



Ministry of Housing,
Communities &
Local Government

Sarah Fabes
Lichfields,
14 Regent's Wharf,
All Saints Street,
London, N1 9RL

Our ref: APP/D5120/W/17/3184205 &
APP/T2215/W/17/3184206.
Your ref: NLP-DMS.FID299507

7th May 2019

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEALS MADE BY ROXHILL DEVELOPMENTS LIMITED
LAND ADJACENT TO THE SOUTHEASTERN TRAIN DEPOT, MOAT LANE, SLADE
GREEN, ERITH
APPLICATION REF: 15/02673/OUTEA and DA/15/01743/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Mr I Jenkins BSc CEng MICE MCIWEM who held a public local inquiry between 19 June and 27 September 2018 into your client's appeals against the decisions of London Borough of Bexley, as directed by the Mayor of London, and Dartford Borough Council to refuse your client's application for planning permission for a cross-boundary outline application for the demolition of existing buildings and redevelopment to provide a strategic rail freight interchange comprising a rail freight intermodal facility, warehousing, new access arrangements from Moat Lane, associated HGV, car, cycle parking, landscaping, drainage, and associated works (within London Borough of Bexley). Creation of a new access road from the existing A206/A2026 roundabout, incorporating a bridge over the River Cray, landscaping and associated works (within Dartford Borough Council) in accordance with application ref: 15/02673/OUTEA and DA/15/01743/OUT dated 20 November 2015.
2. On 7 November 2017 these appeals were 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 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeals be dismissed, and planning permission be refused.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with his recommendation. He has decided to dismiss the appeals and refuse planning permission. A copy of the Inspector's report (IR) is

enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and the supplementary environmental information submitted before the inquiry opened. Having taken account of the Inspector's comments at IR1.2.2, the Secretary of State is satisfied that the Environmental Statement and other additional information provided complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Policy and statutory considerations

6. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
7. In this case the development plan consists of the adopted development plans for the area which comprises The London Plan, March 2016; the Bexley Core Strategy Development Plan Document, February 2012; and, saved policies of the Bexley Unitary Development Plan, 2004 for LBB. The Dartford Core Strategy, September 2011; and, the Dartford Development Policies Plan (DDPP), July 2017 for Dartford Borough Council. Other plans that affect the site are The Mayor's Transport Strategy 2018 and The Kent County Council Local Transport Plan 4: Delivering Growth without Gridlock 2016-2031. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR6.1.3 to 6.2.9. Other local planning guidance considered include the Mayor's Transport Strategy, 2018 and the Kent County Council Local Transport Plan 4: Delivering Growth without Gridlock 2016-2031 as set out at IR 6.5
8. Other material considerations which the Secretary of State has taken into account include the National Policy Statement for National Networks and the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'). The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the revised Framework.

Emerging plan

9. The emerging plan comprises the London Plan – The Spatial Development Strategy for Greater London outlined in the Inspectors Report at IR6.4. The Secretary of State considers that the emerging policies of most relevance to this case include LPe Policy G2, T7, and SD1.
10. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in

the Framework. While Examination in Public hearings have taken place since the inquiry closed, due to the early stage of the emerging plan only limited weight is attributed to the policies as outlined in the Inspectors Report at IR6.4.4.

Main issues

Location of site and Green Belt

11. The Secretary of State agrees with the Inspector for the reasons given in IR15.2.3 to 15.2.5 that the appeals proposal would cause substantial harm to the Green Belt (IR 15.2.6). He therefore considers that this carries substantial weight against the scheme. In accordance with paragraph 143 of the Framework, inappropriate development should not be approved except in very special circumstances.

Character and Appearance

12. For the reasons given at IR 15.3.1 to 15.3.6 the Secretary of State agrees with the Inspector that both the landscape impact and the visual impact of the appeals scheme would be substantial and adverse. Overall, he considers that it would cause significant harm to the character and appearance of the local area and he therefore attributes significant weight to this harm.

Rail issues

13. The Secretary of State acknowledges that given the locational need for effective connections for both rail and road, the number of locations suitable for Strategic Rail Freight Interchanges will be limited. He agrees with the Inspector at IR 15.4.3 that for the proposed rail link to be considered 'adequate', it would be necessary for it to be capable of accommodating 4 trains/day as a minimum. For the reasons given in IR 15.4.6 to 15.4.20, he agrees with the Inspector (15.4.20) that the likelihood of passenger service numbers having to be reduced in order to accommodate the appeals site freight traffic appears significant. The Secretary of State agrees with the Inspector's conclusion that there is significant uncertainty (15.4.21) as to whether the timetable could be flexed/amended to accommodate four trains per day to/from the appeals site either now or in the future. He agrees with the Inspector that overall this would conflict with the aims of a number of development plan policies that seek to minimize any adverse impact on the wider transport network and safeguard or improve public transport services, and that this should carry significant weight.

Highways Issues

14. For the reasons given in IR15.5.4 to 15.5.28, the Secretary of State agrees with the Inspectors findings (IR15.5.29) that, by 2031, the residual cumulative impact of the development during 'normal' (non-incident) highway conditions on the local highway network would be likely to be severe. He further agrees with the Inspector for the reasons given at IR 15.5.30 to 15.5.36 that, during incidents, the proposal would be likely to have a material, albeit limited, adverse impact, adding to severe conditions. He also agrees with the Inspector for the reasons given at IR 15.5.38 to 15.5.42 that the proposed mitigation measures do not alter this finding. The Secretary of State considers that the proposal would cause considerable harm to the convenience of highway users in Dartford. He notes that the proposal would be in conflict with the DDPP. The Secretary of State attributes significant weight to this matter.

Amenity and living conditions

15. For the reasons given in IR15.6.2 to 15.6.7, the Secretary of State agrees with the Inspector (IR15.6.8) that on balance, the appeals proposal would be unlikely to have an unacceptable material impact on living conditions in the local area, with particular reference to air quality. For the reasons given in IR15.6.9 to 15.6.11, the Secretary of State also agrees with the Inspector (IR15.6.12) that subject to mitigation secured the proposal is unlikely to cause noise and vibration that would have an unacceptable impact on living conditions. The Secretary of State therefore considers that these matters do not weigh against the scheme.

Other matters

16. For the reasons given at IR15.7.1 The Secretary of State agrees with the Inspector that the effect on Howbury Moat and a Grade II listed tithe barn would be negligible, and that their significance would not be materially harmed by the scheme, therefore the Secretary of State considers that there are no policy conflicts in this respect, or in respect of Howbury Grange. He further agrees with the Inspector for the reasons given in IR15.7.2 to 15.7.5 that there are no unacceptable impacts of the scheme in terms of the effect on living conditions of neighbouring residents, navigation and facilities along the River Cray, and flood risk.

Need for SRFIs in London and the South East

17. The Secretary of State agrees with Inspector that there is an identified need for a Strategic Rail Freight Interchange to serve London and the South East (IR15.8.7). However, given the uncertain findings in relation to both road and rail connectivity at IR15.8.10 to 15.8.15, he agrees with the Inspector's conclusion that the appeals scheme would not be well qualified to meet the identified need (IR15.8.16 and IR15.8.17).

Availability of alternative sites

18. The Secretary of State agrees with the Inspector that in the 2007 decision it was identified that there was no alternative development site, a finding which attracted considerable weight in favour of that scheme (IR4.2). However, since 2007 the London Gateway, a brownfield site not located in the Green Belt, has been developed. For the reasons given in IR15.8.18 to 15.8.24, the Secretary of State agrees with the Inspector's conclusions that the London Gateway site has the potential to provide an alternative development option for the provision of a SRFI to serve the same part of London and the South East as the appeals proposal (IR15.8.26).

Economic and Social impacts

19. The Secretary of State notes that the largest part of the appeal site lies within the Bexley Riverside Opportunity Area, and that the establishment of a SRFI at the appeals site would be consistent with that particular strategic policy direction. He agrees with the Inspector that it could provide significant benefits to the local economy creating a large amount of new employment (IR15.8.28). However, the Secretary of State notes that the Inspector found that the proposal would also be likely to have a material adverse effect on traffic congestion in the area which may have adverse impacts on the local economy (IR15.8.29). The Secretary of State also agrees with the Inspector that, given that broadly similar benefits could be obtained from the alternative, non-Green Belt site

(IR15.8.31), overall limited weight could be given to the socio-economic benefits of the scheme.

Effect on biodiversity

20. The Secretary of State notes that there are no statutory designated sites of nature conservation interest within or adjacent to the appeals site. Furthermore, he notes that the habitats that would be lost to development are of little ecological value, comprising improved and semi-improved grassland, and that an aim of the proposed landscaping along the eastern side of the site would be to enhance its ecology value, likely resulting in a net biodiversity gain overall (IR15.8.46). The Secretary of State agrees with the Inspector and attributes moderate weight to this gain.

Planning conditions

21. The Secretary of State has given consideration to the Inspector's analysis at IR15.8.47 to 15.8.62, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 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 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

Planning obligations

22. Having had regard to the Inspector's analysis at IR 15.8.63 to 15.8.66, the planning obligation dated September 2018, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR18.8.65 that the obligation complies with Regulation 122 and 123 of the CIL Regulations and the tests at paragraph 56 of the Framework. However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing this appeal and refusing planning permission.

23. The Secretary of State has considered whether it is necessary for him to refer back to parties in respect of regulation 123 prior to determining this appeal. However, the Secretary of State does not consider that the planning obligation overcomes his reasons for deciding that the appeal should be dismissed, as set out in this decision letter. Accordingly, he does not consider it necessary for him to do so.

Planning balance and overall conclusion

24. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with LP Policy 7.16, BCS Policies CS01 and CS17 as well as DCS Policies CS 1, CS 13 and DDPP Policy DP22 and LPe Policy G2 of the development plan and is not in accordance with the development plans overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

25. In this case the Secretary of State considers that the harm to the Green Belt from inappropriate development carries substantial weight against the scheme and the effect on the character and appearance of the local area carries significant weight along with

the adequacy of the proposed rail link and the effect on existing/future passenger rail services. Significant weight is also given to the effect on the convenience of highway users.

26. The Secretary of State considers that the provision of social economic benefits of the scheme has overall limited weight and the resulting net biodiversity gain has moderate weight.
27. The Secretary of State considers that the benefits of the scheme do not outweigh the harm to the Green Belt by reason of inappropriateness and any other harm, and so very special circumstances do not exist. He considers that the adverse impacts of the proposal significantly and demonstrably outweigh the benefits. Overall, he considers that there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
28. The Secretary of State therefore concludes that the appeal is dismissed, and planning permission is refused.

Formal decision

29. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeals and refuses planning permission for a cross-boundary outline application for the demolition of existing buildings and redevelopment to provide a strategic rail freight interchange comprising a rail freight intermodal facility, warehousing, new access arrangements from Moat Lane, associated HGV, car, cycle parking, landscaping, drainage, and associated works (within London Borough of Bexley), and for the creation of a new access road from the existing A206/A2026 roundabout, incorporating a bridge over the River Cray, landscaping and associated works (within Dartford Borough Council)

Right to challenge the decision

30. 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 Town and Country Planning Act 1990.
31. A copy of this letter has been sent to London Borough of Bexley, Dartford Borough Council and the Mayor of London, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Andrew Lynch

Andrew Lynch

Authorised by the Secretary of State to sign in that behalf



Report to the Secretary of State for Housing, Communities and Local Government

by I Jenkins BSc CEng MICE MCIWEM

an Inspector appointed by the Secretary of State

Date: 4 February 2019

**TOWN AND COUNTRY PLANNING ACT 1990
APPEALS BY ROXHILL DEVELOPMENTS LIMITED
AGAINST THE DECISIONS OF
THE LONDON BOROUGH OF BEXLEY, AS DIRECTED BY THE MAYOR OF
LONDON, AND DARTFORD BOROUGH COUNCIL**

Inquiry opened on 19 June 2018

Land adjacent to the Southeastern Train Depot, Moat Lane, Slade Green, Erith

File Ref(s): APP/D5120/W/17/3184205 APP/T2215/W/17/3184206

File Ref: APP/D5120/W/17/3184205

Land adjacent to the Southeastern Train Depot, Moat Lane, Slade Green, Erith, Kent, DA8 2NE

- 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 Roxhill Developments Limited against the decision of the London Borough of Bexley.
- The application Ref 15/02673/OUTEA, dated 20 November 2015, was refused by notice dated 20 July 2017.
- The development proposed is a cross-boundary outline application for the demolition of existing buildings and redevelopment to provide a strategic rail freight interchange comprising a rail freight intermodal facility, warehousing, new access arrangements from Moat Lane, associated HGV, car, cycle parking, landscaping, drainage, and associated works (within London Borough of Bexley). Creation of a new access road from the existing A206/A2026 roundabout, incorporating a bridge over the River Cray, landscaping and associated works (within Dartford Borough Council). All matters reserved except access.
- The appeal was recovered by the Secretary of State on 7 November 2017 for the reason that it related to proposals for significant development in the Green Belt.

Summary of Recommendation: I recommend that the appeal be dismissed.

File Ref: APP/T2215/W/17/3184206

Land adjacent to the Southeastern Train Depot, Moat Lane, Slade Green, Erith, Kent, DA8 2NE

- 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 Roxhill Developments Limited against the decision of Dartford Borough Council.
- The application Ref DA/15/01743/OUT, dated 20 November 2015, was refused by notice dated 21 April 2017.
- The development proposed is a cross-boundary outline application for the demolition of existing buildings and redevelopment to provide a strategic rail freight interchange comprising a rail freight intermodal facility, warehousing, new access arrangements from Moat Lane, associated HGV, car, cycle parking, landscaping, drainage, and associated works (within London Borough of Bexley). Creation of a new access road from the existing A206/A2026 roundabout, incorporating a bridge over the River Cray, landscaping and associated works (within Dartford Borough Council). All matters reserved except access.
- The appeal was recovered by the Secretary of State on 7 November 2017 for the reason that it related to proposals for significant development in the Green Belt.

Summary of Recommendation: I recommend that the appeal be dismissed.

CONTENTS	Page
1. Procedural matters	3
2. The site and surroundings	4
3. The appeals proposal	5
4. Planning history	8
5. Common ground	8
6. Planning policy	9
7. The case for the Mayor of London	16
8. The case for Dartford Borough Council	47
9. The cases for other objectors represented at the Inquiry	68
10. The cases for other objectors who made written representations	83
11. The case for the appellant	92
12. The cases for supporters represented at the Inquiry	130
13. The cases for supporters who made written representations	133
14. Other written representations	143
15. Inspector's conclusions	147
16. Inspector's recommendations	195
Appendix 1: Appearances	196
Appendix 2: Documents	198
Appendix 3: Abbreviations	208
Appendix 4: Schedule of Conditions	211

1. PROCEDURAL MATTERS

1.1. The Inquiry

1.1.1. I have been appointed by the Secretary of State to conduct an Inquiry into 2 linked appeals made by Roxhill Developments Limited, which are associated with a development proposal that would straddle the shared boundary between planning authorities: the London Borough of Bexley (LBB); and, Dartford Borough Council (DBC). The appeals are against the decisions of LBB, as directed by the Mayor of London (MOL), and DBC to refuse to grant outline planning permission.

1.1.2. I held a pre-Inquiry meeting at DBC's Civic Centre on 23 March 2018, after which I issued to interested parties *Notes Following the Pre-Inquiry Meeting*, dated 26 March 2018, providing guidance concerning preparation for the Inquiry and the conduct of the Inquiry. The Inquiry, at DBC's Civic Centre, sat on 18 days, comprising: 19-22 June; 26-28 June; 3-5 July; 17-21 September and 25-27 September 2018. In addition to a number of unaccompanied site visits, accompanied site visits were undertaken on: 29 June 2018 to the appeals site; 6 July 2018 around the highway network; 26 September 2018 to Slade Green Station and Rail Depot; and, 28 September 2018 to Barking Rail Freight Interchange.

1.1.3. Whilst representatives of the LBB attended the Inquiry throughout its duration, it confirmed at the start that although it did not intend to present evidence, it would participate in the planning conditions/obligations session.

The National Planning Policy Framework

1.1.4. During the course of the Inquiry the *National Planning Policy Framework, 2012* was replaced by the *revised National Planning Policy Framework, 2018* (the Framework). Those who wished to do so were afforded an opportunity to comment on any implications of the revised document for their case.

1.2. Environmental Impact Assessment

1.2.1. Regulation 76 of *The Town and Country Planning (Environmental Impact Assessment) Regulations 2017* (2017 EIA Regulations) sets out the circumstances under which *The Town and Country Planning (Environmental Impact Assessment) Regulations 2011* (2011 EIA Regulations) continue to apply. These include where '*an applicant, appellant or qualifying body, as the case may be, has submitted an Environmental Statement or requested a scoping opinion*' prior to the commencement of the 2017 EIA Regulations. In the case of the subject appeals, the 2011 EIA Regulations continue to apply.

1.2.2. An Environmental Statement (November 2015)¹ and a Supplementary Environmental Statement (April 2016)² were submitted in support of the applications. Further environmental information was supplied during the

¹ CD/1.27.

² CD/1.30.

appeal process, including within the proofs of evidence and during the course of the Inquiry. In reaching my conclusions and recommendations, I have taken account of this environmental information, which I consider to be sufficient to assess the likely environmental impact of the applications.

1.3. **Planning obligations**

1.3.1. In support of the appeals proposal the appellant relies on 2 agreements pursuant to section 106 of *The Town and Country Planning Act 1990*: the first, with the London Borough of Bexley (LBB s106)³; and, the second, with Dartford Borough Council and Kent County Council (DBC s106)⁴. The final drafts of the documents were submitted before the close of the Inquiry, with copies of the formally completed documents submitted shortly thereafter, as agreed at the Inquiry. I have considered these agreements in light of the tests set out in *The Community Infrastructure Levy Regulations 2010 (as amended)* (the CIL Regs) and reflected in the Framework.

1.4. **The Report**

1.4.1. In this report, I set out the main substance of the cases for the parties who appeared at the Inquiry, summarise the main points raised in written representations submitted as well as review suggested conditions and submitted planning obligations. I then set out my conclusions and my recommendations to the Secretary of State. Appended to the report are lists of :

1. Appearances at the Inquiry;
2. Core documents, planning application drawings, proofs of evidence and documents submitted during the Inquiry;
3. Abbreviations; and,
4. Recommended conditions.

2. **THE SITE AND SURROUNDINGS**

2.1. **The site and immediate surroundings**

2.1.1. The 57.4 hectare appeals site comprises, for the most part, relatively flat fields used for grazing animals. Howbury Grange, the only building on the site, is currently vacant. The site is bounded: to the north by Moat Lane, to the northwest of which is residential development forming part of Slade Green and to the northeast Crayford Marshes; and, to the east by a restored landfill site. The southwestern boundary of the site is separated from Southeastern Trains' Slade Green Depot by a strip of land reserved for Crossrail development. To the south, beyond the depot, is the Viridor waste recycling site, a small part of which would be required to accommodate the proposed railway connection to the North Kent Line. At its southern end, the appeals site extends across the River Cray, which marks the boundary between the LBB and DBC thereabouts, to the existing roundabout at the junction of the A206/A2026.⁵

³ INQ/115.

⁴ INQ/116.

⁵ CD/6.2 section 2.

2.2. **The highway network**

- 2.2.1. The proposed main access road to the site would link in to the existing roundabout at the junction of the A206 Bob Dunn Way, to the northeast, the A206 Thames Road, to the west and leading to Slade Green, and the A2026 Burnham Road, to the southeast leading to Dartford Town Centre. Bob Dunn Way provides access to junction 1A of the A282/M25 motorway, which is approximately 3 Km to the east of the site. Junction 1B of the A282/M25, which is located around 4 Km to the southeast of the site, can be accessed via roads within Dartford town centre.
- 2.2.2. Kent County Council (KCC) is the Highway Authority for the local road network in Dartford, including: a short section of Thames Road; Burnham Road; the A206/A2026 roundabout; Bob Dunn Way; the signals at the Littlebrook Interchange junctions with the A206 adjacent to junction 1A, and the A225 Princes Road Interchange adjacent to junction 1B. The LBB is the Highway Authority for the local road network to the west of the site, including the western section of Thames Road and the associated Craymill Rail Bridge, which crosses that highway. The A282 (Dartford Crossings⁶), the M25 mainline as well as junctions 1A and 1B form part of the Strategic Road Network (SRN), for which Highways England (HE) is the Highway Authority. Whilst HE is also the Highway Authority for a stub of the A2, which leads westward from junction 2 of the M25, Transport for London (TfL) is the Highway Authority for the section further to the west within the London Borough of Bexley.⁷

2.3. **The railway network**

- 2.3.1. Slade Green Train Depot is situated alongside the North Kent Line at Crayford Creek Junction (CCJ), where lines intersect from: Plumstead to the north; Barnehurst/Bexleyheath to the west; as well as, Hither Green and Dartford to the south⁸. Slade Green Station is located a short distance to the north of CCJ. Rail access to the appeals site would be obtained through Slade Green Train Depot, off a section of the North Kent Line to the south of CCJ.

3. **THE APPEALS PROPOSAL**

- 3.1. The planning applications subject of these appeals are identical cross-boundary outline applications for the demolition of existing buildings and redevelopment to provide a strategic rail freight interchange (SRFI) comprising:
- Within the LBB, a rail freight intermodal facility; warehousing; new access arrangements from Moat Lane; associated HGV, car, cycle parking; landscaping; drainage; and, associated works; and,

⁶ The Dartford Tunnel, northbound traffic and the Queen Elizabeth II Bridge, southbound traffic.

⁷ INQ/35 and DBC/W2/1 paras 4.4-4.11.

⁸ APP/RAIL/1 page 34 Figures 11 and 12.

- Within the Dartford Borough, the creation of a new access road from the existing A206/A2026 roundabout, incorporating a bridge over the River Cray, landscaping and associated works.

In the case of both outline planning applications, all detailed matters except access, are reserved for future consideration.

- 3.2. The scheme parameters, shown on Parameters Plan Ref. 30777-PL-101 Rev I⁹, for which approval is sought are summarised below together with the detailed site access proposals.
- 3.3. A total of 184,500 m² of rail served warehouse/distribution floorspace (Use Class B8) and associated buildings is proposed: 70,222 m² in zone A; 113,904 m² in zone B; and, 374 m² in zone C. The freight interchange facility (the intermodal area) would be located centrally within the site in zone C. The maximum build height of the proposed warehouses would be: 18 metres (27.1 metres AOD) in zone A; and, 18 metres (26.4 metres AOD) in zone B. The structures within zone C, which would include a maximum of 3 no. gantry cranes, would be up to a maximum of 18 .1 metres in height (26.7 metres AOD).
- 3.4. A new single railway track, routed via the southern part of the development site, would link the proposed intermodal facility to a former private siding connection off the Southeastern Trains Depot's southern head shunt and from there to the North Kent Line.
- 3.5. Vehicular access to the site would be via a new link road, from the existing A206/A2026 roundabout, across the River Cray. The River Cray would be crossed by a fixed, standard deck bridge that spans the river, with a viaduct on either side. That access would also provide for pedestrian and cycle access to the site. A vehicular access for a shuttle bus service and emergency vehicles only is proposed from Moat Lane to the north of the site. That access would also allow for pedestrian access to the site. In addition, the proposals include a linking road between the SRFI main access road and the adjacent Viridor waste recycling site.¹⁰
- 3.6. Following submission of the planning applications to the Councils on 20 November 2015:
 - LBB presented application Ref. 15/02673/OUTEA to Planning Committee on the 16 February 2017, with an Officer's recommendation for approval. The Committee resolved to approve the application subject to referral to the MOL, in accordance with the *Greater London Authority Acts 1999 and 2007*, and the *Town and Country Planning (Mayor of London) Order 2008*. Subsequently the MOL directed LBB to refuse the application on 17 July 2017. In accordance with that direction, LBB refused application Ref. 15/02673/OUTEA on 20 July 2017. The reason for refusal was¹¹:

⁹ CD/1.17.

¹⁰ CD/6.1-6.3 'Description of development'.

¹¹ CD/1.9.

- 1) *The proposal is inappropriate development in the Green Belt and very special circumstances have not been demonstrated which would clearly outweigh the harm to the Green Belt by reason of inappropriateness, and any other harm. The development is therefore contrary to Policy 7.16 of the adopted London Plan 2016 and the National Planning Policy Framework 2012.*
- An Officer's Report to the Dartford Borough Council's Development Control Board, recommending application Ref. DA/15/01743/OUT for approval, was published on 10 November 2016. However, that report was withdrawn and the minutes for the meeting show that the reason for this related to an identified requirement for additional information before any decision could be made. DBC Officers subsequently presented the application to the Development Control Board on 20 April 2017, with an Officer recommendation for refusal. The Board members supported the Officer's recommendation and the application Ref. DA/15/01743/OUT was refused on 21 April 2017. The reasons for refusal were¹²:
 - 1) *The proposal by virtue of its significant traffic generation and routing of vehicles to the development via junction 1A of the M25, will result in increased traffic on local roads and together with the reassignment of vehicles at times of congestion is likely to result in worsening air quality in the Borough, particularly in the areas designated as Air Quality Management Areas at the A282 (Dartford Tunnel Approach Road) and Dartford town centre. The proposal is therefore considered to be contrary to Policy CS1 of the adopted Dartford Core Strategy 2011, Policies DP3 and DP5 of the emerging Dartford Development Policies Plan 2015, the National Planning Policy Framework and the National Policy Statement for National Networks 2014.*
 - 2) *By virtue of significant trip generation of the proposal and its location, inside the M25 and in a heavily built up area adjacent to the A282/Dartford Crossing, it will impact on the local roads in Dartford as well as the strategic road network in Dartford, which is likely to be detrimental to the quality of life of the community in Dartford. It is not considered that the justification for a SRFI at this location, with no certainty that this will reduce long haul HGVs from the local strategic road network outweighs the harm to the local community. The proposal is therefore considered to be contrary to Policy CS1 of the adopted Dartford Core Strategy 2011, Policies DP3 and DP5 of the emerging Dartford Development Policies Plan 2015, the National Planning Policy Framework and the National Policy Statement for National Networks 2014.*

¹² CD/1.5.

3) *The proposal is considered to be inappropriate development in the Green Belt and very special circumstances have not been demonstrated which would outweigh the harm to the Green Belt. The development is therefore contrary to Policy CS13 of the adopted Dartford Core Strategy 2011, and the National Planning Policy Framework and Policy DP22 of the emerging Dartford Development Policies Plan (Modifications post Examination, Dec 2016).*

4. PLANNING HISTORY

- 4.1. A similar SRFI scheme at Howbury Park was the subject of cross boundary planning applications, submitted in 2004 (LBB Ref. 04/04384/OUTEA and DBC Ref. 04/00803/OUT). Following DBC's decision to refuse planning permission on the grounds of adverse impact on the openness and character of the Green Belt, an appeal was submitted. The LBB failed to determine the application submitted to it within the prescribed period and an appeal was submitted against non-determination of that application. A public Inquiry, considering both applications, followed.
- 4.2. In December 2007 the Secretary of State, in agreeing with the appointed Inspector's recommendation¹³, allowed the appeals¹⁴. The overall conclusions were that, although the proposal constituted inappropriate development in the Green Belt and harm would be associated with that and other matters, in that particular case, the benefits of the proposals constituted very special circumstances and were sufficient to clearly outweigh the harm. In reaching that decision, the Secretary of State agreed with the Inspector's conclusions that the ability of the proposals to meet part of London's need for 3 or 4 SRFIs was the most important consideration to which she afforded significant weight. She also afforded considerable weight to the lack of alternative sites to meet this need.
- 4.3. The outline planning permission granted was never taken forward and has since lapsed.¹⁵

5. COMMON GROUND

- 5.1. The following Statements of Common Ground, setting out matters agreed as well as differences between the parties that were signatories to them, were submitted by:
- RDL and LBB¹⁶;
 - RDL and DBC¹⁷;

¹³ CD/5.2.

¹⁴ CD/5.3.

¹⁵ CD/6.1-6.3.

¹⁶ CD/6.1.

¹⁷ CD/6.2.

- RDL and the Greater London Authority (MOL)¹⁸; and,
- RDL and Highways England¹⁹.

6. PLANNING POLICY

[The statements of Common Ground agreed by the appellant with the MOL, DBC and the LBB list the policies in the Development Plans as well as other planning policy documents and guidance which those parties consider to be relevant to the appeals. In this chapter of the report, I set out what I consider to be the most relevant to the appeals proposal.]

6.1. The LBB Development Plan

- 6.1.1. The Development Plan for the LBB comprises: *The London Plan, March 2016 (LP)*; the *Bexley Core Strategy Development Plan Document, February 2012 (BCS)*; and, saved policies of the *Bexley Unitary Development Plan, 2004 (BUDP)*.

Planning Policy Designations

- 6.1.2. The section of the appeals site within the LBB (with the exception of a small strip of land linking the main area of the site to the North Kent Line) is within the Metropolitan Green Belt²⁰ and is also within the *Crayford Landfill and Howbury Grange Site of Borough Importance for Nature Conservation Grade 1 (BxBI18)*.²¹

The London Plan²²

- 6.1.3. LP Policy 2.13 indicates that within opportunity areas, such as the Bexley Riverside Opportunity Area (BROA), development proposals should support the strategic policy directions for opportunity areas set out in Annex 1. Annex 1, which forms part of the LP, identifies, amongst other things:

'Bexley Riverside relates to parts of Erith, Crayford, Slade Green and Belvedere. Improvements in public transport accessibility, especially associated with Crossrail 1 will provide scope for intensification, particularly around Abbey Wood. Account should be taken of the Area's strategically important role in addressing London's logistics requirements including protection for inter-modal freight transfer facilities at Howbury Park...'

- 6.1.4. LP Policy 2.14 indicates that within the areas for regeneration shown on Map 2.5 the Mayor will work with partners to coordinate their sustained renewal. The reasoned justification indicates that an objective of the Policy

¹⁸ CD/6.3.

¹⁹ CD/6.4.

²⁰ CD/3.13 BUDP Proposals Map.

²¹ ES Volume 3c Appendix H figure H1, updated APP/BIO/2 Appendix 1 and 2.

²² CD/3.1.

is to tackle spatial concentrations of deprivation, by amongst other things, delivering new growth and jobs.

- 6.1.5. LP Policy 5.3 gives encouragement to sustainable design and construction, promoting principles including minimising pollution (including noise and air).
- 6.1.6. LP Policy 6.14 identifies that the Mayor will work with all relevant partners to, amongst other things, promote movement of freight by rail. LP Policy 6.15 is supportive of SRFIs providing that the facilities:
- a) Deliver modal shift from road to rail;
 - b) Minimize any adverse impact on the wider transport network;
 - c) Are well-related to rail and road corridors capable of accommodating the anticipated level of freight movements;
 - d) Are well-related to their proposed market.
- 6.1.7. The reasoned justification for LP Policy 6.15 indicates that:
- 'The advice from the former Strategic Rail Freight Authority that there needs to be a network of SRFIs in and around London still applies. If these facilities result in modal shift from road to rail, they can offer substantial savings in CO₂ emissions. However, they are by their nature large facilities that can often only be located in the Green Belt. In addition, while reducing the overall impact on the network, they can lead to substantial increases in traffic near the interchange itself. The Mayor will need to see robust evidence that the emissions savings and overall reduction in traffic movements are sufficient to justify any loss of Green Belt, in accordance with Policy 7.16, and localised increases in traffic movements. However, planning permission has already been granted for a SRFI at Howbury Park...'*
- 6.1.8. LP Policy 7.4 indicates that development should improve an area's visual or physical connection with natural features²³.
- 6.1.9. LP Policy 7.8 seeks to ensure that development affecting heritage assets and their settings should conserve their significance.
- 6.1.10. LP Policy 7.14 requires development proposals to be at least 'air quality neutral' and not lead to further deterioration of existing poor air quality (such as areas designated as Air Quality Management Areas (AQMAs)).
- 6.1.11. LP Policy 7.15 seeks to ensure that development proposals manage noise by, amongst other things, avoiding significant adverse noise impacts on health and quality of life as a result of new development as well as mitigating and minimising potential adverse impacts of noise.
- 6.1.12. LP Policy 7.16 confirms that the Mayor strongly supports the current extent of London's Green Belt and its protection from inappropriate development. It indicates that:

²³ APP/PLAN/1 para 7.37.

'The strongest protection should be given to London's Green Belt, in accordance with national guidance. Inappropriate development should be refused, except in very special circumstances.'

- 6.1.13. LP Policy 7.19 indicates that, wherever possible, development proposals should make a positive contribution to the protection, enhancement, creation and management of biodiversity. Proposals should be resisted where they would have a significant adverse impact on the population or conservation status of a protected or priority species, or a habitat identified in a UK, London, appropriate regional or borough Biodiversity Action Plan (BAP). Strong protection should be afforded to sites of metropolitan importance for nature conservation (SMIs). When considering proposals that would affect directly or indirectly a site of recognised nature conservation interest, the following hierarchy will apply: 1) avoid adverse impact to the biodiversity interest; 2) minimise impact and seek mitigation; and, 3) only in exceptional cases where the benefits of the proposal clearly outweigh the biodiversity impacts, seek appropriate compensation. LP Policy 7.21 seeks to ensure that, wherever appropriate, the planting of additional trees should be included in new developments.

Bexley Core Strategy²⁴

- 6.1.14. In common with BCS Policy CS01, BCS Policy CS17 seeks to protect the Green Belt from inappropriate development, which the reasoned justification for the Policy indicates is defined by Government guidance. BCS Policy CS01 also aims to achieve sustainable development by, amongst other things, maximising the effective and efficient use of natural and physical resources, including land, whilst addressing pollution issues, such as noise and air quality.
- 6.1.15. BCS Policy CS09 seeks to protect, enhance and promote green infrastructure, including making open spaces, amongst other locations, an integral part of encouraging healthy lifestyles. It also identifies that the Council will maximise opportunities to improve the health of the environment, for example air quality, and reduce pollution.
- 6.1.16. BCS Policy CS04 seeks to ensure that opportunities are taken to improve the quality of the natural environment in the Erith geographic region. BCS Policy CS17 indicates that Bexley's green infrastructure, including open spaces and waterways will be protected, enhanced and promoted as valuable resources²⁵. The reasoned justification for this Policy identifies that river corridors, such as that of the Cray, are important defining features of the Borough's landscape and views. BCS Policy CS18 indicates that the Council will protect and enhance its biodiversity, whilst complying with national and regional policy and guidance by, amongst other things:

- b) Protecting, conserving and enhancing Bexley's Sites of Importance for Nature Conservation (SINC); and,

²⁴ CD/3.12.

²⁵ APP/PLAN/1 para 7.37.

- c) Resisting development that will have a significant impact on the population or conservation status of protected species and priority species as identified in the UK, London and Bexley Biodiversity Action Plans.

- 6.1.17. BCS Policy CS15 indicates that the Council will work to achieve a comprehensive, high quality, safe, integrated and sustainable transport system which makes the most of existing and proposed transport infrastructure within the Borough and seeks to ensure a much improved and expanded role for public transport through a number of identified actions. They include:
- a) Increasing the capacity, frequency, accessibility and safety of rail facilities; and,
 - h) Improving the efficiency and promoting the sustainability of freight movement in the borough and ensuring the construction and preservation of rail freight interchange facilities where this does not prejudice other objectives of the Core Strategy.

The reasoned justification for the Policy states that '*There is a planning permission for a rail freight interchange facility at Howbury Park, which has yet to be implemented*'.

- 6.1.18. BCS Policy CS13 seeks to assist in supporting a strong and stable economy by, amongst other things, supporting development proposals that diversify the local employment offer.
- 6.1.19. The aims of BCS Policy CS19 include conserving and enhancing the significance of heritage assets, their setting and the wider historic environment.

BUDP²⁶

- 6.1.20. BUDP Policy ENV4 sets out a number of criteria to be met by development within the Green Belt, including that: it should not detract from the function and appearance of the Green Belt; and, the proposed development should retain sufficient space around the building, within the site, to maintain the contribution the site makes to the character of the Green Belt by virtue of its open and spacious nature.

6.2. The DBC Development Plan

- 6.2.1. The DBC Development Plan comprises: the *Dartford Core Strategy, September 2011* (DCS); and, the *Dartford Development Policies Plan, July 2017* (DDPP).

²⁶ CD/3.13.

Planning Policy Designations

6.2.2. The section of the appeals site within Dartford Borough is within the Metropolitan Green Belt.

DCS²⁷

6.2.3. DCS Policy CS 1 indicates that in order to maximise regeneration benefits, promote sustainable patterns of development and protect less appropriate areas from development, the focus of development will be in 3 priority areas: Dartford Town Centre and Northern Gateway; Ebbsfleet to Stone; and, The Thames Waterfront. The reasoned justification for the Policy states that this approach enables greater protection for other areas where development is less appropriate, such as the Green Belt. DCS Policy CS 7 identifies the jobs target for the Borough for the period 2006-2026 and indicates that it can be met by identified sites and potential new service jobs, and it provides an indicative distribution. DCS Policy CS 8 indicates that the Council will seek a transformation of the economy by focussing on key growth sectors, such as logistics, transport and distribution.

6.2.4. DCS Policy CS 13 indicates that in order to protect the openness of the Green Belt the Council will resist inappropriate development, in accordance with Government guidance.

6.2.5. The reasoned justification for DCS Policy CS 15 explains that the successful achievement of Dartford's economic potential and the creation of cohesive and prospering communities are dependent on a transport network which, amongst other things is reliable and has sufficient capacity to meet the needs of residents and businesses. The Policy identifies the approaches the Council will take in order to reduce the need to travel, minimise car use and make the most effective use of the transport network. They include:

- e) Work in partnership with Network Rail, train operating companies and other partners to enhance capacity and journey times of train services; and,
- h) Require that major trip generating development is supported by a travel plan containing a package of measures ensuring sustainable travel, linked to monitoring and management of targets.

6.2.6. DCS Policy CS 16 indicates that the Council will take a number of approaches in order to enable the transport network to respond to the pressures of new development. They include that: e) off-site transport improvements relating directly to an individual development including site access and local junction and road improvements will be required through S106 and S278 agreements in addition to any pooled payments towards the Strategic Transport Infrastructure Programme. The reasoned justification for the Policy highlights that there are particular concerns that new development will exacerbate the existing high levels of congestion at junction 1A of the M25.

²⁷ CD/3.17.

DDPP²⁸

- 6.2.7. DDPP Policy DP3 identifies that development will only be permitted where it is appropriately located and makes suitable provision to minimise and manage the arising transport impacts, in line with BCS Policies CS 15 and 16. Furthermore, development will not be permitted where the localised residual impacts from the development on its own, or in combination with other planned developments in the area, result in severe impacts on one or more of the following: a) road traffic congestion and air quality.
- 6.2.8. DDPP Policy DP5 indicates that development will only be permitted where it does not result in unacceptable material impacts, individually or cumulatively, on neighbouring uses, the Borough's environment or public health. Particular consideration must be given to areas and subjects of potential sensitivity and other potential amenity/safety factors, such as: air quality; and, noise disturbance or vibration. The reasoned justification for the Policy identifies that consideration should be given to the potential for development to result in additional traffic flows that may impact on AQMAs located elsewhere.
- 6.2.9. In keeping with the Framework, DDPP Policy DP22 identifies that inappropriate development, which is, by definition, harmful to the Green Belt, should not be approved except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. The Policy identifies that the following criteria will be used by DBC in assessing the 'other harm':
- a) The extent of intensification of use of the site;
 - b) The impact of an increase in activity and disturbance resulting from the development, both on and off site, including traffic movement and parking, light pollution and noise;
 - c) The impact on biodiversity and wildlife;
 - d) The impact on visual amenity or character taking into account the extent of screening required; and,
 - e) Impacts arising from infrastructure required by the development.

6.3. **National Policy**

The National Planning Policy Framework (the Framework)

- 6.3.1. References to relevant passages of the Framework can be found in the cases of the parties and my conclusions.

The National Policy Statement for National Networks (NPSNN)²⁹

- 6.3.2. The NPSNN is the primary basis used by the Secretary of State for making decisions on development consent applications for national networks

²⁸ CD/3.18.

²⁹ CD/2.2.

nationally significant infrastructure projects (NSIP) in England, including Strategic Rail Freight Interchanges. The appeals proposal does not comprise an NSIP, as the site is below the 60 hectare NSIP threshold. However, the NPSNN confirms that, in England, it may also be a material consideration in decision making on applications that fall under the *Town and Country Planning Act 1990*. There is no dispute that the NPSNN is a material consideration in the determination of these appeals.

6.3.3. Relevant passages of the NPSNN can be found in the cases of the parties and my conclusions.

6.4. **Emerging plans**

The London Plan-The Spatial Development Strategy for Greater London-Draft for Consultation, December 2017 (LPe)³⁰

6.4.1. LPe Policy G2 indicates that the Green Belt should be protected from inappropriate development and the reasoned justification for the Policy identifies that the National Planning Policy Framework provides clear direction for the management of development in the Green Belt.

6.4.2. LPe Policy T7 identifies that development proposals for new consolidation and distribution facilities should be supported, provided, amongst other things, they:

- 1) Deliver mode shift from road to rail without adversely impacting passenger services (existing or planned) and without generating significant increases in street based movements.

6.4.3. LPe Policy SD1 seeks to ensure that decisions support development that creates employment opportunities within Opportunity Areas and the reasoned justification identifies a growth target of 19,000 jobs in the BROA.

6.4.4. At the time of the Inquiry, the LPe Examination in Public had not commenced and so the weight attributable to these policies is limited, more so in relation to LPe Policy T7, which I understand is the subject of objection.

6.5. **Other local planning guidance**

The Mayor's Transport Strategy, 2018 (MTS)³¹

6.5.1. MTS Policy 1 identifies that, working with stakeholders, the Mayor will reduce Londoners' dependency on cars, with the central aim for 80% of all trips in London to be made on foot, by cycle or using public transport by 2041. Proposal 16 indicates that the Mayor, through TfL, and working with the boroughs and members of the Freight Forum, will improve the

³⁰ CD/3.2.

³¹ CD/3.3.

efficiency of freight and servicing trips on London's strategic transport network by, amongst other things, identifying opportunities for moving freight on to the rail network where this will not impact on passenger services and where the benefits will be seen in London.

The Kent County Council Local Transport Plan 4: Delivering Growth without Gridlock 2016-2031 (LTP4)³²

- 6.5.2. With respect to Dartford, the LTP4 identifies the following points, amongst others:
- a) The A282 suffers from congestion at peak times and when there are traffic incidents. This results in congestion spreading out into the town and reducing the performance of the local road network over a wide area. Incidents at the Dartford Crossing and its approach are frequent and severe;
 - b) Parts of the local road network are reaching capacity, as a result of the high levels of development taking place. A significant modal shift is needed to accommodate the projected growth;
 - c) Rail capacity on the North Kent Line is stretched and likely to be overcapacity in the near future;
 - d) The proposed SRFI interchange at Howbury would potentially remove up to 540 Heavy Goods Vehicles (HGVs) from the road network. KCC supports modal shift from road to rail, provided that it does not adversely affect peak rail passenger services and impacts on the local road network are properly mitigated.

7. THE CASE FOR THE MAYOR OF LONDON (MOL)

7.1. Policy context

Applicability of Green Belt Policy

7.1.1. It is common ground that:

- a. *London Plan* Policy 7.16 requires that the 'strongest protection' should be given to London's Green Belt³³.
- b. The *National Policy Statement for National Networks* (NPSNN) 'does not diminish the special protection given to Green Belt land'³⁴.

Materiality of the NPSNN

7.1.2. It is common ground that NPSNN is a material consideration in the determination of this application. It identifies a compelling need for an expanded network of SRFIs which should be located near the business

³² CD/4.14 page 32.

³³ as confirmed by Mr Scanlon in XX and see CD/3.1 at p.312 and CD/6.3 at para 7.20.

³⁴ as confirmed by Mr Scanlon in XX and see CD/2.2 at 5.172 and 5.178 and CD/6.3 at para 7.3.

markets which they serve³⁵. It notes the particular challenge in expanding rail freight interchanges serving London and the Southeast³⁶. It draws upon unconstrained rail freight forecasts³⁷ but cautions that 'the forecasts in themselves do not provide sufficient granularity to allow site-specific need cases to be demonstrated'.

- 7.1.3. Its expectations for Strategic Rail Freight Interchanges (SRFIs) include the prescription that '*adequate links to rail and road networks are essential*'³⁸. The need for '*effective connections for both rail and road*' is emphasised³⁹. The NPSNN directs that as a minimum a SRFI should be capable of handling four trains per day and where possible increasing the number of trains handled. There has been some debate about the meaning of this requirement at the Inquiry. The appellant's case appears to be that this is an observation only relevant to the internal design of a SRFI. The more sensible way of reading the policy as a whole is that the expectation of capability of handling 4 trains as a minimum (and increasing where possible) should inform the assessment of the adequacy of the rail links.
- 7.1.4. There is a recorded expectation that where possible SRFIs should have capacity to handle 775 metre trains⁴⁰. It is material therefore to reflect on the access issues for trains of that length even if (as here) existing line constraints do not cater for trains of that length⁴¹.
- 7.1.5. There is only one previous decision in respect of a SRFI facility around London which postdates the NSPNN. That is the Colnbrook decision⁴². It provides helpful guidance on matters of approach (as discussed further below). With reference to the NPSNN, it advocates a focus on the quality of the SRFI provision, not necessarily maximising the number of schemes⁴³.

Development Plan policies

- 7.1.6. Policy 6.15 of the *London Plan*⁴⁴ supports the provision of SRFIs in principle, but sets mandatory expectations for them (in sub-para B of the Policy). As Mr Scanlon (for the appellant) accepted, it is necessary for SRFI proposals to satisfy each of these requirements in order to comply with the Policy. The MOL is not satisfied that the facility will 'deliver modal shift from road to rail' (criterion (a)). As Mr Scanlon agreed, the focus of the Development Plan policy is on the delivery of modal shift (not merely the provision of a facility with the potential to deliver modal shift). The MOL is

³⁵ CD/2.2 at para 2.56.

³⁶ CD/2.2 at 2.58.

³⁷ CD/2.2 at 2.59.

³⁸ CD/2.2 at 4.85.

³⁹ CD/2.2 at 2.56.

⁴⁰ CD/2.2 at 4.89.

⁴¹ INQ/72 APP/RAIL/7 para 2.1.5 '*train length of 565 metres in the 2016 planning application (restated in APP/RAIL/4 para 2.3.15) was based on the then average length of domestic intermodal services*' (CD/1.25 Intermodality Rail Report, November 2015 para 5.4.6- 565 metres excluding locomotive and 586 metres including locomotive), para 2.1.5 continued '*longest train to operate on the North Kent Line to date, on which the timing analysis is based (i.e. 538 metre train +21.5 metre locomotive=559.5 rounded up to 560 metres)*'.

⁴² CD/5.4.

⁴³ CD/5.4 at 12.92.

⁴⁴ CD/3.1 at p.271.

also not satisfied that the proposal is well related to rail corridors capable of accommodating the anticipated level of freight movements (criterion (c)). This is because of the significant constraints which exist in accessing and departing from the site and also the difficult pathing across this congested and complex part of the South London network. The issues raised by DBC also bring into question the relationship of the proposal with the road network relevant to criteria (b) and (c) of this Development Plan policy. It is accepted that criterion (d) of this policy is satisfied in that Howbury Park is well-related to the London market.

- 7.1.7. The supporting text to Policy 6.15 of the *London Plan* notes that planning permission has already been granted for a SRFI at Howbury Park. This part of the plan dates back to 2011 when that permission was extant. It is descriptive only. It does not allocate the site as a SRFI, as Mr Scanlon accepted. The reference to the previous permission in the supporting text has no traction in the situation we are now in where there is no extant permission.
- 7.1.8. The Howbury Park site is located within the Bexley Riverside Opportunity Area⁴⁵. This opportunity area was identified in 2011. It applies to an area of 1,347 hectares. The 57 hectares of the site are 4% of the opportunity area. The opportunity area contains large areas of previous developed land including industrial land suitable for logistics development.
- 7.1.9. Annex 1⁴⁶ records the opportunity area's important role in addressing London's logistics requirements including protection for inter-modal freight transfer facilities at Howbury Park⁴⁷. This part of the plan dates from 2011 when there was an extant planning permission for the site. That is no longer the case. It was accepted by Mr Scanlon that the Howbury Park site has not been allocated in the *London Plan*. It is also clear, as he accepted, that there has been no re-designation of the Green Belt boundary.
- 7.1.10. Mr Scanlon did not advance any argument that achieving the employment and growth aspirations of the Bexley Riverside Opportunity Area depends upon the delivery of the Howbury Park scheme.
- 7.1.11. The appellant's case is overstated in so far as it purports to rely upon site specific support for the Howbury Park scheme in the *London Plan*⁴⁸. It can claim with justification that its scheme is consistent with the aspirations of growth for the Bexley Riverside Opportunity Area but to seek to go further than that is misconceived. It is not the function of the *London Plan* to make site specific designations.
- 7.1.12. The true position is illuminated by an analysis of the Development Plan policy position in Bexley:
- a. Bexley's Core Strategy protects the Green Belt⁴⁹;

⁴⁵ see policy 2.13 of the *London Plan* CD/3.1 at p.65 and annex 1 at p.355.

⁴⁶ CD/3.1 annex 1 at p.355

⁴⁷ CD/3.1 at p.355.

⁴⁸ see APP/RAIL/1 at para 2.1.

⁴⁹ CS 01 and CS 17 – see GLA/NR/01 at p.8.

- b. Policy CS 15 seeks to improve the efficiency and sustainability of freight movements. It also gives encouragement to the construction and preservation of rail freight interchanges where this does not prejudice other objectives of the Core Strategy. As Mr Scanlon accepted in cross-examination, those objectives include the protection of the Green Belt;
 - c. Paragraph 4.7.13 of the Bexley Core Strategy⁵⁰ records the existence of the planning permission at Howbury Park which has yet to be implemented. As Mr Scanlon accepted, this is purely descriptive of the situation which existed in 2012. It does not allocate the site;
 - d. Appendix A of the Core Strategy contains an infrastructure delivery plan. At CD/3.12 p.122 it makes provision for '*complementary measures in the event of the Rail freight interchange facility being built*' in the Crayford and Northend Ward, but notes that: '*Rail freight interchange is not required for the delivery of the Core Strategy, however if it is not implemented, there is need to identify more sustainable freight facilities*', consistent with the aims of Policy CS15 set out above.
- 7.1.13. In summary therefore, the Development Plan position (for Bexley/London) is that:
- a. Support for SRFIs is conditional rather than absolute;
 - b. Howbury Park is not allocated as a SRFI within the Development Plan;
 - c. Despite the site's inclusion in an opportunity area, it remains in the Green Belt;
 - d. There is an explicit statement in the Bexley Core Strategy that a rail freight interchange is not required for the delivery of Bexley's Core Strategy.
- 7.1.14. The references to the previous consent in the *London Plan* are descriptive of the past planning permission. Once that permission lapsed, on a proper analysis, the Development Plan policies should be applied to the proposal on its merits (not with the pretence that the site has been allocated as a SRFI in the Development Plan). Whilst the contribution that the Howbury Park scheme would make towards meeting the objectives of the Bexley Riverside Opportunity Area is a material part of the overall assessment, it is a mistake to assert that the scheme benefits from site specific support in any part of the Development Plan. The reality is that the Green Belt constraints continue to apply to the proposed development.

Relevant emerging policies

- 7.1.15. It is common ground that the draft *London Plan* carries limited weight given that the Examination in Public has not yet occurred. Policy T7 is relevant⁵¹. Its support for freight facilities is qualified by the need to ensure

⁵⁰ CD/3.12.

⁵¹ CD/3.2 at p.431.

that they deliver modal shift and do not adversely affect passenger services. There is no mention of Howbury Park in the draft *London Plan* as Mr Scanlon accepted⁵².

Other relevant guidance

- 7.1.16. The *Mayor's Transport Strategy, 2018*, explains the very significant challenges facing London. Proposal 16 seeks to identify opportunities to move freight onto rail where these will not impact on passenger services and the benefits will be seen within London⁵³. The *Mayor's Transport Strategy, 2018*, seeks to free up paths for passenger services to meet growing passenger demand⁵⁴.
- 7.1.17. The appellant has also referred to transport guidance issued by Kent County Council. Its *Freight Action Plan*⁵⁵ notes the existence of the Howbury Park proposal. Its position is to support the provision of modal shift from road to rail 'so long as it does not adversely affect peak passenger services'. Its Transport Plan⁵⁶ notes the proposal with the same caveats.
- 7.1.18. There is a consistent theme emerging from this guidance. There is support for rail freight facilities which deliver modal shift provided that they do not have an adverse impact on passenger services. The MOL's concerns are that this specific proposal is poorly suited to deliver the desired modal shift and, given the constraints of the adjacent rail network, it would adversely affect passenger services if it managed to do so.

7.2. Approach to the 2007 Planning Permission

- 7.2.1. It is common ground that the planning permission granted in 2007 has lapsed. There is no fall-back position. The planning balance needs to be struck in the light of the circumstances as they now exist.
- 7.2.2. It is instructive to look at the basis on which planning permission was granted last time and to explore the extent to which the key factors remain unchanged or have altered.
- 7.2.3. Analysis of the planning balance struck in 2007 shows that it was a finely balanced decision.
- 7.2.4. In para 15.178 of the Inspector's report in 2007⁵⁷ the Inspector observed:
- 'Put simply, if the proposal would, for any reason, not operate as a SRFI then it would not enjoy the policy support which such proposals attract. Put another way, there is no doubt that a proposal to build road-served warehouses on open land in the Green Belt around London would not*

⁵² in XX and see para 7.125 of APP/PLAN/1.

⁵³ CD/3.3 at p.81.

⁵⁴ see CD/3.3 at p.87.

⁵⁵ CD/4.15 at p.4.

⁵⁶ CD/4.14 at p.32.

⁵⁷ CD/5.2.

come anywhere near to constituting very special circumstances outweighing the harm to the Green Belt that would be inevitable with such a proposal.'

- 7.2.5. In 2007 the Inspector regarded the issue of whether very special circumstances existed to outweigh the relevant harm to be a 'difficult balance'⁵⁸. He found it difficult to 'answer with complete certainty' whether the concerns that the proposal may end up being 'little more than a collection of road-served warehouses' were justified⁵⁹. On the evidence before him, he concluded that the Secretary of State could be 'reasonably assured' that the then proposed development would operate as a SRFI. Part of his analysis in support of that conclusion was that 'the design of the proposed warehouses at Howbury Park has been optimised to attract users committed to rail'⁶⁰. He found that the larger units proposed would be difficult to let to a road only user given their configuration⁶¹. The submission on the part of the developer which he referenced in making that finding had contended that it would be 'commercial suicide' for the warehouses as designed to have been pitched to users only interested in road access⁶². Another element of the judgement reached in 2007 was that Network Rail had '*effectively guaranteed that paths for three trains a day would be available on the opening of the terminal and they state that further paths are likely to be made available as and when required*'⁶³.
- 7.2.6. In addressing the question of whether very special circumstances existed to clearly outweigh the harm to the Green Belt and other harm, the Inspector emphasised: (a) the ability of the proposal to meet part of London's need for 3 or 4 SRFIs and (b) the agreed position that if planning permission were not granted there was no other site to the south and east of London that could meet the need. The combination of those factors was the critical part of the judgement that very special circumstances existed. The Inspector made it clear that other benefits, though potentially valuable, were less significant in the critical Green Belt balancing exercise⁶⁴. The Secretary of State adopted the same approach to the determination of very special circumstances⁶⁵.
- 7.2.7. The key changes since 2007 are as follows.
- 7.2.8. First, the configuration of what is now proposed differs materially from what was proposed in 2007. The Inspector's observations at para 15.132 of CD/5.2 are not apt for the present proposal. The configuration of what is now proposed would be attractive to road only users. As Mr Birch explained, by far the largest element of the logistics industry is road based. It certainly could not be said that it would be commercial suicide for

⁵⁸ CD/5.2 at 15.183.

⁵⁹ CD/5.2 at 15.178 and 15.179.

⁶⁰ CD/5.2 at 15.132.

⁶¹ CD/5.2 at 15.132.

⁶² CD/5.2 at para 6.123.

⁶³ CD/5.2 at 15.110.

⁶⁴ see footnote at CD/5.2 at p.167.

⁶⁵ see CD/5.3 at para 31.

a road only operator to occupy the warehouses proposed⁶⁶.

The attractiveness of the facility presently proposed to road only transport gives rise to significant concerns on the part of the MOL because (a) there is much less assurance than was the case in 2007 that the practical operation of the facility would deliver modal shift (as expected by the Development Plan policy); (b) the consent sought by the appellant does not secure any level of rail use by way of condition; (c) the consequences of additional road journeys in this locality would be particularly significant.

- 7.2.9. Second, the train length under consideration in 2007 was 420 metres. In the present case, the rail experts proceed on the basis that a train length of 560-565 metres should be considered⁶⁷. This additional train length has implications for the judgement as to whether the rail connection is adequate given the practicality of achieving access to and departure from the site across the highly congested rail network.
- 7.2.10. Third, the level of assurance as to the availability of pathing across the network is appreciably worse this time. Network Rail has not effectively guaranteed any quantum of paths. This is discussed further below.
- 7.2.11. Fourth, there has been unprecedented growth in passenger demand on the railway in London, as explained in Mr Hobbs' evidence⁶⁸ and accepted by Mr Gallop in cross-examination. As Mr Hobbs explained passenger rail capacity is critical to London's growth. London has grown exponentially in the intervening period and the challenges which it faces have 'increased markedly'⁶⁹. Passenger rail capacity, which is critical to London's economic growth, is under real and increasing pressure⁷⁰. The extent of growth in passenger rail demand in London is noted in the NPSNN at para 2.31⁷¹. This is important because jobs in central London depend on passenger rail capacity⁷². The stakes are very high if the facility cannot interact with passenger services in a way which avoids having a detrimental impact. The evidence is also clear that in this part of London further growth is expected.
- 7.2.12. Fifth, there is not a quantified policy need for 3-4 facilities in London expressed in policy⁷³. This was accepted by both Mr Gallop and Mr Scanlon in cross-examination.
- 7.2.13. Sixth, in 2007 there were no alternative sites worthy of consideration. The appellant's analysis throughout this appeal has proceeded on the basis that this remains the case⁷⁴. However, it was wrong to do so. London

⁶⁶ Re-examination of Mr Birch.

⁶⁷ MoL-INQ/63 GLA/RG/09 para 1.1.3 train length of 565 metres, RDL-INQ/72 APP/RAIL/7 para 2.1.5 train length of 560 metres.

⁶⁸ GLA/GH/01 at para 19 and 20.

⁶⁹ as Mr Hobbs explained in his oral evidence and see para 6, 16 and 19 of GLA/GH/01.

⁷⁰ see GLA/GH/01 at para 20.

⁷¹ CD/2.2 at pp.16-17.

⁷² see GLA/GH/02 at Appendix 2 p.41.

⁷³ see CD/5.4 at 12.101.

⁷⁴ see APP/PLAN/1 at paras 2.6, 2.8, 7.3, 7.24. 7.154 and CD/1.27 Volume 1-Non-Technical Summary para 3.13 '*The Howbury Park site has been identified as the only site within the catchment that has the potential to operate as an SRFI.*'

Gateway is 'capable of fulfilling a SRFI role'⁷⁵. It is proximate to the London market⁷⁶. Although it is 'primarily a port development', its capacity to develop a subsidiary SRFI role may well be on a very substantial scale (as it would be subsidiary to the huge primary development). There are no planning barriers to the expansion of this facility on brownfield land within the catchment of the alternative sites search. Yet, its potential has simply not been explored by the appellant, as Mr Scanlon accepted in cross-examination. This is a fatal defect in the very special circumstances case advanced by the appellant in the present case. There has been a marked shift in circumstances pertaining to the critical part of the judgement reached in 2007. Para 21 of the appellant's opening statement⁷⁷ impliedly recognises that the question of alternatives is of game changing significance. It states '*If...there are no preferable alternative sites to meet the nationally-identified need outside the Green Belt....*'. However, in truth there is an alternative site, which has potential to function as a SRFI proximate to the London market and that avoids development on the Green Belt, whose potential has not been properly examined by the appellant.

7.2.14. Seventh, consent has now been granted for the Radlett facility⁷⁸.

7.2.15. Eighth, some weight was placed on the MoL's support for the facility in 2007⁷⁹. Given the importance of giving the strongest protection to London's Green Belt, the concerns about the effectiveness of the facility in delivering modal shift, the potential adverse impact on passenger services and the availability of an alternative facility on brownfield land; equivalent support in 2018 is not forthcoming. The MOL remains a strong advocate of appropriately located freight facilities and economic growth but considers that this proposal fails to pass the stringent criteria for justifying development on London's Green Belt.

7.3. **Application of Green Belt Policy**

7.3.1. As confirmed in cross-examination with Mr Scanlon, there is common ground in respect of much of the Green Belt analysis.

7.3.2. The proposed development constitutes inappropriate development in the Green Belt.

7.3.3. The proposed development would cause harm to the Green Belt by reason of its inappropriateness.

7.3.4. It would also result in substantial harm to the openness and character of the Green Belt given the scale of what is proposed⁸⁰. Mr Scott conceded the impacts in cross-examination and that the characterisation of the

⁷⁵ see CD/5.4 at para 12.107.

⁷⁶ CD/5.4 at 12.105.

⁷⁷ INQ/4

⁷⁸ CD/5.5.

⁷⁹ CD/5.2 at para 15.186.

⁸⁰ see Mr Ray's proof of evidence at paras 51-57 (GLA/NR/01).

development as huge/massive⁸¹ remained apt. This harm cannot be mitigated, as Mr Scott conceded in cross-examination and the landscape is not readily capable of absorbing change⁸². As Mr Mould's cross-examination of Mr Scott established, his evidence had paid insufficient regard to the sensitivity of the site as emphasised at the previous appeal⁸³.

The Inspector's observations last time that 'there is no doubt that the character of the landscape immediately about the appeals site would be significantly changed as a result of the development. Its flat, open expansive character would be lost and replaced with massive buildings, surrounded at the northern end of the site by substantial earthworks'⁸⁴ remains apt, as Mr Scott conceded in cross-examination.

- 7.3.5. There would be harm to the purposes of including land within the Green Belt.
- a. The proposal conflicts with the purpose of safeguarding the countryside from encroachment.
 - b. It would also contribute to urban sprawl and materially weaken the function that the Green Belt serves in maintaining separation between settlements. It would diminish the gap between Slade Green and Dartford albeit that a visual gap would remain⁸⁵. Mr Scott conceded that an already narrow gap would be further reduced (see his agreement in cross-examination that the characterisation of the gap as already narrow⁸⁶ remained correct and that the impact of the present proposal was equivalent to that identified by the Inspector at the last appeal). Mr Scott confirmed that the redefinition of the urban edge was a disadvantage. It does not need redefining. Thus the proposal would impact adversely on the key purpose of maintaining separation between settlements.
- 7.3.6. The appellant rightly concedes that there is substantial harm to the Green Belt⁸⁷.
- 7.3.7. It is common ground that it is necessary for the decision maker to weigh other harm against the proposal. The MOL has not advanced any positive case in respect of any specific other harm, as his concerns in respect of this proposal are strategic in nature. The Inspector and Secretary of State will need to take account of, in their assessment of the adverse impacts which flow from the development, the submissions made by DBC and the third party participants at the Inquiry.

⁸¹ CD/5.2 at 15.7.

⁸² see CD/5.2 at 15.12.

⁸³ see CD/5.2 at 15.12 and 15.157.

⁸⁴ CD/5.2 at 15.13.

⁸⁵ see the evidence of Mr Ray in GLA/NR/01 at paras 45-50.

⁸⁶ in CD/5.2 at 15.9.

⁸⁷ see APP/PLAN 1 at para 7.30.

7.4. **Whether very special circumstances exist**

7.4.1. The focus of the MOL's case to the Inquiry has been the issue of whether very special circumstances exist that clearly outweigh the harm to the Green Belt by reason of inappropriateness and all other harm.

Overview

7.4.2. It is common ground that the onus is on the Appellant to demonstrate that very special circumstances exist.

7.4.3. The shape of the appellant's very special circumstances case is apparent from para 7.85 of Mr Scanlon's proof of evidence⁸⁸. There are three planks to the argument advanced:

- First, the overriding need for SRFIs to serve London and the Southeast;
- Second, the absence of alternative sites; and,
- Third, economic and social benefits of the scheme.

7.4.4. The shape of the MOL's response is as follows.

7.4.5. As to need:

- a. There is an accepted need for a network of SRFIs;
- b. It is also right that there is an under-provision of SRFIs in proximity to the London market;
- c. However, the support for SRFIs is predicated on the premise that they will deliver modal shift;
- d. There are very real doubts as to whether this Howbury Park proposal will do so;
 - i. This is due to the constraints of rail access in its particular location and pathing difficulties.
 - ii. In so far as it identifies a market need for rail freight, the contentions of Mr Gallop amount to little more than Howbury Park should be allowed to 'find its market'. There is a lack of any credible evidence of market demand for the facility. There are risks attached to the claim that it will attract 71% of its traffic from domestic intermodal traffic given that growth in domestic intermodal has been slow (and dominated by Tesco).
 - iii. There are real risks in the bold proposition -upon which the appellant's case depends - that forecasts based on unconstrained demand will actually deliver a modal shift through the provision of this facility in this very constrained part of the rail network.

⁸⁸ APP/PLAN/1.

- iv. The proposed as configured would be well suited for use for road based vehicles.
 - e. The Appellant's case seductively seeks to downplay expectations as to how much tangible assurances can be expected at this stage. But unlike the East Midlands decision relied upon⁸⁹, this is a Green Belt case. The Inspector and Secretary of State are urged to examine in a discerning way what the evidence suggests as to how well this particular facility is equipped to deliver the modal shift benefits expected of SRFIs. The necessary foundations for being reasonably assured that this proposal will succeed as a SRFI do not exist in this instance. The MOL is concerned that there would be severe adverse consequences
 - i. Green Belt land would be permanently lost.
 - ii. The benefits of the predicted modal shift may not be delivered.
 - iii. Train paths might not materialise.
 - iv. If they do, passenger services might be adversely affected.
 - v. The Slade Green depot's operation may be adversely affected.
- 7.4.6. As to alternatives, the appellant's case has failed to engage with the potential of London Gateway to function as a SRFI to serve 'the arc around the south and east of London'⁹⁰. This is a fatal defect in its very special circumstances analysis.
- 7.4.7. As to other benefits, whilst potentially valuable, these are not sufficiently persuasive considerations to justify the loss of Green Belt land.

Policy need

- 7.4.8. As above, the policy position is that there is a need for a network of SRFI but no longer any quantified need for 3-4 facilities around London⁹¹. Under the NPSNN, SRFIs are supported because they deliver modal shift from road to rail. Planning policy requires that modal shift should be delivered and cautions that freight facilities should not have an adverse impact on passenger services.

Market need-reliance on growth in domestic intermodal traffic

- 7.4.9. The application for planning permission assumes that the rail freight traffic at the proposed facility would comprise approximately: 71% domestic intermodal; 10% maritime intermodal; 6% Channel Tunnel intermodal; and, 13% conventional ⁹².
- 7.4.10. Table 2 on p.17 of APP/RAIL/1 shows that domestic intermodal is only currently operating from DIRFT (East Midlands) and Mossend (Glasgow).

⁸⁹ CD/5.6.

⁹⁰ para 15.177 of CD/5.2.

⁹¹ CD/5.4 at 12.101.

⁹² see CD/1.25 at 4.7.16 and APP/RAIL/1 at para 4.6.8.

It can thus be seen that the tables on page 18 of APP/RAIL/1 show that growth in domestic intermodal traffic is currently static.

- 7.4.11. The claim made by Mr Scanlon at para 7.90 that there has been 'unprecedented growth in intermodal traffic' is not apt as an observation applied to domestic intermodal traffic, at which this proposal is mainly directed, as Mr Gallop eventually accepted in cross-examination. The growth in the broader intermodal sector is dominated by maritime intermodal traffic, trains originating from the UK's deep sea ports.
- 7.4.12. The scheme therefore relies upon growth in a sector which is currently underperforming.
- 7.4.13. The forecasted growth in domestic intermodal traffic referred to in the NPSNN is 12%/annum⁹³. However, the critical point is that this forecast is based on unconstrained growth. That is, *'freight demand is considered without addressing the ability of the rail network to cater for it'*⁹⁴.
- 7.4.14. The explanation advanced by the appellant is that the underperformance in domestic intermodal is due to a lack of facilities. This is effectively the adoption of the 'chicken and egg' analogy referred to by the previous Inspector⁹⁵, that is the lack of growth is attributable to the lack of facilities.
- 7.4.15. Whilst it is accepted that a lack of facilities may be part of the story, a more discerning analysis is required.
- 7.4.16. The ability of this facility to deliver modal shift to rail needs to be assessed in the real world where constraints exist. Network Rail's *Rail Freight Study 2013* at para 3.2 identified key constraints as including (a) conflict with passenger services; (b) pinch points on the network; (c) capacity on the network⁹⁶. Howbury Park is a location that suffers from a perfect storm of such constraints. Those constraints include the current level of network capacity and the constraints involved in entering and leaving the site (given the complexity involved in crossing Crayford Creek Junction). These are addressed in detail below and are a critical part of the MOL's concerns that this facility may not succeed in delivering a modal shift of freight to rail.
- 7.4.17. The evidence shows that the domestic intermodal traffic generated is very unevenly distributed. Tesco (in partnership with Stobart) have led the way⁹⁷. Excluding local authority waste services, the domestic intermodal traffic is almost entirely generated by Tesco. This is consistent with the figures showing the take up of rail by retailers in table 1 on p.16 of APP/RAIL/1.
- 7.4.18. There is no evidence that Tesco has expressed any interest in operating from or to Howbury Park. They are currently delivering rail freight to the east of London to Barking, Tilbury and Purfleet. It was accepted by

⁹³ see table 3 at p.21 of CD/2.2.

⁹⁴ CD/4.9 page 24.

⁹⁵ CD/5.2 at 15.102.

⁹⁶ see CD/4.9 at para 3.2.

⁹⁷ see p.7 of APP/RAIL/4.

Mr Gallop that the route to Howbury Park would be pathed on a different part of the London network. It could not therefore be an extension to any of the existing Tesco paths.

- 7.4.19. Other retailers have been slower adopters of rail than Tesco. We get a sense of why from Appendix I of APP/RAIL/2. The concerns recorded there are not just about a lack of facilities but emphasise (a) the need for flexibility; and, (b) a desire for rail freight to be cost competitive with road use (see for example Marks & Spencer: *'more flexible timetables for train departures'*, *'more government grants or support to make rail cheaper or cost neutral to road'*; Asda: *'more timely and versatile services'* and *'reduced cost of rail services to make it more competitive against road'*).
- 7.4.20. So the critical issues raised by potential customers include concerns about cost and the need for operational flexibility. The emphasis on operational flexibility chimes with the points made by Mr Goldney in para 6.18 of GLA/RG/01 (see *'disadvantages'*).
- 7.4.21. As discussed further below:
- a. This proposal performs badly so far as operational flexibility is concerned; and,
 - b. Rail does not currently compete with road in economic terms.
- 7.4.22. There is a complete absence of any evidence from any retailers that they would be committed to or even interested in operating from Howbury Park.
- 7.4.23. Paragraph 4.6.6 of APP/RAIL/1 identifies distribution facilities in reasonable proximity to Howbury Park operated by Asda, Ocado and Sainsbury's. Yet on the evidence, there is no support expressed by any of these retailers; or any other retailers or any retail trade representative organisation.
- 7.4.24. The evidence of support for the scheme put forward by the appellant is limited (see Appendices A-D of APP/RAIL/2).
- a. The letter from GB Railfreight⁹⁸ identifies a need to deliver close to London and confirms the importance of cost to customers.
 - b. The letter of support from Maritime Transport Limited (Appendix B) lacks any meaningful detail.
 - c. The same is also true of the letter of support from the campaigning representative body the Rail Freight Group (Appendix C). It flags up the support for the delivery by rail into central London. Yet there is nothing tangible at all to suggest that this would be a realistic proposition if Howbury Park became operational.
 - d. The appellant stresses the support of Viridor (Appendix D) but at the Inquiry it was clear that the way in which *'spare capacity'* could be utilised to *'carry [waste] materials as backload'* had not been explored at all. Mr Gallop confirmed that this would need to be to a

⁹⁸ APP/RAIL/2 appendix A.

port such as Felixstowe. Therefore, there is no indication on the evidence that this could assist in respect of the 71% of domestic intermodal traffic that the application is projected to cater for.

- 7.4.25. There is nothing tangible put forward by the Appellant as to where the demand for the facility would in practice come from. In evidence in chief (XC) Mr Gallop asserted that Howbury Park would 'find its market'.
- 7.4.26. Such optimism is a commendable quality to possess if, like Mr Gallop, your role is to be a champion of rail freight. However, when making critical land use decisions, which would involve the permanent loss of Green Belt land, the MOL submits that it is necessary to look more critically at what the evidence suggests.
- 7.4.27. That takes us back to the 2 issues flagged by the retailers namely cost and flexibility.

Market need-cost

- 7.4.28. As to cost, Mr Goldney puts forward an analysis of the relative cost of rail against road freight⁹⁹. He explains the relative lack of flexibility in rail use and the importance of grant support which is not guaranteed. He concludes that in financial terms rail is more expensive and less flexible than road. This was based on an assumption that a train could carry 37 containers. In light of Mr Gallop's evidence that, depending on the type of wagon used, a 560 metre train may comprise between 28 and 32 wagons (plus a locomotive)¹⁰⁰, the economic case for rail is even less compelling¹⁰¹.
- 7.4.29. The MOL supports the social and environmental benefits of transferring freight to rail. But at this stage of the analysis, the question is: what degree of assurance can the decision maker have that the modal shift will in fact be delivered if this facility (which is capable of being used by road only based operation) is opened? The lack of an economic case for rail (and the positive evidence that this is something which matters to retailers) weigh against the decision maker being satisfied that a modal shift will in fact be delivered.
- 7.4.30. The appellant's evidence is strangely silent on economics. Mr Gallop's rebuttal contains a single paragraph¹⁰². That asserts that the matter was discussed at the last appeal. When the cross reference to CD/5.2 at 15.121-2 is followed up that reveals the last Inspector took it on trust that there was 'credible research to establish the demand'. It is important however to remember that those forecasts look at 'unconstrained' demand. The delivery of modal shift in the present case begs the question whether there will in fact be take up of the facility by rail users. The evidence suggests that economics are part of the real world decision making of potential operators. Mr Goldney has explained in detail why he has concerns that the case for rail does not compete well with road in commercial terms. The appellant has not answered that case. Cost is a real

⁹⁹ see section 6 at p.56 of GLA/RG/1; as clarified in GLA/RG/6.

¹⁰⁰ INQ/72 para 2.1.6.

¹⁰¹ see GLA/RG/09 at para 1.1.4 as explained by Mr Goldney in his oral evidence on 17 September 2018.

¹⁰² see APP/RAIL/4 at 2.4.1 (p.21).

world constraint that will impact on the take up of the facility. There is much to lose if this facility does not deliver modal shift, such as the unjustified loss of Green Belt¹⁰³ and the adverse effects of additional trip generation if the predicted modal shift does not materialise.

Market need-flexibility

- 7.4.31. Then there is the issue of flexibility. The constraints on access/departing the site and the network constraints (see below) are factors which tend strongly against the facility providing the operational flexibility that potential operators would seek. There are also a series of constraints which tend against operational flexibility.
- a. The proposal is based around a single shared intermodal facility. No operator will be able to have exclusive control of its own operations. This contrasts with the position on the ground at DIRFT where Tesco have control of their own operations.
 - b. The apron size is fixed and comparatively small.
 - c. No reception sidings are proposed. The site does not have the ability to hold more than 2 trains at any given time (each of which would need to be split assuming that they are over 450m in length). As Mr Goldney put it, when reflecting on limited pathing opportunities from the site¹⁰⁴, departure and arrival slots have to be hardwired into the timetable.
 - d. The facility will have to operate with a peak hours cap on HGV movements applying to the whole of the site – permitting only 32 movements (for example. 16 movements in and 16 movements out) during the am peak¹⁰⁵. A booking system is proposed in the *Freight Management Plan*. This will impact on operational flexibility and will impact on early morning arrivals. For example, if it takes 5 hrs to unload a train, HGV movements associated with a train arriving in the early morning, at say 04:00 hrs, may conflict with the cap, as acknowledged by Mr Gallop in cross-examination. Furthermore, there is no precedent of a SRFI facility operating with a cap on HGV movements, as confirmed in cross-examination by Mr Findlay and Mr Gallop. The operational implications of this have not been thought through at all by the appellant. The evidence showed that there had been no joined up thinking about the operational implications of the HGV restrictions.
 - e. It is also contemplated that in the frequently occurring abnormal highway events, there may be the need to hold HGVs on site. Mr Findlay asserted the ability to hold over 100 HGVs on site. Yet it appeared that no operational consideration had been given as to how this might work. The illustrative plan of where such vehicles might be parked attached to APP/RAIL/7 at appendix D raised more questions

¹⁰³ see CD/5.2 at para 15.178.

¹⁰⁴ Examination in chief of Mr Goldney, 17 September 2018, with reference to INQ/2 and APP/RAIL/6 Appendix I- 'Mr Kapur's analysis'.

¹⁰⁵ see APP/TRAN/1 at 4.4.1.

than it answers. The small apron area is asserted to be the main area in which this emergency HGV holding can take place. Yet this will cut across the operations of loading and unloading trains which are going to be time critical given the assertions now advanced that this can be achieved in times faster than the 5 hours which Mr Goldney considers is realistic (see CD/1.25 at para 4.7.8 – rail report produced by Mr Gallop had indicated that full length trains would take up to 6 hours to process; GLA/RG/01 at pages 9-10 concurring that 5 hours is an appropriate estimate; yet now in APP/RAIL/6 at page 15 it is being asserted that trains can be processed in 4 hours¹⁰⁶). Mr Gallop's shifting position on the issue of unloading train times revealed how little thought has been given to the practicalities of unloading trains given the many and various constraints which apply at this site.

- 7.4.32. On 26 September 2018 INQ/106, a technical note on HGV parking, was submitted. This appears to be the document referred to in paragraph 14.5.5 of the TMP to support the position that 100 HGVs could be parked within the intermodal facility. Figure 4 on page 5 shows 100 spaces right in the centre of the apron. It is impossible to see how efficient operations could co-exist there. Analysis at paragraph 1.4.1 indicates that the experience relied upon was DIRFT, *'HGV drivers will tend to arrive close to the scheduled delivery or collection time for the trains and /or containers so as to avoid unproductive down time, with most inbound HGVs being processed in under 30 minutes'*. That is a long way away from what would be possible at the appeals site if the highway network is shut down. It shows a lack of joined up thinking regarding operational constraints. That matters as the evidence indicates that operational flexibility is critical to potential customers¹⁰⁷.
- 7.4.33. The upshot of this discussion is that the proposal is particularly unsuitable for providing the flexibility in operations which retailers have identified as a practical aspiration for shifting from road to rail.
- 7.4.34. The MOL is sceptical that this proposal will appeal to rail users in the manner claimed. As identified, it does not secure any level of rail use. It is suitable for 'road only' based operators. The MOL is accordingly concerned that it will not deliver the modal shift claimed. It also appears to be common ground that it will not achieve any significant modal shift of freight movements into central London by rail¹⁰⁸.
- 7.4.35. The submissions above have concentrated on the position in respect of domestic intermodal traffic as this makes up 71% of the projected traffic.

¹⁰⁶ INQ/54 para 3.3.4. (Inspector's note: This reference is associated with a 560 metre train (28 containers), whereas CD/1.25 para 4.7.8 relates to full-length trains of 775 metres taking 6 hrs. GLA/RG/01 estimate of 5 hrs is based on 37 containers and using his method of calculation, I calculate that 28 containers would equate to 4.4 hrs).

¹⁰⁷ Para 7.4.19.

¹⁰⁸ (Inspector's note: In cross-examination of Mr Gallop, it was put to him it is not part of the appellant's case that there would be a rail route from the appeals site onwards into London. He responded, with reference to page 29 of CD/1.25, that some conventional wagon and express freight traffic travels into London and, although it represents a small element of freight traffic, it could be considered in the future.)

However, the position in respect of potential Channel Tunnel traffic is that the route is unattractive¹⁰⁹.

- 7.4.36. The route to and from Southampton is also unattractive and would not support a daily cycle of more than 1 return journey in a 24 hour period¹¹⁰.

Rail access issues

- 7.4.37. The MoL's concerns that the proposed development would be ill equipped to deliver modal shift are heightened by the rail accessibility issues which have been canvassed in detail at the Inquiry.
- 7.4.38. The site is located in a particularly difficult location within the busy South London network. The local junction arrangements are complex. In effect 3 parallel lines interconnect adjacent to the proposed entrance to the facility. Pathing across South London is "very difficult" (as Mr Goldney explained) given congestion issues and junction constraints. Access into and out of site (which involves crossing multiple lines) is even more difficult and has not been adequately assessed by the Appellant (or Network Rail on the material that has been made available to the Inquiry).

Junction occupation whitespace requirements to access or depart from the site

- 7.4.39. The primary method of accessing/departing the site will use the Barnehurst branch¹¹¹. This involves crossing the up and down lines of the North Kent lines at Crayford Creek Junction¹¹².
- 7.4.40. Paragraph 5.4.6 of the Intermodality Rail Report, November 2015 (IRR), which was submitted in support of the planning applications and in relation to which Mr Gallop was the author¹¹³, recognises that 8-10 minutes of whitespace would be required in the working timetable for a train to arrive or depart from the site. This allowance includes the time taken for a 565 metre freight train (586 metre train including the locomotive) to cross the junctions (from the controlling signal west of Perry Street Fork Junction through to clearing the main line connection at Slade Green Depot) and appropriate headways.
- 7.4.41. Mr Goldney's analysis suggests that this figure may be an under-estimate to some extent (see (a) para 5.24 of GLA/RG/01 which suggested 11 minutes whitespace requirements for arriving trains and 11½ minutes whitespace requirements for departing trains and (b) his further analysis at GLA/RG/09 at 2.1.5 which indicates junctions crossing times of 7½ minutes inbound to which 5½ -6 minutes headway is added to make 12½-13 minutes whitespace requirement inbound and 4½ minutes outbound to which 5½-6 minutes headway is added to make a whitespace requirement of 11-11½ minutes for departing trains).

¹⁰⁹ see CD/1.25 at 4.6.7 and the observations of GLA/RG/01 at pp.51-3.

¹¹⁰ the test set for viability by GB Railfreight at App A of APP/RAIL/2; see RG's observations at p.8-9 of GLA/RG/04.

¹¹¹ see 5.4.5 of CD/1.25 and INQ/54 APP/RAIL/6 para 3.2.3.

¹¹² see the schematic diagrams at p.3 of GLA/RG/08-INQ/24.

¹¹³ CD/1.25 page 2 and confirmed in cross-examination of Mr Gallop.

- 7.4.42. For present purposes (as explored in cross-examination with Mr Gallop), let's leave those differences to one side and proceed on the basis that there is a degree of corroboration between the appellant's estimates in its IRR and Mr Goldney's analysis.
- 7.4.43. The Appellant technical rail evidence to the Inquiry has come forward in the following stages:
- a. Mr Gallop's Intermodality Rail Report, November 2015, which identified that 8-10 minutes of whitespace would be required in the working timetable for a train to arrive or depart from the site¹¹⁴.
 - b. Mr Gallop's proof of evidence¹¹⁵ was silent on technical access issues.
 - c. Mr Gallop's rebuttal¹¹⁶ – pages 17-19; responded to Mr Goldney's analysis by referring to the 1½ -6 minutes timings referred to by Network Rail (2.3.28 and 2.3.3) without acknowledging (a) that these figures exclude headways (as accepted in cross-examination by Mr Gallop) and (b) that the lower end of these figures is absurd – it assumes a junction speed of 25 mph. As Mr Goldney put it, 1½ minutes is an '*amazing thing for Network Rail to say*' (i.e. amazingly improbable, not least as it assumes a speed of 25 mph, notwithstanding that the track speed limits for trains crossing Crayford Creek Junction are 15-20 mph¹¹⁷).
 - d. APP/RAIL/5¹¹⁸ which was submitted by Mr Gallop to the Inquiry after Mr Goldney had given his evidence. It was abandoned shortly afterwards on the grounds that it was not accurate¹¹⁹.
 - e. APP/RAIL/6¹²⁰ paras 3.2.7-3.2.10, focussing only on the time needed to cross Crayford Creek Junction, estimated to be 2 minutes, and then adding headway/junction margins, indicated that 6-8 minutes of whitespace would be required. It also introduced for the first time a timetable analysis undertaken by Mr Kapur, Head of Capacity Planning at GB Railfreight, which purported to show how time within the timetable was available for crossing times (analysed by Mr Gallop in that document).
 - f. APP/RAIL/7 (September 2018) included some acknowledgement by Mr Gallop of the force of some points made by Mr Goldney in GLA/RG/09 in respect of junction crossing times for accessing and departing from the site. It suggested time required to cross Crayford Creek Junction would be: 2 minutes for inbound trains; and, 2.5

¹¹⁴ CD/1.25 para 5.4.6.

¹¹⁵ APP/RAIL/1.

¹¹⁶ APP/RAIL/4.

¹¹⁷ CD/1.25 figure 15 page 34.

¹¹⁸ INQ/41 submitted on 3 July 2018.

¹¹⁹ Mr Gallop's response to Inspector's question.

¹²⁰ INQ/54 submitted on 24 July 2018.

minutes for outbound trains¹²¹. It did not contain any reworking of the timetable analysis that had been undertaken by Mr Kapur.

- 7.4.44. The MOL does not challenge the skill and expertise of Mr Kapur in analysing the timetable to identify available slots. It is safe to proceed on the basis that the best available expert, Mr Kapur, has analysed the timetable to see what is possible in this congested part of the network. That said, Mr Kapur's analysis does come with a significant health warning that it does not catch scheduled movements to and from the depot, as Mr Gallop acknowledged in cross-examination. But for now let's leave that additional constraint on potential capacity to one side.
- 7.4.45. So to recap where we are:
- a. The appellant's analysis in its rail report¹²² suggests a whitespace requirement of 8-10 minutes to access or depart the site from the Barnehurst branch (the agreed main access/departure route);
 - b. The appellant has deployed the best available expert to interrogate the timetable to look at available whitespace to meet the requirements; and,
 - c. His work comes with the health warning that it does not catch movements into the depot which would be an additional constraint but we are leaving that additional constraint out of the equation for now.
- 7.4.46. So what does Mr Kapur's exercise show? Mr Kapur's results are at APP/RAIL/6 Appendix I¹²³. If we look at what available opportunities there are in the timetable for 8-10 of whitespace the answer is:
- a. For inbound trains the figure of 43 windows in para 3.3.3 reduces to 5 windows in the period analysed; and,
 - b. For outbound trains, the figure of 13 windows reduces to 1 (the 00.36½ slot).
- 7.4.47. Mr Gallop paired up arrival and departure opportunities shown in Appendix I, as a means of showing that it would be possible to route trains on and off the site¹²⁴. However, in light of the reduction in the number of windows identified above, none of the identified trains in appendix I work. Mr Gallop accepted that this is what the analysis shows in cross-examination. It demonstrates the correctness of Mr Goldney's conclusion at para 5.28 of GLA/RG/01 that there is no opportunity to depart a train during the day. This is also demonstrated when Mr Gallop's own latest analysis for departing trains (via Barnehurst) is considered. Between APP/RAIL/6 and APP/RAIL/7 his assessment of the time taken physically to cross the junction departing increased from 2 minutes to 2 minutes 42 seconds (as a

¹²¹ INQ/72 Para 2.2.28 (Inspector's note: application of junction margin or headway allowance would be dependent on the movement of trains immediately ahead or behind the Howbury Park train, INQ/54 paras 3.2.9-3.2.10).

¹²² CD/1.25 at para 5.4.6.

¹²³ as summarised in para 3.3.3 of APP/RAIL/6.

¹²⁴ INQ/54 para 3.3.4 and Appendix I.

result of taking on board an error in his analysis that had been identified by RG – see 2.2.4 of APP/RAIL/7; revised timing in APP/RAIL/7 appendix E). So his crossing time is 2:42 minutes to which headways have to be added. There is disagreement about whether it is legitimate to round the crossing time down to 2 ½ minutes and there is some debate about whether total headways should be 5 ½ minutes or 6 minutes (i.e. 3½ + 2 or 3½ + 2½). Let's assume both of those points in Mr Gallop's favour for now. That makes the whitespace requirement 8 minutes for departing trains (2 ½ + 5½ (3½ + 2) combined headways) (as put to him and accepted in cross-examination).

- 7.4.48. So back to Mr Kapur's analysis in Appendix I of APP/RAIL/6, the critical question is where are the opportunities to depart a train that needs 8 minutes whitespace? The answer is there are none during the day; just the solitary 0036½ train. Once again, this shows that Mr Goldney was correct in his assessment at para 5.28 of GLA/RG/01 that there are no opportunities to depart trains during the day.
- 7.4.49. Mr Gallop's claim in para 3.3.8 of APP/RAIL/6 that Mr Kapur's analysis shows that 'within less than half of a 24-hour period windows exist within the current timetable to allow multiple trains to get through the door to and from Howbury Park' is wrong in just about every way that it is possible to be wrong:
- a. First, as above, it does no such thing. In fact, it proves the MOL's case that it is not possible to depart trains; and,
 - b. Second, the reference to 'less than half of a 24-hour period' is very misleading in that:
 - i. As the footnote on page 17 of APP/RAIL/6 shows, it focussed on the available opportunities in the intra peak period (05:00-07:00; 09:30—14:30; 19:00-01:00). As Mr Gallop accepted in cross-examination, these are the key periods to focus enquires on.
 - ii. Second, Network Rail's recorded position is that 'we do not generally path freight trains across London during the morning or evening peaks'; p.24 (last paragraph) of CD/1.6.
 - iii. Third, Mr Kapur's exercise (Appendix I of APP/RAIL/6) did in fact straddle the whole peak period and some of the slots identified did cut into peak periods to a degree.
 - iv. Fourth, the decision to exclude opportunities from 0100-0500 reflects Network Rail's apparent concern about the conflict in this period with engineering works during the night time period (as indicated on p.4 of INQ/3 (second bullet point)); albeit that Mr Goldney considers that these restrictions are less significant in that they occur every third week¹²⁵.

¹²⁵ see para 5.68 of GLA/RG/01.

Pathing difficulties

- 7.4.50. There has been no attempt by the appellant to match up any analysis of the whitespace requirements for getting into/out of the site with the considerable difficulties in finding paths across the congested and complex route across London. The MoL's position is that Mr Goldney is correct to characterise the necessary exercise as being combining a very difficult thing (pathing across London) with an impossible thing (finding sufficient whitespace gaps to get into the site). There is also force in Mr Hobbs' more colourful assessment that: *'the stars would need to align in a particularly improbable way to get freight in'*.
- 7.4.51. The only Network Rail train pathing study before the Inquiry, which provides an indication of the basis for Network Rail's consultation responses, is INQ/3 – the draft Network Rail *GRIP 2 Report Part 2 – Timetable analysis*¹²⁶. This is a profoundly unsatisfactory document for a number of reasons:
- a. It is on its face a draft;
 - b. It is on its face incomplete. We have Part 2: Timetable analysis. Where is part 1? What does it say?;
 - c. GRIP (Governance for Railway Investment Projects) is Network Rail's internal project management process. Mr Gallop indicated in his evidence in chief that the purpose of Network Rail's GRIP 2 stage is to establish whether a feasible solution can be found. We found out in Mr Gallop's oral evidence (in answer to the Inspector's question) that the GRIP 2 process has not in fact been completed, but rather has been put on hold for now. He indicated that the basis of the appellant's service agreement with Network Rail was that Network Rail would complete a feasibility report, with the expectation of then continuing to GRIP 3 (option assessment). However, Mr Gallop's understanding is that Network Rail still has work left to do at GRIP 2 to finalise their thoughts and so the report provided is in draft, without the level of detail the appellant would have expected;
 - d. The report indicates that consideration has been given to the availability of train paths between the main stabling yard at Wembley and Crayford Creek Junction. However, the associated data sheets contained within the report indicate that the train length considered was 342 metres. Mr Goldney is and remains concerned that this study tested the wrong train length and therefore would not have picked up on junction occupation complications of pathing a 565 metre train on the network and the potential associated need for greater headway allowances. The explanation given orally by Mr Gallop, that the reference to a 342 metre train results from an automatically generated software output but that a 775 metre train was considered, is question begging. In email correspondence between Network Rail

¹²⁶ (Inspector's note: Mr Gallop has confirmed in oral evidence that this is the only GRIP study he has seen. For LBB, Mr Kiely confirmed that this was the GRIP report before LBB when it considered the planning application and is the document referred to in the INQ/25 emails between Network Rail and LBB.)

and LBB (Thomas Caine/Martin Able dated 23 November 2016 in INQ/25) reference is made to para 2.4 of the timetable study to back this up. No document supplied to the Inquiry matches that reference or explains the discrepancy in train length in a satisfactory way. This position has not changed following the production of an email from Mr Bates of Network Rail, dated 26 September 2018 (INQ/99);

- e. The study assumes the use of an uncharacteristically powerful and rarely used class 70 locomotive;
- f. The study only analyses the position to Crayford Creek Junction, as Mr Goldney put it 'to the door' of the site not 'through the door', clear of the main line¹²⁷. Mr Gallop accepted that this was so in cross-examination. Mr Gallop's contention that it would not be possible for the pathing software used by Network Rail to path trains through the door, due an absence of existing rail infrastructure within the appeals site, is not accepted. It could have been better pathed to an identified point in the Slade Green depot as a better proxy – see, for example, signalling point SGNT&RSMD (App B, p.8 of GAL/RG/02); and,
- g. The Wembley-Crayford Creek Junction study is critically dependant on routes via Hither Green (see para 5.64 of GLA/RG/01; this is especially an issue for all of the daytime arrival paths). The Hither Green path is not one which offers tenable access opportunities into the site¹²⁸. The severing in the study of the issue of pathing (solvable but very difficult) from whitespace requirements to access the site (impossible) means that this study does not accurately reflect the sum of the constraints that face the proposed facility.

Longer trains would lead to greater constraints

- 7.4.52. It is also appropriate to contemplate (as Mr Goldney explained in answer to the Inspector's questions on 17 September 2018) that the requirements for whitespace would increase if we contemplate the manoeuvre across Crayford Creek Junction of a 775 metre train.

Whether the ability to 'flex' provides reasonable assurance

- 7.4.53. The appellant's answer to the inability to get trains into and out of site and through London is that the timetable can be 'flexed'. It contends that any exercise based on the current timetable is of limited utility. What matters, it is said, is the availability of space in an as yet unplanned future timetable that cannot reasonably be anticipated at the present time. Seductively presented as it was, this claim needs to be treated with very great care.

¹²⁷ see p.6 of GLA/RG/06.

¹²⁸ (Inspector's note: Mr Goldney conceded in cross-examination that trains up to 700 metres in length could enter and leave the site from the south via Hither Green, making use of the Slade Green Depot carriage sidings and headshunt, although he had reservations about the potential impact on Depot operations. See INQ/14 and 24 for further details).

- 7.4.54. The reality is that the passenger timetable has shown enduring stability. Recent changes are the exception to a period of great stability¹²⁹. The recent changes associated with Thameslink altered the destinations of trains rather than their slots (e.g. Thameslink trains now running through to Rainham). The reality is that this is a heavily congested area of London – described by Mr Goldney in his oral evidence as ‘South London’s tube’. There is very little slack in the system throughout the day. As Mr Goldney explained in re-examination on 17 September 2018, there is inter-dependency of services based on ‘decades of refinement’. Furthermore, he maintained that the restrictions which exist in the current timetable are a good proxy for the constraints that will exist in any future timetable. The complexity of making alterations stems from very constrained junctions, rolling stock constraints, congestion at critical junctions (for example Lewisham) and the demands at the London termini. The time taken in manoeuvring a slow and long freight train across multiple junctions during the day creates the need for gaps in services which will disrupt the rhythm of the passenger timetable even if all goes well. Mr Reynolds’ analogy was with turning right across very busy traffic. It is very difficult. If things go wrong, then the delays that will ensue will be significant given the difficulties lack of flexibility in the network.
- 7.4.55. Mr Goldney’s clock face analysis¹³⁰ illustrates the timetabling difficulties. The key point is that the whitespace requirements to access/depart from the site would fill a significant portion of the time within a notional quarter hour of the timetable. The knock on effects of this will be that passenger services in the other three quarters of the timetable will become bunched up and irregular. As Mr Goldney explained, Mr Warren’s cross examination of this exercise was based on the incorrect premise that the unused capacity was available in a single block and so passenger services could be effortlessly shifted around. This was a flawed literal analysis of what was intended to be a notional representation of how significant the demands of the freight train on the timetable are in a part of the network characterised by: multiple recurring passenger services; critical junctions; and terminal constraints, such as platform availability and turnaround requirements at London termini. The implications of flexing and rescheduling to accommodate the required block of time needed to get into and out of the site would adversely affect the passenger services on which this part of London is critically dependent¹³¹.
- 7.4.56. No comfort can be drawn from the examples of Crossrail freight trains and the BP trains, which Mr Gallop relies upon. These are examples which are solely concerned with pathing not the combined difficulties of pathing and achieving a particularly difficult site access. The Crossrail trains benefited from an exceptional degree of political will that the project’s waste would be dealt with by rail. The BP trains have encountered very considerable pathing difficulties as Mr Goldney explained.

¹²⁹ As Mr Goldney explained in Re X on 17 September 2018 and also as emphasised by Mr Reynolds in his knowledgeable explanation of timetabling restrictions in the area.

¹³⁰ GLA/RG/09 at p.13.

¹³¹ see Mr Goldney’s conclusion at 2.3.11 to 2.3.13 of GLA/RG/09.

Interface with depot movements

- 7.4.57. There is also the critical issue of how the operation of the site would interface with the use of Slade Green depot. The Appellant refers to the fact that Southeastern's franchise is due to end soon. But this is a red herring. The depot is a critical facility to the network and can reasonably be expected to remain operation whoever is operating the franchise. The critical issue is the interaction of departures and arrivals with the much used headshunt. The issues raised by this are real. There is also evidence that Mr Goldney's concern regarding conflict with the depot are in fact shared by Southeastern as reflected in their email to Councillor Borella (INQ/58) which states: 'We explained that we use the head shunt 24/7 every day, and at least 6 times an hour and have made clear that the proposals would need to make provision for an additional head shunt'.
- 7.4.58. There is a considerable lack of clarity as to what Network Rail's position is in respect of the potential conflict between the depot and the proposal. Their comments to the LBB indicate that '*a design solution has been identified which would not only provide Howbury Park with a suitable main line access, but would equip Southeastern Trains (SET) with an enhanced 12-car headshunt siding, replacing the constrained 10-car siding currently operated and avoid any internal SET depot movements conflicts with those to and from Howbury Park*¹³².
- 7.4.59. So what is this design solution and how will it be secured? Extraordinarily, nobody knows. Mr Gallop confirmed in cross-examination that he did not know. It was not even clear that Network Rail had done the work to convert the solution into a design.
- 7.4.60. Mr Gallop is left resorting to advancing a case which is based on a gloss on what Network Rail in fact say by claiming that this design solution is not a pre-requisite for the operation of Howbury Park but just a win/win 'synergy' identified by Network Rail. Unfortunately for the appellant, that is not what the evidence suggests. The evidence suggests that movements into and out of the depot are a very relevant constraint and that the potential conflict between the Howbury Park freight facility needs to be addressed and secured in order that the competing interests can be protected. Mr Goldney's opinion, as stated in re-examination¹³³, was that a second access would be required to resolve the conflict between appeals site and depot traffic.
- 7.4.61. The appellant's case to the Inquiry invites the Secretary of State and the Inspector to shut their eyes to this conflict and assume that it will all be resolved in a way that the planning system need not concern itself with.
- 7.4.62. The MOL invites the planning decision maker to adopt a more cautious approach. The stakes are too high on this part of the network to permit movements which could conflict with passenger services and/or disrupt a facility which provides essential facilities for passenger services.

¹³² see CD/1.6 at p.21.

¹³³ 20 July 2018.

- 7.4.63. As was apparent in the cross-examination of Mr Gallop by Mr Mould (on behalf of Dartford Borough Council), there is no clarity as to the project (i.e. its physical parameters) that Network Rail contend is a viable proposition. This is a manifestly unsatisfactory position for the Inquiry to be left in. That fundamental lack of clarity remains following the late introduction of Mr Bates' email dated 26 September 2018 (INQ/99).
- 7.4.64. The position in short is:
- a. We do not know what the 'project' is that Network Rail apparently support.
 - b. We have had no explanation of the basis on which they consider it to be a 'viable prospect'¹³⁴.
 - c. There is no indication that access issues into the site have been assessed by Network Rail on a tenable basis.
 - d. The draft timetable study (INQ/3) raises more questions than it answers. It is critically dependent on pathing via Hither Green (which is not a realistic proposition given the access constraints involved in accessing that path)¹³⁵.
 - e. There can be no comfort that the conflict with the depot will be resolved unless and until the design solution is articulated and secured. This remains the case following the late introduction of Mr Bates' email dated 26 September 2018 (INQ/99).
 - f. The stakes are high. If things go wrong there will be severe and detrimental impact on passenger services which are critical to this part of London and expressly protected in the MoL's guidance as referred to above.

Differences of detail

- 7.4.65. The MoL's concerns as expressed above exist even if the points of detail on access timing that were canvassed between Mr Gallop and Mr Goldney are assumed in Mr Gallop's favour. That said, Mr Goldney's analysis of the times to access the site are to be preferred. The material differences are identified at para 2.1.2 of GLA/RG/09 and were explained by Mr Goldney in his oral evidence on 17 September 2018. The points of difference are:
- a. It is a more robust assumption to plan on the basis that arriving freight trains may need to accelerate from a stationary position at the preceding signal.
 - b. Mr Gallop's acceleration assumptions are unsafe as they are based on the use of a class 70 locomotive which is atypical for freight. He accepted that there are over 500 class 66 locomotives in use and only 17 (out of an existing stock of 27) class 70 locomotives¹³⁶.

¹³⁴ see Mr Mould's XX of Mr Gallop in respect of the quotation on p.54 of Mr Gallop's proof of evidence (APP/RAIL/1).

¹³⁵ See footnote to para 7.4.51g.

¹³⁶ see third bullet point on p.5 of GLA/RG/09 – figures accepted by Mr Gallop in XX.

To base acceleration assumptions on a class 70 locomotive as Mr Gallop has done is unsound and does not represent 'a suitably representative train accelerating from a static position', his own test¹³⁷.

- c. Mr Goldney's approach to driver behaviour when braking is more realistic than the sudden braking assumed by Mr Gallop.
 - d. Mr Goldney's assumption as to the speed at which in practice a train could be reversed (i.e. at a modest walking pace; not at 5mph) is more prudent.
 - e. Given the complexities of the manoeuvres required, Mr Goldney's suggestion of 10% contingency is prudent. It is wrong to assert, as Mr Gallop does, that this involves double counting of time covered by the headway allowance.
- 7.4.66. These detailed points suggest that the time required to get into and out of the site will be greater than has been assumed in above submissions.

Whether modal shift will be delivered

- 7.4.67. Drawing the above threads together, the MOL has very real concerns that the proposal will not deliver modal shift. The factors which influence this concern are:
- a. Unlike the position in 2007, the proposal is configured in a way that makes it perfectly suitable for entirely road based traffic.
 - b. The proposal assumes take up from domestic intermodal – a sector which is currently underperforming.
 - c. There is no tangible evidence of market demand.
 - d. The evidence suggests that rail remains more expensive than road freight.
 - e. In operational terms, the multiuser intermodal facility is unlikely to provide the flexibility that retailers identify they seek.
 - f. This lack of flexibility is compounded by the highway constraints which impose operational restrictions which are unprecedented for SRFIs.
 - g. Rail access for a freight train into and out of the site is impossible on the current timetable.
 - h. Pathing across London is very difficult and we do not have an equivalent level of assurance to that which existed last time when Network Rail had effectively guaranteed 3 paths.
 - i. No attempt has been made to assess access difficulties and pathing difficulties together (other than by Mr Goldney who opines that it

¹³⁷ APP/RAIL/6 page12 (second bullet point).

seeks to combine an impossible thing with a *'really really difficult thing'*).

- j. Given the intensity of passenger services, there is not a sufficient level of assurance that timetables can be flexed to secure that the facility will be operational without adversely affecting passenger services. The constraints of the current timetable are a realistic proxy for what can be expected in the future¹³⁸.
- k. Network Rail's support for the project gives rise to many questions and no answers.
- l. There is a real danger of conflict with the depot.
- m. The proposal for which planning permission is sought does not secure any level of rail use or the design solution that Network Rail apparently thinks will avoid conflict with the depot.

Alternatives

- 7.4.68. At the last Inquiry, the Inspector concluded that there were no alternative sites for a SRFI 'in the arc around south and east London'¹³⁹.
- 7.4.69. The detail of the search area associated with the current appeals proposal is set out in CD/1.26 and assesses the same area as was considered on the last occasion¹⁴⁰. The Transport Assessment¹⁴¹ makes clear that the same wide area has been assumed as constituting the *'market area'*. The majority of HGV vehicles serving this market are assumed to travel to and from destinations north of the Dartford Crossing¹⁴². That this was so was confirmed in cross-examination by Mr Findlay, Mr Gallop and Mr Scanlon.
- 7.4.70. The Appellant's case that very special circumstances exist to outweigh the harm to the Green Belt and other harm has been formulated on the assertion that (like last time) no alternatives exist within the catchment area assessed¹⁴³.
- 7.4.71. Mr Scanlon purported to examine whether there is any alternative site within the catchment with the *'realistic potential to function as a SRFI'*¹⁴⁴.
- 7.4.72. The MOL agrees that this is the relevant question to ask when the loss of the Green Belt is at stake. Very special circumstances are unlikely to exist unless it can be demonstrated that alternatives have been properly explored before being discounted.

¹³⁸ Re-examination of Mr Goldney 17 September 2018.

¹³⁹ CD/5.2 at 15.177.

¹⁴⁰ as confirmed in para 7.151 of Mr Scanlon's proof of evidence APP/PLAN/1.

¹⁴¹ CD/1.27.

¹⁴² CD/1.27 see p.64 of the Transport Assessment; appendix E1 to the Environmental Statement.

¹⁴³ see paras 2.6, 2.8, 7.3, 7.24, 7.85 and 7.154 of APP/PLAN/1 and CD/1.27 Volume 1-Non-Technical Summary para 3.13 *'The Howbury Park site has been identified as the only site within the catchment that has the potential to operate as an SRFI.'*

¹⁴⁴ see para 7.154 of APP/PLAN/1.

- 7.4.73. However, it became clear beyond any doubt that the appellant's alternatives sites evaluation failed to examine the potential of London Gateway to function as a SRFI within the catchment area to serve the London market. This was effectively conceded by Mr Scanlon in cross-examination.
- 7.4.74. In the Colnbrook SRFI decision¹⁴⁵, the Inspector found:
- a. London Gateway is capable of fulfilling a SRFI role¹⁴⁶.
 - b. It was proximate to the London market¹⁴⁷.
 - c. There was an uneven distribution of potential SRFI sites around London; with the deficiency being to the west of London; not the east¹⁴⁸.
- 7.4.75. Although the Colnbrook Inspector regarded London Gateway as '*primarily a port development*' and described the capacity to develop a '*subsidiary SRFI*'; she was using the term subsidiary by comparison with the huge primary size of the port. She was not in any way suggesting that the potential for London Gateway as a SRFI was subsidiary to or less than Howbury Park (as Mr Scanlon accepted in cross-examination).
- 7.4.76. The clear position is that London Gateway has realistic potential to function as a SRFI. Given this, it is clear that the only case advanced on alternatives in the appellant's written evidence, that there are no alternatives sites within the catchment with realistic potential to function as a SRFI, collapses. The appellant was left in the uncomfortable position of having to formulate an entirely new position on alternatives in its oral evidence by asserting that there is room for both sites to co-exist and be complementary to each other. However, that case is unpersuasive given that the appellant has closed its eyes to the potential of London Gateway rather than fairly examined it.
- 7.4.77. The scale of the potential of London Gateway is apparent from the agreed statement in respect of London Gateway (INQ/39). There is strong policy support for the development of a SRFI at London Gateway¹⁴⁹. The potential exists within the port (where the rail head is already operation) and within the area outside the ports parameters where the construction of a common user siding is already permitted¹⁵⁰. It will be required to be provided when the floorspace exceeds 400,000 m² of development¹⁵¹. The overall scheme of London Gateway is encapsulated in the description of 'London Gateway Rail Services' set out on the second page of INQ/39 as follows:

'The intermodal rail terminals will serve the Port, while a Common User Siding (CUS) will be built on the eastern side of the Logistics Park.

¹⁴⁵ CD/5.4.

¹⁴⁶ CD/5.4 at 12.107; and for more detail of the basis on why this is so see CD/5.4 at 8.40.

¹⁴⁷ CD/5.4 at 12.105.

¹⁴⁸ CD/5.4 at 12.107.

¹⁴⁹ see p.1 of the INQ/39 and also CD/1.26 at 5.15

¹⁵⁰ see appendix 7 of INQ/39.

¹⁵¹ see fourth bullet point on p.2 of INQ/39.

Additionally building plots to the south of Logistics Park shall incorporate directly served rail sidings. The aim of these rail facilities will be to provide efficient movement of goods between the Port or Logistics Park and other rail freight centres within the UK. The rail terminals in the Port will primarily handle deepsea containers' (emphasis added)

- 7.4.78. The potential of this permitted floorspace is considerable as Mr Birch explained in his evidence (and see GLA/IB/01 at para 44).
- 7.4.79. Mr Scanlon accepted (in cross-examination) that there are no planning obstacles to the delivery of the rail facility on the logistics park.
- 7.4.80. London Gateway is a brownfield site. No loss of the Green Belt is required for it to achieve the potential set out in INQ/39.
- 7.4.81. There are indications as explained by Mr Birch that London Gateway (as its name suggests!) is seeking to compete with the East Midlands facility and marketing itself as the gateway to London (as Mr Goldney explained).
- 7.4.82. It was conceded by Mr Gallop and Mr Scanlon that there was no prospect of direct trains to Howbury Park from London Gateway. The route across London from the East Midlands (or other potential facilities north of London) is fundamentally different. To that extent, it is clear that the facility would be a rival serving the market to the east of London rather than a facility which would provide opportunities from linked trips. As Mr Birch put it, London Gateway and Howbury Park would broadly serve the same sector of London albeit on different sides of the river.
- 7.4.83. It was conceded by Mr Findlay and Mr Scanlon that the opening of the Lower Thames Crossing would make the road connections of London Gateway to destinations south of the Thames easier by road.
- 7.4.84. The evidence suggests that the rail links (a) from London Gateway to the East Midlands (and beyond) and (b) for crossing London are much easier than that which would exist from Howbury Park. They were described as 'night and day' by Mr Birch in his oral evidence. The superiority of the rail links to and from London Gateway when compared to Howbury Park was also stressed by Mr Goldney. The network serving London Gateway has also been earmarked by Network Rail for further capacity upgrades¹⁵². This is significant given the emphasis in the Colnbrook's Inspector's analysis on the quality of provision¹⁵³. The superiority of London Gateway's rail access was stressed by Mr Birch in his oral evidence (and see GLA/IB/01 at para 46).
- 7.4.85. Rather than acknowledge this considerable potential to operate as a SRFI, the appellant's evidence was as follows:

¹⁵² see CD/4.11 at table 1, p.5; p.28 (note at end of table), p.41 (Gospel Oak to Barking extension), p.46 (cross London flows) and p.71 (cross London freight flows – a plan which confirms how much easier the route across London is and that it has been earmarked for further upgrades) .

¹⁵³ see CD/5.4 at 12.92 on the quality of SRFI provision and in NSPNN on the need for 'effective connections' by rail – see CD/2.2 at 2.56.

- a. In his rebuttal Mr Gallop asserted that alternatives had been addressed at the last appeal¹⁵⁴. As Mr Gallop accepted in cross-examination, that is factually wrong. The potential of London Gateway as a SRFI was not analysed at the last Inquiry because the alternative sites assessment discounted it for the reasons which are clearly set out at CD/1.26 at p52 (see section entitled '*previous supplementary ASA (2006) conclusion*'). There has been a significant change of circumstances which Mr Gallop has not sufficiently acknowledged in his written evidence. The same mistake is made in the appellant's opening statement to the Inquiry which asserts wrongly that 'nothing material has changed' in respect of alternatives since 2007¹⁵⁵.
 - b. As above, Mr Scanlon discounted the 'realistic potential' of London Gateway to 'function as a SRFI' rather than fairly analyse it in his written evidence¹⁵⁶.
- 7.4.86. The flaw in the appellant's thinking can be traced back to CD/1.26 at page 21. The analysis there focuses on the fact that the primary function of London Gateway is as a container port and draws upon the recognition in para 2.48 of the NPSNN¹⁵⁷ that London Gateway will '*increase the need for SRFI development*'. The appellant's focus on this contribution that London Gateway might make to the need for a wider network of SRFIs across the country misses the critical point for present purposes that the SRFI function proximate to the London market represents an alternative within the catchment that needs to be considered in the evaluation of whether the need case for a facility in the Green Belt at Howbury Park is sufficiently compelling. In cross-examination, Mr Scanlon fairly accepted that page 21 of CD/1.26 failed to address the potential of an SRFI at London Gateway to compete with Howbury Park. As Mr Birch explained¹⁵⁸, the key issue is the implications for local need of '800,000 m²' of rail connected warehousing. That question has been ignored rather than addressed by the appellant.
- 7.4.87. In summary in respect of alternatives:
- a. The position is markedly different at this Inquiry than it was in 2007.
 - b. The appellant's analysis completely fails to acknowledge that difference.
 - c. London Gateway plainly has potential to function as a SRFI within the catchment for alternatives and proximate to the London market.
 - d. It offers some significant advantages over Howbury Park given that it does not involve any loss of the Green Belt and its rail links are superior to Howbury Park in terms of access into the facility and pathing across London.

¹⁵⁴ see 2.5.1, 2.5.6 and 3.3.1 of APP/RAIL/4.

¹⁵⁵ see INQ/4 at para 9.

¹⁵⁶ see APP/PLAN/1 at 7.154.

¹⁵⁷ CD/2.2.

¹⁵⁸ GLA/IB/01 paras 44 and 54.

Other benefits

7.4.88. The third plank of the appellant's case identifies socio-economic and ecological benefits of the scheme. The MOL would welcome the delivery of such benefits if the price for their delivery was not the loss of Green Belt land which needs to be given the 'strongest protection'. As Mr Bell put it, care must be given in weighing 'generic benefits of any large scale development' in the Green Belt balance, if the Green Belt is to be given meaningful protection. Like the Inspector and Secretary of State's approach at the last appeal, it is submitted that these benefits ought not to weigh heavily as very special circumstances. In respect of the ecological benefits, these are essentially expectations of the relevant Development Plan policies, as established by Mr Mould's cross-examination of Mr Goodwin. The economic aspirations of the *Bexley Riverside Opportunity Area* and the *Bexley Core Strategy, 2012* can and should be delivered without development on Green Belt land.

7.5. Overview and conclusions

7.5.1. London's Green Belt requires the strongest protection.

7.5.2. This proposal is inappropriate development which causes substantial harm to the Green Belt.

7.5.3. The need for an expanded network of SRFIs is acknowledged. However, there is no specific quantified need. There are reasons to doubt how attractive this facility will be given the poor rail links. As designed it will be attractive to road users and the MOL has very real concerns that it may not deliver modal shift to rail. The MOL is also very concerned that the proposal may adversely affect passenger services which are critical to London's economy.

7.5.4. The very special circumstances case advanced by the Appellant asserts that there is no alternative. This is manifestly incorrect. The potential of London Gateway to function as a SRFI serving the market has been wrongly ignored. This should be fatal to the proposition that the loss of Green Belt land is justified.

7.5.5. The other claimed benefits do not justify the permanent loss of Green Belt land.

7.5.6. The proposal is contrary to the development plan given its conflict with Green Belt policy and failure to adhere to the expectations for SRFI developments in Policy 6.15 of the *London Plan*.

7.5.7. The MOL invites the Secretary of State to protect London's Green Belt and reject the proposed development.

8. THE CASE FOR DARTFORD BOROUGH COUNCIL (DBC)

8.1. Background

- 8.1.1. The starting point is the common acceptance by all parties that the proposed development would constitute inappropriate development in the Green Belt. In order to succeed on appeal and to secure planning permission, the appellant is accordingly required to demonstrate that there are very special circumstances that clearly outweigh the harm to the Green Belt by reason of inappropriateness and any other harm and so justify the grant of planning permission.
- 8.1.2. This core policy for the control of development within the Green Belt is consistent across all levels of policy including in the *revised National Planning Policy Framework, 2018* (revised Framework) and the statutory Development Plan. See paragraphs 143/144 of the revised Framework, Policy CS13 of the Dartford Core Strategy 2011(DCS)¹⁵⁹ and Policy DP22 of the DBC Development Policies Plan 2017 (DDPP)¹⁶⁰. Policy DP22 states that the assessment of any other harm to the Green Belt will use a number of criteria, including '*(b) the impact of an increase in activity and disturbance resulting from the development, both on and off the site, including traffic movement and parking, light pollution and noise*'; and '*(d) the impact on visual amenity or character taking into account the extent of screening required*'. It is agreed that these assessment criteria also embrace the impact of the proposed development on air quality¹⁶¹.
- 8.1.3. It is common ground that the core policy for the control of development within the Green Belt is not qualified in its application to proposals for SRFIs. See paragraphs 5.172 and 5.178 of the NPSNN¹⁶², which assert the special protection given to Green Belt land notwithstanding that promoters of SRFIs may find that the only viable sites for meeting the need for regional SRFIs are on Green Belt land¹⁶³. It is common ground that the NPSNN is a material consideration in these appeals.
- 8.1.4. Paragraphs 2.53 to 2.58 of the NPSNN state the Government's current policy for addressing the need for SRFIs. At the national level of assessment, paragraph 2.56 of the NPSNN identifies a compelling need for an expanded network of SRFIs. Paragraph 2.58 of the NPSNN states that there is a particular challenge in expanding rail freight interchanges serving London and the South East. It is meeting that challenge that we understand to lie at the heart of the appellant's case for very special circumstances justifying the grant of planning permission in these appeals.
- 8.1.5. Conversely, there is no current development plan policy that identifies a need for SRFI development in Dartford. It is not in dispute that the Dartford Core Strategy 2011 provides for the growth of the key logistics, transport and distribution sector in Dartford as part of the spatial pattern

¹⁵⁹ CD3.17 p.66

¹⁶⁰ CD3.18 p.103

¹⁶¹ Xx Scanlon

¹⁶² CD2.2

¹⁶³ Ibid. paragraph 5.172

of development identified in policy CS1¹⁶⁴. Policy CS8 and paragraph 3.13 of the Core Strategy provide for economic change in this key sector within the priority area focus set by policy CS1¹⁶⁵. There is no suggestion that Green Belt release may be contemplated to meet Dartford's needs in this sector of employment development. Nor does the appellant assert that the proposed development would meet any identified local need in Dartford for employment development.

- 8.1.6. It is also notable that the appeal is not supported by any attempt to quantify the likely level of need or take up of the facilities contemplated by the appeals scheme's illustrative masterplan. There is no economic forecast in evidence which seeks to analyse and demonstrate a site specific need case. Mr Gallop, in oral evidence in chief, offered the expectation that 'no doubt Howbury Park will find its market'. The appellant's case is thus founded essentially upon the policy support for expanded SRFI provision stated in paragraphs 2.53 to 2.58 of the NPS.
- 8.1.7. Planning permission was granted on appeal for the development of a SRFI at the appeals site in December 2007¹⁶⁶. In his report¹⁶⁷, the inspector stated his 'firm view' that the 'only factor of any significant weight in favour of granting the proposal stems from the Government's policy desire to increase the proportion of freight carried by rail'¹⁶⁸. He concluded¹⁶⁹ that the ability of the then proposal to meet part of London's need for three or four SRFIs was 'the only consideration of significance', it being accepted that 'if planning permission is not granted for this proposal, the evidence is that there is no other site to the south and east of London that could meet the need...a material consideration of very considerable weight and one which...constitutes very special circumstances that clearly outweigh the harm to the Green Belt and all other harm that I have identified'. The Secretary of State agreed with that analysis¹⁷⁰.
- 8.1.8. That was how the 'difficult' balance¹⁷¹ was drawn in favour of granting planning permission in the circumstances that existed in 2007. It is DBC's submission that the balance has swung, and swung clearly, against the grant of planning permission in 2018. In summary:
- a) The presumption remains strongly against inappropriate development in the Green Belt both under the revised Framework, the NPSNN notwithstanding the SRFI challenge in London and the Southeast (paragraph 2.58) and the Development Plan;
 - b) The harm caused by the proposed development to the openness and purposes of the Green Belt remains as extensive as was the case in 2007. The appeals scheme would be a massive development encroaching into the open countryside in an area of Green Belt that is

¹⁶⁴ CD3.17 page 24

¹⁶⁵ CD3.17 pages 53/54.

¹⁶⁶ CD5.3

¹⁶⁷ CD5.2

¹⁶⁸ CD5.2 paragraph 15.173

¹⁶⁹ Ibid paragraph 15.185

¹⁷⁰ CD5.3 paragraph 31

¹⁷¹ CD5.2 paragraph 15.183; CD/5.3 paragraph 31

sensitive to change and would materially weaken the separation between Slade Green/Bexley and Dartford. It would have substantial impacts on the openness of the Green Belt that cannot be mitigated¹⁷²;

- c) The impact of the appeals scheme on the landscape and its visual impact would be at least as harmful as was the case in 2007. Although the proposed design of the development has changed and notwithstanding the proposed mitigation, the landscape and visual impact would remain¹⁷³, particularly as it affects views from locations within Dartford to the south and east;
- d) The 'other harm' caused by the appeals scheme is no longer confined, as it was in 2007, to the landscape and visual impacts of the proposed development¹⁷⁴. In 2018, evaluation of the local impact of the proposed development must also weigh in the balance the considerable potential for operation of the SRFI to exacerbate existing congested conditions on the highway network in the locality of the appeals site and through Dartford Town Centre. Added to that, the concomitant potential of the operation of the SRFI to contribute to worsening air quality due to the congested highway network in the locality of the appeals site. Neither of these impacts were a cause for concern for DBC in 2007¹⁷⁵. They lie at the heart of the evidence presented by DBC to this Inquiry in support of its case against the proposed development in 2018¹⁷⁶;
- e) On the 'positive' side of the balance, policy no longer supports a quantified need for three or four SRFIs to serve London and the South East. The NPSNN now articulates a compelling need nationally for 'an expanded network of SRFIs'¹⁷⁷ and a particular challenge in expanding RFI's serving London and the South East¹⁷⁸;
- f) Since 2007, Radlett has achieved planning consent (CD5.5). In 2016, the SIFE proposal at Colnbrook was refused planning consent (CD5.4). In her report on the SIFE proposal, the Inspector succinctly articulated the way in which national policy has moved on since the publication of the NPSNN in 2014¹⁷⁹. In particular, she states that *'the attention is on quality of provision, not necessarily maximising the number [of] schemes'*. She adds that the rail freight forecasts in the NPSNN alone¹⁸⁰ *'do not provide sufficient fine grain detail to allow site specific need cases to be identified'*;

¹⁷² Scott XX, agreeing that the conclusions drawn by the Inspector in 2007 (CD5.2 paragraphs 15.5 to 15.9, 15.156 and 15.170) apply to the appeals scheme

¹⁷³ Scott XX agreeing that conclusions drawn by the Inspector in 2007 (CD5.2 paragraphs 15.12 to 15.21, 156-160 and 15.170) apply to the appeals scheme.

¹⁷⁴ CD5.2 paragraph 15.170

¹⁷⁵ CD5.2 paragraphs 15.30 and 15.52

¹⁷⁶ Peter Caneparo – highways – DBC/W2/1; Richard Maggs – air quality – DBC/W3/1

¹⁷⁷ CD2.2 paragraph 2.56

¹⁷⁸ CD2.2 paragraph 2.58

¹⁷⁹ CD5.4 inspector's report paragraphs 12.91-12.92

¹⁸⁰ CD2.2 paragraph 2.50 table 3

- g) A central qualitative requirement of a SRFI proposal is the need for 'effective connections' for road and rail, which is said in paragraph 2.56 of the NPSNN to be a limiting factor in the identification of viable alternative sites. See also paragraph 4.85 of the NPSNN, which states that '*adequate links to the rail and road networks are essential*'. This cuts both ways: the more constrained the road and/or rail connections to the posited site, the greater the significance of an alternative location which is seen to have the realistic potential to function as a SRFI;
- h) DBC's principal local objection to the appeals scheme is the fact that the proposed road connections to the facility, albeit forming part of the primary route network, are in fact already prone to frequent disruption which results in serious and prolonged traffic congestion and delays in Dartford Town Centre. That is an existing situation that the introduction of the substantial levels of SRFI traffic is likely to exacerbate, by encouraging more drivers to reassign or divert away from the primary route network and onto local roads through the Town Centre, an effect that cannot be fully mitigated. That, in a nutshell, is the advice that DBC has received from the local highway authority, Kent County Council¹⁸¹. Following cross-examination of Mr Findlay, we do not understand the reliability of KCC's assessment to be in serious dispute. Both KCC and Highways England see the solution to the root cause of the problem, i.e. the frequent breakdown of the Dartford Crossing, the A282 and the build-up of traffic on the surrounding roads, to lie in the provision of a new Thames Crossing to provide a substantial additional slug of strategic road space – the Lower Thames Crossing ('LTC'). Interventions designed to improve the performance of the existing road network, junctions 1A and 1B as well as the Crossing Approach, are judged to have been of only limited value. Furthermore, future planned interventions there are likely to only be able to smooth flows for existing traffic, as opposed to building in any significant new capacity to cater for future growth/demand. Yet were the LTC to come to fruition in future years, it would appear to offer the prospect of benefits to road users, including HGV traffic, on both sides of the River across the arc around the south and east of London;
- i) In 2007, there was no dispute that, Barking not being a realistic candidate for a SRFI, there were no viable alternative sites for SRFI development in the arc around south and east London – a matter to which the inspector and the Secretary of State attached considerable weight¹⁸². In 2018, the evidence before this Inquiry points to the opposite conclusion. This issue is central to the GLA's case, but it is no longer in dispute in evidence that London Gateway does now have the 'realistic potential' to function as a SRFI¹⁸³. Moreover, the realistic potential of London Gateway for domestic intermodal SRFI

¹⁸¹ DBC/W2/2 Appendix PC1 pages 11-13

¹⁸² CD/5.2 paragraph 15.177; CD/5.3 paragraph 22

¹⁸³ Scanlon APP/PLAN/1 paragraph 7.154 states the test and he agreed in XX (GLA) that London Gateway fulfils that test

development (the principal market for the operation of the appeals scheme advocated by Mr Gallop¹⁸⁴), is as least implicitly recognised in paragraph 2.48 of the NPS. In 2016, the SIFE/Colnbrook inspector recognised that realistic potential in the context of the NPS¹⁸⁵. The current planning policy position lends clear support to the conclusion that London Gateway has the credentials for such SRFI development¹⁸⁶; and,

- j) The presence or absence of a viable alternative site to meet the challenge of SRFI provision to the south and east of London remains as much a 'material consideration of very considerable weight' to the merits of the development of the appeals site for a SRFI as was the case in 2007¹⁸⁷. That is because the force of Green Belt policy is undiminished; and the weight to be given to the appeals site's ability to contribute towards the challenge of meeting London and the South East's need for expanded SRFI capacity must plainly be measured against the existence of another realistic potential source of supply, which would avoid the otherwise inescapable and considerable harm that results from the appeals scheme. Having heard the evidence before the Inquiry, DBC submits that London Gateway appears to have the realistic potential to fulfil that role.

8.1.9. It is essentially for these reasons that we invite the Secretary of State to draw the balance against the grant of planning permission in the present appeals: that which was, on balance, justified in 2007 is no longer justified in 2018. The strong and enduring protection vouchsafed to the Green Belt in the revised Framework, the NPSNN and the Development Plan ought now to prevail.

8.1.10. We now turn in a little more detail to summarise the position, in light of the evidence heard at the Inquiry, on the four matters that we identified in opening DBC's case on the appeal:

- a) The impact of the appeals scheme on the Green Belt;
- b) The impact of the appeals scheme on the local road network;
- c) The impact on the appeals scheme on local air quality; and,
- d) Whether the evidence put forward by the appellant justifies its contention that very special circumstances exist, which clearly outweigh the harm to the Green Belt by reason of inappropriateness and other harm (including traffic and air quality impacts) so as to justify the grant of planning permission for the appeals scheme.

¹⁸⁴ Gallop APP/RAIL/1 paragraphs 2.2.17-18 and 5.2.12; and XX (DBC)

¹⁸⁵ CD5.4 paragraph 12.105

¹⁸⁶ INQ 39 – Agreed statement

¹⁸⁷ CD5.2 paragraph 15.185

8.2. The Impact on the Green Belt

- 8.2.1. Paragraph 133 of the NPPF states that 'The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.'
- 8.2.2. Paragraph 134 of the revised Framework identifies the five purposes served by the Green Belt:
- a) *To check the unrestricted sprawl of large built-up areas;*
 - b) *To prevent neighbouring towns merging into one another;*
 - c) *To assist in safeguarding the countryside from encroachment;*
 - d) *To preserve the setting and special character of historic towns; and,*
 - e) *To assist in urban regeneration, by encouraging the recycling of derelict and other urban land.*
- 8.2.3. Revised Framework policy is reflected in DDPP Policy DP22 on Green Belt. Policy CS13 of the DCS also seeks to protect the Green Belt and notes that with the significant growth in population expected through planned development, there will be an increased demand for open space.
- 8.2.4. It is not in dispute the proposed development would constitute inappropriate development in the Green Belt, that it would cause substantial harm to openness, and that it would conflict with one of the purposes of including land within the Green Belt by encroaching on the countryside.
- 8.2.5. Mr Bell gave evidence as to the nature and quality of that area of the Green Belt comprising the appeals site and its surroundings. His evidence¹⁸⁸ is that the appeals site forms part of a sensitive and strategic part of the Metropolitan Green Belt. It has the spatial function of separating not only Dartford and Bexley, but also Greater London and Kent.
- 8.2.6. The Green Belt here is a predominantly flat, low-lying landscape, covered with low-level flora. It is an area enjoyed by recreational users, who are able to experience the area as a relatively remote, urban countryside environment, notwithstanding that it is situated in a highly urbanised area. A public right of way runs under the proposed access route and viaduct. Walkers are able to enjoy the views across the marshes and such views can be experienced from the A206/Bob Dunn Way.
- 8.2.7. This is an important and sensitive part of the Green Belt, which should be kept permanently open. Mr Scanlon explained during cross-examination that he believed that the previous appellant, Prologis, had made representations seeking the release of the Howbury Park site from the Green Belt. If indeed such submissions were made, it is unsurprising that they were not accepted.

¹⁸⁸ DBC/W1/1 – paragraphs 5.9-5.33

- 8.2.8. Mr Bell explained in evidence how the appeals scheme, which will be a large group of industrial buildings with extensive plant and machinery and will require an access route and viaduct in Dartford's area, would cause harm both spatially and visually to the openness of the Green Belt. The effect of this access route and viaduct on openness would be exacerbated by its use for the operation of the proposed SRFI.
- 8.2.9. Mr Bell's judgement is that, in addition to encroaching into the countryside, the appeals scheme would also undermine two further purposes of including land within the Green Belt:
- a) To check the unrestricted sprawl of large-built-up areas; and,
 - b) To prevent neighbouring towns from merging into one another.
- 8.2.10. The proposed development would constitute a substantial extension of the built up area of Bexley into open land to the east. Although a narrow gap would remain, it would be significantly diminished as a result of the presence and operation of a vast logistics and distribution facility, whose physical and functional presence would in fact create a continuum of development from the access roundabout at Bob Dunn Way to the existing urban edge in Bexley to the northwest¹⁸⁹. Mr Scott correctly acknowledged that the protection afforded to the Green Belt should not be diminished by virtue of the fact that the area of Green Belt land for development is situated next to an existing industrial area.
- 8.2.11. The Green Belt at the appeals site and its surroundings fulfils its essential spatial function, of maintaining openness. The massive development proposed by the appeals scheme would undermine that function and thereby give rise to significant harm.
- 8.2.12. In cross-examination, Mr Scott accepted that, although there had been some changes, mainly related to the illustrative layout of the development, the appeals scheme is not materially different from the 2007 scheme:
- a) The appeals scheme proposes the same essential form of development as the 2007 appeals scheme, namely a large-scale intermodal freight facility with associated structural screening arrangements;
 - b) In terms of its scale and height, the two schemes are broadly similar;
 - c) The landscaping scheme proposed is based upon the scheme put forward as part of the previous application¹⁹⁰; and,
 - d) The appeals site itself remains in the same physical and functional form as it was in 2007, forming part of a wide area of Green Belt with an estuarine landscape, characterised by open grassland and used for grazing.
- 8.2.13. Mr Scott agreed in cross-examination that there were no material differences between the proposed development and the 2007 scheme in

¹⁸⁹ Mr Bell XX

¹⁹⁰ APP/LANVIS/1 paragraph 4.2

terms of their impact on the landscape and their visual impact. The findings and conclusions of the Inspector in relation to the 2007 scheme¹⁹¹ therefore are also applicable to the proposed development. So judged, the proposed development may confidently be found to result in substantial harm both to the openness of the Green Belt, to undermine the purposes of including land in the Green Belt, and to give rise to significant and adverse landscape and visual impacts.

8.3. **The impact on the local road network**

Existing conditions

- 8.3.1. Mr Caneparo's evidence addresses the current traffic conditions in and around Dartford Town Centre and the impacts that the appeals scheme is likely to have on the local road network. The present situation is that the local and strategic road network¹⁹² is frequently subject to periods of congestion, disruption and delay due to the occurrence of incidents or high traffic flows at the Dartford Crossing and its approach along the M25. An incident at the Dartford Crossing can have a significant and prolonged adverse impact on the operation of the local and strategic road network in Dartford. The effect of such congestion and delay on the local and strategic road network is that traffic 'reassigns' throughout the local road network, with drivers 'rat running' - diverting to try to avoid queues and taking an alternative route to their destination through the Town Centre and its approach roads.
- 8.3.2. Mr Caneparo demonstrated the various 'pinch points' on the local road network¹⁹³. He emphasised in evidence in chief that the key constraint is the Dartford Crossing itself, which is frequently over capacity. When there is an 'incident' at the Dartford Crossing, such as a lane closure, or accident, this leads to tailbacks on the A282 Tunnel Approach. This in turn leads to a significant amount of congestion and delay on the A206 Bob Dunn Way eastbound towards junction 1A, because vehicles struggle to get onto the strategic road network. The TA¹⁹⁴ shows junction 1A operating at high levels of saturation during peak times of day. In the opposite direction westbound on Bob Dunn Way, the 'pinch point' is at the Craymill Rail Bridge, immediately to the west of the roundabout junction of the A206 and the A2026, the A206 (Thames Road). Here the road narrows to one lane in each direction (two lanes in total) as it passes through the Craymill Rail Bridge. This, he observed, results in congestion, queues and delay, which encourages drivers to reassign through the Town Centre¹⁹⁵.

¹⁹¹ CD5.2 paragraphs 15.12-21

¹⁹² See section 2.2-the highway network.

¹⁹³ INQ/21.

¹⁹⁴ CD/1.27.

¹⁹⁵ DBC/W2/2 Appendix PC9 is an image of the resulting traffic conditions in Dartford Town Centre that Mr Caneparo describes.

- 8.3.3. These conditions are a matter of record, as Mr Caneparo demonstrates in his proof¹⁹⁶. KCC's *Local Transport Plan 4: Delivering Growth without Gridlock (2016-2031)* (LTP4)¹⁹⁷ states:

The major interchange of two strategic traffic routes, the M25 and the A2(T) is located within Dartford. Both of these routes, but particularly the A282 (Dartford Crossing), suffer from congestion at peak times and when there are traffic incidents...Incidents at the Dartford Crossing and its approach are frequent and severe.

- 8.3.4. Highways England's *Lower Thames Crossing Route Consultation 2016*¹⁹⁸ states:

The existing crossing is at capacity for much of the time and is one of the least reliable sections of the UK's strategic road network of motorways and major roads. Road users regularly experience delays and unreliable journeys and, when there are incidents, the congestion at the crossing quickly causes congestion on local roads and arterial roads in and out of London.

- 8.3.5. There is evidence before the Inquiry that such traffic congestion and disruption, and its impacts on the convenience of highway users, air quality, and quality of life for residents in Dartford, is considered to be an unwelcome but inescapable fact of life in the local community. See, for example, the oral evidence of Mr Bell and of the Leader of the Council, Councillor Kite. Councillor Kite spoke of the problem taking up a significant proportion of the Council's strategic planning resources and efforts. He spoke of continuous efforts to 'shave off' traffic congestion, and the frustration when such marginal gains were reversed by unplanned development. Mr Bell stated in cross-examination that he could '*sit and talk for a long time and talk about traffic in Dartford*'.
- 8.3.6. There is no real dispute about these matters. Mr Findlay acknowledged that congestion can be particularly severe on the A282 approaching the Dartford Crossing and that this was a well-known and common occurrence. He further agreed that this made it difficult for traffic to get on and off the strategic road network and that this can result in drivers seeking alternative routes by 'rat running' along local roads through the Dartford Town Centre.
- 8.3.7. Essentially, both Mr Caneparo and Mr Findlay (in cross-examination) accepted the careful and detailed analysis of the existing conditions on the local road network set out in the local highway authority, KCC's, very thorough consultation response to DBC on the appeals scheme¹⁹⁹. Taken with the commentary in the LTP²⁰⁰, the key points are:

¹⁹⁶ DBC/W2/1 Paragraphs 4.38-4.44

¹⁹⁷ CD/4.4 paragraph 4.39 page 32

¹⁹⁸ DBC/W2/2 Appendix PC6 page 6 para 4.

¹⁹⁹ DBC/W2/2 Appendix PC1 – KCC dated 4 April 2017

²⁰⁰ CD/4.14

- a) KCC supports modal shift to rail (including Howbury Park) if it (a) doesn't adversely affect peak rail passenger services and (b) impacts on the local road network are properly mitigated;
- b) High levels of development are taking place in Dartford with the result that parts of the local road network are reaching capacity;
- c) The Dartford Crossing/A282 suffers from congestion at two distinct times: (a) at peak times and (b) when there are traffic incidents;
- d) The consequence of these two categories of events is (a) congestion spreads out into the Town and (b) the performance of the local road network reduces over a very wide area;
- e) Incidents at Dartford Crossing are frequent and severe; and result in rat running that causes further congestion. The problem of congestion and rat running through the Town Centre is pre-dominantly caused by such incidents;
- f) Dartford Crossing has been closed partially or completely for an average of 300 times per year, for a period of 30 minutes or more. It can take 3 to 5 hours for the roads to clear following a closure;
- g) Measures to improve the performance of the Dartford Crossing have been mixed in their effectiveness – KCC has made numerous changes to signal timings to try to smooth flows – but the problems lies in the tailing back of traffic on the M25 which causes exit blocking at junction 1A and other junctions to the south. What is needed is a major new slug of capacity to relieve the M25 and the existing river crossing – such as the Lower Thames Crossing.

Impact of the proposals

- 8.3.8. The modelling work submitted in support of the appeals scheme does show that during normal functioning of local highway conditions, the network has capacity to absorb the traffic generated by operation of the development, albeit that the HE cap is considered a necessary constraint on the operation of the appeals scheme during peak hours in order to provide a degree of resilience at junction 1A and junction 1B. Even during normal conditions, the introduction of the scheme traffic through junction 1A results in degrees of saturation at peak times that approach full saturation²⁰¹.
- 8.3.9. '*Normal conditions*', however, are not the focus of DBC's concern. That focus is upon the propensity of the additional traffic generated by the operation of the proposed development to add to the congestion and

²⁰¹ CD/1.27 paragraphs 9.11.3-4 and Table 9-14 '*During the AM peak period the addition of the development related trips increases the maximum DoS from 89.8% to 93.8% with the maximum DoS remaining constant during the PM peak*' (96.7% PM Peak). Table 9-15 PM Peak on the southbound off-slip increase from 86.4% baseline to 96.0%. CD/1.30 para 3.5.4 '*...the impact of the Howbury Park development is negligible, with the maximum degree of saturation (DoS) during the PM peak hour increasing from 97.0% to 98.3% on the western roundabout and reducing slightly on the eastern roundabout from 108.9% to 108.5%.*' (Inspector's note: in answer to my question, Mr Findlay confirmed that a Degree of Saturation (DoS) of 90% is the point at which the Practical Reserve Capacity has fallen to zero).

delays that already result from the incidents that frequently affect the road network in and around Dartford Town Centre.

- 8.3.10. It is not in dispute that the latter point, which is the crux of DBC's traffic objection, must be addressed primarily as a matter of judgement. It requires a qualitative rather than a quantitative assessment. As Mr Findlay acknowledges in his proof and confirmed in cross-examination, the modelling work cannot provide a reliable assessment of the performance of the road network under the conditions that result from the kind of frequent incidents that disrupt the strategic and local road network through Dartford²⁰². That was also the position as recorded in the TA itself²⁰³.
- 8.3.11. TfL has 5 strategic highway assignment models covering the London area, which are used to forecast the routes that drivers choose and the associated congestion and delay impacts. For the purposes of exploring options for a new river crossing, TfL has adapted its East London Highway Assignment Model to create a River Crossing Highway Assignment Model (RXHAM), which has a reference year of 2012 to which the model has been validated by TfL²⁰⁴. Mr Findlay exemplified the modelling limitation by explaining that the RXHAM model, to the extent that it reassigns traffic, does so by assuming a degree of foresight from a driver. The 'reassigned' route is planned from the outset of the model. However, that does not necessarily reflect driver behaviour in real life. In real life, a driver will be caught up in an incident unexpectedly. Drivers make random choices and choose random routes. Even with the aid of navigation devices, drivers do not make strictly rational decisions and will often get to the source of the congestion or delay before making a choice whether to, and if so how to, re-route. He said in cross-examination that caution should be exercised before drawing any conclusions about the traffic impacts of Howbury Park during an incident scenario from the RXHAM model. His attempt to model an incident scenario at paragraph 4.5 of APP/TRAN/1 was at best an 'indication' of the impact of an incident on the road network.
- 8.3.12. KCC's judgement, based on their long experience of the challenging conditions that often beset the local road network and the reasons that they arise, is clear. The significant increase in HGV/LGV movements associated with the operation of the proposed development will inevitably exacerbate local traffic congestion and lengthen existing traffic queues, particularly when 'incidents' occur which disrupt the flow of traffic on the approach to the Crossing and the M25 through junction 1A and junction 1B²⁰⁵. DBC relies upon that judgement and invites the Secretary of State to do so. It plainly supports the conclusion that the proposed development would give rise to other harm which should weigh in the balance in applying Green Belt policy, as summarised in paragraph 8.1.2 above.
- 8.3.13. Mr Caneparo also addressed the propensity for greater levels of traffic to divert or reassign from the A206/Bob Dunn Way/Thames Road by reason

²⁰² APP/TRAN/1 paragraphs 4.5.5, 4.5.23 and other references put in XX on this point

²⁰³ CD/1.27 paragraphs 9.13.1-3.

²⁰⁴ CD/1.27 volume 3b pages 33/34.

²⁰⁵ DBC/W2/2 Appendix PC1 pages 11-13

of the proposed access roundabout being affected by the narrowing of the A206 as it passes across the Craymill Rail Bridge to the west of the roundabout. Observation shows that this constraint can give rise to exit blocking at present caused by westbound traffic queuing back from Thames Road across the roundabout at peak times. Development traffic accessing and leaving Howbury Park, which would all access the appeals site via the Bob Dunn Way/Burnham Road/Thames Road junction and so add to existing flows, could (a) lead to reassignment of traffic away from the already congested Bob Dunn Way/A206 and (b) lengthen queues on the Bob Dunn Way/A206. This also, he suggested in evidence, raised the significant risk of worsening congestion and delays in Dartford Town Centre owing to significant reassignment of traffic.

- 8.3.14. The TA modelled the performance of the A206/A2026 roundabout, from where the site would be accessed, using ARCADY software. However, modellers were unable at the time of the TA preparation in 2015 to satisfactorily validate the peak period surveyed queues against the queues produced by the TA ARCADY model. This was due to the blocking back from Craymill Rail Bridge. In order to allow some comparison of roundabout performance with and without the appeals proposal, it was modelled on the assumption that the Craymill Rail Bridge constraint no longer existed: the results show a ratio of flow to capacity (RFC) for the roundabout above 0.85 with the development traffic²⁰⁶. However, there is no current timetable for the removal of the Craymill Rail Bridge constraint, which has been assumed by the TA²⁰⁷.
- 8.3.15. In seeking to better understand the effect of the Craymill Rail Bridge constraint on the operation of the A206/A2026 roundabout, Mr Caneparo produced an alternative site access roundabout junction model using a newer version of ARCADY (2017) than that relied upon in the TA, which introduces the ability to model the 'bottle neck on the A206 Thames Road exit from the junction. Whilst, in comparison with the 2015 observed queues from the TA, his base case model underestimates the queue on the Bob Dunn Way approach in the AM peak period (when the observed queues are highest), his queue outputs are closer to the observed in comparison with the outputs from the TA model²⁰⁸. Mr Caneparo used his alternative base case model to produce alternate models for the 2031 base case and 2031 base case plus development case (2031BCDC).²⁰⁹

²⁰⁶ CD/1.27 paragraphs 4.6.5-4.6.9 and 9.8.2. (Inspector's note: In response to my question, Mr Findlay indicated that whilst normal practice is that a RFC > 0.85 indicates that the practical capacity of a junction would be exceeded, in his view, a RFC value of 1.0 is reasonable in London, as the associated queues are likely to be acceptable due to the congested nature of the network. No evidence was provided in support of that view.)

²⁰⁷ DBC/W2/2 Appendix PC4 – email from Bexley BC dated 16 May 2018

²⁰⁸ DBC/W2/1 page 14 table 4.1.

²⁰⁹ (Inspector's note: INQ/34 and APP/TRAN/4 para 2.3.21.- On Bob Dunn Way, the 2031BCDC AM Peak model indicates that queues would increase by around 800 PCUs and delays by around 18 minutes. Mr Caneparo acknowledges that in practice, such queues would be unlikely to be realised, as vehicles would be likely to re-assign to different routes to avoid the congestion/delay at the A206/A2026 junction. However, he indicated that as there isn't a properly validated model, it is difficult to understand the future operation of the junction with and without the proposed development. He identifies that the only RXHAM model that appears to take account of the existing effect of the Craymill Rail Bridge constraint is Mr Findlay's 'sensitivity model', which suggests that, in the AM Peak, traffic passing through the junction would reduce substantially' through re-assignment, by some 1,300 pcus to around 550 pcus on the Bob Dunn Way approach.)

- 8.3.16. However, the ARCADY modelling results are unsatisfactory. Firstly, there is no current timetable for the removal of the Craymill Rail Bridge constraint, which has been assumed by the TA²¹⁰. Secondly, there is, as we submit, an unresolved debate about the correlation between observed and modelled traffic flows through the roundabout and the impact of the Craymill Rail Bridge constraint²¹¹. What may be said, however, is that the assessments point to the likelihood that the development traffic passing through the roundabout will result in a significant increase in reassignment of other traffic that would otherwise have routed through the roundabout; and that at least a substantial proportion of that traffic would be likely to divert through Dartford Town Centre²¹².
- 8.3.17. In summary, DBC invites the Secretary of State to give substantial weight to the judgement of KCC, as the local highway authority, on the likely impact of the proposed development on the local road network. Mr Caneparo shows that judgement to be well founded - the impact of the proposed development on an already congested local and strategic road network would be increased reassignment of vehicles onto the local network in and around Dartford Town Centre. Mr Caneparo's judgement was that this impact could be severe²¹³.
- 8.3.18. Dartford Core Strategy 2011 Policy CS15²¹⁴ is aimed at managing transport demand for development and advises that the successful achievement of Dartford's economic potential and the creation of cohesive and prospering communities is dependent on a good transport network. Dartford Development Policies Plan 2017 Policy DP3²¹⁵ states that development will only be permitted where it is appropriately located and makes suitable provision to minimise and manage the arising transport impacts in line with Core Strategy policies CS15 & CS16.
- 8.3.19. Notwithstanding their judgement about the *impact* of the proposed development, KCC drew back from recommending refusal on the basis that the impact was not severe and so did not meet the test for free standing refusal on highway grounds in the Framework (and see Policy DP3.2 in CD3.18). DBC took a different view on that point, as KCC acknowledged was open to them. But the overall judgement and advice of KCC that '*the residual impact of this development is likely to be characterised by additional local traffic generation and some consequent increase in congestion, which the applicant cannot fully mitigate and that may also cause a worsening in local air quality.*'²¹⁶ is a clear finding of 'other harm'. Substantial weight should be given to that other harm in the overall planning balance.

²¹⁰ DBC/W2/2 Appendix PC4 – email from Bexley BC dated 16 May 2018

²¹¹ See the detailed exchanges in xx of Caneparo and Findlay in relation to the validation results in Appendix E of CD/1.30.

²¹² DBC/W2/1 paragraph 5.36

²¹³ (Inspector's note: Regarding the appeals site roundabout, Mr Caneparo's judgement was that, as a result of growth, by 2031 queuing on the Bob Dunn Way would be likely to be severe).

²¹⁴ CD/3.17

²¹⁵ CD/3.18

²¹⁶ DBC/W2/2 Appendix PC1 page 13.

Mitigation-the Transport Management Plan

- 8.3.20. It is not in dispute that the effectiveness of the TMP is a critical factor to the judgement whether the transport impacts of operating the proposed development are acceptable. It is submitted that there remain serious doubts over the TMP's effectiveness in the light of both the evidence and the discussion of planning obligations on 25 September 2018.
- a) There is no clear evidence that further work to refine the operation of J1A is likely to achieve any significant improvement in its operation²¹⁷. We understand KCC to say that the MOVA system would not be KCC's choice (in contrast to Mr Findlay in X) and that a SCOOT system was under consideration;
 - b) The principal management tools to be deployed under the Freight Management Plan element are the HE Cap and routing restrictions which seek (a) to limit additional HGV traffic passing through junction 1A and junction 1B at peak times and (b) to confine HGV traffic to and from the proposed development to the A206 and the M25, avoiding the local roads through Dartford Town Centre;
 - c) Neither of these tools appears to have been tested in operation in relation to an existing SRFI or in a road network which displays the propensity for congestion, disruption and delay that is the case here. Mr Caneparo's account²¹⁸ of the operation of a similar regime of traffic management at Andover (the only example that is known in evidence before the Inquiry) does not give confidence that the proposed ANPR/vehicle monitoring system, a key element of the proposed traffic management regime, can be relied upon to operate effectively as a control mechanism. Evidence of very significant levels of breaches, in the region of 2000 separate incidents over a two-year period, and the high levels of penalties incurred point to the real risk that occupiers subject to such a regime will conclude that penalties are simply a business cost, and factor them into their expenditure. Although, understandably, the appellants assert that this risk will be effectively managed in the case of the proposed development, the evidence shows that realising that ambition in practice may be far from straightforward;
 - d) The degree of that risk sharpened in the light of the observations of both Highways England and KCC during the discussion on 25 September 2018. Both those highway authorities emphasised the administrative challenges involved in managing breakdowns in the vehicle monitoring system and the lack of nimbleness in resolving glitches and operational problems. The Highway Authorities may require up to 1 month notice of the need to rectify a fault before access would be granted. Yet that system is the single most critical element in the effective operation of the Freight Management Plan, since it is that system which enables the regulatory bodies to judge whether the routing controls are being complied with day to day; and,

²¹⁷ See 14.1.8.

²¹⁸ DBC/W2/1 paragraphs 5.30-5.38

e) Self-evidently, the TMP is able only to control the transport operations of the proposed development. It does not seek to and cannot to manage adverse impacts associated with the reassignment and diversion of existing or other traffic on the road network resulting from the increase in traffic flows created by the proposed development²¹⁹.

- 8.3.21. In summary, it is submitted that this complex and untested traffic management regime should be viewed with considerable scepticism. It must bear a very heavy burden of control in the context of the congested and often dysfunctional road network in which it seeks to operate. Its effective performance in practice, from Day One of operation, is critical to the appellants' own case in support of the appeals scheme. It requires, on any view, considerable operational restrictions on a complex and vast transport undertaking which plainly cut across the natural operating dynamic of that undertaking, severe peak hour traffic restrictions and a vehicle routing controls which are of questionable efficacy in practice in the case of a multi-occupancy facility. DBC invites the Secretary of State to conclude that the TMP does not give the required level of confidence that the transport impacts of operation of the proposed development on the road network in and around Dartford Town Centre are likely to be managed to an acceptable degree.
- 8.3.22. DBC maintains its argument that the section 106 agreement should spell out the key components of the TMP as minimum requirements which must be secured under any future review or edition of the TMP. This is necessary to ensure that those minimum traffic management measures which, on the appellants' case, are said to be essential to the acceptable operation of the proposed development in controlling its transport impacts, are not at risk of being adulterated through the work of the Steering Group. The requirement to secure the approval of the statutory planning and highway authorities to any subsequent review of the TMP under the aegis of the section 106 agreement is necessary to provide a further level of legal and practical assurance that those minimum requirements will remain in place and will be complied with.
- 8.3.23. In relation to DIRFT III Development Consent Obligation dated 16 December 2013²²⁰. The appellant suggested that the document submitted provides an example of steering group operation and TMP effectiveness. In fact it does the opposite and supports DBC concerns:
- a) Firstly, this document includes an express contractual obligation on the owners to procure compliance with the Travel Plan by future occupiers of the development. Plainly that obligation would be enforceable against the developers;
 - b) Secondly, the requirements of the Travel Plan are contractually bound into the section 106 agreement, by the definition of the Travel Plan in the section 106 agreement and its incorporation into the section 106 agreement as schedule 4 to the agreement;

²¹⁹ DBC/W2/1 paragraph 5.33

²²⁰ INQ/104.

c) Thirdly, the section 106 agreement does not contemplate any change by way of dilution to any of the requirements of the Travel Plan. Rather, it contemplates change to address two matters:

- a. Firstly, unforeseen traffic impacts; and,
- b. Secondly, additional highway works.

So the measures in the plan are minimum requirements and the scope of review amounts to a one way ratchet upwards.

- d) Fourthly, the role of the review group is limited principally to monitoring and reviewing the operation and performance of the Travel Plan itself. It does not extend to changing its key requirements. Any change adopted by the Review Group is confined to the MILNE envelope; and,
- e) Fifthly, the overall role of the Review Group within this document is advisory rather than executive in so far as the contents of the Plan are concerned. Any executive role is focused on implementing the Plan rather than changing it.

8.3.24. What we draw from that analysis, is that this document (the section 106 agreement and Travel Plan), if it is to be seen as a comparator for the arrangements sought to be achieved here, provides the clarity and enforceability that DBC seeks in the present case, and that it has consistently sought throughout the process.²²¹

8.3.25. DBC reluctantly signed up to the provisions set out in the agreed draft, reflecting those that were set out in the LBB agreement, but subject to making submissions about its remaining concerns.

8.3.26. DBC relies on the DIRFT III document as completely consistent with the concerns that it has put forward, so we are grateful for its introduction. Far from casting doubt on DBC's position, it actually reinforces it.

8.3.27. We would invite the Inspector, in order to assist the Secretary of State, to draw attention to these concerns and consider recommending to him that if he is minded to grant planning permission he requires the changes that DBC has put forward to be made to the section 106 agreement in order to address those matters.

8.4. **The impact on local air quality**

8.4.1. DBC has designated four Air Quality Management Areas ('AQMAS'). It is common ground that the purpose of these AQMAS is to bring about a reduction in pollution from NO₂, which results predominantly from traffic congestion.

²²¹ INQ/67.

- 8.4.2. It is common ground that the highest NO₂ concentrations in Dartford are consistently monitored in the 2 AQMAs which are the focus of DBC's objection: the A282 road link AQMA and Dartford Town Centre AQMA.
- 8.4.3. Adverse air quality impacts of the proposed development would constitute 'other harm' in the Green Belt policy balance, and in accordance with DP22.
- 8.4.4. Dr Maggs explained in his evidence the role that local authorities, such as Dartford, have to play in improving air quality on a local level in order to achieve national compliance with European Union (EU) air quality standards. The need to comply with air quality standards has become an increasing focus of attention in respect of environmental protection, health and compliance with EU legislation. Whilst Government is focusing on the national level to achieve EU Limit Value compliance, Dartford, like many local authorities with areas of poor air quality, is endeavouring to improve air quality at the local level. The two efforts are not mutually exclusive to each other and the Framework recognises that local authorities have a contribution to make in respect of assisting Government to achieve EU Limit Values, and that planning has a role to play in safeguarding local air quality through development control.
- 8.4.5. In terms of the existing air quality conditions in Dartford, Dr Maggs said, that in general, levels of NO₂ across the borough have shown improvements in the last couple of years, although a number of monitoring locations have shown increases in the levels of NO₂ and that recent improvements have not achieved compliance with the annual mean NO₂ objective of 40µg/m³, the pollutant which forms the key focus of concern.
- 8.4.6. Dr Maggs' evidence in relation to the impact of the appeals scheme was that, while it was common ground with the appellant that air quality improvements had been shown, his judgement was that the impact of the additional traffic congestion that would result from the operation of the proposed development created an uncertainty over whether that trend or improvement would continue or, instead, plateau out. This would thus slow the time period for achieving compliance with the annual mean NO₂ objective in Dartford and would have an impact on the amenity and quality of life of those living in Dartford.
- 8.4.7. The evidence of the appellant's *Air Quality Assessment* is that impacts of the scheme in 2021 are Moderate to Slight Adverse, but largely Negligible at the majority of the sensitive locations appraised in their modelling work²²². This assessment is based on the Transport Assessment. Cross-examination of Dr Tuckett-Jones accordingly focused on the limitations of that Transport Assessment as an evidence base for reliable air quality modelling– in particular, the likely impacts on air quality of periods of congestion and disruption in the road network in and around Dartford.
- 8.4.8. Dr Maggs' judgement is that the *exacerbation* of the existing congestion and delay on the local road network, leading to an increase in idling

²²² CD/1.27 volume 2 section G pages 23/24 and CD/1.30 pages 35/36.

emissions, calls into question the reliability of the appellants' traffic model based assessment of the potential air quality impacts of the appeals scheme in periods of congestion and disruption resulting from the frequent traffic incidents experienced on that road network²²³. Dr Tuckett-Jones accepted in cross-examination that it would be necessary in an air quality assessment to examine the effect of a development that not only has the propensity to add to the volume of vehicles on the network but to exacerbate periods of congestion on the road network. We understood Dr Tuckett-Jones's evidence in cross-examination to acknowledge that, in the light of Mr Findlay's evidence (paragraph 8.3.10 above), the Transport Assessment did not provide the basis upon which reliably to model the air quality effects of such traffic conditions. We also rely on the analysis put to Dr Tuckett-Jones in cross-examination on paragraphs 3.2.26-3.2.32 of her rebuttal²²⁴ showing that this gap in assessment cannot be reliably filled by recourse to the verification factor applied to the air quality modelling exercise. It follows, in our submission, that it is necessary to consider this risk as a matter of judgement²²⁵. The appellants' reliance on the modelled output based on the Transport Assessment does not allow for this risk.

- 8.4.9. Policy DP5 of CD3.18 states - *'Development will only be permitted where it does not result in unacceptable material impacts, individually or cumulatively, on neighbouring uses, the Borough's environment or public health. Particular consideration must be given to areas and subjects of potential sensitivity in the built and natural environment (including as highlighted on the Policies Map) and other policies, and other potential amenity/ safety factors such as...air and water quality, including groundwater source protection zones'*.
- 8.4.10. Policy DP3 provides that development will not be permitted where the localised residual impacts from the development on its own, or in combination with other planned developments in the area, result in severe impacts on air quality.
- 8.4.11. It is submitted that there remains a significant risk that the addition of the development traffic into the road network from the early 2020s during periods of congestion and disruption will result in increases in NO₂ emissions on local roads, including within designated AQMAs. The creation of that risk runs contrary to the tide of national and local policy and could undermine DBC's efforts to achieve local compliance with air quality standards in the quickest time possible.
- 8.5. **Whether very special circumstances exist, which clearly outweigh the harm**
- 8.5.1. In granting the 2007 planning permission, the two most important factors that were given weight by the Inspector and the Secretary of State in the previous appeal were²²⁶:

²²³ DBC/W3/1 paragraphs 7.11 and 7.20

²²⁴ APP/AQ/4

²²⁵ DBC/W3/1 paragraph 7.11 - see also the judgement of KCC at DBC/W2/2 Appendix PC1 page 13 (top)

²²⁶ CD/5.2, para 15.185 and CD/5.3, para 31.

- a) The ability of the proposal to meet part of London's need for 3 or 4 SRFIs, to which the Secretary of State afforded significant weight; and,
- b) The lack of alternative sites to meet this need, to which she afforded considerable weight.

8.5.2. We have set out our key submissions in support of DBC's case on the Green Belt planning balance in the first part of these submissions. It is necessary briefly to address some other issues that have been debated during the course of the Inquiry.

Adequate links to road and rail-paragraph 4.85 of CD/2.2

- 8.5.3. We have summarised DBC's submissions on the impact of operation of the proposed development on the road network. The GLA has taken the lead on the adequacy of the proposed connection onto the rail network, the physical and functional challenges that must be overcome in order to provide that connection and the likely limits of the operational rail capability of the proposed development given other demands on rail capacity in the Slade Green area.
- 8.5.4. We submit that paragraph 4.89 of the NPSNN does not absolve the appellant from providing sufficient evidence to give reassurance that the rail connection is able to accommodate the minimum level of train handling (4 trains per day) that policy requires of a SRFI. The policy requirements in paragraphs 4.85 and 4.89 must plainly be read together. Adequacy of rail connection between the site and the rail network is as critical a component of SRFI function as is the ability of the site itself to accommodate the required minimum train handling facilities. The distinction that Messrs Gallop and Scanlon sought to draw between the requirements of these paragraphs is unconvincing and would risk defeating the underlying policy objective of encouraging modal shift from road to rail.
- 8.5.5. In this regard, the approach of the Inspector²²⁷ in 2007 remains correct; *'Put simply, if the proposal would, for any reason, not operate as a SRFI then it should not enjoy the policy support which such proposals attract. Put another way, there is no doubt that a proposal to build road-served warehouses on open land in the Green Belt around London would not come anywhere near to constituting very special circumstances outweighing the harm to the Green Belt that would be inevitable with such a proposal'*.
- 8.5.6. It follows that the Secretary of State must consider and come to a judgement on whether the appeals scheme will in fact operate as a SRFI. We understand that the GLA will address this issue in detail in closing submissions. DBC's position is that, after hearing the evidence at the Inquiry, there is a substantial level of doubt over the physical arrangements that the appeals scheme requires in order to enable effective rail access between the railway and the site. Additionally, there is uncertainty as to whether, once such a link is provided, there will be the operational capacity to deliver the scale of rail-based operations that are

²²⁷ CD/5.2 para 15.178.

the basis for the appeals scheme. We submit that it is crucial in this context to have in mind that Howbury Park is in the Green Belt. Uncertainties in the proposed development's ability to fulfil the policy expectations for the function of a SRFI in the NPSNN go directly to diminish the weight to be given to the appellant's case, that the SRFI function provides the very special circumstances needed to justify the grant of planning permission.

- 8.5.7. In particular, there remains a lack of clarity in the position of Network Rail. Network Rail have made no direct submission to the Inquiry. The Inquiry has therefore had to proceed on the basis of Network Rail's reported consultation response to LBB and DBC. Yet those responses are conflicting, as Mr Gallop asserted²²⁸. The appellants naturally prefer the supportive response given to LBB. But there is no good reason to dismiss the email responses provided to DBC, INQ/25 in January 2016 and January 2017, the latter provided by Network Rail not only after the response to LBB (which was provided in autumn 2016²²⁹), but also following the apparently incomplete GRIP2 timetable study, INQ/3. The response to DBC is clear (email of 6 January 2017), Network Rail continues to have concerns about the proposed development. Yet neither Network Rail nor the appellants has informed the Inquiry of the nature of those concerns or whether they remain. This uncertainty adds to the weight that is due to the GLA's analysis of the likely physical and operational rail capability that would be available to the proposed development were planning permission to be granted; it fills the gap in evidence. It also lends support to the case for the tighter controls on delivery and operation that are sought in the GLA's/DBC's versions of conditions 6 and 30 and, in the case of Bexley, condition 6. Neither of the matters I have set out is resolved wholly or in part by INQ/99.

Other claimed benefits

- 8.5.8. It is submitted that the other claimed benefits of the appeals scheme should not weigh significantly in the planning balance and do not add substance to the appellant's asserted case for very special circumstances.
- a) The NPSNN makes clear²³⁰ that the applicant should show how the project has taken advantage of appropriate opportunities to conserve and enhance biodiversity and ecological conservation interests. It is a requirement of national policy that the appeals scheme should deliver ecological mitigation, including enhancements that are appropriate to and in proportion to its context and impacts on biodiversity. The Marshes Management Plan fulfils that policy requirement. Although it differs in its detail to that which was proposed in 2007, Mr Goodwin did not maintain his claim in oral evidence that it was a significant improvement on that earlier plan. It is submitted that the Plan remains a welcome element of the appeals scheme, but not one that weighs significantly in favour of the proposed development in the Green Belt balance;

²²⁸ APP/RAIL/1

²²⁹ INQ/25, see email from Guy Bates (Network Rail) to LBB dated 5 October 2016.

²³⁰ see CD/2.2 para 5.23.

- b) The contribution that SRFI development can make to modal shift and reducing CO₂ emissions is central to the Government's identification of a compelling need for such facilities: see paragraphs 2.53/54 and 2.56 of the NPSNN. It would be wrong in principle to weigh those factors in the Green Belt planning balance over and above the significance given to the ability of the proposed development to meet that compelling need. To treat CO₂ emissions savings as an additional benefit of significant weight would be 'double counting';
- c) DBC maintains the submission that the economic benefits asserted by the appellant should not attract significant weight in the Green Belt balance. It is not in dispute that there is no identified need for the proposed development to serve Dartford on economic grounds. Dartford has low unemployment. Core Strategy 2011 policies CS1 and CS7 set up a clear spatial strategy for development in Dartford to ensure future economic growth and jobs. Howbury Park is not a necessary element to the delivery of this strategy. Furthermore, there is a risk that the proposal would displace class B8 development which might otherwise come forward on non-Green Belt land²³¹. The Secretary of State is invited to take the same approach as in 2007 [CD/5.2 paragraph 15.150] and conclude that the employment benefits that would flow from the development should not weigh significantly in deciding whether planning permission should be granted.

Overall balance

- 8.5.9. DBC's submission, in the light of the evidence heard at this Inquiry, is that the appellant has not demonstrated very special circumstances to justify the grant of planning permission. The balance has shifted since 2007 in relation to the two critical considerations that tipped the case in favour of planning permission in 2007 – the ability of the proposed development to meet the identified need for SRFIs in national policy and the lack of viable alternative sites. The substantial harm to the Green Belt and other harm (landscape, visual, traffic and air quality impacts) that is likely to result from the appeals scheme is no longer clearly outweighed by those other considerations advanced by the appellants in the light of the evidence before the Inquiry. The appeals should be dismissed.

²³¹ DBC/W1/1 para 5.64.

9. THE CASES FOR OTHER OBJECTORS REPRESENTED AT THE INQUIRY

9.1. Mrs C Egan²³²(CE)

- 9.1.1. I moved to Moat Lane 22 years ago and I live opposite the fields that comprise the appeals site. I have followed the planning process since 2004. I wrote to the Council expressing my concerns in 2004, in 2006 I wrote to my Member of Parliament, in 2007 I spoke at the planning meeting and in 2015 I spoke to the planning team.
- 9.1.2. In my view, the appeals site, which I consider to be countryside, should not be touched by development, as the fields go back many centuries. The proposal would result in the loss of local Green Belt land and it would also affect the open natural outlook from properties onto the Crayford Marshes and cause a reduction in the open space for local residents' leisure time.
- 9.1.3. In and around Crayford Marshes there is an amazing amount of wildlife. The ecology of the Marshes and local farm land could be disturbed by the proposal, with serious implications for wildlife, including protected species, such as bats and water voles, birds, insects and foxes as well as wild flowers. Furthermore, the previously approved scheme, by Prologis, included reinstatement of hedgerows alongside Moat Lane, after the construction was finished. The current proposal does not. I consider that the hedgerows should be preserved for local wildlife.
- 9.1.4. Heavy rail traffic could cause vibration damage to surrounding homes. My daughter lives in Holloway and has had to have her home underpinned because of rail related vibration. Damage could also be caused by the HGVs entering the site and by on site plant and heavy machinery. There would be a great deal of mess, dust and noise around the construction site for a number of years. Construction and 24 hour operations at the site would have a detrimental impact on the everyday lives of local people. It may also have an adverse impact on the value of adjacent properties. A warehousing site with 24 hour operation could also cause light pollution, which would be a significant nuisance to wildlife and would harm local residents' health.
- 9.1.5. Local highway traffic has increased greatly over the years; causing noise and extra pollution problems on the roads. Traffic on the local dual carriageway into Slade Green, the A206, is often slow moving or jammed. It is a safety hazard even trying to cross Moat Lane, due to parked cars, which narrow the carriageway and can make it difficult for existing double decker buses to pass. Local roads would not be able to cope with heavy trucks entering and exiting the appeals site via Moat Lane.
- 9.1.6. The Marshes and fields act as a local flood defence. I am concerned that development of the appeals site may result in local roads being flooded.

²³² INQ/29.

9.2. **LA21 Traffic/Transport Forum (LA21)**²³³

- 9.2.1. The Bexley LA21Traffic/Transport Forum has around 40 members and represents the views of the membership, concerning traffic/transport matters, to the Council.
- 9.2.2. LA21 objected when a similar application was submitted by Prologis some 10 years ago. At the associated public Inquiry, those attending heard from Prologis who told the Inspector that there was an urgent need for such a development. Although LA21 acknowledges that the recession may have delayed implementation of that scheme²³⁴, since then we seem to have coped rather well without this development.

Rail

- 9.2.3. The appeal proposal involves development in the Green Belt. Special circumstances are necessary for the appeal to succeed. The special circumstance cited by the appellant is the provision of a rail freight connection.
- 9.2.4. The rail link proposed is directly across, and into, the complex passenger service network for both commuting and off peak rail travel services, with proposed freight services passing through the 2 pinch points of Crayford Creek Junction and Lewisham Junction²³⁵. Lewisham Junction is confirmed by Network Rail as being complex²³⁶.
- 9.2.5. As frequently stated by the appellant during the Inquiry, Network Rail will only determine in the future what rail services can be run, according to bids made by potential operators nearer the time²³⁷. There is no guarantee that the proposed freight services can be run, nor that as a consequence of the appeals proposal passenger services would not be reduced in quantity and the variety of destinations²³⁸. Network Rail has not presented evidence to the Inquiry to predict the future interaction between freight and passenger services. With its data and computer modelling, it could have presented a future scenario depicting a potential operating network of freight and passenger services for the Inspector to consider and examine²³⁹. No such scenario has been presented for examination. Only late assurances that 'it would be alright on the night', which is not acceptable²⁴⁰.
- 9.2.6. Should Network Rail, after a bidding process, decide to schedule the freight train slots requested by a future site operator, expansion of the passenger network would be compromised by that freight using the limited passenger infrastructure²⁴¹. If, at any time in the bidding processes, passengers on this busy section of network are deemed a priority over freight, freight slots may

²³³ Consultation response 30 November 2017 and INQ/32.

²³⁴ XX Mr I Lindon.

²³⁵ INQ/23, INQ/30, INQ/59, INQ/80.

²³⁶ INQ/79.

²³⁷ INQ/54 (APP/RAIL/6) para 3.4.5.

²³⁸ INQ/54, INQ/30, INQ78 (train 4 in, train 2 out via Lewisham), INQ/79, INQ80.

²³⁹ INQ/30, INQ/78.

²⁴⁰ INQ/99 late submission email by Network Rail.

²⁴¹ INQ/23, INQ/30, INQ/78, INQ/80.

be refused²⁴². Therefore, there is a great deal of uncertainty over the operation of the site as a true rail freight interchange in the future.

- 9.2.7. In this Dartford and Bexley rail passenger service area, there is a real risk of the direct services to London termini on each of three lines being limited to accommodate the freight service²⁴³. For example, Cannon Street only for the Bexleyheath line, and Charing Cross only for the Sidcup line. Also likely is the total loss of the Denmark Hill (for Kings Cross Hospital) and London Victoria main line service. All to release rail capacity at Lewisham junction²⁴⁴.
- 9.2.8. It has been accepted that passenger demand for rail service will increase in the future²⁴⁵. The MOL prioritises improved rail passenger services for his road traffic and pollution reduction targets²⁴⁶. Bexley Borough has no Underground, DLR, tram or Fastrack bus services. In the Borough 2 north/south rail services via Canon Street/Slade Green/Cannon Street are a future essential link to/from stations on the Sidcup and Bexleyheath lines in the south, to new housing and employment areas in the north of the Borough²⁴⁷. Just as importantly to access the new transport hub provided by Crossrail (Elizabeth Line) on the northwestern corner of the Borough at Abbey Wood.
- 9.2.9. LA21 requests that the appeal should not be allowed on the grounds of: 1) inappropriate development in the Green Belt; 2) no guarantee that the freight services proposed can be accommodated by Network Rail on the local network; and, 3) the loss of passenger train infrastructure preventing future expansion together with the potential loss of destinations served.

Road

- 9.2.10. Since the previous appeal in 2007, several large local developments have taken place within Bexley. The Dartford Tunnel and Bridge now becomes blocked every day. Furthermore, it is very noticeable that more and more lorries are using our local roads. As a result, it is normal to have to wait at traffic lights through at least 3 cycles of the lights, as lorries take so much time to get moving, thus delaying all the cars behind them. The last thing that is needed is more lorries on the already overcrowded roads.
- 9.2.11. Both the A2 and A20 are well over capacity relative to their original design. The A2 comes to a standstill on average 3 times a week, due to accidents and the volume of traffic. Heavy lorries around Erith and Queen's Road are continuously held up. If a road bridge is allowed to be built into that location, the situation will become even worse.
- 9.2.12. Furthermore, the Belvedere Incinerator has recently been granted planning permission, which is likely to add to increased HGV traffic on the A206 Thames Road, although LA21 is not sufficiently familiar with the associated

²⁴² CD/3.3 page 87 Proposal 18 and page 25 'rail service enhancement'.

²⁴³ INQ/30, INQ/78, INQ/79.

²⁴⁴ INQ/79, INQ/78, INQ/80, INQ/63 (GLA/RG/09) para 2.37.

²⁴⁵ CD/3.3 page 87 Proposal 18 and page 25 'Rail Service Enhancement, CD/3.15 Bexley Growth Strategy para 2.3.2.

²⁴⁶ CD/3.3.

²⁴⁷ INQ/23, CD/3.15.

traffic data to quantify the likely impact in the vicinity of the appeals site. In addition, the Bexley 'Growth Strategy' includes building many more homes and other development within Thamesmead and Erith.

- 9.2.13. The *London Plan* seeks to reduce congestion and encourage alternative means of travel. The major problem with development, such as that which is proposed, is that although it does remove road traffic whilst the cargo is on the train, it then concentrates heavy volumes of HGVs in a very concentrated area, which requires an excellent road network to make it feasible. Other existing rail interchanges have several major roads to the sites. For example, the Freight depot in Daventry has 5 major roads on which to distribute heavy lorries. In contrast, local to the appeals site there is only 1, the A206, which is already busy. Furthermore, the proposed local access from Moat Lane would not help the situation.
- 9.2.14. If the appeal proposal is approved, against local wishes, both in Bexley and Dartford yet more heavy lorries would lead to narrow local roads coming to a complete standstill. Car usage by site staff would increase the pressure on local roads even further.
- 9.2.15. LA21 considers that the London Gateway site represents a better alternative to the appeals site for a SRFI²⁴⁸.

Environment

- 9.2.16. The proposed warehouses, being very large, would be forever noticeable in the area, irrespective of how much shrubbery is planted. This would especially be the case for local residents with views from the south and west towards elevated areas. Freight movements at night would impact on local residents, through sleep deprivation, not only due to noise, but also vibration, notwithstanding the proposed freight interchange would be a considerable distance from residential development²⁴⁹.
- 9.2.17. The development could easily have an adverse impact on Crayford Marshes, a site of environmental significance.

9.3. Slade Green Community Forum (SGCF)

- 9.3.1. SGCF is a registered charity, the aim of which is to act as a conduit between those doing things for or to the community and the community itself. It has around 160 members, comprising for the most part residents of the former Northend ward, and an elected board of trustees.
- 9.3.2. It is of course accepted by all sides represented at this Inquiry that the proposals constitute inappropriate development of the Green Belt. For people in Slade Green and surrounding areas, it is not just inappropriate development; it also represents a loss of amenity²⁵⁰.

²⁴⁸ XX Mr I Lindon.

²⁴⁹ XX Mr I Lindon.

²⁵⁰ INQ/42b para 4.1.

The previously approved scheme vs the appeals proposal

- 9.3.3. It is important to note that the application before this Inquiry diverges in various ways from the previously-consented application. Numerous planning obligations that were in the previously-consented application, a number of which balanced the loss of amenity, are not included in the current applications. The creation of an Environmental Studies Centre at the Tithe Barn and giving that to a Trust to run is no longer in there; the multiple local employment measures that were part of the previous planning obligations are not included alongside the current applications, nor have opportunities been taken to pursue other alternatives; nor are there access improvements to Slade Green station that might increase the chances of people with disabilities being employed at the SRFI site. Instead of a large part of Crayford Marshes being taken 'in perpetuity' into independent ownership through a Trust, they are instead to be managed for 25 years. The cost to the appellant is less unless the proposed Warden's office is taken into consideration, but that would not be needed if the Tithe Barn was also developed (obviously SGCF would prefer the Tithe Barn to be developed, in which case the amount of money would be almost right).²⁵¹
- 9.3.4. There is also concern in the community that the presence of the site will result in further losses of amenity and Green Belt land by increasing the likelihood in the future of a road being constructed across Crayford Marshes joining the site to Manor Road, Erith or Wallhouse Road in Slade Green²⁵².
- 9.3.5. Also diverging from the previously-consented application, the appeals proposal does not include various measures to promote the use of the site as a SRFI through subsidy and direct promotion, nor are there suitable alternatives to those measures. This gives rise to concerns that the site may simply not attract rail freight users, and that it may end up being occupied by companies only interested in using the site for road operations.²⁵³

Highway impacts and mitigation

- 9.3.6. The impact of the proposed SRFI on roads to the west of the site is unquantified by the appellant. SGCF considers that it would be substantial and would harm its community by the resulting increase in traffic congestion. It is unquantified due to failings in the traffic modelling. The starting-point data does not actually reflect the amount of traffic heading westwards from the site projected by the appellant. Mr Findlay stated that 90% of the HGV traffic from the site would head towards or come from junction 1A of the A282/M25. As Burnham Road is not an option under the terms of the TMP, this clearly leaves 10% of the HGV traffic heading down Thames Road. Mr Findlay also illustrated this by noting that the Sainsbury's site close to junction 1A has 10% of its traffic arriving eastwards or departing westwards along the A206. And yet the data fed into the traffic modelling has a much lower percentage (2.5-2.95%) of HGVs

²⁵¹ INQ/42a section 7, INQ/42b para 1.2, INQ/42c pages 11-12, INQ/65 page 2, INQ/64 page 1.

²⁵² INQ/42b paras 4.2-4.5, INQ/42c page 12.

²⁵³ INQ/66 and 66.

using this route²⁵⁴. Furthermore, this seems not to fully account for staff employed who live to the west of the proposed SRFI and does not allow for future growth in this that may be caused by new river crossings to East London. Substantially more traffic than the model projects is likely along the A206 Thames Road/Northend Road/South Road but there is no mitigation for this.²⁵⁵

- 9.3.7. Moreover, westwards along Thames Road into Bexley Borough is the direction in which Mr Findlay admits the model fails its real-world test, with the test showing it underestimating the amount of traffic by 22%²⁵⁶. Other concerns with the modelling include it apparently allowing HGVs going along roads they cannot actually travel on, such as Maiden Lane where there is a width/height restriction²⁵⁷.
- 9.3.8. Given the real-world 10% HGV traffic heading to or arriving from the A206 west of the SRFI and the 22% fail mentioned above, we have substantial concerns about the impact of the proposed SRFI on the junction of South Road and Northend Road and subsequent junctions in Erith²⁵⁸.
- 9.3.9. Mr Findlay suggests that as the amount of traffic on the A206 is already substantial, as Thames Road gets busier with traffic from the site, traffic will re-assign to other local roads. However, each so-called re-assignment is a lengthening of someone's car journey. The local roads vehicles re-assign to will become more congested, and drivers spending more time in their cars will be exposed to more air pollution²⁵⁹.
- 9.3.10. SGCF considers that the proposed cap on HGV traffic going towards the M25 at peak times and the restrictions on Burnham Road, measures to be secured by the TMP, together would lead to HGV traffic increasing at peak times along the A206 Thames Road, substantially affecting businesses along Thames Road and local people. The only solution to this would be an additional cap on peak time HGV movements to and from the SRFI, but this has not been included in the Transport Management Plan or elsewhere, nor is it to be monitored.²⁶⁰
- 9.3.11. It is suggested by the appellant in both their road and rail evidence that Viridor may switch some of the distribution of its sorted recycled waste from road to rail. We note that under cross-examination Mr Findlay admitted that he didn't know the detail of how Viridor's business works. Whereas the implication in Mr Findlay's evidence was that this would be half of Viridor's weekly HGV movements, in reality it would be much less, as waste arrives in an uncrushed state but departs in crushed bales, so far fewer HGV movements saved.²⁶¹

²⁵⁴ (Inspector's note: Mr Findlay confirmed in XX that the remaining 10% would not just be made up by local area west traffic (2.5%/2.95%) but also traffic associated with other areas, such as central London (5.14%/4.93%) ref. CD/1.27 volume 3b pages 64 and 65).

²⁵⁵ INQ/42a paras 4.1-4.5, INQ/42c pages 3-6.

²⁵⁶ CD/1.30 Appendix E page 37 Table 2-5.

²⁵⁷ INQ/42c page 5.

²⁵⁸ INQ/42c pages 4-5.

²⁵⁹ INQ/42a paras 3.1-3.12 & 4.5-4.6, INQ/42c pages 8-9 air quality.

²⁶⁰ INQ/42c page 11, INQ/65 and 64.

²⁶¹ APP/TRAN/1 paras 3.4.6, 4.2.12 and 6.3.3, INQ/51 (APP/TRAN/5), XX Mr Findlay.

9.3.12. It is likely that some people employed at the proposed SRFI site who live to the west of Slade Green will drive to Slade Green and either walk or take the shuttle bus to work, adding to the daytime parking congestion in the areas either side of Slade Green station. Nothing in the planning obligations allows for this to be mitigated, either directly through enhancing cycle routes or by the shuttle bus being available to the public (the latter would encourage people from Dartford already parking in Slade Green to use that alternative, hopefully balancing the people from the west referred to above).²⁶²

Air quality impacts

9.3.13. Dr Tuckett-Jones agreed that her modelling of air quality was based on the traffic levels projected by the traffic modelling, and that she had every confidence in Mr Findlay's figures. However, as noted above Mr Findlay himself anticipates that 10% of the HGV traffic relating to the SRFI would arrive eastwards or depart westwards from the appeals site whereas the modelling only takes into account 2.5-2.95% of the traffic doing so, and Mr Findlay admits that the model underplays current traffic by 22%. SGCF therefore concludes that the air quality modelling is inadequate and must itself underplay the problem of air pollution as it is based on traffic modelling that underplays the amount of traffic, in particular the HGV traffic generated by the site.²⁶³

9.3.14. We also note the comment in a House of Commons committee report, which states that using modelling to assess air quality is substantially less accurate than actually testing and that there are no safe limits for NO₂. Generally the limitations of such a model combined with the underestimated traffic may mean air pollution levels greater than the appellant projects, with no monitoring planned.²⁶⁴

9.3.15. We are concerned that insufficient regard in the air quality assessment was had to the location of Peareswood School alongside the A206, because the Environmental Statement fails to identify it as a 'Sensitive Receptor', and requests for this to be included in the S106 have not been met.²⁶⁵

Alternative sites

9.3.16. SGCF agree with the case put forward by MOL that London Gateway represents a viable alternative site. It was suggested to Mr Birch under cross examination that the proposed SRFI is to serve South East London and that therefore London Gateway is in the wrong location, as to serve South East London HGVs would have to cross the River Thames via the heavily congested Dartford Crossing. However, the projected destinations or origins of the HGV traffic are essentially as much north of the Dartford Crossing as south of it, and even allowing for these figures needing to adjust for the 10% rather than 2.5-2.95% of traffic heading westwards on the A206, this still represents a substantial amount of projected destinations in East and

²⁶² INQ/42a section 6, INQ/42b para 3.9, INQ/42c page 10, INQ/65 and 66.

²⁶³ XX Dr Tuckett-Jones.

²⁶⁴ INQ/42b paras 2.1-2.4 and 2.12, INQ/42c pages 8-9 air quality.

²⁶⁵ INQ/42a para 4.7, INQ/66.

Northeast London, Essex and beyond that are on London Gateway's side of the Thames²⁶⁶. Moreover, the proximity of London Gateway to the forthcoming Lower Thames Crossing would allow it to serve destinations in Kent and to avoid using the Dartford Crossing.²⁶⁷

Rail impacts

- 9.3.17. SGCF's concerns about the rail impact of the SRFI are that the running of freight trains across the local junctions, especially Crayford Creek Junction, will interfere with existing passenger services, prevent enhancements to those services through clockface timetabling and make the introduction of new services difficult or impossible. The *Bexley Growth Strategy, December 2017* (BGS), indicates that up to 31,500 new homes can be delivered across the Borough over the period to 2050, with growth areas at locations along the North Kent Line, including 8,000 new homes in Slade Green alone²⁶⁸. Given the substantial projected growth of our community and other local communities such new passenger services will be essential. The BGS identifies priority interventions to support the identified level of growth, which include: upgrades to services on the borough's railway lines as an immediate/short term priority; and, an extension to Crossrail from Abbey Wood towards Ebbsfleet as a medium/long-term priority²⁶⁹.
- 9.3.18. The evidence of Mr Goldney for MOL leads SGCF to substantially doubt whether the proposed facility would actually run as a SRFI, but it is concerned that current and possibly future passenger services will be damaged in the attempt.²⁷⁰ Whilst Network Rail has undertaken an initial timetable study, it considers pathing across London to Crayford Creek Junction, but not from the junction into the depot. Furthermore, the quality of Network Rail's analysis should be judged in light of the suggestion it made in its consultation response to LBB that trains could cross from Crayford Creek Junction into the appeals site at a speed of 25 mph in 1.5 minutes²⁷¹, when the track speed limit ranges from 15-20 mph²⁷².
- 9.3.19. As a further illustration of the potential difficulties and disruption, under cross-examination by SGCF, Mr Gallop agreed that many of the whole series of possible gaps in the timetable that might allow a 7 minute window (at about 25½ - 32 minutes and 55½ - 02 minutes) to get a freight train into the SRFI were there to provide a time buffer that the timetable allows for a train running from Cannon Street to Cannon Street via Crayford and then Slade Green (Crayford departure 21 or 51 minutes, Slade Green departure 29 or 59 minutes) to catch up if it is running late by timetabling the train to sit in Slade Green station for a short while before departing. Mr Gallop agreed that if the Cannon Street train was running late but a freight train was waiting to get into the SRFI, it would have to take priority to keep Crayford Creek junction clear, but that the Cannon Street train then

²⁶⁶ CD/1.27 pages 63-65.

²⁶⁷ INQ42c pages 3-4.

²⁶⁸ CD/3.15 pages 29-30, SGCF email dated 19 December 2017.

²⁶⁹ CD/3.15 pages 48-49.

²⁷⁰ INQ/42c pages 6-8.

²⁷¹ CD/1.6 page 25.

²⁷² INQ/72 APP/RAIL/7 page 10 figure1.

being delayed would delay other services on the line and knock on to the timing of later departures back from London. Mr Gallop suggested, for the first time during his oral evidence, that if the timetable was flexed to allow sufficient time for freight trains to enter or depart from the SRFI, only 1.4% of services would need to be moved. However, under cross-examination by SGCF, he agreed that re-timetabling the 1.4% of services that needed to be changed would result in many other services having to be re-timed if a clockface timetable was to be achieved.²⁷³

- 9.3.20. Regrettably any response Southeastern Trains' (SET) may have provided to LBB concerning the appeals proposal are not before the Inquiry and we must rely on their recent exchange of emails with Councillor Borella. However, SET stated that for the SRFI to work without interfering with the depot they currently run in Slade Green, an extension is needed to the country end headshunt, and Network Rail state that this is part of the solution. SET also identify an upgrade to the Depot signal panel and extra staff as being required for movements in the Depot to take place safely. For its part, Network Rail state that its technical solution would permit the main line connection and associated train movements to be under direct signal control from Ashford and it makes no mention of there being any alternative to this that would allow a connection to the network that would not interfere with the running of Slade Green Depot.²⁷⁴ This evidence implies that there is only one solution. In contrast, Mr Gallop stated that the headshunt extension is not a requirement and nowhere is there a guarantee that the signalling solution referred to would be implemented. Under the circumstances, SGCF considers that conditions would be necessary to ensure that infrastructure would be in place before any other works are undertaken. That is to secure the provision of a new headshunt and to allow signalling from Network Rail Ashford, which enables trains to be pathed across Slade Green Depot access and Crayford Creek Junction without requiring intervention from Slade Green Depot staff.²⁷⁵

Consultation

- 9.3.21. The community consultation the appellant undertook was wholly inadequate, being substantially under publicised.²⁷⁶ What publicity there was could easily be misinterpreted. Mr Scanlon, claimed under cross-examination by SGCF, that the publicity material was clear that the consultation it advertised related to an entirely new planning application and that has no part in explaining the low turnout at the consultation. SGCF disagrees and considers that it was written in a way that implied a planning consent for a SRFI already existed and the application was simply a variation upon the already-consented plans.²⁷⁷
- 9.3.22. Mr Scanlon stated during cross-examination that the checks on deliveries of publicity leaflets were carried out by the company that made the deliveries rather than by himself or anyone connected with RDL. He indicated that he

²⁷³ CD/1.6 page 22, INQ/54 appendix I, INQ/31 Timetable May 2018 page 47, XX Mr Gallop.

²⁷⁴ INQ/99.

²⁷⁵ INQ/58, CD/1.6 pages 21 and 23, INQ/99 page 1.

²⁷⁶ INQ/42a section 2, INQ/42c pages 1-2, INQ/27.

²⁷⁷ CD/1.22 appendix 2, XX Mr H Scanlon..

has gone back to the delivery company since SGCF raised the issue and they confirmed that there was nothing wrong with the delivery or checking and that they had delivered in the correct area. They would hardly be likely to admit to anything else and their view is entirely un-evidenced.

Conclusion

- 9.3.23. In conclusion, SGCF believes that much of the balance between Green Belt and amenity loss, and public gain, that existed in the previous application has been lost. The certain loss of Green Belt land and the levels of uncertainty about deliverability of a SRFI, rather than warehousing, as well as road issues and air pollution would be too great. SGCF urges the Inspector and the Secretary of State to reject these appeals.

9.4. **Councillor J Kite (CK)**

- 9.4.1. I am the Leader of DBC. As well as my Council duties, I have roles within other groups, including Ebbsfleet Development Corporation due to the significant levels of development within Dartford Borough, such as the Bluewater Shopping Centre.

Plan led

- 9.4.2. DBC has a positive approach to growth and regeneration, which is inevitable given the Borough's proximity to London and range of transport infrastructure, such as the M25 and rail links to Ebbsfleet. DBC seeks to embrace and manage residential and commercial growth through the Development Plan, aimed at addressing matters such as business growth, housing, open space and transport infrastructure in a manner that delivers a whole and rounded community. Proper compliance with the *Dartford Core Strategy, 2011* (DCS) is key. The alternative would be chaos, resulting in an unbalanced economy and no objectives being achieved for the community.

Highways

- 9.4.3. Dartford River Crossing, and in particular associated queues and congestion, is a huge issue for DBC, not least as the M25 bisects the town separating east from west. The slightest trigger can have a significant effect on traffic within the town. Incidents on the M25/Dartford Crossing result in an extraordinary build-up of congestion on routes across the Borough, as people try to avoid the incident and associated problems can persist for a large part of the day. I am a governor at the University Technical College in The Bridge community, which is part way between the appeals site and the Dartford Crossing. Recently, it took me 2 hrs to complete what should be a 9 minute trip to the college and I abandoned my car after 4 hrs on the return journey. I regularly hear similar stories from others, including residents, traders, as well as NHS staff and patients trying to reach the local hospital. These events are routine. Furthermore, Dartford Town Centre is not isolated from the impact of such incidents, as drivers re-assign to the town centre when there are problems elsewhere. For example: if traffic slows on Bob Dunn Way, traffic flows within the town centre are affected within 10-15 minutes; and, problems at the Dartford Crossing impact on the town centre within around 20 minutes.

- 9.4.4. DBC is committed to realising modal shift. Evidence of that is provided by our 'Fastrack' bus transit system, which operates on its own dedicated routes over around 70% of the network. The aim being to encourage the use of public transport, thereby minimising road trips. Furthermore, DBC has committed substantial sums for town centre improvements to relieve congestion. However, only marginal gains are possible, due to the proximity and influence of the M25.
- 9.4.5. It is frustrating if, contrary to the DCS, others say there is a bit of capacity, so allow development that had not been expected, such as the appeals proposal. That approach is likely to undermine all the benefits that DBC is trying to gain. Incremental damage associated with such developments must be taken into account. The proposals would add to traffic on Bob Dunn Way. The mitigation proposed by the appellant centres around enforcement of conditions, which is difficult to manage over time. It is intolerable to have such schemes forced upon us. The appeals proposal also sits uneasily with our environmental regeneration plans.

Rail

- 9.4.6. In relation to rail use, my view is that of a layman. However, I am struck by the contrast between the appellant's conviction that the proposed rail based facility would be a sure fire success on the one hand, and its reluctance to commit to the delivery of the rail connection on the other. The evidence suggests to me that there is no certainty concerning the provision of a rail connection or its capacity. This gives rise to the suspicion that the outcome may be a collection of use Class B8 sheds and not the very special circumstances necessary to justify loss of Green Belt land.

Consultation

- 9.4.7. The Bridge community is situated part way between the appeals site and the Dartford Crossing. Many of the residents I have spoken to were unaware of the proposals during the initial stages of the scheme. Since they have been informed, they have told me that no more traffic should be added to the roadways and in particular Bob Dunn Way.

Conclusions

- 9.4.8. To sum up, Councils can be expected to encourage development. DBC has a plan in place to achieve that, so it can afford to be unimpressed by the appeals proposal. Furthermore, we have businesses here already who say that they wish they weren't, due to traffic. It affects their staff and goods movements to and from their offices and also the reputation of the business. The appeals proposal would generate a lot of new traffic, with controls only over movements in peak hours. However, if there is an incident on the local highway network, there are no non-peak conditions. Furthermore, it is easy for LBB to support development which provides them with benefits, such as increased business rates, whilst the traffic impact falls on others.
- 9.4.9. With particular reference to the uncertainty associated with the rail connection, the appellant's vague ambitions as regards modal shift risk delivering no more than road connected use Class B8 warehouses with an

associated increase in highway traffic. The appeals proposal can be characterised as being 'built on sand'.

9.5. **Councillor S Borella** (CB)

9.5.1. I am a LBB Councillor, representing the Slade Green and Northend Ward.

Residential amenity

9.5.2. The appeals proposal would have an impact on residents of Moat Lane, Oak Road and Hazel Road, some of whom have fantastic views from their properties over the appeals site, which give a lot of enjoyment. The proposed development would include features such as banking and lighting, which would diminish that enjoyment. Parts of Oak Road and Moat Lane fall within a Conservation Area.

9.5.3. The community alongside Northend Road, which is a 4 lane highway, is already blighted by traffic impacts. Traffic associated with the appeals proposal, including HGVs and potentially employee vehicles would increase that problem.

9.5.4. When there are problems on the M25 or A2, causing vehicles to re-assign to other routes, Slade Green tends to become grid locked. There are also existing issues on Bob Dunn Way. It can take 2 hours for local residents to get out of the area.

9.5.5. These factors would have an adverse impact on the quality of life of local residents.

Rail

9.5.6. The recently approved LBB Growth Strategy²⁷⁸, which seeks to manage growth, anticipates the need for additional housing and improved transport links. It is not easy to get in and out of the area by bus at present, due to congestion. In the future, additional capacity is likely to be needed on the rail network for passenger rail services²⁷⁹. The rail freight demands of the appeals proposal would conflict with the provision of those services. Southeastern Trains' staff, at the Slade Green Train Depot, have also raised concerns about the potential impact of the proposed rail freight connection on the operation of the Depot²⁸⁰.

Consultation

9.5.7. Some residents of the community around Northend Road were not included in the appellant's original public consultation. Given the potential scale of the impacts arising from the appeals scheme, the appellant could have done better.

²⁷⁸ CD/3.15.

²⁷⁹ INQ/79.

²⁸⁰ INQ/58.

Economic impact

- 9.5.8. I raised my concerns regarding the appellant's scheme at the LBB committee meeting, at which the committee voted in favour of the grant of planning permission. I disagree with that decision. In particular, I consider that substantial weight should not be given to economic benefits the appellant claims; as I understand it rail freight development has a chequered history, with some successes and some failures. In my judgement, potential economic benefits of the appeals proposal would be outweighed by harm to the local community²⁸¹.

Conclusions

- 9.5.9. In conclusion, the appeals proposal would be likely to have an adverse impact on the quality of life of local residents, highway conditions and train services, with no gain for the local community.

9.6. Bexley Natural Environment Forum (BNEF)

- 9.6.1. It has been established at the Inquiry that the application is not acceptable to LBB, DBC or MOL unless there is a credible prospect of a net biodiversity gain. Furthermore, it has been agreed in cross-examination that we are, in particular, looking for gains for particular Biodiversity Action Plan and other rarer species at Bexley, London/regional and national levels.
- 9.6.2. BNEF understands the argument made by Mr Goodwin about the current relative conservation value of the improved/semi-improved grassland and former landfill areas. However, it believes that the addition of the former to the *Crayford Agricultural and Landfill Site of Importance for Nature Conservation*, upgraded to Borough Grade 1 status and renamed *Crayford landfill and Howbury Grange*, provides geographical coherence. It cannot be said that LBB approved the extension or upgrade lightly, given that it took getting on for three years to sign off on its 2013 SINC review. BNEF has also heard in evidence and cross-examination that at least 6 Biodiversity Action Plan Species are present in this grassland area, some known to be breeding here.
- 9.6.3. *The Mayor of London's Environment Strategy* (May 2018)²⁸² states that SINC's 'are locally valued wildlife sites that provide the core framework necessary to conserve London's biodiversity'.
- 9.6.4. In the view of BNEF, the appellant's case has not fully addressed the outcome of the Government's own review '*Making space for nature: a review of England's wildlife sites, 2010*²⁸³, which states that larger, better joined up (i.e. not smaller and more fragmented) habitats are essential for conservation. The wildlife value of the appeals site grassland could easily and cheaply be improved by changes to the grazing regime and by other means and it would provide a bigger buffer between Slade Green and the

²⁸¹ XX Councillor S Borella.

²⁸² INQ/22 BNEF/W1/3 attachment 2.

²⁸³ INQ/22 BNEF/W1/3 attachment 3.

richer wildlife areas to the north and east. It is no accident that the highest-graded SINCs in Bexley are also the largest, and in this case we are dealing with two relatively large high-grade sites with a long common border.

- 9.6.5. Exercises in peeling off the parts of SINCs that are poorer than average would leave us with smaller sites of a Swiss cheese character, with inappropriate developments within them and at their margins. In the absence of any biological SSSIs, SINCs are the best wildlife sites in the LBB, and its Grade 1 areas fall within the top half of this set of sites in terms of richness of biodiversity.
- 9.6.6. The *State of Nature* reports, most recently in 2016²⁸⁴, have highlighted serious declines in biodiversity. The very weak statuses of Skylark as a breeding species in Bexley as a whole, and that of the Corn Bunting in London, have not been quantified by the appellant, or by LBB officers at planning committee, and in our view they would be exposed to significant risk by this development. The Skylark is an iconic species of summer and a good one to engage the local public with wildlife. Mr Goodwin remarked, in response to BNEF's question as to what LBB's view is of the likely implications of the scheme for Corn Bunting numbers?, that it is difficult for LBB officers to have a handle on everything. BNEF considers that is not good enough when set against the Council's biodiversity Policy CS18 regarding protected and priority species, which in turn informs mitigation requirements, especially when we are talking about larger, more obvious species of conservation concern. In addition, the *Marshes Management Plan* (MMP)²⁸⁵ para 3.7 admits that there is an absence of contemporary, detailed, biodiversity survey data for the Crayford Marshes SMINC. You would not remove, or risk having removed, sums of money from your bank account without understanding how much was in it to start with. Or at least you wouldn't keep claiming that you're in no danger of going into the red or that the amount in it will definitely be increasing.
- 9.6.7. Managing biodiversity is not like chemistry or physics, in that you cannot rely completely on outcomes from particular practices being replicable. There are no guarantees that there will be a net increase in biodiversity, or that the numbers of species of particular conservation concern displaced from the development site will increase as a result of the MMP. Mr Goodwin's evidence in chief specifically mentions Skylarks and Corn Buntings. The MMP²⁸⁶ does not, and under a general heading of 'Birds' (paras 4.25, 4.26) is rather vague and essentially aspirational in this regard. Table 8 (point 2 page 14) of the MMP on birds makes a general point about retaining favourable conservation status, which in these particular cases ought to mean a significant population increase within Bexley. Indeed the MMP is thin on detail regarding species-specific actions and does not enumerate any predicted increases set against any defined targets. Even if there were, there would be no penalties should they not be attained. BNEF does not doubt the appellant's good intentions in this respect. Nevertheless rather more information would have inspired greater

²⁸⁴ INQ/22 BNEF/W1/3 attachment 4.

²⁸⁵ CD/1.33.

²⁸⁶ CD/1.33.

confidence in the overall claim that an increase in biodiversity will be delivered across the remainder of the combined area of the two adjacent sites. We appreciate that more detail will be added in due course, but once outline planning has been approved the chances of any permission being overturned should this be deemed inadequate are essentially non-existent.

- 9.6.8. BNEF has heard in cross-examination why the appellant prefers green walls to green or brown living roofs, but no evidence has been presented as to design and which suite of species might use such walls, or whether and why these might be better than living roofs for the rarer species identified in the area. Reference was made to Lapwing chicks falling off a green roof, but this is likely fixable through design. Meanwhile Skylarks have nested on living roofs in the UK.
- 9.6.9. BNEF remains extremely concerned that this development could become the thin end of a wedge that leads to the loss of more of the marshes area, particularly by providing justification for Bexley's mooted Slade Green 'relief road' (by-pass)²⁸⁷ and/or other roadways or widened roads that could in turn become a driver for further development. On its own a by-pass would directly impact Green Belt and damage and fragment the Crayford Marshes SMINC, itself part of the proposed mitigation area, along with the landfill immediately to the east of the development site which would also be likely to be affected given routing constraints, and increase traffic. In BNEF's view, that the local planning authority, which is to be half of the Marshes Management Board is proposing this, however 'hypothetically', does not inspire confidence in its commitment to protecting and enhancing the marshes. In BNEF's view the Prologis 'offer' to put the land into a Trust might have granted better long-term protection.
- 9.6.10. BNEF has seen no evidence to suggest that this, or any larger collection of proposed SRFIs, will result in a net reduction of HGV or LGV traffic on UK roads, including in the light of Department for Transport growth predictions, which BNEF submitted. Nor that any amount of SRFIs will do so. This must be a consideration given that appeal has been deemed to be of regional and UK-wide strategic importance and taking into account the government's carbon emissions and sustainability targets.
- 9.6.11. BNEF therefore remains of the opinion that the value of the proposals as a whole do not outweigh the loss to Green Belt and other negative consequences, and that the exceptional case test is not passed.

²⁸⁷ INQ/82.

10. THE CASES FOR OTHER OBJECTORS WHO MADE WRITTEN REPRESENTATIONS

[This section relates to the correspondence received by the Planning Inspectorate in response to the appeal notifications and the consultation responses received by the Councils in response to the applications for planning permission. The submissions reflect many of the matters raised by the main parties, which I do not repeat in detail here. I summarise the many points raised].

APPEAL STAGE REPRESENTATIONS

10.1. Royal Society for the Protection of Birds (RSPB)²⁸⁸

- 10.1.1. The development would contribute to the long-term encroachment and degradation of the Thames marshes. The Greater Thames Estuary is one of the most important wildlife sites in Europe. The adjacent inner-Thames marshes, of which Crayford Marshes is a part, are a much diminished resource and under increasing threat of fragmentation from creeping development. The development would constitute both physical loss of habitat and peripheral effects on the adjacent wet grassland.
- 10.1.2. The appeals proposal would result in a loss of breeding habitat for scarce and declining bird species, in particular Corn Bunting and Skylark. Both of these species are Red listed in the most recent revision of Birds of Conservation Concern (a multi-partner assessment of the conservation status of British birds). Like many bird species, Skylark and Corn Bunting are mobile and adaptable, so dispersal is not an issue. However, the continued loss of suitable habitat means that they have nowhere to go. Both species breed in Crayford Marshes because the habitat is ideal, but are absent from other areas around Bexley, and are generally reduced and fragmented in North Kent. This suggests that the remaining breeding sites are particularly important. Loss of suitable habitat is the main driver for declining populations in both species.
- 10.1.3. Whilst the Thames has a long history of economic development, it has an even longer history as a 'feeding hub' for migratory birds. There is a need to balance the economic and natural assets along the Thames. The remaining wetlands of the inner Marshes are particularly vulnerable to encroachment. It is vital that economic activity in the Thames works with, not against, nature. Preventing the loss of remaining green space is paramount, creating new green space the ambition. The emerging *London Plan* is clear about the benefits of green space for local communities and has ambitious targets for the creation of green space. The appeals proposal would conflict with that ambition.

10.2. Dr R Gray²⁸⁹ (Chairperson of BNEF)(DG)

- 10.2.1. The evaluation of the significance of the impacts of the development are recorded as being of moderate or little significance to the majority of factors considered in the Environmental Statement. Having worked in the

²⁸⁸ RSPB, 19 December 2017.

²⁸⁹ G.Gray, emails 21 May 2018, 11 December 2017.

construction industry for many years, it is my experience that any construction project does not produce impacts of minor significance.

- 10.2.2. From the landscape viewpoint the development will impact on the traditional openness of the marshland landscape, bringing in a new dominant feature. The overall impact of the proposed development will significantly alter views from many of the surrounding areas, and the mitigation effects only adding to the breakup of the landscape, as well as introducing features that are not characteristic of the area. Can the imposition of an unnatural building and associated construction works be said to enhance an open green landscape.
- 10.2.3. Fragmentation across the whole of the North Kent Marshes has resulted in the loss of much of the traditional open values of the landscape. This has allowed the encroachment of industry and urban development and a loss or damage to the characteristics and features of the grazing marsh. The advent of the proposed development would lead to further erosion of the grazing marsh landscape in the Inner Thames area and increasing dominance of their surroundings. The influence of the landscape and surroundings on Crayford and Dartford Marsh will help determine their future. Allowing such a large development adjacent to the sensitive marshes would severely impact on the ability of the marsh to act as an ecologically viable entity and further reduce the area of grazing marsh, not only in Greater London but throughout the UK.
- 10.2.4. As well as destroying a significant area of Green Belt the proposed development would fragment an important group of Sites of Importance for Nature Conservation, preventing species from recolonising sites that have been damaged, or extending their present ranges. To lose additional grazing marsh and to increase the possibility of further loss is in direct contravention of the UK, Kent and Bexley Biodiversity Action Plans (BAPs).
- 10.2.5. The Environmental Statement, whilst being comprehensive in its scope of how the development will affect the immediate site upon which construction will take place, seems to have been less well researched and surveyed in terms of the wider reaching impacts on the local area. From a landscape ecology viewpoint, the site needs to be considered as to how it relates to its environment and the habitats and landscapes that surround it. In this respect it can be regarded as having 4 main functions: a buffer between urban development, the landfill site and Crayford Marshes; a wildlife corridor; a refuge for wildlife associated with the grazing marshes in the future as sea levels rise due to climate change; and, a potential future contributor to the Bexley Green Grid Framework. Ratcliffe (1977), recorded that the position in the ecological unit, the potential value and intrinsic appeal of a habitat or area were just as important in evaluating a site as size, diversity and rarity. In this case it would appear that these three criteria have been badly overlooked.
- 10.2.6. To allow this development to proceed would severely limit the ability of LBB to implement its Biodiversity Action Plan, (not only in respect of grazing marshes), and to conform with the greater national need to see an overall increase in areas of grazing marsh. The proposed development would in my opinion lead to the current marshes of both Crayford and Dartford losing value and they would be threatened by processes during the construction

and operational phases that cannot be mitigated against. Their fragility rests on hydrological processes that have not been fully researched; processes that will be influenced and altered, as admitted in the proposals, by the development, and the complex relationship of the mosaic of micro habitats that comprise the grazing marsh habitat. The value of grazing marshes as a feeding, nesting and overwintering site for many bird species relies on the hydrological processes and inter-relation of the topographical features. To allow the development to proceed puts all these factors at risk and in doing so would severely reduce the value of the marshes as an important habitat, locally, regionally and nationally.

- 10.2.7. The mitigation measures provided by the Environmental Statement, whereas, on the surface would appear to be of some benefit to the local natural environment, do not go far enough and in many cases are inappropriate. To ensure the survival of grazing marsh and green space in the Crayford area is going to require long term management and have adequate funding to provide the right kind of management. We acknowledge that a draft management plan has been produced covering a period of 25 years. A fully prepared management plan, covering a longer span of time, would need to be provided, together with insurance that over the long term the effects of sea level rise and climate change can be accommodated with the provision that there will be areas onto which the grazing marsh and its ecology can retreat.
- 10.2.8. In determining the outcome of these appeals, there must be consideration of not only future sustainability of our local environment, but also the actual longer strategic need for this development. Consideration must be given to the effects that the construction of the Lower Thames crossing will have, with the aim of taking traffic, including freight away from London and the M25, in order to speed up movements to the Channel Tunnel. At this time, will this facility be a viable option for freight traffic? In this instance, would not London Gateway be a better option? Can it be guaranteed that Bexley will not be left with a white elephant or a giant lorry park?
- 10.2.9. The Framework believes that there should be enhancement and promotion of green infrastructure and biodiversity. Building on green space and removing habitat is hardly promoting it.
- 10.2.10. These appeals should be rejected as they do not meet any criteria on strategic needs that require the loss of Green Belt, neither do they make any contribution to the sustainability of local resources. Strategic and sustainability must be seen in tandem, and that means not just today, tomorrow or next week, but 20, 35, 50 years into the future.

10.3. **The Inland Waterways Association**²⁹⁰ (IWA)

- 10.3.1. The Inland Waterways Association accepts the proposed access bridge clearances to Crayford Creek shown on drawing no. 2039-STR-01 rev B.

²⁹⁰ Letters dated 28 March and 2 May 2016 and email dated 11 June 2018.

It would be sufficient to allow upstream passage of all craft able to enter Vitbe Basin. They should not be reduced by changes to the design.

- 10.3.2. Furthermore, a mooring should be provided downstream of the proposed new bridge to give safe refuge for masted boats that would otherwise have moored further upstream at the disused wharves. IWA acknowledges that the disused wharves upstream of the position of the proposed bridge have not been used for decades. However, access to the area upstream of the location of the proposed bridge for high masted craft was improved by the removal of fallen/overhanging trees in January/February 2017. In May 2018 a flotilla of craft from St Pancras Cruising Club visited, supporting the need for moorings downstream of the proposed new bridge.
- 10.3.3. A licence would be required from the Marine Management Organisation for works affecting the right of navigation of tidal waters. The IWA would oppose the grant of such a licence, if the mitigation measures we seek are not implemented.

10.4. **A.G. Thames Holdings Limited**²⁹¹ (AGT)

- 10.4.1. AGT and a sister company, Solstor Limited, run fruit packing, warehousing and distribution operations from their site, employing around 500 people. They are located on the A206 Thames Road. AGT and Solstor are therefore significant local employers. AGT's local knowledge of how the A206, local road network and associated major roads presently function has given AGT an insight into how the proposed development would adversely impact on local road conditions and the already congested M25, M2 and M20. This would in turn have an adverse impact on AGT's business and employees, local residents and businesses, and others even further afield.
- 10.4.2. COTTEE Transport Planning Ltd have been instructed by AGT to review the proposed development and the following submissions draw upon its findings.
- 10.4.3. The most recent traffic survey of key roads most likely to be affected by the appeals proposal was produced in 2015. Since then, congestion has increased substantially. Therefore, an updated survey should be produced and used as the basis for assessment. The area already suffers from extremely serious traffic congestion and the proposed development would make this situation significantly worse. The additional congestion caused by the proposed access road would have a significant adverse effect on AGT's business in terms of its ability to service customers with confidence, the financial impact of delays and AGT's ability to recruit employees due to the level of congestion.
- 10.4.4. The scarcity of existing Strategic Rail Freight Interchanges, and the fact that they are not directly comparable with this site means that they provide only a limited understanding of the potential impacts of a new SRFI in a different location to that proposed for this development. For example, a SRFI in Daventry (from which the trip generation was derived in the TA), while next to motorways, is in a rural location some distance from any major urban

²⁹¹ Letters dated 21 August 2018 and 19 December 2017.

area. The proposed site while in the proximity of the M2, M20 and M25, serves the major urban area of London. Therefore, there is a significant risk in allowing the appeals proposal as a 'guinea pig' for developing a large SRFI.

- 10.4.5. Being within the London area and the M25 with connections to the M2 and M20 and southeast ports creates a strong likelihood that the site would be more attractive than the Daventry site. Any assessment needs to allow for this potential but the current TA potentially underestimates this effect and does not make allowance for this location factor.
- 10.4.6. As raised by DBC, as well as being inside the M25, the site is located in a heavily built up area adjacent to the A282/Dartford Crossing and traffic from the site would impact on the local roads in Dartford as well as the strategic road network in Dartford. AGT has further concerns with the TA analysis which we set out below.
- 10.4.7. With regard to the A206, Thames Road, there is a historic problem (going back to about the time of a previous planning application in 2006) with Craymill Rail Bridge, which narrows the highway to a single lane in each direction. At the time of the previous planning application in 2006, the bridge was to be replaced as part of the A206 Thames Road improvement scheme. Whilst the replacement has never taken place and there is apparently no firm date for it, the TA assumes in its analysis that the Craymill Rail Bridge replacement is in place²⁹²; there is no provision in the TA that the development should only take place once the Craymill Rail Bridge is in place. Completion of the Craymill Rail Bridge improvements should be an absolute pre-requisite to the appeals proposal being approved, as without this, the increased congestion in an already congested area would be intolerable and would have a major impact on local businesses.
- 10.4.8. Furthermore, at such time as the Craymill Rail Bridge Scheme is implemented there would be likely to be a significant rise in traffic flow with the removal of the cause of congestion. The TA assessment of the impact of the development on traffic flow is on a suppressed traffic flow condition as a result of the current bottleneck and should be tested on traffic flows which relate to a congestion free route.
- 10.4.9. The TA indicates that on the Thames Road/Crayford Way roundabout, the Thames Road (east) arm had average queues of 4 vehicles recorded in 2015²⁹³. This rises to an extraordinary 166 vehicle queue in the forecast 2031 base position²⁹⁴. The reason for this is the capacity (RFC) rises from 0.804 to 1.077 taking that arm of the junction over capacity. The TA acknowledged the local network is at capacity in the 2031 base so additional traffic will cause a spread of overcapacity across the network²⁹⁵.
- 10.4.10. Congestion is already a problem, acknowledged in the TA, both in and outside peak times from the Dartford Tunnel up to the junction 1A slip road

²⁹² CD/1.27 page 41 paras 4.6.5-4.6.6.

²⁹³ CD/1.27 page 40.

²⁹⁴ CD/1.27 page 78 Table 9-9.

²⁹⁵ CD/1.27 page 78 para 9.7.2.

and the proposed SRFI would have a major impact on this junction because it is the route to and from the M25 which most HGVs will use. Major improvement to the road network would need to be made before the SRFI is introduced if it is not to have serious consequences for the M25, junction 1A.

- 10.4.11. The TMP is a substantial document, which would require significant management input and there are no examples of similar development on such a scale in this congested area being operated effectively and without congestion issues.

10.5. Other respondents

[The remaining respondents are for the most part either individuals or private companies and the matters set out in this section are not attributed to particular parties.]

- 10.5.1. I am a Community Occupational Therapist and have lived on Burnham Road for 23 years. There are times when I and colleagues are late for appointments due to traffic congestion. Near gridlock conditions can result from an accident at Dartford Crossing²⁹⁶. Part of Burnham Road lies in a flood zone and the marshes have a natural flood defence role hereabouts. During the time that I have lived in the area, I have seen the appeals site flood on numerous occasions²⁹⁷.
- 10.5.2. The marshes comprise a unique area of open space, which is accessible to Dartford and Bexley residents, and valued for leisure uses, such as walking and bird watching. This natural environment has a positive impact on the health and wellbeing of people and communities, a view supported by *The London Environment Strategy*²⁹⁸.
- 10.5.3. The proposal would harm residential property value.
- 10.5.4. Hoo Junction, to the east of the appeals site, handles a lot of container freight and has good road and rail links. It should be considered as an alternative location for the proposed use²⁹⁹.
- 10.5.5. The proposal would include the removal of elm along part of Moat Lane, to form an entrance into the site. Elm is the only habitat for White-letter Hairstreak, a protected species of butterfly of high conservation priority, which has been recorded in that area. The habitat would be harmed.
- 10.5.6. Friends of Crayford Marshes objects to the appeals proposal. In support of its view it has established an on-line petition entitled '*Save our Crayford Marshes-Don't Build on Habitat for Corn Bunting and Skylark*', which had over 2,680 signatures of objection as of December 2017.

²⁹⁶ C Campbell, 13 December 2017.

²⁹⁷ C Campbell, 13 December 2017 and others.

²⁹⁸ C Campbell, 13 December 2017, and others.

²⁹⁹ T Boulton, 12 December 2017.

PLANNING APPLICATION STAGE REPRESENTATIONS

- 10.6. **London Wildlife Trust (LWT)**
- 10.6.1. LWT estimates that the application site would take around 59 hectares of the Crayford Landfill and Howbury Grange SINC (currently some 96 hectares), although around 17 hectares would be restored as part of the scheme. The net loss of the SINC, in spatial terms, of some 49% is highly significant. There would be additional indirect impacts, most notably reducing the area of habitat would reduce the viability of the remainder of the SINC site to support populations of: breeding and roosting birds, such as Corn Bunting and Skylark; as well as small mammals and reptiles.
- 10.7. **J Lambert MEP³⁰⁰** (Green Party Member of the European Parliament for London)
- 10.7.1. The scheme would increase the amount of traffic in this part of Bexley, including worker access. However, it would not offer 'more sustainability' in terms of supplying Bexley and southeast London with goods, as the goods movements generated are expected to go in the direction of the Queen Elizabeth II Bridge, not west or southwest into Bexley and neighbouring boroughs. The proposals would contribute to the Department for Transport's prediction of increased HGV traffic on the road network, and this would cause additional carbon emissions and localised air pollution impacts.
- 10.7.2. BCS Policy CS18 requires protection and enhancement of the Borough's biodiversity. The proposed development would go against that objective. The scheme would destroy almost 50% of the Crayford agricultural and landfill Site of Importance for Nature Conservation. The appellant claims that the best part of the SINC would be left intact, that the rest is of poor value and that its landscaping work would deliver a net benefit to wildlife. However, the approach also ignores the intrinsic value of larger areas of habitat and the unmeasured plant and insect resources they would produce for more mobile species utilising this and neighbouring areas. The appeals proposal would result in the diminution in size and fragmentation of key wildlife sites, which is a problem of local, regional and national significance.
- 10.7.3. BCS Policy CS18 criteria (c) additionally identifies the need to '*resist development that will have a significant impact on the population and conservation status of protected species and priority species in the UK, London and Bexley Biodiversity Plans*'. The appeals proposal would run counter to that Policy. The scheme presents a major threat to breeding Skylark and Corn Bunting in Bexley, both red-listed species due to significant declines.

³⁰⁰ Letter dated 24 October 2016.

10.8. G Johnson MP³⁰¹ (for Dartford)

- 10.8.1. Whilst I recognise the large amount of jobs that could be created by the scheme, congestion on the roads around the Dartford Crossing causes a significant amount of lost revenue for the local economy. The approach to the Dartford Crossing is in my opinion the worst stretch of road in the country. Therefore, adding to an already problematic situation would have a detrimental impact on the local area.
- 10.8.2. The current road network needs only a minor issue for congestion to grip the area. If the application is successful then the traffic created would, in my estimation, lead to more regular hold ups.
- 10.8.3. I have serious concerns that the already saturated roads would be unable to cope with an additional 1,150 HGVs and numerous other vehicles a day, particularly during periods of heavy congestion.

10.9. Save of Skylarks: Save Our Crayford Marshes³⁰²

- 10.9.1. The southern part of Crayford Marshes is visually, geographically and, from a wildlife and ecological point of view, functionally part of the wider Crayford Marshes area. The London Wildlife Trust has said of this section '*the extensive area of the site and its proximity to two Sites of Metropolitan Importance (the northern part of Crayford Marshes and the River Thames) further increases its value*'. It has recommended that it is promoted from a Borough Grade 2 to a Grade 1 site in the SINC review, which the Council has delayed agreeing to for nearly 2 years. The proposed development would destroy a large part of it.
- 10.9.2. In conjunction with neighbouring Dartford Marshes, the area provides an expanse of open space and big skies available nowhere else in Bexley.
- 10.9.3. It is a high tide roost for several species of national conservation concern: Redshank; Curlew; as well as, Ringed Plover (red-listed) and Lapwing (red-listed). It is one of only two breeding sites for Skylark in Bexley which are fairly secure from disturbance. The other is under 'development' threat. It also has breeding Corn Bunting, of which there may now be only 20 pairs in the whole of London. The site is therefore of conservation importance at Borough, regional and national level and should not be built on as this would be contrary to Bexley Council's policy to protect and enhance biodiversity in the Borough.
- 10.9.4. Despite being rail connected, the proposed logistics hub would result in a net increase in road traffic and carbon emissions in Bexley, and has nothing to do with delivering real 'sustainability', the supposed basis of Bexley's Core Strategy.

³⁰¹ Letter dated 15 December 2015.

³⁰² CD/1.6 page 51 'a total of almost 150 individually signed letters/leaflets have been received which object to the scheme on the following grounds'.

10.10. **Dartford and Crayford Creek Restoration Trust**³⁰³ (DCCRT)

10.10.1. The Cray is navigable and interest in visiting is expected to increase following the removal of fallen/overhanging trees. DCCRT has a record of 4 yachts having navigated up the creek in 2016. Mooring pontoons should be provided downstream of the proposed bridge location to allow sailing craft to moor and be safely demasted before onward travel.

10.11. **Other respondents**

[The remaining respondents are for the most part individuals and the matters set out in this section are not attributed to particular parties.]

10.11.1. A number of residents of properties local to the site, such as on Leycroft Gardens and Oak Road, are concerned about the noise that would be generated, both in the construction of the proposal and during operation, anticipating that even with the proposed embankment, the noise from trains moving about the site would be intrusive.

³⁰³ Email dated 1 September 2016 and CD/1.6.

11. THE CASE FOR THE APPELLANT

11.1. Introduction

11.1.1. The main issues outstanding in these appeals are as follows:

- a. Would the proposed Strategic Rail Freight Interchange meet a nationally-identified need that cannot be met adequately elsewhere?
- b. What planning benefits of the proposed development can be reasonably anticipated?
- c. What are the likely adverse effects of the proposals?
- d. Are there, bearing mind all of those points, 'very special circumstances' justifying the release of the appeals site from the Green Belt.

Navigation

11.1.2. Those 4 issues emerge from a complex evidential situation driven by conflicting arguments and it seems helpful to begin with a brief guide to navigation of the matters set out below. In this introductory section I therefore make points about: the overall strength of the case for the RDL proposals; what I call the 'architecture' of the opposition cases presented to the Inquiry; and, the need to focus attention on the right questions when assessing a SRFI.

The overall strength of the case

11.1.3. There is a considerable amount of detail before the Secretary of State. However, it is perhaps salutary to recall the following key points at the outset of any summary:

- a. The appeals site lies within the Green Belt and has an ecological designation. The Green Belt and landscape impacts of the appeals proposal are very large and adverse. However, the site itself is otherwise unconstrained. It also lies in relatively close proximity to the M25 and Network Rail say it can physically connect to the mainline railway with gauges appropriate for rail freight. Nobody at the Inquiry suggests that the physical rail connection itself is incapable of being constructed and used. The use is not prohibited by proximate residential occupiers, if appropriate mitigation is employed.
- b. It was granted consent for a SRFI of comparable proportions in 2007.
- c. It lies in the Bexley Riverside Opportunity Area, which identifies logistics as a key strategic use for that area, and is protected for SRFI use in the *London Plan*.
- d. Fully operational, it would generate around 2000 jobs.
- e. The application continues to enjoy the support of Network Rail as far as access to, and pathing through, the rail network. Despite all manner of suggestions to the contrary, there is no evidence to suggest that Network Rail considers that the SRFI cannot operate satisfactorily as such; indeed it would be extraordinary for Network

Rail to have written in the detailed terms that it has, if that were its view³⁰⁴.

- f. SRFI facilities on the appeals site are supported by GB Railfreight, Maritime and an obvious potential user, the neighbouring Viridor operation.³⁰⁵
- g. The appeals proposal are being promoted by a company with specialist knowledge of SRFIs, and which is currently engaged in the delivery of such facilities at East Midlands Gateway (and Radlett, with a new Development Consent Order application having just been made in Northamptonshire). There is no basis for a negative inference that RDL's Howbury Park scheme is a 'Trojan Horse' application for a purely road-connected logistics park.
- h. The expressions of interest and the demand evidence chimes with the Government's view about the demand for SRFIs, and what it continues to see as the national need for an expanded network of SRFIs, established in the NPSNN, which also notes the particular goal of locating such uses close to London. SRFIs are of sufficient importance for their benefits to form the basis for a very special circumstances case; it is unlikely that any local plan would allocate land for a national use of this kind.
- i. It is not the subject of any highway safety or free flow objection from any of the relevant Highways Authorities: Highways England; Kent County Council; LBB; and TfL (Mr Findlay's '4HA'). DBC's air quality work does not disclose any more than negligible air quality effects.
- j. The London Borough of Bexley, in which the vast majority of the site lies, resolved to approve the proposal (only for the MOL to direct refusal).
- k. There is no technical objection from any statutory consultee in relation to ecology, which would be enhanced by the proposals.

The architecture of the cases presented to the Inquiry

- 11.1.4. A word also at the outset about the overall architecture of support and opposition to the proposals. Given the eleven summary points, it is unsurprising: (1) that the LBB (which opposed the Prologis scheme in 2006-7) resolved to grant permission and has not actively objected at this Inquiry; and, (2) that there has been, for a scheme of this size, very little local opposition and engagement, save for a handful of conscientious and able people like Mr Hillman and Mr Reynolds.
- 11.1.5. It is rather more surprising that DBC oppose the grant of permission on highways grounds, given that the relevant highways authority for the affected roads in their area, KCC, supports the grant of permission. It is odd that they maintain an air quality impact case when their own air quality

³⁰⁴ CD/1.6 page 21 onwards.

³⁰⁵ APP/RAIL/2 Appendix A.

expert, Dr Maggs, says that the proposal would have negligible effects. Furthermore, if the DBC position really is as parochial as appeared to be the case from Mr Bell's evidence to the Inquiry, then it should be treated with considerable caution. It is a source of regret that only limited weight appears to have been given to the scheme's SRFI credentials in DBC's evaluation simply because the majority of the development, with its Non-Domestic Rates revenue, jobs and economic benefits, lies within Bexley; that is obviously not an approach that should be commended to the Secretary of State when considering nationally-important infrastructure.

- 11.1.6. Finally, it is *very* surprising that the Labour MOL opposes the grant of permission for a SRFI on Green Belt land at Howbury Park. It is a proposition the then MOL supported in 2006-7; it comprises a use now protected on the site in the *London Plan*; that use is in line with a policy focus on ambitious logistics growth in the Bexley Opportunity Area; especially since the employment ambitions held by the MOL for that area are hugely increased in the emerging *London Plan*.
- 11.1.7. This point is nothing to do with the inquisitorial role of the Inspector or the overall discretion of the Secretary of State when making the decision. Those roles and powers go without saying. But the way the principal parties arrive at an Inquiry like this and the shape of their arguments should not be forgotten when reflecting on the key issues which go to whether permission should be given for RDL to take the opportunity to deliver a SRFI on the edge of London. The Secretary of State should therefore be informed clearly, and should consider carefully, the limited local opposition, the circumscribed concerns of DBC and the conflicted way that the MOL now seeks to call into question a proposal which in policy terms he should support.

Right and wrong questions

- 11.1.8. There are two points to be made here. One goes to the arguments advanced on the basis of the rail connectivity of the site in 2018 timetable; the other goes to the arguments about traffic modelling and uncertainty. These two issues have, I think it is fair to say, occupied a considerable amount of Inquiry time. RDL's case is not that the evidence is entirely irrelevant, but that it is potentially very misleading, and runs the risk of founding recommendations and the overall decision on a false basis. To use a more legal formulation, the points here go to matters of weight, but only once one has understood the policy context correctly.
- 11.1.9. Dealing first with the rail connectivity issue, the obvious point is that the site can be physically connected to the network, and is large enough for a SRFI. It lies on the edge of London and there is considerable rail traffic currently timetabled, which makes getting freight trains across London, across the Crayford Creek Junction, and into the site, a challenging and technical job for Network Rail's timetable planners. That challenging rail landscape is, in a sense, a constraint of the site for rail freight. However, it is not a constraint in the same way as a canal, or a steep gradient might be. Indeed, the nature of the constraint is only in fact *represented*, rather than *comprised in*, the 2018 timetable.

- 11.1.10. That is because the constraint may or may not be the same when the SRFI opens. If permission were granted, the development would not be fully built out and operational for some years, perhaps as many as 10 years from opening. It is therefore not realistic to expect decision-makers to assess the SRFI's effects and operation as at 2018. The traffic effects, for instance, have been assessed at design year 2031. One can see why it should not be an absolute objection (even if it were made out on the evidence) that the 2018 timetable cannot show 4 trains in and out of the site without making adjustments to the existing timetable.
- 11.1.11. Some of the pattern of movement, types of freight, wider network traffic conditions, rail timetable, and so on, will change between now and the maturing of the scheme. 'What are the effects of the scheme in 2018' is therefore the wrong question. 'Can 4 paths in and out be accommodated in the September 2018 timetable' might be a relevant question, but it is not the question that discloses the answer about the site's ability to provide 4 trains a day during its operation.
- 11.1.12. Is there a different question based on the 2018 timetable evidence? The MOL says that planning permission should be refused because the Secretary of State cannot be reasonably assured that even 4 trains a day could in the future be pathed into the site. Clearly, it is a relevant question to ask whether the Secretary of State could be reasonably assured that might be the case in the future.
- 11.1.13. I leave the detail of the evidence to later in these submissions, but make the point now that, even if it were judged (contrary to the appellant's view of the evidence) that the 2018 timetable did not show 4 paths in and out a day, should the Inspector and Secretary of State *infer* that the site is not capable of functioning as a SRFI? That is what the MOL asks to be done. However, that would require a judgement that the 2018 timetable is incapable of being, would not be, adjusted either in any event, or specifically in relation to the pathing of rail freight to Howbury Park in the future. There is no evidence from Mr Goldney to that effect. It would be a hugely tendentious judgement. It would run counter to the position of Network Rail on the appeals.
- 11.1.14. There is also a real danger of circularity here: unless Howbury Park secures its planning permission, there will be no pathing to negotiate with Network Rail, no exercise carried out to move the 14.25 from Dartford to Victoria by 5 minutes to allow a train into Howbury, and so on; one should not refuse permission on the basis that such an exercise has not yet been done and therefore that its results cannot be demonstrated.

11.2. **Would the proposed SRFI meet a nationally identified need that cannot be met adequately elsewhere?**

The role of the National Policy Statement for National Networks
(NPSNN)

- 11.2.1. The Government's national policy statements have as a primary function the establishment of the need for certain developments and facilities; they are

intended to obviate the need for the kind of interminable debate about need that bedevilled Inquiries in the past such as that into Heathrow Terminal 5.

11.2.2. Chapter 2 of the NPSNN is entitled *The need for development of the national networks and Government's policy*. There has been little if any debate at this Inquiry as to the need which exists for a network of SRFIs. The principal references are:

- a. Paragraph 2.2 *'There is a critical need to improve the national networks to address road congestion and crowding on the railways to provide safe, expeditious and resilient networks that better support social and economic activity; and, to provide a transport network that is capable of stimulating and supporting economic growth'*.
- b. Paragraph 2.8 *'There is also a need to improve the integration between the transport modes, including the linkages to ports and airports. Improved integration can reduce end-to-end journey times and provide users of the networks with a wider range of transport choices.'*
- c. Paragraph 2.10: *'The Government has therefore concluded that at a strategic level there is a compelling need for development of the national networks – both as individual networks and as an integrated system.'*
- d. Having referred to the Network Rail unconstrained rail freight forecasts 2023 to 2033, the Government in paragraph 2.50 continues: *'while the forecasts in themselves, do not provide sufficient granularity to allow site-specific need cases to be demonstrated, they confirm the need for an expanded network of large SRFIs across the regions to accommodate the long-term growth in rail freight. They also indicate that new rail freight interchanges, especially in areas poorly served by such facilities at present, are likely to attract substantial business, generally new to rail'*.
- e. On a different point concerning the environmental benefits of modal shift away from the roads, the NPSNN also says this, at paragraph 2.54: *'To facilitate this modal transfer, a network of SRFIs is needed across the regions, to serve regional, sub-regional and cross-regional markets.'*
- f. The concept of the particular SRFI 'network', and whether there are any differences between the regions, is explored at paragraphs 2.56 to 2.58:

2.56- *'The Government has concluded that there is a compelling need for an expanded network of SRFIs. It is important that SRFIs are located near the business markets they will serve – major urban centres, or groups of centres – and are linked to key supply chain routes. Given the locational requirements and the need for effective connections for both rail and road, the number of locations suitable for SRFIs will be limited, which will restrict the scope for developers to identify viable alternative sites.'*

2.57- *'Existing operational SRFIs and other intermodal RFIs are situated predominantly in the Midlands and the North. Conversely, in London and the South East, away from the deep-sea ports, most intermodal RFI and rail-connected warehousing is on a small scale and/or poorly located in relation to the main urban areas.'*

2.58- *'This means that SRFI capacity needs to be provided at a wide range of locations, to provide the flexibility needed to match the changing demands of the market, particularly with traffic moving from existing RFI to new larger facilities. There is a particular challenge in expanding rail freight interchanges serving London and the South East.'*

- 11.2.3. There can be no doubt that the NPSNN as published establishes a critical or compelling need for an expanded network of SRFIs, particularly in close relation to London. That need, whilst locationally-focused, is part of a national need.

Is the NPSNN still reliable?

- 11.2.4. It is not suggested by the MOL or any party that the NPSNN is out of date, to be replaced, or unreliable for the purposes of these appeals. All the main parties refer to it and use it to judge the proposals in various ways. The only exceptions perhaps are: (1) DBC's suggestion that the NPSNN has 'moved on' in the SIFE decision to focus on quality rather than quantity, for which there is no evidential basis (and nor was the Inspector, in my submission, in SIFE purporting to move policy on from the NPSNN); and, (2) the MOL's point³⁰⁶ that the NPSNN refers to 'unconstrained' demand, which may not have been reflected in the progress made by SRFI development since 2014. However, that does not, indeed may not be intended by the MOL to, suggest that the NPSNN itself is out of date. The unconstrained demand still exists; it is a question of removing the constraints. One of those, as the NPSNN indicates, is the lack of a network of SRFIs, without which it is unsurprising that the fully unconstrained demand has not been expressed in take up of rail freight.
- 11.2.5. It follows that the Secretary of State should give substantial weight to the NPSNN, and when applying it to the appeals proposal, bear in mind that it forms part of the Government's policy, based on evidence, that if a SRFI is constructed in order to meet demand, it is likely to be taken up, particularly in areas where there is currently poor demand. This part of the country, to the south east of London, is such an area.

Would Howbury Park meet the identified need (in part)?

- 11.2.6. So the conclusion is that a compelling national need exists for an expanded network of SRFIs. Is there any force in the suggestion that Howbury Park would 'not function' as a SRFI? This became the focus of the MOL's case at the Inquiry, in support of his stated scepticism that Green Belt loss would be

³⁰⁶ See emphasis at paras 7.1.2 and 7.4.30 of the MOL's case.

justified by the benefits of a SRFI. In summary, it is said (on behalf of the MOL)³⁰⁷ that:

- a. Howbury Park has operational restrictions on site, including the allegation that the proposed multi-user intermodal facility is unlikely to provide the flexibility that retailers identify;
- b. It does not have rail-connected warehouses; and unlike in 2007 'the proposal is configured in such a way that makes it perfectly suitable for entirely road-based traffic';
- c. Demand for SRFIs is questionable or 'underperforming';
- d. Rail remains more expensive than road freight;
- e. It would suffer from restrictions due to the apron size and the need to park HGVs in large numbers during the 'HGV cap' period and/or during 'incidents' which have led to congestion, and due to road congestion in general;
- f. The current timetable is a 'realistic proxy for what can be expected in the future' and does not permit more than 2 services a day to access the site;
- g. Pathing across South London is very difficult and less 'guaranteed' than in 2007;
- h. There is '*not a sufficient level of assurance that timetables can be flexed to secure that the facility will be operation[al] without adversely affecting passenger services*';
- i. There would be conflict with the Southeastern depot;
- j. There are no conditions or s.106 obligations which 'secure any level of rail use'.

None of these points, either singly or in aggregate, indicate that Howbury Park would not operate as a SRFI, or would not meet the underpinning policy objective. Most are examples of asking the wrong question, and then seeking to rely on the answer to generate doubt. Within those points lies the answer to the concerns maintained by the MOL (and to some extent, DBC and others), and so they occupy a substantial part of these submissions.

Operational restrictions and rail-connected warehousing (points a. and b.)

11.2.7. There is no physical restriction in terms of the road access, the site size, the flexibility of the site for different kinds of warehouses or the physical room for the intermodal terminal, gantry cranes, reachstackers and lorries.

11.2.8. Mr Goldney originally suggested that the intermodal terminal suffered from size restrictions, but this has not been maintained as an objection. There was a suggestion that the outline masterplan, showing an intermodal terminal without rail-connected buildings, was disadvantageous and would

³⁰⁷ And summarised at para 7.4.67 of the MOL's case.

make Howbury Park less attractive, or even disqualify it as a SRFI. However:

- a. The outline masterplan does not dictate whether any of the buildings could or could not be rail-connected; for instance, as Mr Gallop observed it would be feasible for a single occupier to build a large unit south of the railhead, onto which one side of his facility opened, whilst keeping the intermodal terminal as an open access facility;
- b. It is not in any event necessary to have rail-connected buildings in order to qualify as a SRFI meeting part of the identified national need. That was made clear by the Secretary of State in granting powers for the East Midlands Gateway SRFI. Rejecting the conclusions of the panel, he said this³⁰⁸

'18. The Secretary of State notes that the proposed arrangement at the SRFI is that rail-borne freight would be transported between the terminal and individual warehouses by road-based tractors. He considers that this would, at the least, mean that the warehouses would be 'rail accessible' or 'rail served' even if not directly connected in terms of rail sidings being physically located in close proximity to warehousing units. He considers that the proposed form of connection between warehouses and the rail freight terminal is sufficient to satisfy the objective of this part of the NSPNN, namely to facilitate and encourage the transport of freight by rail'

- 11.2.9. It is worth bearing that last sentence in mind throughout any consideration of the rail objections advanced on behalf of the MOL in these appeals. In order for the benefits to be realised, the Government's policy is aimed at facilitating and encouraging railfreight. Refusing permission for it because it may need Network Rail to re-time some passenger trains in the Dartford area would not on the face of it conform to the Government's approach in policy.
- 11.2.10. There should be no residual concerns about getting the trains into position to be loaded and unloaded, or of unloading them through a combination of reachstackers and gantry cranes. The two work perfectly well together and Mr Goldney confirmed that setting the tracks into the concrete to facilitate that was a common practice. The combination may well be witnessed at Barking RFI on the planned site visit.
- 11.2.11. It would also be physically possible for the intermodal terminal operator to install an exchanger to facilitate the movement of locomotives within the intermodal terminal. One is not necessarily required, but it is a piece of machinery, not something that needs to be included within the terms of a planning application, and could be installed at any point.
- 11.2.12. Other than noting as relevant the planning history and the way that the principle of SRFI use on the site is protected in the current Development Plan, RDL does not say that permission should be given this time because it

³⁰⁸ CD5.6 Decision Letter page 4, paragraphs 17 to 19.

was given in 2007. Certain things have changed. They include the identification of a compelling need for an expanded network of SRFIs in national policy, rather than a quantitative approach of 3 or 4 around London.

11.2.13. For that reason, RDL has not engaged in a 'spot the difference' contest between the last decision and the current appeals. The MOL on the other hand wants to have his cake and eat it on this point, disavowing the planning balance that was struck in 2007 as no longer relevant³⁰⁹ but suggesting that it might 'instructive' to 'explore the extent to which the key factors remain unchanged or have altered.' RDL do not agree that there is anything particularly instructive in such an exercise, given that the 2007 decision was made on balance in the circumstances of the day, which are different, see for instance the national policy point, from those which currently prevail.

11.2.14. However, since the points are relied on by the MOL, RDL records the following responses:

- a. It is right to say that the decision was thought in 2007, to involve striking 'a difficult balance'³¹⁰ – that is pretty much always true in Green Belt cases, especially when balancing such incommensurables as the harm to Green Belt openness in Bexley against the achievement of part of a nationally-important network of SRFIs. It is still true;
- b. The test applied by the Secretary of State in 2007 was whether he judged that he was 'reasonably assured' that the proposal would operate as a SRFI. That remains a sensible test to apply;
- c. In 2007, the Secretary of State found that the design of the proposed warehouses had been optimised to attract users committed to rail³¹¹. Eleven years later, the SRFI market has matured and there is no need to persuade the Secretary of State that a proposal is a SRFI by designing warehouses that would be commercially suicidal for road based occupiers. The NPSNN, which post-dates the 2007 decision, strongly emphasises that SRFIs are facilities for both road and rail, an idea to which the 2007 design of Howbury Park would have been deeply inimical³¹²

'Rail freight interchanges are not only locations for freight access to the railway but also locations for businesses, capable now or in the future, of supporting their commercial activities by rail. Therefore, from the outset, a rail freight interchange (RFI) should be developed in a form that can accommodate both rail and non-rail activities.'

³⁰⁹ See paras 7.2.1-7.2.15 of the MOL's case.

³¹⁰ CD5.2 paragraph 15.183, referred at para 7.2.5 of the MOL's case.

³¹¹ CD5.2 paragraph 15.132.

³¹² CD/2.2 paragraph 4.83, page 45.

The MOL submits³¹³ that the configuration now proposed would be 'attractive to road only users'. Yes, it would, in line with the national policy which has come into force since 2007. This attractiveness is said³¹⁴ to 'give rise to significant concerns on the part of the Mayor' for reasons set out, but the concerns appear to be premised incorrectly on the outdated view that SRFIs should not be attractive to road users. That is a potentially serious conceptual pitfall which the Secretary of State will no doubt avoid;

- d. Next the MOL points to the fact that the Inspector in 2007 recorded that Network Rail 'effectively guaranteed that paths for three trains a day would be available on the opening of the terminal'³¹⁵. Leaving aside whether NR in fact guaranteed or 'effectively guaranteed' anything, it is striking that there was no suggestion by the MOL or anyone else at the 2007 Inquiry that it should be a ground of objection to the proposals that insufficient whitespace or time was available to access the site itself across Crayford Creek Junction. Given the MOL's submission that 'the passenger timetable has shown enduring stability'³¹⁶, one would be forgiven for thinking the 2007 assessment undermines the current focus on the existing timetable to show whether trains can 'get through the door'. But in any event, the evidence and the views of Network Rail were given due weight in 2007 as they should be in 2018;
- e. It does not matter that Network Rail was considering a 420 metre train in 2007³¹⁷ but we are concerned with trains up to 565 metres. The Network Rail exercise reported to the local planning authorities on the current scheme took into account 750 metre plus trains at a significant trailing load³¹⁸;
- f. The MOL says that the combination of two factors was a critical part of the very special circumstances judgement reached in 2007: the ability to meet part of London's need for three or four SRFIs; and, the lack of alternatives in the south and east of London³¹⁹. The policy has changed and the way that need is identified nationally is different, something that the MOL expressly recognises in his analysis³²⁰ (although it unclear why that point should assist the MOL's case). That has a direct effect on how one approaches an alternative sites analysis. The whole of the apparatus of that issue in the 2007 decision is of no assistance now, but nothing adverse to the current proposals can be inferred;

³¹³ See para 7.2.8 of the MOL's case.

³¹⁴ Ibid para 7.2.8.

³¹⁵ CD5.2 paragraph 15.110, cited in para 7.2.5 of the MOL's case.

³¹⁶ See para 7.4.54 of the MOL's case.

³¹⁷ Ibid para 7.2.9 of the MOL's case.

³¹⁸ See, for instance, the reference in INQ/99 to that point, although it had been foreshadowed in Mr Gallop's evidence.

³¹⁹ See para 7.2.6 of the MOL's case.

³²⁰ It forms point 5 in the list of differences suggested between 2007 and 2018, para 7.2.12 of the MOL's case.

- g. The MOL says³²¹ that the balance between passenger rail and rail freight has changed since 2007³²². The demand for rail freight at Howbury Park is largely unchanged, as I come on to in a moment. There has been a growth in passenger rail, but there is no suggestion from the MOL that Mr Gallop was wrong to observe that as far as the mechanics of pathing are concerned, Network Rail has an equal obligation to facilitate the use of the network by both kinds of traffic. Again, the suggestion that somehow the railways have become *more constrained* since 2007 due to an increase in passenger rail sits uncomfortably with the MOL's submission that the timetable has an enduring quality about it. If that is wrong, as it surely is, then the balance between passenger and rail needs to be kept under review by Network Rail now and in the future. The passenger rail point is unlikely to have been much different in terms of actual pathing in 2007, but in any case it doesn't matter if it was – it is the future that really matters in that debate;
- h. The MOL also points out³²³ that consent has been granted (more than once!) for the SRFI at Radlett. That point does not assist unless the MOL suggests that somehow Radlett would reduce or remove the need for Howbury Park, which is not said.

11.2.15. From that list of responses it is evident that the MOL places rather too much weight on his compare and contrast exercise with 2007. His submissions are chiefly notable for the insight they give to the erroneous approach taken by the MOL to a modern SRFI, something which permeates his entire case.

Demand (point c. above)

11.2.16. I turn to deal with the suggestion that the Secretary of State should be concerned about Howbury Park as a SRFI because of doubts over whether there is demand for it. The Secretary of State will note that the Government has not withdrawn or modified its advice in the 2014 NPSNN³²⁴ that '*new rail freight interchanges, especially in areas poorly served by such facilities at present, are likely to attract substantial business.*' One of the chief constraints on the expansion of railfreight has been the difficulties of overcoming the regulatory hurdle of securing planning permission or development consent. That some of the key food retailers recognise that³²⁵ is notable.

11.2.17. However, the fact that there might be other constraints (for instance cost) which are also reflected in remarks by food retailers in relation to rail freight, does not mean that the unconstrained forecasts cease to be relevant. On the contrary, they indicate the level of likely demand were constraints removed. If the response of the industry to the NPSNN were to be that the constraints still exist, then the achievement of the NPSNN's

³²¹ See para 7.2.11 of the MOL's case.

³²² Ibid para 7.2.11.

³²³ Ibid para 7.2.14.

³²⁴ CD2.2 paragraph 2.50 page 21.

³²⁵ See the comments of retailers like Sainsburys and Marks & Spencer in the 2012 document at APP/RAIL/2 Appendix I

objectives would be indefinitely postponed. More SRFIs need to be built, to increase the resilience of the overall network, to bring costs down, and to encourage modal shift.

11.2.18. The MOL suggests that the domestic intermodal market is 'currently static'³²⁶ and 'underperforming'³²⁷, on the basis of Table 2 on page 7 of APP/RAIL/1. That submission ignores the evidence given by Mr Gallop that a new intermodal service has begun during the currency of this Inquiry, at I Port, Doncaster; it is also an unrealistic interpretation of the data presented by Mr Gallop. The tables on page 18 of APP/RAIL/1 are quite different and need to be interpreted sensibly in context:

- a. Figure 3 shows the volume of traffic through five SRFIs over time. It is notable that whereas DIRFT (the only one of the five with substantial domestic intermodal traffic) has remained broadly level since 2007, those like Hams Hall and BIFT which are reliant on maritime traffic have experienced a slight decline in volume since 2007. The change in the overall pattern occurs from 2008 onwards, which surely cannot be a surprise given the decade started with the deepest recession since before the War;
- b. Figure 4 is just about DIRFT, and actually shows the increase there in container handling activity between 2007 and 2014, from 80,000 'lifts' to 130,000 per annum³²⁸.

11.2.19. However, the MOL's notion that the 'sector' is underperforming is undefined, or at least rather slippery: if it is against the unconstrained demand figure, then it is not a reliable comparison, given that there are constraints in the real world, both macro-economic (global recession), and regulatory (failure of NPSNN to have delivered many more SRFI consents since 2014). The MOL accepts that the lack of facilities 'may be part of the story'³²⁹ but shifts attention to constraints identified in the Network Rail Freight Study 2013, saying that certain constraints in the MOL's view combine at Howbury. That is not an evidenced argument for a lack of market demand at Howbury, as it depends entirely on the proposition that the market will respond more to Mr Goldney's evidence and the MOL's qualms than to the consistent and robust support of Network Rail and the presence of RDL promoting the scheme. To be clear: it would not be a reliable inference from the market evidence on intermodal demand that Howbury will not attract rail users³³⁰.

11.2.20. There is in fact ample evidence to suggest that the Howbury Park location will be attractive to the market:

- a. RDL are promoting the site, as the country's leading SRFI developer;
- b. GB Railfreight, one of the few companies with a proven track record in operating rail freight, tell the Secretary of State that it is an attractive

³²⁶ See para 7.4.10 of the MOL's case.

³²⁷ Ibid para 7.4.12.

³²⁸ Figure 4, APP/RAIL/1, page 18.

³²⁹ See para 7.4.16 of the MOL's case.

³³⁰ Contrary to para 7.4.16 of the MOL's case.

location for a SRFI³³¹, as does Maritime, which operates a number of established intermodal facilities including that at Birch Coppice³³²;

- c. The industry body (the Rail Freight Group (RFG)) has also indicated that *'the development of suitable locations is therefore urgent and critical to unlocking rail distribution to and from, but also within the region'*, and it supports the idea of a SRFI at Howbury Park³³³. It would be very odd if the representative body was prepared to write in such terms if Howbury Park was not likely to be attractive to the companies which constitute the RFG;
- d. Viridor is on the doorstep of Howbury Park and writes³³⁴ to say that the lack of any rail freight facilities on the site means that the 'significant' potential to use rail freight is lost and HGVs will continue to be used. There was some discussion at the Inquiry about whether 'contaminated' waste from Viridor would be able to be transported in intermodal wagons, but that is not the point here – it is a major facility operated by one of the UK's largest waste management companies, and Mr Gallop identified that paper, packaging and recycle is already transported in intermodal wagons, giving DIRFT and Birch Coppice as examples. There would be no obvious restriction on Viridor taking space on the site as an extension to their business, and making use of the intermodal terminal; the co-location stems from the existing position of Viridor and represents an unusual benefit of the site.

11.2.21. It is hoped that the Secretary of State would give due weight to direct market evidence like this, and reject as unrealistic the suggestion that one would need a contractual arrangement or firmer indication before one could do so. In addition, one would not expect a food retailer like Tesco to express support for a particular site before permission is granted for it, given their aversion to involvement in contentious third-party planning³³⁵, and it would be wrong to draw such an adverse inference. The submission in the MOL's closing³³⁶ that *'there is no tangible evidence of market demand'* is plainly untenable. It is also regrettable that he chooses rather sneeringly to caricature Mr Gallop as a kind of railfreight cheerleader with *'commendable'* enthusiasm: he is by far the most experienced agent acting for promoters, owners and occupiers of SRFI and RFI facilities in the country, and has been from the very beginning of the industry. His view about the likely demand for Howbury Park should be treated with a little more respect, rather than used as a debating point as part of a 'strategic' objection by the MOL.

Economic viability of the proposals (point d. above)

11.2.22. It is true that margins for logistics, like everything else, can be tight and businesses are cost-sensitive. Similarly, where rail freight is concerned, the

³³¹ APP/RAIL/2 Appendix A

³³² Ibid, Appendix B.

³³³ Ibid, Appendix C.

³³⁴ Ibid Appendix D.

³³⁵ Mr Gallop XC.

³³⁶ See para 7.4.67 (c) of the MOL's case.

amount of profit will depend on the take-up of the services and (from an occupier's point of view) the efficiency of each train. All that goes without saying. But those very general propositions do not amount to a cogent objection to Howbury Park based on economics. The MOL makes two rather different points in support of this aspect of his objection: he says (1) that the evidence suggests that rail remains more expensive than road (and therefore Howbury Park may not be attractive as a SRFI), and (2) that there is no 'economics' case presented by RDL in support of the appeals proposal.

11.2.23. The MOL's reference to 'the evidence' is to the exercise that Mr Goldney carries out in his main proof, but very little weight should be given to that exercise³³⁷:

- a. Mr Goldney's exercise is not a cost benefit analysis, but a very high level (and tendentious) costs comparison exercise. It does not include perhaps the most important cost comparison item, which is what value or price the operators place on the reliability of the rail connection over the HGV. Mr Goldney accepted that the commercial decision as to whether to operate in part with a rail freight logistics component turns on more than the cost comparison between rail and HGV; it includes matters which are reputational (such as corporate social responsibility) as well as important issues which might be monetised but have not been in the rather crude exercise presented by Mr Goldney – the most important of which is that rail offers reliability and resilience, especially where deliveries to the London area are concerned. The traffic evidence adduced by Dartford as to numbers of 'incidents' on the M25 serve to support one of the fundamental cost benefits of railfreight, which is that one train, with a much lower risk of delay/disruption, compares with many HGVs all of which would be likely to have to travel on the M25 (and M1 if the assumption is a Daventry or Birch Coppice to Howbury movement), with vastly greater risk of delay. Mr Gallop's anecdote about the Morrisons' store in Kent, waiting in frustration for the arrival of four lorries stuck on the M25 illustrates this point. Without factoring in this key commercial aspect of rail freight, it is not possible to prove that a commercial operator would find it unviable to transport goods from Daventry to Howbury Park by rail, and the exercise is all but useless;
- b. If one turns to the contents of the exercise itself, it was based on 37 container trains which do not correspond to the evidence as to what domestic intermodal trains currently run on the network and what would be likely to run at Howbury Park;
- c. Similarly, Mr Goldney's 'cost model' is entirely based on variable costs, the input of which has a direct effect on the output of the model, and which are questionable: fuel costs, labour costs, facilities costs are all items the future cost of which is unknown.

11.2.24. It is maintained on behalf of the MOL³³⁸ that Mr Goldney's view is that rail has a relative lack of flexibility, but that rather masks the key value that

³³⁷ See GLA/RG/01 pages 56 to 61.

³³⁸ See para 7.4.28 of the MOL's case.

operators are likely to place on reliability (i.e. dependability) of rail compared to dicing with the strategic road network between the Midlands, or the ports, and Howbury. For these reasons, it would be unsafe to place any reliance on Mr Goldney's exercise as a factor in any judgement over whether operators would be attracted to use Howbury Park for intermodal freight. It is also another of the many signs in the MOL's case that he has fundamentally misunderstood how SRFIs work, and how the Secretary of State suggests that SRFI proposals are assessed.

- 11.2.25. That persistent failure also underlies the other point the MOL makes on this issue. He comments that RDL's evidence is 'strangely silent on economics'³³⁹, but there is nothing remotely strange about that. No policy (including the *London Plan*) requires a promoter of a SRFI to demonstrate its viability. No aspect of RDL's case is justified on the basis of the exigencies of a viability appraisal. No suggestion has ever been made that a viability appraisal should be included in the applications.
- 11.2.26. Most importantly, however, is that the notion that there is anything strange about not undertaking an economics case in a SRFI proposal misunderstands national policy. No such assessment was undertaken, for instance, in support of the now consented East Midlands SRFI³⁴⁰. The reason is simple – unlike a road or railway improvement scheme, for instance, where one can assess fare revenue from passengers against capital expenditure, and monetised social and environmental effects, a SRFI must be flexible when it is planned and begun.
- 11.2.27. It should not be a ground of complaint or surprise that an 'economics' case was not prepared for the Howbury Park proposals, when the NPSNN makes it clear³⁴¹ that in areas such as the southeast quadrant around London, which is 'poorly served' by rail freight, 'new rail freight interchanges ... are likely to attract substantial business, generally new to rail'. The NPSNN does require NSIP applications to be supported by a business case³⁴², but there is a specific exception made for SRFIs³⁴³

'In the case of strategic rail freight interchanges, a judgement of viability will be made within the market framework, and taking account of Government interventions such as, for instance, investment in the strategic rail freight network.'

- 11.2.28. The Secretary of State has ample evidence in this case that the market exists for a SRFI at Howbury Park. That comprises not just Mr Gallop's remark in evidence that Howbury Park 'will find its market' (much seized upon by both the MOL³⁴⁴ and DBC³⁴⁵, apparently to show that was all he relied on), which is based on having been involved in many SRFIs and RFI

³³⁹ See para 7.4.30 of the MOL's case. A similar point is raised by DBC, 8.1.6.

³⁴⁰ Although interestingly the Examining Authority sought further clarification about whether a business case should have been prepared for the two road schemes which were also included in the NSIP which was the subject of the report: see CD5.6, paragraph 4.2.5ff.

³⁴¹ CD/2.2 paragraph 2.50.

³⁴² Ibid paragraph 4.5.

³⁴³ Ibid and paragraph 4.8.

³⁴⁴ See para 7.4.25 of the MOL's case.

³⁴⁵ See para 8.1.6 of DBC's case..

projects over the past 20 years; it also comprises the underpinning rationale of the NPSNN, and the market evidence of SRFI take up generally and the support for Howbury Park specifically. He can confidently form the view that the preponderance of the evidence supports the market attractiveness of SRFI facilities on the appeals site.

Restrictions due to apron size, HGV parking and congestion (point e. above)

- 11.2.29. The MOL says that in operational terms, 'the multi-user intermodal facility is unlikely to provide the flexibility that retailers identify they seek'³⁴⁶, compounded, it is said, by 'the highway constraints which impose operational restrictions which are unprecedented for SRFIs'³⁴⁷.
- 11.2.30. Is this a point about discouraging rail use, or road use? It seems to be the MOL's concern that the site would be *too attractive*, rather than not attractive enough, for road based traffic³⁴⁸. If those whose entire business, at least at first, involves road based haulage from Howbury would be attracted to the site notwithstanding the 'unprecedented' HGV cap, why should rail-based HGV use find it so alarming? That logical inconsistency runs throughout the MOL's evidence and submissions.
- 11.2.31. In fact, Howbury Park is a huge site with ample provision for apron space, multi- or single-user buildings, and (as already submitted) the potential for a building or buildings to be rail-connected, albeit not exclusively. That is the situation for part of the DIRFT intermodal terminal, as Mr Gallop said – in addition to their own facility (which is not exactly rail-connected using the old terminology³⁴⁹), Tesco use part of the intermodal terminal which is also open-access. Tesco are not put off, and nor it would seem are the other intermodal users at DIRFT.
- 11.2.32. The MOL gathers his points on this together under the heading '*flexibility*'³⁵⁰. It is not said that a particular operator, or type of operator, would not be able to conduct his business from Howbury Park due to the apron size, the shared intermodal area, the lack of reception sidings, the HGV cap or the need at times to hold HGVs on site rather than let them out into a pre-existing road '*incident*'. All that it said is that these things would make Howbury Park '*less attractive*'. The MOL forgets, in this part of his case, the concession that he makes elsewhere³⁵¹, that Howbury Park '*is well related to the London market*'. That is more than a policy requirement – it is something which drives the entire commercial opportunity at Howbury Park. Operators who use rail want reliability and efficiency in their supply chain proximate to the end market for their goods. At the moment, there is not a single constructed SRFI serving the largest and wealthiest concentration of customers in the UK. It is fanciful for the MOL to suggest that an intermodal facility here would cease to be attractive to retailers and logistics companies

³⁴⁶ See para 7.4.67 (e) of the MOL's case.

³⁴⁷ Ibid para 7.4.67(f).

³⁴⁸ Ibid para 7.5.3 – 'As designed it will be attractive to road users'.

³⁴⁹ As Mr Gallop said, it is some way from the Tesco warehouse and up a 9m high ramp next to the rail tracks,

³⁵⁰ see paras 7.4.31-7.4.36 of the MOL's case.

³⁵¹ Ibid para 7.1.6. It is also inherent in the argument that the Mayor makes about London Gateway being an alternative to Howbury Park.

because the roads snarl up regularly in London. They probably know that – they currently have to get their lorries down the M1, round the M25 *and then through London*. The prize is big enough not to be put off by traffic.

11.2.33. Of course, the HGV cap is a constraint on the flexibility of the use, but it only applies during hours that are likely to be avoided by road hauliers anyway. Given the likelihood that some or most of the trains will be loading/unloading well away from the peak hours in traffic terms, it is hardly the operational bugbear that the MOL apparently sees it as. Similarly, the need to keep HGVs back on a 57 ha site which can be designed with large amounts of parking for HGVs³⁵² is hardly an insuperable problem.

11.2.34. The MOL is scraping the barrel for objections to the scheme at this point: Mr Goldney, it will be recalled, first misread the drawing of the gantry crane and reachstacker, then indicated he had no first-hand experience of reachstackers and cranes working together, and finally fell back on the suggestion that HGVs would prevent the unloading of the trains. That last suggestion assumes that the HGVs foul the gantry crane, which they would not. The MOL's submission at the end of that staged evidential retreat is that if there is time pressure to unload a train, lots of parked HGVs would 'cut across' the operation³⁵³. No doubt that eventuality would be factored into the detailed design of the intermodal area in due course. It has no real force as an objection to the principle of the SRFI here; the MOL should leave the design of SRFIs to those who promote and operate them.

Pathing and rail access to the site (points f., g. and h. above)-important areas of agreement

11.2.35. I note that the MOL does not allege either of the following:

- a. He does not say that Network Rail is wrong, and that paths cannot be found to the site across the congested South London network³⁵⁴. That was expressly acknowledged by Mr Goldney, whose case was that pathing is 'very difficult' but not impossible. One can readily understand why Mr Goldney was not of the view that it was impossible to path new freight services through the North Kent line, given that he has just done so himself for BP. Although at his first Inquiry appearance on 19-20 June 2018 he was rather negative about his client's prospects of securing pathing agreements with Network Rail (he spoke of 'crisis meetings' being held³⁵⁵), by the time he and Mr Gallop gave their evidence in September 2018, the service had

³⁵² The illustrative layout can be shown to yield nearly 200 spaces (see APP/RAIL/7 Appendix D), without even turning to the service yards of the warehouses themselves, or indeed imagining the final detailed design factoring in more HGV overspill parking.

³⁵³ See para 7.4.31(e) of the MOL's case.

³⁵⁴ Mr Goldney does not present an analysis purporting to show that Mr Gallop's suggested train times to and fro the SRFI at Howbury do not 'match up' with paths through South London. It is not a fair criticism of RDL or Mr Gallop that such an exercise has not been done, as the Mayor alleges (see para 7.4.50 of the MOL's case).

³⁵⁵ Mr Goldney, answer to Inspector's question, 19 June 2018.

started to run³⁵⁶. The MOL accepts that both the BP train and the Crossrail trains were examples of pathing being achieved;

- b. The MOL also does not say that pathing to the site would not, or might not, involve a degree of adjustment (so-called 'flex') to the timetable. He says instead that one should treat the ability of Network Rail to work new freight services into a future timetable 'with very great care', despite the point being 'seductively presented'³⁵⁷. Presumably, the choice of the word 'seductively' rather than 'persuasively' is intended to imply a degree of questionably emotional appeal which any right-thinking Secretary of State would immediately spot and keep well clear of, like a diplomat avoiding a honey trap. However, there is nothing seductive about the timetable flex point. It is just right:

- i. Network Rail has the power to flex the timetable, indeed (as Mr Kapur, the acknowledged industry expert³⁵⁸ points out³⁵⁹) by as much as 24 hours;
- ii. Network Rail has a duty to adjust and manage the timetable to enable growth in both passenger and freight traffic, with no preference being given to one or other³⁶⁰
- iii. The process of submitting a *Train Operator Variation Request* to Network Rail is, according to Mr Kapur³⁶¹, 'a very regular event', and he illustrates that by saying³⁶²

'...GB Railfreight will regularly bid for between 150 and 200 alterations and new services into any of the twice-yearly timetable, many of which will need to have support for altered timings from other Train Operators. At a timetabling level, GB Railfreight, and other freight & passenger operators, always work with each other to accommodate minor flexing of services to help each other accommodate desired changes to their timetables.'

- iv. This is the true position. It presents the accurate picture of flexibility and co-operation between those engaged in running the railways, in stark contrast to the position that the MOL urges the Secretary of State to adopt. In order to accept the MOL's chief submission on this point – that the access to Howbury from the mainline is 'impossible' because one cannot see an 8-10 minute whitespace gap for emerging trains in the current timetable – one would have to reject the unchallenged

³⁵⁶ Indeed, was early – Mr Gallop XC, 18 September 2018. The Mayor still refers (para 7.4.56 F of the MOL's case) to the 'very considerable pathing difficulties', but something being complicated and difficult is not a reason to refuse planning permission, especially where the service that was so difficult is actually operating.

³⁵⁷ See para 7.4.53 of the MOL's case.

³⁵⁸ See the agreement on this point from the Mayor, para 7.4.44 of the MOL's case ('the best available expert').

³⁵⁹ APP/RAIL/7, Appendix D, page 2.

³⁶⁰ As Mr Goldney acknowledged, XX September 2018.

³⁶¹ APP/RAIL/7 Appendix D, page 3.

³⁶² Ibid.

evidence of Mr Gallop and Mr Kapur that the pathing of trains into Howbury Park, whilst it might require some re-timing of some existing train times in the current 2018 timetable, is not a show-stopping objection to the grant of permission for a SRFI at Howbury Park.

- c. We are back to the right question versus the wrong question. RDL would ask the Secretary of State to bear in mind the ramifications of accepting the MOL's argument about flex and timetabling here – particularly here, in fact, around London where no SRFIs currently exist but where national policy seeks for them to be located. If it is to be a major 'trip hazard' to grant of permission that negative findings or inferences are drawn from timetabling exercises which do not relate to the relevant year (and do not take into account the powers of Network Rail and the industry practices as relayed by Messrs Gallop and Kapur) then the Secretary of State would also need to acknowledge the very serious effect that such an approach would have on the reasonable achievement of the Government's rail freight policy.

11.2.36. If one therefore accepts that pathing of Howbury Park trains should be assumed to be possible across South London and on the North Kent line, and accepts that the current timetable is not a proxy for the future timetable because there is an established industry practice to ensure that adjustments are made to enable different services, including new ones, to co-exist, then there is simply nothing substantive underlying the MOL's concerns about access to the site.

Pathing and rail access to the site (points f., g. and h. above)-two other ways of assessing the position

11.2.37. If absolutely necessary, the overall position can also be tested by referring to the final evidential tussle between Mr Gallop and Mr Goldney on this issue: one should look at Mr Gallop and Mr Kapur's timetabling exercise, and Mr Goldney's 'clockface' exercise.

11.2.38. The MOL submits with thinly veiled triumph that Mr Gallop and Mr Kapur's evidence APP/RAIL/7 simply proves that Mr Goldney is right³⁶³ that 'it is not possible to depart trains'. Unfortunately, that submission relies on making the prior assumption that a junction occupation time of 8-10 minutes is necessary to enable a Howbury Park train to cross the Crayford Creek Junction³⁶⁴. That was not Mr Gallop's evidence, and not the basis on which Mr Kapur carried out his exercise. The dispute over whether Mr Gallop or Mr Goldney is right about the length of time to cross the junction is in fact critical to resolve the actual evidential dispute between them on this point, not the adoption of the 8-10 minutes from the now-superseded (on this issue) rail report from 2016. That perhaps important distinction is not made in the MOL's submissions, where the detail of who is right about the junction crossing time is relegated to a single paragraph entitled '*[d]ifferences of*

³⁶³ See para 7.4.49 of the MOL's case.

³⁶⁴ See para 7.4.41 of the MOL's case, which contrasts Mr Goldney's 11 or 11½ minutes with the 8-10 minutes in the rail report of 2016.

*detail*³⁶⁵. It is said there that 'the MOL's concerns as expressed above exist even if the points of detail on access timing ... are assumed in Mr Gallop's favour'. That cannot be right, for the reasons just set out.

11.2.39. The 8-10 minute exercise was accepted on its face by Mr Gallop to show that, if one takes Mr Kapur's 'white spaces', then, as currently timetabled, there is no space for an emerging train during the period Mr Kapur shows. It's another example of the wrong question yielding a potentially misleading answer, though. Mr Gallop's actual evidence in APP/RAIL/7 is in his Tables 1 and 2, which work on the basis of his analysis (1) that the actual junction occupation time is substantially shorter than claimed by Mr Goldney, and (2) that access to the site can be achieved by flexing the existing timetable by only a very limited amount. For completeness, I return shortly to the technical details that underlie Mr Gallop's junction occupation times, and why they should be preferred to those Mr Goldney suggests.

11.2.40. Turning to Mr Goldney's clockface exercise³⁶⁶, it appears to show the effect on a typical hour of introducing a 12 minute junction occupation Howbury Park train. As he accepted³⁶⁷, the work illustrates the degree of timetable 'flex' that would require (assuming such a long junction occupation):

- a. It would leave three of the four passenger services able to be located in diametrically opposite half-hourly slots;
- b. It would leave 7 minutes entirely free in the hour;
- c. It would enable a train to enter or leave Howbury Park taking 12 minutes to do so each hour;
- d. It would enable the Dartford to Victoria service to continue to run 4 times an hour past the site, with slight variations in the gaps between the service;
- e. It would be possible to apply the exercise to an interpeak hour.

11.2.41. The reality is that Mr Goldney's exercise was an own goal. In submissions³⁶⁸, Mr Kolinsky runs to Mr Goldney's aid by suggesting that the exercise shows that the 'knock on effects [of inserting a 12 minute Howbury train in one quarter] will be that passenger services in the other three quarters will become bunched up and irregular'. It does not in fact show that: the majority of the services would not be bunched or irregular. The right question about the Victoria-Dartford service is whether it matters that the gaps are slightly irregular.

11.2.42. Further, it is suggested that Mr Goldney's exercise was 'intended to be a notional representation of how significant the demands of the freight train on the timetable are...'³⁶⁹ If that was the intention, then with great respect Mr Goldney has not achieved his aim. The clockface in fact suggest how

³⁶⁵ See para 7.4.65 of the MOL's case.

³⁶⁶ RG/09 page 13.

³⁶⁷ XX RG 17 September 2018

³⁶⁸ See para 7.4.55 of the MOL's case.

³⁶⁹ Ibid.

limited the effects, even of such a long junction occupation, would be. It is also a little unfair to accuse me of a 'flawed literal analysis' of Mr Goldney's clockface exercise, given that the questions were put on the basis that the exercise showed how little effect the freight train would have on regular passenger services. It was actually neither a flawed nor a literal analysis, but one which sought to show that as soon as one begins to try to show how difficult – indeed insuperable – it would be to flex the passenger services in and around the site, the more obvious it becomes that Mr Kapur is right in what he says: *'this is a very regular event ... at a timetabling level, GB Railfreight, and other freight & passenger operators, always work with each other to accommodate minor flexing of services...'*.

Why Mr Gallop is correct in his junction occupation assessment

- 11.2.43. The acceleration and deceleration curves employed are largely agreed, save for the wrangle over the evidence for acceleration (based on two pieces of footage)³⁷⁰. Mr Goldney appeared to take issue with the use of the Class 70 locomotive in Mr Gallop's footage, despite the fact (1) they are in use and may well be in use in the future, particularly in cases where speed through the network is at a premium³⁷¹, and (2) the weight of the train in Mr Gallop's footage appears to be much greater than that now agreed to be likely for a 545 metre intermodal train at Howbury Park (c.1100 t)³⁷². The important combination of the locomotive type and the weight of the trailing load is not a point grappled with in the MOL's submissions³⁷³.
- 11.2.44. Mr Goldney notably added to his assumptions about the duration of junction occupation for his later evidence, RG/09. He had not suggested before that time that the incoming Howbury trains would either have to, or may³⁷⁴, stop at a signal before the junction and then have to start from zero again on the way in. Now of course, that might have to happen if there is perturbation on the system, but as Mr Goldney accepted³⁷⁵, the clear objective would be to path and signal trains in and out of Howbury Park such that they cleared the mainline as fast as possible.
- 11.2.45. Network Rail has made it clear that it anticipates a through-signalling system which would allow the Howbury Park trains to be signalled from the Ashford box³⁷⁶, something which would also reduce the likelihood of the basic position being one where the trains would have to stop before the junction; that is an unsafe and unduly negative assumption to make, and it has a significant effect on the junction occupation time. The MOL does not explain why it is 'a more robust assumption to plan on the basis that arriving freight trains may need to accelerate from a stationary position at the preceding signal'³⁷⁷, unless 'robust' simply means 'more conservative'.

³⁷⁰ See APP/RAIL/7 paragraph 2.2.6.

³⁷¹ All of which Mr Goldney accepted, XX 17 September 2018.

³⁷² XC Gallop.

³⁷³ See para 7.4.65(b) of the MOL's case.

³⁷⁴ The further qualification he introduced in XC.

³⁷⁵ XX 17 September 2018

³⁷⁶ See INQ/99.

³⁷⁷ See para 7.4.65(a) of the MOL's case.

There is far less justification for it if one reaches an evaluative judgement, however.

- 11.2.46. Similarly, the MOL submits that Mr Goldney's novel 10% contingency is 'prudent'.³⁷⁸ The reason there is 'given the complexities of the manoeuvres required'. Actually, Mr Goldney's own evidence undermined his late introduction of this considerable additional time; he stressed on several occasions how freight drivers are trained, become familiar with the exact layout and operation they have to perform, and how there are not only visual cues but technological aids to prevent them from making mistakes. It is entirely unclear why the weather should affect the time across the junction by as much as 10%. The effect of the 10% is to compound the over-estimate of crossing times, and render the basis of the assessment less realistic and less useful to the Secretary of State. Especially if it relied on by the MOL to oppose a rail freight scheme, which he claims is a category of development which in principle he strongly supports³⁷⁹.
- 11.2.47. That leaves the deceleration – even if one assumes an earlier rather than a later start to the braking when entering the site, the difference that makes to Mr Gallop's assessment would be lost in the rounding. Mr Goldney's point about walking slowly when the train is shunting does not affect the junction occupation time.
- 11.2.48. As a result, to the extent that it is thought necessary, the Secretary of State is urged to accept the more balanced view of Mr Gallop on the time needed to enter and leave the site across the Crayford Creek Junction.
- 11.2.49. For all of these reasons, it is not the case that the future operators and occupiers of Howbury Park would be dissuaded from engaging with RDL because of pathing and access issues. As Mr Gallop recollected, the same arguments, with necessary variations, have been advanced and debated at most of the other SRFI inquiries or examinations. Howbury Park is nothing special in that regard – indeed, at Radlett (where Mr Gallop gave evidence) there was a considerable debate about the ability of the freight trains to cross a high-speed section of line occupied by frequent Thameslink services travelling at over 100 mph³⁸⁰; at Doncaster, he clarified, the East Coast mainline trains posed a similar challenge³⁸¹.

Network Rail and (in particular) the depot (point i. above)

- 11.2.50. It is relevant that NR support the scheme and do not suggest that there is any technical reason concerned with pathing, timetabling, access or the SET depot that should cause the consent sought to be refused. NR have not appeared at the Inquiry, and although that may be frustrating for all concerned, the Secretary of State should not be persuaded to give NR's view any lesser respect and status than they are usually given. NR is the custodian of the rail network, and they have engaged fully with the Howbury Park proposals, which they fully support.

³⁷⁸ Ibid para 7.4.65(e) of the MOL's case.

³⁷⁹ See for instance para 7.1.18 of the MOL's case.

³⁸⁰ Mr Gallop XC.

³⁸¹ Mr Gallop XX.

11.2.51. If there were insuperable difficulties with Howbury Park due an inability to path trains through South London, or NR felt that no amount of timetable flexing could achieve an access (or egress) for the SRFI, it is obvious that NR would have said. Indeed it is *inconceivable* that NR would have written in the terms they did to Bexley (and Dartford, see later) in 2016, or indeed for them to have written as they have done much more recently³⁸² if they had thought that the SRFI would suffer from as fundamental a defect as is now suggested.

11.2.52. Whilst they are not here to defend themselves, it is perhaps salutary to evaluate the opprobrium which the MOL heaps on them in his submissions to the Secretary of State³⁸³:

- a. The headline point made by the MOL is that 'Network Rail's support for the project gives rise to many questions and no answers'³⁸⁴;
- b. There is alleged to be 'considerable lack of clarity as to what Network Rail's position is in respect of the potential conflict between the depot and the proposal'³⁸⁵. Is there? NR do not suggest that any such conflict should result in permission being withheld, indeed their clear advice to Bexley and Dartford was that SET depot would not be affected by the proposal³⁸⁶

'Is Southeastern genuinely content about freight trains reversing in front of Slade Green train depot for operation via the Sidcup line?

Southeastern have been consulted on the project, methods of working into and out of Howbury Park for those paths running via Sidcup would not affect the day to day running of the depot. In addition, the project will enable Southeastern to extend their headshunt from 10 car to 12 car to enable more efficient working.'

- c. What is unclear about that? Consistent with evidence given by Mr Gallop to the Inquiry, there has been liaison between NR, RDL and Southeastern Trains about the project and its potential effects on the depot. It is notable that SET does not formally object to the proposals, despite a member of its staff (without, as far as one can tell, any particular authority to do so, making negative comments in an unofficial communication to Councillor Borella³⁸⁷, the MOL seeks to rely on that communication in support of the proposition³⁸⁸ that the depot issues 'are real', but it would have been better to have focused on the explanatory email from Mr Caine;

³⁸² INQ/99.

³⁸³ See para 7.4.67(k) of the MOL's case

³⁸⁴ Ibid para 7.4.67(k).

³⁸⁵ Ibid para 7.4.58.

³⁸⁶ See INQ/25, email from Thomas Caine (NR) to Martin Able (Bexley) copied to Tania Smith at Dartford BC, dated 23 November 2016.

³⁸⁷ INQ/58.

³⁸⁸ See para 7.4.57 of the MOL's case.

- d. Network Rail (NR) are also accused of being unclear about what the design solution is, and whether the 12 car headshunt for SET is a pre-condition of the acceptability of the RDL scheme. This was an example of the 'I see no ships' phenomenon witnessed on rare occasions at planning Inquiries. It is perfectly clear that the RDL scheme is viewed as an enabling device for SET/NR's depot re-organisation, rather than requiring it to happen as a precondition of the SRFI access. That is clear from (1) the 23 November 2016 email from Mr Caine of Network Rail, relevant part cited above, (2) from the formal consultation response which one finds repeated verbatim in both the Bexley committee report³⁸⁹ and in the withdrawn November 2016 Dartford committee report³⁹⁰ and (3) from the 26 September 2018 email from Guy Bates of NR³⁹¹. Mr Caines' *'in addition'* is consistent with Mr Bates' *'the design of Howbury Park's main line connection is compatible with Slade Green Depot achieving its own extended 12-car headshunt within the boundaries of the depot.'* Mr Gallop was entirely accurate in his description of the relationship between the RDL scheme and the potential depot improvement, which was consistent with the NR emails; in no sense was it (as is alleged) a 'gloss'³⁹²;
- e. Similarly, Network Rail (and by extension, RDL) are taken to task for producing a timetable study summary marked 'draft', but not the entire document. That is a matter for NR. As the email exchanges in late 2016 between NR and Bexley³⁹³ amply illustrate, NR wrote in detail and then responded to questions from Bexley including in a meeting on 19 October 2016; that then led to further emailed questions, all of which were answered in detail by Thomas Caine. That led to Bexley's committee report and their stance (maintained throughout this Inquiry, despite the Mayoral injunction that they refuse permission) that the proposal would function as a SRFI;
- f. On a small point, both DBC and the MOL query what the scheme is. The rail connection is as illustrated on the masterplan. Mr Goldney has not suggested that it cannot be provided in that form, fails any standard, or anything of that kind. Far from being 'extraordinary'³⁹⁴, it is wholly unsurprising that the NR responses and documents do not detail a possible depot improvement which is not part of the RDL scheme and is not required as its precursor. The NR emails as long ago as 2016 confirm that the design work and assessment to the end of GRIP2 have been completed³⁹⁵.

³⁸⁹ CD/1.6

³⁹⁰ CD/1.1

³⁹¹ INQ/99.

³⁹² This allegation is made in para 7.4.60 of the MOL's case.

³⁹³ INQ/17.

³⁹⁴ The Mayor's reaction, expressed at para 7.4.59 of the MOL's case.

³⁹⁵ See INQ/25, email from Guy Bates to Susan Clark of Bexley dated 5 October 2016: 'we have now completed our review of the engineering, operational and timetable aspects of the scheme through our 'GRIP' process as far as the end of Level 2 (Feasibility), a level of detail commensurate with the needs of the project at this stage of its development.' (underlining added).

Summary – why the SRFI would function as one

11.2.53. For these reasons, the attack mounted at this Inquiry on the proposals as falling outside or beneath the relevant standards for a SRFI should be rejected. RDL is the last party to make light of the practical and technical challenges facing a SRFI promoter, but a degree of overall reasonableness has to be maintained when examining whether the SRFI proposal will function as such. The Secretary of State can be reasonably assured that the proposals will function as a SRFI, delivering modal shift, employment benefits and meeting part of the identified national need. It should be given very significant weight in the assessment of whether very special circumstances exist.

London Gateway

11.2.54. The MOL says that the potential of London Gateway as a SRFI serving the east/south of London is a 'fatal defect' in the RDL case³⁹⁶. Is it? In what sense would it meet the need that Howbury Park would meet, obviating the need for a SRFI in the Green Belt at Howbury?³⁹⁷

11.2.55. The answer is that it would not remove the need that Howbury Park would meet, unless one asks the wrong question. In order to determine whether there is a need for Howbury Park, the MOL asks: could London Gateway in the future host a SRFI in the arc to the east/south of London³⁹⁸? Since the answer is obviously 'yes' to that question, the MOL then forms the view that Howbury is not needed. But the mistake is to assume that the critical need for an expanded network of SRFIs would be met by one at London Gateway (even with Radlett in place at some point).

11.2.56. London Gateway and Radlett would not constitute a network of SRFIs serving London and the South East. That is manifestly the case when one recognises that London Gateway and Howbury Park would be unlikely to interconnect directly (i.e. for rail freight to travel between them); they would actually serve different parts of the market and use different parts of the rail network. This appears to be acknowledged in the MOL's submissions³⁹⁹, albeit that it is put as London Gateway acting as a 'rival' to Howbury Park. It is not particularly clear why they would not in fact be complementary to one another, since they would be likely to serve different rail routes, with one being closer to the south London area, the other to the east.

11.2.57. But the problem with the rather simplistic case advanced on this point by the MOL is that the NPSNN does not envisage a need quantitatively framed, for 3 or 4 SRFIs around London. We are not here (thankfully) in the world of Motorway Service areas to be provided at suitable intervals around the M25 to meet needs. There is no obvious logic to the MOL's argument that a

³⁹⁶ See para 7.2.13 of the MOL's case.

³⁹⁷ I note that the Mayor does not pursue the raft of other suggested alternative sites suggested by Mr Goldney in his main proof.

³⁹⁸ His exact formulation is at para 7.4.71 of the MOL's case.

³⁹⁹ See para 7.4.82 of the MOL's case.

potential future SRFI at London Gateway would meet the need that Howbury Park would meet – they are both needed.

- 11.2.58. That is certainly the way that the NPSNN envisages the London Gateway SRFI potential; the intermodal terminal had been consented by the release of the NPSNN in 2014, and yet the Government's view has been that London Gateway is primarily a port which will increase, not diminish, the needs for SRFI facilities elsewhere⁴⁰⁰. The port-related railhead is not, as RDL understands it, being promoted by the MOL as the alternative SRFI.
- 11.2.59. Furthermore, apart from the fact that the intermodal terminal is not constructed and is not required to be so until 400,000 m² of B8 is built and occupied at London Gateway (a staggering amount, considering the size of the port already in operation), the potential SRFI is not proving to be attractive to the market due to its location. It is not close enough to London to displace locations such as Barking in the affections of Tesco, and Mr Gallop gave evidence that others had considered London Gateway as a location and rejected it.
- 11.2.60. The chief issue is that many of the Regional Distribution Centres for the big retailers are south of the river, near the many stores and customers in South London. It makes little sense for HGVs to move the additional mileage out to London Gateway and back; that would remain the case even if a new Lower Thames Crossing is in due course constructed. It would be much more convenient (and therefore much more likely to attract customers to rail) for there to be the shortest HGV trips possible to and from the SRFI. London Gateway will never be able to compete with a site as close to the urban area and RDCs as Howbury Park.
- 11.2.61. So whilst it is undoubtedly true that there are failings with the Alternative Sites Assessment⁴⁰¹, and a role for London Gateway should probably have been identified, there is no embarrassment on RDL's part in rejecting the MOL's case on this point. If London Gateway did in fact represent such a 'fatal defect' in the appellant's case, why was it not mentioned in the MOL's Statement of Case? The point has mushroomed as the MOL's case to the Inquiry developed, and now occupies an unjustifiably prominent role, mainly due to the fact that it appears (to the MOL, at least) to be the answer to the relevant question. But, as submitted already, he is wrong about that.

11.3. **What planning benefits of the proposal can be reasonably anticipated?**

- 11.3.1. It follows from the submissions already made that the Secretary of State is invited to find that sufficient assurance exists in this case for the proposals to be treated as a SRFI.

⁴⁰⁰ CD/2.2 paragraph 2.48,

⁴⁰¹ Most of the points made in paras 7.4.85-86 of the MOL's case are accepted. However it should be noted that the suggested role of London Gateway was not identified in consultation on the project, nor is the site referred to in the Mayor's Statement of Case on these appeals.

- 11.3.2. From that flow some very weighty benefits (hence of course the reason the MOL spent much of the Inquiry disputing that the proposals would be a SRFI).

Employment

- 11.3.3. First, Howbury Park would meet part of the nationally-recognised need for an expanded network of SRFIs. It would therefore bring about modal shift because it would encourage retailers, logistics companies, waste companies, to shift some of their HGV loads to rail. It would not start at 4 trains a day, or more. It would start, as all SRFIs have done, with one train⁴⁰² and some road-based traffic, and the operators would work hard to interest the on-site operators and others to make use of the rail connection. That is precisely the way that the Government approached the East Midlands SRFI⁴⁰³:

*'The Secretary of State does not agree with the Examining Authority that the fact that a proportion of the warehousing would be made available for use in the period of 3 years during which the rail link was being constructed means that the project would fail to meet the functionality requirements of the NPSNN referred to above. He appreciates that the construction of the warehousing and the construction of a new railway will involve different timescales and he considers it entirely reasonable that a commercial undertaking should seek to generate income from the warehousing facilities before the railway becomes operational. The Secretary of State considers that the interpretation of the NPSNN requirements must allow for the realities of constructing and funding major projects such as this.'*⁴⁰⁴

- 11.3.4. Here, occupation of the warehousing is proposed to be precluded until the intermodal area and the new mainline rail connection are complete⁴⁰⁵. Mr Kolinsky chastised me for my reference in the conditions session to the cost of the intermodal facility and the rail connection as involving very considerable expenditure⁴⁰⁶, but it is common sense that this scale of built facility does not come cheap. The warehousing would be on-stream with the rail connection and intermodal facility already in place here, a better and more advantageous outcome than one found acceptable by the Secretary of State at East Midlands.
- 11.3.5. The proposal would also bring with it many jobs, 2,000 at its full operation. It is acknowledged to be in accordance with the Bexley Riverside Opportunity Area in the *London Plan*⁴⁰⁷, which has a particular focus on the strategic importance of logistics⁴⁰⁸. These are important points in which the proposals accord with the Development Plan. The MOL would, it appears, welcome those benefits if he had formed a different view on the loss of the Green Belt⁴⁰⁹.

⁴⁰² See the first lone service from the new I Port, Doncaster, in its first month of operation (Gallop XC).

⁴⁰³ CD5.6 paragraph 16 of the DL.

⁴⁰⁴ The Secretary of State is referred to the full passage in CD5.6.

⁴⁰⁵ See draft condition 6, CD5.9.

⁴⁰⁶ An 'evidential vacuum' was the accusation.

⁴⁰⁷ See para 7.1.11 of the MOL's case.

⁴⁰⁸ Mr Scanlon XC.

⁴⁰⁹ See para 7.4.88 of the MOL's case.

11.3.6. The weight to be given to these jobs benefits should be substantial. Mr Scanlon identified⁴¹⁰ that in 2007 only relatively limited weight was given to the jobs and economic benefit of the proposals; he observed rightly however that things had changed:

- a. The NPSNN ties the role of SRFIs absolutely securely to the achievement of economic, as well as environmental, benefits;
- b. The jobs and employment targets in Bexley are very high and only likely to increase. The MOL again seeks to downgrade the importance of jobs in Bexley by submitting⁴¹¹ that since Appendix A of the Bexley Core Strategy contains an infrastructure delivery plan⁴¹² which says that Howbury Park 'is not required for the delivery of the Core Strategy, however, if it is not implemented, there is need to identify more sustainable freight facilities', then it follows that the SRFI is really not that important to Bexley. Despite wielding the power to override Bexley's own democratic response to the application, the MOL cannot erase Bexley's actual views about the benefits of the proposal, which appear clearly set out in its committee report⁴¹³

'These economic impacts demonstrate a significant scale of predicted benefits. The GLA notes that the proposal would make a significant positive economic impact and help support the Bexley Riverside Opportunity Area and Regeneration Area.

...

Significant harm is afforded to the environmental impacts and the identified harm to the Green Belt, however, substantial weight is also to be afforded to the economic benefits of the proposals ...'.

- c. The GLA agrees with this assessment in the Statement of Common Ground between them and RDL⁴¹⁴;
- d. Furthermore, the revised Framework has materially changed in relation to support for logistics in particular⁴¹⁵. The new national policy underlines why substantial or significant weight should be given to the employment and economic benefits that the scheme would bring.

11.3.7. In the light of those points, it is difficult to know quite what to make of the submissions by the MOL on jobs and the economy⁴¹⁶. There seems to be a failure there to grapple with the agreement in the Statement of Common

⁴¹⁰ Mr Scanlon XC.

⁴¹¹ See para 7.1.12(d) of the MOL's case.

⁴¹² CD3.12 page 122.

⁴¹³ CD1.6, pages 66-69.

⁴¹⁴ CD/6.3, paragraph 7.26.

⁴¹⁵ See new paragraph 82, and Mr Scanlon XC.

⁴¹⁶ See paras 7.1.7-12 of the MOL's case.

Ground, and there is certainly no reference to the revised Framework paragraph 82.

- 11.3.8. The MOL submits⁴¹⁷ that '*[l]ike the Inspector and Secretary of State's at the last appeal, it is submitted that these benefits ought not to weigh heavily as very special circumstances ... [t]he economic aspirations of the Bexley Riverside Opportunity Area and the Bexley Core Strategy can and should be delivered without development on Green Belt land*'. The first of those points appears to contradict the agreed statement with the GLA. The second averts its eyes from the agreement that the scheme would support the Opportunity Area. There is no reference to the NPPF or to the much higher employment target that the MOL promotes for the Opportunity Area (some 19,000 jobs) in the emerging *London Plan*⁴¹⁸.
- 11.3.9. The Secretary of State is therefore invited to give significant weight to the employment, regeneration and policy benefits of the scheme.

Ecology

- 11.3.10. It is broadly accepted, as RDL understands it, that the proposals would bring about an enhancement of the ecological value of the land adjacent to the appeals site, specifically through the implementation of the Marshes Management Plan⁴¹⁹. However, it is said that relatively little weight should be given to the ecological benefit because policy now seeks enhancement as well as conservation of ecological assets.
- 11.3.11. As Mr Goodwin said⁴²⁰, whilst that is true, a case-specific evaluation needs to be undertaken, because there is a spectrum of ecological enhancements. Not all enhancements are equally valuable⁴²¹, despite the fact that the merest enhancement would be enough to satisfy policy.
- 11.3.12. In this case, the enhancement would be significant. The marshes are viewed by local ecologists as the unpolished jewel in the crown of the LBB; this scheme would take a significant step towards improving and maintaining that improvement in the long term. As part of that assessment:
- a. The Secretary of State is asked to take account of, and give weight to, Mr Goodwin's evidence that the loss of ecological value on the appeals site itself would be minimal. The flora is of low value, since it is very largely semi-improved or improved grassland of low value; the small pockets of better successional vegetation largely lie off site on the former landfill area⁴²²;
 - b. There would be a small displacement of some breeding birds (Corn Bunting and Skylark), but neither species is dwindling markedly in numbers in this area and both would be amply provided for (not just

⁴¹⁷ See para 7.4.88 ⁴¹⁷.

⁴¹⁸ Mr Scanlon XC.

⁴¹⁹ See para 7.4.88 of the MOL's case; see para 8.5.8a) of DBC case.

⁴²⁰ XX DBC

⁴²¹ As Mr Godwin put it 'it might be 1, or it might be 10'.

⁴²² Mr Goodwin illustrated this by reference to his Appendix 6 of APP/BIO/2.

on the former landfill site, which they prefer in any event⁴²³, but on the marshes);

- c. The Marshes Management Plan would re-charge the marshes to stop them drying out, and allowing them thereby to achieve a much more favourable status and value. This will have significant benefits to biodiversity and although the drainage aspects are connected to the mitigation of the scheme, the ecological benefits of the re-charging go well beyond conservation and well up the scale of enhancement.

11.3.13. On the logic of DBC's argument, one could never attribute more than limited weight to ecological benefits, even if one were entirely restoring a SSSI or Ramsar site. As Mr Goodwin said, however, there is a spectrum of effects and the ecological benefits, which will be locally felt⁴²⁴ in this case, and that should be properly and fairly recognised in the planning balance.

11.4. **What are the likely adverse effects of the proposal?**

Green Belt

11.4.1. There is no dispute between the main parties that there would be significant harm to the openness of the Green Belt, and to the purpose of not encroaching on the countryside; because the SRFI would be inappropriate development, that also contributes an irreducible kernel of harm in line with the Framework. RDL have never suggested otherwise, and accept that significant weight must be given to this harm in the very special circumstances balance. Indeed, the policy ramifications in national, *London Plan* and Bexley policies are as set out in the MoL's final submissions⁴²⁵, and are as set out in DBC's submissions⁴²⁶ for Dartford.

11.4.2. A minor area of dispute is with DBC over the purposes of preventing unrestricted sprawl and coalescence. There is no difference in relation to the location of development in the Green Belt and the role of this parcel of Green Belt as between 2007 and 2018, and RDL do not demur from the findings of the last Inspector and the Secretary of State in that respect⁴²⁷. If the same approach is taken, that would answer the Green Belt aspect of Mr Bell's evidence⁴²⁸ which is slightly overstated on the point of importance of the Green Belt here in gap and settlement pattern terms.

Landscape

11.4.3. Similarly, RDL does not dispute that there would be significant landscape and visual harm as a result of what would be a very large development. The impacts would be capable of mitigation to some degree, but clearly not entirely given the landform and availability of views, particularly from

⁴²³ See the plan at Appendix 3 of APP/BIO/2 and Mr Goodwin's XC.

⁴²⁴ Despite the scheme not including (cp the 2007 scheme) the Tithe Barn and its learning centre, it will provide office space on the appeals site for the same purpose, and it will be tied in to local ecological and amenity groups.

⁴²⁵ At paras 7.1.1 and 7.1.12(a) of the MoL's case.

⁴²⁶ Para 8.1.2 of DBC's case.

⁴²⁷ CD5.2 paragraphs 15.8-15.9; CD/5.3 paragraph 13.

⁴²⁸ Especially his suggestion that the Green Belt here is 'sensitive and strategic' – see para 8.2.5 of DBC's case.

middle and far distance. Again, the scale and location of the proposals are broadly comparable to those in 2007, and the findings of the Inspector and Secretary of State remain relevant⁴²⁹. Weight should be given to these identified harms, which would be substantial and adverse.

Other harms-biodiversity, residential amenity

11.4.4. RDL does not accept any net harm to biodiversity for the reasons I have already covered. Nor is there evidence that the living conditions of neighbours would be harmed, if the mitigation (including the conditions on noise impacts) were to be imposed.

Other harms-highways and air quality

11.4.5. That leaves the DBC case on highways and air quality. It is important first for the Secretary of State to recognise the limits of the DBC case. It does not say that permission should be refused outright on highways and/or AQ grounds; instead it asks for a degree of harm to be taken into account under both heads as part of the very special circumstances balance.

11.4.6. In summary, DBC's case is:

- a. On highways, it is said that the 'crux of DBC's traffic objection'⁴³⁰ is not the 'normal conditions', which the modelling submitted in support of the planning applications shows to be unaffected by the proposal⁴³¹ but the propensity of the Howbury Park traffic to '*inevitably exacerbate local traffic congestion and lengthen existing traffic queues, particularly when 'incidents' occur*'⁴³²; it is recognised that any such points can only really be addressed as a matter of judgement⁴³³. DBC also say that the TMP would not give sufficient comfort;
- b. On air quality, that a significant risk remains that 'the addition of the development traffic into the road network from the early 2020s during periods of congestion and disruption will result in increases in No₂ emissions on local roads, including within designated Air Quality Management Areas (AQMAs)'.⁴³⁴

11.4.7. Of course, it is accepted that due to the proximity of the M25, there are regular incidents that cause elevated levels of traffic in Dartford. It would be folly to suggest otherwise. However, as DBC recognised through the evidence of Mr Caneparo, there is no technical validity in a modelling assessment of such periods. To do so would be contrary to established practice⁴³⁵ and in any event, the modelling outputs cannot be relied upon once saturation is reached⁴³⁶.

⁴²⁹ CD/5.2 paragraphs 15.12 to 15.21; CD/5.3, paragraph 15.

⁴³⁰ See para 8.3.10 of DBC's case.

⁴³¹ DBC expressly recognise this at para 8.3.8 of its case.

⁴³² Para 8.3.12 of DBC's case

⁴³³ Ibid.

⁴³⁴ See para 8.4.11 of DBC's case.

⁴³⁵ Accepted by Mr Caneparo, XX.

⁴³⁶ Ditto.

11.4.8. It is unsurprising in the light of that measure of agreement that DBC does not in its submissions rely on any technical assessment by Mr Caneparo that purports to quantify or justify degrees of additional impact around Dartford town centre. Instead, DBC's submissions stay at a high level, and rely more on the advice of Kent County Council (KCC) as set out in their consultation response⁴³⁷:

'the residual impact of this development is likely to be characterised by additional local traffic generation and some consequent increase in congestion, which the applicant cannot fully mitigate and that may also cause a worsening in local air quality.'

11.4.9. That is fine so far as it goes, but the Secretary of State will bear in mind that KCC did not, and do not, object to the grant of permission. They have not quantified or further characterised the degree of residual impact which they consider likely 'additional local traffic generation and some consequent increase in congestion' could well be a very small amount of incremental change. Indeed, that would be consistent with KCC's evaluation: if there is congestion at times in Dartford town centre, then a certain degree of additional traffic would materially worsen an existing poor situation; and if that was KCC's view then one would have naturally expected them to recommend refusal. But they did not. That obviously undermines the submission that DBC then makes⁴³⁸ that the highways impact be given 'substantial weight'.

11.4.10. So as a result, DBC has no evidence base of its own (Mr Caneparo's exercise to quantify by modelling what numbers might reassign due to the Craymill Rail Bridge was a bogus exercise which he did not rely on⁴³⁹), and RDL would urge caution when it comes to accepting the submission⁴⁴⁰ which refers to Mr Caneparo's judgement about the degree of reassignment at times of congestion possibly ('could'⁴⁴¹) be 'severe'. In fact, Mr Caneparo accepted in terms⁴⁴² that he was not able to say that the scheme impacts would be 'severe', something which is borne out by the complete absence of any quantified amount, queue length, link capacity or junction saturation figure in the DBC closing submissions. There is no reliable evidence whatever to substantiate the submission that there would be severe harm, let alone that it should be given substantial weight.

11.4.11. Before going on to deal with the highways points, RDL notes that the air quality case advanced is also entirely unsupported by evidence. Dr Maggs' evidence, as he made clear, was that the impacts he assessed and presented are all negligible. The air quality case depends on asking the Secretary of State to speculate what might be the air quality impact if different, higher but slower traffic flows are assumed. But that poses the decision-maker some intractable problems. For a start, which figures, which links and what degree of exceedance is being alleged? Over time, as the

⁴³⁷ See DBC/W2/2 page 13 Appendix PC1.

⁴³⁸ See para 8.3.20 of DBC's case.

⁴³⁹ Mr Caneparo. XX (Inspector's note: INQ/34, issued after cross-examination, sets out Mr Caneparo's final position)

⁴⁴⁰ See para 8.3.17 of DBC's case.

⁴⁴¹ DBC case *ibid*.

⁴⁴² Mr Caneparo XX

fleet becomes less diesel based, would there be any noticeably impacts even at locations where the existing flows are higher? We don't know.

Dr Tuckett-Jones does not think so, because her view is that the existing methodology overstates the impact anyway.

Kent County Council's position

11.4.12. DBC is not the highway authority for the affected roads, and there is no KCC objection. Were the likely effects of the proposal to be seriously adverse, then (1) KCC would have said so, but did not; and (2) they would have objected to the proposals, but did not. Indeed, none of the highways authorities objects to the grant of permission.

11.4.13. DBC is therefore constrained to rely on the KCC consultation response, with its unquantified residual impact (obviously not that troubling from the highways perspective).

Highways evidence

11.4.14. The modelling undertaken by WSP on RDL's behalf is based on TfL's RXHAM model, which was developed for the modelling of a new river crossing but can be used for this purpose. There are numerous points of detail arising from the RXHAM Model Audit Report contained within the ES⁴⁴³, but one overarching point: the model is not only the best available, it was urged upon RDL by TfL, and is a model which is still used. It is a version of the other 'HAM' family of models. From a promoter or developer's point of view, as the Secretary of State will appreciate, if TfL expresses the view that one of its HAM models is to be used to assess a development proposal, then that is what tends to be used.

11.4.15. Mr Caneparo does not present any quantitative or modelling evidence on which DBC now relies for its submissions. Instead, it is asserted that the proposal gives rise to '*considerable potential for operation of the SRFI to exacerbate existing congested conditions on the highway network in the locality of the appeal site and through Dartford Town Centre*' when there has been an incident affecting the strategic road network⁴⁴⁴. The only real basis for this is a rather protean use of the KCC consultation response, which suggests that there will be reassignment onto local roads without any quantification or evaluation of the effect. The best way to get to grips with that point is to focus on the additional work that Mr Finlay presented, showing the state of play with the roads through which it is alleged reassigning traffic⁴⁴⁵would 'rat run'. That work shows that those roads perform relatively well and are not in fact overly constrained. Mr Caneparo confirmed⁴⁴⁶ that he does not allege any harm to the free flow/capacity at any junction in Dartford.

11.4.16. So, even if one bases the entire exercise on the KCC consultation response, it is extremely difficult rationally to form a view about the *degree* of harm.

⁴⁴³ CD/1.27 Volume 3b Appendix E Appendix 3.3 RXHAM Model Audit Report, July 2015 and CD/1.30 Appendix E- Revised RXHAM Model Audit Report, February 2016.

⁴⁴⁴ See para 8.1.8d) of DBC's case.

⁴⁴⁵ See the analysis of nodes, links and junctions in APP/TRAN/5

⁴⁴⁶ XX.

There is no distribution suggested, and so one cannot tell whether it is said that a particular road or roads would be over-capacity; one cannot tell whether the additional Howbury traffic would have any measurable effect over the entire area – they would obviously comprise a very small percentage of the overall flows through the area. So when DBC say⁴⁴⁷ that the crux of its objection is 'primarily a matter of judgement', that is a euphemistic way to say that it is without any obvious evidential support. Mr Finlay's work⁴⁴⁸ on the capacities of junctions, links and nodes in Dartford does, on the other hand, provide a measure of objective assessment as to the state of the network and the way in which any re-assignment might affect it.

11.4.17. It is not really appropriate for DBC to move from this evidential position to a submission that the harm could be severe or that substantial weight should be given to this notional harm. Even if one were to accede to DBC's request that the issue is approached as 'a matter of judgement', there is no reliable evidence that the scheme would make any material difference to the degree of congestion or queueing in any link. The Secretary of State should therefore give this point very limited weight.

11.4.18. DBC also makes a short string of points about the TMP⁴⁴⁹:

- a. Criticism is made of the junction 1A contribution (on the basis that SCOOT, rather than MOVA, might be implemented), but the contribution is supported by KCC in both principle and in terms of the financial contribution;
- b. It is suggested that the HE cap and routeing restrictions may not be effective. The regime, however, will depend for its effectiveness primarily on KCC and LBB, neither of whom make a complaint about the way the ANPR and monitoring system would operate. Of course, the steering group would include DBC and would be able to ratchet up fines if necessary; the s.106 binds the TMP and given that it runs with the land, would be enforceable against the occupiers as well as the owners of the site. It may be 'far from straightforward'⁴⁵⁰, but we are dealing with a major concerted effort on the part of the authorities and RDL in a relatively constrained edge of London location. There is nothing which suggests that the system is unfeasible, would not be achievable technically, or would not allow the steering group to manipulate the sanctions to make it financially painful for occupiers and operators to breach the routeing controls.

11.4.19. DBC is also critical of the failure to spell out in the s.106 agreement(s) 'the key components of the TMP as minimum requirements'⁴⁵¹. This is unnecessary because there is an overall covenant obliging the owners/occupiers to comply with the TMP.

⁴⁴⁷ See para 8.3.10 of DBC's case.

⁴⁴⁸ See APP/TRAN/2, Appendix B and XC.

⁴⁴⁹ See para 8.3.21 of DBC's case.

⁴⁵⁰ See para 8.3.20c) of DBC's case.

⁴⁵¹ See para 8.3.22 of DBC's case.

- 11.4.20. Finally, DBC's objections/submissions in relation to the Steering Group decision-making⁴⁵² are noted, but appear unfounded because there is no basis for requiring 'a further level of legal and practical assurance' that the TMP won't be stripped of key protective provisions. DBC and the other public bodies will sit on the Steering Group as statutory bodies, able to consult their constituents and take into account the full burden of the public interest in making their views known through the Steering Group. There is no likelihood of a democratic deficit in this process. That is the case in relation to the DIRFT example that Mr Mould drew attention to⁴⁵³.
- 11.4.21. For these reasons, the TMP, now bound into the final version of the s.106, would provide a comprehensive and workable mechanism for controlling certain aspects of the Howbury Park proposals.

Conclusion-harm

- 11.4.22. Significant harm to Green Belt and landscape is accepted. The other impacts would be mitigated such that they should not feature in the 'other harm' component of the very special circumstances test. In particular, it would not be an evidentially robust finding that local highways harm, let alone air quality impacts, should be factored in.

11.5. Are there very special circumstances justifying the release of the appeals site from the Green Belt?

- 11.5.1. Green Belt is not an environmental designation, but a highly restrictive brake on development in designated areas. However, at all levels of policy, even where the proposed development is 'inappropriate development', an exception arises where (in aggregate) circumstances are so unusual that the restraint policy should, in the public interest, be relaxed.
- 11.5.2. There is nothing between the main parties as to the articulation between the NPSNN and planning policy: the NPSNN does not amend or disapply the need for very special circumstances to be shown. However, that does not mean that meeting a critical national need may not amount to the key aspect of very special circumstances: of course it can. It did at Radlett (also in the Green Belt), at Howbury Park in 2007, and should again here now. Indeed, the meeting of a national need is a quintessential justification for releasing Green Belt land.
- 11.5.3. Indeed, although they fight shy of saying this, the cases for the MOL and DBC implicitly accept that if the Secretary of State finds that the need is for

⁴⁵² See para 8.3.22 of DBC's case.

⁴⁵³ DCO Obligation page 11 of Sch 4, paragraphs 4.6 to 4.9: the composition of the Transport Review Group is very similar to that here. It will be remembered that the main point being made at the s.106 session was about democratic deficit. That is exactly the same in the DIRFT case, which is why Ms Thomson referred the Inquiry to it. The other points made by Mr Mould go nowhere: (a) the obligations here would bind the occupiers as s.106 runs with the land – no obligation is needed to bind the owner to procure compliance; (b) and (c), the degree of change is more tightly defined, but plainly it is the control of the proposed group in this case – a major proposed change eg by RDL could be blocked by DBC, and adjudicated by the expert; (d), that is the answer also to whether a major change could take place – although not the same exactly, the same; (e), It is not simply an advisory group – see paragraph 4.1, 4.3 and 4.4. RDL simply doesn't accept the DBC submissions on this point.

an expanded network of SRFIs that would in part be met at Howbury Park (in a way, or to an extent, that would not be obviated by any potential SRFI at London Gateway), then very special circumstances are indeed likely to be established, even given the Green Belt and landscape harm. That is the corollary of the MoL's heavy emphasis on need and alternative sites; as the NPSNN makes clear, it is particularly difficult to meet the need for a network around the country's largest market, London, since that market is girded about with Green Belt. DBC's case on highways effects and air quality would not rebut the very substantial weight to be given to meeting national need.

- 11.5.4. Familiarity might perhaps breed contempt where this issue is concerned. A national need, particularly one which is deemed by the Government to be critical, repays careful consideration. It is a national need because to have a network of SRFIs is crucial for the country's commercial resilience, and its environmental robustness, going forward. To achieve those goals of paramount importance is more important than the preservation of the openness of the Green Belt in this location. Although certain factors are different, the need for SRFI facilities did clearly outweigh the same level of harm in 2007, so although a 'difficult balance', as the MoL would stress, it was one in which the benefits nevertheless *clearly outweighed* the harm.
- 11.5.5. Standing back from the detail of the evidence on this occasion, the big points can still be seen:
- a. London's Green Belt requires the strongest protection⁴⁵⁴;
 - b. London is the country's largest, and most important market for goods;
 - c. London and the Southeast together currently lacks any SRFI facilities. The prevailing consequences for the HGV use of the strategic road network can be imagined. The road network is frequently inoperable due to incidents, making the flows essential to our economy highly susceptible and vulnerable. London needs a network of SRFIs around it to improve the resilience of its economy;
 - d. If one is to release 57 ha of land from the Green Belt, there needs to be a justification of real strategic force. Making the metropolitan region more economically stable, and improved in environmental terms, would be an appropriate use of land currently kept free from development. That is the case even if a non-Green Belt site, at London Gateway, might have the potential to contribute to part of the network as well one day.
- 11.5.6. That is the shape of these particular appeals, if one rejects the MoL's 'concerns' about the market attractiveness of the intermodal facilities, based as they are on asking a series of questions aimed at the wrong targets. Whilst DBCs' concerns are perhaps legitimately more locally-focused, it is less easy to forgive the approach of the MoL, who frames his objection as based on strategic concerns. A truly strategic approach would have borne in mind the fact that, as Mr Kapur says, the rail industry is well used to

⁴⁵⁴ See para 7.5.1 of the MoL's case.

shaping the timetable to meet evolving and competing needs. The biggest markets in the country lie within striking distance of Howbury Park, without the need to run the gauntlet of the M25 on the way in. The site is self-evidently a good SRFI location to meet part of the identified national need.

- 11.5.7. Again, why DBC wishes to raise its points about traffic in Dartford is understandable. But perhaps it is worth reflecting, at the end of this phase of the process, why the MOL attacks the RDL scheme with such relish and in such alarmist terms. There are two clues, one might think.
- 11.5.8. The first clue, which runs throughout the evidence, is the fundamental error, identified earlier in these submissions, that because the scheme would be attractive to road as well as rail, it is somehow suspect. Another clue is the entirely bogus argument – accepted as such by Mr Hirst⁴⁵⁵ – that the scheme would do nothing for London. That is found in the Stage 1 report, and in the reason for refusal, and in the MOL’s statement of case. Unsurprisingly, it has been quietly shelved by Mr Kolinsky in submissions in favour of a central argument based on the ‘perfect storm’ of constraints that the current timetable and all the constraints make access all too difficult.
- 11.5.9. Not once throughout this process has Mr Goldney, or anyone from City Hall, picked up the phone, or written an email, to Network Rail. The MOL calls Mr Goldney as his witness to argue that it would be impossible to gain access to the site by rail (in fact, his confirmed position⁴⁵⁶ is that 2 trains a day could access the site); but Mr Goldney advises a party (BP) which has just inserted a new rail freight service into the South London network, and he accepts⁴⁵⁷ that his ex-colleague Mr Kapur’s evidence should be given substantial weight. Perhaps the MOL should have approached Mr Kapur, who would have no doubt told him that flexing and developing the timetable is a regular rail industry process.
- 11.5.10. The second clue is that the MOL calls evidence to support the primacy of passenger rail over rail freight. That is the thrust of Mr Hobbs’ evidence, and part of Mr Ray’s evidence about the policy in London. But Network Rail does not have the same approach: they must balance fairly the competing reasonable demands of rail freight and passenger rail. At the close of the evidence, the MOL is not able to submit that Howbury Park trains would lead to the loss or detrimental re-timing of any passenger service. But the idea that Howbury might prejudice passenger rail is the other loose thread that runs through the MOL’s case.

11.6. **Conditions and planning obligations**

- 11.6.1. I do not repeat here the detailed submissions made in the 106 and conditions session, other than to note:

⁴⁵⁵ In XX.

⁴⁵⁶ In XX.

⁴⁵⁷ Ibid.

- a. There is no need to restrict warehousing by condition until rail freight is taken up. That is not the Secretary of State's market-led policy approach (including at Radlett in the Green Belt) and it is unnecessary. It would be sufficient to impose draft condition 6, which would oblige RDL to pay for the installation of major rail infrastructure before the warehousing is occupied;
- b. I confirm that RDL agrees to the imposition of any of the agreed conditions which is in form of a Pre-Commencement Condition⁴⁵⁸. It does not consent to imposition of proposed Pre-Commencement Condition 6x as proposed by LBB, unless (1) the Secretary of State considers it necessary in principle, and (2) in terms of wording, 'commencement' is replaced by 'occupied' and the words 'and accepted in writing by' are removed.

11.7. Conclusions

- 11.7.1. The Secretary of State has to balance some weighty considerations in this case. But the starting point is that the SRFI which is proposed by RDL would be attractive to the market, well located for the country's largest economic agglomeration, and although challenging, will be accessed from the mainline via a well-trodden statutory process administered by Network Rail. Network Rail are the guardians of the railway network and they support the grant of permission. The SRFI would therefore meet part of a compelling national need.
- 11.7.2. Although the harm to Green Belt and landscape would be substantial, the Secretary of State is invited to find that London would benefit more from the greater economic and environmental resilience that a network of SRFIs would bring, than from the retention of the site as largely undeveloped land. Yes, it is hard to path rail freight and London's roads can be congested on a regular basis. But that is no answer to the challenge set by the NPS.
- 11.7.3. If permission is granted, RDL will deliver the scheme, and support the very ambitious employment targets in the current and emerging *London Plan*. Both DBC and the MOL fasten on a reference in the SIFE Inspector's Report⁴⁵⁹ to 'quality', which they oppose to 'quantity'. That is rather a sophisticated point of detail in the reasoning of that Inspector. The Secretary of State in these appeals will no doubt bear in mind a more basic point. There are at present no SRFIs around London. If the Government's economic (and mode shift) policies for rail freight are worth the paper they are written on, this is a site which should be consented for use a SRFI.

⁴⁵⁸ In CD/5.9.

⁴⁵⁹ CD/5.4, paragraphs 12.91 to 12.92.

12. THE CASES FOR SUPPORTERS REPRESENTED AT THE INQUIRY

12.1. The London Borough of Bexley (LBB)

Introduction

- 12.1.1. The LBB's role at the Inquiry is unusual. The LBB did not oppose the proposed development at the time of determination of the application, and, after careful consideration of the written evidence submitted on behalf of the principal parties and of representations received from the public, the LBB's position at the opening of the Inquiry remained as recorded in the officer's report to the planning committee and as endorsed by that committee's resolution, dated February 2017.
- 12.1.2. Representatives of the LBB have attended the Inquiry throughout its duration, and copies of Inquiry documents have been circulated to relevant planning and technical officers. The LBB has reviewed these documents on an ongoing basis, together with summaries of the key submissions made in oral evidence, and has considered matters raised both in respect of technical issues and those relating to the balancing of relevant planning policies.
- 12.1.3. The LBB has also given due regard to the publication of the revised Framework on 24 July 2018. Key Framework policies relevant to the determination of the appeal remain substantially unchanged.
- 12.1.4. To summarise the LBB's position, the appellant's scheme is by definition inappropriate development in the Green Belt, which would cause substantial harm to the Green Belt with the ensuing loss of openness and encroachment into the countryside. It is also likely to give rise to significant environmental impacts. However, adopted planning policies identify a regional and national need for a Strategic Rail Freight Interchange at this site, which, in the absence of appropriate alternative locations, amount to very special circumstances which clearly outweigh the identified harm to the Green Belt as well as any other harm.
- 12.1.5. At the close of the Inquiry, the LBB's position remains the same. It recommends that planning permission be granted for development, subject to appropriate conditions and planning obligations secured by way of a section 106 agreement.

Section 106 agreement and conditions

- 12.1.6. The LBB participated fully in the Inquiry sessions dealing with conditions and planning obligations. Appropriate planning conditions and obligations are essential to help mitigate the environmental impacts of the proposed development identified through the assessment of the application, and to enable the LBB, as the local planning authority for the majority of the application site, to properly control and monitor the implementation and operation of the proposed development.
- 12.1.7. In light of the sessions dealing with planning obligations and conditions, the LBB's position in relation to each is set out below.

Section 106 agreement

- 12.1.8. The LBB has agreed a form of section 106 agreement with the appellant to secure appropriate planning obligations relating to '*Bexley Obligation Land*'.⁴⁶⁰
- 12.1.9. The planning obligations sought and offered remain substantively unchanged from those agreed at the application stage and reported to the LBB planning committee. The exception to this is the financial contribution towards improvements at junction 1A of the A282/M25, which is now solely secured by the DBC section 106 agreement on the basis that the works fall wholly within the area for which Kent County Council is the Highway Authority.
- 12.1.10. The LBB's justification, both in terms of planning policy and in the context of Regulation 122 of the CIL Regs, is set out in its *Statement of Compliance*⁴⁶¹. DBC's *Statement of Compliance*⁴⁶² is complementary in respect of those planning obligations which are common to both agreements, as are the appellant's own *Position Statement*⁴⁶³ and response to the 2 *Statements of Compliance*⁴⁶⁴.
- 12.1.11. Further to the submission of INQ/48a and INQ/53, further amendments have been agreed to the form of the LBB section 106 agreement, principally to take account of amendments required by DBC to the DBC section 106 agreement and to the TMP. All parties agree that it is sensible for obligations common to both agreements to be identical, as both local planning authorities and both Highway Authorities will all need to co-operate to monitor, control and enforce the appellant's transport management obligations in the event that planning permission is granted and the development is implemented. Following the Inquiry session dealing with the section 106 agreements and the TMP, a form of common wording has been agreed which DBC has indicated it will sign. The LBB does not consider that these further amendments alter the position set out in paragraph 4.3 of INQ/48a.
- 12.1.12. The LBB is satisfied that the agreed form of the section 106 agreement will secure the obligations necessary to ensure that the development is acceptable in planning terms.

Conditions

- 12.1.13. The LBB has drafted a comprehensive set of recommended draft conditions⁴⁶⁵ for consideration by the Secretary of State. An updated version⁴⁶⁶ was discussed in the Inquiry session dealing with conditions, and

⁴⁶⁰ INQ/115 page 3.

⁴⁶¹ INQ/48a.

⁴⁶² INQ/48b.

⁴⁶³ INQ/53.

⁴⁶⁴ INQ/68.

⁴⁶⁵ CD/5.9.

⁴⁶⁶ INQ/94.

revised drafting of condition nos. 4, 6, 21 and 32 has been circulated prior to the close of the Inquiry⁴⁶⁷.

12.1.14. The suggested conditions are largely agreed by the parties. Where there are differences between the recommendations from DBC/MOL and from the appellant:

- a) In relation to condition no. 6, the DBC/MOL's wording is to be preferred, as it enables greater enforceability by the local planning authority, albeit, it is acknowledged the LBB resolved to grant planning permission on the basis of a condition(s) similar to that now recommended by the appellant;
- b) In relation to condition nos. 27 and 30, the appellant's recommended wording is to be preferred on the basis that the additional elements sought by DBC/MOL are unnecessary with regard to paragraph 55 of the Framework (test for conditions).
- c) On the question of whether conditions requiring the approval of a scheme containing a list of elements should end with the wording 'including' or 'comprising'; clearly there is a balance to be struck between (i) ensuring that conditions are precise and allow the efficient and effective delivery of development, and(ii) in ensuring that the language of a planning permission is flexible enough to enable the impacts of development to be fully mitigated. This is especially the case where the scheme proposed is in outline, where it is of substantial scale, and where development is likely to be implemented and undertaken over a long period of time. In this case, the reasoning for each condition is clearly and precisely set out, and there is no ambiguity as to the underlying purpose and justification for the need for a scheme to be submitted. Submissions were made by both the appellant and the LBB as to the respective merits of the language.
- d) If the Secretary of State is minded to grant planning permission and is persuaded by the LBB as to the need for the use of non-exhaustive lists within the suggested conditions, the recent Development Consent Order for the East Midlands Gateway SRFI⁴⁶⁸ does provide a precedent for the use of the word 'including' in such conditions, as does the decision notice on the Radlett scheme⁴⁶⁹. The Inspector's reports considering the refused Slough and Kent Gateway schemes⁴⁷⁰ also incorporate draft conditions referencing non-exhaustive lists.

Conclusions

12.1.15. The LBB remains of the view that there is a compelling regional and national need for a SRFI at this location, which is capable of amounting to very special circumstances which outweigh the substantial weight given to the

⁴⁶⁷ INQ/97 and 100.

⁴⁶⁸ CD/5.6 at schedule 2.

⁴⁶⁹ CD/5.5.

⁴⁷⁰ CD/5.4 and CD/5.7.

harm to the Metropolitan Green Belt, and to other environmental harms which are considered likely to arise as a consequence of the development.

- 12.1.16. Subject to the imposition of conditions substantively in the form considered at the Inquiry session, and to the due execution and completion of the 2 section 106 agreements, the LBB considers that the appellant's proposals do constitute very special circumstances which clearly outweigh the harms, both by definition and as identified as part of the application and appeal processes.

13. THE CASES FOR SUPPORTERS WHO MADE WRITTEN REPRESENTATIONS

APPEAL STAGE REPRESENTATIONS

13.1. Viridor Waste Management Limited⁴⁷¹ (VWML)

- 13.1.1. VWML is a recycling, renewable energy and waste management company based in the UK. If the appeals are successful, it would open the possibility to use the rail facilities at Howbury Park. VWML already uses rail elsewhere in Britain to move material in containers to and from processing points. In particular, working for the local authorities in Manchester, and previously in Edinburgh, to move residual waste by rail from inner-urban RFI to remote disposal and recovery sites. Our network of daily rail services carry up to 50 containers each way over distances as short as 30 miles, removing a considerable number of HGV trips that would otherwise operate over the inner-urban and outer-urban road networks. VWML's freight trains operate amongst busy commuter services in and out of Manchester.
- 13.1.2. VWML is aware of the wider opportunities to use rail for longer-distance movements of bulk recyclates such as glass, polymers, paper and metals from urban areas, to provide feedstock material into factories located in Britain and overseas. VWML will consider opportunities wherever they arise to provide this service.
- 13.1.3. VWML business currently operates one of the largest recycling facilities in Western Europe, off Thames Road adjacent to the application site, which handles close to 300,000 tonnes of material per year. Waste and recyclables are transported to the site by HGV, where they are processed and then exported off-site in large containers to a variety of locations, including ports for export abroad.
- 13.1.4. The lack of rail freight facilities at the Thames Road site removes any real prospect for rail use to service the current operations. The potential to transport materials from the site using rail is significant, in the order of 100,000 to 200,000 tonnes per annum. Clearly, at this stage in the planning process, it is difficult to accurately predict precise benefits in this regard. In the absence of a SRFI at Howbury Park, this material will continue to be transported by HGV on local roads to and from the Thames Road site.

⁴⁷¹ APP/RAIL/2 Appendix D and letter dated 4 February 2016 to LBB.

- 13.1.5. The creation of a multi-user, open-access rail freight interchange at Howbury Park would bring rail access to VWML's doorstep. It would also open up opportunities to work with other occupiers and companies in the hinterland of Howbury Park, to exploit any spare capacity in containers leaving the site by rail to carry VWML's material as a backload, further reducing the number of HGV movements on local roads. Based on VWML's experience in working with train operators and Network Rail elsewhere in the UK, we would not anticipate any problems in our ability to move trains to and from Howbury Park.
- 13.1.6. An additional benefit of the appeals proposal that would also greatly assist in our operation is the proposed new access to our recycling facility, with a spur from the SRFI new access road that links the A206/A2026 roundabout. This would enable HGVs to access our site directly off the strategic highway network, which would significantly improve the current situation by removing VWML traffic from the A206/B2186 roundabout.
- 13.1.7. VWML would welcome the opportunities presented by the rail freight facility, which could include occupying new premises at the Howbury Park site, to extend our existing production operations.
- 13.2. **GB Railfreight⁴⁷²** (GBR)
- 13.2.1. GBR supports the development of a new SRFI at Howbury Park.
- 13.2.2. GBR is part of the Swedish-owned Hector Rail Group, having been acquired last year as part of an ambitious and considered plan to expand rail freight services across Europe. GBR's aim is to improve the frequency, capacity, reliability, punctuality and competitiveness of rail freight services so as to provide a real and better alternative to long distance road haulage both in the UK and throughout the continent. This goal requires GBR to develop logistics solutions, as opposed to just the rail element, so that customers can have their product collected in one location and delivered to another, whether those locations have a direct rail link or not.
- 13.2.3. Whilst the environmental benefits of rail are appreciated by all our customers (rail is recognised as producing around one quarter of the CO₂ emitted by an equivalent road journey and one train can typically carry the load of between 40 and 70 trucks, some rather more) those customers also require consistent and comparable service levels. They will not pay more or accept less complete service just for the sake of moving to rail. That stance dictates that GBR seeks more efficient ways of delivering our customer's products to their point of use or sale. To be able to deliver close to London, given the current size and predicted growth of the southeastern conurbation, is an absolute necessity.
- 13.2.4. Every Government since the privatisation of the rail industry in 1994 has set out to increase the volume of rail freight. As recently as September 2016, this Government re-confirmed its commitment to growth and published its Rail Freight Strategy, particularly highlighting the scope offered by the

⁴⁷² APP/RAIL/2 Appendix A.

industry to reduce emissions and road congestion. GBR's aims parallel those of Government policy, being convinced, as investor's purchase proves, that the industry has a very positive contribution to make. That contribution can only be optimised if rail delivers the products it carries close to the final market.

- 13.2.5. Some traditional sectors of the rail freight market, notably coal for power stations and raw materials and finished products in the iron and steel sector, have declined substantially in the last three decades, but this reduction in absolute volume has been substantially offset by growth in construction materials volumes and in both the newer intermodal (container freight) and automotive sectors. Instead of carrying raw materials or fuel, rail freight has shifted towards the carriage of finished products. Those, in turn, are consumed where people live, but the industry's current infrastructure does not allow it to deliver into areas of significant growth such as London and southeast England.
- 13.2.6. The region presently has no functioning SRFIs. One has been granted consent at Radlett, to the north of London and 47 miles (or about 90 minutes in an HGV around the M25) from Erith, but construction has not yet started. In any event, its catchment area is completely different to that of the appeals proposal. GBR considers there to be no likelihood of overlap or 'cannibalism' by one on the other; there is more than enough potential traffic for both. In fact GBR would like to see at least a third SRFI in close proximity to the M25 and was profoundly disappointed when the proposal at Colnbrook was refused consent in 2016 on the basis that the site was in the Green Belt.
- 13.2.7. GBR does not accept that the appeals site is too close to the southern ports to be viable; such a statement is far too generalised. In fact the site is ideally placed to receive trains from the north and from the Channel Tunnel and to act as a regional distribution location for those arriving loads. Moreover, trains from deep-sea ports such as Southampton and Felixstowe will be viable when we are able to cycle our rolling stock more than once in 24 hours. The relatively short distances and a modern terminal will allow faster turnaround times which will, in turn, promote much better asset utilisation. Neither does GBR accept that it would impede passenger services, another general perception unfounded in fact. GBR has very substantial experience of working closely with Network Rail to make best use of the available space on the network and avoid conflicts.
- 13.2.8. GBR fully accepts that it cannot make the 'final mile' deliveries by rail and that there will be localised traffic around the site, but the ability of rail, if provided with facilities such as at Howbury Park, to remove substantial volumes of heavy traffic from the road network is undoubted.

13.3. **Maritime Transport Limited**⁴⁷³ (MTL)

- 13.3.1. Following recent discussions with the appellant as the preferred operator for the rail freight terminal at East Midlands Gateway SRFI, MTL and the appellant discussed wider opportunities for SRFI developments, including the appellant's proposal for Howbury Park. The appellant asked MTL to write a letter, which might be placed before the Inquiry, setting out its perspective, from the point of an established intermodal logistics company and operator of the SRFI at Birch Coppice, Birmingham Intermodal Freight Terminal (BIFT).
- 13.3.2. MTL is a UK based container transport and ancillary storage operator, servicing global customers that include retailers, manufacturers, logistics companies and shipping lines. The company also provides domestic distribution services, predominantly to retailers. In addition, MTL operates a number of rail freight interchanges, handling flows of intermodal and other traffic.
- 13.3.3. In 2001 MTL was the fifth largest container transport operator by road in the UK. Today, the company is the market leader in the domestic movement of containers and is the fastest growing domestic distribution operator with a growing portfolio of rail freight interchange operations in the UK.
- 13.3.4. As an evolution of MTL's origins in road transport, its involvement in rail freight has expanded on a number of fronts. Over the last 10 years, MTL has become involved in creating and planning trainload services, as well as becoming the largest provider of road haulage at either or both ends of the rail transit, moving containers between rail freight interchanges and their ultimate origins or destinations.
- 13.3.5. In 2010 MTL recognised a growing need to have a strategic stake in rail as a natural extension of our road haulage services, to secure additional transport options and exploit the benefits of rail haulage for moving large volumes of freight. We embarked on diversification into rail freight interchange operations, taking the lease on the Tilbury Riverside Rail Terminal for handling port-related traffic to and from rail freight services. In 2014, MTL acquired Roadways Container Logistics and BIFT, an open-access, purpose built rail freight interchange at Birch Coppice in the west Midlands.
- 13.3.6. As a business, MTL sees road and rail as complementary, not competing activities. With long distance road haulage services most affected by growing congestion on the motorway network there are clear benefits and opportunities for the increased use of rail in the UK for both long distance trunk hauls and shorter distance shuttle services. However, the future success of rail freight is predicated on the development of an expanded network of modern rail interchanges able to accommodate longer trains with more efficient handling, to replicate current road based distribution networks. The creation of an expanded network of SRFIs will facilitate the movement of freight by rail, providing the critical infrastructure needed to run trains from point to point to take substantial volumes from the roads.

⁴⁷³ APP/RAIL/2 Appendix B.

- 13.3.7. Taking MTL's terminal at BIFT as an example, it now receives and handles four trains a day from container ports. MTL provides the critical mass of traffic needed to underpin these services as well as handling third party traffic, all of which would otherwise have to travel by road. The interchange facility also enables MTL to store containers on site as required, prior to delivering these to their final destinations, either to occupiers of the SRFI site (e.g. Euro Car Parts, Smurfit Kappa and Volkswagen) or elsewhere, including Argos at Barton Under Needwood, JLR (various local sites) and Triumph Motorcycles at Hinckley, as required. The system also works in reverse with goods collected and delivered by train (in the case of BIFT), for export.
- 13.3.8. The principle of SRFIs located around London to service the region represents an obvious next step, given that there are no such facilities at present. The Capital is the largest single concentration of consumer demand. Currently road based distribution networks connect national distribution centres located in the Midlands, (including some on SRFI) with road based regional distribution centres serving the Capital, typically sited around the M25. There is a need to provide rail interchange facilities in the southeast in order that the motorway network between the Midlands and the southeast can be bypassed, allowing goods to be brought as close as possible to their ultimate destinations before transfer to road for their final delivery.
- 13.3.9. As far as I am aware, Howbury Park would represent the first SRFI facility of its kind to service London and the southeast. From a transport operator's perspective, the proposed site is in an excellent location to the southeast of London with immediate arterial road connectivity (A206) and motorway links (M25) as well as access to the rest of the UK and mainland Europe via the Channel Tunnel.
- 13.3.10. Howbury Park clearly provides the opportunity to maximise use of rail for manufacturers and producers based in the southeast or for those looking for a warehousing and distribution presence, as well as for retailers serving London and the surrounding areas.
- 13.3.11. The warehousing on site would be used to hold products as required prior to their next movement by road or rail. By maximising use of rail for large volume shipments, the road leg can be made as short as possible and with smaller delivery loads, bringing these within the scope of the growing fleets of electric and hybrid powered delivery vehicles.
- 13.3.12. MTL currently has a number of grocery, FMCG and parcel traffic flows, in particular, and can identify other flows that would be suited to Howbury Park and potentially representative of the goods that may be transported by rail to and from the site, including domestic and international flows in containers or conventional rail wagons which are currently moved by road. These would utilise the SRFIs in the Midlands, in particular, and other rail terminals in the UK.
- 13.3.13. MTL supports the expansion of SRFI capacity across the rest of the country, London and the southeast being one of the biggest gaps in the network at present. MTL therefore supports the proposed development at the appeals site and is confident that it would succeed. In the absence of any alternative

sites in the area south of the Thames, MTL sees it as an essential addition to the network.

13.4. **Rail Freight Group**⁴⁷⁴ (RFG)

- 13.4.1. RFG is a representative body for rail freight in the UK. It has around 120 member companies from across the rail freight sector, including train operators, logistics companies, ports, equipment suppliers, property developers and support services, as well as retailers, construction companies and other customers. RFG's aim is to increase the volume of goods moved by rail. RFG and its members strongly support the appeals proposal.
- 13.4.2. The SRFI model, supported by the associated national policy framework, has proved to be a key element in the development of sustainable movement of freight. Each of the established SRFI has delivered growth in rail freight and has enabled new customers to make use of rail as well as supporting growth for existing users.
- 13.4.3. As the culmination of a decade of Government policy evolution in this area, the NPSNN is unequivocal in its support for an expanded network of SRFIs, acknowledging the relatively small number of sites able to be developed for the purpose. The Department for Transport's latest Rail Freight Strategy 2016⁴⁷⁵ reiterates this support, noting that the key constraint to unlocking potential in this sector is the availability/construction of suitable rail-connected terminal facilities, including SRFI.
- 13.4.4. In addition to national policy, the recently published *Mayor's Transport Strategy 2018*⁴⁷⁶ also notes the challenges for freight transport and suggests measures to increase the use of rail and water freight as an alternative to road, including greater use of consolidation centres.
- 13.4.5. Yet despite the success of these policies, and the delivery of new SRFIs elsewhere in the country, none have yet been consented in London and the southeast, although there have been several applications including Howbury Park. The absence of such locations means that rail's share of distribution in London is below that of other major conurbations, and rail's ability to help decongest the trunk road network in the southeast is also hampered.
- 13.4.6. The development of suitable locations is therefore urgent and critical to unlocking rail distribution to and from, and also within the region. It is therefore particularly disappointing and concerning that, following the previously successful appeal, there is now renewed objection from DBC and the MOL, despite the LLBB voting in favour of the grant of consent.
- 13.4.7. The proposed development at the appeals site aligns both with national and regional policy for the development of rail freight, being capable of receiving long-distance freight by rail from the regions, mainland Europe and ports of

⁴⁷⁴ APP/RAIL/2 Appendix C.

⁴⁷⁵ CD/4.1.

⁴⁷⁶ CD/3.3.

entry, and of supporting use of rail to deliver into central London. With a clear absence of alternative proposals, we are concerned to ensure that this important scheme is able to proceed and deliver as a key part of rail freight growth in London and the southeast.

PLANING APPLICATION STAGE REPRESENTATIONS (for the most part)

13.5. Network Rail⁴⁷⁷

- 13.5.1. We can confirm that a design solution has been identified which would not only provide Howbury Park with a suitable main line access, but would equip Southeastern Trains (SET) with an enhanced 12-car headshunt siding, replacing the constrained 10-car siding currently operated and avoid any internal SET depot movement conflicts with those to and from Howbury Park.
- 13.5.2. Critically, the design would also allow trains to and from Howbury Park to be signalled to and from the main line directly by Network Rail, avoiding the need for SET's resources to be used to co-ordinate movements between Howbury and the main line and providing fail-safe reliability.
- 13.5.3. Freight trains routed via Bexleyheath or Blackheath⁴⁷⁸, so arriving in the 'down' direction, would access Howbury Park via the south end depot connection running directly via the connecting curve to the facility. This connecting curve is long enough to accommodate a full length (so 775 metre) freight train 'inside clear' of the main line. Freight trains routed via Hither Green, so arriving in the 'up' direction, would access Howbury Park by running into one of the Slade Green depot reception lines, drawing into the depot north end head shunt (so circa 700 metres inside clear); they would then set back round the connecting curve into the terminal. Likewise outbound trains via Bexleyheath or Blackheath would stand on the connecting curve awaiting clearance of the departure signal and trains routed via Hither Green would set back out of the terminal through one of the Depot reception lines into the north head shunt & await signal clearance to depart. For inbound trains arriving in the Up direction, it may additionally prove possible to set back directly from the Up line and onto the connecting curve and into the terminal (whilst commonplace nationwide, this option would be dependent upon prevailing service frequencies & for simplicity has not been included in the formal analysis).
- 13.5.4. As per national safe operating practice, all set back moves are conducted with a Person In Charge (PIC, in this instance one of the terminal operatives or member of freight company ground staff) observing the movement from a position of safety and in continuous radio contact with the driver.
- 13.5.5. We have identified an opportunity for the track works on the main line to be undertaken at the same time as another pre-planned maintenance possession in the Slade Green area, minimising any disruption to existing

⁴⁷⁷ As set out in LBB Officer's Report CD/1.6 pages 21-25 (Inspector's Note: broadly comparable points are made in DBC Officer's Report CD/1.1 (superseded by CD/1.2) and INQ/17, 25 and 99.)

⁴⁷⁸ CD/4.12 page 2 schematic and INQ/54 page 11 Figure 5.

passenger and freight services. To reiterate previous discussions we also see an opportunity for our own proposed depot enhancement works at Slade Green to be undertaken in parallel with those at Howbury Park, enabling us to use the Howbury site construction access, to minimise the need to bring heavy plant through residential roads in Slade Green. Beyond this, we have discussed with RDL the retention of a permanent highway access between Slade Green depot and Howbury Park, which would further reduce the need to bring depot traffic through Slade Green residential areas.

Capacity and pathing

- 13.5.6. Rail freight has an established operational footprint in the timetable in this area with the existing aggregates railheads at Greenwich Angerstein Wharf collectively generating some 4 to 5 trains in and out of the site per day. Notably, such bulk aggregates services operate in the 1,850 to 2,200 tonne range and so are significantly heavier (and so commensurately slower to accelerate & brake) than the intermodal services likely to operate to and from Howbury Park. Moreover, this same North Kent corridor recently accommodated the 4-6 daily heavy weight (up to 2600t) trains conveying cross London Crossrail construction works spoil to the reconnected bulk quay facility at Northfleet, such additional trains being timetabled without impact on the prevailing passenger service.
- 13.5.7. With regard to timetabling, our assessment has considered both off-peak daytime and overnight periods for movement of freight trains to and from Howbury Park (as we do not generally path freight trains across London during morning or evening peaks), with a particular focus on the off-peak daytime period when services are more intensive than at night. Against the longer-term objective of operating up to 7 freight trains per day to and from Howbury Park, it is a significant and positive achievement that the analysis of the off-peak daytime period has identified 7 paths during the relatively narrow window between morning and evening peaks with the timetable as it stands. Building on this 'worst-case' scenario, further investigation has identified a similar quantum of paths available overnight. We are therefore satisfied that capacity exists to allow the SRFI to achieve a meaningful level of rail traffic and associated mode shift of freight from road.
- 13.5.8. Notably the study work considered the proposals for a more intensive 'metro' style passenger service pattern along the North Kent Line during the day. Focusing on the trains accessing / egressing the Slade Green southerly connection, the analysis revealed two 7 minute slots per hour during the off-peak daytime period to allow freight trains to access or exit Howbury Park. To put this in context, the time taken for a maximum-length (775 metres) freight train to traverse the main line connection (so laddering across both main lines) would range from 6 minutes at minimum speed (5 mph / 2.2 m/s), to 1½ minutes at maximum speed (25 mph / 11.2 m/s). Obviously Down direction inbound & outbound moves entail no such laddering moves & would be quicker.
- 13.5.9. It is also worth pointing out that the timetable is not 'cast in stone' but is constantly being updated as a rolling 18-month programme, resulting in the timetables published by the train operators. The evolution of train services, whether passenger or freight, is taken into account by Network Rail when

updating the timetable. Growth in freight services from Howbury Park would be one of many stakeholder inputs that we would account for as the timetable is developed in future years.

- 13.5.10. Typical of such developments, we expect a progressive development of the traffic base building from 1-2 trains per day pathed to match available line of route capacity across the country and available slots at origin ports and terminals. Any new services are planned and monitored closely by our national freight team to avoid performance issues; a useful parallel perhaps being the recent experience of some 5-6 additional daily freight services per day (spread throughout the night and day) hauling Crossrail spoil from Paddington to Northfleet, a quantum of additional freight traffic achieved without impact on existing passenger and freight services over the North Kent line.
- 13.5.11. In summary, and in line with previous commentary on this scheme, with a proposal that works from a technical perspective and an absence of network capacity issues, we reiterate our support for development of a SRFI at Howbury Park. This facility answers a market need for rail connected facilities in the south east and it would seem there is a unique window of opportunity currently with our Infrastructure Projects team primed to deliver the relevant rail access works alongside our own Slade Green depot enhancement programme for Slade Green depot.

Market context

- 13.5.12. Howbury Park addresses a demonstrable market demand; Network Rail are aware of potential rail flows frustrated by the paucity of rail terminals in the southeast capable of handling contemporary intermodal traffics.
- 13.5.13. Nationwide, facilities such as Howbury are critical to the growth of domestic intermodal traffics, where rail is utilised by retailers and logistics operators for inland trunk haul movements, the slow pace of realisation of such facilities has been an impediment to this area of modal shift nationwide. Howbury Park will also have a geographically unique role to play in accommodating future Channel Tunnel traffic growth.
- 13.5.14. Network Rail receives numerous applications for new freight (and passenger) interchanges which are reviewed and prioritised with a view to market & network fit to make best use of our available technical resources. We therefore do not engage with new third-party projects lightly and had the Howbury Park proposals raised strategic concerns about viability or deliverability in design, construction or operation, we would not have engaged with the promoters through our GRIP process.

Crossrail extension

- 13.5.15. Our strategic planning team who work to a 30 year time horizon have long endorsed Howbury with their full visibility of future freight & passenger service development including prospects for the future eastward extension of Crossrail beyond Abbey Wood.
- 13.5.16. With electrification and signalling systems fundamentally different to those on the existing mainline, the Crossrail running lines to Abbey Wood

currently under construction feature a physically discrete alignment that sits parallel to the existing main line, on the Downside.

- 13.5.17. Whilst there are no definitive designs or timescales yet, it is understood that for Crossrail be extended east of Abbey Wood towards Dartford further dedicated additional running lines will be constructed, physically separated from existing running lines. With Slade Green depot located on the Down side of the existing mainline, such Crossrail lines will need to be configured so as to not sever access and egress between the existing mainline and Slade Green depot's north and south end connections; for this reason grade separation has been previously proposed as a solution.
- 13.5.18. Mindful then that the Howbury Park terminal connection is effectively a spur off Slade Green's southerly connection and head shunt; it is clear that Howbury Park itself poses no additional considerations or obstacles for the future Crossrail extension.
- 13.5.19. Reflecting its current development status, detailed train path planning of the future extension of Crossrail 1 beyond Abbey Wood and any implications for existing freight and passenger services (including movements to/from Howbury Park/Slade Green depot) has yet to take place. However, we are aware that the previous discussions between Crossrail and RDL raised no objections to the Howbury Park scheme.

14. OTHER WRITTEN REPRESENTATIONS

14.1. Kent County Council

Background

- 14.1.1. KCC considers it is important to highlight, that since the previously approved scheme was considered in 2007, traffic flows on the M25/A282 have increased considerably with reported 24 hour flows of vehicles in 2015 and 2016 far exceeding the design capacity of the strategic road network. Development growth across the wider area has been both significant and rapid over the last decade, with large residential and commercial developments in close proximity to the M25/A282, one local example being The Bridge commercial/residential development, which is situated off the A206 part way between the appeals site and the A282/M25.
- 14.1.2. KCC is satisfied with the overarching approach/methodologies as presented in a series of key technical documents issued in support of the proposal, including *Chapter E-Transportation of the Environment Statement, November 2015*⁴⁷⁹, the associated *Transport Assessment, November 2015* and the *Transport Assessment (Addendum), March 2016*.

Traffic flow and localised congestion

- 14.1.3. The problem of traffic congestion on the local road network and the associated impact on Dartford Town Centre, as well as the wider area, is acknowledged at both local and sub-regional level. KCC is of the view that this is predominantly caused by incidents occurring on the Highways England strategic road network, M25/A282, and the activation of the Traffic Management Cell in advance of the 2 north-bound river tunnels. Following the introduction of the free-flow system, which saw the removal of barriers/toll booths at the Dartford Crossing, the number of incidents of localised congestion associated with the crossing increased and was attributed directly to the introduction of the free-flow system and associated highway works. However, it is considered that in the last 3-6 months, conditions have improved somewhat and there has been a decrease in the frequency of local network problems.
- 14.1.4. Traffic flows around junction 1A of the A282/M25, Dartford Town Centre and A206 Bob Dunn Way are particularly sensitive to signal timings at junction 1A. KCC has made numerous changes to the traffic signals in recent history in an attempt to smooth the flow of traffic passing through the junction at different times of day. However, ultimately it is not necessarily what is happening at the junction that is the problem, it is what is happening on the M25/A282 'main line'.
- 14.1.5. For example, the extraction of an over-height vehicle triggers the Traffic Management Cell at the north-bound tunnel bore, which creates immediate delays. The north-bound tunnels can be closed due to congestion on the Essex side. Minor collisions on the approach to the tunnels (generally the result of lane changing/weaving) all exacerbate problems on the local network and very quickly, junction 1A and Bob Dunn Way suffer the

⁴⁷⁹ CD/1.27 Volume 2 Chapter E, CD/1.27 Volume 3b and CD/1.30.

consequences of such incidents, reflecting the sensitivity of the local network. Over recent years, the existing Dartford Crossing has either been partially or completely closed, for an average of 300 times per year (for 30 minutes or more). This has largely been due to vehicle height restrictions, dangerous goods vehicles, accidents, breakdowns and the need to prevent excessive queuing/traffic inside the tunnels. Typically it can take between 3 to 5 hours for roads to clear following closure. Inevitably any increase in local HGV/LGV movements associated with the proposed SRFI would exacerbate local traffic congestion and lengthen existing traffic queues, particularly when there is an incident on the local or strategic road network.

Traffic modelling

- 14.1.6. In support of the appeals proposal, computer highway modelling has been undertaken in an attempt to better understand the direct impact that the scheme might have on the local and strategic road network. Transport for London (TfL) in particular worked with the appellant in relation to the traffic modelling aspect of the application, which is a TfL area of expertise. The appellant utilised a TfL/Highways England derived highways assignment model known as RXHAM, which is fully audited and validated. RXHAM seeks to model the change in traffic capacity across the whole network as a result of the proposed SRFI development at peak times. As is similar in London and its fringes, the road network is constrained and this means that in some cases a small number of vehicles are reassigned to alternative routes. Looking towards 2031, the modelling suggests that the local road network and associated local roundabouts would be able to manage the associated increase in development related traffic.
- 14.1.7. However, as much depends on driver behaviour and local traffic conditions, there is uncertainty as to precisely where and how many vehicles would be assigned to the local highway network. Whilst computer highways models can help to 'paint a picture' of what may or may not occur on a local highways network in the future, it should only form one element of the overall professional advice presented. No computer model will ever be 100% reliable/accurate. That said, KCC is confident that the RXHAM model accurately reflects the typical traffic conditions in the local area.
- 14.1.8. TfL and Highways England concur that in the medium to long-term, physical mitigation measures are required at the M25/A282 junction 1A. As of spring 2017 KCC and Highways England are scoping/developing plans for remedial improvements to the junction. Future interventions would be most likely to focus on improving the general layout, queuing capacity, traffic signals and associated monitoring/response options. Such improvements are likely only to be able to smooth flows for existing traffic, as opposed to building in any significant new capacity to cater for future growth/demand.
- 14.1.9. Highways England has proposed a cap on HGV movements between the appeals site and junction 1A during peak periods (AM and PM peaks), in order to address anticipated congestion around that junction identified by the modelling. This is supported in principle by KCC, although the impact of the proposed cap did not form part of the original modelling and consequently, there is some uncertainty as to how it might impact on the shoulders of the associated peaks.

- 14.1.10. The proposed new access road of the A206/A2026 roundabout, offers benefits, such as removing the need for vehicles to use the current constrained access route provided under the Craymill Rail Bridge to reach the Viridor Waste Management Limited site.
- 14.1.11. KCC considers it is certain that the appeals proposal would contribute a significant amount of additional traffic in the form of HGVs, light goods vehicles and employee vehicles to both the local and sub-regional/strategic highways network. The scheme would inevitably exacerbate existing periods of delay and congestion on the approach to the existing river crossing (particularly the north-bound tunnels) and specifically at local M25 junctions 1A and 1B and nearby local roads.
- 14.1.12. Having had regard to the traffic assessment as well as the current and likely future conditions on the local highway network, KCC considers that whilst the situation is likely to be worsened by the proposals, it is not able to conclude that it would result in conditions that could be described as having a severe impact on congestion or safety.

14.2. **Highways England⁴⁸⁰ (HE)**

- 14.2.1. The TfL RXHAM model is the most appropriate model to assess the strategic impact of the proposed SRFI. With reference to the documents submitted in support of the applications, the resulting traffic assignments on the highway network, and specifically the M25, A282 and the associated junctions (1A and 1B), were agreed.
- 14.2.2. HE concluded that at the time of full occupation of Howbury Park and on the basis of the current road network, the evidence presented showing queues and delays during peak periods on the M25/A282 would be severe from safety and operational viewpoints that could not be mitigated by the Howbury development. Under such circumstances HE would normally require planning conditions preventing further traffic onto the strategic road network at this location during the peak periods. However, as the Howbury development would likely remove some freight traffic off the M25/A282 an allowance was made via a recommended condition limiting the volume of Howbury Park HGVs on the M25 to 32 trips per hour (16 arrivals and 16 departures or equivalent) between the hours of 7am and 10am and 56 trips per hour (28 arrivals and departures or equivalent) between the hours of 4pm and 7pm. WSP do not agree with this limitation but RDL are prepared to accept it whilst the strategic highway network in the region remains unchanged.

14.3. **The Environment Agency⁴⁸¹ (EA)**

⁴⁸⁰ CD/6.4 section 5.

⁴⁸¹ Consultation response dated 22 January 2016 and 26 May 2016, see CD/1.6 page 31.

14.3.1. Subject to the imposition of conditions related to contamination land, drainage, construction methods and biodiversity⁴⁸², the EA does not object to the grant of planning permission. The EA has no objection to the proposal on flood risk grounds.

14.4. **Natural England**⁴⁸³ (NE)

14.4.1. Based On the information provided, NE advises that the proposal would be unlikely to affect any statutorily protected sites or landscapes.

14.5. **Historic England**⁴⁸⁴

14.5.1. Subject to the imposition of conditions related to investigation of archaeological and locally listed building investigations, Historic England does not object to the grant of planning permission.

14.6. **Port of London Authority**⁴⁸⁵ (PLA)

14.6.1. The PLA has no in principle objection to the grant of planning permission and recommends the imposition of a number of conditions.

⁴⁸² Consultation response dated 22 January 2016 and 26 May 2016, see CD/1.6 page 31.

⁴⁸³ Consultation response dated 9 December 2015 see CD/1.6 page 36.

⁴⁸⁴ Consultation response dated 23 December 2015 see CD/1.6 page 35.

⁴⁸⁵ Consultation response dated 23 December 2015, see CD/1.6 page 33.

15. INSPECTOR'S CONCLUSIONS

[In this section references in square bracket [] indicate a paragraph in which relevant material can be found.]

15.1. Introduction and main issues

- 15.1.1. The appeals site falls within the Green Belt. In the context of identifying the need for robust evidence to justify locating a SRFI in the Green Belt, the reasoned justification for LP Policy 6.15 indicates that *'... planning permission has already been granted for a SRFI at Howbury Park...'*. In 2007 the Secretary of State granted outline planning permission for a SRFI scheme at Howbury Park (the 2007 permission), which was similar in a number of respects to that which is now proposed. However, that previous permission does not amount to a fallback position, as it is no longer extant. Furthermore, the appellant has confirmed that *'RDL does not say that permission should be given this time because it was given in 2007'* and *'the 2007 decision was made on balance in the circumstances of the day, which are different...'* [7.2.1, 11.2.12-13].
- 15.1.2. The appeals site lies within the Bexley Riverside Opportunity Area (BROA) and an identified Regeneration Area within the LP. LP Policy 2.13 indicates that development proposals in the BROA should support the strategic policy directions set out in LP Annex 1. They include, amongst other things, that *'Account should be taken of the Area's strategically important role in addressing London's logistics requirements including protection for inter-modal freight transfer facilities at Howbury Park...'*. The proposed SRFI development would be consistent with that particular strategic policy direction [7.1.11]. However, that is not the end of the matter, not least as there are other Development Plan policies with requirements relevant to SRFI development in this location.
- 15.1.3. Consistent with the Framework, LP Policy 7.16 indicates that *'The strongest protection should be given to London's Green Belt, in accordance with national guidance. Inappropriate development should be refused, except in very special circumstances.'* There is no dispute that, under the terms of the Development Plans and the Framework, the appeals proposal would constitute inappropriate development in the Green Belt [7.3.2, 8.1.1, 11.4.1].
- 15.1.4. In light of the evidence before me, I consider that the main issues are as follows:
- a) The effect of the scheme on the openness of the Green Belt and whether it is consistent with the purposes of including land within the Green Belt;
 - b) The effect on the character and appearance of the local area;
 - c) The adequacy of the proposed rail link and the effect on existing/future passenger rail services;
 - d) The effect on the convenience of highway users;
 - e) The effect on living conditions in the local area, with particular reference to air quality, noise and vibration; and,

- f) Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, such as, but not limited to:
- i. Whether the proposal would meet an identified need for SRFIs to serve London and the South East;
 - ii. The availability of alternative sites;
 - iii. The socio-economic benefits of the scheme;
 - iv. The effect on biodiversity; and,
 - v. The extent to which mitigation would be secured through planning conditions and obligations; and,

If the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, whether the very special circumstances required to justify the proposal exist.

15.1.5. In this section of the report I consider each of these matters in turn. In doing so I have had regard to the information supplied with the applications, including that contained within the *Environmental Statement (November 2015) (ES)*, the *Supplementary Environmental Statement (April 2016) (SES)* and the various technical reports and appendices attached thereto. I have also taken into account the further environmental information supplied in the proofs of evidence and elsewhere during the course of the Inquiry.

15.2. **a) The effect of the scheme on the openness of the Green Belt and whether it is consistent with the purposes of including land within the Green Belt**

15.2.1. The appeals site, with an area of around 57 hectares, comprises for the most part of grassland with some limited tree and shrub cover. The northern end of the site lies at around 5 metres above ordnance datum (AOD), rising up to around 13.5 metres AOD at Howbury Grange and then falling back down towards the River Cray at the southern end of the site and the A206 beyond⁴⁸⁶. Howbury Grange, to my mind, has the appearance of a two-storey dwelling and, according to the planning application forms, it has an internal floor area of around 800 m². I consider that the appeals site is generally characterised by open countryside, which together with a wider expanse of open landscape to the northeast and east comprises a relatively compact area of Green Belt separating Bexley, to the northwest, and Dartford, to the southeast. This area is bounded by the River Thames to the northeast⁴⁸⁷.

15.2.2. The Framework states that '*The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence*' and

⁴⁸⁶ APP/LANVIS/1 paras 3.8-3.9.

⁴⁸⁷ APP/LANVIS/1 page 25

it identifies 5 purposes served by Green Belt, of which I consider that the following are particularly pertinent [8.2.1-2, 8.2.9]:

- a) To check the unrestricted sprawl of large built up areas;
- b) To prevent neighbouring towns merging into one another; and,
- c) To assist in safeguarding the countryside from encroachment.

15.2.3. As a result of the proposed development, the largest part of the appeals site would be taken up by warehouse development, in zones A and B⁴⁸⁸, with a total floor area of around 184,500 m² and a height up to 27.1 metres AOD. A relatively narrow, centrally positioned intermodal area, zone C, would include rail sidings, an area for stacked container storage as well as gantry cranes up to 26.7 metres AOD in height. At the southern end of the site, the initial section of the access road off the A206 would be carried on a viaduct spanning the River Cray, with a length of some 280 metres and varying in height up to approximately 10 metres above the existing ground level⁴⁸⁹ [3.3-5].

15.2.4. Against this background, I consider that it is appropriate to describe the overall scale of built development proposed as 'huge' or 'massive' [7.3.4]. In my judgement, the proposed introduction of landscaping around the perimeter of the site to interrupt views of the built development, either partially or completely from some vantage points, would not mitigate its impact on the openness of the site. Furthermore, the appellant acknowledges that *'outside of the site the level of harm to the openness of the remaining Green Belt will vary relative to factors such as proximity to the site, surrounding vegetation and topography'*; *'the proposals will extend the urban fringe and reduce the depth of view'* from a number of vantage points within the wider Green Belt⁴⁹⁰. To my mind, it is clear from the appellant's photomontages illustrating the potential visual impact of the scheme, in particular viewpoints 1, 2, 7, 8, 9 and 25⁴⁹¹, that the adverse visual impact of the scheme on the openness of the Green Belt would be likely to extend well beyond the appeals site boundary. [8.2.8]

15.2.5. The proposal would have a substantial adverse effect on the openness of the Green Belt and the introduction of this massive development beyond the built limits of Slade Green would constitute urban sprawl. Although it would not be unrestricted sprawl, as the Green Belt designation of the countryside bounding the appeals site to the northeast and east would continue to apply, thereby providing a check on further development, it would amount to a significant encroachment on the countryside. Furthermore, whilst the remaining Green Belt gap between Bexley and Dartford would be sufficient in physical and visual terms to prevent those neighbouring areas from merging together, the separation between the two would be materially weakened. [8.2.5, 8.2.10, 11.4.1-2]

⁴⁸⁸ Parameters Plan dwg. no. 30777-PL-101 Rev I

⁴⁸⁹ Drawing no. 2039-RP-001 rev D at chainage 283-290 metres (11.445 metres-0.781 metres). The difference in level between the high point of the proposed bridge (12 metres AOD) and the existing footpaths at chainages 310 and 360 metres (5.5 metres AOD) would be around 6.5 metres-Mr Scott evidence in chief.

⁴⁹⁰ APP/LANVIS/1 para 9.5- 9.10.

⁴⁹¹ APP/LANVIS/2.

15.2.6. The Framework states that, when considering any planning application, substantial weight should be given to any harm to the Green Belt. The proposal would have a considerable impact on the openness of the Green Belt and would undermine a number of purposes served by Green Belt thereabouts [7.3.5, 8.2.13]. I conclude overall, that the appeals proposal would cause substantial harm to the Green Belt, an outcome acknowledged as likely by the appellant [7.3.6]. This harm weighs heavily against the scheme [8.2.4, 11.4.1]. The scale of development proposed now is broadly comparable with that associated with the 2007 scheme⁴⁹², in relation to which the Inspector reached a similar conclusion regarding the impact on the Green Belt. [8.2.12-13]

15.3. **b) The effect on the character and appearance of the local area**

15.3.1. The ES⁴⁹³ identifies the appeals site, together with the former Crayford Landfill to the east and marshland to the north, east and southeast as falling within *Character Area 1-Dartford/Crayford/Rainham Marshes (CA1)*. It indicates that CA1 is: a high value landscape; characterised by its mostly flat topography and open nature, with occasional stands of trees and remnant hedgerows breaking up a largely grassed or marshy space; and, is relatively sensitive to development. To the southwest and northwest it adjoins *Character Area 3-Dartford to Erith Transport Corridor (CA3)*, which is identified as: a low value landscape; relatively insensitive to development; and, local to the site, comprises a variety of residential and industrial uses as well as road and rail routes. To the south east of CA1, the predominant character of the neighbouring Character Areas is: CA7-residential; CA8-commercial/industrial; and, CA9-industrial. CA9 includes a number of large structures, such as the now closed Littlebrook Power Station and the Queen Elizabeth II Bridge Crossing, which are prominent features of the wider landscape.

15.3.2. In my judgement, due to its mostly flat topography and open nature, CA1 is not readily capable of absorbing change [7.3.4]. As a result of the proposal, the predominantly grassed appeals site would be almost entirely replaced by development, comprising, for the most part, massive buildings, the scale of which would be much greater than neighbouring existing development within the lower value landscape of CA3. Furthermore, the proposed landscaping at the northern end of the site, comprising earthwork bunding topped by planting at a density sufficient to offer a degree of visual mitigation, would not be in keeping with the predominant landscape characteristics of CA1. I consider that the landscape impact would be substantial and adverse, a view shared by the appellant [8.2.13, 11.4.3].

15.3.3. Turning to the visual impact of the scheme. Whilst the appeals site itself is not publicly accessible, large parts of the site are visible from a wide range of vantage points, including: residential properties to the north and west; public rights of way that run through other parts of CA1; and, the highway network leading to the site. The proposals include the installation of

⁴⁹² CD/1.27 Volume 2 Chapter D paras D8.8-8.9.

⁴⁹³ CD/1.27 Volume 2 Chapter D para D4.4 and Volume 3a Appendix D1 figure 6.

screening bunds and establishment of planting, with the aim of softening the impact of the structures. However, as the appellant observes '*the impacts would be capable of mitigation to some degree, but clearly not entirely given the landform and availability of views*' [11.4.3]. The ES indicates that the residual visual effect of the proposal at all of the identified viewpoints within a 2 Km radius around the site would be adverse and moderate/adverse in the case of many⁴⁹⁴.

- 15.3.4. It is apparent from the evidence of DBC and a number of individuals who have objected to the scheme, that CA1 is an area enjoyed by recreational users, not least as it provides a countryside environment which is easily accessible from a highly urbanised area [8.2.6, 10.5.2,]. Some of the greatest visual impacts would be likely in relation to views towards the site from recreational routes to the north and south of the site. For example, the footpaths alongside the northern site boundary and the section of the London Loop Long Distance Path (LLDP) to the northeast⁴⁹⁵. In my judgement, the expansive views across the appeals site from sections of those footpaths contribute significantly to a sense of being within the countryside. Those views would be lost as a result of the proposal [7.3.4]. To the south of the site, the sections of footpath passing along either side of the River Cray would be dominated by the proposed viaduct⁴⁹⁶, which in my view would also be clearly visible, where it traverses marshland and the River Cray, from Bob Dun Way. Expansive views across the appeals site would also be lost from a number of vantage points within the residential area to the north and northwest of the site, such as along Oak Road and Moat Lane. Views from those locations would initially be of the proposed substantial earth bund wrapping around the northwestern corner of the site and taller warehouses beyond. Whilst over time, bund planting would soften, if not entirely screen, views of the buildings⁴⁹⁷, in my judgement, due to its close proximity and scale, the proposed development would be likely to remain a dominating presence. I consider that the visual impact of the appeals proposal would be substantial and adverse, a view shared by the appellant [8.2.13, 11.4.3].
- 15.3.5. The proposals would not have a direct effect on the character or appearance of the Oak Road Conservation Area (ORCA)⁴⁹⁸, which lies outside, albeit immediately to the northwest, of the appeals site. The ORCA comprises a small estate of railway workers cottages built in 1900⁴⁹⁹, in relation to which Slade Green Train Depot lies to the south and the North Kent Line to the west. An area of predominantly residential development is situated to the north. In contrast the area of the appeals site immediately to the east of the ORCA comprises grassland. In my judgement, it does not contribute to the significance of the ORCA nor would the proposed development harm the significance of that Designated Heritage Asset.

⁴⁹⁴ CD/1.27 Volume 3a Appendix D1 figure 8-Viewpoint location plan, Appendix D5-Visual Effects Table,

⁴⁹⁵ CD/1.27 Volume 3a Appendix D1 figure 2, figure 5 and figure 16A.

⁴⁹⁶ CD/1.27 Volume 3a Appendix D1 figures 2 and 17B.

⁴⁹⁷ CD/1.27 Volume 3a Appendix D1 figure 11 (3 pages).

⁴⁹⁸ CD/1.27 Volume 3a Appendix D1 figure 4.

⁴⁹⁹ CD/1.27 Volume 2 para D4.16.

15.3.6. Nonetheless, I conclude overall, that the proposal would cause significant harm to the character and appearance of the local area, contrary to the aims of LP Policy 7.4, BCS Policy CS17⁵⁰⁰ and the Framework, which seeks to ensure that developments are sympathetic to local character, including the surrounding built environment and landscape. In relation to the 2007 scheme, the Inspector reached a similar conclusion regarding landscape and visual impacts [7.3.4, 8.2.13, 11.4.3].

15.4. **c) The adequacy of the proposed rail link and the effect on existing/future passenger rail services**

15.4.1. The NPSNN paragraph 2.56 recognises that *'given the locational requirements and the need for effective connections for both rail and road, the number of locations suitable for SRFIs will be limited...'*. It establishes a number of assessment principles for SRFIs, which include:

- Scale and Design-*'The initial stages of the development must provide an operational rail network connection and areas for intermodal handling and container storage'* and *'As a minimum, SRFI should be capable of handling 4 trains per day'*⁵⁰¹; and,
- Transport links and locational criteria- *'Adequate links to the rail and road networks are essential. Rail access will vary between rail lines, both in number of services that can be accommodated, and the physical characteristics such as train length...'*⁵⁰².

15.4.2. The proposal includes the provision of an intermodal facility comprising rail sidings and an area for container handling, storage and vehicular access, in zone C of the site⁵⁰³. A new rail line would link the facility to the North Kent Line utilising a redundant spur within the Slade Green Train Depot. There is no dispute that either: the new rail line and connection to the spur could be constructed and used [11.1.3a.]; or, that provision of those facilities as part of the initial stages of development could be secured by condition, the details of which I will return to later. However, concerns have been raised by the MOL as to whether the proposed link would be adequate to service the needs of a SRFI, with particular reference to the number of freight services that could be accommodated, and if it would, the likely impact on passenger services.

15.4.3. In my judgement, given the requirement of the NPSNN that *'as a minimum, a SRFI should be capable of handling 4 trains per day'*, it follows that in order for the proposed rail link to be considered *'adequate'*, it would be necessary for it to be capable of accommodating 4 trains/day as a minimum [7.1.3, 8.5.4]. It seems to me, unless that would be the case, there would be no merit in requiring the facility to be capable of handling 4 trains per day.

⁵⁰⁰ APP/PLAN/1 para 7.37.

⁵⁰¹ CD/2.2 paras 4.88 and 4.89.

⁵⁰² CD/2.2 para 4.85.

⁵⁰³ Parameters plan dwg. no. 30777-PL-101 rev I.

- 15.4.4. I acknowledge that, in common with other SRFIs, the proposed facility would be unlikely to start operating with 4 trains per day [11.3.3]. *The Rail Report, November 2015*, submitted in support of the appeal planning applications, predicts that rail traffic through Howbury Park could potentially grow from 1 train per day (each way) in 2018 to 8 trains per day in 2033⁵⁰⁴. Nevertheless, I consider that in order to qualify for the full support given to SRFIs by the NPSNN, it would be necessary to be reasonably assured that the proposed rail link would have the capacity in the future to service the site with 4 trains/day, as a minimum [11.1.12].
- 15.4.5. In 2007, the Inspector indicated that Network Rail *'have effectively guaranteed that paths for 3 trains each day would be made available on opening the terminal and they state that further paths are likely to be made available as and when required'*. However, *'it has to be recognised that the implications of the emerging Kent Franchise and planned timetable changes on the North Kent Lines are not yet fully understood and have not been fully assessed'*. He concluded, *'whilst I take the view that, on the totality of the evidence available, the Secretary of State can be reasonably assured that sufficient train paths would be available to service a SRFI at Howbury Park, I do not consider this guaranteed'*.⁵⁰⁵ The supporting documents upon which those findings were based are not before me. Furthermore, there is some uncertainty as to the extent to which the timetable has altered since 2007 [7.4.54, 11.2.14.g)]. Under the circumstances, in my view, the position in 2007 is of little assistance now. In addition, an effective guarantee of paths for 3 trains each day would not meet the 4 trains per day minimum I have identified.
- 15.4.6. The evidence before me regarding Network Rail's current position with respect to the proposed development comprises for the most part correspondence between it and the Councils/appellant. On that basis, it appears that, whilst it may still have some concerns, Network Rail is generally supportive of the appeals proposal [8.5.7, 11.1.3.e., 11.2.50, 13.5.11]. Nonetheless, in my judgement, the evidence of Network Rail in the cases before me does not amount to an effective guarantee as to the number of trains that could be accommodated each day [7.2.5, 7.2.10, 7.4.67h), 9.2.5, 11.2.14.d)]. Furthermore, overall, I consider that the evidence presented at the Inquiry, which also includes analysis on behalf of the MOL and the appellant, casts serious doubts over the capacity of the network to accommodate the level of service required, for the reasons I set out below [11.2.50-52a.].
- 15.4.7. In initial consultation correspondence, Network Rail indicated that in order to address its concerns regarding the rail connection to the North Kent Line a GRIP1-2 study would be undertaken to review the likely impact, including a detailed timetable study⁵⁰⁶. In later correspondence with the LBB, Network Rail indicated that it had completed its review of timetable aspects of the scheme through to the end of its GRIP stage 2 (Feasibility)⁵⁰⁷. However, this was disputed at the Inquiry by the appellant's own rail witness, Mr Gallop,

⁵⁰⁴ CD/1.25 page 30.

⁵⁰⁵ CD/5.2 paras 15.110 and 15.112.

⁵⁰⁶ INQ/25 email from Adrian Toolan, dated 19 January 2016.

⁵⁰⁷ INQ/25 email from Guy Bates of Network Rail to Susan Clark of LBB, dated 5 October 2016.

who indicated that Network Rail still had work to do to finalise its thoughts at GRIP stage 2. Furthermore, some support for that position is provided by the only Network Rail timetable analysis report (*GRIP2 Report Part 2: Timetable analysis, 9th November 2016*) submitted to the Inquiry, which appears to be incomplete and has a 'draft' status (GRIP2 Report)⁵⁰⁸ [7.4.51, 11.2.52.e.]

- 15.4.8. The GRIP2 Report indicates that timetable analysis was undertaken in 2 steps: 1) identification of the potential opportunities to path trains across London (cross London paths), between the main stabling yard at Wembley and Crayford Creek Junction (CCJ); and, 2) identification of the potential opportunities to access the site off the main North Kent Line, the access point being just to the south of CCJ. Both steps are necessary to successfully path a train across London and into the site. The contents of the draft report are limited to an Executive Summary and a number of data sheets supporting only the step 1) analysis.
- 15.4.9. The step 1) cross London paths analysis, which Network Rail has confirmed was based on the '*timetable as it stands*' at the time [13.5.7], identified a number of opportunities to path trains across London, albeit Network Rail indicates that with any new service proposal on routes into London there are potential risks to the robustness and performance of the timetable⁵⁰⁹. The MOL, although concerned that it would be very difficult, accepts that it would not be impossible to provide cross London paths [11.2.35.a.]. Recent experience referred to by the appellant and Network Rail appears to support this position [7.4.56, 11.2.35.a., 13.5.6 & 10]. In my judgement, it is likely that cross London paths could be found to accommodate 4 trains per day between Wembley and Crayford Creek Junction, although the associated risks to the robustness and performance of the timetable have yet to be defined. However, a far greater level of uncertainty is associated with opportunities to access the site off the North Kent Line, step 2).
- 15.4.10. With reference to the step 2) analysis, the evidence from Network Rail on this matter gives rise to a number of concerns. Firstly, the GRIP2 Report indicates that based on an estimated 'metroisation' service pattern, there would be two 7 minute windows in each day-time intra-peak hour for freight trains to/from Howbury Park, the intra-peak period being 1000 hrs to 1600 hrs⁵¹⁰ [13.5.8]. However, the GRIP2 Report does not include any details of the assumed metroisation service pattern to support the finding. Secondly, Network Rail indicates in its consultation response to the LBB that the 7 minute windows should be viewed in the context that the time taken for a train to traverse the main line connection would range from 6 minutes at minimum speed (5 mph) to 1.5 minutes at maximum speed (25 mph) [13.5.8]. However, the maximum speed referred to is misleading as the speed limits across the junction range from 15-20 mph and the speed limit that would apply while any part of the train is within the Slade Green Train Depot would be 15 mph⁵¹¹. Furthermore, those crossing time estimates referred to

⁵⁰⁸ INQ/3.

⁵⁰⁹ INQ/3 page 4.

⁵¹⁰ INQ/3 page 4.

⁵¹¹ CD/1.25 page 34 figure 15.

appear not to take account of headway/junction margins [7.4.43.c.]. Under the circumstances, I consider that little reliance can be placed on the documented step 2) analysis put forward by Network Rail.

- 15.4.11. In the absence of details of the metroisation service pattern assumed by Network Rail, a reasonable starting point for the assessment of opportunities to access the site off the main North Kent Line is the current timetable, not least as the '*timetable as it stands*' appears to have been used by Network Rail as the basis for its step 1) analysis [11.1.10-11,13.5.7]. The appellant and others have given evidence regarding the available gaps or 'available whitespace' in the current timetable to allow trains in/out of the appeals site as well as the whitespace likely to be required for such manoeuvres, 'required whitespace'.
- 15.4.12. I will deal with required whitespace first. Three potential routes exist for trains to and from the appeals site: via Barnehurst, to the west; via Plumstead, to the north; and via Hither Green, to the south. The appellant has confirmed that the route over which most trains would be anticipated to travel to and from the appeals site is via Barnehurst, due to constraints associated with the use of the other two⁵¹² [7.4.39]. Therefore, this was the main focus of analysis at the Inquiry.
- 15.4.13. In the *Rail Report, November 2015*, submitted in support of the planning applications, the appellant's rail witness, Mr Gallop, estimated that whitespace of around 8-10 minutes would be required for a train to arrive at or depart from the site [7.4.43.a.]. His assessment was based on the time taken by a train travelling at 15 mph to cross from the controlling signal west of Perry Street Fork Junction, through CCJ and clearing the main line (4 minutes) as well as making an allowance for headway/junction margins before and after (2-3 minutes taken to rest signals and pointwork ready for the next train). As acknowledged by Mr Gallop, this time estimate was broadly comparable to that arising from the approach set out by Mr Goldney in GLA/RG/01 if a train length of 565 metres is used⁵¹³.
- 15.4.14. Prompted, at least in part, by Mr Goldney's evidence that a whitespace requirement of 8-10 minutes could not be met, Mr Gallop's approach to junction crossing times changed during the course of the Inquiry, lowering his estimate of required whitespace. I have a number of concerns regarding his revised approach:
- a) In APP/RAIL/6⁵¹⁴ Mr Gallop moved away from his view that the crossing time should be calculated with reference to the distance between the site and the controlling signal on the main line, to focussing only on the shorter distance across CCJ into the site [7.4.43.e.]. This is not an approach supported by Mr Goldney⁵¹⁵. Furthermore, it is

⁵¹² INQ/54 APP/RAIL/6 para 3.2.3- The route via Plumstead has W6A gauge clearance, as opposed to the W8 gauge clearance of the other two, which is preferred with reference to NPSNN para 4.85. The route via Hither Green involves trains manoeuvring within the Slade Green Train Depot sidings, potentially disrupting Depot operations [7.4.57-64, 9.5.6, 11.2.50-52].

⁵¹³ XX of Mr Gallop by the MOL (GLA/RG/01 para 5.20 method, inserting 565 metre train length = $565 / ((5 \times 1600) / 60)$ = 4.2 minutes, para 5.23 total headway = 6 minutes, Total = 4.2+6 = 10.2 minutes.

⁵¹⁴ INQ/54.

⁵¹⁵ INQ/63 para 2.1.2 bullet 1.

not clear that this revised approach was supported by Mr Kapur, a timetable analysis expert instructed by the appellant to assist with the timetabling exercise. His primary concern appears to have been related the use of blanket speeds, rather than the distance assumed⁵¹⁶. Taking account of a need to clear the signal, Mr Goldney estimates a crossing time of around 4.5 minutes (not including headway/junction margin), which is not based on blanket speeds⁵¹⁷. Whilst I share the appellant's view that his 10% contingency is not justified [7.4.65, 11.2.46], its removal is largely offset when account is taken of the 5 mph speed limit within the intermodal area, which may well have to be adhered to until the back of the train leaves that area⁵¹⁸. On that basis, and having regard to Mr Gallop's approach to acceleration, I consider that a crossing time estimate of 4+ minutes is reasonable and, even if the minimum allowance for headway/junction margin is assumed, a whitespace requirement of 8 minutes results.⁵¹⁹[11.2.43-47]

- b) In closing the appellant suggests that the position set out in tables 1 and 2 of APP/RAIL/7 should be preferred, which for an outbound train indicates a whitespace requirement of 6.5-7 minutes [11.2.39]. I do not share that view for a number of reasons. Firstly, the manner in which Mr Gallop's timetable analysis evidence changed during the Inquiry casts doubt over the reliance that can be placed upon it. Mr Gallop confirmed that his APP/RAIL/5 was replaced by APP/RAIL/6 due to errors in the timetable analysis [7.4.43.d.]. Mr Gallop's APP/RAIL/6 timetable analysis (tables 2 and 3) also differs from that in Appendix I of the same document, which was produced by the timetable analysis expert commissioned by the appellant, Mr Kapur. Mr Gallop's APP/RAIL/7 analysis (tables 1 and 2) is not entirely consistent with that in APP/RAIL/6 either. His explanation was that each analysis was based on a different version of the timetable⁵²⁰. Under the circumstances, I give greater weight to the analysis of Mr Kapur, who is acknowledged by both the appellant and the MOL to be an expert in timetable analysis [7.4.44, 11.5.9]. To my mind, these factors also cast doubt on the reliability of a number of the headway/junction margin assumptions included in APP/RAIL/7 tables 1 and 2. Secondly, in any event, Mr Gallop's final say on the matter of whitespace needed for a train departing from the appeals site, which came in cross-examination by the MOL and was not revisited in re-examination, was to confirm a crossing time of 8 minutes [7.4.47, 11.2.38-39].

15.4.15. It appears to me, with reference to the above reasons, whether taken in isolation or together, that a period of 8 minutes is a reasonable estimate of

⁵¹⁶ INQ/54 para 3.2.2.

⁵¹⁷ INQ/63 GLA/RG/09 para 2.1.5

⁵¹⁸ INQ/54 figure 5 track section 4-5 mph speed restriction, GLA/RG/09 para 2.1.2 bullet 3, INQ/72 APP/RAIL/7 para 2.2.4.

⁵¹⁹ [Inspector's note: the difference between the parties regarding assumed train length (560 metres-Mr Gallop, 565 metres- Mr Goldney) does not make a material difference to the outcome.]

⁵²⁰ In response to Inspector's question.

the likely whitespace requirement for a train departing from the appeals site.

- 15.4.16. Turning to available whitespace. The appellant appointed Mr Kapur of GB Railfreight to analyse the timetable to identify available whitespace slots, arriving/departing via Barnehurst, in the period between 05:30 and 01:03, thereby avoiding any overnight possessions that might occur⁵²¹. During the 6 hr intra-peak period referred to by Network Rail, Mr Kapur's analysis identifies only 6 opportunities of 7 minutes or more to arrive at the site and no opportunities of that duration to depart. Having regard to the whole period, he identifies 5 opportunities of 8 minutes or more to arrive at the site and one opportunity of that duration to depart⁵²²_[7.4.48-49].
- 15.4.17. Based on the evidence presented, in my judgement, the number of trains that could be pathed to/from the appeals site, having regard to the current timetable, would be likely to fall well short of 4 per day (each way), not least due to constraints on departure.
- 15.4.18. Looking forward, the NPSNN predicts that in London and the South East rail passenger kilometres will grow by around 20% between 2011 and 2020 and by a further 26% by 2033 _[7.2.11]. Locally, the Bexley Growth Strategy indicates that up to 31,500 new homes can be delivered across the Borough over the period to 2050, with growth areas at locations along the North Kent Line, including 8,000 new homes in Slade Green alone⁵²³. Furthermore, priority interventions to support the identified level of growth include: upgrades to services on the borough's railway lines as an immediate/short term priority _[9.2.8, 9.3.17]. The LTP4 indicates that rail capacity on the North Kent Line is stretched and likely to be overcapacity in the near future _[6.5.2]. I understand that, in broad terms, the metroisation concept, referred to by Network Rail in the GRIP2 Report, is expected to increase the frequency of passenger services throughout the day, increasing capacity in the southeast London suburban area by up to 25%⁵²⁴. That being the case, I consider it unlikely that future passenger timetables, such as metroisation, would be more favourable in terms of available whitespace than the current timetable, upon which the above analysis was based. Under the circumstances, the current timetable is also a reasonable starting point against which to judge potential future opportunities, in relation to which I maintain the view that the number of trains which could be pathed to/from the appeals site would be likely to fall well short of 4 per day _[7.4.54, 11.1.9-13, 11.5.9, 11.2.14.g & 36]. Furthermore, for the avoidance of doubt, in light of my finding regarding a whitespace requirement of 8 minutes, the 7 minute windows in Network Rail's estimated 'metroisation' service pattern, referred to in the GRIP 2 Report, would not be sufficient to accommodate departing trains.
- 15.4.19. However, that is not the end of the matter. There is no dispute that Network Rail has an equal obligation to facilitate the use of the network by both passenger and freight traffic _[11.2.14.g], 13.5.9] and it has certain powers to 'flex' the timing of trains within the timetable in order to accommodate new

⁵²¹ INQ/54 APP/RAIL/6 para 3.3.2.

⁵²² INQ/54 APP/RAIL/6 Appendix I.

⁵²³ CD/3.15 pages 29-30, SGCF email dated 19 December 2017.

⁵²⁴ CD/4.12 Technical Appendix section 10 page 50 para 10.6.

services. In Mr Kapur's experience, freight and passenger operators are often willing to work with each other to accommodate minor flexing of services to help each other accommodate desired changes to their timetables [11.2.35.b, 11.2.42]. Nevertheless, as observed by Mr Goldney and not disputed, there are limits. For example, Network Rail does not have the power to autonomously alter service levels specified by the Department for Transport. Furthermore, operators may object to proposed changes and there is provision for appeals to be determined by an independent body⁵²⁵.

- 15.4.20. Turning to the potential outcome of 'flexing' to accommodate the appeals proposal. Based on the timetable analysis submitted, including Mr Goldney's clockface exercise, it appears to me that the introduction of a freight service, into a typical hour of existing daytime passenger services, would be likely, at best, to result in disruption to a more even existing distribution of passenger services, with bunching of services in certain periods of the hour and significant gaps in others. When account is additionally taken of other factors, such as existing movements of passenger trains to and from the Slade Green Train Depot and the possibility of inflexibility elsewhere on the network, such as platform availability and turnaround requirements at London termini, the likelihood of passenger service numbers having to be reduced in order to accommodate appeals site freight traffic appears to me to be significant [7.4.54-55, 9.3.19, 9.5.6, 11.2.40-42, 11.5.10]. Furthermore, it seems likely that there would be little, if any, scope for future increases in passenger services, such as those envisaged by metroisation, referred to above.
- 15.4.21. I conclude that there is significant uncertainty as to whether the timetable could be flexed/amended to accommodate 4 trains per day to/from the appeals site either now or in the future [11.1.10-11, 11.1.13, 11.2.35]. At the Inquiry, I asked for the views of the parties as to whether assurance that an adequate rail link would be provided could be secured through the imposition of a Grampian type condition, the need for which I will return to later. Only the LBB confirmed that it could be done and provided suggested wording, condition no. 6x⁵²⁶. It would require evidence to be provided, prior to the commencement of development, of confirmation from Network Rail that the connection to the site is capable of handling 4 trains per day (each way). However, the appellant confirmed that it would not accept a condition requiring compliance prior to commencement [11.6.1b)]. Under the circumstances, notwithstanding Network Rail's support for the scheme, I am not reasonably assured that an adequate SRFI rail link, with reference to the NPSNN, would be provided [11.2.12, 14.d, 13.5.11]. However, if it would, I consider that it would be likely to have a material adverse effect on existing/future passenger services [7.4.55 & 67.j, 9.3.18, 13.2.7]. In this respect the appeals proposal would conflict with the aims of LP Policy 6.15, BCS Policy CS15, DCS Policy CS 15, LPe Policy T7 as well as MTS Policy 1 and Proposal 16 insofar as they seek to minimize any adverse impact on the wider transport network and safeguard or improve public transport services. I give this significant weight.
- 15.4.22. The NPSNN indicates that where possible SRFIs should have the capacity to handle 775 metre trains. Although the facilities within the appeals site would

⁵²⁵ XX of Mr Goldney by RDL, 17 September 2018.

⁵²⁶ INQ/100.

be capable of doing so, I understand that existing main line constraints do not cater for trains of that length at present [7.1.4, 13.5.3]. Therefore, whilst the whitespace necessary to manoeuvre such a train across Crayford Creek Junction would be even greater than set out above, and so more difficult to accommodate, I consider that it would not be appropriate to weigh that particular factor against the scheme [7.4.52].

15.5. d) The effect on the convenience of highway users

Background

- 15.5.1. The 4 Highway Authorities with an interest in the area most likely to be affected by the appeals proposal are: HE and TfL, who between them are responsible for the strategic highways/London Red Routes, such as the M25, A282 and A2; and, KCC and the LBB, who are responsible for the local highway network (the 4 HAs). None of them has objected to the grant of planning permission [11.1.3.i].
- 15.5.2. The main vehicular access point to the appeals site would be at a new fourth arm added to the north side of the roundabout at the intersection of: the A206 Thames Road, to the west; Burnham Road, to the south; and, A206 Bob Dunn Way, to the east, which leads to junction 1A of the A282/M25 (the appeals site roundabout). Furthermore, the DBC s106 requires adherence to the *Transport Management Plan* (TMP), which includes a number of measures associated with freight, in the *Freight Management Plan* (FMP). They include: a) limits on the number of HGVs associated with the appeals site that can use junctions 1A and 1B of the A282/M25 at peak times (HE cap); and, confining HGV traffic to and from the site to the A206, rather than through Dartford town centre using Burnham Road (with certain exceptions).
- 15.5.3. There is no dispute that there are regular incidents on the M25 that cause congestion and elevated levels of traffic in Dartford [11.4.7]. The Transport Assessment (TA) states *'it is clear that the area around the M25 junction 1A and Dartford is subject to frequent incidents, primarily associated with incidents on or around the M25 and Dartford Tunnels. It is impossible to undertake quantitative analyses to reflect every possible event...In order to assess the impact of Howbury Park it is appropriate to consider the 'typical' operation of the highway network...'*⁵²⁷. Mr Findlay confirmed that the traffic modelling in the TA is based on a 'typical day' avoiding 'abnormal traffic periods', such as network incidents⁵²⁸. Nonetheless, given that traffic incidents are frequent in this particular area, in my view such conditions cannot be ignored, if a robust assessment of the likely impact of the proposal is to be undertaken. The ES acknowledges that it is possible to approach that aspect on a qualitative, rather than quantitative, basis. Against this background, I have considered the likely impacts in the first instance based on 'non-incident' highway conditions and then 'incident' highway conditions.

⁵²⁷ CD/1.30 page 12 para 5.1.2, APP/TRAN/1 para 4.5.3.

⁵²⁸ APP/TRAN/1 para 4.5.3, evidence in chief and cross-examination of Mr Findlay.

Highway conditions: non-incident

- 15.5.4. TfL has adapted its *East London Highway Assignment Model* (ELHAM) to explore options for a new River Thames crossing, the *River Crossing Highway Assignment Model* (RXHAM). As part of the TA, this highway assignment model has been used to forecast the routes that drivers choose in the area and the associated flows were fed into more detailed junction specific models, such as ARCADY roundabout models, to assess junction performance.
- 15.5.5. I understand that the ELHAM model has undergone several years of development, calibration and validation and more recently RXHAM has been further enhanced and refined by TfL to improve the level of validation at the Thames Crossing points⁵²⁹. I consider it follows that the RXHAM model is likely to be reasonably reliable when it comes to modelling the strategic network immediately to the south of the Dartford crossings. However, regarding the local highway network around the appeals site, the TA acknowledges that *'as with all strategic models, when it is intended to use them to precisely assess a more local area it is necessary to undertake a local audit and validation process'*⁵³⁰. The need for this was echoed by HE and LBB⁵³¹, and in a letter to TfL, dated June 2015, WSP acknowledged that it would be necessary to *'undertake a thorough local model recalibration and validation to ensure that the model is fit for purpose for modelling the impacts of the freight interchange over its area of impact'*. Therefore, it appears to me that although there is no dispute amongst the 4HAs that the RXHAM model is the most appropriate strategic model available to assess the likely impact of the proposal on vehicle flows around the network, that support was qualified, particularly in relation to its application to the local highway network. I will return to this below, under the reliability of the appellant's RXHAM results [11.4.14].

Strategic highway network

- 15.5.6. KCC has indicated that since the previously approved scheme was considered in 2007, traffic flows on the M25/A282 have increased considerably with reported 24 hour flows of vehicles in 2015 and 2016 far exceeding the design capacity of the strategic road network [14.1.1]. Based on results from the RXHAM model, HE has concluded it is likely that, when the appeals site is fully occupied, delays and queues during peak periods on the M25/A282 would be severe from safety and operational viewpoints. Whilst accepting that the proposals may add to queuing on the strategic highway, Mr Findlay does not accept HE's argument that that would add to the safety risk. I share HE's concern, on the basis that longer queues resulting from the scheme may well take longer to disperse, extending the period during which the free flow of traffic is subject to interruptions and that this would be likely to increase safety risks⁵³².

⁵²⁹ CD/1.27 ES Volume 3b Appendix 3.3 page 45.

⁵³⁰ CD/1.27 ES Volume 3b Appendix E1 page 36 para 3.9.7.

⁵³¹ CD/1.27 ES Volume 3b Appendix 1.7-WSP letters to: TfL, dated 26 June 2015; LBB, dated 26 June 2015; and, HE, dated 26 June 2015.

⁵³² Mr Findlay's responses to Inspector's questions.

- 15.5.7. The proposed new Lower Thames Crossing (LTC) would be expected to provide some relief to the M25, although not in all circumstances, on the approach to the Dartford Crossing Tunnels (northbound traffic) due to demand which is suppressed at present⁵³³. However, it has not yet been consented and the anticipated opening date of 2027, which is some time after the estimated full occupation date for the appeals site⁵³⁴, is not guaranteed. Therefore, I give its impact little weight.
- 15.5.8. HE acknowledges it is possible that the impact of additional traffic associated with the proposals on the strategic highway network may be offset to an extent by some reduction in existing HGV traffic, through the use of rail. Against that background, HE considers that the impact of the proposal on the strategic highway network can be satisfactorily mitigated by limiting, by planning obligation, the numbers of Howbury Park HGVs joining or leaving the M25 in peak periods [14.2.1-2]. This is accepted by the appellant. I agree it is necessary.

Local highway network

- 15.5.9. I consider that key junctions on the local highway network include the following:
- a) The appeals site roundabout;
 - b) The Thames Road/B2186 Crayford Way roundabout, immediately to the west of the appeals site roundabout; and,
 - c) The signalised M25/junction 1A, to the east of the appeals site roundabout along Bob Dunn Way.
- 15.5.10. The LTP4 indicates that parts of the local road network are reaching capacity, as a result of high levels of development taking place [6.5.2]. The junction specific modelling work submitted in support of the scheme has been undertaken using ARCADY software for the above roundabouts and Linsig software for the signalised junction. The standard approach, acknowledged by Mr Findlay, is to regard the practical capacity of a roundabout as having been reached when the ARCADY predicted Ratio of Flow to Capacity (RFC) on any arm rises to 0.85⁵³⁵. For signalised junctions the reserve capacity of a junction is taken to have reduced to zero when the Linsig predicted Degree of Saturation (DoS) rises to 90%. These benchmarks allow for uncertainties inherent in the modelling. However, in this case Mr Findlay advocates setting these benchmarks to one side and the use of higher values to judge performance, based on his view that some queuing and congestion is to be expected in London. This approach is reflected in the TA, where findings as to whether junction capacity has been reached appear to be based on a RFC of 1.0 and a DoS of 100%.
- 15.5.11. Against that background, DBC and KCC take the view that the modelling work submitted in support of the appeals scheme indicates that, looking

⁵³³ APP/TRAN/1 section 5.

⁵³⁴ APP/TRAN/1 para 5.1.2.

⁵³⁵ Mr Findlay in response to Inspector's questions, see also CD/5.2 para 15.57.

beyond the estimated year of full occupation of 2025 to a forecast year of 2031, the local network would be able to manage with the development related traffic [8.3.8, 14.1.6]. I acknowledge that the modelling work suggests that the development traffic would not add greatly to problems that would exist at the Thames Road/B2186 Crayford Way roundabout and the M25/junction 1A in 2031. However, even if the relaxed benchmarks favoured by Mr Findlay are accepted, the TA results indicate that in 2031 both of those junctions would be over capacity to some degree with or without the appeals scheme [8.3.8]. Furthermore, in the case of the Thames Road/B2186 Crayford Way roundabout it predicts queue lengths on Thames Road (E) in the AM peak of 166-189 passenger car units (pcus), which in my judgement, would be likely to interfere with the free flow of traffic around the appeals site roundabout⁵³⁶ [8.3.2, 10.4.9].

- 15.5.12. Furthermore, and in any event, for the reasons set out below, I have significant concerns regarding the reliance that can be placed on the modelling work submitted in support of the appeals scheme as a means of judging the likely impact of the development, not least in relation to the appeals site roundabout.
- 15.5.13. To the west of the appeals site roundabout, Thames Road reduces from 2 lanes to a single lane, due to a width restriction at the Craymill Rail Bridge (CRB), before widening again to 2 lanes on the approach to the Thames Road/B2186 Crayford Way roundabout.
- 15.5.14. The TA indicates that, in practice, due to the CRB restriction and the associated need for traffic to merge, during the AM peak hour queues extend back to and through the appeals site roundabout, resulting in exit blocking to the Burnham Road arm, with slow moving vehicles from Bob Dunn Way making it difficult for vehicles to enter the roundabout from Burnham Road. The TA identifies that queue length surveys recorded in the AM peak hour show the average maximum queue during each 5 minute period on Bob Dunn Way was 61.2 pcus, equivalent to approximately 360 metres, and 14.8 pcus on Burnham Road, equivalent to approximately 85 metres⁵³⁷.
- 15.5.15. The TA confirms that, due to the issues set out above, it is not possible to validate an ARCADY model of the roundabout as it currently operates. Instead the roundabout has been modelled based on the assumption that the CRB constraint has been removed [8.3.14]. In stark contrast with the queue survey results referred to above, using 2015 traffic flows, the model predicts a 1 pcu queue on Bob Dunn Way in the AM peak⁵³⁸.
- 15.5.16. In 2007, when the previously approved scheme was under consideration, it was thought that replacement of the CRB was the LBB's 'no. 1 priority' and that it would be reasonable to expect it to be completed by 2025⁵³⁹. However, notwithstanding inclusion of the project in the LBB's Regulation

⁵³⁶ CD/1.27 Volume 3b Appendix E page 78 Table 9-9 and CD/1.30 supplementary Environmental Statement (2016) Appendix 3 page 8.

⁵³⁷ CD/1.27 Volume 3b Appendix E page 41 table 4-9, 1 pcu equivalent to around 5.9 metres (para 4.6.2 250m/42).

⁵³⁸ CD/1.27 Volume 3b Appendix E page 41 table 4-10.

⁵³⁹ CD/5.2 para 15.70.1.

123 List-April 2015⁵⁴⁰, I am not convinced that remains a reasonable expectation, given there is still no confirmed timetable for the removal of the CRB constraint [8.3.16, 10.4.7]. In my judgement, due to the likely scale and nature of such works, there is no prospect of those works being undertaken within the normal timescale for the commencement of development following a grant of planning permission and so it would not be appropriate to impose a Grampian type condition prohibiting development of the appeals site until those works are complete [10.4.7]. In any event, the appellant has indicated that it would not accept such a pre-commencement condition⁵⁴¹. Under these circumstances, I consider that the ARCADY modelling of this junction reported in the TA is of little assistance.

- 15.5.17. In order to investigate the potential effect of the CRB restriction on the operation of the appeals site roundabout, Mr Caneparo produced an '*Alternative Site Access Roundabout Junction Model*' (ASAM), using a version of ARCADY that allows some account to be taken of such constraints; a version not available when the TA was produced. Whilst, in comparison with the 2015 observed queues from the TA, the ASAM underestimates the queue on the Bob Dunn Way approach in the AM peak period (21 pcus, as opposed to the 61 pcus observed), its queue outputs are closer to the observed in comparison with the outputs from the TA model (1 pcu). Looking forward to 2031, the ASAM predicts significant queues on all the existing arms of the roundabout, such as queues of 800 pcus and delays of around 19 minutes in the AM peak on Bob Dunn Way [8.3.15].
- 15.5.18. Mr Caneparo and Mr Findlay agree that queues on that scale would be unlikely to be realised, as some vehicles would re-assign to different routes to avoid such levels of congestion/delay at the junction⁵⁴². To test this, Mr Findlay has run the RXHAM model using the delay predicted by the ASAM. It suggests that faced by such delays, significant numbers of vehicles would re-assign away from the roundabout to other routes through Dartford, for example a reduction in the AM peak of around 1,300 pcus to 550 pcus on Bob Dunn Way [8.3.16]. However, Mr Findlay indicates that such notable reductions are not realistic either. I share this view: firstly, as, if they were to occur, delays at the roundabout predicted by ASAM would be less and the incentive for drivers to re-assign elsewhere would also be reduced⁵⁴³; and, secondly, it appears to me that once westbound on the A206, away from junction 1A, the opportunities to re-assign to another route before reaching the appeals site roundabout are very limited.
- 15.5.19. I consider that in the absence of a validated model, future operation of the appeals site roundabout with/without the proposed development cannot be predicted accurately in numerical terms, such as Ratio of Flow to Capacity, delays or queues. However, the absence of such information neither automatically favours the scheme nor does it prevent a judgement from being reached [11.4.10, 11.4.15-17]. In this context, whilst Mr Caneparo takes the view that by 2031 conditions could be severe, even without the appeals

⁵⁴⁰ DBC/W2/2 Appendix PC4.

⁵⁴¹ During the conditions session.

⁵⁴² INQ/34, APP/TRAN/4 para 2.3.21-22.

⁵⁴³ APP/TRAN/4 paras 2.3.18-2.3.25.

scheme traffic, Mr Findlay considers that the appeals scheme would not make a material difference⁵⁴⁴ [8.3.17]. In my view, the latter argument is a poor one, as: it could be repeated often, potentially resulting in a much more significant impact in small increments; and, even if the additional contribution to existing severe conditions was small, the implication would be that the cumulative residual impact would be severe, which would be a matter of considerable concern. [11.4.9]

15.5.20. The TA identifies that in the AM peak total arrivals at /departures from the site could include around 221 cars/LGVs and 106 HGVs, with higher numbers in the inter-peak period⁵⁴⁵. With the HE cap in place, HGVs to/from the M25 would be limited to 32 per hour between 0700-1000 hours and Mr Findlay has indicated that the balance would be expected to either travel at a different time or take a different route, the only alternative being westwards, to the Thames Road/B2186 Crayford Way roundabout⁵⁴⁶. The proposal would result in additional traffic at the appeal site roundabout, with which queues are already associated. In my judgement, it would be likely to add significantly to congestion there and also exacerbate conditions at junctions to the east and west [8.3.13, 17, 11.4.10].

Reliability of the appellant's RXHAM modelling results

15.5.21. Having gained access to TfL's RXHAM model, WSP (acting for the appellant) undertook an audit, the findings of which were initially set out in the draft *River Crossing Highway Assignment Model (RXHAM) Model Audit, July 2015* (draft RXHAM Audit). The RXHAM Audit indicates that it was carried out in accordance with TfL's *Sub-regional Highway Assignment Model Guidance on Model Use (HAMG)*⁵⁴⁷. I understand that the draft RXHAM Audit was issued to the 4 HAS⁵⁴⁸ and Revision 1 of the audit, addressing TfL comments, is dated February 2016 (final RXHAM Audit). Consistent with the draft, the final RXHAM Audit states that '*Our overall conclusion...is that the RXHAM model represents ... peak hour demand and traffic conditions well across the area...Levels of congestion (e.g. V/C and blocking back), routing behaviour and journey times are also generally realistic and well matched to observed data*'.⁵⁴⁹

15.5.22. In its consultation response⁵⁵⁰, KCC indicated that it had had regard to the TA, ES and SES. It commented that: '*Transport for London (TfL) in particular worked with the appellant in relation to the traffic modelling aspect of the application, which is a TfL area of expertise*'. '*The appellant utilised a TfL/Highways England derived highways assignment model known as RXHAM, which is fully audited and validated*'; and, '*KCC is confident that the RXHAM model accurately reflects the typical traffic conditions in the local area*'.

⁵⁴⁴ Mr Caneparo and Mr Findlay in XX,

⁵⁴⁵ CD/1.27 Volume 3b Appendix E page 61, (1000-1600 hrs 280 cars/LGV per hr and 191 HGVs per hr).

⁵⁴⁶ APP/TRAN/1 paras 3.3.3 and 4.4.1-2.

⁵⁴⁷ CD/1.27 Volume 3b Appendix E Appendix 3.3 para 1.1.4.

⁵⁴⁸ CD/1.30 Appendix 3 Appendix C page 2/3 para 2.

⁵⁴⁹ CD/1.30 Appendix 3 Appendix E page 49.

⁵⁵⁰ Appeals questionnaire, email dated 4 April 2017.

15.5.23. However, it appears to me that that confidence was misplaced. The HAMG, which the audit suggests has been followed, confirms that *'users should not rely heavily on the validation of the original highway assignment models provided to them, as these were developed as strategic models, whilst a local study will require further refinement in the local area'*⁵⁵¹. It identifies the issues to be addressed in achieving a satisfactory 'local revalidation', including that network adequacy be reviewed within the vicinity of the development area, defined as within a 2 Km radius⁵⁵². In a letter to HE, dated 19 January 2016, WSP indicated that its circulation of the draft RXHAM Audit to the 4HAs *'resulted in some TfL comments, which were acknowledged. The conclusion of this work was that we could proceed with the 2031 forecasting process without the need for a validation stage'*⁵⁵³. Therefore, it appears to me that the audit was not carried out in accordance with all of the requirements of TfL's HAMG.

15.5.24. Furthermore, during the Inquiry, Mr Findlay acknowledged that a number of the findings within the RXHAM Audits contained errors and were not supported by the underlying data⁵⁵⁴ [11.4.14]. For example:

- a) Screenline and cordon performance⁵⁵⁵- Firstly, the link flows in Appendix A comprise calibration data and not validation data claimed by paragraph 2.8.3. Secondly, with reference to Appendix A, paragraphs 2.8.5 and 2.8.7 are wrong to state that all individual links have a GEH<5;
- b) Local Journey times⁵⁵⁶- Paragraph 2.9.4 is wrong to say *'the AM peak hour modelled journey times along the westbound direction were shown to be within the 15% acceptability limit prescribed by WebTAG'*. Table 2-5 indicates that the figure is 22%, not ≤15%. Furthermore, it appears to me that the relevant WebTAG Unit M3.1 test⁵⁵⁷ is failed in the AM peak, taking account of the routes that pass through the 2 km radius (not including 53/54)⁵⁵⁸ [9.3.7];
- c) Local counts-Paragraph 2.10.2 says that the majority of counts used for the RXHAM model calibration show good comparison between observed and modelled. It is silent on the relevant WebTAG Unit M3.1

⁵⁵¹ INQ/51 Appendix A para 1.1.2.

⁵⁵² INQ/51 Appendix A sections 2 & 3, CD/1.30 supplementary Environmental Statement (2016) Appendix 3 Appendix E paras 1.1.7 and 2.2.3,

⁵⁵³ CD/1.30 supplementary Environmental Statement (2016) Appendix 3 Appendix C page 2/3.

⁵⁵⁴ Mr Findlay responding to Inspector's questions.

⁵⁵⁵ CD/1.30 supplementary Environmental Statement (2016) Appendix 3 Appendix E final RXHAM Audit Paragraph 2.8.3- *'WebTAG Unit 3.1-Highway Assignment Modelling validation acceptability criteria, screenlines modelled flows should be within 5% of observed for all, or almost all of the links'*. Paragraph 2.8.4-*'The screenline validation results for RXHAM AM peak are shown in table 2-3'*. Paragraph 2.8.5- *'observed and modelled flows match very well...(all individual links with GEH<5)'*. Paragraph 2.8.9-*'individual link flows...are tabulated in Appendix A'*.

⁵⁵⁶CD/1.30 supplementary Environmental Statement (2016) Appendix 3 Appendix E final RXHAM Audit paragraph 2.9.2-*'WebTAG Unit M3.1-Highway Assignment Modelling validation acceptability criteria, modelled journey times should be within 15% of observed times for more than 85% of the routes.*

⁵⁵⁷ INQ/77 page 20-Journey time validation criterion and acceptability guideline-modelled journey times along routes should be within 15% of surveyed times (or 1 minute if higher than 15%) for >85% of routes. The comparisons should be presented separately for each modelled period.

⁵⁵⁸ CD/1.30 supplementary Environmental Statement (2016) Appendix 3 Appendix E final RXHAM Audit page 37/38-3 in 4 routes=75%.

test, which, with reference to table 2-7, is failed⁵⁵⁹. With respect to the additional counts carried out by WSP, with reference to table 2-9, the correlation between observed and modelled flows in the PM peak failed the test⁵⁶⁰.

- 15.5.25. There is no evidence before me to show that the 4HAs were aware of the misleading nature of a number of the findings upon which the audit conclusions were based. They were not picked up in the comments passed by TfL on the draft⁵⁶¹. In my judgement, they: cast doubt over the conclusion of the RXHAM Audit and, in turn, the reliability of the RXHAM model results related to the network local to the site; and, reduce the weight attributable to views expressed by the 4HAs as to the accuracy of the model in the local area, which is likely to have influenced, at least in part, their lack of objections⁵⁶².
- 15.5.26. The final RXHAM Audit indicates that the final report will be provided to TfL and model auditing progress and sign-off will be documented⁵⁶³. There is no confirmation in writing before me to show that TfL considered the model 'fit for purpose' in light of the final report. I give little weight to the appellant's suggestion that the lack of a formal objection to the appeals proposal by TfL implies acceptance. In my view, its propensity to not object may have been influenced by other factors, not least as the scheme is unlikely to have a significant impact on the section of the Red Routes in the area of particular interest to TfL⁵⁶⁴, which are some distance from the appeals site.
- 15.5.27. In my judgement, these matters cast further doubt over reliance that can be placed on the modelling work submitted in support of the scheme and reduce the weight attributable to findings of the parties who appear to have taken the results on face value [11.4.12, 14.1.12].

Conclusions

- 15.5.28. DBC and KCC have taken the view that the modelling work submitted in support of the appeals scheme suggests, looking towards the forecast year of 2031, the local network would be able to manage with the development related traffic. However, for the following reasons, I give little weight to that position:
- a) ARCADY modelling work submitted in support of the appeals scheme indicates that in 2031 key local network junctions to the east and west of the appeals site roundabout would be over capacity with and without the appeal proposal. Furthermore, it appears that in the AM peak hour west bound queues towards the Thames Road/B2186

⁵⁵⁹ CD/1.30 supplementary Environmental Statement (2016) Appendix 3 Appendix E final RXHAM Audit section 2.10, INQ/77 WebTAG Unit M3.1, table 2- criterion >85% of cases meet the guideline, INQ/96-(within 2 km of the site) AM Peak 67% and PM Peak 71%.

⁵⁶⁰ CD/1.30 supplementary Environmental Statement (2016) Appendix 3 Appendix E final RXHAM Audit para 2.10.6, INQ/77 table 2-9 (Tests % Diff within 15% and GEH<5 for >85% of cases).

⁵⁶¹ INQ/96.

⁵⁶² For example, CD/6.1 para 6.23.

⁵⁶³ CD/1.30 supplementary Environmental Statement (2016) Appendix 3 Appendix E final RXHAM Audit para 1.1.7.

⁵⁶⁴ INQ/35.

Crayford Way roundabout would be likely to interfere with the free flow of traffic at the appeals site roundabout;

- b) ARCADY modelling of the appeals site roundabout, submitted in support of the appeals scheme, is of little assistance, as it assumes the removal of the highway constraint caused by the Craymill Rail Bridge, works for which there is no confirmed timetable. Modelling work undertaken on behalf of DBC with the aim of taking some account of the Craymill Rail Bridge constraint, predicts massive queues on Bob Dunn Way in 2031, if vehicles do not re-assign to other parts of the network. Whilst re-assignment would be likely in practice, the degree of relief it would offer is uncertain. Under the circumstances, future operation of the appeals site roundabout with/without the proposed development cannot be predicted accurately in numerical terms, such as Ratio of Flow to Capacity, delays or queues and the modelling results must be viewed with caution; and,
- c) A key input in the assessment of the likely impact on the local highway network is the data concerning traffic assignment generated by the RXHAM. The audit undertaken for the purpose of determining whether the model was fit for the purpose for which it was to be used was not undertaken in complete accordance with the HAMG and it contained a number of errors, acknowledged for the first time at the Inquiry. These circumstances cast doubt over the conclusion of the RXHAM Audit and, in turn, the reliability of the RXHAM model results related to the network local to the site; and, reduce the weight attributable to views expressed by the 4HAs as to the accuracy of the model in the local area, which is likely to have influenced, at least in part, their lack of objections.

15.5.29. For the reasons set out above, I have significant concerns with respect to the reliance that can be placed on that modelling work submitted in support of the scheme. Having regard to the modelling results provided in evidence, with due caution, and the other Inquiry evidence, I consider that, by 2031, the residual cumulative impact of the development during 'normal' (non-incident) highway conditions on the local highway network would be likely to be severe. [11.4.10, 12]

Highway conditions: incidents

15.5.30. The TA states *'it is clear that the area around the M25 junction 1A and Dartford is subject to frequent incidents, primarily associated with incidents on or around the M25 and Dartford Tunnels'*⁵⁶⁵. The LTP4 identifies that incidents at the Dartford Crossing and its approach are frequent and severe [6.5.2]. KCC estimates that over recent years the existing Dartford Crossing has either been partially or completely closed on average 300 times per year, for 30 minutes or more. I have no compelling reason to depart from that assessment by the local Highway Authority. In my view, the HE incident data record on its own is unlikely to provide an accurate guide to frequency,

⁵⁶⁵ CD/1.30 page 12 para 5.1.2.

as it appears not to pick up all of the Dartford crossing related incidents recognised by KCC'S Highway Management Centre as causing congestion⁵⁶⁶.

- 15.5.31. The appellant acknowledges that there is no technical validity in modelling assessments of such incidents. However, as I have indicated before, the absence of quantitative information does not automatically favour the scheme. DBC advocates a qualitative approach, which I consider to be reasonable. [8.3.10-11, 11.4.7, 11.4.6.a., 11.4.10]
- 15.5.32. KCC indicates that when such incidents occur, junction 1A and Bob Dunn Way very quickly suffer the consequences, reflecting the sensitivity of the local network. Furthermore, it estimates that typically it can take between 3 and 5 hours for roads to clear following closure [14.1.5]. This position is echoed in many respects by the Leader of DBC [9.4.3]. Whilst Mr Findlay acknowledged that such incidents can result in severe traffic conditions, his view was that the appeals proposal would not make a material difference⁵⁶⁷.
- 15.5.33. The TA indicates that the number of HGVs travelling to/from the appeals site would be around: 106 in the AM peak hour; 155 in the PM peak hour; and, 191 in inter-peak hours. In light of the HE cap, I consider it likely that a number of the peak hour trips would be displaced to the inter-peak period. Notwithstanding the view of the appellant that the biggest markets in the country lie within striking distance of Howbury Park, without the need to run the gauntlet of the M25 on the way in [11.5.6], Mr Findlay anticipates that broadly 90% of the scheme HGV traffic would arrive at/depart the appeals site roundabout along Bob Dun Way from/towards the A282/M25⁵⁶⁸.
- 15.5.34. There is no compelling evidence before me to show that departing HGV drivers faced with delays at junction 1A, due to network incidents or the proposed HE cap, and the proposed prohibition on the use of Burnham Road, would choose instead to travel west and then north towards central London as an alternative. I consider that it would be unlikely, not least in light of the trip destinations identified by the TA, such as Essex [9.3.10].
- 15.5.35. Given that incidents are not easily predictable and associated delays can be lengthy, it is likely that a significant number of HGVs associated with the appeals site would contribute to the associated build-up of traffic. Whilst I acknowledge the view of the appellant that during incidents affecting access to and along the A282/M25 some departing HGV drivers may choose to remain on site, rather than joining a queue towards junction 1A, many may not, given likely pressures to meet delivery schedules, and little control is likely to be possible over vehicles already in transit to/from the site.⁵⁶⁹ [7.4.31, 11.2.23.a), 11.2.32]
- 15.5.36. The appellant's claim that, during incidents, the apron of the intermodal area could be used to park 100 or more HGVs⁵⁷⁰ lacks credibility [7.4.31.e, 32]. It is clear from the details of potential loading arrangements, provided by

⁵⁶⁶ DBC/W2/2 Appendix PC10, APP/TRAN/4 section 2.6.

⁵⁶⁷ Evidence in chief

⁵⁶⁸ APP/TRAN/1 tables 2 and 3 A206 East (affected by the HE cap) and Mr Findlay in XX.

⁵⁶⁹ INQ/102 pages 35-36, CD/1.30 SES Appendix 3 Appendix G page 9/12 point 12.

⁵⁷⁰ INQ/72 APP/RAIL/7 para 214 and Appendix D, INQ/106.

the appellant, that the area to the side of the gantry crane would be likely to be required for manoeuvring/loading by reachstackers or for container storage⁵⁷¹. Nonetheless, whilst therefore, it would be likely to be necessary to provide HGV parking space outside the intermodal area in addition to the proposed 25 vehicle layby, given that the scheme is in outline, this could be secured through the imposition of a suitable condition [11.2.33-34].

15.5.37. Nevertheless, overall, I share the view of KCC that during incidents the scheme would inevitably exacerbate existing periods of delay and congestion on the approach to the existing river crossing (particularly the north-bound tunnels) and specifically at local M25 junctions 1A and 1B and nearby local roads [8.3.9, 8.3.12]. Having had regard to Mr Findlay's estimates of flows along the route between the site and junction 1A, I consider that the proposal would be likely to have a material, albeit limited, adverse impact, adding to severe conditions.

Mitigation

Junction 1A

15.5.38. The DBC s106 secures, amongst other things, a contribution of £800,000 to be used for feasibility assessment/works to improve junction 1A. In light of the circumstances I have identified above, I consider that it meets the tests of planning obligations set out in the Framework. However, KCC has made clear that improvements are likely to be limited to smoothing traffic flow, as opposed to building in any significant new capacity to cater for future growth/demand [8.3.20.a), 11.4.18.a), 14.1.8]. In my view, its provision does not alter the findings set out above.

The Transport Management Plan (TMP)

- 15.5.39. As I have acknowledged, the Freight Management Plan (FMP) section of the TMP seeks to a) limit the number of HGVs associated with the appeals site that use junctions 1A and 1B of the A282/M25 at peak times (HE cap); and, confine HGV traffic to and from the site to the A206, rather than through Dartford town centre using Burnham Road (with certain exceptions) [8.3.20b)].
- 15.5.40. The means of monitoring compliance with these requirements would through the use of an Automatic Number Plate Recognition (ANPR) system to be installed at the site entrance as well as at a number of points around the network. I acknowledge that provision of such a system is likely to be technically feasible and I am content that the DBC s106 includes adequate safeguards to ensure that the system is maintained. The Highway Authorities have not objected to the proposed arrangements. Under the terms of the TMP, the data generated would be reported periodically by the TMP Manager to the TMP Steering Group, which would comprise LBB, DBC, KCC, HE and Howbury Park Limited (HPL). The TMP indicates that fines would be imposed for non-compliance.
- 15.5.41. I consider it is conceivable, rather than suffer delays resulting from the restrictions, an operator may determine that it would be worth breaching the restrictions and incurring the fine set out in the TMP in the interests of

⁵⁷¹ INQ/54 APP/RAIL/6 appendix C, INQ/72 APP/RAIL/7 Appendix A.

the viability of its business. For example, rather than waiting on site for frequent incidents affecting junction 1A to clear, an operator may decide to use the route along Burnham Road and through Dartford town centre to reach the M25. The only example in evidence before the Inquiry of a similar system of monitoring and fines currently in operation is at Andover, in relation to which I understand that there has been a significant number of breaches over a 2 year period [8.3.20.c)].

- 15.5.42. However, the TMP indicates that, if the penalty was ineffective, it would be open to the Steering Group to seek to increase the fine to a level which it determines would deter future breaches⁵⁷². Whilst an increase in the level of fine could be initially approved by a majority of the members, there would be a right of appeal⁵⁷³. Furthermore, in my view, it is unlikely that HPL would accept a proposed increase without appealing against it, as increased fines would be likely to make the development less attractive to occupiers⁵⁷⁴. However, the DBC s106 indicates that appeals would be determined by an independent expert and it would be open to the parties to put their respective cases. None of the Highway Authorities have taken issue with this approach. Under the circumstances, I consider that this mechanism provides sufficient safeguards in relation to this example and also the risk of dilution of other measures contained within of the TMP [8.3.21-27, 11.4.18.b), 11.4.19-20].
- 15.5.43. I consider that the TMP/DBC s106 gives the required level of confidence that the proposed traffic restriction measures it contains are likely to be managed to an acceptable degree [8.3.21]. However, its provisions do not alter my previous findings.

Conclusions

- 15.5.44. Imposition of the HE cap, secured by the terms of the TMP/DBC s106, would be likely to ensure that the proposal would not add to the severe queues/delays characteristic of the strategic M25/A282 route during normal highway conditions. However, I consider that, by 2031, the residual cumulative impact of the development during normal highway conditions on the local highway network would be likely to be severe.
- 15.5.45. The area around the M25 junction 1A and Dartford is subject to frequent incidents, primarily associated with incidents on or around the M25 and Dartford Tunnels, which can result in severe traffic conditions. Whilst there is no technical validity in modelling assessments of such incidents, it is appropriate to consider the implications qualitatively. I share the view of KCC that the scheme would inevitably exacerbate existing periods of delay and congestion on the approach to the existing river crossing (particularly the north-bound tunnels) and specifically at local A282/M25 junction 1A and nearby local roads during 'incidents'. I consider that it would have a material adverse impact, adding to severe conditions.

⁵⁷² INQ/102 page 41 para 16.8.1.

⁵⁷³ INQ/102 para 2.4.6.

⁵⁷⁴ DBC/W2/1 para 5.32 bullet 3.

15.5.46. In my judgement, overall, having regard to both non-incident and incident related highway conditions, it is likely that the residual cumulative impact of the development on the local road network would be severe, with reference to congestion.

15.5.47. I conclude that the proposals would be likely to cause considerable harm to the convenience of highway users in Dartford. In this respect it would conflict with DDPP Policy DP3, which, in keeping with the Framework, indicates that development will not be permitted where the localised residual impacts from the development on its own, or in combination with other planned developments in the area, result in severe impacts on road traffic congestion. This is a view shared by DBC [3.6].

15.6. **e) The effect on living conditions in the local area, with particular reference to air quality, noise and vibration**

Air quality

15.6.1. The main focus of the air quality objections are 3 particular Air Quality Management Areas (AQMAs): the A282 road link AQMA No. 1 and Dartford Town Centre AQMA No. 3, which extends along Burnham Road to the appeals site roundabout (DBC AQMAs); and, the Bexley AQMA⁵⁷⁵. Nitrogen Dioxide (NO₂) is the key pollutant of concern and whilst, in general, levels of NO₂ across the area have improved in recent years, compliance with the annual mean NO₂ objective, 40 µg/m³, has yet to be achieved⁵⁷⁶ [8.4.5].

15.6.2. Air quality modelling reported in the ES/SES is based upon traffic flow outputs from the RXHAM, related to 'non-incident' traffic conditions⁵⁷⁷. They indicate that in 2021, the assumed year of opening, and in 2031 the overall effect of the proposed development in terms of impacts on annual mean NO₂ concentrations is not likely to be significant in the AQMAs [8.4.7].

15.6.3. For the purposes of these assessments a number of conservative assumptions have been made, including it has been assumed that background concentrations would not change over time from 2013, notwithstanding that, with reference to the Government's Air Quality Plan and Air Quality Strategy, background concentrations are expected to decrease over time⁵⁷⁸. The findings of the ES/SES were supported by LBB⁵⁷⁹. Furthermore, based on the same traffic flow outputs, DBC's own assessment relating to the DBC AQMAs reached the same conclusion regarding significance⁵⁸⁰ [11.4.11]. So did the analysis provided by the appellant to the

⁵⁷⁵ For extent of AQMAs see CD/1.27 Volume 3c Appendix G7 figures G7 and G8.

⁵⁷⁶ APP/AQ/1 section 3.2.

⁵⁷⁷ APP/TRAN/1 para 4.5.3, evidence in chief and cross-examination of Mr Findlay.

⁵⁷⁸ APP/TRAN/4 para 3.2.23, APP/AQ/1 para 4.3.42 and CD/1.27 Volume 2 Appendix G para G3.16-it was assumed that there would be no improvement in light duty vehicle emissions from 2013 in 2021 and for 2031 Emission Factor Toolkit v6.0.2 light duty vehicle emissions for 2021 have been assumed. In addition, EFT heavy duty vehicle emissions for 2021 have been assumed for 2021 and 2031.

⁵⁷⁹ CD/1.6 page 64.

⁵⁸⁰ DBC/W3/1 para 7.11 and, para 7.19, under a congestion sensitivity scenario the impact at all existing receptors was negligible.

Inquiry, reflecting new factors, such the proposed HE cap and an *Emissions Factor Toolkit v8 (December 2017)* updated from that relied on in the ES/SES⁵⁸¹. It also concluded that there would be a very low risk of impacting on compliance with the Ambient Air Quality Directive⁵⁸².

- 15.6.4. However, regarding traffic flow outputs from RXHAM, I have found that whilst they are likely to be reasonably reliable when it comes to the strategic network, such as the A282, which falls within DBC AQMA No. 1, the same cannot be said in relation to the highway network local to the site. Furthermore, abnormal highway conditions, such as the frequent network incidents that occur hereabouts were not within the scope of the TA modelling. These factors have potential implications for the reliability of the air quality modelling.
- 15.6.5. Nonetheless, as DBC put it, consideration of the associated risk is a matter of judgement [8.4.8]. In that context, whilst Dr Maggs suggests there is a possibility that the impact of the scheme would be greater than suggested by the modelling⁵⁸³ [8.4.6], Dr Tuckett-Jones suggests not, as the methodology she used overstates the impact [11.4.11]. In relation to AQMAs, I share Dr Tuckett-Jones' view for a number of reasons, including that: the air quality modelling work relied on by the appellant is based on a number of conservative assumptions, referred to above; under the terms of the TMP, HGV traffic to /from the site would generally be prohibited from using Burnham Road, part of DBC AQMA No. 3; and, the section of the local highway network in relation to which concerns regarding the accuracy of the traffic modelling results are greatest, such as Bob Dunn Way, lies almost entirely outside of the identified AQMAs [8.4.6, 9.3.13-14].
- 15.6.6. Turning to the concerns raised by SGCF. Mr Findlay indicated that around 90% of the HGV traffic from the site would head towards or come from junction 1A of the A282/M25, with the remainder arriving from/departing towards the west. It appears to me that this latter approximation is reflected in the modelling referred to in the TA when account is taken of all the areas, in addition to the local west area, from which traffic is likely to arrive at the appeals site roundabout from the west or depart it in that direction⁵⁸⁴. Furthermore, non-HGV trips, distributed in accordance with the 2011 journey to work census data and with no account taken of potential reductions due to Travel Plan initiatives⁵⁸⁵, have also been accounted for in a reasonable manner [9.3.6, 8]. Peareswood Primary School was not identified as a sensitive receptor. However, having had regard to the assessment results associated with nearby property R12 Colyers Lane (No. 192), which is closer to the A206 than the Peareswood School buildings and its main amenity areas, it appears to me that the impact of the proposal on attendees of the school would be unlikely to be significant⁵⁸⁶ [9.3.15]. Therefore, I give SGCF's concerns in relation to air quality little weight.

⁵⁸¹ APP/AQ/1 para 4.3.43.

⁵⁸² APP/AQ/1 section 4.4.

⁵⁸³ DBC/W3/1 paras 7.20 and 8.14.

⁵⁸⁴ Cross-examination of Mr Findlay- local area west, central London and some other traffic, CD/1.27 Volume 3b Appendix E1 page 64 Table 8-11.

⁵⁸⁵ CD/1.27 Volume 3b Appendix E1 pages 62-63.

⁵⁸⁶ INQ/50 page 5 and APP/AQ/2 Appendix A.

- 15.6.7. It would be possible to ensure that the potential for fugitive dust pollution to arise from construction activities on the appeals site is satisfactorily controlled through the imposition of a condition requiring an approved Construction Management Plan to be adhered to⁵⁸⁷ [9.1.4].
- 15.6.8. I conclude on balance, that the appeals proposal would be unlikely to have an unacceptable material impact on living conditions in the local area, with particular reference to air quality. In this respect it would not conflict with LP Policies 5.3 and 7.14, DDPP Policies DP3 and DP5 [8.4.9-11], BCS Policies CS01 and CS09 or the Framework.

Noise and vibration

- 15.6.9. The ES/SES concludes that, with the exception of the construction of the proposed earth bund, all of the predicted noise and vibration impacts can be adequately mitigated to avoid any significant impact. I consider that the provision of those identified mitigation measures could be ensured through a combination of the imposition of suitable conditions and funds secured by the LBB s106. The focus of that mitigation is most likely to be nearby properties on Moat Lane and Leycroft Gardens⁵⁸⁸. Properties further to the west are likely to be shielded by proposed buildings on the western side of the site, which are expected to be constructed first; phasing of construction could also be controlled through the imposition of a suitable condition⁵⁸⁹.
- 15.6.10. The ES/SES indicates that noise associated with the construction of the earth bund at the northern end of the site has the potential to have a major adverse impact on the living conditions of residents of Moat Lane and Oak Road. There would also be likely to be some minor-moderate vibration impacts, which whilst they may give rise to complaints from a small number of nearby properties, would be at a tolerable level. However, the harm would be short term. Furthermore, the ES indicates that there would be effective liaison with residents to keep them informed of work schedules and to take account of their preferences as regards working hours and practices⁵⁹⁰. Once completed, at an early stage in the development of the site, the bund would have a beneficial acoustic and visual screening effect for later construction phases and the operational phase. Under these circumstances, I consider that the impact would be acceptable. [9.1.4, 9.2.16, 10.11, 11.4.4]
- 15.6.11. Statements of Common Ground agreed between the appellant, the LBB, DBC and the MOL⁵⁹¹ conclude, with reference to the assessments of noise set out in the ES/SES together with mitigation identified there, that there is no objection to the appeals scheme on the basis of noise impact. This adds further weight to my findings.
- 15.6.12. I conclude that, subject to mitigation secured by conditions/planning obligations, the appeals proposal would be unlikely to have an unacceptable

⁵⁸⁷ APP/PLAN/1 para 7.54, CD/1.27 Volume 2 Chapter G section G8.0.

⁵⁸⁸ INQ/101, INQ/115 pages 6 and 17.

⁵⁸⁹ INQ/55 Section 2, INQ/94 condition nos. 5, 24, 25, 29, INQ/98.

⁵⁹⁰ CD/1.27 Volume 2 Chapter F para F6.8.

⁵⁹¹ CD/6.1, 6.2, 6.3.

impact on living conditions in the local area, with particular reference to noise and vibration. In this respect it would not conflict with the terms of LP Policies 5.3 and 7.15, BCS Policies CS01 and CS09, DDPP Policy DP5 or the Framework, insofar as they seek to ensure pollution is minimised and avoid unacceptable noise impacts.

15.7. **Other matters**

- 15.7.1. The ES indicates that the likely impact on the significance of nearby Designated Heritage Assets, Howbury Moat (a Scheduled Ancient Monument) and a Grade II listed tithe barn, both of which are situated outside and to the north of the appeals site, would be negligible⁵⁹², a finding accepted by the LBB and the MOL⁵⁹³. In my judgement, the significance of those Designated Heritage Assets would not be materially harmed by the scheme. I have already found that the scheme would not harm the significance of the Moat Lane/Oak Road Conservation Area [9.5.2]. Furthermore, the loss of the locally listed Howbury Grange would be adequately mitigated through the creation of a building record, secured by condition⁵⁹⁴. I conclude that the effect of the appeals proposal on heritage assets would be acceptable and consistent with the aims of LP Policy 7.8, BCS Policy CS19 and the Framework.
- 15.7.2. The proposed development would be likely to reduce the outlook from neighbouring residential properties that currently have views across the appeals site. However, the proposed buildings would be set well back from the appeals site boundaries and their visual impact relative to neighbouring dwellings would be softened to an extent once proposed planting is established in the intervening space. The potential for light pollution to arise from the site could be satisfactorily controlled through the imposition of a suitable condition. I conclude that the scheme would be unlikely to have a significant detrimental effect on the living conditions of neighbouring residents, with particular reference to outlook and light pollution, in keeping, in this respect, with the aims of the Framework, which seeks high standards of amenity and to limit the impact of light pollution [9.1.2, 9.1.4, 9.5.2, 11.4.4].
- 15.7.3. Turning to the potential impact of the scheme on access along the River Cray; the PLA and IWA accept the proposed bridge clearances. I understand that although the proposed bridge would restrict high masted craft from travelling upstream to a limited turning area for small craft, similar opportunities to turn exist just downstream of the proposed bridge location⁵⁹⁵. Furthermore, the evidence indicates that this section of river is infrequently used by high masted vessels, even taking account of more recent activity reported by the IWA/DCCRT, and given that wharves upstream of the proposed bridge location have been disused for a significant number of years, I consider that the absence of the provision of downstream alternatives as part of the proposed works does not weigh against the

⁵⁹² CD/1.27 Volume 2 Appendix K page 38.

⁵⁹³ CD/7.2 para 6.33 and CD/7.1 para 7.30.

⁵⁹⁴ CD/1.6 page 36.

⁵⁹⁵ CD/1.31 section 10.0.

scheme. I conclude that the impact of the appeals proposal with respect to navigation and facilities along the River Cray would be acceptable.⁵⁹⁶ [10.3, 10.10]

15.7.4. The ES indicates that the appeals proposal would be unlikely to give rise to any significant effects as regards flood risk⁵⁹⁷. Furthermore, the Environment Agency has confirmed that it does not object to the scheme on the basis of flood risk. I give greater weight to that evidence than the general and largely unsubstantiated concerns raised by a number of interested parties on the subject. [9.1.6, 10.5.1, 14.3.1]

15.7.5. I give no weight to the concern raised that the proposal would harm residential property value [10.5.3]. Planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property could not be a material consideration⁵⁹⁸.

15.8. **f) Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, and, if it would, whether the very special circumstances required to justify the proposal exist**

15.8.1. The Framework confirms that the very special circumstances necessary to justify inappropriate development in the Green Belt will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

Whether the proposal would meet an identified need for SRFIs to serve London and the South East

Need

15.8.2. LP Policy 6.14 gives encouragement to the movement of freight by rail. Furthermore, the Framework indicates that planning decisions should recognise and address the specific locational requirements of different sectors. This includes making provision for storage and distribution operations at a variety of scales and in suitably accessible locations [11.3.37].

15.8.3. The NPSNN indicates that '*The industry, working with Network Rail, has produced unconstrained rail forecasts to 2023 and 2033...*'. The NPSNN confirms that '*These forecasts...are considered robust and the Government has accepted them for planning purposes*'. The applications for planning permission assume that approximately 71% of the rail freight at the proposed facility would be domestic intermodal traffic, a category of rail freight predicted to grow by 12% per annum from 2011 to 2033 [7.4.9, 7.4.13]. I understand that growth has been slower than forecast in this sector [7.4.10-12, 11.2.4]. However, this is unsurprising, as the forecasts are unconstrained in

⁵⁹⁶ CD/1.31 section 10.0.

⁵⁹⁷ CD/1.27 Volume 2 Appendix J para 8.3.

⁵⁹⁸ National Planning Practice Guidance- 'what is a material planning consideration?'.

the sense that *'freight demand is considered without addressing the ability of the rail network to cater for it'* and the NPSNN makes clear that action is needed to realise the identified potential for growth [7.4.13-15].

- 15.8.4. Unlike the circumstances in 2007, there is no longer a formally identified requirement for 3 or 4 SRFIs around London [4.2, 7.2.6, 8.5.1, 11.2.12, 11.2.14.f.]. The Government approach set out in the NPSNN is to support the realisation of the forecast growth by encouraging the development of an expanded network of large SRFIs across the regions [11.2.9]. Furthermore, *'...SRFI capacity needs to be provided at a wide range of locations...There is a particular challenge in expanding rail freight interchanges serving London and the South East'*. [11.2.17-19]
- 15.8.5. The *Alternative Sites Assessment (ASA)*, submitted in support of the appeals proposal, confirms that the market to be served by the proposed facility would be London and the South East⁵⁹⁹ and there is no dispute that that area, with no operational SRFIs, is poorly served at present [7.4.5, 13.5.12]. It is the Government's view *'that new rail freight interchanges, especially in areas poorly served by such facilities at present, are likely to attract substantial business, generally new to rail'*[11.2.5, 11.2.16, 11.7.3]. Against that policy background, I consider that it is unnecessary for the appeals scheme to be supported by a site specific economic viability assessment. I understand that no such assessment was requested by the local planning authorities while the applications were before them and this adds further weight to that view [7.4.28-30, 8.1.6, 11.2.19, 22-28].
- 15.8.6. Furthermore, I give little weight to the current absence of any expressions of support from retailers, such as Tesco who are active in the domestic intermodal market [7.4.22]. I have no reason to doubt the view of the appellants that retailers tend not to express support for a particular site prior to the grant of planning permission, due to an aversion to involvement in contentious third-party proposals [11.2.21].
- 15.8.7. Overall, I am content that there is a need and market for SRFIs to serve London and the South East [11.2.2-3]. I turn then to consider the extent to which the appeals scheme would be likely to meet the requirements of SRFIs set out in the NPSNN.

The requirements of SRFIs

- 15.8.8. The NPSNN identifies a number of locational and physical characteristics that define SRFIs, which would be exhibited by the appeals proposal. They include:
- The NPSNN identifies *'it is important that SRFIs are located near the business markets they would serve...'*. In common with the 2006 ASA, the current ASA indicates that the proposal is intended to serve London and the South East, and more specifically defines the catchment area for site search as extending out from central London, to around 32 Km beyond the M25, in an arc from the A1(M), in the north, eastwards around to the M3 in the southwest.

⁵⁹⁹ CD/1.26 para 1.3.

In contrast, the proposed SRFI at Radlett, for which planning permission has been granted, would broadly be expected to serve the Northwest sector of London⁶⁰⁰ [7.2.14]. With reference to the ASA defined catchment area for the facility, there is no dispute that Howbury Park would be located near to the market that it would serve [7.1.6, 11.2.32]. In this respect it would be in keeping with the aims of LP Policy 6.15.

- Under the terms of a condition agreed by the appellant, occupation of the proposed warehousing would be precluded until the intermodal area and the new main line rail connection are complete [11.3.4, 11.6.1]. The necessary form of condition I will return to later. This is consistent with the requirement of the NPSNN that *'initial stages of the development must provide an operational rail network connection'*.
- In 2007, the Inspector found that the larger of the proposed warehouses in the scheme before him would be difficult to let to road only users due to their configuration, which included loading bays suitable for lorries on only one side, with the other side taken up by rail tracks. This was one of the factors which led to a finding that the Secretary of State could be 'reasonably assured' that the then proposed development would operate as a SRFI [7.2.8]. In contrast, there is no dispute that the outline configuration of the buildings now proposed would be attractive to road only users, being set apart from the intermodal terminal beyond parking/loading areas, giving rise in part to the MOL's concern that the proposal may not deliver modal shift [11.2.14c].

However, the NPSNN now makes clear that *'Rail freight interchanges are not only locations for freight access to the railway but also locations for businesses, capable now or in the future, of supporting their commercial activities by rail. Therefore, from the outset, a rail freight interchange (RFI) should be developed in a form that can accommodate both rail and non-rail activities.'*

The NPSNN indicates that *'it is not essential for all buildings on the site to be rail connected from the outset, but a significant element should be.'* Based on the Parameters Plan, whilst none of the buildings would be directly rail connected, the proposed warehouses would all be *'rail accessible'* via internal site roads. This is comparable to an arrangement accepted at the East Midlands Rail Freight Interchange [11.2.8]. Furthermore, I understand that at DIRFT, whilst Tesco has some of its own rail facilities, it also makes use of the open-access intermodal terminal [11.2.31].

Against this background, it appears likely that the proposed building layout and connection to the intermodal facility would satisfy the objective of the NPSNN to facilitate and encourage the transport of freight by rail. In my view, whilst it would not be necessary to restrict the use of the proposed warehousing until rail freight had

⁶⁰⁰ CD/5.5 Secretary of State's decision para 34.

actually been taken up [11.6.1a.], the need for the rail works to be provided before the warehouses are occupied is a separate matter that I deal with below in the 'conditions' section of this report.

- 15.8.9. However, the NPSNN also identifies a number of transport link requirements associated with SRFIs, including that *'in all cases it is essential that these (SRFIs) have good connectivity with both the road and rail networks'*. A number of the objectors to the scheme have raised concerns in relation to these matters.

Rail connectivity

- 15.8.10. The importance of 'frequent', 'flexible' and 'timely' services in facilitating the transfer of freight from road to rail is emphasised by the views of a number of retailers who contributed to a 2012 FTA study entitled *'On Track! Retailers using rail freight to make cost and carbon savings'* [7.4.19-20].

- 15.8.11. The NPSNN acknowledges that rail access will vary between lines, including in the number of services that can be accommodated⁶⁰¹ and, as a result of requirements such as the need for effective rail connections, the number of locations suitable for SRFIs will be limited⁶⁰². As I have indicated, with reference to the NPSNN, I consider that in order for the proposed rail link to be considered 'adequate', it would be necessary for it to be capable of providing a service level of 4 trains/day (each way) as a minimum. Based on the evidence presented, and having had regard to the possible use of conditions⁶⁰³, I am not reasonably assured that the network would provide this level of service.

Road connectivity

- 15.8.12. The road access to the appeals site would be likely to be characterised by:

- Restricted access to and from the A282/M25 junctions 1A and 1b, which would be likely to be part of the route taken by the majority of HGVs, due to:
 - The HE cap limiting access for HGVs during the periods from 07:00-10:00 hrs and 16:00-19:00 hrs to approximately 30-40% of the numbers that would otherwise have been expected in the peak hours⁶⁰⁴. A HE cap is unprecedented at existing SRFIs [7.4.67]; and,
 - Frequent incidents on the A282/M25 main line that quickly cause congestion on the local highway network, which can take significant periods of time to clear;

The appellant anticipates that it is likely to be necessary for some HGVs to remain on site during the course of, as a result of, the

⁶⁰¹ CD/2.2 para 4.85.

⁶⁰² CD/2.2 para 2.56.

⁶⁰³ See sections entitled 'Adequacy of the proposed rail link and the effect on existing/future passenger rail services' and 'The extent to which mitigation would be secured through planning conditions and obligations'.

⁶⁰⁴ APP/RAIL/4 tables 2 and 3- AM peak hr (16+16)/52+44)=0.33, PM peak hour (28+28)/76+66)=0.39.

restrictions, delaying their onward journeys. Whether waiting onsite or queuing on the highway, such frequent restrictions would be unlikely to be viewed as convenient by the drivers of those vehicles, their employers or the businesses they serve⁶⁰⁵ [7.4.31e., 8.3.20]. Furthermore, such circumstances contrast starkly with the 'just in time' approach experienced at other SRFIs, which according to the appellant involves drivers arriving as close as possible to scheduled delivery or collection times for containers and short turn-around times on site, in order to avoid loss of productive driving time⁶⁰⁶; and,

- Overall, having regard to both non-incident and incident related highway conditions, the residual cumulative impact of the development on the local road network would be severe, with particular reference to congestion.

15.8.13. In light of the above findings, even if the rail route to/from Howbury Park were to be considered adequate, freight would be delivered to/collected from a location where the local highway network would be prone to congestion and the route used by the majority of HGVs, to/from the north of the Dartford Crossing, would be likely to be disrupted by frequent incidents. Notwithstanding the proximity of the appeals site to the M25 and a number of major 'A' roads and contrary to the view of the appellant and the LBB⁶⁰⁷, in my judgement, the proposed facilities would not benefit from 'good road access', which the NPSNN indicates that SRFIs facilities should have in order to facilitate modal shift from road to rail.

15.8.14. Insofar as the letters of support for the appeals proposal from Maritime Transport Limited, GB Railfreight and the Rail Freight Group (RFG) express a view that the appeals site is in an attractive location for a SRFI, I give them little weight, as they do not acknowledge any of the access issues identified above [7.4.24, 11.1.3.f, 11.2.20.b-c., 13.3.9].

15.8.15. The NPSNN indicates that '*because the vast majority of freight in the UK is moved by road, the proposed new rail freight interchanges should have good road access, as this will allow rail to effectively compete with, and work alongside, road freight to achieve modal shift to rail*'. In that context, I consider it unlikely that the road links relied on by Howbury Park would encourage a significant move away from road haulage [11.2.23.a, 11.2.29-30, 32]. Against this background, I give little weight to the LTP4 assessment that a SRFI at Howbury Park would potentially remove significant numbers of HGVs from the road network [6.5.2].

Conclusions

15.8.16. I conclude that the appeals proposal would exhibit a number of the locational and physical characteristics of SRFIs, set out in the NPSNN, gaining some support from LP Policy 6.14. However, in respect of transport links, the NPSNN indicates that '*in all cases it is essential that these*

⁶⁰⁵ INQ/102 Transport Management Plan page 35 para 14.5.1-2.

⁶⁰⁶ CD/1.30 supplementary Environmental Statement (2016) Appendix 3 Appendix G page 9/12 point 12.

⁶⁰⁷ CD/6.1 para 6.5.

(SRFIs) *have good connectivity with both the road and rail networks*'. Based on the evidence presented, I am not reasonably assured that the proposed rail links would be adequate. Furthermore, even if that assurance could be provided, the proposed facilities would be unlikely to benefit from the 'good road access', necessary to facilitate modal shift and thereby enable the facility to deliver the benefits expected of SRFIs, such as facilitating a reduction in CO₂ emissions associated with freight transport⁶⁰⁸ [8.5.8.b), 9.6.10]. In relation to transport links it would not be consistent with LP Policy 6.15 or the NPSNN.

- 15.8.17. Notwithstanding that the appellant has some experience of developing SRFIs [11.1.3.g., 11.2.20.a.], I conclude overall, that the appeals scheme would not be well qualified to meet the identified need for SRFIs to serve London and the South East [11.2.14.b., 11.2.53, 11.5.2, 13.5.12-14].

Availability of alternative sites

- 15.8.18. In its written evidence to the Inquiry, the appellant's 'very special circumstances case' included the assertion that *'no alternative development options exist for SRFIs to serve this part of London and the South East...this represents a material consideration of very considerable weight'*⁶⁰⁹ [7.4.3, 7.4.70-71]. The basis for this view was the *Alternative Sites Assessment (ASA)*, submitted in support of the appeals proposal. As I have indicated, it adopted the same search area as the 2006 ASA, accepted by the previous Inspector, which extended out from central London, to around 32 Km beyond the M25, in an arc from the A1(M), in the north, eastwards around to the M3 in the southwest. In 2007 the Inspector concluded that there were no alternative sites for a SRFI *'in the arc around south and east London'* and that was a matter which attracted considerable weight in the planning balance [7.2.13, 7.4.68]. Notwithstanding that the circumstances of London Gateway have changed in a number of respects since 2007 [7.4.85a.], such as through the upgrading of the gauge of the branch line to London Gateway⁶¹⁰, the current ASA reached the same overall conclusion as the 2006 ASA⁶¹¹. However, the appellant now accepts that *'there are failings with the ASA and a role for London Gateway should probably have been identified'* [7.4.73-76, 7.4.86, 10.2.8, 11.2.61].

- 15.8.19. The NPSNN identifies that *'the construction of London Gateway will lead to a significant increase in logistics operations. This will lead to the need for SRFI development...'* Whilst London Gateway's primary function may be to operate as a container port, as suggested by the ASA, London Gateway comprises 2 elements, with plans for rail connections to both: the London Gateway Port; and, the London Gateway Logistics Park, which is substantial in its own right having planning permission for a total of 829,700 m² of commercial floorspace⁶¹² [7.4.74-75, 11.2.58]. Against this background, there is now no dispute that London Gateway, which is not a Green Belt site, could host a SRFI [7.2.13, 7.4.77-80, 11.2.55].

⁶⁰⁸ CD/2.2 para 2.53, APP/PLAN/1 para 7.69.

⁶⁰⁹ APP/PLAN/1 para 7.192.

⁶¹⁰ CD/1.26 page 40.

⁶¹¹ CD/1.26 page 52 see 'Rail infrastructure' and 'Previous Supplementary ASA (2006) conclusion.

⁶¹² INQ/39.

- 15.8.20. The appellant suggests that London Gateway, on the north side of the Thames, would not be able to compete with the appeals site, due to Howbury Park's proximity to: a number of Regional Distribution Centres on the south side of the Thames; as well as, some groups of stores and customers in south London, which would lead to shorter HGV trips [11.2.60]. However, the TA anticipates that the majority of HGV trips associated with the proposed facilities would be expected to travel to and from destinations to the north of the Dartford Crossing [7.4.69, 9.3.16]. There is no persuasive analysis before me to show that substituting London Gateway for the appeals site would result increased road miles overall or increased delays, not least due to the high risk of delays to traffic travelling north from Howbury Park across the Dartford Crossing [11.2.60, 11.5.6].
- 15.8.21. Furthermore, the ASA does not find fault with the road links to London Gateway⁶¹³ and its rail links appear superior in a number of respects [7.4.84, 7.4.87d), 11.2.56, 13.4.7]. It follows, a finding that rail connectivity to the appeals site would be likely to be unduly restricted for the purposes of SRFI use would not automatically apply to all sites around London [11.2.35.c.]. I give little weight to Mr Gallop's assertion that others have considered London Gateway and rejected it [11.2.59]. Whilst he cited Marks & Spencer as an example in support of his view⁶¹⁴, the reasons for rejection have not been set out and I cannot be sure that they would not apply equally to the appeals site. Similarly, whilst Tesco may prefer locations such as Barking to London Gateway, there is no evidence to show that it would relocate from such sites to Howbury Park [7.4.18, 11.2.21].
- 15.8.22. Viridor has indicated that there would be no real prospect for rail use to service its current operations at its Thames Road site without the appeals proposal. I accept that this is an unusual benefit of the appeals scheme [11.2.20d.]. However, a 7-day count identified that a total two-way flow of 569 HGVs is associated with Viridor and Mr Findlay estimated that the potential to redirect some of that traffic to rail might result in a reduction of around 200 HGVs [9.3.11]⁶¹⁵. To my mind, even if it is assumed that reduction would be over 5 days (Monday-Friday), rather than the 7 days of the count, it would be equivalent on average to only 40 HGV trips per day. By way of comparison, the TA indicates that: external HGV trips associated with the appeals site alone would be 106-155 in the peak hours and 191 in each inter-peak hour; and, a Thames Road two-way Automatic Traffic Count close to the appeals site roundabout recorded a weekday average count of 30,025 vehicles⁶¹⁶. Whilst the potential benefit referred to may be unusual, it would be small and in my view, does not weigh either for the appeals site or against London Gateway to any significant extent.
- 15.8.23. Under the present circumstances, which differ from those in 2007, I conclude that little weight is attributable to the appellant's argument that '*no alternative development options exist for SRFIs to serve this part of London and the South East*'. The same can be said in relation to the its

⁶¹³ CD/1.26 para 5.16.

⁶¹⁴ Evidence in chief of Mr Gallop.

⁶¹⁵ INQ/51 page 11- 'a total two-way weekly (7day) flow of 569 HGVs', 200 HGVs estimate provided in cross examination of Mr Findlay.

⁶¹⁶ CD/1.27 Volume 3b Appendix E1 pages 33, 61 and 62.

view that *'allowing the development would not fail to assist urban regeneration because there is no suitable urban land available that could accommodate the SRFI and meet its operational requirements'* ⁶¹⁷ [8.5.8c.]

- 15.8.24. The ASA suggests that, rather than acting as an alternative, Howbury Park would be a complementary facility to London Gateway, by forming part of a network of rail freight terminals needed to facilitate the transfer of goods to and from the port⁶¹⁸. However, as alluded to above, the ASA did not assess the ability of the London Gateway Logistics Park to meet such a need. I consider that these facilities would be more likely to be rivals in the same market, given that: the sites are relatively close together in the same catchment area⁶¹⁹; and, as now acknowledged by the appellant, there is no prospect of direct trains to Howbury Park from London Gateway. As to the potential for the appeals site to accept non-domestic intermodal trains, the IRR anticipates that it would be likely to constitute only a small proportion of Howbury Park traffic and I understand that London Gateway already receives Channel Tunnel trains⁶²⁰ [13.2.7, 13.3.9, 13.5.13]. There is no compelling evidence before me to demonstrate that they would both be needed and I give the appellant's argument to that effect little weight [7.4.82, 11.2.55-57].
- 15.8.25. As regards Hoo Junction, referred to by an objector [10.5.4]. I understand that it is an existing rail yard on the North Kent Line, which is safeguarded for Crossrail and so does not represent a suitable alternative to the appeals site⁶²¹.

Conclusions

- 15.8.26. I conclude that London Gateway, a brownfield site, has the potential to provide an alternative development option for the provision of a SRFI to serve the same part of London and the South East as the appeals proposal. Under these circumstances, even if the appeals scheme was also well qualified to meet that need, in my view, the weight attributable to this would be limited.

Economic and social impacts of the scheme

- 15.8.27. The largest part of the appeals site lies within the BROA and a Regeneration Area identified by the LP. LP Policy 2.13 indicates that development proposals in the BROA should support the strategic policy directions set out in LP Annex 1. They include, amongst other things, that *'Account should be taken of the Area's strategically important role in addressing London's logistics requirements including protection for inter-modal freight transfer facilities at Howbury Park...'*
- 15.8.28. That reference to Howbury Park does not amount to an allocation in the LP [7.1.9, 11.1.3, 11.1.6]. Nevertheless, establishment of a SRFI at the appeals site would be consistent with that particular strategic policy direction [7.1.11].

⁶¹⁷ APP/PLAN/1 para 7.24-25.

⁶¹⁸ CD/1.26 pages 20-21.

⁶¹⁹ CD/1.26 Appendix 1 site 7.

⁶²⁰ GLA/RG/01 para 7.7.

⁶²¹ APP/PLAN/1 paras 9.2-9.4.

Furthermore, it could provide significant benefits for the local economy, such as creating a large amount of new employment, related to construction of the facility and in the order of 2,000 full time equivalent jobs once it is fully occupied [11.3.5]. It would also be consistent with the aims of: LP Policy 2.14 as regards generating new growth and jobs in the Regeneration Area, some parts of which suffer from significant levels of deprivation; it would contribute towards realising the 7,000 indicative employment capacity of the BROA, set out in the LP, which is significantly increased in the LPe (Policy SD 1); and, BCS Policy CS13, which gives support to the diversification of the local employment offer. I am also conscious the Framework indicates that significant weight should be placed on the need to support economic growth.

- 15.8.29. However, whilst DCS Policy CS 8 indicates that DBC will seek transformation of the economy by focussing on key growth sectors, including logistics, transport and distribution, the appeals site is not consistent with the spatial pattern of development set out in DCS Policy CS 1 or the provisions of DCS Policy CS 7 regarding the distribution of jobs in the Borough, where unemployment levels are already relatively low. I consider that the proposal would conflict with these aspects of the spatial strategy for Dartford and little weight is attributable to socio-economic benefits of the scheme to Dartford Borough claimed by the appellant [8.1.5]. Furthermore, I have found that the proposal would be likely to have a material adverse effect on traffic congestion in the area. In turn, this may well have an adverse impact on the local economy, as observed by a number of objectors. However, in the absence of any quantification of the likely impact on the local economy, I give that particular matter little weight⁶²² [10.4.1, 10.8].
- 15.8.30. The circumstances I have outlined are materially different from those considered in 2007, not least in terms of the Policy framework [8.5.8.c]. I conclude overall that, notwithstanding the conflicts with the DCS, significant socio-economic benefits would be likely to be attributable to the establishment of a SRFI at the appeals site, with particular reference to those likely to be realised in the LBB, consistent with LP Policies 2.13 and 2.14 as well as BCS Policy CS13 and the Framework as well as LPe Policy SD 1 [7.4.88, 8.5.8c., 11.3.8-9].
- 15.8.31. Nonetheless, in light of the shortcomings of the ASA, I cannot be sure that similar benefits would not be attributable to London Gateway. It appears to me that economic benefits broadly of the scale referred to above would be likely to be commonly attributable to SRFIs [11.3.9]. The NPSNN indicates that considerable benefits for the local economy, including creating many jobs are generally likely to be associated with SRFIs. Furthermore, with reference to London Gateway, the *Thurrock Core Strategy and Development Management Plan Policies, 2015*, sets out an expectation that there will be significant employment associated with major logistics, import-export based development at that site, which comprises brownfield land⁶²³ [7.4.80]. Under the circumstances, I give little weight to the

⁶²² DBC/W1/1 para 5.68.

⁶²³ INQ/39.

appellant's assertion that if the appeals proposal is rejected the identified job creation potential of such a scheme would be lost⁶²⁴

- 15.8.32. Against this background, I conclude overall, that the weight attributable to the potential socio-economic benefits of establishing a SRFI at the appeals site is limited.

The effect on biodiversity

- 15.8.33. The Framework seeks to ensure the protection and enhancement of sites of biodiversity value (commensurate with their statutory status or identified quality in the Development Plan).
- 15.8.34. There are no statutory designated sites of nature conservation interest within or adjacent to the appeals site. The nearest is the *Inner Thames Marshes SSSI*, which is located approximately 2.4 km to the north of the appeals site, on the other side of the Thames. The nearest European designated site is *Thames Estuary and Marshes SPA/Ramsar site/SSSI*, which is situated around 14.4 km to the east of the appeals site, at its closest point. The ES indicates that given the separation distances involved, the proposed development would be unlikely to have any effect on these designated sites, a view shared by Natural England, and I have not been provided with any compelling evidence to the contrary.
- 15.8.35. Non-statutory nature conservation sites in London are ranked in terms of their value as: Sites of Metropolitan Importance (SMI); Sites of Borough Importance (SBI); and, Sites of Local Importance⁶²⁵.
- 15.8.36. The River Cray, which forms part of the *River Thames and Tidal Tributaries SMI*, passes through a narrow strip of the appeals site at its southern end⁶²⁶. In order to facilitate access to the site, a permanent bridge would be constructed over the River, the abutments of which would not encroach on the River. The scheme has been designed and mitigation measures, secured by condition⁶²⁷, are proposed to minimise any impact on the River in terms of hydrological flow, habitats and its value as a wildlife corridor, in the context of which the ES indicates that residual impacts on the River are considered to be of negligible significance⁶²⁸. I am content that there would be no significant effects on the *River Thames and Tidal Tributaries SMI*⁶²⁹.
- 15.8.37. The *Crayford Marshes SMI*, which is situated outside of and immediately to the north of the site⁶³⁰, is designated on account of it being one of the few remaining examples of grazing marsh in Greater London supporting a range of flora, birds and invertebrate species⁶³¹. The LBB s106 would secure the implementation of a Marshes Management Plan and a drainage

⁶²⁴ APP/PLAN/1 para 7.26.

⁶²⁵ CD/1.27 Volume 2 Appendix H para 4.16.

⁶²⁶ CD/1.27 Volume 3c Appendix H figure H1.

⁶²⁷ INQ/94 condition no. 22.

⁶²⁸ CD/1.27 Volume 2 para H7.23.

⁶²⁹ CD/1.27 Volume 2 para H8.6.

⁶³⁰ CD/1.27 Volume 3c Appendix H figure H1.

⁶³¹ CD/1.27 Volume 2 Appendix H para 4.20.

scheme to assist in maintaining water levels, supported by funding, the aim of which would be the enhancement of the biodiversity value of a large part of the Crayford Marshes, insofar as the area is within the control of the appellant⁶³² [11.3.12]. The MOL acknowledges that, subject to such provisions, the proposals could result in significant improvements to the ditches and wetland in Crayford Marshes SMI⁶³³. The period over which the MMP would remain in place would be 25 years, sufficient according to Mr Goodwin to achieve its conservation objectives⁶³⁴. I have not been provided with any persuasive evidence to show that would be unlikely to be the case and consider therefore, that to require a longer period, preferred by some objectors, would not be reasonable [10.2.7].

- 15.8.38. I give little weight to the concern that the appeals proposal may increase the likelihood of future development of the neighbouring marshes, such as the provision of a mooted Slade Green 'relief road', potentially placing at risk any ecological benefits of the appeals scheme to the marshes [9.6.9]. Provision of a 'relief road' does not form part of the appeals proposal, which must be considered primarily on its own merits. Furthermore, it is not certain that such a scheme would be likely to come forward in future⁶³⁵ and in any event, if it did, I have no doubt that the local planning authority would take account of the value of the Crayford Marshes SMI, which is likely to be enhanced by the appeals proposal.
- 15.8.39. The area of the appeals site to the north of the River Cray makes up a large part of the *Crayford Landfill and Howbury Grange Site of Borough Importance-Grade 1* (BxBI18), the remainder comprising an area of former landfill that adjoins the eastern boundary of the appeals site. It appears that the features of the SBI cited in support of the designation are largely located in the east of the designated site, beyond the eastern boundary of the appeals site⁶³⁶. Furthermore, the habitats that would be lost to development are of little ecological value, comprising improved and semi-improved grassland, not grazing marsh⁶³⁷ [9.6.2, 10.1.1-3, 10.2.3, 10.2.6, 10.9.1]. The habitat which is of some ecological value relative to the rest of the appeals site is field F10, which is situated along the eastern edge of the site and the majority of that habitat would be retained as part of the development proposal⁶³⁸. Mr Goodwin explained that whilst some hedgerows would be removed along the northern side of the site to facilitate the works, they are generally species-poor and weak in structure. Replanting to be undertaken would include, amongst other things, disease resistant strains of Elm, which would benefit White-letter Hairstreak, a protected species of butterfly of high conservation priority, which has been recorded in that area⁶³⁹ [10.5.5].

⁶³² INQ/115.

⁶³³ CD/7.1 para 7.28.

⁶³⁴ Cross-examination of Mr Goodwin.

⁶³⁵ INQ/82.

⁶³⁶ CD/1.27 Volume 2 Appendix H para 8.5.

⁶³⁷ APP/BIO/1 para 7.35.

⁶³⁸ CD/1.27 Volume 2 Appendix H para 8.9, Volume 3c Appendix H figure H2.

⁶³⁹ Cross-examination of Mr Goodwin.

- 15.8.40. In relation to fauna, the ES indicates that overall, having regard to the proposed mitigation measures which could be secured by condition, the residual impacts on bats, water vole, birds, reptiles and invertebrates would be beneficial, albeit to a limited extent. The species listed within the citation for the BxBI18 as using the site as a high tide roost were not found within the part that comprises the appeals site during the ES site usage surveys⁶⁴⁰ [10.9.3]. None of the planning authorities involved maintain an objection to the development on nature conservation grounds. I consider that more weight is attributable to the detailed assessment by Ecology Solutions Limited contained within the ES than generalised and largely unsupported concerns raised by other objectors [9.1.3, 10.2.1].
- 15.8.41. I am content that from an ecology perspective the ES has had sufficient regard to the relationships between the appeals site and the wider environment within which it is situated [10.2.5]. For example, the bird breeding surveys reported in the ES included not only the appeals site but also the section of BxBI18 outside and to the east of the site. The bird species identified included, amongst others, Skylark and Corn Bunting, both of which are on the Red List of conservation concern. Skylark is also a UK, Kent and Bexley BAP species and Corn Bunting a UK and Kent BAP species⁶⁴¹ [9.6.6]. Although these species were identified within the site, in comparison with the area of BxBI18 to the east, the numbers were small. Furthermore, of the 4 identified Skylark breeding territories within the site, 3 were within field F10, on the east eastern side of the site, where suitable breeding habitat can be retained alongside the remainder of BxBI18. 2 Corn Bunting breeding territories would be lost within the site⁶⁴².
- 15.8.42. Nevertheless, the assessment of the appellant's ecologist is that the proposed landscaping and management of open space within the site in the interests of Corn Bunting and Skylark would secure habitats of better quality and provide more breeding opportunities overall. I have not been provided with any compelling evidence to show that this would not be possible and I consider that the necessary measures for those species, together with other provisions to improve the biodiversity value of the site such as green walls and nesting boxes, are matters which could be secured through the imposition of a suitable condition requiring the implementation of an approved Biodiversity Management Plan⁶⁴³. Whilst there can be no guarantee regarding the numbers of particular species that may frequent the site as a result, I am satisfied that the provision of better quality and secure habitat represents an enhancement, albeit limited. [9.6.6-8, 10.1.2, 10.5.6, 10.6.1, 10.7.3, 10.9.3, 11.3.12.b)]
- 15.8.43. In 2007 the Inspector found there was no merit in the argument that development of the appeals site should be resisted having regard to its future value as an area for the long term managed retreat of Crayford Marshes⁶⁴⁴. I share this view, not least as massive intervention would be

⁶⁴⁰ CD/1.27 Volume 2 Appendix H. para 5.87.

⁶⁴¹ CD/1.27 Volume 2 Appendix H paras 5.92-93

⁶⁴² APP/BIO/1 para 6.28-33.

⁶⁴³ CD/1.27 Volume 2 para H7.64.

⁶⁴⁴ CD/5.2 para15.37.

required, due to the significant differences in level between the two [10.2.5, 10.2.7].

- 15.8.44. Furthermore, I have indicated, an aim of the proposed landscaping along the eastern side of the site would be to enhance its ecology value. It would adjoin the remainder of BxBI18 and together they would maintain the linkage between the SMIs to the north and south [10.2.4]. The retention, creation and safeguarding of wildlife corridors through the site could be ensured through the imposition of a condition, as already referred to [10.2.5]. Against this background, I give little weight to the concerns raised regarding fragmentation of habitats, which was also considered and given little weight in 2007⁶⁴⁵ [9.6.4-5].
- 15.8.45. As to the potential impact of the scheme on the hydrology of the marshes, there is no objection from the Environment Agency or Natural England. Furthermore, the proposed works to improve the drainage of the marshes with the aim of enhancing the areas biodiversity value could be controlled by the local planning authority through the imposition of suitable conditions and the LBB s106 [10.2.6].
- 15.8.46. I conclude that the appeals proposal, including the off-site planning obligations, would be likely to result in a net biodiversity gain overall, a view shared by both local planning authorities⁶⁴⁶ [8.5.8, 9.6.1, 11.3.10-12, 11.4.4]. In this respect it would accord with the aims of LP Policies 7.19 and 7.21, BCS Policies CS04, CS09, CS17 and CS18, as well as the Framework. However, there is no guarantee that the overall net gain would be substantial and so I afford it moderate weight.

The extent to which mitigation would be secured through planning conditions and obligations

Conditions

- 15.8.47. Without prejudice to their respective cases, the appellant and the planning authorities have jointly submitted a list of 32 planning conditions (nos. (1)-(32)), INQ/94, that they consider should be imposed in the event of planning permission being granted, for the reasons set out in INQ/94 which include the requirements of the Development Plans. The included wording was agreed between the appellant, the LBB, DBC and the MOL, except: in relation to condition nos. (6), (27) and (30); and, whether lists set out in conditions should be preceded by the phrase 'to comprise' rather than 'to include', in the interests of precision. The list of conditions was discussed at the Inquiry, together with other conditions suggested by interested parties. I have had regard to those views when compiling the conditions listed in Appendix 4 of this report, which departs from INQ/94 where I consider it necessary in order to accord with the tests of conditions set out in the Framework. Should the Secretary of State be minded to grant planning permission for the proposed development, then I recommend that the conditions listed in Appendix 4 of this report be attached to the permission granted.

⁶⁴⁵ CD/5.2 para 15.39.

⁶⁴⁶ CD/1.6 page 63.

- 15.8.48. As to the conditions set out on INQ/94, in addition to the normal commencement condition (3) and conditions to secure details of reserved matters (1, 2), conditions would be required to ensure that the works would be: carried out in accordance with the principles illustrated on the Parameters Plan and other approved plans; and, phased in a manner approved by the local planning authority (4⁶⁴⁷, 5). This would be necessary in the interests of certainty as well as to ensure that the development is generally in accordance with the scheme and mitigation which was the subject of the ES/SES. For the latter reason, conditions would be necessary to secure the implementation of an approved:
- Biodiversity Action Plan as well as a demolition/tree felling/construction timetable, in the interests of protecting and enhancing biodiversity (9, 11);
 - Construction Management Plan (8), to control the impact of those activities on the surrounding environment;
 - Programme of archaeological evaluation and mitigation (12), and programme of historic building evaluation and analysis (13), in the interests of safeguarding heritage assets;
 - Set of measures to control the impact of noise and vibration, in the interests of living conditions (24, 25, 29);
 - Landscaping scheme (26), in the interests of protecting and enhancing biodiversity as well as visual amenity;
 - Building layout/footprint (31), buildings/structure base levels, heights and site levels (14), scheme for the location and use of external storage areas (18), schedule of materials/finishes for buildings and other structures (23), and gantry crane design (32), all in the interests of visual amenity; and,
 - A number of conditions would be necessary in order to satisfactorily control the risk of pollution, in the interests of human health and the wider environment (10, 15, 19, 27, 28, 33).
- 15.8.49. A condition would be necessary to ensure, through the approval and implementation of a Method Statement, that the proposed development would not prejudice the use of safeguarded land for a possible future extension of Crossrail (7) [13.5.15-19]. Conditions would also be required to ensure that: the development provides and retains appropriate facilities for its future occupiers (16, 17, 20) and is served by adequate means of access, having regard to the amenities of nearby occupiers of residential properties; and, the capacity and quality of the River Cray is safeguarded (21, 22).
- 15.8.50. In my judgement, the use of the phrase 'to include', rather than 'to comprise', preceding a list of requirements set out in a condition is normal practice and would not result in the recommended conditions failing the test of precision set out in the Framework. [12.1.14.c)-d)]

⁶⁴⁷ Amended to reflect conditions discussion in accordance with INQ/97.

Pre-commencement conditions

- 15.8.51. 4 of the 32 conditions set out in INQ/94 are identified as pre-commencement conditions, nos. (6-9). Whilst the appellant has suggested that condition no. 6 is not necessary in a pre-commencement form, in closing it confirmed that it agrees to the imposition of any of the agreed conditions which are in the form of a pre-commencement condition in INQ/94 [11.6.1.b.].
- 15.8.52. Condition no. (6)- relates to: 1) the completion of the intermodal area (zone C) rail infrastructure (as shown on the Parameters Plan: drawing no. 30777-PL-101 rev I); and, 2) the provision of an operational connection between it and the North Kent main line rail network. I indicated earlier in my conclusions, there is no dispute that a connection could be physically made and it is likely that provision of those facilities as part of the initial stages of development could be secured by condition. However, the necessary terms of such a condition are a matter in dispute, as set out in INQ/94.
- 15.8.53. Firstly, I consider that without both elements, 1) and 2), the scheme could not operate as a rail freight interchange. Furthermore, consistent with the view expressed by the Inspector in 2007, if the proposal would, for any reason, not operate as a SRFI then it would not enjoy the policy support which such proposals attract. Put another way, there is no doubt that a proposal to build purely road-served warehouses on open land in the Green Belt around London would not come anywhere near to constituting very special circumstances outweighing the harm to the Green Belt that would be inevitable with such a proposal. [7.2.4] In addition, these circumstances are materially different from those in the case of the East Midlands SRFI, which did not involve development in the Green Belt [11.3.3-4].
- 15.8.54. Secondly, it follows that the provision of these elements of the scheme, 1) and 2), are a fundamental aspect of the particular development for which planning permission is sought in the cases before me and without them planning permission would have to be refused. Furthermore, the provision of the operational connection would be within the control of Network Rail, not the appellant, and there is no formal agreement in place between those 2 parties to ensure its provision. To my mind, in these circumstances, a pre-commencement condition would be necessary to gain reasonable surety in the public interest, before Green Belt land is lost, that the necessary operational rail facilities would be provided in a timely manner.
- 15.8.55. Thirdly, following the appellant's alternative approach, set out in INQ/94, would mean allowing the development to proceed without any such assurance to the point at which the proposed warehousing would be sufficiently complete to be occupied. At that point the associated Green Belt land would have been subject to substantial development, the appellant would be likely to have invested significant sums and if it is found then that the required rail facilities cannot be delivered, it may well be

difficult to enforce the provision requiring the warehouses not to be occupied, as observed by the LBB⁶⁴⁸.

- 15.8.56. I conclude that the approach recommended by DBC and the MOL in sections 6.1, 6.2 and 6.4 of condition no. (6) in INQ/94, which is supported by the LBB⁶⁴⁹ [12.1.14a)], is reasonable and necessary. It indicates, amongst other things, that (6.1) development shall not commence until the proposed operational connection to the North Kent main line has been progressed to the end of Network Rail's GRIP Stage 5 (completion of detailed design⁶⁵⁰) and (6.2) the development shall not be occupied or brought into use until the rail works have been progressed to the end of GRIP Stage 7 (transfer of asset responsibility from the contractor to the operators⁶⁵¹). In the event Network Rail determines that a new headshunt is required at Slade Green Train Depot to facilitate the provision of the operational connection, this would also be secured by this approach⁶⁵² [11.2.52, 13.5.1-5]. Whilst I have had regard to the appellant's estimate that it may take up to 2 years to progress from GRIP Stage 2 to 5⁶⁵³, in my judgement this does not indicate that section 6.1 would be unduly onerous, particularly given the outline nature of the planning applications and that time would be needed for reserved matters approval prior to commencement in any event. In light of the safeguards provided by sections 6.1 and 6.2, I consider that section 6.3, which would require the development to be removed in the event that the Rail Works are not completed within 3 years from the commencement of development would be unduly onerous and unnecessary. I have made minor modifications to 6.1/6.2 in the interests of clarity and enforceability.
- 15.8.57. Condition no. 6x⁶⁵⁴-for the reasons set out above in relation to condition no. (6) and the NPSNN requirements of SRFI, I consider that a condition seeking to ensure that the proposed rail connection would have the capacity to serve the site with 4 trains/day would also need to be in a pre-commencement form. Although I have referred to the need for such a condition earlier in my conclusions, given the appellant's refusal to accept that form, it was not possible to include it in Appendix 4.
- 15.8.58. Condition nos. (7), (8) and (9)-There is no dispute that pre-commencement conditions are required to ensure that: the proposal proceeds in a manner which would not prejudice the possible future extension of Crossrail, with reference to the hatched area shown on the Parameters Plan; a Construction Management Plan is in place to control the impact of those activities on the surrounding environment; and, biodiversity would be adequately protected from the impacts of development.

⁶⁴⁸ During the conditions session.

⁶⁴⁹ During the conditions session.

⁶⁵⁰ INQ/38 page 1.

⁶⁵¹ INQ/38 page 1.

⁶⁵² Discussed during the conditions session.

⁶⁵³ APP/PLAN/1 para 10.23.

⁶⁵⁴ INQ/100.

- 15.8.59. Turning to the other disputed conditions: Condition no. (27)-in the context of seeking to maintain or improve air quality, I consider that it is reasonable to require a Low Emissions Strategy for the development to include an assessment of the contribution likely to be made by rail locomotives. However, given the appellant's estimate⁶⁵⁵ that a low percentage of locomotives is currently capable of meeting the standards referred to by DBC/MOL (section 27.1.1), a matter not disputed by others, it would be unduly onerous to require compliance with those standards. Furthermore, given that road vehicles arriving on site would be likely to be from a range of different locations and operators, it would be unduly onerous to require the appellant to commit to all road vehicles meeting best practice towards the cited standards [12.1.14.b)]. Instead, in relation to road vehicles, it would be reasonable to require the appellant to identify measures that would be taken to secure the use of vehicles that comply with the cited standards.
- 15.8.60. Condition no. (30)-the NPSNN indicates that '*Rail freight interchanges are not only locations for freight access to the railway but also locations for businesses, capable now or in the future, of supporting their commercial activities by rail. Therefore, from the outset, a rail freight interchange (RFI) should be developed in a form that can accommodate both rail and non-rail activities.*' Against this background, with reference to the DBC/MOL recommended wording for condition no. (30), I consider that it would be unreasonable to require that all the material stored on the site must either arrive or depart by rail. In that case the appellant's recommended wording would be reasonable and necessary [12.1.14.b)].
- 15.8.61. As to other INQ/94 conditions: Condition no. (29)-requires mitigation measures to be put in place to deal with any unforeseen impacts of noise from the development on local residents. I have recommended the form set out in INQ/94, rather than the alternative proposed by the appellant in INQ/98, as the latter does not secure a timetable for approval and implementation and so would be difficult to enforce.
- 15.8.62. Condition no. (32)- amendments have been made to the position set out in INQ/94, in order to clarify the gantry crane details to be provided in the interests of visual and residential amenity. The approach reflects the position suggested at the Inquiry by the LBB in INQ/100.

Planning obligations

- 15.8.63. In support of the appeals proposal the appellant relies on 2 agreements pursuant to section 106 of the *Town and Country Planning Act 1990*: the first, with the London Borough of Bexley (LBB s106)⁶⁵⁶; and, the second, with Dartford Borough Council and Kent County Council (DBC s106)⁶⁵⁷. Each is supported by a statement from the relevant local planning authority⁶⁵⁸ setting out the justification for included planning obligations

⁶⁵⁵ APP/PLAN/1 para 10.37.

⁶⁵⁶ INQ/115.

⁶⁵⁷ INQ/116.

⁶⁵⁸ INQ/48a and 48b.

upon which the parties to the Inquiry have had an opportunity to comment⁶⁵⁹. [12.1.10-11]

- 15.8.64. The general terms of the LBB s106 include provisions related to: noise mitigation; bus stop facilities; legible London signage; local employment; community liaison; a Marshes Management Regime, a Marshes Drainage Strategy and Marshes Management Implementation; a Transport Management Plan, Bexley signage strategy and a shuttle bus. The general terms of the DBC s106 include provisions related to: cycle/footpath improvements; junction 1A improvements, in keeping with the aims of DCS Policy CS 16; a Transport Management Plan; an HGV signage strategy; air quality monitoring and management; and, a shuttle bus facility. A number of these provisions include financial contributions and some have been referred to earlier in my conclusions.
- 15.8.65. With reference to the submissions made, principally by the appellant, DBC and the LBB⁶⁶⁰, I am satisfied that the planning obligations 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. They would accord with the provisions of Regulations 122 and 123 of the CIL Regs and the tests for planning obligations set out in the Framework. [12.1.12]

Conclusions

- 15.8.66. I conclude that the above measures would be necessary to mitigate a number of the impacts likely to be associated with the appeals proposal and they respectively meet the tests of planning conditions and obligations set out in the Framework as well as certain requirements of the Development Plans. However, for the avoidance of doubt, in my judgement, they would not reduce the harm that I have identified in relation to the main issues to any material extent.

Other matters

- 15.8.67. I give little weight to the appellant's contention that there has been very little local opposition and engagement, save for a handful of conscientious people, who appeared at the Inquiry [11.1.4, 11.1.7]. The number of people who appeared at the Inquiry does not provide a reliable indication of the level of objection. For example, in some cases the objectors who appeared were representing groups of others, such as the representative of SGCF. Furthermore, a significant number of objections were submitted in response to the planning applications and non-attendance at the Inquiry does not preclude them from being taken into account, as the appeal notifications made clear.
- 15.8.68. The appeals relate to cross-boundary planning applications. Whilst the largest part of the appeals site lies within the London Borough of Bexley, who resolved to approve the proposal, the LBB's decision does not alter the planning merits of the appeals scheme. Nor does it follow that associated

⁶⁵⁹ For example: INQ/67, 68, 69, 70, 92 and discussions during the planning obligations session.

⁶⁶⁰ INQ/48a, 48b and 68.

impacts beyond the boundary of that particular Council would be acceptable. I consider that limited weight is attributable to the LBB resolution of itself. [11.1.3.j., 11.1.5, 12.1.1-5, 12.1.15-16]

Conclusions

Harm

- 15.8.69. There is no dispute that, under the terms of the Development Plans and the Framework, the proposed development would constitute inappropriate development in the Green Belt, which the Framework confirms is, by definition, harmful to the Green Belt. Furthermore, the introduction of this massive development beyond the built limits of Slade Green would have a considerable adverse impact on the openness of the Green Belt and would undermine a number of the purposes served by Green Belt thereabouts. I consider that overall, the appeals proposal would cause substantial harm to the Green Belt, an outcome acknowledged as likely by the appellant. With reference to the Framework, which states that substantial weight should be given to any harm to the Green Belt, this identified harm weighs heavily against the scheme. [11.7.2, 15.1-2]
- 15.8.70. In addition, the proposed development would also be likely to have a significant adverse effect on the character and appearance of the local area, contrary in this respect to the aims of the LBB Development Plan. This attracts significant weight. [15.3]
- 15.8.71. Turning to the proposed transport links. Based on the evidence before me, I am not reasonably assured that an adequate rail link for the purposes of a SRFI, with reference to the NPSNN, would be provided. However, if it would, I consider that the level of freight service involved would be likely to have a material adverse effect on existing/future passenger services, contrary in this respect to the aims of the LBB Development Plan. [15.4] As regards the likely highways impact of the scheme, I acknowledge the lack of objections from the Highway Authorities. Nonetheless, I have found that the proposal would be likely to cause considerable harm to the convenience of highway users in Dartford, contrary in this respect to the aims of the DBC Development Plan and the Framework. [15.5] These adverse impacts each attract significant weight.
- 15.8.72. As to other harm, I am satisfied that, with mitigation secured by planning conditions and obligations, the scheme would be unlikely to result in material harm to living conditions in the local area, with particular reference to air quality, noise and vibration. [15.6] Nor would it cause material harm to the significance of any Designated Heritage Assets. In these respects the proposal would not conflict with the Development Plans and these matters do not weigh against the scheme. [15.7]
- 15.8.73. Nonetheless, the Framework confirms that the very special circumstances necessary to justify inappropriate development in the Green Belt will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

Other considerations

- 15.8.74. In 2007 the Secretary of State granted planning permission for a SRFI scheme at Howbury Park. However, it does not represent a fallback position, as the permission has since lapsed and the appellant acknowledges that the circumstances of that case are not directly comparable to those in the current case [11.5.4, 15.1].
- 15.8.75. I am content that there is a need and market for SRFIs to serve London and the South East. Planning permission has been granted for a SRFI at Radlett, which would be expected to serve the northwest sector of London. In contrast, the appeals proposal would be situated in an arc to the south and east of London. Establishment of a SRFI at the appeals site, whilst inconsistent with the DBC Development Plan Spatial Strategy, would be in keeping with the aims of the LBB Development Plan and the Framework regarding the generation of socio-economic benefits, to which substantial weight would ordinarily be attributable [11.3.6-9, 15.8.30].
- 15.8.76. However, whilst the appeals proposal would exhibit a number of locational and physical characteristics that define SRFIs, I consider that it would be likely to fall seriously short of the transport link requirements. Even if connectivity by rail would be likely to be adequate for the purposes of a SRFI, a matter in relation to which I am not reasonably assured, I consider that the proposed facility would be unlikely to benefit from good road access, as required by the NPSNN. Consequently, the appeals scheme would not be well qualified to meet the identified need for SRFIs to serve London and the South East, which casts significant doubt over whether the full socio-economic benefits of a SRFI would be likely to be realised and also the extent of CO₂ net savings through modal shift. [11.7.1-2, 15.8.17]
- 15.8.77. Furthermore, even if the appeals scheme would be likely to meet the NPSNN requirements of a SRFI in full, the weight attributable to that matter would be limited, as London Gateway, a brownfield site, has the potential to provide an alternative development option for the provision of a SRFI to serve the same part of London and the South East, potentially with broadly comparable socio-economic benefits.[11.5.2, 15.8.26]
- 15.8.78. Under the circumstances, I give limited weight to the potential socio-economic benefits of the appeals scheme. [15.8.32]
- 15.8.79. Whilst the appeals proposal, including the off-site works secured by planning obligations, would be likely to result in a net biodiversity gain, there is no guarantee that the overall net gain would be substantial and so I afford it moderate weight [15.8.46]. Significant weight is not attributable to the other matters raised.

Planning balance

- 15.8.80. Overall, even if reasonable assurance could be provided that the rail link to the appeals site would be adequate to service the needs of a SRFI and that it would not have an adverse impact on passenger services (neither of which I consider to be the case), in my judgement the remaining harm, associated with other identified factors, would not be clearly outweighed by

the other considerations, not least due to the absence of good road access and the existence of a possible alternative.

- 15.8.81. I conclude that the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposals, would not be clearly outweighed by other considerations. In light of this conclusion, it follows that the very special circumstances necessary to justify inappropriate development in the Green Belt do not exist. In relation to the 2007 scheme, the absence at that time of any other site in the arc to the south and east of London that could meet part of London's need for SRFIs was judged to be a very special circumstance. The circumstances are now materially different, as I have indicated above. I conclude that the scheme would conflict with LP Policy 7.16, BCS Policies CS01 and CS17 as well as DCS Policies CS 1, CS 13 and DDPP Policy DP22, and the Framework as well as LPe Policy G2. Whilst the MOL has placed some reliance on BUDP Policies ENV4, with which the proposal would conflict⁶⁶¹, it appears to me that its requirements are more stringent than those set out in the Framework and so I give that conflict little weight.
- 15.8.82. I conclude on balance, that the appeals proposal would conflict with each of the relevant Development Plans taken as a whole and it would not amount to sustainable development under the terms of the Framework.

15.9. **Conclusion**

- 15.9.1. For the reasons given above, I conclude that the appeals should be dismissed.

16. **INSPECTOR'S RECOMMENDATIONS**

- 16.1. I recommend that the appeals be dismissed.
- 16.2. If, notwithstanding the above recommendation, the Secretary of State should be minded to grant planning permission for the proposed development, then I recommend that the conditions listed in Appendix 4 of this report be attached to the permission granted.

I Jenkins

INSPECTOR

⁶⁶¹ GLA/NR/01 page 19 para 77.

APPENDIX 1-APPEARANCES

FOR THE APPELLANT:

Mr R Warren
QC

He called	
Mr N Findlay	WSP Limited
BSc CEng MICE MIHT MCILT	
Dr B Tuckett-Jones	WSP Limited
BSc PhD CEnv MIAQM	
Mr C Scott	Barry Chinn Associates Limited
BA DipLA CMLI	
Mr N Gallop	Intermodality Limited
BSc(Hons)	
Mr T Goodwin	Ecology Solutions Limited
BSc (Hons) MSc MIEEnvSc MCIEEM MIALE	
Mr H Scanlon	Litchfields
BA(Hons) MPhil MRTPI	

FOR THE MAYOR OF LONDON:

Mr D Kolinsky
QC

He called	
Mr R Goldney	Rail Freight Consulting
BSc(Hons) MBA FIMechE FCILT FICE	
Mr I Birch	Cebr
MA(Cantab) MA(Leeds)	
Mr G Hobbs	Transport for London
BA(Hons) (Econ) MSc (Econ)	
Mr N Ray	Greater London Authority
BA(Hons) MA	

FOR DARTFORD BOROUGH COUNCIL:

Mr T Mould
QC
assisted by
Ms H Gibbs
Of Counsel

He called	
Mr P Caneparo	Caneparo Associates Limited
BSc MSc MCILT MCIHT	
Dr R Maggs	Bureau Veritas UK
BSc(Hons) PhD DIC	
Mr S Bell	Dartford Borough Council
BA(Hons) DiP TP	

FOR THE LONDON BOROUGH OF BEXLEY:

Mr J Garbett
Solicitor
Mr M Kiely
BTP MBA MRTPI

Womble Bond Dickinson (UK) LLP
Mike Kiely Planning + Regeneration

INTERESTED PERSONS:

Mrs J White Member of SGCF	on behalf of Mrs C Egan, local resident
Mr I Lindon Chairman	LA21 Traffic/Transport Forum
Mr D Reynolds Member LA21	LA21 Traffic/Transport Forum
Mr R Hillman Trustee SGCF	Slade Green Community Forum
Councillor J Kite Leader of DBC and member of KCC	Dartford Borough Council
Councillor S Borella Slade Green & Northend Ward	The London Borough of Bexley
Mr C Rose BSc (Hons) MSc Vice-chair of BNEF	Bexley Natural Environment Forum

PLANNING CONDITIONS AND OBLIGATIONS SESSION only:

Miss M Thomson on behalf of RDL	Eversheds LLP
Mr M Able on behalf of the LBB	LBB
Mrs J Burgess on behalf of Highways England	HE
Mr P Harwood on behalf of Highways England	HE
Mr D Joyner on behalf of KCC	KCC

APPENDIX 2-DOCUMENTS**PRE-INQUIRY DOCUMENTS**

CD/No.	CORE DOCUMENTS (CD)
	APPLICATION DOCUMENTS
1.1	DBC Officer's Report, 10 November 2016
1.2	DBC Officer's Report, 20 April 2017
1.3	Update to DBC Officers Report, 20 April 2017
1.4	DBC Committee Resolution, 20 April 2017
1.5	DBC Decision Notice, 21 April 2017
1.6	LBB Officer's Report, 16 February 2017
1.7	LBB Addendum to Officer's Report, 16 February 2017
1.8	LBB Committee Resolution
1.9	LBB Decision Notice, 20 July 2017
1.10	MOL's Initial Representation Letter, 6 June 2016
1.11	GLA Stage 1 Referral Report, 6 June 2016
1.12	GLA Stage 2 Referral Report, 17 July 2017
1.13	GLA Stage 2 MOL's Decision Letter, 17 July 2017
1.14	Application Form and CIL Form, November 2015
1.15	Covering Letter and Document List, November 2015
1.16	Ownership and Agricultural Holdings Certificates and Notices, November 2015
1.17	Application Plans (See Planning application drawings table below)
1.18	Planning Summary, November 2015
1.19	Planning Statement, November 2015
1.20	Design and Access Statement, November 2015
1.21	Sustainability Statement, November 2015
1.22	Statement of Community Involvement, November 2015
1.23	Utilities Assessment Report, November 2015
1.24	Draft S106 Heads of Terms, November 2015
1.25	Rail Report, November 2015
1.26	Alternative Site Assessment, November 2015
1.27	Environmental Statement, November 2015, including:- Volume 1: Non-Technical Summary Volume 2: Main Technical Assessments Volume 3: Appendices to the Main Technical Assessments
1.28	Response to Consultee Comments Report, February 2016

1.29	Response to Consultee Comments Report (Update), April 2016
1.30	Supplementary Environmental Statement, April 2016 Updated Non-Technical Summary, April 2016
1.31	Response to Consultee Comments Report (Update), June 2016
1.32	Technical Notes (July 2016 and October 2016) relating to Air Quality Following Stage 1 Response
1.33	Marshes Management Plan, February 2017
1.34	Transport Management Plan, 2018
	NATIONAL POLICY
2.1	National Planning Policy Framework, March 2012
2.2	National Policy Statement for National Networks, December 2014
2.3	Draft National Planning Policy Framework for Public Consultation, March 2018
	LOCAL POLICY
3.1	London Plan, March 2016
3.2	Draft London Plan, December 2017
3.3	Mayor's Transport Strategy 2018
3.4	Green Infrastructure and Open Environments: The All London Green Grid Supplementary Planning Guidance 2012
3.5	Sustainable Design and Construction Supplementary Planning Guidance, April 2014
3.6	Character and Context Supplementary Planning Guidance, June 2014
3.7	Land for Industry and Transport Supplementary Planning Guidance, September 2012
3.8	Mayor's Draft London Environment Strategy, August 2017
3.9	Mayor's Economic Development Strategy for London, May 2010
3.10	Mayor's Draft Economic Development Strategy, December 2017
3.11	A City for all Londoners, October 2016
3.12	Bexley Core Strategy, 2012
3.13	Bexley Council Saved Unitary Development Plan, 2007
3.14	Sustainable Design and Construction Guide SPG, LBB, October 2007
3.15	Bexley Growth Strategy, December 2017
3.16	Planning Obligations Supplementary Planning Guidance, LBB, July 2008
3.17	DBC Core Strategy 2011
3.18	DBC Development Policies Plan 2017
	OTHER STATUTORY BODIES
4.1	Rail Freight Strategy: Moving Britain Ahead, DfT: September 2016

4.2	Transport Investment Strategy: Moving Britain Ahead, DfT: July 2017
4.3	Delivering A Sustainable Transport System: The Logistics Perspective, DfT: December 2008
4.4	The Logistics Growth Review – Connecting People with Goods, DfT, 2011
4.5	Rail Freight Strategy, TfL, August 2007
4.6	London Freight Plan – Sustainable Freight Distribution: A Plan for London, TfL, November 2007
4.7	Network Rail Value and Importance of Rail Freight, 2010
4.8	Network Rail Value and Importance of Rail Freight Summary Update, April 2013
4.9	Network Rail Freight Market Study, 2013
4.10	Rail Delivery Group Keeping the Lights on and the Traffic Moving: Sustaining the benefits of rail freight for the UK economy, 2014
4.11	Network Rail Freight Network Study, April 2017
4.12	Network Rail South East Route: Draft Kent Area Route Study, March 2017
4.13	Building our Industrial Strategy, Jan 2017
4.14	Kent County Council Transport Plan 4: Delivering Growth without Gridlock, 2016-2031
4.15	Kent County Council Freight Action Plan for Kent, 2017
4.16	The strategic road network and the delivery of sustainable development (DfT Circular 02/13)
	OTHER MATERIAL
5.1	Previous Howbury Park Scheme Parameters Plan, Reference: 2144/PL/49D dated 30 June 2004, Appeal References APP/T2215/A/05/1185897 and APP/D5120/A/05/1198457
5.2	Inspector’s Report for previous Howbury Park SRFI (27 September 2007), Appeal References APP/T2215/A/05/1185897 and APP/D5120/A/05/1198457
5.3	Secretary of State’s Decision Letter for the previous Howbury Park SRFI Appeal (2007), Appeal References APP/T2215/A/05/1185897 and APP/D5120/A/05/1198457
5.4	SIFE Secretary of State’s Decision Letter and Inspector’s Report, Appeal Reference APP/J0350/A/12/2171967
5.5	Radlett Decision Letter and Inspector’s Report, Appeal reference APP/B1930/A/09/2109433
5.6	East Midlands Gateway Rail Freight Interchange Secretary of State’s Decision Letter and Examining Authority’s Report, DCO Reference TWA

	8/1/15
5.7	Kent International Gateway Secretary of State's Decision Letter and Inspector's Report, Appeal Reference: APP/U2235/A/09/2096565
5.8	Current Draft S106 Agreements
5.9	Draft Planning Conditions
5.10	Previous Howbury Park S106: Highway Obligations, dated 1 June 2007, Appeal References APP/T2215/A/05/1185897 and APP/D5120/A/05/1198457
5.11	Previous Howbury Park S106: Non Highway Obligations, dated 1 June 2007, Appeal References APP/T2215/A/05/1185897 and APP/D5120/A/05/1198457
	STATEMENTS OF COMMON GROUND (SoCG)
6.1	SoCG - LBB
6.2	SoCG - DBC
6.3	SoCG - GLA
6.4	SoCG - Highways England
	STATEMENTS OF CASE (SOC)
7.1	SOC - GLA
7.2	SOC - LBB
7.3	SOC - DBC
7.4	SOC - Roxhill Developments Ltd
	AIR QUALITY
8.1	Air Quality (England) Regulations 2000
8.2	Air Quality (England) (Amendment) Regulations 2002
8.3	2017 Air Quality Annual Status Report (ASR)
8.4	Air Quality Action Plan for the Borough of Dartford (Sept 02)
8.5	Local Air Quality Management - Action Plan Dartford Town and Approach Roads Air Quality Management Area, - A226 London Road Air Quality Management Area, and - Bean Interchange Air Quality Management Area (2009)
8.6	Local Air Quality Management: Technical Guidance (TG16) - February 2018
8.7	IAQM Guidance: Land-Use Planning & Development Control: Planning For Air Quality (January 2017)
8.8	Air Quality Standards Regulations 2010
8.9	Air Quality Standards (Amendment) Regulations 2016
8.10	Air Quality Annual Status Report for Bexley for 2016 (published 2017)

8.11	UK Plan for Tackling Roadside Nitrogen Dioxide Concentrations. An Overview
8.12	Air Quality Plan for tackling roadside nitrogen dioxide concentrations in Greater London Urban Area

PLANNING APPLICATION DRAWINGS

Drawing no.	Title
30777-PL100 rev E	Location plan, November 2015.
30777-PL-101 rev I	Parameters plan, current revision February 2017.
30777-PL-102 rev D	Illustrative masterplan, November 2015.
30777-PL103	Colour illustrative masterplan, November 2015.
30777-PL104 rev B	Existing block plan, November 2015.
30777-PL-105 rev A	Development phasing, November 2015.
30777-PL-106 rev A	Typical colour elevations (unit 2), November 2015.
30777-PL-107 rev A	Typical plans and section (unit 2), November 2015.
2039-RP-001 rev D	Site access road plan and section (sheet 1), November 2015.
2039-RP-002 rev C	Site access road plan and section (sheet 2), November 2015.
2039-RP-003 rev D	Viridor access road plan and section, November 2015.
2039-RP-004 rev B	Road 3 plan and section, November 2015.
2039-RP-005 rev B	Road 4 Plan and section (sheet 1), November 2015.
2039-RP-006 rev B	Road 4 Plan and section (sheet 2), November 2015.
2039-RP-007 rev B	Road 5 plan and section, November 2015.
2039-RP-008 rev B	Site access off-site roundabout improvements, November 2015.
2039-STR-001 rev B	Howbury viaduct general arrangement, current revision submitted February 2016.
D5.5	Indicative rail layout, November 2015.
D5.5S	Indicative section through interchange, November 2015.

PROOFS OF EVIDENCE (pre-Inquiry submissions)

Ref no.	Content
	APPELLANT
APP/TRAN/1	Proof of evidence Mr N Findlay
APP/TRAN/2	Appendices Mr N Findlay
APP/TRAN/3	Summary Mr N Findlay
APP/TRAN/4	Joint rebuttal Mr N Findlay

APP/AQ/1	Proof of evidence Dr B Tuckett-Jones
APP/AQ/2	Appendices Dr B Tuckett-Jones
APP/AQ/3	Summary Dr B Tuckett-Jones
APP/TRAN/4	Joint rebuttal Dr B Tuckett-Jones
APP/LANVIS/1	Proof of evidence Mr C Scott
APP/LANVIS/2	Appendices Mr C Scott
APP/LANVIS/3	Summary Mr C Scott
APP/RAIL/1	Proof of evidence Mr N Gallop
APP/RAIL/2	Appendices Mr N Gallop
APP/RAIL/3	Summary Mr N Gallop
APP/RAIL/4	Rebuttal Mr N Gallop
APP/BIO/1	Proof of evidence Mr T Goodwin
APP/BIO/2	Appendices Mr T Goodwin
APP/BIO/3	Summary Mr T Goodwin
APP/PLAN/1	Proof of evidence Mr H Scanlon
APP/PLAN/2	Appendices Mr H Scanlon
APP/PLAN/3	Summary Mr H Scanlon
APP/PLAN/4	Rebuttal Mr H Scanlon
	MOL
GLA/RG/01	Proof of evidence Mr R Goldney
GLA/RG/02	Appendices Mr R Goldney
GLA/RG/03	Summary Mr R Goldney
GLA/RG/04	Rebuttal Mr R Goldney
GLA/IB/01	Proof of evidence Mr I Birch
GLA/IB/02	Appendices Mr I Birch
GLA/IB/03	Summary Mr I Birch
GLA/GH/01	Proof of evidence Mr G Hobbs
GLA/GH/02	Appendices Mr G Hobbs
GLA/GH/03	Summary Mr G Hobbs
GLA/NR/01	Proof of evidence Mr N Ray
GLA/NR/02	Summary Mr N Ray
	DBC
DBC/W2/1	Proof of evidence Mr P Caneparo
DBC/W2/2	Appendices Mr P Caneparo
DBC/W2/3	Summary Mr P Caneparo
DBC/W3/1	Proof of evidence Dr R Maggs
DBC/W3/2	Appendices Dr R Maggs

DBC/W3/3	Summary Dr R Maggs
DBC/W1/1	Proof of evidence Mr S Bell
DBC/W1/2	Summary Mr S Bell
DBC/W1/3	Appendices Mr S Bell
	SGCF
SGCF/W1/1	Summary Mr R Hillman (amended INQ/42)
SGCF/W1/2	Proof of evidence Mr R Hillman (amended INQ/42)
SGCF/W1/3	Appendix 1 Mr R Hillman
SGCF/W1/4	Appendix 2 Mr R Hillman (amended INQ/47)
SGCF/W1/5	Rebuttal Mr R Hillman (amended INQ/42)
SGCF/W1/6	Rebuttal appendix 1 Mr R Hillman
SGCF/W1/7	Rebuttal appendix 2 Mr R Hillman
SGCF/W1/8	Rebuttal appendix 3 Mr R Hillman
	LA21
-	Proof of evidence Mr I Lindon (letter dated 30 November 2017)
-	Proof of evidence Mr D Reynolds, including appendices (letter dated 30 November 2017)

INQUIRY DOCUMENTS (INQ)

Doc. no.	Party	Description
INQ/1	DBC/LBB	Letters from the Council's notifying interested parties of the appeals.
INQ/2	-	Correspondence from interested parties in response to the appeal notifications.
INQ/3	MOL	Network Rail-Roxhill Developments Howbury Park SRFI GRIP2 Report Part 2: Timetable Analysis, November 2016.
INQ/4	RDL	RDL Opening statement.
INQ/5	DBC	DBC Opening statement.
INQ/6	MOL	MOL Opening statement.
INQ/7	LBB	LBB Opening statement.
INQ/8	MOL	Euro Tunnel-Fixed Link Annual Statement-2018 working timetable.
INQ/9	MOL	2018 HS1 Network Statement, March 2017.
INQ/10	MOL	Railfreight Consulting-Train arrival and departure schematic, June 2018 (GLA/RG/05).
INQ/11	MOL	Clarification points arising from cross-examination (GLA/RG/06).
INQ/12	SGCF	SGCF opening statement.
INQ/13	RDL	DIRFT layout-aerial photo.
INQ/14	MOL	Clarification points arising from cross-examination (GLA/RG/07).
INQ/15	MOL	Revised note on W10 gauge cleared routes across North London.
INQ/16	MOL	MDS Transmodal-Rail Freight Forecasts to 2023/4, 2033/4 and 2043/4, April 2013.

INQ/17	MOL	Emails from Network Rail (SB9).
INQ/18	SGCF	Mrs White-Statement on behalf of Mrs Egan.
INQ/19	MOL	Dartford lines, down signal (chainage 15.18) and wagon details.
INQ/20	MOL	Briefing note: Process for producing the published Mayor's Transport Strategy (MTS).
INQ/21	DBC	Road links plan (PC14).
INQ/22	BNEF	Mr Rose-Proof of evidence, appendices and summary.
INQ/23	LA21	Mr Reynolds-updated statement, May 2018.
INQ/24	MOL	Time intervals available for crossing Crayford Creek Junction (GLA/RG/08).
INQ/25	RDL	Emails from Network Rail.
INQ/26	RDL	Draft Transport Management Plan, June 2018.
INQ/27	SGCF	Flyer distribution and leaflet delivery checking report extracts.
INQ/28	SGCF	TfL-Bakerloo Line Extension: options assessment report, December 2015 and Bakerloo Line Extension: Background to 2017 consultation, February 2017-extracts.
INQ/29	CE	Mrs Egan-statement.
INQ/30	LA21	Mr Reynolds-updated Appendix 1A.
INQ/31	LA21	Southeastern Railway-Train Times 5.
INQ/32	LA21	Mr Lindon-objection letter, 1 May 2016.
INQ/33	RDL	Britain Runs on Rail-In partnership for Britain's Prosperity, South East London and Kent.
INQ/34	DBC	Caneparo Associates-Craymill Rail Bridge/Site access-note.
INQ/35	DBC	Highways Authorities-areas of responsibility.
INQ/36	SGCF	Mr Hillman-updated summary proof.
INQ/37	DBC/RDL	Summary table of key verification parameters across air quality monitoring work presented during Inquiry.
INQ/38	RDL/MOL	Governance of Railway Investment Projects (GRIP)-Summary Note.
INQ/39	MOL/RDL	London Gateway: Agreed statement between Roxhill Developments Limited and Greater London Authority.
INQ/40	RDL	Technical Note-Slade Green Community Forum Monitoring Locations.
INQ/41	RDL	Mr Gallop-Rebuttal evidence, Rail (APP/RAIL/5).
INQ/42	SGCF	Mr Hillman-amended: (42a) proof of evidence; (42b) rebuttal proof of evidence; and, (42c) summary (withdrawal of a number of sections related to air quality).
INQ/43	CK	Councillor Kite-points to be covered.
INQ/44	RDL	S106 plan-showing redline and green line boundaries.
INQ/45	DBC	Accompanied site visit/tour-itinerary.
INQ/46	DBC	Fastrack plan and overview.
INQ/47	SGCF	Mr Hillman-amended: proof of evidence Appendix 2.
INQ/48a	LBB	Planning obligations-Statement of Compliance (email 24 July 2018)
INQ/48b	DBC	Planning obligations-Statement of Compliance (email 24 July 2018)
INQ/49	RDL	Quarry permissions in the vicinity of the appeals site (email 24 July 2018)
INQ/50	RDL	APP/AQ/5-Information supporting judgement of overall significance of effects (email 24 July 2018)
INQ/51	RDL	APP/TRAN/5-Response to Inspector's transport questions raised during Neil Findlay's evidence (email 24 July 2018)
INQ/52	RDL	Transport Management Plan Position (email 24 July 2018)
INQ/53	RDL	S106 Agreement Position Statement (email 24 July 2018)

INQ/54	RDL	APP/RAIL/6-Rail Note (email 24 July 2018)
INQ/55	RDL	Response to Inspector's noise questions raised during Neil Findlay's evidence (email 24 July 2018)
INQ/56	RDL	Response to Inspector's landscape and visual questions raised during Craig Scott's evidence (email 24 July 2018)
INQ/57	RDL	Confirmation that APP/RAIL/6 supersedes APP/RAIL/5, which is no longer relied upon (email 9 August 2018)
INQ/58	SGCF	S106/Conditions (email 10 August 2018)
INQ/59	DR	Response to APP/RAIL/6 (letter 11 August 2018)
INQ/60	DR	Planning conditions (letter 15 August 2018)
INQ/61	DBC	WSP response to Inspector's questions-comments (email 16 August 2018)
INQ/62	SGCF	Conditions (email 20 August 2018)
INQ/63	MOL	Clarification note GLA/RG/09-Response to APP/RAIL/6 (email 20 August 2018)
INQ/64	SGCF	S106/conditions (email 21 August 2018 10:00)
INQ/65	SGCF	S106/conditions (email 21 August 2018 11:02)
INQ/66	SGCF	S106/conditions (email 21 August 2018 11:43)
INQ/67	DBC	Dartford Borough Council comment on the appellant's S106 agreement position statement dated 24 July and DBC comments on the appellant's TMP position statement submitted 24 July 2018 (email 21 August 2018)
INQ/68	RDL	S106 agreement-appellant's response to statements of compliance (email 21 August 2018)
INQ/69	AGT	S106/conditions-Lambert Smith Hampton letter of 21 August 2018 (email 21 August 2018)
INQ/70	HE	S106/conditions-Representation from Highways England (email 21 August 2018)
INQ/71	MOL	GLA/NR/03-Planning evidence clarification note-National Planning Policy Framework (email 4 September 2018)
INQ/72	RDL	APP/RAIL/7-Rail Note (email 4 September 2018)
INQ/73	DBC	National Planning Policy Framework (email 4 September 2018)
INQ/74	DR	Clarification requested regarding the train timetable referred to in APP/TRAIN/6 and 7 (email 9 September 2018)
INQ/75	RDL	Confirmation regarding the train timetable, including copies, referred to in APP/TRAIN/6 and 7 (email 10 September 2018)
INQ/76	RDL	Transport Management Plan-Rev 7, dated 10 September 2018, and tracked changes Rev 6 to 7 (email 11 September 2018)
INQ/77	RDL	ARCADY Junctions 9 User Guide, WebTAG Unit M3.1 Highway Assignment Modelling and Table 2-9 Howbury Local Counts % diff/GEH stats (email 12 September 2018)
INQ/78	DR	Supplement to INQ/59 Rail Clarification
INQ/79	DR	South Eastern Rail Franchise Public Consultation, March 2017-extract
INQ/80	DR	Lewisham junction plan
INQ/81	Inspector	TRL Software-measuring queues-is it all a waste of time?
INQ/82	LBB	Slade Green Relief Road-position statement (email 5 July 2018)
INQ/83	RDL	Definition of ecological succession
INQ/84	RDL	Response to Inspector's Transport questions raised during Neil Findlay's evidence 19/9/18
INQ/85	RDL	Appellant's proposed amendment to condition 29
INQ/86	RDL	Draft S106, inc LBB
INQ/87	RDL	Draft s106, inc DBC

INQ/88	RDL	Appellant's response to the s106 agreements received on 20 September 2018
INQ/89	DBC	Suggested Travel Plan condition
INQ/90	DBC	WSP response to Inspector's transport questions raised during Neil Findlay's evidence 19/9/18-comments
INQ/91	DBC	DBC section 106 24 September 2018 draft with outstanding points highlighted.
INQ/92	DBC	DBC comments on s106 position 24 September 2018.
INQ/93	DBC	DBC comments on the appellant's TMP position statement submitted 24 July 2018.
INQ/94	LBB	Agreed planning conditions (amended), 21 September 2018.
INQ/95	RDL	Response to Inspector's questions (Hugh Scanlon-20 September 2018).
INQ/96	RDL	Response to Caneparo Associates reply to APP/TRAN/6
INQ/97	RDL	Suggested wording for condition 4
INQ/98	RDL	WSP Briefing note-suggested wording of condition 29
INQ/99	RDL	Email from Network Rail to RDL, 26 September 2018
INQ/100	LBB	LBB suggested wording-conditions 6, 21 and 32
INQ/101	LBB	Noise affecting Leycroft Gardens (email 26 September 2018)
INQ/102	RDL	Transport Management Plan, rev 8, 10 September 2018
INQ/103	RDL	WSP Howbury additional information-Heath Lane (email 26 September 2018)
INQ/104	RDL	Steering Group examples-s106s (email 25 September 2018)
INQ/105	RDL	S106 agreement with DBC-final wording
INQ/106	RDL	Technical note on HGV parking arrangements for intermodal terminal, 19 August 2016
INQ/107	DR	Closing statement
INQ/108	BNEF	Closing statement
INQ/109	LBB	Closing statement
INQ/110	MOL	Closing statement
INQ/111	DBC	Closing statement
INQ/112	RDL	S106 agreement with LBB-final wording
INQ/113	SGCF	Closing statement
INQ/114	RDL	Closing statement
INQ/115	LBB	Formally completed agreement pursuant to section 106 (inc LBB).
INQ/116	RDL	Formally completed agreement pursuant to section 106 (inc DBC/KCC).

INSPECTOR'S INQUIRY NOTES

Document title	Dated	Description
Inquiry Note 1	9 July 2018	Adjournment actions.
Inquiry Note 2	9 July 2018	Mr Findlay's evidence-matters arising from cross-examination and Inspector's questions.

APPENDIX 3-ABBREVIATIONS

AGT	A G Thames Holdings Limited
ANPR	Automatic number plate recognition
AOD	Above ordnance datum
AQMA	Air Quality Management Area
ASA	Alternative sites assessment
ASAM	Alternative Site Access Roundabout Junction Model
BAP	Biodiversity Action Plan
BCS	Bexley Core Strategy, February 2012
BGS	Bexley Growth Strategy (CD/3.15)
BIFT	Birmingham Intermodal Freight Terminal
BNEF	Bexley Natural Environment Forum
BROA	Bexley Riverside Opportunity Area
BUDP	Bexley Unitary Development Plan, 2007
BxBI	Site of Borough Importance for Nature Conservation-Grade I
BxBII	Site of Borough Importance for Nature Conservation-Grade II
CB	Councillor S Borella
CCJ	Crayford Creek Junction
CE	Mrs C Egan
CIL Regs	Community Infrastructure Levy Regulations 2010
CK	Councillor J Kite
CRB	Craymill Rail Bridge
DBC	Dartford Borough Council
DCCRT	Dartford and Crayford Creek Restoration Trust
DBC s106	INQ/116
DCS	Dartford Core Strategy, 2011
DDPP	Dartford Development Policies Plan, July 2017
DG	Dr R Gray
DoS	Degree of saturation
DR	Mr Dave Reynolds
EA	Environment Agency
ELHAM	East London Highway Assignment Model
Emerging London Plan	The London Plan-Spatial Development Strategy for Greater London-Draft for Public Consultation, December 2017.
ES	Environmental Statement (November 2015) (CD/1.27)
EU	European Union

FMP	Freight Management Plan
the Framework	The revised National Planning Policy Framework, 2018
FTA	Freight Transport Association
GBR	GB Railfreight
GRIP	Governance of Railway Investment Projects
HAMG	TfL's <i>Sub-regional Highway Assignment Model Guidance on Model Use (INQ/51)</i>
(4) HAs	4 Highway Authorities: Highways England, Transport for London, Kent County Council and the London Borough of Bexley.
HE	Highways England
HGV	Heavy goods vehicle
IRR	Intermodality Rail Report, November 2015 (CD/1.25)
IWA	Inland Waterways Association
KCC	Kent County Council
LA21	LA21-Traffic/Transport Forum
LBB	London Borough of Bexley
LBB s106	INQ/115
LLDP	London loop long distance path
LP	The London Plan-The Spatial Development Strategy for London consolidated with alterations since 2011, March 2016.
LPe	The London Plan-The Spatial Development Strategy for Greater London-Draft for Consultation, December 2017
LTC	Lower Thames Crossing
LTP4	KCC Local Transport Plan 4: Delivering Growth without Gridlock (2016-2031)
LWT	London Wildlife Trust
MMP	Marshes Management Plan
MOL	Mayor of London
MTL	Maritime Transport Limited
MTS	The Mayor's Transport Strategy, 2018
NE	Natural England
NPSNN	National Policy Statement for National Networks, 2014
NR	Network Rail
NSIP	Nationally significant infrastructure project
ORCA	Oak Road Conservation Area
PCU	Passenger car unit
PLA	Port of London Authority
RDL	Roxhill Developments Limited
RFC	Ratio of Flow to Capacity

RFG	The Rail Freight Group
RSPB	The Royal Society for the Protection of Birds
RXHAM	River Crossing Highway Assignment Model
SBI	Site of Borough Importance for nature conservation
SES	Supplementary Environmental Statement (April 2016) (CD/1.30)
SET	Southeastern Trains
SGCF	Slade Green Community Forum
SINC	Site of Importance for Nature Conservation
SMINC	Site of Metropolitan Importance (SMI) for Nature Conservation
SRFI	Strategic Rail Freight Interchange
SRN	Strategic road network
TA	Transport Assessment
TfL	Transport for London
TMP	Transport Management Plan
XX	Cross-examination
XC	Evidence in chief
VWML	Viridor Waste Management Limited
2007 Permission	CD/5.3
2011 EIA Regulations	The Town and Country Planning (Environmental Impact Assessment) Regulations 2011
2017 EIA Regulations	The Town and Country Planning (Environmental Impact Assessment) Regulations 2017
2031BCDC	2031 base case plus development case (ARCADY modelling)

APPENDIX 4-CONDITIONS

[The reasons for these conditions, where not explained in the text for the report, can be found in INQ/94.]

DEFINITIONS

In these conditions, the following expressions shall have the following meaning:

Local planning authority: As between the London Borough of Bexley and Dartford Borough Council means the Local Planning Authority within whose administrative area the part of the site to which the condition relates is located and where a condition relates to the whole development or any part of the development which straddles the boundary between the two local authorities, then the expression shall be taken to mean both authorities.

Environmental Statement: The Environmental Statement (November 2015) and Supplementary Environmental Statement (April 2016).

CONDITIONS

1. RESERVED MATTERS

- 1.1. Approval of the details of the proposed appearance, landscaping, layout and scale of each phase of the development (hereinafter called the reserved matters) shall be obtained in writing from the Local Planning Authority before any development is commenced for that phase.

2. APPROVAL OF RESERVED MATTERS

- 2.1. Application for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this outline permission.

3. COMMENCEMENT OF DEVELOPMENT

- 3.1. The development shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

4. COMPLIANCE WITH APPROVED PLANS

- 4.1. The development shall be carried out in accordance with the principles illustrated on the Parameters Plan (dwg. no. 30777-PL-101 Rev I) and the Development Phasing Plan (dwg. no. 30777-PL-105 Rev A) and in strict accordance with the other approved plans, the subsequently approved reserved matters and the other matters approved under the conditions set out below. The other approved plans comprise the following:
 - a) Location Plan (Ref: 30777-PL-100 Rev E);
 - b) Existing Block Plan (Ref: 30777-PL-104 Rev B);
 - c) Site Access Road Plan and Section (Sheet 1 of 2) (Ref: 2039-RP-001 Rev D);

- d) Site Access Road Plan and Section (Sheet 2 of 2) (Ref: 2039-RP-002 Rev C);
- e) Viridor Access Road Plan and Section (Ref: 2039-RP-003 Rev D);
- f) Road 3 Plan and Section (Ref: 2039-RP-004 Rev B);
- g) Road 4 Plan and Section (Sheet 1 of 2) (Ref: 2039-RP-005 Rev B);
- h) Road 4 Plan and Section (Sheet 2 of 2) (Ref: 2039-RP-006 Rev B);
- i) Road 5 Plan and Section (Ref: 2039-RP-007 Rev B);
- j) Site Access Off-Site Roundabout Improvements (Ref: 2039-RP-008 Rev B); and,
- k) Howbury Viaduct General Arrangement (Ref: 2039-STR-001 Rev B).

5. DETAILS OF PHASING

- 5.1. Notwithstanding the Phasing Plan submitted with the applications, prior to the submission of any of the reserved matters detailed in condition 1, a Phasing Plan showing the phasing of development shall be submitted to and approved in writing by the Local Planning Authority. Such details to include the rationale and functioning of the phases. The development shall be implemented in accordance with the approved Phasing Plan.

6. DELIVERING THE 'RAIL WORKS'

- 6.1. The development shall not commence until the Intermodal Area (Zone C) rail infrastructure (as shown on the Parameters Plan: dwg no. 30777-PL-101 Rev I) and its operational connection to the North Kent main line rail network (the Rail Works) have been progressed to the end of GRIP Stage 5-Detailed Design (or equivalent) and the developer has informed the Local Planning Authority that it has satisfied the requirements to reach the end of GRIP Stage 5.
- 6.2. No part of the development shall be occupied or brought into use until the Rail Works have been progressed to the end of GRIP Stage 7-Scheme Handback (or equivalent), are ready to be brought into use and the developer has informed the local planning authority that it has satisfied the requirements to reach the end of GRIP Stage 7.
- 6.3. The Rail Works and any other railway line or siding provided within the site further to this permission shall not be removed, realigned or altered in any way and shall be maintained so that they remain available for use by rail traffic at all times.

7. SAFEGUARDING LAND FOR CROSSRAIL WORKS

- 7.1. The development shall not commence until a Method Statement for the treatment of the land on the boundary with the area hatched in grey and annotated 'Network Rail/Crossrail' on the approved Parameters Plan (dwg. no. 30777-PL-101 Rev I) has been submitted to and approved in writing by the Local Planning Authority. The Statement to include:

- 7.1.1. Arrangements to ensure the planned future construction of the extension of the Crossrail/Elizabeth Line extension eastward from Abbey Wood is not impeded by the implementation of this planning permission; and,
- 7.1.2. Details of boundary and perimeter treatments for the land on the boundary with the area hatched in grey and annotated 'Network Rail/Crossrail' on the approved Parameters Plan (dwg. no. 30777-PL-101 Rev I), including security measures, retaining structures and landscaping.
- 7.2. The development shall be carried out in accordance with the approved Method Statement unless otherwise agreed in writing by the Local Planning Authority.
- 7.3. Development shall not be carried out in the area hatched in grey and annotated 'Network Rail/Crossrail' on the approved Parameters Plan (dwg. no. 30777-PL-101 Rev I).

8. CONSTRUCTION MANAGEMENT PLAN

- 8.1. The development shall not commence until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan to include:
 - 8.1.1. Measures to optimise the use of river transport during construction;
 - 8.1.2. Details of vehicular and pedestrian access to the site for construction purposes;
 - 8.1.3. A scheme for the routeing, management and signage of construction traffic;
 - 8.1.4. Days/hours of work and deliveries of construction materials, to be consistent with permitted hours imposed by the borough under section 60 of the *Control of Pollution Act 1974*, which require all noisy works (i.e. those audible beyond the site boundary) to be undertaken between 08:00 and 18:00 hours Monday to Friday and 08:00 to 13:00 hours on Saturdays with no noisy works permitted on Sundays or Public Holidays;
 - 8.1.5. Demolition and construction methods and techniques, including the avoidance of burning on site;
 - 8.1.6. Means of minimising noise and vibration (including any piling), and compliance with BS 5228;
 - 8.1.7. Means of minimising dust and similar emissions, in accordance with Air Quality: Best Practice Guidance - The Control of Dust and Emissions During Construction and Demolition Supplementary Planning Guidance (published by the Greater London Authority, July 2014);
 - 8.1.8. Details of how the requirements of EU Directive 97/68/EC for both NO_x and PM II for all Non-Road Mobile Machinery (including locomotives if used) will be met;
 - 8.1.9. Details of construction site lighting;
 - 8.1.10. Details of all temporary buildings and compound areas including arrangements for their removal;

- 8.1.11. Details of the areas to be used for parking, loading and unloading of construction vehicles and for parking employees' vehicles; and,
- 8.1.12. Contact arrangements for the public, including 'out of hours' telephone numbers for named contacts.
- 8.2. The development shall be constructed in accordance with the approved Construction Management Plan unless otherwise agreed in writing by the Local Planning Authority.

9. BIO-DIVERSITY MANAGEMENT PLAN

- 9.1. The development shall not commence until a Biodiversity Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Biodiversity Management Plan to include:
 - 9.1.1. A scheme for the mitigation of any loss of biodiversity, the provision of habitat enhancements and the subsequent management of the biodiversity interests within the site;
 - 9.1.2. A plan, informed by an ecologist, showing the number, position and type of bat and bird boxes that are to be incorporated within the fabric of the bridge and attached to buildings and trees, as well as other measures to enhance the biodiversity performance of the buildings and other parts of the site as detailed in the Environmental Statement;
 - 9.1.3. The use of Green Walls for the buildings, including planting and long-term management;
 - 9.1.4. In addition to the proposed SuDS ponds, wet ditch habitat in the area adjacent to the access road; and,
 - 9.1.5. Water bodies should be designed to retain water permanently throughout the year.
- 9.2. The Biodiversity Management Plan shall be designed in conjunction with the Landscape Strategy required pursuant to condition 26.1 in order to ensure that they are not in conflict.
- 9.3. The development and management of the site thereafter shall be carried out in accordance with the approved Biodiversity Management Plan and any subsequent variations shall be agreed in writing by the Local Planning Authority pursuant to condition 9.4.
- 9.4. The Biodiversity Management Plan shall remain in place for the lifetime of the development. The ongoing management elements shall be reviewed every 5 years, with reference to the specific targets agreed in the first Biodiversity Management Plan, with each draft to be submitted to the Local Planning Authority for approval prior to the completion of a 5-year cycle from the implementation of the previous iteration of the Biodiversity Management Plan.

10. POLLUTION PROTECTION

- 10.1. Prior to the commencement of each phase of the development a Remediation Strategy for the protection of human health and groundwater of that phase

shall be submitted to and approved in writing by the Local Planning Authority.
The Strategy to include:

- 10.1.1. An updated risk assessment, including relevant soil, gas and groundwater sampling data;
- 10.1.2. Details of the remediation strategy for identifying and dealing with existing contamination on the site;
- 10.1.3. Details of how piling and other penetrative foundation designs will be carried out in a way that poses no risk to subsurface water and sewerage infrastructure;
- 10.1.4. Details of how surface water drainage will be protected from infiltration into the ground where there is a risk to controlled waters; and,
- 10.1.5. A Verification Plan setting out how the development and subsequent use of the site will be carried out in a way that ensures human health and the underlying groundwater are protected from the risk of pollution.
- 10.2. The development shall be constructed in accordance with the approved Strategy and any long-term monitoring and maintenance plan shall be implemented as approved.
- 10.3. If, during the construction of the development, contamination not previously identified is found to be present at the site (including munitions), then no further development (unless otherwise agreed in writing by the Local Planning Authority) shall be carried out in that phase until the developer has submitted to and obtained the written approval from the Local Planning Authority of a Remediation Strategy detailing how this unsuspected contamination shall be dealt with. The Strategy shall be implemented as approved.
- 10.4. Prior to occupation of each phase of the development, a Verification Report demonstrating completion of the works set out in the approved Remediation Strategy and the effectiveness of the remediation for that phase shall be submitted to and approved in writing by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include a plan (a 'long-term monitoring and maintenance plan') for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, if appropriate, and for the reporting of this to the Local Planning Authority.

11. TREES AND NESTING SPECIES PROTECTION

- 11.1. Prior to the commencement of each phase of the development details of a demolition, tree felling and construction timetable for that phase shall be submitted to and approved in writing by the Local Planning Authority. This timetable shall have the principal purpose of ensuring that no work takes place during a bird nesting season, unless an ecologist has provided confirmation that birds are not breeding on site at that time. This timetable will take into account the findings of all ecological survey work undertaken, both before and after approval of the outline permission.

- 11.2. Once the details are approved, the construction work on site, through all its phases shall be strictly in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

12. ARCHAEOLOGICAL PROTECTION

- 12.1. Prior to the commencement of each phase of the development (other than authorised demolition to existing ground level) a programme of archaeological evaluation site work in accordance with a Written Scheme of Investigation (WSI) for that phase shall be submitted to and approved in writing by the Local Planning Authority. The WSI shall be prepared and implemented by a suitably qualified archaeological practice in accordance with Historic England Archaeology Guidelines. The Scheme to include:
- 12.1.1. A programme of geo/archaeological investigation;
- 12.1.2. Dependent upon the results of the preceding paragraph, no development (other than authorised demolition to existing ground level) shall take place until a programme of archaeological mitigation site work in accordance with a WSI has been submitted to and approved in writing by the Local Planning Authority;
- 12.1.3. A report on the evaluation of the results of the preceding paragraph shall be submitted to and approved by the Local Planning Authority in writing; and,
- 12.1.4. The programme of archaeological mitigation recommended in the preceding paragraph shall be carried out in accordance with a WSI.
- 12.2. The site investigation and post-investigation assessment shall be completed within 12 months of the completion the development (as defined by the issuing of a Completion Certificate issued under the Building Regulations) in accordance with the programme set out in the WSI and the provision for analysis, publication and dissemination of the archaeological results and archive deposition has been secured.

13. HERITAGE PROTECTION

- 13.1. No demolition of Howbury Grange shall take place until a programme of historic building evaluation in accordance with a Written Scheme of Investigation (WSI) has been submitted to and approved in writing by the Local Planning Authority. The Scheme to include:
- 13.1.1. The nomination of a competent person or organisation to undertake the investigation;
- 13.1.2. The programme and methodology of investigation and recording, which shall include the statement of significance and research objectives; and,
- 13.1.3. The programme for post-investigation assessment and subsequent analysis, publication, dissemination and deposition of resulting material.
- 13.2. The demolition of Howbury Grange shall only take place in accordance with the agreed WSI and all parts of the WSI shall be fulfilled.

14. DETAILS OF LEVELS, BUILDING DATUM AND HEIGHTS

- 14.1. Prior to the commencement of each phase of the development details of the finished site levels and base levels and heights of all buildings and other structures in that phase shall be submitted to and approved in writing by the Local Planning Authority.
- 14.2. The development shall be implemented in accordance with the approved details.

15. SUSTAINABILITY PERFORMANCE OF BUILDINGS

- 15.1. Prior to the commencement of each phase of the development details of the relevant measures set out in the Sustainability Statement (November 2015) submitted with the application to deliver energy demand minimisation for that phase shall be submitted to and approved in writing by the Local Planning Authority. The measures to include:
 - 15.1.1. A pre-construction BREEAM Assessment;
 - 15.1.2. Following completion of the development, a post-construction BREEAM Review Certificate showing that at least 'Very Good' has been achieved; and,
 - 15.1.3. An energy statement demonstrating how a 35% reduction in total CO₂ emissions from the development has been achieved. This should follow the Mayor's Guidance for Developers in Preparing Energy Assessments. The energy assessment should include: calculation of the energy demand and CO₂ emissions that are covered or not covered by Building Regulations at each stage of the energy hierarchy; proposals to reduce CO₂ through energy efficient design; proposals to further reduce CO₂ emissions through decentralised energy where feasible; and proposals to further reduce CO₂ emissions through the use of on-site renewable energy technologies.
- 15.2. The development shall be implemented in accordance with the approved measures. The renewable energy technologies and other features installed must remain for as long as the development is in use.

16. SECURE BY DESIGN

- 16.1. Prior to the commencement of each phase of development details of how that phase of the development will be designed to minimise the risk of crime and meet the specific security needs of the development in accordance with the principles and objectives of Secured by Design shall be submitted to and approved in writing by the Local Planning Authority.
- 16.2. The approved details shall be implemented with respect to each building prior to its occupation or bringing into use.

17. AREAS AROUND BUILDINGS: DETAILS OF INTERNAL ROADS, CYCLEWAYS, FOOTPATHS, PARKING ETC

- 17.1. Prior to the commencement of each phase of the development details of all vehicle and cycle parking areas and access roads and footpaths serving the buildings in that phase shall be submitted to and approved in writing by the Local Planning Authority. The details to include:

- 17.1.1. Car parking areas;
- 17.1.2. Electric Vehicle Charging Points;
- 17.1.3. Provision for the parking of cycles;
- 17.1.4. Cyclist amenity provisions;
- 17.1.5. HGV parking areas;
- 17.1.6. Servicing and manoeuvring spaces; and,
- 17.1.7. Roads, footpaths and cycleways, including details of sight lines.
- 17.2. Such details to be in accordance with the current Transport Management Plan. The details shall include a programme of implementation as well as management protocols and a maintenance specification.
- 17.3. The development shall be implemented in accordance with the approved details prior to the occupation of any building to which the approved details serve, and must remain for as long as the development is in use.

18. AREAS AROUND BUILDINGS: DETAILS OF EXTERNAL STORAGE

- 18.1. Prior to the commencement of each phase of development details of any external storage areas (including the maximum height of any such storage, which shall not exceed 12m above the ground level) in that phase shall be submitted to and approved in writing by the Local Planning Authority. No materials shall be stored outside the buildings except in the approved areas.

19. REFUSE AND RECYCLING STORAGE PROVISION

- 19.1. Prior to the commencement of each phase of development a scheme detailing the location and appearance of the refuse storage areas and recycling facilities for that phase shall be submitted to and approved in writing by the Local Planning Authority.
- 19.2. Each phase of development shall be implemented in accordance with the approved scheme, unless otherwise agreed in writing by the local planning authority, and must be maintained as approved for as long as the development is in use.

20. DETAILS OF DRIVER WELFARE FACILITIES

- 20.1. Prior to commencing development of the Intermodal Area (Zone C) rail infrastructure as shown on the Parameters Plan Ref 30777-PL-101 Rev I details of the welfare facilities available at the freight terminal for freight drivers visiting the site, including provision for freight parking/waiting areas, shall be submitted to and approved in writing by the Local Planning Authority. Such approved facilities shall be available for use by freight drivers before the use of the Intermodal Area.

21. ACCESS DETAILS

- 21.1. The development of the site's accesses shall not commence until technical details of the access points to the site and associated off-site highway works

have been submitted to and approved in writing by the Local Planning Authority. The Details to include:

- 21.1.1. Highway works on Moat Lane;
- 21.1.2. Bexley Byway 103/Footpath 25;
- 21.1.3. Diversion of KCC footpath DB85 around the access bridge piers;
- 21.1.4. The access to the site from the A206 Bob Dunn Way/Thames Road/ Burnham Road junction;
- 21.1.5. The northern access from Moat Lane;
- 21.1.6. The western access from Bexley Byway 103;
- 21.1.7. Details of measures to be introduced to ensure that only authorised vehicular traffic, cyclists and pedestrians can use the northern access from Moat Lane or the western access from Bexley Byway 103 as identified on the Parameters Plan (dwg no 30777-PL-101 Rev I). The said details shall specify the type of vehicles to be authorised and the management arrangements for the operation of those measures so that vehicles that are not authorised to use these accesses are restricted from doing so; and,
- 21.1.8. Details of all vehicular and pedestrian sight lines and visibility splays, including the height of zone within which there shall be no obstruction to visibility.
- 21.2. No part of the development shall be occupied or brought into use until the works have been completed in accordance with the approved details and they must be maintained as approved, including any management arrangements, for as long as the development is in use.

22. PROVISION OF NEW BRIDGE

- 22.1. The development of the access bridge over the River Cray shall not commence until details of the bridge have been submitted to and approved in writing by the Local Planning Authority. The details to include:
 - 22.1.1. Details of the construction method statement;
 - 22.1.2. Details of the provision to be made for access for the Environment Agency to and along both banks of the River Cray;
 - 22.1.3. Details of the works to the banks of the River Cray;
 - 22.1.4. Details of the Public Right of Way arrangements;
 - 22.1.5. If required, details of fenders and bridge protection;
 - 22.1.6. Details of guard rails and life-saving devices (such as grab chains, access ladders and life buoys);
 - 22.1.7. The materials and finishes to be used for the external surfaces of the bridge; and,
 - 22.1.8. Details of management arrangements including future maintenance specification.

- 22.2. No part of the development shall be occupied or brought into use until the bridge has been implemented in accordance with the approved details. The bridge must be managed and maintained, as approved, for as long as the development is in use.

23. EXTERNAL APPEARANCE OF BUILDINGS

- 23.1. The construction of any building or other structure above ground level shall not commence until a schedule of materials and finishes to be used for the external walls and roofs of that building or other structure has been submitted to and approved in writing by the Local Planning Authority.
- 23.2. The development shall be implemented in accordance with the approved schedule and must be maintained as approved for as long as the development is in use.

24. MITIGATE IMPACT OF NOISE OR VIBRATION FROM BUILDINGS

- 24.1. The construction of any building above ground level shall not commence until a detailed report has been prepared, by a suitably qualified acoustician, setting out how the building is expected to perform acoustically and has been submitted to and approved in writing by the Local Planning Authority. The cumulative noise rating levels from all fixed plant/machinery shall be at least 5dB below the representative background level when measured at any nearby residential façade, expressed as an L_{Aeq} and averaged over a fifteen minute period (night) or one hour (day). Measurements shall be undertaken in accordance with the methodology specified in 'BS4142: 2014: Methods for rating industrial and commercial sound'.
- 24.2. No part of the development shall be occupied or brought into use until the plant and acoustic attenuation measures have been installed in accordance with the approved details. They must be retained and maintained thereafter in accordance with the manufacturer's recommendations.

25. MITIGATE IMPACT OF PLANT etc

- 25.1. Prior to the installation of any fixed plant/machinery within or on a building a detailed report, prepared by a suitably qualified acoustician setting out how the plant/machinery to be installed are expected to perform acoustically, shall be submitted to and approved in writing by the local planning authority. The cumulative noise rating levels from all fixed plant shall be at least 5dB below the representative background level when measured at any nearby residential façade, expressed as an L_{Aeq} and averaged over a fifteen-minute period (night) or one hour (day). Measurements shall be undertaken in accordance with the methodology specified in 'BS4142: 2014: Methods for rating industrial and commercial sound'.
- 25.2. No part of the fixed plant/machinery shall be operated until the acoustic attenuation measures have been installed in accordance with the approved details. They must be retained and maintained thereafter in accordance with the manufacturer's recommendations.

26. DETAILS OF LANDSCAPING & BOUNDARY TREATMENT

- 26.1. The construction of any building above ground level shall not commence until a Landscaping Scheme for the boundaries of the site has been submitted to and approved in writing by the Local Planning Authority. The boundary scheme shall be substantially in accordance with the Landscape Strategy set out in the Environmental Statement and include:
 - 26.1.1. Details of all boundary ground modelling, re-profiling, bunding and mounding, including a comprehensive ground level survey with information relating to the existing and proposed ground levels above Ordnance Datum and cross-sections at a scale of not less than 1:200 at Moat Lane/Oak Road and 1:500 elsewhere at the boundary;
 - 26.1.2. All site boundary treatment, retaining walls, gabions, footpaths and security fencing;
 - 26.1.3. Acoustic fencing as shown on the Parameters Plan (dwg no 30777-PL-101 Rev I); and,
 - 26.1.4. A programme of implementation and a management plan.
- 26.2. Prior to the commencement of each phase of development, full details of hard and soft landscaping works for the building plots within that phase of development shall be submitted to and approved in writing by the local planning authority. These details shall comprise proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; and soft landscaping works, including planting plans, specifications, sizes, numbers and densities.
- 26.3. Landscaping shall comprise predominantly native planting designed to enhance biodiversity value, be carried out as approved and be maintained in accordance with the approved management plan for a minimum of ten years after planting. Any trees, shrubs, or other plants which die, are removed or become seriously damaged or diseased during this period shall be replaced with others of a similar type and size unless otherwise agreed by the Local Planning Authority.

27. LOW EMISSIONS STRATEGY

- 27.1. No building shall be occupied or brought into use until a Low Emissions Strategy has been submitted to and approved in writing by the Local Planning Authority. The Strategy to include:
 - 27.1.1. An assessment of the emission specification for all road vehicles and rail locomotives forming part of the operation and accessing the site, which for road vehicles will include identification of measures to secure the use of vehicles that comply with Euro VI (6) standards and the Mayor of London's emerging London wide Ultra Low Emission Zone;
 - 27.1.2. An assessment of procurement policy (including planned vehicle replacement and suppliers of other goods and services);
 - 27.1.3. Measures such as eco-driving (driver training and technological aids to eco-driving), and policies regarding vehicle idling;

- 27.1.4. An assessment of low emission vehicle technology and infrastructure (e.g. electric vehicle dedicated parking and charging, gas refuelling station etc.); and,
- 27.1.5. All energy plant/space heating provision shall achieve compliance with the emissions standards specified in Appendix 7 of the GLA: Sustainable Design and Construction Supplementary Planning Guidance, April 2014.
- 27.2. The Strategy shall take into account future changing standards and available technologies and be updated accordingly in agreement with the Local Planning Authority.
- 27.3. At the end of each calendar year an implementation plan shall be submitted for approval in writing by the Local Planning Authority, which shall be fully implemented in accordance with the details and measures so approved, unless otherwise agreed in writing by the Local Planning Authority.

28. DETAILS OF EXTERNAL LIGHTING

- 28.1. No building shall be occupied or brought into use until details of all external lighting for that building have been submitted to and approved in writing by the Local Planning Authority. These details shall demonstrate compliance with the Institute of Lighting Professionals (ILP) 'Guidance Notes for the Reduction of Obtrusive Light.' This scheme of lighting shall include details of how it has been designed to minimise impact on navigation and ecological interests including the river. The lighting scheme must be assessed by an ecologist and approved in writing as part of the proposed lighting scheme.
- 28.2. The development shall be implemented in accordance with the approved details and must be maintained as approved for as long as the development is in use.

29. RESIDUAL NOISE IMPACT

- 29.1. Within 12 months of each phase set out in the approved Phasing Plan referred to in condition no. 5 being occupied or brought into use a package of mitigation measures to deal with any residual noise impact from the operation of the facility over and above that set out in the Environmental Statement shall be submitted to and approved in writing by the Local Planning Authority. The package to include, as necessary:
 - 29.1.1. Additional acoustic barrier(s) to protect specific amenity/garden areas for affected properties in Moat Lane;
 - 29.1.2. Affected properties to be offered uprated acoustic glazing and ventilation treatments; and,
 - 29.1.3. A timetable for implementation.
- 29.2. The package(s) shall be implemented in accordance with the approved timetable.

30. RESTRICTING USE AS A SRFI

- 30.1. The buildings hereby permitted shall be used solely for Class B8 (storage or distribution) purposes (including uses ancillary thereto) as part of a Strategic

Rail Freight Interchange and for no other purpose, including other uses within the Classes in B to the *Town and Country Planning (Use Classes) Order 1987* (as amended), or in any provision revoking and re-enacting that Order with or without modification.

31. RESTRICT SCALE OF DEVELOPMENT

- 31.1. The total gross external area of all buildings to be erected on the site, including ancillary offices and other activities, shall not exceed 184,500 square metres, notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or replacing the same), save for the addition of mezzanine floors within buildings that are used for B8 storage purposes, but not for any ancillary or incidental uses in such buildings.

32. GANTRY CRANES

- 32.1. Details of any gantry cranes to be used on the site shall be submitted to and approved in writing by the Local Planning Authority prior to their installation and first use. The details shall include:
- 32.1.1. Details of their external appearance and any associated surfaces and guide rails; and,
- 32.1.2. A detailed report, prepared by a suitably qualified acoustician, setting out the acoustic characteristics expected to be associated with the operation of gantry cranes. The cumulative noise rating levels shall be at least 5dB below the representative background level when measured at any nearby residential façade, expressed as an L_{Aeq} and averaged over a 15 minute period (night) or 1 hour (day). Measurements shall be undertaken in accordance with the methodology specified in BS4142:2014-Methods for rating industrial and commercial sound.
- 32.2. No gantry cranes shall be installed or used on the site other than as previously agreed in writing by the Local Planning Authority.

33. Travel Plan⁶⁶²

No individual warehouse and/or Intermodal Terminal shall be occupied or brought into use until the Occupier Travel Plan for that warehouse or the Intermodal Terminal (as applicable) has been submitted to and approved in writing by the Local Planning Authority. The relevant premises shall thereafter comply with the requirements of the approved Occupier Travel Plan. The Occupier Travel Plan shall be updated to reflect any change of occupier, re-submitted and approved in writing by the Local Planning Authority prior to each change of occupier.

⁶⁶² INQ/94 page 22.



Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

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.