



HM Prison &
Probation Service

Rebuttal

James Smith – Deputy Director, HMPPS Prison Supply Directorate

HMPPS rebuttal

1. This Rebuttal document has been prepared by James Smith in response to the Proof of Evidence of Adele Rogers (Gartree Action, referred to as 'GA' in my rebuttal) and Jonathan Weekes (Local Planning Authority, referred to as 'LPA' in my rebuttal), specifically in relation to the need case for the new prison.
2. The evidence that I have provided for this appeal is true and I confirm it has been prepared in accordance with the Civil Service core values; integrity, honesty, objectivity and impartiality.
3. This Rebuttal is not intended to be comprehensive and lack of response to any particular point does not indicate acceptance.

Demand

4. In GA's proof at §4.1-§4.7, questions are raised over the accuracy of MoJ's published forecast and the drivers for the increase in demand. It is right that there is "considerable uncertainty about projections", as quoted from the 'Prison Population Projections 2021 to 2026' (**CD/J6**). The projections are the best estimate based on the information available at the time. Assumptions are made around future crime rates, police activity, courts, sentencing and prison release policies, all of which have an inherent degree of uncertainty, even more so given the shock to the system during Covid and the subsequent Bar strike. This uncertainty extends both ways: the demand for prison places could also increase further over the coming years and exceed the current forecast. The system also needs capacity to be able to respond to extraordinary events, such as the 2011 England riots.
5. A number of activities are underway to alleviate the Crown Court backlog:
 - Investing an extra £477 million over the next three financial years for the Criminal Justice System to help improve waiting times for victims of crime and reduce the Crown Court backlog.
 - Removing the limit on sitting days for the second year in a row.
 - Extending 30 Nightingale courtrooms beyond the end of March 2022 as we continue our efforts to tackle the impact of Covid on the justice system and secure speedier justice for victims.
 - Opening two new 'super courtrooms' in Manchester and Loughborough, allowing up to an extra 250 cases a year to be heard across England and Wales.
 - Expanding our plans for judicial recruitment to secure enough capacity to sit at the required levels.
 - Increasing Magistrates' court sentencing powers from 6 to 12 months for a single Triable Either Way offence to allow more cases to be heard in the magistrates' court and free up capacity in the Crown Court.
 - Raising the statutory mandatory retirement age from 70 to 75 for judicial office holders, estimated to retain up to 2,000 magistrates per year across all jurisdictions.
6. The impact of Covid, the Bar strike - which MoJ is working to resolve as soon as possible - and the rate of recovery in the Courts are having a short-term impact. This is shown at §4.4 in GA's Proof, which highlights the difference between the forecast in the 'Prison Population Projections 2021 to 2026' (**CD/J6**) and the current prison population. I do not expect these

events to impact the long-term increase in demand for prison places, and the demand for Category B training places when this prison would be delivered. From a planning decision, it would take c5 years to build the prison. It is prudent and right for His Majesty's Prison and Probation Service (HMPPS) to deliver the supply of places on the basis of the best available forecast, ensuring we have adequate prison capacity to protect the public and respond to any future events which would further increase demand beyond the forecast. I have explained in my evidence the risks associated with a shortage of prison spaces. It is also worth noting that the population projections inform the investment of public money in the New Prisons Programme and thus are considered a proper basis upon which to make these significant investment decisions.

7. The current programme of prison building is to respond to policies which will place more demand on the prison system. These are set out in the published forecasts **(CD/J6)**:

“Changes in the prison population are expected as the result of a range of policies, including those already in effect but not yet fully represented in the population and those expected to commence over the projection horizon. In addition to the impacts from the additional 23,400 police officers, estimates of the following are also factored into the central projections:

- *The impacts of the proposals in the Police, Crime, Sentencing and Courts Bill, which includes provisions for changing the automatic release point for violent and sexual offenders sentenced to a standard determinate sentence of 4-7 years;*
- *The impacts of the Statutory Instrument to increase custodial sentences for serious offenders with a custodial sentence of 7 years or more; and*
- *The impacts of the Domestic Abuse Act 2021, including extending extraterritorial jurisdiction over specified offences (necessary for ratification of the Istanbul Convention).”*

8. At §4.9, GA raise a question over the imperative to address Category B places and provides a table which shows they are the least overcrowded category of prisoner. Crowding cells is not a desirable way to manage the prison population and, as I set out in my Proof at §3.11, it has detrimental effects on levels of prisoner on prisoner violence, prisoner on staff violence and the health of prisoners. For Category B prisoners, crowding is made more difficult because of the types of offences committed. This means cell sharing can be of a higher risk and is used infrequently as a last resort, as shown in GA's Proof.

Supply

9. At §5.2-§5.3, GA reference the need to consider the latest supply and demand picture for Category B prisons, which I have submitted in my Proof at Sections 4 and 5. I conclude in my Proof that the forecast increase in demand for Category B Training places will result in a deficit of around 1,400 places in July 2026.
10. At §5.4-§5.5, GA consider the supply of Category B training places at two other sites considered by HMPPS, which is also raised by the LPA in their Proof at §5.5. Regarding a new houseblock at HMP Gartree, we have paused our application for planning to focus on the proposed new prison, but this development alone would not provide the capacity needed to meet the forecast demand. At RAF Wethersfield, feasibility studies are ongoing and

planning permission has not been sought. Should planning be applied for and granted, we could not build two prisons on the site at the same time. A Category C Resettlement Prison would be the priority, meaning the supply of any Category B places would be, at the least, 10 years in the future.

Site selection

11. As I stated in my Proof, the MoJ does not accept that it has to demonstrate that there are no alternative sites that could accommodate the Appeal Scheme. The Proof of GA and the LPA, whose Planning Officer recommended approval, assert that HMPPS has not put forward a case to support the need for a new prison at Gartree or within the East Midlands. Category B prisons are a national resource and the need for this resource is covered in my Proof. The site selection strategy is covered in the Annex to my Proof. That Annex explains the process undertaken by and on behalf of MoJ, which didn't identify any other suitable sites for a new Category B prison, and the decision making process which led to the present application, and therefore addresses the points raised by both GA and the LPA in their evidence.

James Smith

21 September 2022