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**TOWN AND COUNTRY
PLANNING ACT 1990**

**Appeal by
Ministry of Justice**

**Adjacent to Her Majesty's
Prison, Welland Avenue,
Gartree**

September 2022

**PROOF OF EVIDENCE:
EXECUTIVE SUMMARY
on behalf of
Harborough District Council**

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**PINS Reference
APP/F2415/W/22/3300227**

**LPA Reference
21/01600/OUT**

***AITCHISON
RAFFETY***



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EXECUTIVE SUMMARY

1. This appeal relates to an outline application submitted to Hinckley and Bosworth Borough Council ("the Council") for '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 82,555sqm within a secure perimeter fence, together with access, parking, landscaping and associated engineering works' (application 21/01600/OUT). A decision notice was issued by the Council on 5 April 2022 refusing permission 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. The Proof of Evidence considers the three Main Issues identified by the Inspector in the CMC Note (6 October 2021), within the context of the statutory framework and the National Planning Policy Framework (NPPF):

- a. Location
- b. Landscape
- c. Planning balance: benefits and harm; conformity with the Development Plan

Location

3. The NPPF is underpinned by sustainability. This includes a locational aspect due to the aim to reduce travel distances and dependency on private motor vehicles. This has then been embedded into the Harborough Local Plan through Policies SS1, GD1 and GD3, setting out the settlement hierarchy, the sustainability approach and location for development, and restrictions to development in the countryside.

4. Being located in a lowest order settlement, with virtually no facilities, access to the site is difficult. The Harborough Local Plan does not expect any development to Gartree.

5. The Appellant accepts that all visitors will drive to the site.

6. The Appellant has accepted that no movements to the new prison (Gartree 2) would be undertaken on foot, even by staff.
7. Access to Gartree 2 by bicycle is limited to the nearby villages of Lubenham and Foxton within 10 minutes, and the western half of Market Harborough. The surrounding highways are generally unlit, national speed limit highways, with no dedicated cycle lanes. They are not particularly inviting cycle routes. The need for employees to be present 24/7 means that shift patterns will also create the need for travel early in the morning/late at night when the desirability is further reduced. The number of journeys expected to be undertaken by bicycle is minimal.
8. Gartree is served by bus route 44. The service operates once every one to two hours, Monday to Saturday, with no service on Sunday. It runs through Market Harborough and a number of the surrounding villages. Its timetable means that none of the uniformed shift officers (60% of the proposed workforce) could use the bus, regardless of shift. Provision of an additional bus via a Section 106 contribution does little to change this situation.
9. There is scope for staff outside of the District to use the train station to Market Harborough. However, the buses do not readily coincide with the train timetable, meaning that taxis are likely to be required. The expectation is therefore that the number of staff using the train for commuting will be very low as it will not represent a cost effective or convenient solution.
10. The Appellant has used assumptions in respect of the basis of travel patterns by employees within the District. These are not based upon evidence relating to the existing prison, but generic findings for the District as a whole. The rural location of the site means that it is likely that the cycle and public transport movements have been over-represented.
11. Notwithstanding this, for the 43 staff expected to live within Harborough working at the new prison, it would equate to 1.3 persons per day travelling on bicycle and 1.3 persons per day travelling by bus. The bus does not serve beyond the District and the expected cycling distance is contained within Harborough District. A maximum of 2.6 staff out of an estimated 778 staff on site are therefore likely to use non-private transport modes to reach the site. This indicates that the site is not sustainably located, with no viable alternative transport options to the private vehicle.

12. A secondary requirement of any selected site according to the MoJ is that it needs to have good strategic access to public transport and the motorway/trunk road network. The appeal site is located in a rural location, which cannot be readily accessed by any means other than the car. It does not therefore fulfil this secondary requirement of the site selection process.
13. The proposal is therefore considered, from a locational perspective, to be contrary to the aims of the NPPF, and Policies SS1, GD1 and GD2 to direct development principally towards the urban areas/sustainable settlements, as the site can only be reached by private motor vehicle.

Landscaping

14. Protection of the landscape and in particular the countryside for its own sake is embedded within the NPPF (Chapter 15) and the Development Plan. Policy SS1 sets out the spatial strategy for Harborough District and explicitly states that development within '*other villages*' (such as Gartree) and the countryside (where the appeal site is located) will be '*strictly controlled*'.
15. Policy GD3 sets out a more restrictive policy for development in the countryside. The Appellant has accepted that the appeal proposal conflicts with Policy GD3, and that the proposed use does not fall within the accepted list noted in this policy, or within the '*other uses that justify and are compatible with a countryside location*'. This policy is considered to be worded to accord with the NPPF and thus can be afforded full weight.
16. By virtue of its location and its size, scale and design, the proposal is considered to result in unacceptable residual harm to the character and appearance of the countryside; would have adverse effects on the landscape setting of Gartree; would compromise the physical separation of Gartree and the Market Harborough Strategic Development Area (SDA); and have a significant adverse effect on the visual separation of the two settlements, by reason of:
 - The introduction of an extensive area of buildings up to 4 storeys high and associated security fencing and car park in place of existing farmland;
 - The nature of the development, which cannot be considered characteristic within the countryside, or in keeping with the adjacent built environment;

- The extent of the effect, with changes being perceived over a wide area;
- The continued physical and visual presence of the prison within the landscape at Year 15, despite the proposed mitigation;
- The exposed nature of the site;
- The loss of longer-distance views across the valley; and
- The negative effects on both the physical and visual separation of Gartree and Market Harborough (39% reduction) and the separation between Gartree and Lubenham (26% reduction).

17. The Landscape and Visual Impact Assessment undertaken by Mr Neesam identifies that the form and scale of development make the proposed prison incompatible and difficult to accept within a rural landscape. It is the view of Mr Neesam that development at the appeal site would compromise the rural qualities of the site and the appreciation of the wider Welland Valley landscape. The proposed prison is, by its nature, considered out of character, and therefore harmful to the character of the countryside, and this effect would not be removed by the proposed mitigation planting.

18. The proposed landscaping does not adequately mitigate the harm identified. Additionally, the landscaping proposed does not accord with the Landscape Character Area within which the prison would be located.

19. From a landscape perspective, the proposal is contrary to Local Plan Policy GD3, and the general aims of Policy GD5 and the NPPF, to protect the open character and appearance of the countryside.

Planning Balance

20. In line with the NPPF, the sustainability benefits and harm of the proposal need to be considered, along with the compliance with the Development Plan.

21. The benefits and harm generally only influence the local level, which is accepted to be Harborough District. The weight to be afforded to the economic benefits is therefore considered on this basis, with a separate benefit to reflect those at a regional and national level.

22. In respect of the need argument placed forward by the Appellant, the weight afforded to this has been tempered in the assessment below due to the quantum of unjustified assumptions and limitations of the information presented as part of the proposal. Questions over the site size criteria, location criteria and sequential search for sites are outstanding. This has led to the conclusion that the justification for the new prison to be located at Gartree, or even within the East Midlands is unclear.
23. The impact upon the mental well-being of prisoners due to the site's inaccessibility is also important in respect of the ability to rehabilitate inmates. The Ministry of Justice commissioned Lord Farmer Report (2017) recognises the importance of strengthening family ties with prisoners, a position that cannot be maximised if the facility is in the wrong part of the country and not easily accessible.

Economic Benefits

Construction Phase	
Construction jobs (13 no. FTE) (temporary benefit)	moderate weight
Direct and induced spend (temporary benefit)	moderate weight
Additional Regional and National Benefits	Moderate weight

Operational Phase	
Induced expenditure (including prison visitors) (£5.95million)	Moderate weight
Additional Regional and National Benefits	Moderate weight
Direct job creation (46 no. FTE)	Limited to moderate weight
Induced job creation (2 no. FTE)	Limited weight

Economic Harm

Potential dis-incentivisation for investment in immediate area for business and residents due to increased scale of prison	Limited weight
Additional traffic negatively affecting traffic volumes on nearby highways	Limited weight

Social Benefits

Providing safe, secure and modern facilities to deliver improved outcomes for prisoners and reduce reoffending rates	Substantial weight
The appointed contractor will be contractually obliged to meet key performance targets including: a 25% local spend within 25 miles of the site; £50,000 spend with voluntary, community and social enterprises; and at least 1 community project per year	Moderate weight
Local apprenticeship, training and supply chain opportunities will be created throughout the construction and operational stages of the development	Limited weight

Delivering new prison places to meet an identified need, in the right geographical location	Limited weight (as unjustified)
Upgrading of open space for use by local community	Limited weight
Contribution towards upgrading public transport to residents located on Route 44	Limited weight

Social Harm

Mental health implications / Success of rehabilitation, due to inability for visitors to reach Gartree 2	Significant weight
Additional traffic along Welland Avenue	Limited weight
Concern over living in close proximity to a prison	Very limited weight
Perceived overlooking of existing housing by prison blocks	Very limited weight

Environmental Benefits

Ability to deliver net biodiversity gain	Significant weight
No impact upon heritage assets	Moderate weight
Provision of energy saving devices and electronic charging points	Limited weight
Provision of cycle parking	Very limited weight
Delivery of a high-quality sustainable prison that will achieve BREEAM Excellent, with endeavours to achieve BREEAM 'Outstanding'.	Very limited weight

Environmental Harm

Additional travel miles due to unsustainable location of site/Lack of viable transport alternatives to the car	Very significant weight
Impact upon open countryside	Significant weight
Impact upon identity of Gartree / Area of Separation	Significant weight
Introduction of lighting into countryside (all night operation)	Moderate weight
Harm to protected species (Badgers and Great Crested Newts)	Moderate weight
Air quality	Limited weight
Loss of agricultural land (25.3 hectares of Grade 3b)	Limited weight
Surface water runoff (mitigation needed)	Very limited weight

Sustainability Assessment Conclusion

24. The balance of these benefits and harms, are considered to result in a net gain to economic and social aspects of sustainability. However, the environmental harm significantly outstrips the benefits to the economic and social sustainability strands. The impact upon the countryside location and Area of Separation is significant. The inability to reach the site by any transport mode other than private vehicle is also very significant, leading to the conclusion that the proposal as a whole is not considered to be sustainable development.

Policy Compliance

25. The starting point for assessing development proposals is always the Development Plan. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states *'if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise'*.

26. Five policies were cited on the decision notice, to which conflict by the proposal is stated.

Policy GD1: Achieving Sustainable Development

27. Conflict with this policy occurs as the scheme does not deliver development to a location where large scale development is expected. Gartree is a lowest order settlement which can only be reached by private transport. A new facility employing 778 people does not accord with the general expectations for such a location, a position that is reinforced by conflict with the other more detailed policy in the Development Plan and the contents of the NPPF. This conflict generates significant harm to the intentions for the delivery of development in sustainable locations as identified in the Local Plan.

Policy GD3: Development in the Countryside

28. The appeal scheme occupies land designated as countryside and the proposal does not form one of the uses considered to be acceptable within the countryside. Additionally, it is not argued by the Appellant to be an acceptable 'other use', whereby a countryside location is required.

29. The appeal site forms a hilltop location, such that it is visible from a number of vantage points, causing significant harm to the open character and appearance of the landscape, through the cumulative impact of an urban style proposal. The proposed landscaping does not mitigate this harm, resulting in significant harm to the countryside setting.

Policy LNP01: Lubenham and Gartree Area of Separation

30. The proposal would reduce the physical length of the Area of Separation by 26% towards Lubenham and 27% towards the Market Harborough Strategic Development Area. This represents a significant reduction, which is contrary to clause (a) of Policy LNP01.

31. In respect of clause (b) and to an extent the visual impact element of clause (a), the proposal would introduce a significant scale development into this space, making the built environment much more prominent. It also brings it visibly closer to both Lubenham and Market Harborough. The proposed landscaping does little to reduce the harm and visibility of the

appeal scheme. This is identified through Viewpoints 8 and 9, in particular to the impact upon the Area of Separation.

32. The appeal proposal therefore fails to accord with either section of Policy LNP01, resulting in significant and permanent harm to the function of the Area of Separation.

Policy LNP19: Gartree

33. This policy expects only limited and small-scale employment/business to potentially be acceptable within Gartree. This proposal is extensive in scale and is located adjacent to Gartree rather than in it.
34. The intention of the policy is to allow reuse of the structurally sound redundant buildings in Gartree. The construction of a new prison does not align with this intention and is clearly contrary to this policy.

Policy LNP16: Proposals for New Business/Employment Development

35. Within the Neighbourhood Plan as a whole, some employment opportunities are expected to be delivered, with this policy outlining these circumstances. Policy LNP19 already provides greater restrictions on Gartree, given its lower order settlement ranking. Nonetheless, clause (a) of Policy LNP16 outlines that proposals need to be at a scale, density and design that is appropriate to its setting and not damage the qualities, character and amenity of an area.
36. This proposal would result in 70% of the inhabitants of Gartree being incarcerated within the two prisons. This is not commensurate in scale to the local residential population.
37. The scale and design of the buildings, as large four storey plus shapes, also does not accord with the small two storey houses or the general two storey height of the existing Gartree prison.
38. As discussed above, the proposal is considered to have significant landscape harm and as such illustrates that the proposal is not assimilated into the area without harming the character of the area or the specific qualities of the location.

39. Failure to accord with any clauses in this policy results in the appeal being contrary to the policy as a whole. The scale of the development is clearly contrary to the intentions of this policy and as a result causes it to not align with the intentions of clause (a).

Policy Compliance Conclusion

40. The appeal proposal is in direct conflict with a number of policies contained within the Harborough Local Plan and the Lubenham Neighbourhood Development Plan. These policies go to the heart of the sequential approach to the location of development, which in turn undermines the sustainability of the proposal, causing harm to the environment. It would also provide a significant development in an inaccessible countryside location, harming the character and appearance of the countryside and Gartree. This conflict is significant.
41. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states *'if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise'*. The benefits that result from the proposal relate primarily to the economic benefits and the need for additional prison places at a national level. These benefits do not outweigh the conflict with the Development Plan. The appeal should therefore be dismissed.