



Department for Levelling Up,
Housing & Communities

Katharine Morgan
Cushman & Wakefield
23 Park Square South
Leeds
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Our ref: APP/F2415/W/22/3300227
Your ref: 21/01600/OUT

katharine.morgan@cushwake.com

15 November 2023

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY MINISTRY OF JUSTICE
LAND ADJACENT TO HMP GARTREE, WELLAND AVENUE, GARTREE, MARKET
HARBOROUGH, LEICESTERSHIRE LE16 7RP
APPLICATION REF: 21/01600/OUT**

This decision was made by the Secretary of State for Levelling Up, Housing & Communities

1. I am directed by the Secretary of State to say that consideration has been given to the report of H Butcher BSc (Hons) MSc MRTPI, who held a public local inquiry on 4-12 and 17 October 2022 into your client's appeal against the decision of Harborough District Council to refuse your client's application for planning permission for a new Category B prison of up to 82,555m² Gross External Area (GEA) within a secure perimeter fence together with access, parking, landscaping and associated engineering work, in accordance with application Ref. 21/01600/OUT, dated 10 September 2021.
2. On 2 September 2022, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act (TCPA) 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal should be dismissed and planning permission refused.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, but disagrees with the Inspector's recommendation. He has decided to allow the appeal and grant planning permission, subject to conditions. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Matters arising since the close of the inquiry

5. On 13 March 2023 the Secretary of State wrote to the main parties to afford them an opportunity to comment on representations made by Neil O'Brien MP in letters dated 2

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February and 27 February 2023. A list of representations received in response to this letter is at Annex A. These representations and responses to them were circulated to the main parties on 5 April and 2 May 2023. The Secretary of State's conclusions on the matters raised are at paragraphs 11-17 and 24 below.

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

Policy and statutory considerations

7. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act (PCPA) 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
8. In this case the development plan consists of the Harborough Local Plan 2011-2031 (LP) (adopted 2019), and the Lubenham Neighbourhood Development Plan 2016-2031 (NP) (made 2017). The Secretary of State considers that relevant development plan policies include those set out at IR19-25.
9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').
10. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

Main issues

Need

11. The Secretary of State has considered the Inspector's analysis at IR234-237, and also the material which was put forward as a result of his reference back exercise of 13 March 2023.
12. In terms of the need for Category B training places he notes the evidence put forward by Mr Smith on behalf of the appellant in his representations of 27 March and 17 April 2023 that there is projected to be a significant unmet need for these places. The projected deficit under the 2021-2026 projections was for c1,400 places, while the projected deficit under the 2022-2027 projections is for c800-2,000 places.
13. The evidence put forward by Mr Smith indicates that the supply for these places comprises this appeal scheme and 247 places which are proposed to be delivered through a houseblock expansion at the existing HMP Gartree (which does not have planning approval), and that there are no other proposals in the pipeline which will meet the urgent need for Category B training places. In his representation of 17 April 2023 Mr Smith addresses the cases put forward by Gartree Action (representation of 3 April 2023) and Harborough District Council (representation of 3 April 2023). The Secretary of State accepts the evidence put forward by Mr Smith, which is based on National Statistics and

a detailed understanding of the operational needs of the prisons estate, and accepts that there is projected to be an urgent and unmet need for Category B training places in both the high and low plausible scenarios (representation of 17 April 2023, p.7).

14. The representation put forward by Neil O'Brien MP on 27 February 2023 considers that the demand projected in 2021 has not materialised, the need for future prison places is significantly lower than forecast in 2021, the projections are significantly more uncertain than those produced in 2021, and the need for prison places is significantly less urgent than forecast in 2021. Harborough District Council in its representation of 24 March 2023 supports this view.
15. The Secretary of State accepts that the projections of prison capacity are subject to considerable uncertainties, and he notes that the latest projections for the period 2022–2027 published on 23 February 2023 ('the 2022 Prison Projections') do not now contain a single figure for the future prison population. Instead they provide a range of between 93,100 and 106,300 prison places by March 2027, as a better reflection of these uncertainties. He considers that despite the inevitable uncertainties of prison projections, the figures in the 2022 Prison Projections forecast continue to represent the best available evidence, and the best estimate of future need. He does not agree with the proposition put forward in the Neil O'Brien MP representation of 27 February 2023, that 'this level of uncertainty means that the 2022 projection cannot be relied upon as a basis for capacity planning.'
16. Overall the Secretary of State does not consider that the 2022 Prison Projections forecast diminishes the needs case for the proposed prison. He considers that it does not change the significant weight which should be attributed to this consideration.

Benefits

17. The Secretary of State notes that when operational, the prison will create over 750 direct jobs as well as further jobs through the provision of related services such as health and education (IR69). He agrees with the Inspector at IR238 that there are clear economic benefits from the construction and operational phases of a development of this size, and that a large number of jobs would be created, both directly and indirectly, and secured for local people. He notes the Inspector's argument that rural prisons do not perform as well in terms of economic impacts than more urban equivalents; however, he does not consider that a comparison with a hypothetical alternative which is not before him is a reason for downgrading the weight to be attached to the clear economic benefits of this scheme. In reaching his conclusion on this matter, he has also taken into account the evidence that was put forward as part of the reference back exercise relating to staffing issues. The appellant acknowledges that recruitment and retention of prison staff is currently challenging across England and Wales (representation of 27 March 2023), and has set out action currently being undertaken to address those challenges. The Secretary of State agrees with the Inspector at IR253 that any staffing issues which may or may not occur in the future would not be a reason to withhold planning permission. Overall, the Secretary of State considers that significant weight attaches to the economic benefits of this proposal.
18. The Secretary of State agrees with the Inspector at IR239 that there are broader benefits from providing a new prison such as an improved environment for prisoners and workers and its construction quality. He agrees with the appellant that new prisons provide improved environments for rehabilitation and more secure environments to reduce criminality within prisons, and that they also provide better places to work. He further

agrees that as much of the prison estate ages there is a need for new investment to deliver this hugely important public service (IR68). Unlike the Inspector at IR239, he does not consider the fact that these benefits would arise from any new prison is a reason for downgrading the weight to be attached to the qualitative benefits of this particular scheme. Overall, and taking into account the potential impact of accessibility on in-person visits, the Secretary of State considers that the qualitative benefits of the proposal carry significant weight.

19. For the reasons given at IR240, the Secretary of State considers that the benefit of 26% biodiversity net gain, the dual use of this land as upgraded and improved open space for local residents, and the benefit of charging points for cars collectively carry moderate weight.

Character and appearance

20. For the reasons given at IR256, the Secretary of State agrees with the Inspector that the harm identified in paragraph 21 below is tempered by the fact that the appeal site is not subject to any national landscape designations and does not comprise a valued landscape for the purposes of paragraph 174(a) of the Framework. He further agrees that the harm to the character and appearance of the surrounding area, given the scale of the development, the predominantly rural landscape in which it is located, and the extent of the impacts on local views, should be attributed significant weight (IR256).
21. For the reasons given in IR197-215, the Secretary of State agrees with the Inspector at IR214 that the new prison would cause harm to the character and appearance of the surrounding area, notably harm to the rural setting of Gartree Estate when viewed from the southern section of Welland Avenue, harm to open and rural views that currently exist from PRow's A22, A23 and A25, and harm to the Lubenham and Gartree Area of Separation. He further agrees that there would be conflict with Policy GD5 of the LP (which requires new development to respect and, where possible, enhance local landscape, the landscape setting of settlements, and settlement distinctiveness), Policy LNP16 of the NP (which requires development to not cause damage to the qualities, character and amenity of the area), and Policy LNP01 of the NP (IR215).

Heritage

22. For the reasons given at IR242-243, the Secretary of State agrees with the Inspector that any buried remains at the former airfield (a non-designated heritage asset) could be dealt with appropriately by condition, and that any features of special architectural or historic interest that any listed building or its setting in the vicinity of the appeal site possesses would be preserved, and the character and appearance of nearby conservation areas would be preserved.

Suitable location and highways

23. The Secretary of State notes the Inspector's reasoning at IR216-231 and IR257, and notes the Inspector's view that the prison is a significant development, and that it would not be located in what could reasonably be called a sustainable location given the appeal site's predominantly rural environs and the limited bus, cycle and walking opportunities currently available to access it (IR226). The Secretary of State notes that the appellant offered to fund an additional bus service to Gartree, but was advised by Leicestershire

County Council that such a contribution could not be justified and it was therefore not included as a planning obligation (IR230).

24. The Secretary of State sought parties' comments on Leicestershire County Council's review of local bus services. Comments were received from the appellant, Gartree Action and Harborough District Council. The Secretary of State has considered these comments, and has taken into account the potential for demand responsive transport. However, as the outcome of the review is not yet known, he does not consider that this matter makes a material difference to the weight attaching to sustainability considerations.
25. The Secretary of State notes the Inspector's reasoning at IR232 and notes the Inspector's view that the proposal would conflict with Policy GD3 of the LP, as it does not fall within any of the exceptions for development in the countryside, and LNP19 of the NP, which supports only limited and small-scale employment/business development in Gartree.
26. The Secretary of State notes the Inspector's reasoning at IR244 and notes the Inspector's view that the impacts of the development on highway safety would not be unacceptable, and when considered cumulatively with other developments, the impacts on the road network would not be severe.
27. The Secretary of State considers that notwithstanding the proposed 53 charging points for electric vehicles and 27 car parking spaces for car sharers, the location offers limited options for sustainable transport. He notes the Inspector's view at IR257 that the harm in terms of lack of sustainability and accessibility carries significant weight against the proposal, and further notes the Inspector's view that the proposal is in conflict with policy IN2 of the LP and paragraphs 105 and 110(a) of the Framework (IR229-231). Notwithstanding these issues, he does not consider that this matter on its own is sufficient to justify permission being refused.

Alternative sites

28. The Secretary of State notes the Inspector's reasoning at IR233, and notes the Inspector's conclusion that the evidence in respect of a search for alternative sites offers only very limited support for the appellant's case that there are no other suitable sites for a Category B Training prison. The Secretary of State considers that the claimed lack of alternative sites carries very limited weight in favour of the proposal.

Other matters

29. The Secretary of State agrees with the Inspector's conclusions on the matters set out at IR245-252 and IR254-255 and agrees that the impact on air quality (IR249) carries minimal weight.

Planning conditions

30. The Secretary of State has had regard to the Inspector's analysis at IR180-195, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 56 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 56 of the Framework and that the conditions set out at Annex B should form part of his decision.

Planning obligations

31. The Secretary of State has had regard to the Inspector's analysis at IR170-179, the planning obligation dated 26 October 2022, paragraph 57 of the Framework, and the Guidance and the Community Infrastructure Levy (CIL) Regulations 2010, as amended. He agrees with the Inspector's conclusion at IR178 that the obligations in Schedules 2, 4, and 6 to the Agreement comply with Regulation 122 of the CIL Regulations 2010 and the tests at paragraph 57 of the Framework, but that the obligations in Schedules 3 and 5 do not. Under paragraph 3 of the Agreement, the obligations in Schedules 3 and 5 are therefore null and void.

Planning balance and overall conclusion

32. In line with section 38(6) of the PCPA 2004, the Secretary of State has considered whether there are material considerations which indicate that the proposal should be determined other than in line with the development plan.
33. Weighing in favour of the proposal are the need for the prison which carries significant weight, the economic benefits which carry significant weight, the qualitative benefits of the proposal which carry significant weight, and the claimed lack of alternative sites which carries very limited weight. The benefit of 26% biodiversity net gain, the dual use of this land as upgraded and improved open space for local residents, and the benefit of charging points for cars collectively carry moderate weight.
34. Weighing against the proposal are the harm to the character and appearance of the area which carries significant weight, the lack of sustainability and accessibility which carries significant weight, and the impact on air quality which carries minimal weight.
35. For the reasons outlined in this letter, the Secretary of State considers that the appeal scheme is not in accordance with Policies GD3 and GD5 of the LP, and Policies LNP01, LNP16 and LNP19 of the NP, and is not in accordance with the development plan as a whole. Overall, in applying s.38(6) of the PCPA 2004, the Secretary of State considers that despite the conflict with the development plan, the material considerations in this case indicate that permission should be granted.
36. The Secretary of State therefore concludes that the appeal should be allowed and permission should be granted, subject to conditions.

Formal decision

37. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission subject to the conditions set out in Annex B of this decision letter for a new Category B prison of up to 82,555m² GEA within a secure perimeter fence together with access, parking, landscaping and associated engineering work, in accordance with application Ref. 21/01600/OUT, dated 10 September 2021.
38. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the TCPA 1990.

Right to challenge the decision

39. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an

application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the TCPA 1990.

40. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
41. A copy of this letter has been sent to Harborough District Council and Gartree Action, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Maria Stasiak

Decision officer

This decision was made by the Secretary of State for Levelling Up, Housing & Communities, and signed on his behalf

Annex A Schedule of representations

General representations

Party	Date
Cushman and Wakefield	5 January 2023
Neil O'Brien MP	2 February 2023
Neil O'Brien MP	27 February 2023
Cllr Phil Knowles	16 March 2023
Mr Briggs	20 March 2023
Ms H Moger	27 March 2023
Ms J Barrow	28 March 2023
Mr J Rowland	21 April 2023
Cllr Phil Knowles	8 November 2023

Representations received in response to the Secretary of State's reference back letter of 13 March 2023

Party	Date
Harborough District Council	24 March 2023
Cushman and Wakefield	27 March 2023
Gartree Action	3 April 2023
Harborough District Council	3 April 2023

Representations received in response to the Secretary of State's recirculation letter of 5 April 2023

Party	Date
Cushman and Wakefield	17 April 2023
Cushman and Wakefield	5 May 2023

Annex B – Conditions

- 1) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 2 years from the date of this permission.
- 3) Details of the appearance and layout (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan 661277-00-PEV-GTX0011-ZZ-DR-A-9000 PO5, Existing Block Plan 661277-0000-PEV-GTX0011-ZZ-DR-A-9001 PO5, Block Plan Demolition 661277-0000-PEV-GTX0011-ZZ-DR-A-9101 PO4, Landscape Masterplan 661277-0000-PEV-GTX0011-XX-DR-L-0301 P05 (insofar as it relates to landscaping matters and not layout), Proposed New Access GART-ATK-HGN-WELL-DR-D-0001 Rev P1.
- 5) Building heights shall not exceed 17.5m (to ridge height).
- 6) The gross external area of the built development shall not exceed 82,555m².
- 7) Prior to the commencement of development a detailed Landscape Plan shall be submitted to and approved in writing by the Local Planning Authority. This shall include: Details of any trees/hedgerows to be retained; Detailed specification of all new planting within the development, including planting within the perimeter landscape belt; Details of the landscape proposal within the Biodiversity Net Gain area (Parcel 2) and; Enhanced boundary treatment between the proposed development and PRow A22.
- 8) Prior to the commencement of development a Landscape Management Plan setting out the timing of the completion, and the ongoing management and maintenance, of all landscaping within the development, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 9) The buildings shall not be occupied until the means of access for vehicles/pedestrians/cyclists including visibility splays has been constructed in accordance with the approved plans. The access and visibility splays shall be permanently retained thereafter.
- 10) Prior to the submission of reserved matters an updated BREEAM assessment report shall be submitted to and approved in writing by the Local Planning Authority. All buildings shall be constructed to meet a BREEAM score of Excellent. No later than 3 months after the occupation of any non-residential building a certificate following a post-construction review shall be issued by an approved BREEAM Assessor to the Local Planning Authority, indicating that the relevant BREEAM rating has been met. In the event that such a rating is replaced by a comparable national measure of sustainability for building design, the equivalent level of measure shall be applicable to the proposed development.
- 11) Prior to the first use of the development details of secure cycle parking facilities shall have been submitted to and approved in writing by the Local Planning Authority, and implemented on site. These facilities shall thereafter be permanently retained.

- 12) Prior to the first use of the development details of the storage of refuse and recycling materials shall have first been submitted to and approved in writing by the Local Planning Authority, and implemented on site. The refuse and recycling storage shall thereafter be permanently retained.
- 13) Prior to the commencement of development full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings in relation to existing ground levels, shall have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved levels.
- 14) The 'appearance' Reserved Matters required in condition 3 shall include details showing all ventilation and extraction equipment on the buildings, and a scheme for the external lighting of the development set out in general accordance with the submitted Pick Everard External Lighting Report (dated 27.8.21) and associated lighting drawings.
- 15) Prior to the commencement of development a scheme for the protection and enhancement of the relevant section of PRoW A22 which passes through the appeal site shall be submitted to and approved in writing by the Local Planning Authority. The works shall be carried out as approved prior to first occupation of the prison.
- 16) The development hereby permitted shall not commence until a pre-development condition survey of Foxtan Road between A4304 Lubenham and the application site (the route for HGVs as set out in the Framework Construction Traffic Management Plan) has been carried out and submitted to and approved in writing by the Local Planning Authority.

Within three months of the completion of the development a post-development condition survey of Foxtan Road, between the A4304 Lubenham and the appeal site, shall be carried out, and submitted to and approved in writing by the Local Planning Authority, along with a method statement identifying how any damage to the highway or highway verge caused as a result of the development will be made safe and remediated in full by the developer. Any works required to the highway shall be completed within 6 months of the completion of the development.

- 17) The development shall be carried out in accordance with the submitted reports from CGO Ecology Limited as related to bats, birds, reptiles, and badgers, and the Badger Survey by Ramboll UK Limited, and the mitigation measures included therein.
- 18) Demolition of building/structures, felling of trees, and removal of shrub and scrub as part of the commencement of any enabling works for the development shall not be carried out during the nesting season unless confirmation that a nest check has been carried out by a suitably qualified ecologist and found to be clear has been submitted to and approved in writing by the Local Planning Authority.
- 19) Prior to the commencement of development, a surface water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority to include the management of water during construction and post development. The scheme shall include infiltration testing to confirm or otherwise the suitability of the site for the use of infiltration as a drainage element. The scheme shall be implemented as approved upon first occupation of the development.
- 20) Prior to occupation of the development a long-term maintenance plan for the surface water drainage system approved under condition 19 shall have been

submitted to and approved in writing by the Local Planning Authority. The maintenance plan shall be adhered to as approved.

- 21) No development shall commence until a scheme for on-site foul water drainage works, including connection points and discharge rate, has been submitted to and approved in writing by the Local Planning Authority. Prior to occupation of the development the foul water drainage works must have been carried out in complete accordance with the approved scheme.
- 22) Prior to the commencement of development full details of diverted and removed watercourses are to be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 23) No development shall take place until a Written Scheme of Investigation has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:
 - i) A statement of significance and research objectives;
 - ii) the programme and methodology of site investigation and recording;
 - iii) the nomination of a competent person(s) or organisation to undertake the works;
 - iv) the programme for post investigation assessment and subsequent analysis, publication and dissemination of the analysis and records of the site investigation, and;
 - v) the provision to be made for archive deposition of the analysis and deposition of resulting material.
- 24) No development shall take place other than in accordance with the Written Scheme of Investigation approved under condition 23.
- 25) No development shall take place until a Remedial Scheme and a Verification Plan to deal with any land contamination has been submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved Remedial Scheme and Verification Plan.
- 26) If during the course of the development previously unidentified contamination is discovered development must cease on that part of the site and it must be reported in writing to the Local Planning Authority within 10 working days. Prior to the recommencement of development on that part of the site, a Risk Based Land Contamination Assessment for the discovered contamination (to include any required amendments to the Remedial Scheme and Verification Plan) must be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be implemented in accordance with the approved details.
- 27) Prior to first occupation of the development a Verification Investigation shall be undertaken in line with the agreed Verification Plan for any works outlined in the Remedial Scheme and a report showing the findings of the Verification Investigation relevant to the whole development, or part thereof, shall be submitted to and approved in writing by the Local Planning Authority.
- 28) Before any fixed plant is used on the premises it shall be enclosed with sound-insulating material and mounted in a way which will minimise transmission of structure-borne sound in accordance with a scheme that shall first have been submitted to and approved in writing by the Local Planning Authority. The measures implemented as approved shall be permanently retained thereafter.

- 29) Prior to the commencement of development a Construction (Traffic) Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The CEMP shall include details of:
- The means of access and routing for demolition and construction traffic and indication of signage locations to assist those delivering to the site, and;
 - Details of a Construction Communications Strategy which contains points of contact and details for residents to report HGVs utilising inappropriate routes.
- 30) Demolition, construction and/or remediation works shall take place only between 0800 to 1800 Monday to Friday and at no time on weekends or Bank Holidays.



The Planning Inspectorate

Report to the Secretary of State for Levelling Up, Housing and Communities

by H Butcher BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Date 4 January 2023

TOWN AND COUNTRY PLANNING ACT 1990

HARBOROUGH DISTRICT COUNCIL

APPEAL BY MINISTRY OF JUSTICE

Inquiry held on 4-12 and 17 October 2022

Land adjacent to HMP Gartree, Welland Avenue, Gartree, Market Harborough, Leicestershire LE16 7RP

File Ref: APP/F2415/W/22/3300227

<https://www.gov.uk/planning-inspectorate>

File Ref: APP/F2415/W/22/3300227

Land adjacent to HMP Gartree, Welland Avenue, Gartree, Market Harborough, Leicestershire LE16 7RP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by the Ministry of Justice against Harborough District Council.
- The application Ref 21/01600/OUT, dated 10 September 2021, was refused by notice dated 7 April 2022.
- The development proposed is a new Category B prison of up to 82,555m² GEA within a secure perimeter fence together with access, parking, landscaping and associated engineering works.

Summary of Recommendation: The appeal be dismissed.

Procedural Matters

1. The Inquiry opened on 4 October 2022 and sat for eight days (4-12 October 2022, and 17 October 2022.) The Inquiry was held in person apart from the final sitting day which was held virtually over Microsoft Teams, arranged by the Council. Members of the public were able to livestream the event throughout and were invited to address the Inquiry on Day 1.
2. I made an unaccompanied visit to the site and its surroundings in advance of the Inquiry. I made a further, accompanied, visit to the site and its surroundings on Day 6 (11 October 2022) following a walking route with viewpoints agreed between the main parties¹. This included visits to 60 and 76 Welland Avenue. I also made an accompanied site visit with representatives from each of the main parties to HMP Five Wells in nearby Wellingborough on the same day. This visit was at the request of Neil O'Brien MP and several interested parties as it is of a similar size and layout to the proposal.
3. The appeal was recovered by the Secretary of State by letter dated 2 September 2022 for the following reasons:

"The appeal involves proposals for development of major importance having more than local significance, and proposals against which another Government Department has raised major objections or has a major interest."
4. The application is made in outline with only access and scale to be determined at this stage². Details of the proposed new access are included at Appendix D of the Transport Assessment, Drawing Reference GART-ATK-HGN-WELL-DR-D-0001 Rev P1³. As set out in the Design and Access Statement the scale/height of the buildings would range from 6m-17.5m⁴. The Gross External Area (GEA) as per the description of development, and as confirmed at the Inquiry, would be 82,555m². I have therefore considered the appeal on this basis.
5. The appellant has also submitted a detailed Comprehensive Landscape Masterplan⁵. Landscaping is identified as a 'reserved matter' on the application

¹ Core Document (CD) K24

² CD A1

³ CD A77

⁴ CD A7 under 'Scale'

⁵ CD A50

form. However, the Landscape Masterplan has been put forward by the appellant for approval at outline stage. This plan is also not marked as being for 'illustrative' or 'indicative' purposes. In accordance with National Planning Practice Guidance⁶ landscaping must, therefore, be treated as forming part of the outline application rather than a reserved matter.

6. No party would be prejudiced by this approach as these landscaping details were before the Inquiry and discussed in detail in a round table session. Furthermore, any additional landscaping details which may be required could be conditioned as part of any outline permission.
7. The Landscape Masterplan also shows a layout for the prison. Layout is also identified on the application form as being a 'reserved matter'. However, as this plan clearly focusses on landscaping I have treated the layout on this plan to be for 'illustrative' purposes only.
8. A draft S106 Agreement was discussed at the Inquiry. I allowed time after the Inquiry closed for this to be completed. The final version was received on 26 October 2022⁷. I deal with its content below.
9. The appeal was screened for an Environmental Impact Assessment (EIA) and found to not be EIA development.

The Site and Surroundings

10. The site is located adjacent to an existing prison at HMP Gartree, and a ribbon of housing along Welland Avenue, Gartree. This housing was historically associated with the prison but is now in private ownership. The site and adjacent existing prison are situated on land which was formerly part of RAF Market Harborough. For the purposes of this report I shall refer to HMP Gartree and its adjacent housing collectively as 'Gartree'.
11. The site comprises three parcels of land which total some 28.9ha. Parcel 1; the largest of the three parcels of land, is located to the south of HMP Gartree and to the east of Welland Avenue. It is identified as farmland. Parcels 2 and 3 are separate, smaller parcels of land on the west side of Welland Avenue, identified as open space⁸.
12. The site is situated approximately 5.1km north-west of the town of Market Harborough⁹ and 1.9km to the north of Lubenham village. Foxton village lies approximately 2.4km to the north-west of the site (via highway routes)¹⁰.
13. For the purposes of the development plan the site falls on land designated as 'countryside'. Parcel 1 also partly falls within the Lubenham and Gartree Area of Separation (AoS) (See Planning Policy section below).
14. The site is to be accessed from Welland Avenue, the relevant part of which is in the ownership of the Ministry of Justice (MoJ).

⁶ Making an application, Outline planning applications, Paragraph: 035 Reference ID: 14-035-20140306

⁷ CD K26

⁸ CDs C3 and C7 Section 2 in both

⁹ CD C7

¹⁰ CD C3

Planning History

15. There is no planning history associated with the appeal site itself. There is planning history associated with the adjacent HMP Gartree¹¹. Of most relevance to this appeal is a planning application which included an extension to the existing prison, made towards the end of 2021, but which was later withdrawn¹². This included the erection of a four-storey houseblock for up to 247 additional prisoners and an extension to the staff carpark.

The Proposal

16. Whilst the application was made in outline, based on what was discussed at the Inquiry, and all submitted details, Parcel 1 would be where the new Category B Training prison would be sited. This would include an Entrance Resource Hub (ERH), a support building, a central service hub, a kitchen block, 2x workshop buildings, a care and separation unit, and 7x houseblocks, each with a capacity of up to 245 prisoners¹³. A GEA of 82,555m² is proposed.
17. In addition to this a car parking area providing 523 car parking spaces is proposed to the front of the ERH. The secure compound area of the site is to be enclosed by a perimeter fence extending to 5.5m high (comprising 5.2m high fence and 0.3m razor wire at the top of the fence)¹⁴.
18. Parcels 2 and 3 are to be used respectively for Biodiversity Net Gain (BNG)¹⁵ enhancements and a play area for the community¹⁶.

Planning Policy

19. At the date of completing this report the development plan includes Harborough Local Plan (LP)¹⁷ and Lubenham Neighbourhood Plan (NP)¹⁸. The Council's reason for refusal¹⁹ relies on Policies GD1 and GD3 of the LP and LNP01, LNP16 and LNP19 of the NP. Other policies also came to light during the course of the Inquiry as detailed below.

Harborough Local Plan 2011-2031 (adopted 2019)

20. Policy GD1 of the LP broadly reflects guidance set out at Sections 1 and 2 of the National Planning Policy Framework (the Framework). Policy GD3 of the same sets out specific types of development permitted in the countryside.
21. During the course of the Inquiry my attention was also drawn to Policy GD5 of the LP by the Rule 6(6) Party Gartree Action (GA). This policy requires development to be sensitive to its landscape setting and landscape character area. Certain criteria are set out therein to achieve this.

¹¹ CDs C3 and C7 under 'Planning History'

¹² Application Reference 21/02128/FUL

¹³ CDs C3 and C7 Section 3 in both, and CD A48

¹⁴ CDs C3 and C7

¹⁵ CD A71

¹⁶ CD A48

¹⁷ CD I1

¹⁸ CD I2

¹⁹ CD A75

22. Policy IN2 of the LP is also relevant insofar as it requires development to make provision for sustainable transport provision such as: measures to facilitate and encourage safe access by cycle and on foot; protection of, connection to, and extension where practicable of existing pedestrian, cycle routes; provision for public transport enhancement where justified; and provision of electric vehicle (EV) recharging facilities where appropriate.

Lubenham Neighbourhood Development Plan 2016-2031 (adopted 2017)

23. LNP01 of the NP sets out the need to maintain the open character of the Lubenham & Gartree AoS as defined on Map 2 of the NP²⁰. This is to preserve the physical and visual separation between these built up areas and Market Harborough and to retain their distinctive character and separate identities. This policy sets out two criteria in respect of development within this area, which must both be met in order to comply with this policy.
24. NP Policy LNP16 relates to new business/employment development in Lubenham parish. This policy is broadly permissive of such development, whilst in particular seeking to protect local character, and ensuring provision is made for employees to access alternative modes of transport for work.
25. LNP19 specifically permits limited and small-scale development in Gartree subject to certain criteria.

The Framework

26. The latest version of the Framework is also a material consideration (2021). Sections 6: Building a strong, competitive economy, 8: Promoting healthy and safe communities and 9: Promoting sustainable transport are of particular relevance.

Agreed Matters

27. The respective Statements of Common Ground²¹ set out the agreed matters in detail. Of particular note for this appeal are:
- The site is within the open countryside for the purposes of the development plan. It is therefore agreed that the proposal conflicts with Policy GD3 of the LP.
 - Part of the site falls within the Lubenham & Gartree AoS.
 - There is conflict with Policy LNP19 of the NP which permits only limited and small-scale development in Gartree.
 - The appeal site is not subject to any national landscape designations.
 - The appeal site does not comprise a valued landscape for the purposes of paragraph 174 (a) of the Framework.
 - The proposal would have positive socio-economic impacts.
 - BNG can be delivered on-site.

²⁰ CD I2 pdf pg 33

²¹ CD C3 and CD C7 (Sections 2 and 6 in both)

- The site is within Flood Zone 1.
- It is agreed that no harm is caused to the significance of any designated heritage asset.
- The site is not a designated nature conservation site.
- The site forms agricultural land of subgrade 3b quality.

28. The Council further agree that there is a national need for new prisons.

The Case for the Appellant

29. The material points are:

Background

30. The proposal is for a new Category B Training prison. Prisoners are categorised in accordance with the risk they pose from "A" meaning highest risk, to "D" meaning lowest risk. Prisons are designed to hold prisoners of a particular category. Prisoners cannot be held in a lower category prison than their categorisation. Prisons are also designed and used for particular purposes:

- "Reception" prisons are for prisoners being held on remand (i.e. before sentence) or awaiting sentence or onward allocation.
- "Training" prisons, either for Category B or C prisoners, focus on addressing the causes of offending and providing skills to find employment on release from prison. Training prisons are a national resource because they cater for prisoners for longer periods.
- "Resettlement" prisons hold prisoners towards the end of their sentences to prepare them for release.

(i) There is a compelling national need for prison places, specifically Category B Training places

31. 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. The consequences of having insufficient prison places are highly problematic: Prisoners may be kept in places where the needs for their behaviours cannot be met, the prisons themselves may be overcrowded, and prisoners may be released early²². The latter point would clearly fundamentally undermine public confidence in the Criminal Justice System.

32. His Majesty's Prison and Probation Service (HMPPS) makes projections of prison place demand at a national level. These show that the operational capacity of the prison system in September 2022 was 83,381 places and a prison population of 81,245. The system is therefore operating at 97.5% of its useable capacity at present. The latest projections show that the total prison population is forecast to reach 98,500 by March 2026 i.e. some 15,000 more prisoners than the current operational capacity within less than four years²³.

²² CD E2 para 2.14

²³ CD E2 para 4.9

33. In respect of Category B Training prison places there are around 7,930 Category B prisoners at present which outstrips supply as shown at Fig 1 of Mr Smith's proof²⁴. There is therefore an existing, unmet need for Category B Training places. Furthermore, the growth in overall prisoner numbers will be reflected in proportionate increases in the demand for Category B Training places. Fig 1 also shows that by July 2026 it is predicated there will be a shortfall of circa 1,400 Category B Training places.
34. These projections are carefully modelled and published to National Statistics standards. They are also updated annually. They are the best evidence of the future need for prison places. Even if these projections materialise later than expected, they will arise.
35. This pressing need for prison places is in part due to the Government's wider criminal justice reforms. These reforms include a substantial uplift in police numbers and changes to sentencing. There is also a substantial backlog in the Crown Courts arising from the Covid pandemic, which is being addressed, but which will lead to an increase in prison place demand.
36. The Framework supports this type of development. At paragraph 96 it sets out that decision makers should work proactively and positively with promoters, delivery partners, and statutory bodies to ensure faster delivery of public service infrastructure such as criminal justice accommodation. Paragraph 97 also states that planning decisions should promote public safety and take into account wider security and defence requirements by recognising and supporting development required for operational defence and security purposes.
37. Category B Training prisons cater for prisoners for longer periods of time and focus on addressing the causes of offending and providing skills to find employment on release from prison. As a result, they meet a national need and the Midlands location of the proposal reflects this.
38. Proposed enlargements to the existing prison estate will not meet the demand for Category B Training places. The HMP Rye Hill expansion is intended to accommodate persons convicted of sexual offences who would otherwise be held in Category C prisons. An extension of HMP Gartree is intended to be pursued in the future but of itself would not come close to meeting the projected need for prison places.
39. RAF Wethersfield was identified as a potential site for a Category B prison. However, the opportunities and risks associated with that development are still being explored. Furthermore, there is a pressing regional need here for a Category C prison which must take priority.
40. That there may be very little overcrowding in Category B prisons is not an argument in favour of refusing planning permission. Overcrowding carries with it risks, particularly with high-risk offenders, and should be avoided.

²⁴ CD E2 pg 16

(ii) This is not an exceptional case where alternative sites are a relevant planning consideration

41. There is no requirement to consider alternative sites for new development. The law is well-established on this point. Where there is no policy requirement to consider alternatives, which in this case there is not, it is only in exceptional cases that alternative sites are a relevant planning consideration.
42. Holgate J summarised the principles²⁵. This summary sets out two limbs to the test of whether an alternative site is relevant:
 - First, are there “clear planning objections” and a “significant adverse effect” that might mean that alternative sites may be relevant?
 - Second, even in those exceptional circumstances where an alternative might be relevant, alternatives are not relevant (or should be given little or no weight) where they are vague, inchoate, or have no real possibility of coming about.
43. The appellant’s case is that neither limb is satisfied. The planning adverse effects, detailed below, would be limited. Furthermore, no one suggests an alternative site is available or has a real prospect of coming about.
44. Notwithstanding this, there has been a careful consideration of alternative sites through the development of the new prisons programme as set out in Mr Smith’s Annex A²⁶.
45. Whilst a pre-application response from the Council set out a requirement to consider alternative sites this does not override the principles set out above.

(iii) Any adverse effects in terms of landscape and visual impacts would be mitigated by landscaping

46. Although in outline, much is known about the new prison with scale fixed in terms of GEA and maximum height of buildings. The appellant is also clear that it would closely resemble that set out in the indicative material before the Inquiry²⁷ reflecting new prison design as implemented at HMP Five Wells.
47. Although the appeal site includes open countryside it falls within no formal landscape designations. The adjacent prison and housing at Gartree also exert a considerable influence on the local landscape.
48. Whilst the new prison would be seen from various Public Rights of Way (PRoW) the impacts would be localised. The site lies in a natural depression such that the proposals would have a limited impact on the skyline i.e. sitting below the existing tree line when viewed from the east.
49. The planting scheme proposed is substantial and well considered²⁸. It would not hide the prison from view but it would minimise its impacts. Some of the

²⁵ CD K25 (3)

²⁶ CD ‘Needs Case Annex A’

²⁷ CDs A48, A54, A55, A56

²⁸ CD A50

identified areas have already been planted so as to effectively get a head start on the mitigating effects of this planting.

50. The area is not an existing dark area, largely due to HMP Gartree, and the lighting scheme could be designed to reduce light spill.
51. Overall, therefore, the landscape and visual harm of the proposal would be limited and not significant.
52. Part of the site lies in an AoS as designated by Policy LNP01 of the NP. This policy requires an assessment of whether development would diminish the physical or visual separation between the built up areas of Market Harborough and Lubenham, and Market Harborough and Gartree, and compromise the effectiveness of the AoS in protecting the identity and distinctiveness of these settlements.
53. The appellant makes the following key points in respect of the AoS:
 - The development would not physically unify the settlements;
 - There would be no visual narrowing of the relationship with Lubenham as Mill Hill (a landscape feature) lies between the site and Lubenham;
 - The incursion into the AoS would be minor when considered as a whole (c. 3.2% of the AoS);
 - In plan view, the separation between Gartree and the Market Harborough Strategic Development Area (SDA) would be reduced by c. 100m;
 - The SDA on the edge of Market Harborough includes provision for a defensible landscape buffer between built form and the start of the AoS;
 - Views from PRow A25 of the fields dividing the settlements would be maintained;
 - No location has been suggested in which the settlements would visually coalesce as a result of the development;
 - Overall both the physical and visual separation of the settlements would be maintained and their separate identity would not be eroded.
54. For these reasons, whilst there is development in the AoS, it would not be contrary to the policy designation because it neither diminishes the physical or visual separation between the built up areas associated with these settlements nor compromises the effectiveness of the AoS in protecting the identity and distinctiveness of these settlements.

(iv) The proposal offers a genuine choice of transport modes

55. The Framework at para 105 sets out:

"Significant development should be focussed on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions, and improve air quality and public health. However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making."

56. Paragraph 110a) also explains that decisions should ensure "*appropriate opportunities to promote sustainable transport can be – or have been - taken up, given the type of development and its location.*"
57. The new prison requires a large site, and is unlikely, therefore, to be located in the most sustainable locations such as a town centre or near a major transport hub. Nevertheless, whilst not located as such, there would be a genuine choice of sustainable transport modes available to staff and visitors:
- 53 charging points would be provided so that low and zero emission vehicles could be used to access the site;
 - A site-specific car sharing scheme is to be provided (5% of total car parking capacity);
 - Walking would be a choice, albeit for people living very close to the prison, and new footways would be provided immediately around the new access and linking to existing footways to the north on Welland Avenue²⁹;
 - Cycling would be an option not just for people living locally but also those travelling by train via Market Harborough from London, Leicester or Nottingham. There is ample cycle parking at Market Harborough station and the cycle time is c. 20 minutes. The road network is popular with cyclists and E-bikes would serve to make the journey more attractive. Cycle parking would be provided on-site also;
 - The new prison will be accessible by bus for a healthy proportion of future employees. The bus could be used in conjunction with rail services into Market Harborough.
58. Overall, therefore, there would be a genuine choice of sustainable transport modes for accessing the new prison supported by a Travel Plan³⁰.

(v) Other matters raised against the proposal

Highways

59. In respect of Highways no case has been made that the test in paragraph 111 of the Framework would be offended i.e. 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 would be severe. The appellant has carried out a careful assessment which demonstrated no such impacts exist. That assessment was accepted by the Local Highway Authority. The Council also commissioned its own assessment which similarly did not identify any unacceptable safety impacts or severe residual cumulative impacts.
60. Whilst some concerns as to highway safety were raised by local residents none came close to identifying a serious safety concern.

²⁹ CD A11 Appendix C

³⁰ CD A11

Prisoners' Mental Health

61. The location of the prison has been cited as harmful to prisoners' mental health due to the difficulties posed for families to visit. The prison would, however, be accessible as set out above. There is also now provision for securely monitored video calls and the 'book at bedtime' provision which allows fathers to read to their children.

Heritage

62. There has been extensive archaeological investigation of the site to the satisfaction of the County Archaeologist. The archaeological interest of the site can be explored and preserved through a scheme of investigation by way of a suitable condition.

Air Quality

63. There is no challenge to the appellant's assessment that there would be no material air quality effects from the proposal.

Surface Water Drainage

64. Surface water drainage can be addressed by condition. This includes measures in respect of the watercourses on site.

Residential Amenity

65. There would be no adverse effects on residential amenity.

Impact on Protected Species

66. In respect of badgers, the provision of a replacement sett addresses any harm. The works in question have already been completed under a license from Natural England.

Impact on Foxton Primary School

67. The appellant's construction traffic proposals would not involve any roads through Foxton. The agreed trip distribution in the Transport Assessment³¹ does not identify any operational traffic passing the school.

(vi) Benefits of the new prison

68. As well as the quantitative benefit of meeting identified demand, the proposal would also deliver qualitative benefits. New prisons provide improved environments for rehabilitation, and more secure environments to reduce criminality within prisons. They also provide better places to work. As much of the prison estate ages there is a need for new investment to deliver this hugely important public service. The major commitment to improving the prison estate is further explained in the Prisons Strategy White Paper³².
69. The proposal would also bring significant economic benefits in the construction and operational phases of the development. Local construction jobs and

³¹ CD A10

³² CD J2

apprenticeships would be encouraged by the obligations in the s106 agreement. When operational, the prison will create over 750 direct jobs as well as further jobs through the provision of related services such as health and education.

70. The proposal also secures a c.26% BNG which goes well beyond that required under the Environment Act 2021. This is a significant benefit.
71. The building would be constructed to high standards of sustainability with energy generation in the form of solar panels and heat pumps. Charging points for cars would also be available in the car park.
72. The proposals also provide for upgraded and improved access to nearby open space and provision for a new play area for the use of the local community at Gartree Estate. Also included is the upgrading of Public Right of Way (PRoW) A21 to encourage school users to park in the village and walk up this footpath rather than parking directly outside the school on Gallow Field Road.

(vii) The planning balance

73. The appellant identifies conflict with policy GD3 of the LP which protects the countryside and LNP19 of the NP which is permissive only of small-scale development in Gartree. Whilst the proposal would extend marginally into the AoS protected under policy LNP01 this would not compromise its purpose; a conclusion shared by the Council's planning officers when recommending approval³³. Nor would there be any conflict with Local Plan Policy IN2 which promotes sustainable transport modes. Additionally, there are areas of policy compliance, including, importantly, policy GD1 of the LP which encourages sustainable development in line with the Framework.
74. The appellant's view is that the proposals accord with the development plan when taken as a whole, acknowledging that policies may pull in different directions. Notwithstanding this, if found that the scheme would not accord with the development plan, permission should be granted on the basis that the material considerations in favour of the proposal convincingly and compellingly justify a grant of permission as a departure from the development plan.
75. The appellant's respective weights for key benefits and harms are set out in a comparison table³⁴.

The Case for the Council

76. The material points are:

(i) The proposal results in harm to the character and appearance of the surrounding area

77. The appeal site is located in countryside, as designated by the development plan, on land to the south of Gartree and it forms an open, rural setting to this settlement. It also forms part of a designated area of physical and visual separation between Gartree and Market Harborough as identified in the NP as an AoS.

³³ CD A72

³⁴ CD K19

78. The Council's landscape witness took the view that the landscape had a value of Medium and the landscape's susceptibility to development of the type proposed was Medium-High. He explained that whilst the existing prison is a detracting feature, the fact that the tallest blocks were located at the centre of the existing site mitigated its effect on the landscape. In addition, mature trees screen views from the west and north and provide a backdrop to views from the south-east and east.
79. The new prison, however, would be substantially larger than the existing prison: 2.5 times in terms of numbers of inmates; more than double the footprint; and would have a greater vertical emphasis with numerous four-storey buildings, associated security fencing and carparking. Whilst the four-storey house blocks would have a similar ridge height to the tallest buildings at the existing HMP Gartree, unlike the existing prison, the tallest buildings would be located close to the perimeter of the site.
80. The new prison would form a large, utilitarian and dominant feature in the landscape causing significant harm to the appearance of the countryside. There would also be a substantial cumulative visual effect as it would be viewed in conjunction with the existing prison.
81. It would be seen from many publicly accessible viewpoints including from PRoW A25 to the east, when descending Mill Hill on PRoW A22, and PRoW A23 to the south-east of the appeal site and Welland Avenue. Furthermore, some long and often open views across the Welland valley would be lost from these viewpoints.
82. There would also, more generally, be a loss of farmland, loss of localised vegetation, and extensive earthworks to accommodate the development given the sloping topography of the site, all of which would negatively impact on views from the surrounding area. Furthermore, there would be a loss of the rural landscape setting to the south of Gartree.
83. The Council's landscape witness therefore found that in the early years of the development there would be an effect of High magnitude and Major-Moderate adverse significance.
84. Turning to mitigation provided by planting³⁵, in the Council's view, the narrow strips of planting proposed along the most exposed edges of the appeal scheme would not achieve this objective. The Council's landscape witness considered at its narrowest point, the 11m wide planting strip could accommodate one row or perhaps a double staggered row of trees, at best. The appellant's landscape witness's visualisations show that the proposed planting would not be sufficient to screen nor assimilate the prison into the landscape³⁶.
85. The Council are therefore of the view that by year 15, when any mitigation planting has had time to establish, there would still be an effect on the

³⁵ CD A50

³⁶ CD E3 'L&V POE' pg 51 onwards

landscape character of the appeal site and its setting of Medium-High magnitude and Major-Moderate adverse significance³⁷.

86. In respect of lighting the appellant's visualisations³⁸ show that the appeal scheme would extend the lit environment of the existing prison. It should also be noted that the visualisations only illustrate the effects of the perimeter security lighting. However, there would be additional lighting from the four storey house blocks well into the evening and beyond, and so the impacts in terms of light pollution would be greater. The Council submit that this would cause significant harm to the character and appearance of the surrounding area.
87. Turning to the AoS, it is agreed that the appeal scheme would encroach into the designated AoS as shown on the annotated plan on page 30 of the Council's planning witness' proof³⁹. The Council's case therefore is that on this point alone it would physically diminish the separation between Gartree and Lubenham, and Gartree and Market Harborough; specifically: c. 269m of the existing 1030m between Gartree and Lubenham (a 26% reduction), and c. 278m of the 718m between Gartree and Market Harborough (a 39% reduction)⁴⁰.
88. The Council's landscape witness also found that the development would visually reduce the separation of the settlements, notably between Gartree and Market Harborough given the impact on the sense of openness experienced by users of PRoW A25. It is also important to take into account that the SDA to Market Harborough shown on the plan referenced above⁴¹ has already brought this settlement much closer to Gartree in recent years.
89. In summary, the proposal would result in unacceptable harm to the character and appearance of the surrounding area. It would have adverse effects on the landscape setting of Gartree, and would also compromise the physical separation of Gartree and Market Harborough and Gartree and Lubenham as well as having a significant adverse effect on the visual separation of Gartree and Market Harborough.
90. The Council consequently find conflict with Policies GD3 of the LP and LNP01 of the NP which seek to protect the countryside and the designated Lubenham and Gartree AoS. The Council also identify conflict with Policy LNP16 of the NP insofar as the scale, density and design would not be appropriate to its setting and would cause damage to the qualities, character, and amenity of the area and its residents.

(ii) The appeal site is not a suitable location for the development having regard to accessibility

91. The Framework para 105 states: "*Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes.*" The Council

³⁷ CD F2 'Landscape POE para 3.2.34' and CD F2 'Appendices-Table-A-2022-09-06.'

³⁸ CDE3 'L&V POE' pg 51 onwards

³⁹ CD F1 'LPA Planning Proof Finalised'

⁴⁰ CD F1 (as above) para 8.99 and 8.100

⁴¹ CD F1 page 30

contend that there are limited alternatives to the use of private motor vehicles to access the site for the following reasons:

- Access to the site by foot is not a genuine transport choice. It is unrealistic as this would be limited to properties along Welland Avenue (c. 84 dwellings). Furthermore, walking between Gartree and Foxton along the PRow would not be suitable as it is unlit, not wide enough for two people, and is along a 60mph road, making it an unattractive option.
 - Access on bicycle is limited to the villages immediately surrounding the appeal site (Gartree, Lubenham and Foxton based on a c. 10 minute cycle ride), and the western part of Market Harborough and Great Bowden (based on a 20 minute cycle ride.) These routes largely involve using sections of heavily trafficked, unlit, 60mph main roads, with no cycle lanes. An alternative route from Market Harborough is along the Grand Union Canal but this is an elongated route, unlit, and narrow. Cycling is therefore considered an unrealistic option particularly at night and/or in inclement weather.
 - Bus access is limited to Market Harborough and operates on a long loop in one direction (c. 35 minutes from Market Harborough to Gartree and 16 minutes in the opposite direction). It also does not operate at all for one day a week. Furthermore, the timetable would not work for uniformed staff (60% of the proposed workforce) as it does not align with shift times.
 - The nearest railway station at Market Harborough is more than 5km away so staff or visitors would be more likely to use a car or take a taxi than walk, cycle, or take the bus (c. 35 minutes) between the station and Gartree. Notwithstanding this, Market Harborough is not connected by train to many major cities.
 - In terms of linking train and bicycle travel, the main line through Market Harborough permits only two standard bicycles on each train and these spaces need to be booked in advance. Whilst there is storage for bicycles at the station this needs to be purchased.
 - Car sharing is proposed but this typically only works when people are travelling from nearby locations to the same area. For this to work at the proposed prison workers would have to live in nearby locations and have the same shift pattern making this less likely to be a genuine option.
 - The prison is a national resource so visitors would be travelling from across England and Wales which compounds the issues outlined above with respect to the choice of transport modes available.
 - The proposal would provide EV charging points. However, hybrid cars could use these which would not necessarily accord with the Framework's definition of sustainable transport modes i.e. ultra low and zero emission vehicles. Furthermore, there is no commitment to provide free use to encourage utilisation.
92. No evidence of actual travel to the existing prison at Gartree is before the Inquiry which could have provided the opportunity to demonstrate actual use of sustainable transport modes. The Council's position is, however, supported by a survey conducted in 2017 at the existing prison which asked "is it

very/quite easy for your family and friends to get here?". Only 22% of respondents agreed with this statement⁴².

93. Thus, the Council contends that private motor vehicles would be the predominant mode of access to the prison for both staff and visitors rather than sustainable transport modes. As a result the Council find conflict with policy IN2 of the LP and the Framework paras 105, 110 and 85.

(iii) There is no need for a Category B Prison, of this size, on this site

94. Although not in their reason for refusal the Council provided evidence on 'need' for a Category B prison at the appeal site, contradicting the appellant's claimed need. The Council accept a national need for prison places, but question whether there is a need for the particular development proposed, in this particular location.

Need for Category B

95. In cross examination (XX) there was found to be a discrepancy with respect to the appellant's stated 1,400 Category B places needed by July 2026. It was stated that there were currently 7,500 Category B places but in fact there are 7,750 as indicated by Figure 1 of the appellant's 'Need' proof⁴³. The difference arises due to HMP Grendon currently housing Category C prisoners. There is therefore a need for Category C places and when those come forward as part of the appellant's expansion plans, an additional 250 Category B places will automatically become available.

96. The following points are also relevant:

- Overcrowding in Category B Training prisons is only 1%, the lowest level of overcrowding.
- This is caused in part by the use of Category B prisons for Category C prisoners as a result of a shortage of Category C spaces.
- In XX the appellant's need witness accepted that in reality very few prisoners are released early from Category B Training prisons.
- The appellant intends to apply again to expand the existing HMP Gartree irrespective of the outcome of this appeal. This indicates no particular urgency for Category B places.
- There have been delays in consideration of a Category B Training prison at RAF Wethersfield since January 2021 which further suggests there is no particular urgency.

Size

97. There is no evidence to justify the need for a site of 12ha, identified by the appellant as providing the maximum efficiency for construction costs and operations. Whilst it might have been rigorously tested internally by the Government, including by HM Treasury, this is not before the Inquiry.

⁴² CD J19, p95

⁴³ CD E2 'Needs Case POE' Fig 1

This site

98. Category B Training prisons are a national resource so do not require a specific regional location. Therefore, they do not necessarily have to be in the Midlands. The appellant is still considering a new Category B prison at the former RAF Wethersfield in Essex which further supports the Council's point that the location required for a new Category B prison is not specific to the Midlands.
99. Even if the Midlands was an appropriate location, there is no specific need for a rural location. Indeed, this location does not meet some of the requirements identified by MoJ as part of the site selection process, namely accessibility⁴⁴ and that the site is previously developed/brownfield land⁴⁵.

(iv) Alternative sites are a relevant planning consideration

100. The appellant considered alternative sites, but the parameters of the site search kept changing. The need for a national Category B Training prison in the Midlands was only detected recently. Searches undertaken in February 2020 were limited to the north-west and south-east⁴⁶. Previously only a need for Category C Resettlement Prisons was identified (April 2020)⁴⁷. Indeed, the appellant only searched for sites in the Midlands region in June 2022 which is after the appeal was submitted⁴⁸. This application was made, therefore, without previous assessment of alternative sites in the Midlands.
101. The Council contend, therefore, that the site search conducted by the appellant was sporadic and inadequate and therefore there may still be a suitable alternative site available. Furthermore, the appellant's point that a viable public sector site will always represent better value for money for the taxpayer is likely to have skewed any search for a private site.
102. In *Derbyshire Dales DC v SSCLG* [2010] 1 P & CR 19⁴⁹, Carnwath LJ said (at §16(2)) that
- "Where, however, 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 alternative site elsewhere...particularly so when 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."*
103. As to examples, he said (at §16(3))
- "Instances of this type of case are developments, whether of national or regional importance, such as airports...Oliver LJ's judgement in Greater London Council v Secretary of State for the Environment [52 P&CR 158] suggests a*

⁴⁴ CD A2 page 28 para 7.33 (please note the reference to accessibility is actually specifically that the site be accessible for construction without major enhancement of transport infrastructure).

⁴⁵ CD A2 page 28 para 7.34

⁴⁶ CD E2 'Needs Case Annex A' para 2.8

⁴⁷ CD E2 'Needs Case Annex A' para 2.10

⁴⁸ CD E2 'Needs Case Annex A' para 3.15

⁴⁹ CD K25 (2)

helpful though expressly not exhaustive approach to the problem of determining whether consideration of alternative sites is material...

'comparability is appropriate generally to cases having the following characteristics: first of all, the presence of a clear public convenience, or advantage, in the proposal under consideration; secondly, the existence of inevitable adverse effects or disadvantages to the public or to some section of the public in the proposal; thirdly, the existence of an alternative site for the same project which would not have those effects, or would not have them to the same extent; and fourthly, a situation in which there can only be one permission granted for such development or at least only a very limited number of permissions.'

104. With this in mind the Council's case is that all of these requirements are met:
- The proposal is of national significance and of advantage to the public insofar as it would provide a public service;
 - There are inevitable adverse effects as set out in the Council's case above;
 - There are disadvantages to the public from the proposal on account of its inaccessibility;
 - An alternative site in a less sensitive and more accessible location would not have those effects;
 - At most only a very few permissions would be granted for new Category B Training prisons.
105. The Inspector is therefore entitled to take into account that an alternative unspecified scheme might do less harm.
106. The appellant refers to Holgate J's summary at §270 of R(Save Stonehenge World Heritage Site Ltd) v SST [2022] PTSR 74⁵⁰ and in particular the point that:
- "even in those exceptional circumstances where alternative proposals might be relevant, inchoate or vague schemes and/or those that are unlikely or have no real possibility of coming about would not be relevant or, if they were, should be given little or no weight."*
107. However, in R (Langley School for Girls) v Bromley LBC [2010] 1 P & CR 10⁵¹ Sullivan LJ in his judgement cautioned that Auld LJ's judgement should not be taken out of context. He said at §51:
- "An unlikely possibility that a more acceptable alternative scheme might be devised could not, on any rational basis, be a reason for refusing permission for a scheme to which there was no planning objection."*
108. He also went on to say (at §§52 and 53 of his judgement, which was quoted by Holgate J at §274 of *Save Stonehenge*):

⁵⁰ CD K25 (3)

⁵¹ CD K25 (1)

"The starting point must be the extent of the harm in planning terms (conflict with policy etc) that would be caused by the application. If little or no harm would be caused by granting permission there would be no need to consider whether the harm (or lack of it) might be avoided. The less the harm the more likely it would be (all other things being equal) that the local planning authority would need to be thoroughly persuaded of the merits of avoiding or reducing it by adopting an alternative scheme. At the other end of the spectrum, if a local planning authority considered that a proposed development would do really serious harm it would be entitled to refuse planning permission if it had not been persuaded by the applicant that there was no possibility, whether by adopting an alternative scheme, or otherwise, of avoiding or reducing that harm"⁵².

In summary, if there is a need for a national prison of this size, the appellant has failed to demonstrate that the harm caused by the development could not be avoided by siting the development in a more appropriate location. Lack of need has relevance to policies GD1 and GD3 of the LP and LNP16 and LNP19 of the NP.

(v) Other policy conflict

109. As agreed with the appellant there is conflict with Policy LNP19 of the LP which allows only limited and small-scale employment/business development on environmentally acceptable sites in Gartree. The development, it is agreed, is not limited in scale. Further, it would not be in Gartree. The Council also identify conflict with Policy GD1 of the LP which reflects the Framework's 'presumption in favour of sustainable development'.

(vi) Other matter

110. The MoJ 2017 report "The Importance of Strengthening Prisoners' Family Ties to Prevent Reoffending and Reduce Intergenerational Crime"⁵³ sets out that good contact between inmates and their family and friends is important to rehabilitation rates. The inaccessibility of the prison is compounded by the fact that visitors would need to travel long distances to see their family members or friends at the prison. This would harm the mental health of prisoners and would eventually spread to the rest of society as a result of reoffending rates.

(vii) The planning balance

111. In summary the Council identifies conflict with Policy GD1 of the LP insofar as the proposal development is not identified in the development plan as a suitable location for development. There is also conflict found with Policy GD3 as the development is not a type of development permitted in the countryside. There is further identified conflict with Policy IN2 which deals with sustainable transport.
112. In addition to this there is identified conflict with Policy LNP01 of the NP which protects the Lubenham and Gartree AoS. There is also conflict with Policy LNP19 of the NP which permits only limited and small-scale

⁵² I have summarised the Council's material points. However, please see the Council's closing CD K22 Appendix A: Legal note on alternative sites, for a fuller account.

⁵³ CD J20

employment/business development in Gartree. Finally, there is conflict with Policy LNP16 insofar as the proposal, in the Council's view, would not be appropriate to its setting and would cause damage to the qualities, character and amenity of the area.

113. Taking these points together the Council find the development to be in significant conflict with numerous key development plan policies and therefore in conflict with the development plan as a whole. This conflict with the plan should be given significant weight.
114. There would be socio-economic benefits from the development, but the Council consider these have been significantly exaggerated. This is because the 2013 report by Peter Brett Associates (PBA) "Economic Impacts of a new Prison"⁵⁴, relied upon by the appellant, looks at a very small sample; four prisons out of 122 and, as acknowledged by the report, economic impacts vary significantly from prison to prison. Furthermore, the report shows that income and job creation per 100 prisoners varies significantly and the Council highlight that the only rural prison considered had the lowest income generated of the four. This rural prison also demonstrated the lowest figures of district employment containment, that is local residents employed in local jobs. Furthermore, there is an existing prison in the same locality and there is evidence from local residents about recruitment difficulties at the existing HMP Gartree.
115. The creation of new jobs is also further tempered by the fact that they would be delivered in a thriving district with low levels of unemployment. With these points in mind moderate weight should be afforded to the economic benefits of the proposal.
116. Given the Council's views on need for a Category B Training prison, in this location, limited weight is afforded to the benefit of meeting the national need for prison places.
117. The Council consider harm to the mental health of prisoners should weigh against the proposal and amounts to significant harm.
118. The benefits in terms of enhancement of open space for residents of Gartree should only be afforded limited weight as there is nothing to prevent the appellant from selling this land, or applying for any condition governing this to be varied.
119. Whilst BNG should be given significant weight, moderate weight should be given to the loss of protected species habitats on site as the design of the scheme fails to address the ability to maintain any of the protected species' habitats on site.
120. The Council therefore find that the material considerations in this case do not outweigh the conflict with the development plan. The Council's respective weights for key Benefits and Harm are set out in a comparison table⁵⁵.

⁵⁴ CD J1

⁵⁵ CD K19

The Case for Gartree Action

121. The material points are:

(i) The effect of the development on the character and appearance of the surrounding area

122. Gartree Action (GA) adopts the Council's position on impact on the character and appearance of the surrounding area finding significant harm. Consequently, like the Council, they identify conflict with Policies GD3, of the LP and LNP01 and LNP16 of the NP. GA also further identify conflict with Policy GD5 of the LP which requires development to be sensitive to its landscape setting and landscape character area.

(ii) Other policy conflict

123. GA also agree with the Council's position that there is conflict with Policies GD1 of the LP and LNP19 of the NP.

(iii) Need for Category B Training places

124. The appellant states that there will be a shortfall in Category B Training prison places by July 2026 of approximately 1,400. GA considers that the extent and urgency of any need for prison places is overstated by MoJ for the following reasons:

- There is a track record of actual prison figures being substantially lower than earlier projections. The 2020 projections significantly overstated the actual prison population for 2021. Likewise, the actual figures from 2022 reveal that even the latest projections continue to significantly exaggerate actual prison populations. Prison population projections bear no realistic resemblance to actual prisoner numbers.
- Although criminal barristers have temporarily suspended industrial action there is zero evidence before the Inquiry that the Government's measures are having any meaningful impact on the Crown Court backlog. Rises in the number of police officers have also not historically been identified as major drivers behind rising prisoner numbers. In any event, whether these new officers lead to a specific need for Category B Training prison places is highly contingent on how the resource is utilised. We simply do not know on the information available.

(iv) Need for this location

125. GA consider the need for new Category B Training prison places could be met in any location.

126. MoJ says it carried out a site search as summarised in Annex A of the appellant's witness's proof on 'Need'⁵⁶. However, Annex A is a summary of process rather than substance and reflects a limited, deficient, opaque and incomplete search for suitable sites.

⁵⁶ CD E2 Annex A

127. MoJ's site search did not factor in their own site search criteria. Gartree was initially discounted but it is not known how it or any other sites compared against the suitability criteria or each other. There is no output from any site search available to the Inquiry, only MoJ's word that it has been done. Therefore, it is not possible to gain a full understanding of the process or to scrutinise it.
128. Despite it being asserted that the Midlands is a preferable location for a Category B Training prison, a wider site search of the Midlands did not happen until June 2022, after the appeal was made. Furthermore, there is an accumulation of Category B Training prisons in the region.
129. Whilst MoJ own this land there are powers such as Compulsory Purchase Orders which are afforded to central government to deliver important proposals in appropriate locations. Land ownership should be wholly irrelevant in identifying the suitability of a site.
130. In summary MoJ's site search was limited and does nothing to advance a positive case for developing this site.

(v) Consideration of Alternative Sites

131. Consideration of alternative sites should not be discounted in this case. GA, like the Council, refer to R(Save Stonehenge World Heritage Site Ltd) v SST [2022] PTSR 74⁵⁷ and specifically §269 where the relevant passage of Trusthouse Forte Hotels Ltd v Secretary of State for the Environment (1986) 53 P & CR 293 at 299-300. That passage sets out the well-established principles on when alternative sites (or lack of such sites) may be taken into account.
132. Of note, the principles from R (Mount Cook Land Ltd) v Westminster City Council [2017] PTSR 1166 reiterated in R (Save Stonehenge World Heritage Site Ltd) v SST [2022] PTSR 74 at §270 were set out in the context of an absence of conflict with planning policy and planning harm. It does not follow that in every case the mere possibility that an alternative scheme might do less harm must be given no weight; there is no 'one size fits all' rule as Lord Justice Sullivan made clear in R (Langley Park School for Girls) v Bromley LBC [2010] 1 P & CR 10 at §§ 52 and 53. This passage also adds that the extent to which it will be for the developer or objectors to establish the need for the proposal on the application or appeal site is a matter of planning judgement.

(vi) Accessibility

133. Prisons by their nature are facilities used 24 hours a day, 7 days a week, 365 days per year. In terms of the accessibility of the site GA make the following observations:
- The appellant's Transport Assessment assumes that virtually no-one would be able to walk to the site.
 - The appellant's estimates of those cycling are optimistic. The appellant's own turning count survey showed virtually no cyclists travelling down

⁵⁷ CD K25 (3)

Welland Avenue. Virtually no-one cycles to the existing prison. It is not a viable commuting option for the new prison either.

- The single, loop-route bus serving only a small part of the district is slow, infrequent and limited in extent. The bus would also be entirely unavailable at night-time, or on Sundays and Bank Holidays (some sixty days of the year). Furthermore, it is a 10-minute walk from the prison up a road with an irregular footpath.
- The nearest railway station is unwalkable so would require a taxi, infrequent bus, or challenging cycle ride, likely culminating in a steady climb up Foxton Road from Lubenham.
- The appellant's own Transport Assessment assumes that all visitors would arrive by car. Gartree is not HMP Five Wells; it is not located on the edge of a major settlement close to the strategic road network or well-connected to public transport.

134. The mere possibility of a particular mode of transport being taken at some stage by some subsection of society is not sufficient to constitute a genuine choice of transport mode. The only suitable way to access this permanently operational site will often be limited to access via private car.
135. The appellant does provide some sustainable transport options. EV charging points would be provided and GA accept there may be some trips made by electric vehicle. However, the shift pattern nature of the development and its isolated location are unlikely to make car-sharing a desirable option. Furthermore, not all opportunities have been taken. There is no longer any contribution to enhance the existing bus service and no plans for any alternative bus provision.
136. GA's case is that significant development should be focused on locations which are or can be made sustainable. The site is not sustainable and cannot be made sustainable either through limiting the need to travel or through offering a genuine choice of transport modes. The site is therefore not a suitable location for such significant development having regard to accessibility.
137. GA therefore find conflict with Policy IN2 of the LP and the Framework.

(vii) Other matters

138. GA raise that parts of Welland Avenue are narrower than detailed in the appellant's Transport Assessment. There are no plans to widen this road. GA consider this to be a limitation of the proposal in both construction and operational phases which would inevitably generate a significant amount of traffic from HGVs, ambulances, deliveries, service traffic and prison vans to and from the site.
139. Furthermore, the appellant's projected traffic flows from the site through the surrounding villages of Foxton, Gumley and Great Bowden are zero. However, many of the shortest and quickest vehicle routes to some of the nearest towns are through those villages. The assumed traffic count also omitted delivery and service vehicles. The overall local highway impacts of the new prison have therefore been downplayed.

140. Staff generation assumptions for Category C prisons were used to inform parking accumulation, not a Category B Training prison, which has a higher prisoner: staff ratio and therefore higher staff numbers. Any underestimation would result in a car park being undersized causing it to overflow.
141. Various mitigation is proposed. This includes works to PRow A22 from Foxton School into the village. This is to provide a safer route to school removing reliance on parking on Gallow Field Road and Foxton Road directly outside of the school. However, this is not a realistic or suitable route for busy parents with young children.

(viii) Benefits and further harms

142. For the reasons already set out, the extent and urgency of need should be afforded limited weight. Whilst jobs are generated, unemployment levels in the district are so low as to not register, employment levels are high, and there is an existing supply of prison jobs at HMP Gartree. The Socio-Economic Statement by MACE⁵⁸ supplied by MoJ also showed rural prisons performed poorly compared to their more urban equivalents. The Peter Brett Economic Impact of a New Prison Final Report⁵⁹ was also based on the economic impacts of urban prisons.
143. In terms of social benefits, whilst the new prison would have well-designed accommodation with access to sports facilities, healthcare, education and workshops, and initiatives for in-mates to virtually connect with their loved ones, the location of the prison would make in-person visits hard especially for those travelling from further afield. This amounts to a degree of social harm, or at the very least, reduced weight to any benefit. Moderate weight should therefore be attributed to the socio-economic benefits.
144. In terms of ecology benefits arising from the secured BNG this is a policy compliant scheme and nothing more. Mitigation is also not a benefit per se. Limited weight should therefore be afforded to ecology benefits.
145. Due to identified harm to a non-designated heritage asset (the former airfield at RAF Gartree) and loss of archaeological remains, recovered and secured in accordance with standard practice, it is the position of GA that this has a limited negative weight in the balance. There should also be limited negative weight attributed to air quality impacts of the development in respect of increased traffic generation.

(ix) The Planning Balance

146. The proposal would cause considerable harm. It is therefore the position of GA that the proposal conflicts with the development plan as a whole having regard to the balance of competing priorities and considerations. Having regard to material considerations, a departure from that plan is not considered to be merited in this case.

⁵⁸ CD A12

⁵⁹ CD J1

Oral Submissions to the Inquiry

147. Herein follows the material points made orally to the Inquiry. Those from Julia King, Maurice Thompson, Des Smith, Ian Barker, Hugh Lovesy, Katherine Winterson and William Winterson are available in writing as Core Documents K4, K6, K7, K8, K9, K11 & K12.
148. *Neil O'Brien MP* spoke in objection to the prison. He specifically referenced the costs of the prison compared to the socio-economic benefits and how these can be different in different areas. He also emphasised the importance of the plan-led system.
149. *Hugh Lovesy*, a local resident, talked about there being no contingency plan in the event that the prison could not be built at the appeal site but, if there was, then any such plans should be made public. Mr Lovesy asked questions to the appellant as set out in his submission. He also said that weight should not be given to the recommendations of the Council's planning officers as these were overturned by Councillors. Doing so would weaken fundamental governance structures and formal channels of communication that underpin the administrative arm of government.
150. *Jo Asher*, a local resident, explained that Welland Avenue provides, for her, affordable living in the countryside. She checked before purchasing her property that there were no plans to build on the countryside surrounding Welland Avenue and was therefore dismayed to hear of the plans for the new prison which would be located to the rear of her property. The countryside surrounding Welland Avenue is appreciated by local residents and outweighs the presence of the existing prison. She also raised concern in respect of noise during building works.
151. *Sandy Bratu* appeared as a representative of Foxton Primary School and spoke about the health and wellbeing of staff and pupils in respect of traffic along Gallow Field Road.
152. *Katherine Winterson*, a local resident, spoke about design stating that the size, scale, and design would be inappropriate adjoining Gartree. Light pollution was also raised as a concern in this respect. The sustainability and suitability of the site was also a concern. Everyone would have to travel by private vehicle to get there and there are no shops or cafes nearby. She reiterated the point that there is no information on the other sites considered by MoJ. She also made the point that she understood the Council had offered an alternative site at Magna Park. Furthermore, unused, brownfield, Ministry of Defence sites could be simply transferred to the MoJ rather than spending money defending appeals. Finally, she questioned the need for extra prison space and highlighted staffing issues at the existing HMP Gartree and explained that siting numerous new prisons in the Midlands would compound existing prison staffing issues in the area. Points were also raised about prisoners being unnecessarily detained. She made various requests for additional evidence to be presented to the Inquiry as set out in her statement.
153. *William R Winterson*, a local resident, also raised the scale of the prison. He compared the rural location of Gartree to the urban location of HMP Five Wells, which he stated was better suited to its environment visually, and better

- connected in transport terms. He reiterated the protection to the environment that should be afforded by Policy GD3 of the LP.
154. *Peter Vale*, a local resident and retired prison officer who farms the land, spoke about flooding issues in the area and the effects on animals from drinking contaminated water.
 155. *D Burden*, a local resident, spoke movingly about the mental stress of the application on local residents.
 156. *Julia King*, a local resident, spoke about highway safety at the T-Junction of Gallow Field Road with Foxtton Road, providing details of road traffic incidents. She also raised various concerns over the path improvements proposed for parents to access Foxtton Primary School from Swingbridge Street.
 157. *John March*, a local resident of Gumley, queried the traffic data and pointed out that unemployment in Market Harborough was low.
 158. *Ian Barker*, a local resident, raised concerns over the behaviour of the MoJ. He also queried the location of the prison, staffing levels, traffic, air and noise pollution, and money spent on the appeal.
 159. *Richard Billington*, a local resident, raised flooding and also noted matters of historic interest in relation to the appeal site.
 160. *Francesca Broadfoot*, a local resident, spoke about the danger to horse riders, cyclists, dog walkers and children on roads from an increase in traffic.
 161. *Phil Knowls*, a local resident, submitted a petition and questioned how 'local' the economic benefits would be.
 162. *Maurice Thompson*, a local resident, spoke about flooding, water discharge, water contamination and light pollution.
 163. *Cllr Peter James* explained that there would be no economies of scale as the two prisons would work under different management schemes. He said brownfield land in cities should be used and reiterated concerns over increased traffic in Foxtton.
 164. *Des Smith*, a local resident, spoke about the appellant's Transport Assessment, highway safety, employment, local services and wildlife and asked a number of questions of MoJ as set out in his submission.
 165. *Andrew Bishop*, a local resident, emphasised the size of the prison and said that the process was undemocratic and there was no Community Infrastructure Levy. He also raised concerns over using Swingbridge Street to access Foxtton Primary School, inadequate sewerage systems, water quality, ecology, living conditions, crime, traffic effects on nearby conservation areas, air quality, noise pollution, and the effect on the Green Belt.

Written Representations

166. A significant number of representations were made on the original planning application consultation and in response to the appeal notification. The latter are included under Core Documents D1-D378.

167. In addition to matters covered elsewhere in this report these written comments included: increased traffic on local, rural roads resulting in negative impacts on highway safety (particularly for vulnerable road users), living conditions, local businesses, air quality, and the condition of the highway; effects on local tourism; increased pressure on local services and amenities including NHS and sewage disposal; loss of agricultural land; money better spent preventing crime; noise impacts; impacts on wildlife; disturbance during construction; concern more houses would be built to house new prison workers or that people would be forced out of their homes in Welland Avenue; concerns over traffic surveys being conducted during Covid; drop in house prices; threat of housing on the site instead; pollution of rivers; local opinions should be taken into account; not enough homes/affordable homes in Market Harborough for new prison staff; concern that HMP Gartree was not a 'good neighbour' currently in terms of communicating with local residents; various alternative suggestions to incarceration; harm to Green Belt/inappropriate development; impacts on heritage assets; high house prices; concern of prejudgement as MoJ own the land; questioning the validity and reliability of BNG calculations; no or limited socio-economic benefits to area; fear over local crime such as smuggling into existing prison; concerns over widening of path between Foxton and the Primary School; limited local spending benefits; loss of light to local residents; increased rubbish; homelessness on leaving prison; effects considered in conjunction with other development in area; Environmental Impact Assessment; and proximity to a high pressure gas main.
168. Electronic and paper petitions were also submitted objecting to the development.
169. A small number of letters were received in support of the new prison for reasons of: It would be close to the existing prison therefore the visual impact would be similar; creation of jobs both directly and indirectly as well as links to local goods and services; criminals should be incarcerated where necessary; it would bring improved infrastructure around the prison, and; a prison would be preferable over housing.

The Obligation

170. A draft version of a Deed of Agreement under s.106 was provided for the Inquiry. This was not supplemented by an analysis of the various obligations contained therein, therefore, it was agreed that the Council provide this after the Inquiry had closed. The parties were also given time after the Inquiry closed to complete and sign the document and a final version, dated 24 October 2022, was duly received.
171. In line with Regulation 122(2) of the CIL Regulations 2010 (as amended) the Framework explains in paragraph 57 that planning obligations must only be sought where they are: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
172. The Agreement contains a number of obligations set out in Schedules 2, 3, 4, 5 and 6 of the Deed which I address in turn. The first is a Social Value obligation. This requires the submission and approval of a Social Value Plan which would secure a percentage of employees, both during the Construction Phase and the Operational Phase, from the Local Employment Market. It is to

be implemented for a period of 30 years from the date of its first approval. This accords with Policy IN1 of the Local Plan insofar as it would provide a social asset to the local area. This obligation therefore meets the tests set out in paragraph 57 of the Framework and Regulation 122(2).

173. The next obligation is a 'Footpath Contribution' of £102,898.00 plus Monitoring Contribution to make improvements to an existing PRow on Swingbridge Street, Foxton which connects Foxton village with Foxton Primary School. It is proposed that the PRow be improved to encourage people to not park on Gallow Field Road which raises highway safety concerns, but to park in Swingbridge Steet and use the PRow to access the school instead.
174. The improvements would include re-laying 300m of the pathway to a 2m width in tarmac along with associated works such as timber edgings. However, no specific breakdown of the cost of works to justify the contribution amount has been provided. Furthermore, it is not clear to me how making the proposed improvements to this PRow would significantly alter the behaviour of people accessing the school. The path currently exists, is accessible for most able-bodied persons, and is already promoted by the school. I am also concerned that, even if it was successful, there is not a great deal of parking space along Swingbridge Street, which is very narrow, and this could, of itself, cause problems. With these points in mind, I find that this obligation does not meet the relevant tests.
175. Also included is an obligation for the development and monitoring of a Travel Plan to support and encourage sustainable transport options in line with Policy IN2 of the LP. This obligation clearly meets the relevant tests.
176. There is also an obligation for a Community Engagement Scheme. This is to secure public benefits for the local community, but these benefits are not clear, it being suggested that these are likely to evolve over time. Suggestions include refurbishment of a building for community use, food waste being turned into fertilizer pellets, and improved Broadband provision. This is not sufficiently precise, however, to demonstrate that such an obligation meets the relevant tests.
177. The final obligation is for BNG Monitoring. This is necessary in order to secure a 26% BNG, as put forward by the appellant, which would ensure the protection and improvement of local biodiversity in line with Policy GI5 of the LP. As such, this obligation meets the relevant tests.
178. In summary, therefore, the obligations in Schedules 2, 4 and 6 of the Agreement under s.106 meet the test of the Framework and fully comply with the requirements of Regulation 122 of the CIL Regulations 2010. The obligations in Schedules 3 and 5, however, do not.
179. There was to be a contribution towards public transport. However, the County Council advised that such a contribution could not be justified. It is therefore not included as an obligation in the Agreement before me. Consequently, I cannot take it into account in my considerations.

Conditions

180. A discussion was held at the Inquiry between the appellant and the Council about what conditions should be recommended to be attached to the

permission in the event the Secretary of State allows the appeal and grants planning permission. The conditions set out in Annex C are taken from the list of conditions agreed between the parties. I have undertaken some minor editing follow discussions with the same to ensure they meet the advice contained at paragraph 56 of the Framework i.e. that they are kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

181. I have recommended conditions (1-3) in respect of the submission of reserved matters, when these must be submitted by, and when the development must be commenced by. I have also included a plans condition as this provides certainty (4). Conditions (5 & 6) specify the maximum building heights and GEA of built development to inform the scope of this permission in respect of scale.
182. Further details are required in respect of landscaping (7 & 8) to protect visual amenity. These include hedgerow protection. I also include a condition (9) in respect of the proposed means of access to ensure suitable visibility splays are provided for highway safety reasons. This is necessary regardless of who owns the land.
183. To ensure the development incorporates sustainable design and construction methods I have included condition 10. Condition 11 is included to secure details of cycle parking facilities. Condition 12 ensures suitable refuse and recycling storage provision. To protect local views condition 13 requires approval of finished floor levels of the proposed buildings.
184. To clarify what should be included at reserved matters stage in respect of appearance I have included a condition (14) which requires the submission of details of ventilation and extraction equipment, and external lighting details.
185. In line with paragraph 100 of the Framework, to protect and enhance PRoW A22 which passes through the appeal site, I have included condition 15. However, any grant of planning permission does not authorise any obstruction to, or interference with, a PRoW and, therefore, a condition seeking arrangements for temporary diversion would fail the test of relevance and be unnecessary.
186. In the interests of highway safety I have included a condition (16) requiring a pre-development condition survey of Foxton Road as the majority of construction traffic will be directed along this route.
187. In the interest of protected species, a condition (17) requiring development to be carried out in accordance with the various submitted ecology reports and mitigations included therein is necessary. Given the presence of these reports it is not necessary to condition the resubmission of these details by way of a Wildlife Management Plan. A condition precluding work during nesting season (18) is also necessary to protect wildlife.
188. To ensure adequate foul and surface water drainage I have included conditions 19, 20 & 21. Condition 22 relates to existing watercourses. Conditions 23 & 24 deal with any archaeology which may be present at the site and are necessary

to protect any buried heritage. Conditions 25, 26 & 27 are necessary to deal with any contamination which may be present at the appeal site.

189. For reasons of public amenity, condition 28 mitigates noise from fixed plant. Again, for public amenity reasons, condition 29 requires the submission of a Construction (Traffic) Environmental Management Plan (CEMP) to secure details of traffic management. I have specifically included the submission of details of the routing of construction traffic in the interest of the living conditions of local residents.
190. Finally, I have included a condition restricting the hours of construction to protect the living conditions of local residents (30). Although not previously raised, the main parties were consulted and no objection was raised in principle. I have specified no work on weekends as this is conducive with the purpose of the condition. However, it is reasonable for working hours to extend to 1800 on weekdays without resulting in harmful disturbance to local residents.
191. The Council suggested conditions to secure the delivery of the play area on Welland Avenue on Parcel 3 of the appeal site and the submission of details of play equipment. However, there is no planning justification before me for this play area. It is simply something offered by the appellant. Consequently, such conditions do not meet the test of necessity.
192. It is not necessary to condition materials at this outline stage given appearance is a matter reserved for later consideration.
193. A specific condition relating to renewable energy is not necessary as details of renewable and low carbon technologies would be included in the BREEAM assessment report which is conditioned separately (10).
194. The obligation submitted with the proposal secures the implementation of the submitted Travel Plan (which includes provision of EV charging points). Therefore, conditions securing either are not necessary. Similarly, there is no need for a condition dealing with BNG as this is covered by the submitted obligation.
195. Finally, it is not necessary to require the development to be carried out in general accordance with the Design and Access Statement as the most important parameters set out in the application have already been conditioned. Therefore, I have not included such a condition.

Inspector's Reasoning and Conclusions

[Numbers in square brackets denote source paragraphs]

Main considerations

196. In the light of all the evidence and submissions the main considerations to be considered in this appeal are as follows:
 - (i) The effect of the development on the character and appearance of the surrounding area including the Lubenham and Gartree AoS; and,
 - (ii) Whether the appeal site is a suitable location for the development having regard to accessibility and planning policy.

Reasons

Character and appearance

197. The appeal site is located to the south of Gartree which comprises the existing prison and its former associated housing which is now in private ownership. It is located off Welland Avenue [10]. The appeal site falls within an area of countryside as defined in the development plan [13].
198. The landscape surrounding the appeal site and Gartree is generally open, undeveloped, agricultural land comprising fields of varying sizes enclosed by hedgerows. The appeal site sits in a slight depression of land with higher points to the north-west and south as demonstrated on Figure 2 of the Council's landscape witness' evidence⁶⁰.
199. Welland Avenue can be described as having two distinct sections: the northern section where much of Gartree Estate is located, and a southern, more rural section. A kink in Welland Avenue at its mid-point provides a clear marker for where these two sections meet.
200. Parcel 1 of the appeal site is located on the southern, rural section of Welland Avenue. Currently, when travelling along here Parcel 1 is seen as forming part of a larger area of open, agricultural land which extends from the east of Welland Avenue. Parcel 1 is large and forms a significant part of this wide, open, rural setting experienced to the south of Gartree. Furthermore, much of Gartree cannot be readily discerned from here due in part to the kink in the road and intervening mature vegetation.
201. As set out previously, Parcel 1 is where the new Category B Training prison would be sited [16]. This would include: an Entrance Resource Hub (ERH); a support building; a central service hub; a kitchen block; 2x workshop buildings; a care and separation unit; and 7x houseblocks, each with a capacity of up to 245 prisoners. A car parking area providing 523 car parking spaces is also proposed to the front of the ERH.
202. Based on this submitted information, the open, rural setting to Gartree Estate, as currently experienced from the southern section of Welland Avenue, would be significantly changed. This can be seen in various indicative plans and visualisations provided by the appellant⁶¹. Based on the Landscape Masterplan⁶² there would be limited scope for planting across the frontage of the Welland Avenue access, which would, in any event, of itself, provide clear views of the prison.
203. PRoWs A22, A23 and A25 criss-cross the open land to the east of Welland Avenue described above. A22 links Gartree to Lubenham; A23, Lubenham to Market Harborough; and A25, Market Harborough to Gartree. These routes are shown in Figure 04a of the Council's landscape witness' evidence⁶³.

⁶⁰ CD F2 'Appendices Part 1 – 2022-09-06'

⁶¹ CDs A48, A54, A5, A56

⁶² CD A50

⁶³ CD F2 'Appendices Part 1 – 2022-09-06'

204. Currently views from these PRowWs are predominantly open, rural and agricultural in character, albeit influenced to varying degrees by the existing HMP Gartree which is a hard addition to the landscape. This can be seen in the appellant's verified views⁶⁴, specifically the Existing Baseline Views at viewpoints 1, 8 and 9 of this document, which show a single viewpoint on each of the above PRowWs.
205. These verified viewpoints also show Proposed Views at Year 1. The new prison would be significantly larger than the existing HMP Gartree and, as shown, the new prison would result in a significant increase in hard and obtrusive built forms in the landscape when viewed from these PRowWs. Viewpoint 8, in particular, from Mill Hill, Lubenham is a high point in the local landscape, located on the edge of Lubenham village and easily accessible from here. It is also a popular walking route from Lubenham over Mill Hill towards Gartree.
206. As shown at Viewpoint 8, the existing prison is currently clearly visible from Mill Hill. It is, however, very much the exception in an otherwise predominantly rural, and open landscape. The new prison, however, would largely obscure the existing prison, when viewed from here, bringing a larger expanse of utilitarian buildings into sharper relief against the otherwise predominantly rural landscape in which they would be set. I therefore consider the views from Mill Hill would be significantly worsened beyond the harm already caused by the existing prison.
207. Whilst the Landscape Masterplan before the appeal⁶⁵ would provide some screening by way of 'woodland' planting around the east and south perimeters of the site, this would be a relatively narrow strip of planting and it would only begin to soften, to a meaningful degree, the visual impact of the proposed prison by year 15. Even then, it would still be a very obvious, intrusive element in the landscape, particularly, from elevated views from Mill Hill, as shown in the verified views⁶⁶.
208. I turn now to the Lubenham and Gartree AoS. Parcel 1 of the appeal site falls into this area [13] which is designated by the NP and dealt with under Policy LNP01 of the same. The thrust of this policy is to maintain the open character of this area in order to preserve a visual separation from the settlement of Market Harborough and retain the distinctive character and separate identities of Lubenham and Gartree.
209. This policy clearly sets out that development within this area will only be permitted subject to two criteria being met: 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 AoS in protecting the identity and distinctiveness of these settlements. Both criteria must be met for development to be permitted.

⁶⁴ CD E3 'L&V POE' pg 51 onwards

⁶⁵ CD A50

⁶⁶ CD E3 'L&V POE' 6.4 Viewpoint 8 – Proposed View at Year 15

210. It is not in dispute that there would be prison buildings constructed within the Lubenham and Gartree AoS. As shown on the Site Block Plan⁶⁷ this could include four storey house blocks and large workshop buildings built on land which is currently predominantly open in character. Clearly, the physical separation between Gartree and Market Harborough would be diminished as a result. For this reason alone, the proposal would conflict with Policy LNP01 of the NP as it would not meet criterion a).
211. Notwithstanding this, from Gallow Field Road both Market Harborough (largely the new SDA) and the existing HMP Gartree can be seen with the AoS in-between them. The new prison would visually extend the extent of prison development towards Market Harborough, therefore undermining the effectiveness of the AoS. Whilst the two settlements would not visually coalesce from here or anywhere else, the proposal would constitute a visual erosion of this open area. I therefore find conflict with criterion a) in this respect also. Any landscape buffer around the SDA would take time to mature and would likely be native, deciduous planting, but, in any event, would not significantly diminish my concerns set out above.
212. Finally, on the topic of character and appearance, I turn to lighting. The appellant's verified views also show viewpoints 1, 8 and 9 at night, existing and proposed⁶⁸. The effects in terms of additional lighting in the landscape would be pronounced even at year 7. Some mitigation would occur at Year 15 due to landscaping. These views do not, however, take into account light from windows, for example, in the four storey high house blocks. When I visited the existing HMP Gartree at night, the houseblocks windows were illuminated and visible from the surrounding area.
213. Furthermore, the more rural section of Welland Avenue on which the new prison would be located is, from what I saw on my site visit, darker than the northern section. There are no streetlights on the southern section, for example, or houses. The proposed prison would dramatically change this with the carpark and entrance to the prison located here along with all of the associated lighting that would come with this. Overall, therefore, I find additional harm in terms of impact on the character and appearance of the surrounding area at night from lighting.
214. With these points in mind, the new prison would cause harm to the character and appearance of the surrounding area, notably harm to the rural setting of Gartree Estate when viewed from the southern section of Welland Avenue, harm to open and rural views that currently exist from PRoWs A22, A23 and A25, and harm to the Lubenham and Gartree AoS.
215. Consequently, I find conflict with Policy GD5 of the LP which requires new development to respect and, where possible, enhance local landscape, the landscape setting of settlements, and settlement distinctiveness. For the same reasons I also find conflict with Policy LNP16 of the NP which requires development to not cause damage to the qualities, character and amenity of the area. Furthermore, for the reasons already stated, I also find conflict with Policy LNP01 of the NP.

⁶⁷ CD A48

⁶⁸ CD E3 L&V POE

Suitable Location - Accessibility

216. There are no local shops or services at Gartree. It is located between the villages of Lubenham and Foxton which are accessible on foot. Foxton is the closest and the nearest school and pub can be found here.
217. Gartree is served by a bus which links it to the town of Market Harborough. This service runs Monday-Saturday on slightly less than an hourly service between approximately 7am to 6pm. The journey times are about 16 minutes to Market Harborough and 35 minutes on the return route [91 third bullet point].
218. The proposed prison would need to be accessed by future employees 24 hours a day, seven days a week. According to the appellant some 750 direct jobs would be created by the prison [69] as well as further jobs created through the provision of other services such as health and education. There would also likely be visits to prisoners from family and friends.
219. As set out in the Outline Travel Plan⁶⁹ 53 charging points for electric vehicles are proposed [57 first bullet point]. That is c. 10% of the 523 [17] on-site parking spaces to be provided. This is broadly compliant with the relevant provisions of policies IN2 of the LP and LNP16 of the NP which encourage inclusion of electric vehicle charging points on larger developments. Nevertheless, it represents a relatively small percentage of total persons accessing the prison who would be encouraged to travel there via the sustainable transport mode of ultra-low and zero emission vehicles. Furthermore, it would not necessarily encourage people to travel by sustainable modes as they would also need to own an equivalent car.
220. Twenty-seven parking spaces would also be provided for car sharers which amounts to c. 5% [57 second bullet point] of the total parking spaces proposed. This similarly represents a small percentage of total persons visiting the prison who could utilise car sharing, another recognised sustainable transport mode. Notwithstanding this the level of car sharing is likely to be limited to staff who live close to each other, or along the same route, and work the same shift pattern at the prison.
221. Walking would only be a choice for people living very close to the prison which would reasonably be limited to Gartree Estate and possibly Foxton village. Therefore, this would likely attract very limited numbers.
222. Cycling would be an option for people living locally including the town of Market Harborough, and also anyone arriving by train into Market Harborough; approximately a 20 minute cycle ride [91 second bullet point]. However, there are sections of the route where there are no designated cycle lanes, and the roads are unlit and subject to national speed restrictions. This would undoubtedly make cycling, particularly in the dark or in inclement weather, less attractive as a regular sustainable transport mode option, whether by e-bike or a standard bike, in spite of the provision of cycle parking at the new prison.

⁶⁹ CD A11

223. As previously noted, the site is served by a single bus service. It is, however, a matter of agreement between the main parties that not all staff would be able to use the bus; notably uniformed staff on shift patterns who represent some 60% of total staff directly employed by the prison. Furthermore, this bus does not run on Sundays or Bank Holidays so on these days all staff and visitors would not be able to use this sustainable mode of transport [91, third bullet point].
224. The bus might be used in conjunction with anyone using the train. However, this adds a further layer of complexity, in addition to the issues outlined above, in terms of travel planning, which could ultimately discourage this as an option.
225. Paragraph 105 of the Framework sets out that *"significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes."*
226. The prison is a significant development. It would not be located in what could reasonably be called a sustainable location given the appeal site's predominantly rural environs and the limited bus, cycle, and walking opportunities currently available to access it.
227. As set out in paragraph 105 of the Framework the question therefore is: *Can the appeal site be made sustainable through limiting the need to travel and offering a genuine choice of transport modes?* In terms of the first strand of this there is very little before the Inquiry in terms of limiting the need to travel to the prison, particularly in terms of staff travel, and that sensibly must be so given the nature of prisons.
228. In terms of the second strand of this paragraph, in order to make the site sustainable through offering a genuine choice of transport modes, the appellant relies largely on the existing transport networks serving the site, all of which raise various serious concerns as set out above. The main enhancements to existing transport modes would be 53 charging points for EVs and 27 car parking spaces for car sharers. Given the small proportion of staff/visitors who would be able to take advantage of these options (15%) and my concerns over car sharing, this would not, in my view, be sufficient to make this location sustainable in line with the requirements of paragraph 105 of the Framework.
229. I have taken into account the fact that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, as set out latterly in paragraph 105 of the Framework. Nevertheless, on the evidence before me, it is my finding that opportunities to maximise sustainable transport modes at the appeal site have not been taken in this case. For example, and as set out in Policy IN2 of the LP, extension of existing cycle routes to the prison or any public transport enhancements, both of which are lacking at the appeal site despite being relied upon as genuine choices of transport modes. I therefore find conflict with the LP in this regard.
230. In a similar vein, I am not satisfied that, as set out at paragraph 110 a) of the Framework, appropriate opportunities to promote sustainable transport modes

can be - or have been - taken up. The appellant states that no further realistic opportunity to promote sustainable transport modes can be taken up⁷⁰ but I do not consider this to be the case. As noted under the obligation section there was a proposal to fund an additional bus service to Gartree [179]. However, the County Council advised that such a contribution could not be justified. It is therefore not included as an obligation in the Agreement before me. Consequently, I cannot take this matter forward in my considerations.

231. I therefore find that the site is not a suitable location for the proposed development in terms of accessibility and as such conflicts with policy IN2 of the LP and the Framework.

Suitable Location - Policy

232. It is agreed between the main parties that the prison would conflict with Policies GD3 of the LP as it does not fall within any of the exceptions for development in the countryside contained therein, and LNP19 of the NP which supports only limited and small-scale employment/business development in Gartree. On this basis I must find that the site is not a suitable location for the proposed development in terms of local planning policy.

Other matters -

Alternative sites

233. Whether the presence of alternative sites is material is a matter of law given the submissions. Notwithstanding this, the evidence before the Inquiry does not robustly support the appellant's case that there are no other suitable sites for a Category B Training Prison other than at Gartree. The site search process set out by the appellant⁷¹ originally focusses on Category C Prisons and locations in the north-west and south-east (2019). Furthermore, a site search in the Midlands for a Category B prison was only undertaken much later in the process in June 2022 [100]. In my view, therefore, the evidence in respect of a search for alternative sites offers only very limited support for the appellant's case that there are no other suitable sites for a Category B Training prison.

Need

234. There were discrepancies in the figures before the Inquiry in respect of 'need'. Furthermore, projections can clearly be over or under-estimated. Nevertheless, the projections before the Inquiry have been carefully modelled and published to National Statistics standards and are updated annually. For these reasons I consider them to be the most reliable evidence before the Inquiry. This evidence shows a projected shortfall of Category B Training places by July 2026 identified by the appellant. I therefore consider there is a national need for Category B Training places and I afford this significant weight.
235. It has been put to the Inquiry that Training Prisons are a national resource, therefore it makes sense to locate them in the Midlands. On the face of it this might support a need for a Category B Training prison at the appeal site. However, there is potentially a cluster of such prisons forming in the Midlands,

⁷⁰ CD K23 para 43 page 14

⁷¹ CD E2 Needs Case Annex A

in which case there may be an argument for them to be more spread out nationally. The need for a prison in the Midlands is therefore reduced in my view. Nevertheless, this does not affect my finding of need generally for this type of prison which, as previously stated, carries significant weight.

236. An extension to the existing HMP Gartree would not meet the projected shortfall for Category B Training places by July 2026 of itself [35] and the fact that this project has been shelved for now provides no clear indication either way of need for the type of prison proposed.
237. Whilst there is limited evidence to justify the size of site [97] conversely there is no substantive evidence before the Inquiry to dispute this. In any event, the size proposed would significantly contribute to the need for prison places moving forward.

Benefits

238. There are clear economic benefits from the construction and operational phases of a development of this size. There are also a large number of jobs to be created, both directly and indirectly, and secured for local people. The weight to be afforded to these, however, is tempered slightly by the fact that unemployment is very low in the district albeit people might relocate for employment. However, more importantly, rural prisons do not perform as well in terms of economic impacts than more urban equivalents in terms of local spending [114 & 142].
239. Aside from the benefit of meeting an identified need, which has been covered above, there are broader benefits from providing a new prison such as an improved environment for prisoners and workers, and its construction quality, but that would apply to any new prison. However, I am also conscious that siting a prison serving a national need here, given the issues the appeal site has in terms of access, may mean in-person visits from family and friends were curtailed. Such visits are important in ensuring positive outcomes in the criminal justice system, albeit virtual meetings are now facilitated in prisons.
240. There is also a c. 26% BNG secured, as endorsed by Natural England, and the dual use of this land as upgraded and improved open space for local residents. The benefit of charging points for cars I give limited weight given the proportionality of this provision to workers and visitors. Furthermore, the benefits in terms of the provision of a play area and upgrading PRow A21 to aid access to Foxton School do not weigh in favour of the development given my findings under the obligation [173-174] and condition [191] sections of this report.
241. Taking the above points together I consider these benefits should be afforded moderate weight.

Heritage

242. I find any impacts in heritage terms to be neutral given any buried remains at the former airfield (a non-designated heritage asset) could be dealt with appropriately by condition.
243. I have also had regard to my statutory duties in relation to designated heritage assets. In this case, whilst there are designated heritage assets in the wider

surrounding area to the appeal site, I am satisfied that any features of special architectural or historic interest that any listed building or its setting in the vicinity of the appeal site possesses would be preserved. Furthermore, the character or appearance of nearby local conservation areas would be preserved.

Highways

244. There would be impacts on the local road network as a result of the proposal, not least, increased traffic. I am also aware of the specific issues Foxton Primary School faces in terms of children being picked up and dropped off on Gallow Field Road. Various other highway safety concerns have also been raised. Nevertheless, the Local Highway Authority have scrutinised the highway evidence and consider that the impacts of the development on highway safety would not be unacceptable, and when considered cumulatively with other developments, the impacts on the road network would not be severe⁷². The Council support this view having looked into the issues in detail and I find no reason to disagree [59].

General

245. I accept there is a legitimate fear of crime associated with the current prison which local residents have to live with. However, a new prison would provide a more secure environment which would help reduce criminality [68].

246. Natural England have not objected in respect of loss of agricultural land following submission of a classification survey. They also found no significant adverse impacts on designated sites⁷³. The Environment Agency also raised no objection in respect of fluvial flood risk and the Local Flood Authority similarly found the proposals acceptable subject to conditions. I find no substantive reasons to dispute these findings.

247. The Health and Safety Executive was consulted on this application as the development would be within the consultation distance of major hazard sites/pipelines and they did not advise on safety grounds against the granting of planning permission in this case⁷⁴.

248. Whilst I recognise the concerns and anxieties of local residents along Welland Avenue who did not anticipate a development of the type proposed here, and the stress and upset this may cause, it is common law that land may be developed in any way which is acceptable for planning purposes by way of the planning system. Were an application made for housing on the appeal site it would be determined accordingly and is not a consideration in this appeal.

249. On the evidence before me any air quality impacts would be negligible therefore this affords minimal weight against the proposal. I am also satisfied sufficient parking can be provided on-site given its size and constraints.

250. There is no firm evidence before me that it would not be feasible to adequately deal with foul waste from the development, nor that problems with local

⁷² CD B32

⁷³ CD B28

⁷⁴ CD B15

services would be materially exacerbated by the proposal. Similarly, there is no detailed evidence of harmful impacts on local tourism or businesses before me.

251. I am satisfied that the site could be developed in such a way so as to ensure no harm occurred to the living conditions of occupiers of neighbouring properties.
252. In respect of property values, the courts have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interest such as the impact of a development on the value of a neighbouring property could not be a material consideration.
253. Any staffing issues which may or may not occur in the future were the prison to be allowed would not be a reason to withhold planning permission.
254. Various requests for evidence to be submitted were made during the course of the Inquiry and much has been made of the absence of this. Nevertheless, my recommendation must be made on the evidence which is before the Inquiry.
255. The various views on incarceration are noted but these are not a matter for consideration under a S78 appeal which is focussed on planning matters.

The planning balance

256. Whilst I have found notable aspects of harm in terms of the character and appearance of the surrounding area this is tempered by the fact that the appeal site is not subject to any national landscape designations and does not comprise a valued landscape for the purposes of paragraph 174 (a) of the Framework. I am also conscious of the visual effects of the existing prison on this landscape. Nevertheless, I consider that the harm to the character and appearance of the surrounding area, given the scale of development, the predominantly rural landscape in which it is located, and the extent of impacts on local views should be attributed significant weight.
257. Given the very clear national and local planning policy support for promoting sustainable transport modes and siting significant development in locations which are or can be made sustainable, I find that, on the evidence before me, it has not demonstrated that the appeal site is a suitable location for the prison having regard to accessibility. I therefore attribute significant weight to this harm.
258. Furthermore, there is conflict with the spatial strategy for the district in terms of siting a development of this nature and size in the countryside. I give this harm significant weight.
259. I have had regard to the development plan as a whole. There is no specific development plan support for the type of development proposed. Conversely, I have found conflict with the development plan's strategic policies relating to the location of new development, and policies relating to the accessibility of the site in terms sustainable transport, and harm to the character and appearance of the area. I therefore find conflict with the development plan as a whole.

260. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. I have had regard to all material considerations raised but I find that the planning harms are not outweighed by these. Consequently, they do not justify granting permission.

Recommendation

261. I recommend that the appeal be dismissed.

Hayley Butcher

INSPECTOR

Annex A - APPEARANCES

FOR THE APPELLANT:

Robert Walton KC assisted by Richard Turney

He called

Katie Machin BSc PGDip CMLI
of Pegasus Group

James Smith BA, PLP
of HM Prison and probation Service

Richard Cook BA (Hons) MA
of Pegasus Group

Duncan Cartwright MENG (Hons) MCIHT
of Atkins

Katrina Hulse MA Dip MRTPI
of Cushman & Wakefield

FOR THE LOCAL PLANNING AUTHORITY:

Howard Leithead

He called

Simon Neesam CMLI of The Landscape
Partnership

Jonathan Weekes BSC(hons) MA TP MRTPI of
Aitchison Rafferty

FOR THE R6(6) PARTY:

Jack Barber

He called

Adele Rogers of Gartree Action

Diana Cook of Gartree Action

David Hickie of Gartree Action

Geoff Armstrong MRTPI of Armstrong Rigg
Planning for Gartree Action

INTERSTED PERSONS:

Neil O'Brien	MP
Maurice Thompson	Local Resident
Hugh Lovesy	Local Resident
Katherine Winterson	Local Resident
William Winterson	Local Resident
Jo Asher	Local Resident
Sandy Bratu	Local Resident
David Burden	Local Resident
Julia King	Local Resident
John March	Local Resident
Ian Barker	Local Resident
Richard Billington	Local Resident
Francesca Broadfoot	Local Resident
Peter Vale	Local Resident
Cllr Phil Knowles	Local Resident
Cllr Peter James	Local Resident
Des Smith	Local Resident
Andrew Bishop	Local Resident

Annex B CORE DOCUMENTS

CD A Application Documents

- A1 Planning Application form
- A2 Planning Statement (Cushman & Wakefield)
- A3 Air Quality Assessment (Ramboll)
- A4 Arboricultural Impact Assessment and Method Statement (Tyler Grange)
- A5 Archaeological Desk-Based Assessment (Orion)
- A6 Archaeological Watching Brief (CFA Archaeology Ltd)
- A7 Design and Access Statement (Pick Everard)
- A8 Geo-Environmental Appraisal (Dunelm)
- A9 Landscape and Visual Impact Assessment (Pegasus)
- A10 Transport Assessment (Atkins)
- A11 Travel Plan (Atkins)
- A12 Socio - Economic Statement (Mace)
- A13 BREEAM Pre-Assessment (Mace)
- A14 Energy and Sustainability Statement (Mace)
- A15 Ecological Impact Assessment (CGO Ecology Ltd)
- A16 Phase 1 Habitat Survey (CGO Ecology Ltd)
- A17 Badger Survey (Ramboll)
- A18 Non Invasive Species Survey (CGO Ecology Ltd)
- A19 Reptile Survey (CGO Ecology Ltd)
- A20 Badger Bait Marking Survey (CGO Ecology Ltd)
- A21 Bat Roost Survey (CGO Ecology Ltd)
- A22 Barn Owl Survey (CGO Ecology Ltd)
- A23 Biodiversity Net Gain calculation (CGO Ecology Ltd)
- A24 Habitat Classification Planting Palette (Pick Everard)
- A25 Flood Risk Assessment (Hydrock)
- A26 Foul Water Drainage Strategy (Pick Everard)
- A27 Proposed SUDs Strategy Report (Pick Everard)
- A28 Surface Water Drainage Strategy (Pick Everard)
- A29 Heritage Statement (The Heritage Advisory)
- A30 Geophysical Survey (Orion)
- A31 Noise Impact Assessment (Hydrock)
- A32 Statement of Community Involvement (Cushman & Wakefield)
- A33 Draft Construction Traffic Management Plan (Atkins)
- A34 Waste Management Strategy (Mace)
- A35 Utility Report (Pick Everard)
- A36 Lighting Report (Pick Everard).
- A37 Detailed Unexploded Ordinance (UXO) Risk Assessment (Bombs Away Ltd).
- A38 Bat Activity Survey (CGO Ecology Ltd)
- A39 Biodiversity Net Gain Report (CGO Ecology Ltd)
- A40 Great Crested Newts Report (CGO Ecology Ltd)
- A41 Agricultural Land Classification Report Final V2 (ADAS)
- A42 Gartree Summary Report on Results of the Archaeological Evaluation (Pre-Construct Archaeology Limited)
- A43 Archaeology Report (Pick Everard)
- A44 Atkins Response to Systra Report (Briefing Note) (Atkins)

A45	Draft GCN Licence
A46	Site Location Plan
A47	Existing Block Plan
A48	Proposed Block Plan
A49	Block Plan Demolition
A50	Landscape Masterplan
A51	Existing Section
A52	Proposed Section
A53	3D Image – Gartree Village Visual
A54	3D Image – Aerial View
A55	3D Image – Aerial View of Entrance
A56	3D Image -ERH Pedestrian Approach
A57	Surface Water Drainage Strategy Plan
A58	Proposed Foul Water Drainage Strategy Plan
A59	Swept Path Analysis Small Skip Lorry
A60	Swept Path Analysis Refuse Vehicle
A61	Swept Path Analysis Fire Tender
A62	Swept Path Analysis Bus
A63	Swept Path Analysis Light Goods Vehicle
A64	Swept Path Analysis Standard Vehicle
A65	Swept Path Analysis Heavy Goods Vehicle
A66	Swept Path Analysis Electric Tug
A67	Badger Relocation Strategy Plan
A68	External Lighting Plan Sheet 1
A69	External Lighting Plan Sheet 2
A70	External Lighting Plan Sheet 3
A71	BNG Area Calculation Plan
A72	Committee Report
A73	Addendum to Committee Report
A74	Printed Minutes
A75	Decision Notice
A76	Pre-Application Enquiry Response from Harborough District Council
A77	Proposed New Access Plan (also in Appendix D of Transport Statement)

CD B Consultation Responses

B1	HDC Strategic Housing And Enabling Officer
B2	Environment Agency
B3	Health and Safety Executive
B4	Anglian Water Sept 2021
B5	Contaminated Land and Air Quality Officer
B6	NATS Safeguarding
B7	LCC S106 Developer Contributions
B8	LCC Highways Response 1.11.21
B9	Historic England
B10	Highways England
B11	HDC Environment Coordinator
B12	LLFA First Response 12.10.21

- B13 Natural England First Response 12.10.21
- B14 Leicestershire Police
- B15 HSE Response 2 dated 14.10.21
- B16 Foxton Parish Council
- B17 Lubenham Parish Council
- B18 Neighbourhood and Green Spaces Officer First Response.
- B19 County Archaeologist First Response
- B20 Market Harborough Civic Society
- B21 Cllr Bremner 20.10.21
- B22 Lubenham Parish Council 2
- B23 HDC Environment Coordinator 2
- B24 LCC Ecology Response
- B25 East Farndon Parish Council
- B26 LCC Ecology Response 2
- B27 HDC Environment Team Leader
- B28 Natural England 2
- B29 Great Bowden Parish Council
- B30 Contaminated Land and Air Quality Officer 2
- B31 LLFA 2
- B32 LCC Highways 25.2.22
- B33 Joint Parish Councils Response 22.3.22
- B34 Response to Parish Councils letter 29.3.22
- B35 Atkins Response to Highways Report appended to Parish Council's letter 29.3.22
- B36 LCC Waste and Minerals
- B37 Systra Report Into LCC Highways Response 8.2.22
- B38 LCC Response to Systra and Atkins 11.3.22
- B39 Pick Everard Response to LLLFA 25.1.22
- B40 Response to Lubenham Parish Council 21.12.21
- B41 Response to Foxton Parish Council 21.12.21
- B42 Response to East Farndon Parish Council 7.3.22
- B43 Response to Market Harborough Civic Society
- B44 Response to Cllr Bremner 21.12.21
- B45 Response to Anglian Water 29.10.21
- B46 Response to Gumley Parish Council 21.12.21
- B47 Response to HDC Neighbourhood and Green Space Officer
- B48 LCC County Archaeologist Response 16.2.22

CD C Appeal Documents

- C1 Planning Appeal Form
- C2 Appellant's Statement of Case
- C3 Statement of Common Ground with HDC
- C4 LPA Statement of Case
- C5 GA Statement of Case
- C6 Draft Section 106 Legal Agreement
- C7 Statement of Common Ground with GA
- C8 Statement of Common Ground with HDC Addendum.
- C9 CMC Note

CD D Representations to the Appeal

- D1- Representations from interested parties
- D378
- D364 Petition

CD E Appellant Proofs of Evidence and Docs Submitted prior to the Inquiry

- E1 Planning Proof of Evidence (C&W)
- E2 Needs Case Proof of Evidence (MoJ) and Annex A (separate document)
- E3 Landscape Proof of Evidence (Pegasus) and Summary
- E4 Socio Economic Proof of Evidence (Pegasus)
- E5 Highways Proof of Evidence (Atkins)
- E6 Transport Rebuttal
- E7 Needs Case Rebuttal
- E8 Socio Economic Rebuttal
- E9 Landscape Rebuttal

CD F LPA Proofs of evidence and docs submitted prior to the Inquiry

- F1 Planning Proof of Evidence (C&W) and summary
- F2 Landscape Proof of Evidence and Appendices.

CD G R6 Proofs of evidence and docs submitted prior to the Inquiry

- G1 Proof of Evidence - Planning, G Armstrong
- G2 Proof of Evidence - Need and Site, A Rogers and Appendices
- G3 Proof of Evidence - Access and Sustainability, D Hickie and Appendices
- G4 Proof of Evidence - Socio-economic Benefits, D Cook

CD H National Planning Policy

- H1 NPPF July 2021
- H2 PPG (web link)
- H3 Noise Policy Statement for England
- H4 LA111 Noise and Vibration
- H5 WHO Guidelines for Community Noise
- H6 Guidelines for Landscape and Visual Impact Assessment
- H7 Economic Development Strategy
- H8 Department for Transport's Manual for Streets 1

CD I Local Planning Policy and Guidance

- I1 Harborough Local Plan 2011-2031
- I2 Lubenham Neighbourhood Plan
- I3 Development Management SPD
- I4 Harborough District Landscape Character Assessment
- I5 Market Harborough Landscape Character and Capacity Study
- I6 Market Harborough Strategic Development Area Landscape and Visual Assessment, Harborough District Council, 2012

CD J	Other
J1	Economic Impact of a New Prison
J2	Prison Strategy White Paper
J3	Conservative 2019 Manifesto
J4	HMPPS Framework
J5	HMPPS Annual Digest 2021/2
J6	Prison Population Projections 2021/6
J7	Prisons and their resettlement providers
J8	Prison Population July 2022
J9	Security Categorisation Policy Framework
J10	Population and Capacity Briefing for Friday 2 September 2022
J11	Population and Capacity Briefing for Friday 7 January 2022
J12	Government Press Release 11 August 2019
J13	Government Press Release 28 June 2020
J14	Government Press Release 12 October 2020
J15	Government Press Release 18 February 2022
J16	MoJ HMP Fosse Way Community Consultation August 2022
J17	MoJ HMP RAF Wethersfield Community Consultation September 2021
J18	Institution of Highways & Transportation Guidelines for Providing Journeys on Foot
J19	HM Chief Inspector of Prisons: Report on an Unannounced Inspection of HMP Gartree November 2017
J20	MoJ Lord Farmer Report: The Importance of Strengthening Prisoner Family Ties (2017)
J21	National Character Area profiles, Natural England, 2014, NCA 94: Leicestershire Vales
J22	Blank
J23	Blank
J24	Economic and Social costs of re-offending: Analytical Report (MoJ, 2019)

CD K	Documents submitted during the Inquiry
K1	Appellant opening
K2	GA opening
K3	Council opening
K4	Julia King Statement
K5	Petition Cllr Phil Knowles
K6	Photos Morris Thompson
K7	Des Smith Statement
K8	Ian Barker Statement
K9	Hugh Lovesy Statement
K10	Proof of Evidence and Summary Proof Erratum -Jonathan Weekes
K11	Hearing Speech Katherine Winterston
K12	Hearing Speech William Winterston
K13	Guidance Notes For The Reduction Of Obtrusive Light
K14	LCC Highways Email in respect of Public Transport Contribution 1.9.22
K15	Appendix A Gartree Appeal Draft Conditions rev A 10.10.22
K16	Gartree Appeal draft list of plans rev2 27.10.22

- K17 Photos from 76 Welland Avenue (sent by Jo Asher)
- K18 Information on Mill Mound from GA
- K19 Benefits and Harms Table (agreed by HDC/GA/Appellant)
- K20 Clarification Note to Inspector (Email dated 11.10.22)
- K21 Gartree Action - Closings
- K22 HDC Closing 17.10.22 FINAL
- K23 Gartree - Appellant Closing Submissions - Final
- K24 Appeal Site Visit route 11.10.22
- K25 Gartree - key legal authorities
- K26 Completed Section 106 Legal Agreement (signed by all parties)
- K27 CIL Compliance Statement

Annex C - SCHEDULE OF RECOMMENDED CONDITIONS

- 1) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 2 years from the date of this permission.
- 3) Details of the appearance and layout (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan 661277-00-PEV-GTX0011-ZZ-DR-A-9000 PO5, Existing Block Plan 661277-0000-PEV-GTX0011-ZZ-DR-A-9001 PO5, Block Plan Demolition 661277-0000-PEV-GTX0011-ZZ-DR-A-9101 PO4, Landscape Masterplan 661277-0000-PEV-GTX0011-XX-DR-L-0301 P05 (insofar as it relates to landscaping matters and not layout), Proposed New Access GART-ATK-HGN-WELL-DR-D-0001 Rev P1.
- 5) Building heights shall not exceed 17.5m (to ridge height).
- 6) The gross external area of the built development shall not exceed 82,555m².
- 7) Prior to the commencement of development a detailed Landscape Plan shall be submitted to and approved in writing by the Local Planning Authority. This shall include: Details of any trees/hedgerows to be retained; Detailed specification of all new planting within the development, including planting within the perimeter landscape belt; Details of the landscape proposal within the Biodiversity Net Gain area (Parcel 2) and; Enhanced boundary treatment between the proposed development and PRow A22.
- 8) Prior to the commencement of development a Landscape Management Plan setting out the timing of the completion, and the ongoing management and maintenance, of all landscaping within the development, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 9) The buildings shall not be occupied until the means of access for vehicles/pedestrians/cyclists including visibility splays has been constructed in accordance with the approved plans. The access and visibility splays shall be permanently retained thereafter.
- 10) Prior to the submission of reserved matters an updated BREEAM assessment report shall be submitted to and approved in writing by the Local Planning Authority. All buildings shall be constructed to meet a BREEAM score of Excellent. No later than 3 months after the occupation of any non-residential building a certificate following a post-construction review shall be issued by an approved BREEAM Assessor to the Local Planning Authority, indicating that the relevant BREEAM rating has been met. In the event that such a rating is replaced by a comparable national measure of sustainability for building design, the equivalent level of measure shall be applicable to the proposed development.

- 11) Prior to the first use of the development details of secure cycle parking facilities shall have been submitted to and approved in writing by the Local Planning Authority, and implemented on site. These facilities shall thereafter be permanently retained.
- 12) Prior to the first use of the development details of the storage of refuse and recycling materials shall have first been submitted to and approved in writing by the Local Planning Authority, and implemented on site. The refuse and recycling storage shall thereafter be permanently retained.
- 13) Prior to the commencement of development full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings in relation to existing ground levels, shall have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved levels.
- 14) The 'appearance' Reserved Matters required in condition 3 shall include details showing all ventilation and extraction equipment on the buildings, and a scheme for the external lighting of the development set out in general accordance with the submitted Pick Everard External Lighting Report (dated 27.8.21) and associated lighting drawings.
- 15) Prior to the commencement of development a scheme for the protection and enhancement of the relevant section of PRow A22 which passes through the appeal site shall be submitted to and approved in writing by the Local Planning Authority. The works shall be carried out as approved prior to first occupation of the prison.
- 16) The development hereby permitted shall not commence until a pre-development condition survey of Foxtan Road between A4304 Lubenham and the application site (the route for HGVs as set out in the Framework Construction Traffic Management Plan) has been carried out and submitted to and approved in writing by the Local Planning Authority.

Within three months of the completion of the development a post-development condition survey of Foxtan Road, between the A4304 Lubenham and the appeal site, shall be carried out, and submitted to and approved in writing by the Local Planning Authority, along with a method statement identifying how any damage to the highway or highway verge caused as a result of the development will be made safe and remediated in full by the developer. Any works required to the highway shall be completed within 6 months of the completion of the development.

- 17) The development shall be carried out in accordance with the submitted reports from CGO Ecology Limited as related to bats, birds, reptiles, and badgers, and the Badger Survey by Ramboll UK Limited, and the mitigation measures included therein.
- 18) Demolition of building/structures, felling of trees, and removal of shrub and scrub as part of the commencement of any enabling works for the development shall not be carried out during the nesting season unless confirmation that a nest check has been carried out by a suitably qualified ecologist and found to be clear has been submitted to and approved in writing by the Local Planning Authority.
- 19) Prior to the commencement of development, a surface water drainage scheme shall be submitted to and approved in writing by the Local Planning

- Authority to include the management of water during construction and post development. The scheme shall include infiltration testing to confirm or otherwise the suitability of the site for the use of infiltration as a drainage element. The scheme shall be implemented as approved upon first occupation of the development.
- 20) Prior to occupation of the development a long-term maintenance plan for the surface water drainage system approved under condition 19 shall have been submitted to and approved in writing by the Local Planning Authority. The maintenance plan shall be adhered to as approved.
 - 21) No development shall commence until a scheme for on-site foul water drainage works, including connection points and discharge rate, has been submitted to and approved in writing by the Local Planning Authority. Prior to occupation of the development the foul water drainage works must have been carried out in complete accordance with the approved scheme.
 - 22) Prior to the commencement of development full details of diverted and removed watercourses are to be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
 - 23) No development shall take place until a Written Scheme of Investigation has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:
 - i) A statement of significance and research objectives;
 - ii) the programme and methodology of site investigation and recording;
 - iii) the nomination of a competent person(s) or organisation to undertake the works;
 - iv) the programme for post investigation assessment and subsequent analysis, publication and dissemination of the analysis and records of the site investigation, and;
 - v) the provision to be made for archive deposition of the analysis and deposition of resulting material.
 - 24) No development shall take place other than in accordance with the Written Scheme of Investigation approved under condition 23.
 - 25) No development shall take place until a Remedial Scheme and a Verification Plan to deal with any land contamination has been submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved Remedial Scheme and Verification Plan.
 - 26) If during the course of the development previously unidentified contamination is discovered development must cease on that part of the site and it must be reported in writing to the Local Planning Authority within 10 working days. Prior to the recommencement of development on that part of the site, a Risk Based Land Contamination Assessment for the discovered contamination (to include any required amendments to the Remedial Scheme and Verification Plan) must be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be implemented in accordance with the approved details.

- 27) Prior to first occupation of the development a Verification Investigation shall be undertaken in line with the agreed Verification Plan for any works outlined in the Remedial Scheme and a report showing the findings of the Verification Investigation relevant to the whole development, or part thereof, shall be submitted to and approved in writing by the Local Planning Authority.
- 28) Before any fixed plant is used on the premises it shall be enclosed with sound-insulating material and mounted in a way which will minimise transmission of structure-borne sound in accordance with a scheme that shall first have been submitted to and approved in writing by the Local Planning Authority. The measures implemented as approved shall be permanently retained thereafter.
- 29) Prior to the commencement of development a Construction (Traffic) Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The CEMP shall include details of:
 - The means of access and routing for demolition and construction traffic and indication of signage locations to assist those delivering to the site, and;
 - Details of a Construction Communications Strategy which contains points of contact and details for residents to report HGVs utilising inappropriate routes.
- 30) Demolition, construction and/or remediation works shall take place only between 0800 to 1800 Monday to Friday and at no time on weekends or Bank Holidays.



Department for Levelling Up, Housing & Communities

www.gov.uk/dluhc

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.