

LAND TO THE SOUTH OF HMP GARTREE

OPENING SUBMISSIONS FOR THE APPELLANT

1. Prisons form a critical part of national infrastructure. The availability of prison spaces is essential to the functioning of the criminal justice system to ensure that those who need to be imprisoned can be accommodated appropriately and safely. It is obvious that Government must ensure that it has sufficient suitable prison places to meet the demand for them.
2. The Government policy is to develop new modern prison places. It is committed to a transformative approach to the prison system, including by designing and building the modern, secure prison places that are needed and ensuring the prison environment is safe, secure and stable so that it can be focused on turning people away from crime.¹ To that end, the Government has committed to building the next generation of prisons designed for safety, security, stability and rehabilitation. This project, together with other steps, is intended to deliver 18,000 additional, modern prison places by the mid-2020s and deliver up to 2,000 new temporary places.
3. The policy of delivering new prison places does not exist in the abstract. The Government's wider criminal justice reforms create a need for those new places. These steps include a substantial uplift in the police numbers, together with changes to sentencing, which will lead to more prisoners. There is also a substantial backlog in the Crown Courts, arising in particular from the Covid pandemic, which is being addressed through measures which will lead to an increase in prison place demand. The Government meet that demand by delivering the right prison places.
4. New prisons will not only meet the quantitative demand for places. They are capable of delivering improved environments for rehabilitation, and more secure environments to

¹ CD/J2, p 9

reduce criminality within the prisons themselves. Modern, purposeful design will provide far better places to imprison offenders – and also better places to work for the substantial prison workforce. As much of the prison estate ages, its suitability reduces whilst its running costs increase. There is a need for new investment to deliver this hugely important public service. This major commitment to improving the prison estate is further explained in the Prisons Strategy White Paper (CD/J6).

5. The national need for prison places can be shortly summarised. By March 2026 it is projected that the prison population will reach 98,500. The current operational capacity is 83,381, and the system is operating at 97.5% capacity. A significant and swift increase in prison places is required.
6. The Ministry of Justice is actively addressing that need through existing prisons by extension and refurbishment. But this pipeline is not enough², and new prisons are required. To that end, it has embarked on a programme of building six new prisons. Three of those prisons already have planning permission, and in the case of HMP Five Wells is constructed and operational. Three more, including these appeal proposals are in the planning system.
7. The need for prison places can be separated into the different prison categories. Category B Training Prisons function to provide effective rehabilitation that develops a prisoner's capacity and motivation to change, reducing their risks of harm and reoffending. They cater for prisoners whose assessed risks require that they need to be kept in a closed prison. Prisoners in Category B prisons are often serving long sentences, allowing time for meaningful interventions through education, skills and work, and thus benefitting from being imprisoned in purpose built training prisons.
8. At present, there are fewer Category B Training places than sentenced Category B prisoners.³ The demand for Category B places will grow along with other prison place demand. To that end, the Ministry of Justice proposes to deliver additional Category B Training places through various means, including through the current proposal to construct a new prison. The difference between the need for these prison places, and their supply, without these proposals is clear from Figure 1 of Mr Smith's proof.

² See James Smith Proof paragraph 5.3.

³ JS Proof para 5.6

9. For those reasons, briefly summarised, there is a compelling national need for the prison places proposed in the appeal scheme. This is a weighty – and we say determinative – planning consideration which drives these proposals and justifies allowing this appeal.
10. The benefits of delivering new prison places are sufficient to justify the grant of permission, but they are not the only benefits. As will be demonstrated through the evidence of Mr Smith, Mr Cook and Ms Hulse, there are wider economic, social and environmental benefits which further point towards the grant of planning permission.
11. All of this makes a compelling case for a strong recommendation in favour of the appeal proposals.
12. Put against the “extraordinary” factors in favour of the appeal proposals by the Local Planning Authority and the Rule 6 party are a series of “ordinary” planning objections. We say that because the points raised are familiar ones for any appeal proposal lying outside a designated settlement boundary.
13. In respect of landscape and visual impacts, it is of course acknowledged that development of this scale will lead to material impacts and it cannot be hidden from view. However, the receiving landscape is not highly sensitive to change. The immediate landscape of the Site is very obviously influenced by the existing HMP Gartree. Part of the Site lies within a designated “Area of Separation” between three settlements (Gartree, Lubenham, and Market Harborough), but the separation between those settlements will not be compromised by the proposals. Substantial and carefully considered landscaping proposals will mitigate any adverse effects which are found to exist.
14. In respect of highways impacts, the “test” set out in paragraph 111 of the Framework is that permission should only be refused if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network are severe. In this respect, the Appellant has carried out a careful assessment which demonstrated no such impacts existed. That assessment was accepted by the Local Highways Authority, whose view should clearly be given substantial weight. But in an abundance of caution, the LPA also commissioned its own assessment from SYSTRA, which similarly did not identify any unacceptable safety impacts or

severe residual cumulative impacts. The LHA reviewed SYSTRA's report, and maintained its position that it had no highways objection to the proposals. No technical highways objection is pursued by the LPA. Similarly, whilst the Rule 6 party call evidence on "accessibility and sustainability", they do not appear to actually suggest that the "test" for refusing permission in paragraph 111 is engaged.

15. The inevitable finding that the highways impacts will be acceptable is important in considering the point which is pursued by the LPA and the Rule 6 party, namely that the site will be not in a "sustainable" location and that there will be overreliance on the car. This argument falls down when one considers the actual policy requirements in respect of sustainability of locations of new development. Sustainability is not judged in the abstract but that "appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location". A substantial new prison requires a large site, and it is unlikely to be located in the most sustainable locations such as a town centre or near a major transport hub. The credentials of the proposals fall to be judged by reference to the "location" of the proposed development. In this case, there is a genuine choice of transport available to staff and visitors, and measures will be put in place to encourage sustainable modes. The Appellant has demonstrated – and the Local Highways Authority have confirmed – that no further realistic opportunity to promote e.g. public transport measures can be taken up.

16. In respect of the development plan, the Appellant does not accept that the proposals are contrary to the development plan when read as a whole. There is conflict with the "blanket" countryside protection policy (GD3), and with a specific policy in respect of Gartree which is permissive only of small scale development (LNP 19) but there is otherwise substantial policy compliance. As the Inspector will be aware, the task called for by s 38(6) is to identify the existence and extent of conflict with relevant policies, but then to form a conclusion as to compliance with development plan as a whole, acknowledging that policies may pull in different directions. The Appellant's view is that, when that task is properly done, the conclusion is that the proposals do accord with the development plan. However, even if Inspector finds otherwise, the material considerations in favour of the proposal convincingly and compellingly justify a recommendation to grant permission as a departure from the development plan.

17. Finally, both the LPA and the Rule 6 party suggest that alternative sites for this proposal have not been adequately examined or excluded. As a matter of fact that is wrong: the Ministry of Justice has carried out and repeated thorough site searches for suitable sites for new prisons and there is no alternative. Notably, neither the LPA nor the Rule 6 party identify an alternative site which could realistically accommodate the proposal. More fundamentally, this is not an “exceptional” case where alternative sites are a relevant planning consideration. As recently summarised by Holgate J the principles are as follows⁴:

“First, land may be developed in any way which is acceptable for planning purposes. The fact that other land exists upon which the development proposed would be yet more acceptable for such purposes would not justify the refusal of planning permission for that proposal. But, secondly, where there are clear planning objections to development upon a particular site then “it may well be relevant and indeed necessary” to consider whether there is a more appropriate site elsewhere. “This is particularly so where the development is bound to have significant adverse effects and where the major argument advanced in support of the application is that the need for the development outweighs the planning disadvantages inherent in it.” Examples of this second situation may include infrastructure projects of national importance. The judge added that, even in some cases which have these characteristics, it may not be necessary to consider alternatives if the environmental impact is relatively slight and the objections not especially strong.

... Thus, in the absence of conflict with planning policy and/or other planning harm, the relative advantages of alternative uses on the application site or of the same use on alternative sites are normally irrelevant. In those “exceptional circumstances” where alternatives might be relevant, vague or inchoate schemes, or which have no real possibility of coming about, are either irrelevant or, where relevant, should be given little or no weight.”

18. For the reasons that are clear in the evidence – and indeed in the Planning Officer’s clear and well-reasoned recommendation to grant permission – this is not a case where the proposal gives rise to “clear planning objections”; the impacts are “relatively slight” and the “objections not especially strong”. Even if there were “exceptional circumstances” to make alternatives relevant, there are no suggested alternatives with a “real possibility of coming about” and thus they can either be ignored or given little or no weight.

19. The Appellant will therefore demonstrate that there is a clear, indeed overwhelming, planning case in favour of this important proposal.

⁴ *R (Save Stonehenge World Heritage Site Ltd) v Secretary of State for Transport* [2022] PTSR 74, at 269-270

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