this location. Further information is set out in the Social and Economic Assessment that was submitted with the planning application **(CD/A12)**.

1. 122 gross/76 net FTE temporary jobs during the construction period with 13 FTE construction jobs being drawn from the local area. A further 40 jobs could be supported at a regional level via the multiplier effect, of which 13 could be expected to be at a local level.
2. An estimated £129.3m GVA (gross) during the construction period, based on the cost of construction.
3. The construction of the proposed development could support a further £106.5m turnover/expenditure through the supply chain activities at a regional level, of which £35.8m could be expected to occur at the local level.
4. Additional turnover/expenditure could generate a further £35.5m GVA at regional level, of which £12.9m could be expected to occur at the local level.
5. 780 FTE jobs created during the operational stage, with approximately 740 employees estimated to live within a 40 mile radius of the scheme.
6. Total income spend by MOJ on goods and services is circa £13.7m per annum, of which £2.7m would be retained locally.
7. The MOJs Economic Impact Report **(CD/J1)** quantifies the total turnover per job as £59,200. This means that 230 FTE jobs could be supported in the wider economy due to the expenditure of the prison, 46 FTE jobs could be expected to be occupied by local residents.
8. Expenditure on goods and services would be multiplied throughout the supply chain of businesses providing goods and services to the prison and adopting the MOJs Economic Impact Report **(CD/J1)** a further circa £17.9m could be spent in the region's economy.
9. Expenditure from prison staff and visitors in the local economy provides a potential spend of £12.1m per annum, supporting 34 jobs.
10. Local apprenticeship, training and supply chain opportunities would be created through the construction and operational stages of the development
11. The appointed contractor would be contractually obliged to meet key performance targets including a 25% local spend within 25 miles of the Site, and £50,000 agreed

spend with voluntary, community and social enterprises, and at least one community project per year.

12. A Local Labour Agreement will be secured as a planning obligation through the s106 agreement.

6.12 The appeal proposal would generate significant economic benefits at the construction and operational stages, both in the wider economy and at a local level.

6.13 The evidence of Mr Cook **(CD/E4)** recognises that although the District has relatively low levels of unemployment, it has lagged behind neighbouring areas in terms of jobs growth in recent years. In addition, there is an outflow of commuters, suggesting that people who live in Harborough will often be working in other local authority areas. Harborough has an ageing population and therefore it is important that new jobs are created to attract people of working age to the area and retain existing working age residents.

6.14 Overall, I attach significant weight to the economic benefits delivered by the appeal scheme.

### **Social Benefits**

6.15 The appeal proposal would contribute to the social objective of sustainability in a number of ways.

6.16 The scheme would:

1. Deliver new prison places to meet an identified need in an appropriate geographical location.
2. Provide safe, secure and modern facilities to deliver improved outcomes for prisoners and reduce reoffending rates.
3. The new prison would create an environment that would assist in turning prisoner lives around by creating a safe, secure and small standalone communities delivering:
  - Workshops to provide opportunities for prisoners to develop skills that they could use once living in the community.
  - Providing the necessary social, recreational and cultural facilities within the prison such as health centre, multifaith provision and sports facilities to support a cohesive prison community.
4. The appeal proposal will provide environmental enhancements to the open space area north of Welland Avenue (area 2) which will support the wellbeing of the local community. The provision of a children's play area on Plot 3 would also enhance the

quality of existing open space. It is considered that this is in accordance with **Policy G12 of the HLP**.

5. A s106 contribution of £102,898 to improvements to the A22 PROW between Gallowfield Road and Swingbridge Street, Foxton.
  6. As has been the case with other new prisons recently opened e.g HMP Five Wells, the MOJ are committed to working with the management team, the local Council and the wider community to discuss community initiatives that can evolve organically prior to the prison opening, if approved. This will be secured via the s106 legal agreement.
- 6.17 In respect to the need for a new prison in this location and improved outcomes for prisoners, I would direct the Inspector to the evidence of Mr James Smith who sets out in detail the ‘need’ case **(CD/E2)**.
- 6.18 The extent of the social benefits that would arise from the appeal proposal are wide-ranging. The evidence of Mr Smith demonstrates that there is a significant national need for more Category B prison places and I attach substantial weight to this factor in favour of the grant of planning permission. The opportunities that would arise for improvements and outcomes for prisoners are significant and I consider this to be a substantial public benefit of the new prison, to which I give significant weight. In addition, moderate weight is given to the improvements to open space and opportunities of the implementation of community initiatives prior to the opening of the prison.

### **Environmental Benefits**

- 6.19 The site is not located in an area with an environmental designation that would give clear reasons for refusing the appeal proposal. I give significant weight to that in favour of the grant of planning permission. Development on the least environmentally sensitive sites is considered to represent an environmentally sustainable solution, resulting in reduced pressure for development to occur on sites that are more constrained by environmental factors. The following factors contribute towards the Site delivering a scheme that significantly contributes towards the environmental objective of sustainable development.

#### Heritage

- 6.20 The appeal proposal will not impact on the setting, or the significance of the setting of any of the 5 identified Listed Buildings that are considered in the submitted Heritage Statement **(CD/A29)**.
- 6.21 Three Conservation Areas are assessed within the Heritage Statement (Foxton, Lubenham and the Grand Union Canal) and no impact is found on these heritage assets.

- 6.22 There are no Schedule Ancient Monuments (SAM) within the Site, however Foxton Locks inclined Plane is approximately 1.2km north west of the Site and Gumley medieval settlement remains and field systems are located 1.7km north west of the Site. The intervening form of the existing prison results in extremely limited intervisibility and it is concluded that the proposals will have no impact on these assets either negatively or positively.
- 6.23 The Council has only recently initiated a 'Local List' of non designated assets and the Officer report to committee confirms that none of these are within the vicinity of the Site (p118, **CD/A72**). The Lubenham Neighbourhood Plan does not have a specific list but identifies features that require continuing protection, however the Officer report to committee confirms that the appeal proposal would have no impact on their setting, or the significance of their setting. Similarly in the Foxton Neighbourhood Plan there are a number of non designated heritage assets that have the potential to be impacted by the appeal proposal however the Officer report concludes at paragraph 6.1.64 that due to the relative distance, topography and existing built form between the application site and the assets there will be no impact on their setting, or the significance of their setting.
- 6.24 In respect of below ground assets (archaeology) most of the Site has limited potential for archaeological deposits or features. The following documents support the appeal proposal:
- PCA Archaeological Evaluation (January 2022) (**CD/A43**)
  - PCA Summary Report on Results of the Archaeological Evaluation (December 2021) (**CD/A42**)
  - Orion Archaeological Desk-Based Assessment (August 2021) (**CD/A5**)
  - CFA Archaeology Watching Brief (August 2021) (**CD/A6**)
  - Magnitude Surveys Geophysical Survey Report (June 2021) (**CD/A30**)
- 6.25 Following the trial trenching carried out across the Site between the 1<sup>st</sup> November 2021 and 3<sup>rd</sup> December 2021, the PCA evaluation (**CD/A42**) concludes that although most of the Site has little potential for further archaeological remains, there were prehistoric features identified in an area to the east of the Site. The Magnitude surveys (**CD/A30**) had identified a number of anomalies across the Site, most of these were of either geological or modern origin. However, in the area of Trenches 12 – 16 two Iron Age features were recorded – a subcircular ditched enclosure and ironworking waste. There is potential for further features in the immediate area of the Iron Age features that were highlighted by the geophysical survey but at the time of the evaluation these were within the badger exclusion zone.
- 6.26 Leicestershire County Council (LCC) Archaeology have recommended that prior to development, a Written Scheme of Investigation with archaeological mitigation should be

submitted to the Local Planning Authority. Draft Condition 30 covers this matter. The Officer Report confirms at paragraph 6.1.72 that the loss of these assets would result in significant harm to the non designated heritage asset, however recording the assets in perpetuity represents a significant benefit. This follows the approach taken when the evaluation work was carried out in November and December 2021, with finds being recorded at archive level, and retained where appropriate as part of the Site's archive.

- 6.27 The Officer report to committee concludes that *'the proposed development will protect the importance of heritage assets in the vicinity of the site.....the proposals will have a moderate beneficial impact upon Heritage and Archaeology*. I concur with this assessment by the Officer – the development of the Site for the appeal proposal provides an opportunity to gain a more informed understanding of the activities that took place in this area during the prehistoric period and an archive recording and this has a beneficial impact on Heritage and Archaeology. I consider that the appeal proposal complies with **Policy HC1 of the HLP** and paragraphs 202 and 203 of the Framework.

#### Ecology

- 6.28 The appeal proposal is supported by the following suite of ecological surveys:

- Badger Survey **(CD/A17)**
- Badger Bait Marking Survey **(CD/A20)**
- Barn Owl Survey **(CD/A22)**
- Bat Roost Surveys **(CD/A21)**
- BNG Calculation **(CD/A23)**
- Ecological Impact Assessment **(CD/A15)**
- Non Invasive Species Survey **(CD/A18)**
- Phase 1 Habitat Survey **(CD/A16)**
- Reptile Survey **(CD/19)**

- 6.29 Although the appeal proposal is located on a greenfield site comprising of existing agricultural land, the biodiversity enhancements proposed will deliver a biodiversity net gain of 26.29% by area and 25.26% by length. I consider these to be substantial environmental benefits arising from the appeal scheme. Mitigation is also proposed as part of the appeal proposal in respect of bats, badger, hedgehog, barn owl, other birds and GCN, and during the construction phase mitigation will be in place to protect these species groups. In the Officer Report to Committee



paragraph 6.2.52 concludes that *‘the proposals will have a major beneficial impact upon ecology and biodiversity*. I conclude that the appeal proposal accords with **Policy G15 of the HLP** and **paragraph 180 of the Framework**. I consider that significant weight should be given to these enhancements that are in any event over and above policy and legislative requirements. Even in circumstances where the BNG and other ecological enhancements only met the policy requirements, I would still give significant weight to such enhancements as they make an important contribution to achieving the objectives of the Government published in 2020 a biodiversity strategy<sup>2</sup>which commits to:

*‘Halt overall biodiversity loss, support healthy well-functioning ecosystems and establish coherent ecological networks, with more and better places for nature for the benefit of wildlife and people’*

#### Highways

- 6.30 A Transport Assessment and Travel Plan support the appeal proposal. There is no outstanding objection to the appeal proposal from Leicestershire County Council Highway Authority (LHA). Vehicular traffic associated with the appeal proposal will be directed onto Welland Avenue from Foxton Road and traffic is proposed to be managed by directional signage along Welland Avenue, with prison staff receiving instructions regarding access to the new prison at induction. A highway improvement scheme including lining and speed reduction measures are proposed for the southern section of Welland Avenue. No other off-site highway works have been requested by the LHA to make the proposal acceptable as they are satisfied that there are no capacity issues with any of the junctions that would justify a scheme of mitigation.
- 6.31 LHA consider that the general principles in the Travel Plan are acceptable and can be implemented by way of condition. They also consider that the Framework Construction Traffic Management Plan is acceptable.
- 6.32 Although I accept that there will be an increase in traffic movements as a result of the appeal proposal, I consider that the TA demonstrates that there are no unacceptable highway safety impacts, or that residual impacts on the highway network would be severe. The appeal proposal complies with **Policies GD8, IN2 and L1 of the HLP** and **paragraph 111 of the Framework**.

#### Landscape and Visual Impact

- 6.33 This is dealt with in the submitted Landscape and Visual Impact Assessment (**CD/A9**) and in the evidence of Ms Machin (**CD/E3**). Additional cross sections were requested through the appeal site and existing Gartree development by Officers during the determination process,

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<sup>2</sup> Biodiversity 2020: A strategy for England’s wildlife and ecosystem services (DEFRA:2020)

however despite some of the proposed buildings being taller than the existing HMP Gartree, the ridge heights of the appeal proposal would sit below the tallest buildings at HMP Gartree.

- 6.34 Ms Machin in her evidence concludes that the appeal proposal strikes an appropriate balance between impact and mitigation. She also concludes that the appeal site does not perform a significant role in respect of any of the AOS functions and the appeal proposal would only have a limited impact on these functions.
- 6.35 With mitigation in place, I consider that although there will be a change in character and appearance to the Site and its immediate context the impact would be acceptable, and the appeal proposal would accord with **Policy GD5 of the HLP and LNP Policy LNP01**.

#### Noise and Vibration

- 6.36 A Noise Impact Assessment undertaken by Hydrock supports the appeal proposal (**CD/A31**). The NIA assesses both the construction and operational phase of the development and considers the potential impacts.
- 6.37 At the construction phase there will be some minor short-term impacts, however these impacts can be mitigated through the imposition of conditions to control the effects of construction.
- 6.38 The NIA found that road traffic noise from local road networks was the dominant noise source throughout the daytime and night-time periods across the site. However, the NIA concluded that appropriate acoustic conditions could be achieved within the prison blocks and education areas with windows open and as such no specific mitigation is required.
- 6.39 Traffic generated by the new prison will have a minor impact in the short term at the worst affected Environmentally Sensitive Receptor (ESR) but in the long term this would reduce to a negligible impact and as such no specific mitigation is required in relation to noise generated road traffic.
- 6.40 Emissions from plant associated with the prison proposal can be considered at the detailed design stage and appropriate low noise plant selected.
- 6.41 I consider that in respect of noise and vibration the proposal will accord with **Policy GD8** of the HLP and there are no unacceptable impacts on existing and future residents in respect to noise and vibration.

#### Drainage and Hydrology

- 6.42 A Flood Risk Assessment submitted in support of the appeal proposal confirm that the Site is in Flood Zone 1 and is at low risk of flooding from all sources assessed. As the risk of flooding is low, no specific flood resistance or resilience measures are considered necessary. The FRA also demonstrates that a means of safe access and egress is possible to and from the site; and

the appeal proposal will not increase flood risk within the catchment as a result of loss of floodplain storage.

- 6.43 In respect of surface water, given that the appeal proposal has the potential to generate surface water run-off, it is anticipated that surface water discharge will need to be restricted to the pre-development run-off rate for all storm events up to and including the 1 in 100 +40% climate change allowance storm event. On-site attenuation will likely be required and also an appropriate and proportionate pollution control method to ensure an acceptable surface water discharge quality from the Site. The Lead Local Flood Authority (LLFA) and Anglian Water do not object to the appeal proposal subject to the imposition of conditions relating to a suitable scheme, management and future maintenance.
- 6.44 At the construction phase the Construction Environment Management Plan (draft Condition 35) will need to include ensuring that there are no adverse impacts on flood risk and surface water drainage during the construction period.
- 6.45 Although currently there is no spare capacity at the existing water treatment centre, Anglian Water are aware of this and do not object to the proposal. They are under an obligation to take the necessary steps to ensure that there is sufficient treatment capacity if the appeal proposal were to come forward and the Appellants are already in discussions with Anglian Water regarding the requirements for new facilities.
- 6.46 Given that there are no objections from technical consultees on the grounds of flood risk and drainage, I consider that the appeal proposal complies with **HLP Policies CC3 and CC3**. This was the view of the Case Officer (paragraph 6.6.25 of the Committee Report **CD/A72**)

#### Air Quality

- 6.47 An Air Quality Assessment undertaken by Ramboll is submitted in support of the appeal proposal and assesses the potential impact to air quality during the construction and operational phases. At the construction phase there is the potential for moderate adverse impacts without mitigation on nearby sensitive receptors, however with a series of standard mitigation measures in place including the implementation of a Construction Management Plan and monitoring air quality on a daily basis these impacts can be mitigated so that they are not significant.
- 6.48 In terms of emissions from road traffic during the operational period, two scenarios have been modelled – without and with the development including cumulative developments. The modelling indicated that concentrations of NO<sub>2</sub>, PM<sub>10</sub> and PM<sub>2.5</sub> would be well below the relevant objectives at all existing receptor locations and no mitigation is required. I consider that there are no air quality constraints to the appeal proposal and the proposals accord with **HLP Policy IN2**.

#### Residential Amenity

- 6.49 I have considered the impact on amenity. The locations of the nearest dwellings houses to the proposed houseblocks (the tallest element) is some distance (circa 160metres minimum). With the retention of the existing tree planting along the western boundary of the Site and the new woodland screening in the 'northern area' I do not consider that the appeal proposal will have any overbearing impact or loss of privacy, although inevitably for a small number of residents there will be a change in outlook.
- 6.50 This is confirmed in the Officer's report to Committee at paragraph 6.8.17. I conclude that the appeal proposal is in accordance with **HLP Policy GD8**.

#### Design

- 6.51 The prison buildings would be of high fabric energy efficiency and the appeal proposal would include air source heat pumps, photovoltaic panels and energy efficient lighting, appliances and equipment to assist the Appellant's target of net zero carbon ready.
- 6.52 A significant element of overall design is the landscape masterplan that demonstrates how significant green infrastructure can be delivered at the reserved matters stage to screen the development from the surrounding landscape and enhance biodiversity.
- 6.53 The External Lighting Report (**CD/A36**) submitted with the appeal proposal confirms that the lighting design will accord with the MOJ Technical Standards Specification and relevant British Standards. As the proposed new prison is a Category B there are additional requirements for special area lighting. These are set out in the External Lighting Report. The levels of lighting across the Site will be tailored to the operational characteristics of that area and cover the following:
- Car Park and Access Road lighting
  - Sports Pitch and MUGA lighting
  - General Lighting – Service Roads and Free Flow Areas
  - General Lighting – Restricted Compound and Inmate Areas
- 6.54 As part of the preparation work for this appeal, field survey work has been undertaken to inform a night-time appraisal of lighting impacts. The details of this are set out in Ms Machin's evidence (**CD/E3**), however she concludes that in the context of the existing HMP Gartree, the use of down-lit LED lamps to reduce light spill as far as possible and the landscaping mitigation, she considers that the lighting effects would not be significant.
- 6.55 The details in respect to layout, appearance and landscaping will come forward with any future Reserved Matters application. A condition requiring details of the external lighting to be

submitted is also proposed, however I consider that the proposals as outlined in the submitted documents accord with **HLP Policy GD8**.

Ground contamination

- 6.56 A Geo-environmental Appraisal undertaken by Dunelm Geotechnical and Environmental **(CD/A8)** was submitted as part of the application documents. The report confirmed that there were no sources of contamination identified and the report concludes that there are no unacceptable risks in respect to ground contamination. Further details in respect of a remediation scheme and verification plan are to be secured by condition. I therefore consider that the appeal proposals are in accordance with criterion n) of **HLP Policy GD8** and **paragraphs 183 – 185 of the Framework**.

Loss of Agricultural land

- 6.57 The Agricultural Land Assessment identifies that the majority of the Site is Grade 3b) agricultural land (25.3ha) with 1.7ha classified as urban land. The agricultural land to be lost is not the best and most versatile agricultural land (Grade 1 – 3a). The proposals therefore are in accordance with **HLP Policy G15**.
- 6.58 I consider that there are no environmental harms arising from the appeal proposal that would indicate that planning permission should be refused. In respect to ecological enhancement and BNG I consider that the appeal proposal will deliver significant environmental benefits over and above policy or legislative requirements and as such substantial weight should be given to this environmental benefit. Evidently, there will be some impacts on the environment that will weigh negatively in the planning balance including an impact on the character and appearance of the Site and on visual receptors close to the Site. In my view, however the appeal proposal complies with all of the relevant environmental policies in the development plan, and with national policies in the Framework. Overall, I give moderate weight to the environmental improvements delivered by the scheme.

## 7. Reasons for Refusal

- 7.1 There is only one reason for refusal cited on the Council's decision notice (**CD/A75**) and this can be broken down into three constituent parts:
- Unsustainable location
  - Impact on character and appearance of the countryside and the Area of Separation
  - Benefits of the proposal do not outweigh the above harms.
- 7.2 Mr Cartwright in his evidence addresses the location of the development and the locational sustainability merits of the Site (**CD/E5**). Mr Cartwright is of the view that notwithstanding the rural location of the Site, appropriate opportunities to promote sustainable transport modes can be or have been taken up. This accords with paragraph 110a) of the Framework (**CD/H1**).
- 7.3 Mr Cartwright also confirms that in his opinion, the development would not have an unacceptable impact on highway safety and the residual cumulative impacts on the road network would not be severe. I would concur with Mr Cartwright that the appeal proposal does not meet the threshold set out in paragraph 111 of the Framework that would direct the decision maker to refuse the new prison proposal.
- 7.4 Based on my consideration of Mr Cartwright's evidence I am of the view that the location of the appeal site is acceptable in planning terms and complies with policies in the Framework. A planning refusal in part based on the location of the development is not justified.
- 7.5 In respect of the impact of the proposal on the character and appearance of the countryside and Area of Separation this is dealt with in the evidence of Ms Machin (**CD/E3**). In respect of the impact on the character and appearance of the countryside, Ms Machin concludes that where there are areas of large scale built form, as is the case with a new prison, this will inevitably result in higher magnitudes of impact. However, the appeal proposal has a robust scheme of mitigation embedded in the design which Ms Machin concludes will assist in minimising the impact of the appeal proposal. The environmental mitigation and enhancement across the wider appeal site adds further mitigation to impacts on landscape character and visual impact and she considers that these measures complement the strategies and guidelines that are relevant to the area. Overall, Ms Machin considers that the appeal proposal strikes an appropriate balance between impact and mitigation. I would conclude based on Ms Machin's evidence that even with mitigation in place there is still some residual harm on the character and appearance of the countryside, however the need for the prison outweighs this residual harm.
- 7.6 In terms of the impact on the Area of Separation, although she concedes that the appeal proposal would impede on the AoS to a small extent, the appeal site does not perform a

significant role in respect of any of the AOS functions and the appeal proposal would only have a limited impact on these functions. Further, the mitigation that is proposed would ensure that the open character of the AOS outside of the new prison is maintained.

- 7.7 Having considered Ms Machin's evidence it is clear that there would be an impact on the character and appearance of the landscape, and this would change as a result of the appeal proposal, however this is the case for any proposal that involves the development of a greenfield site. The appeal proposal is not located in or near to any protected landscapes. Although in Year 1 there will be a moderate to adverse effect on landscape character, this will reduce to minor moderate effect at Year 15 once the mitigation proposed has matured. I would further add, that the landscape mitigation would continue to mature beyond Year 15 providing opportunities to further mitigate any residual effects. I consider that notwithstanding the impacts, the development is sensitive to its landscape setting and character but will result in some limited harm to the character and appearance of the countryside in this location. I do not consider that the proposals would result in harm to the function or open character of the AOS.
- 7.8 In respect of the planning balance, I set this out below and conclude that overall, the harms are outweighed by the substantial benefits of the scheme.

### **Planning Balance**

- 7.9 I provide an assessment of the weight I give to various factors in the planning balance.
- 7.10 I accept that the appeal proposal conflicts with **HLP Policy GD3** and **Policy LNP19** and would attach **significant weight** against the proposal in respect to this policy conflict, however I do not consider that the appeal proposal would conflict with **LNP01**. However, the principle of public service infrastructure and its faster delivery is supported through the policies set out in paragraphs 96 and 97 of the Framework and I give these policies **significant weight** in favour of the appeal proposal in the planning balance.
- 7.11 Mr Smith's evidence has demonstrated that there is an imperative need for a new Category B prison and I give this need **substantial weight** in favour of the grant of planning permission in the planning balance. The Site Search has identified no other site that is deliverable in planning terms, or that would represent good value to the public purse, even if the timescales allowed for the acquisition of such a site. The MOJ has invested significant time and money in developing the proposal at HMP Gartree and pursuing another site option at this stage is not realistic or in the public interest. Even in circumstances where other sites were identified, I consider that the benefits of this scheme are such that they outweigh any harm of the appeal proposal.
- 7.12 In respect of the economic factors, these can be divided into those delivered at the construction phase and those delivered at the operational phase of the new prison.

- 7.13 At the construction phase there a number of benefits that I have identified in Section 6 above. Although, these benefits are temporary and will only arise for a period of 2 -3 years during the construction phase, they would be subsequently replaced by the substantial economic benefits delivered during the lifetime of the prison. Overall, I give **significant weight** to the economic benefits of the scheme – this accords with paragraph 81 of the Framework.
- 7.14 The extent of the social benefits that would arise from the appeal proposal are wide ranging. The opportunities that would arise for improvements and outcomes for prisoners are significant and I give **substantial weight** to these social benefits. The community benefits identified including upgrading PROW A22, enhancements to the two areas of open space and the community initiative set out in the s106 agreement, I attach **moderate weight** to. Overall, I give **significant weight** to the social benefits of the appeal proposal.
- 7.15 There are a range of environmental issues, which attract varying weight, positive and negative, in the planning balance and I summarise below the respective weights I give to these.
- Heritage – **moderate weight** in favour arising from the public benefits of the appeal proposal. I have set out above the heritage benefits that derive from the appeal proposal.
  - Ecology – **significant weight** in favour arising from enhancements to biodiversity that goes beyond statutory and policy requirements, and the mitigation for individual species
  - Highways – **limited weight** against as a result of an increase in vehicle numbers arising from the development. Notwithstanding the rural location of the Site, appropriate opportunities to promote sustainable transport modes can be or have been taken up and I consider that the appeal proposal is policy compliant. I would give the promotion of sustainable transport modes **limited weight** in favour of the grant of planning permission.
  - Landscape and Visual Impact –**limited weight** against as a result of the inevitable change to the Site and its local context, however the landscape strategy and other environmental mitigation that supports the appeal proposal limits the impact on landscape character and visual impact. I consider that the imperative need for a new Category B prison outweighs the limited harm.
  - Noise and Vibration – Although there will be some minor impacts arising from operational highways traffic on identified ESR this would range from minor to negligible. I therefore give **limited weight** against in relation to this impact.
  - Flood Risk and Hydrology – I would concur with the Officer report to Committee and give this **neutral weight** in the planning balance.



- Air Quality – no impacts will arise from the appeal proposal and I therefore give this **neutral weight** in the planning balance.
- Residential Amenity – no impacts have been identified in respect of residential amenity and as such I give this **neutral weight** in the planning balance.
- Design – insofar as the appeal proposal is only at the outline stage I would give **limited weight** in favour.
- Ground contamination – no impacts have been identified in respect of ground contamination and as such I give this **neutral weight** in the planning balance.
- Agricultural Land – loss of Grade 3b) agricultural land which is not the best and most versatile. I would therefore give **limited weight** against the appeal proposal in relation to his impact.

7.16 Although I give limited weight against the appeal proposal in respect of landscape and visual impacts, traffic noise (construction and operational phases) and loss of agricultural land, in the planning balance I consider these to be clearly outweighed by the substantial weight I afford to the need for a new prison, the significant economic and social benefits, the significant beneficial impacts on ecology, the moderate benefits accorded to heritage and the more limited positive impacts arising from the design and sustainable travel opportunities.

## 8. Gartree Action Group Case

- 8.1 The Gartree Action Group (GA) became a formal part of the Inquiry on the 20th of July 2022. The GA Statement of Case **(CD/C5)** raises additional issues other than those dealt with in the reason for refusal set out in the Council's decision notice **(CD/A75)**. These can be summarised as follows:
- Need for a new prison in this location
  - Socio-economic benefits
- 8.2 GA have confirmed that they will rely on the Council's evidence in respect to landscape harm but will seek to supplement the Council's evidence on transport and accessibility.
- 8.3 Matters of need are dealt with in Mr Smith's evidence including the MOJs decision making process in respect to site choice **(CD/E2)**. A summary of the Site Search process is appended to Mr Smith's evidence and covers both the public and private sector elements of the search.
- 8.4 Mr Richard Cook addresses the socio-economic benefits of the appeal proposal in his evidence **(CD/E4)**.

## 9. Third Party Representations

9.1 There have been a significant number of representations from third parties received by the Planning Inspectorate in relation to the appeal proposal. These can be summarised as falling into the following categories:

- Contrary to Local Plan Policy
- Sustainability
- Greenfield land
- Impact on landscape/character/wider area/infrastructure/residents
- Increase in traffic/inadequate transport links/inadequate roads/highway safety
- Increase in air pollution/noise pollution/light pollution
- Impact on wildlife
- Impact on flood risk/drainage/foul water system
- Need
- Staffing
- Alternative sites
- Socio-economic benefits

9.2 I have reviewed the representations and issues relating to compliance with local plan policies, sustainability/transport links and impact on landscape character and these areas reflect the concerns set out in the Council's decision notice and are dealt with in evidence submitted in support of the appeal proposal.

9.3 Issues relating to need and alternative sites and the socio-economic benefits delivered by the appeal proposal are concerns set out in the GA Statement of Case. These matters are dealt with in the evidence of Mr Smith **(CD/E2)**, Mr Cook **(CD/E4)** and in my evidence above.

9.4 Other planning issues raised by third parties are considered in my evidence and I demonstrate how they comply with relevant development plan policies:

- Ecology

- Air/noise/light pollution
- Flood risk/drainage/foul water system

9.5 None of the above issues are identified by the Council as reasons for refusal.

9.6 To conclude, I consider that all the issues raised in third party representations have been addressed either in evidence provided by others or within my evidence and I am unaware of any outstanding issues raised that would indicate that planning permission should be refused.

## 10. Summary and Conclusions

- 10.1 The appeal proposal is against the refusal of the Council to grant planning permission for a new prison at land adjacent to HMP Gartree. The appeal was refused by Planning Committee, against Officer recommendation on the 7<sup>th</sup> April 2022. One reason for refusal is cited in the Council's decision notice, which can be summarised as follows **(CD/A75)**
- Unsustainable location
  - Impact on character and appearance of the countryside and the Area of Separation
  - Benefits of the proposal do not outweigh the identified harms
- 10.2 Although ultimately Members of the Council's Planning Committee overturned the recommendation by Officer, I can confirm that Harborough Local Planning Authority worked proactively with the Appellant's throughout the pre-application and determination periods and all technical issues were resolved to the satisfaction of the LPA such that they were able to make a positive recommendation to Committee.
- 10.3 GA also raise additional issues in their Statement of Case over and above the Council's reason for refusal and are summarised as:
- Need for a new prison in this location
  - Alternative sites
  - Socio-economic benefits
- 10.4 The Site comprises of 28.9ha of land located in the ownership of the MOJ. The Site comprises of three land parcels - the main development Site is on agricultural land south of HMP Gartree and east of Welland Avenue. Parcel 2 is open space to the north west of Welland Avenue and Parcel 3 is an area of open space which has been identified as having potential for amenity/play space for the Gartree estate.
- 10.5 The Site is situated in countryside approximately 5.1km north west of Market Harborough. Lubenham village is situated approximately 1.9km to the south of the Site. Foxton village is situated 2.4km to the north west of the Site.
- 10.6 The Site access is via Welland Avenue via Foxton Road. Welland Avenue from Foxton Road to the Gartree Estate is owned by the MOJ. The section of Welland Avenue running through the Gartree Estate is unadopted and is in multiple ownerships.

- 10.7 The appeal proposal seeks outline planning permission for a new prison (Class C2A) within a secure perimeter fence etc. All matters are reserved except for means of access and scale.
- 10.8 The Development Plan for Harborough comprises of the Harborough Local Plan 2011- 2033 and the Lubenham Neighbourhood Development Plan (2016 - 2031). As a matter of law, planning permission should be determined in accordance with the development plan, unless material considerations indicated otherwise. Paragraph 11c) of the Framework states that where development proposals accord with an up-to-date development plan they should be approved without delay.
- 10.9 The Site is located in a countryside policy location and the relevant policy in the Development Plan is HLP Policy GD3, which permits development outside of settlements and urban areas where it is required for certain purposes. LNP Policy LNP19 relates to the Gartree Estate and only allows limited and small scale employment/business development.
- 10.10 I conclude that the appeal proposal conflicts with policies HLP Policy GD3 and LNP Policy LNP19, however having considered all of the relevant development plan policies, I consider that the appeal proposal is in accordance with the development for Harborough read as a whole.
- 10.11 There are a number of significant benefits of the appeal proposal that I consider are material considerations and that would justify the grant of planning permission, even in circumstances where the Inspector is of the view that the appeal proposal is contrary to the development plan.
- 10.12 The Appellant has identified an imperative need for a new Category B prison in the Midlands, which I consider to be a material consideration and should be given substantial weight in the planning balance. The Appellant has a statutory duty to ensure that sufficient prison places are available of the right type and in the right location. The Appellant's have undertaken a robust Site Search both prior to submitting the planning application and at the appeal stage to ensure that this location is the best to meet their requirements. No other suitable sites have been identified that are deliverable within the requirement timescales and that represent best value to the public purse.
- 10.13 The Framework requires new development to be sustainable (paragraph 11). To achieve sustainable development the planning system should give consideration to three overarching objectives - economic, social and environmental.
- 10.14 In the case of the appeal proposal there are a number of positive economic benefits that will be delivered at the construction and operational phase of the development both at the local level and in the wider economy. I have set these out in Section 6 of my proof and give them significant weight in the planning balance.

- 10.15 The social benefits are two-fold - to prisoners and the community. The provision of high quality prisons that create an environment aimed at turning round prisoners lives will deliver improved outcomes for prisoners and I give significant weight to these benefits. There are also community benefits as identified in Section 6 of my evidence and I attach moderate weight to these.
- 10.16 I also conclude that there will be limited environmental harms arising from the appeal proposal as set out in the planning balance section of my evidence, however these are justified by the significant benefits delivered by the appeal proposal, most importantly the need for a new prison.
- 10.17 To conclude the appeal proposal overall accords with up-to-date development plan policies, taken as a whole. In light of the evidence of others and my own professional judgement I consider that the imperative need for a new Category B prison together with the economic, social and environmental benefits will clearly outweigh the conflict with policies GD3 and LNP19 and the limited harmful impacts in respect of landscape and visual impact. However, if the Inspector is of the view that the appeal proposal conflicts with the development plan as a whole, the material considerations of need, and socio-economic benefits that will be delivered by the appeal scheme justify the grant of planning permission
- 10.18 I am of the view that the appeal proposal represents a sustainable form of development that should be granted planning permission.

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