



Department for  
Communities and  
Local Government

Our Ref: APP/B1930/A/09/2109433

Your Ref: 5/09/0708

Erica Mortimer  
CgMS Ltd  
Morley House  
26 Holborn Viaduct  
London  
ED1A 2AT

14 July 2014

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY HELIOSLOUGH LTD  
LAND IN AND AROUND FORMER AERODROME, NORTH ORBITAL ROAD, UPPER  
COLNE VALLEY, HERTFORDSHIRE  
APPLICATION: REF 5/09/0708**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, A Mead BSc (Hons) MRTPI MIQ, who held a public local inquiry between 24 November and 18 December 2009 into your client's appeal against a decision by St Albans City & District Council (the Council) to refuse outline planning permission for the construction of a Strategic Rail Freight Interchange (SRFI) comprising an intermodal terminal and rail and road served distribution units (331,665m<sup>2</sup> in Use Class B8 including ancillary B1/B2 floorspace) within Area 1, with associated road, rail and other infrastructure facilities and works within Areas 1 and 2, (including earth mounds and a Park Street/Frogmore relief road) in a landscaped setting, and further landscaping and other works within Areas 3 to 8 inclusive to provide publicly accessible open land and community forest, at land in and around Former Aerodrome, North Orbital Road, Upper Colne Valley, Hertfordshire in accordance with application Ref 5/09/0708 dated 9 April 2009.

2. On 29 July 2009, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990. This was because the appeal concerns a proposal for development of major importance having more than local significance and because it is for significant development within the Green Belt.

3. The Secretary of State issued his decision in respect of the above appeal in his letter dated 7 July 2010. That decision letter was the subject of an application to the High Court and was subsequently quashed by order of the Court dated 4 July 2011. The appeal therefore falls to be redetermined by the Secretary of State.

#### **Inspector's recommendation and summary of the decision**

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

#### **Matters arising since 7 July 2010**

5. Following the quashing of his decision letter of 7 July 2010, the Secretary of State issued a letter, dated 15 September 2011, under Rule 19 of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, to all interested parties, setting out a written statement of the matters with respect to which further representations were invited for the purposes of his re-determination of the appeal. These matters were:

- a. The views expressed by the Secretary of State in paragraph 33 of the quashed decision letter with regard to the Inspector's proposed Condition 33 - alternatives 1- 3, and the weight to be given to the planning obligation in the form submitted by the appellant and made by unilateral undertaking dated 16 January 2008.
- b. Whether or not Hertfordshire County Council is prepared to join as a party to the undertaking in the light of the Secretary of State's comments made in paragraphs 32 and 33 of the quashed decision letter; or if the parties to the undertaking wish him to consider any other amendments to the undertaking which might overcome his concerns about its enforceability.
- c. Any new matters or change in circumstances which the parties consider to be material to the Secretary of State's further consideration of this appeal.

6. On 19 October 2011, the Secretary of State circulated the responses he had received to his letter of 15 September 2011. On 29 November 2011 he circulated the responses he had received to his letter of 19 October 2011, and invited comments on the Department for Transport's updated policy guidance note on Strategic Rail Freight Interchanges, the Department for Transport's review document on logistics growth, and a joint Written Ministerial Statement on Strategic Rail Freight Interchanges issued by the Secretary of State for Transport and the Secretary of State for Communities and Local Government.

7. On 1 February 2012, the Secretary of State circulated the responses he had received to his letter of 29 November 2011 and stated that he was of the view that he was in a position to re-determine the appeal on the basis of all the evidence and representations before him.

8. Following the publication of the National Planning Policy Framework ("the Framework"), which replaced the national planning policy documents set out in its Annex 3, the Secretary of State wrote to parties on 29 March 2012 inviting comments on the relevance of the Framework to this appeal. On 18 April he circulated the responses he had received to his letter of 29 March. The Secretary of State has given careful

consideration to all of the representations received and he considers that, for the most part, the issues raised in relation to the Framework cover those already rehearsed at the inquiry. In considering these further representations the Secretary of State wishes to make clear that he has not revisited issues which are carried forward in the Framework, and which have therefore already been addressed in the IR, unless the approach in the Framework leads him to give different weight. Notwithstanding the replacement of the majority of former national planning policy documents by the Framework, the Secretary of State considers that the main issues identified by the Inspector remain essentially the same.

9. On 19 September 2012, the Secretary of State wrote to parties inviting comments on re-opening the inquiry into the Radlett appeal and conjoining it with the planned inquiry into the proposed SRFI at Colnbrook, Slough (Appeal Reference: APP/J0350/A/12/2171967). On 12 October 2012 the Secretary of State wrote to parties and circulated copies of the responses he had received to his letter of 19 September 2012. On 14 December 2012 the Secretary of State wrote to parties stating that he had concluded that it was unnecessary for him to re-open the inquiry into the Radlett appeal and conjoin it with the planned inquiry into the Colnbrook appeal and that he was satisfied that he could determine the Radlett proposal on the basis of the evidence before him.

10. The Secretary of State wrote to you on 20 December 2012 indicating that he was minded to allow the appeal subject to the provision of a suitable planning obligation which binds all of those with an interest in the appeal site. You submitted a new planning obligation (dated 19 December 2013) on 20 December 2013 and, on 19 February 2014, the Secretary of State wrote to parties inviting comments on that obligation. On 14 March 2014, the Secretary of State circulated the responses he had received and invited comments on (i) those responses, (ii) the Planning Practice Guidance (the Guidance) published on 6 March 2014 and the cancellation of previous planning practice guidance documents, and (iii) any material changes of circumstances that have occurred since 20 December 2012. On 1 April 2014, the Secretary of State circulated the responses he had received and invited final comments on those representations.

11. Responses received following the letters referred to above and the other representations received following the close of the inquiry are listed at Annex A below. The Secretary of State has given all these representations very careful consideration in his determination of this appeal. He is satisfied that those representations which have not been circulated to interested parties do not raise any matters that would affect his decision or require him to refer back to parties on their contents for further representations prior to reaching his decision. Copies of the representations referred to are not attached to this letter. However, copies will be made available to interested parties on written request to either of the addresses at the foot of the first page of this letter.

### **Procedural Matters**

12. In reaching his decision, the Secretary of State has taken into account the Environmental Statement (ES) which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 and the Inspector's comments at IR13.7. The Secretary of State is content that the Environmental Statement complies with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

13. At the Inquiry, an application for award of costs was made by your client against St Albans City & District Council. This application was decided by the Secretary of State in his costs decision letter of 7 July 2010.

### **Policy considerations**

14. In determining the appeal, 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.

15. In this case, the relevant parts of the development plan comprise the saved policies of the City and District of St Albans Local Plan Review (LP), adopted 1994. The Secretary of State considers that the development plan policies most relevant to this case are those referred to by the Inspector at IR13.27. He is satisfied that these policies are generally consistent with the Framework.

16. Other material considerations which the Secretary of State has taken into account include: the Framework; the Guidance; the Community Infrastructure Levy (CIL) Regulations; The London Plan 2011 (as amended October 2013) including Policies 6.14 and 6.15 and the draft further alterations to the London Plan (January 2014).

17. The Secretary of State has also had regard to the Strategic Rail Authority's (SRA) *Strategic Rail Freight Interchange Policy* (published in 2004) as a material consideration. He has taken account of the Inspector's comments on the document (IR13.30 – 32) and he agrees with the Inspector that, although the SRA has ceased and some of its former responsibilities have transferred to Network Rail, the document is still a source of advice and guidance (IR13.30). The Secretary of State has also taken account of the Department for Transport's Strategic Rail Freight Interchange Policy Guidance and its Logistics Growth Review Document (both published on 29 November 2011), and the joint Written Ministerial Statement on Strategic Rail Freight Interchanges issued by the Secretary of State for Transport and the Secretary of State for Communities and Local Government on 29 November 2011.

18. He has also had regard to Slough's Core Strategy 2006-2026 (2008), the saved policies of the Slough Local Plan (2004) and the Revised Pre-submission Version of the Development Strategy for Central Bedfordshire (DSCB) (June 2013).

19. The East of England Plan (EEP) formed part of the development plan when the Inspector wrote his report. The Order revoking the Plan had been laid but had not come into force when the Secretary of State issued his letter of 20 December 2012. However the EEP was revoked on 3 January 2013 and the Secretary of State has not had regard to it in his determination of this case.

20. The South East Plan (SEP), which was a material consideration when the Inspector wrote his report and which remained in place and attracted limited weight when the Secretary of State issued his letter of 20 December 2012, was partially revoked on 25 March 2013. The Secretary of State has not had regard to it in his determination of this case.

21. The Secretary of State has taken account of the fact that the Inspector attributes little weight to the emerging St Albans City and District Core Strategy Development Plan Document which was published in 2009 (IR13.28). The Secretary of State notes that,

since the IR was written, the Council has taken a number of steps in the development of new development plan documents. However, at this stage the Council's emerging development plan is not sufficiently advanced to carry material weight.

### **Legal Submissions**

22. In addition to the material considerations referred to above, the Secretary of State has taken account of Inspector Phillipson's report dated 4 June 2008 and the associated decision letter dated 1 October 2008. The Secretary of State has considered the Inspector's comments on the submissions made by your client, the Council and STRIFE about how the current case should be approached in view of the Secretary of State's 2008 decision on the appeal site (IR13.8 – 13.18). For the reasons given by the Inspector in those paragraphs, he agrees with the Inspector's conclusion at IR13.19 that, if there is a very good planning reason, he is able to differ from the conclusions or decision of his predecessor.

### **Main issues**

23. The Secretary of State considers that the main issues in this case are those set out by the Inspector at IR13.20 and whether the proposal complies with the development plan and with national policy.

#### **Green Belt**

24. Having had regard to the Inspector's comments at IR13.35, the Secretary of State concludes that the appeal proposal would be inappropriate development in the Green Belt and that it is harmful as such. As the proposal amounts to inappropriate development he considers that, in the absence of very special circumstances, it would conflict with national policies and with LP policy 1 which concern the protection of the Green Belt. The Secretary of State agrees with the Inspector's further analysis at IR13.35 and concludes that the proposal would have a substantial impact on the openness of the Green Belt, that it would result in significant encroachment into the countryside, that it would contribute to urban sprawl and that it would cause some harm to the setting of St Albans. For the reasons given by the Inspector at IR13.36 – 13.39, the Secretary of State is satisfied that the proposal would not lead to the merging of neighbouring towns (IR13.38). He also agrees with the Inspector's analysis and conclusion that the aim to encourage the recycling of derelict and other urban land would not be frustrated by the proposal (IR13.40).

#### **Other Harm**

25. The Secretary of State agrees with the Inspector's reasoning and conclusions with respect to the proposal's landscape and visual impact, as set out at IR13.41 – 13.44. Like the Inspector, he considers that the effect of the proposal on the landscape and visual impact would be moderately adverse and would be contrary to Policy 104 of the LP (IR13.44).

26. In 2008, the former Secretary of State found that the harm to ecological matters would not be significant (IR13.45). However, for the reasons given by the Inspector (IR13.45 – 13.46), the Secretary of State shares his view that the proposal would conflict with Policy 106 of the LP (IR13.45) and, despite there being no more bird species recorded than there were at the time of the previous Inquiry and despite the lack of objection from Natural England, more weight should be attached to the harm to ecological interests (IR13.46).

27. Having taken account of the section 3.2.4 of the November 2011 Strategic Rail Freight Interchange Policy Guidance, which states that the availability of an available and economic workforce will be an important consideration and the Inspector's comments at IR13.47 – 13.48, the Secretary of State agrees with the Inspector and he too concludes that it would not be reasonable to refuse planning permission for the development on account of sustainability concerns relating to the likely pattern of travel to work by the workforce (IR13.48).

28. The Secretary of State has given careful consideration to the Inspector's assessment of the impact of the proposal on highways, as set out at IR13.49 – 13.58, and agrees with his reasoning and conclusions on this matter. Whilst he has taken account of the comments on highways matters put forward by interested parties following the close of the inquiry, including the matters raised by Anne Main MP in her letters of 5 March (and her attached letter dated 27 January 2014) and 14 April 2014 and the concern expressed in the letter dated 27 March 2014 from the Radlett Society & Green Belt Association, he does not consider that highway concerns amount to a reason for refusal in this case.

29. The Secretary of State agrees with the Inspector's analysis, as set out at IR13.59 – 13.71, with regard to the impact of noise generated by the proposed development. He has given careful consideration to the point about noise made by STRIFE in its letter of 15 April 2014 and the statement from Network Rail in its letter of 26 March 2014 that the connections to and from the Radlett terminal should be designed to be capable of 45mph operation. He observes that the question of when and how the junction will be used by trains entering and exiting the SRFI is a matter for negotiation with Network Rail and he does not consider that STRIFE's representation undermines his conclusions in relation to noise. Like the Inspector (IR13.71), he is satisfied that, with the inclusion of the three conditions on noise, the noise generated by the activity of the site during the night would not be unacceptable and would not bring the proposal into conflict with the development plan.

30. The Secretary of State agrees with the Inspector's reasoning and conclusions with respect to air quality and lighting issues (IR13.72 – 13.73), the impact of the proposal on Park Street and Frogmore and the Napsbury Conservation Area (IR13.74) and the impact on existing footpaths and bridleways (IR13.75).

#### Other considerations

31. The Secretary of State has had regard to the Inspector's comment at IR13.34 that, as the Council accepted in evidence, the need for SRFIs is stated and restated in a number of documents. The Secretary of State observes that the Written Ministerial Statement of 29 November 2011 makes clear that there remains a need for a network of SRFIs to support growth and create employment and that it has proved extremely problematical, especially in the South East, to create appropriately located SRFIs. The SRFI Policy Guidance published on 29 November 2011 states that only one SRFI had been granted planning consent in the whole of the South East region and advises that SRFI capacity needs to be provided at a wide range of locations, particularly but not exclusively serving London and the South East. The Secretary of State has had regard to the comment made by STRIFE (letter of 4 March 2014) that the proposed SRFI at Howbury Park has not been delivered. However, he tends to the view that this only serves to reinforce the point made in the 2011 Written Ministerial Statement on Strategic Rail Freight Interchanges that, in the South East in particular, it is proving extremely problematical to develop SRFIs.

### *Whether the development would operate as an SRFI*

32. The Secretary of State has carefully considered the Inspector's analysis and conclusions as to whether the development would operate as an SRFI including his statement (IR13.79) that Network Rail does not consider that there are any major technical obstacles to achieving a connection such as is proposed at the site (IR13.76 – 13.83). He has also taken account of the further comments on this matter submitted following the close of the inquiry, including the letters from STRIFE dated 4 March and 15 April 2014 which raise the matter of junction speed. The Secretary of State has also given careful consideration to your representation dated 28 March 2014 and the letters of 1 November 2011 and 26 March 2014 from Network Rail, and those dated 11 November 2011 and 31 March 2014 from the Department for Transport. He observes that the letter dated 31 March 2014 states that Network Rail, as both the owner and operator of the rail infrastructure and the author of a very recent Freight Market Study that seeks to identify the market demand and infrastructure needs for rail freight over the coming thirty years, may be regarded as authoritative on these matters. Having taken account of the comments made, the Secretary of State sees little reason to doubt Network Rail's view that there is no good reason why a junction at Radlett capable of 45 mile per hour operation cannot be achieved.

33. Overall, the Secretary of State sees no good reason to disagree with the Inspector's analysis or with his conclusions that the timetabling and bidding process should ensure that sufficient paths to enable access to be gained would be made available to serve the SRFI during the interpeak hours and overnight (IR13.80) and that he can be satisfied of the ability of the SRFI to be accessed from all the key destinations (IR13.82). He further agrees that there is no reason to doubt that the Midland Main Line will develop as a key part of the rail freight network and that the aim of Network Rail and rail regulators will be to enable freight to be carried efficiently, albeit without compromising its passenger carrying ability (IR13.83).

### *Alternatives*

34. For the reasons given at IR13.84 – 13.88, the Secretary of State agrees with the Inspector that the broad approach of the appellant in focusing on the north west sector in the assessment of alternatives is reasonable (IR13.88). He agrees with the Inspector, for the reasons given at IR13.89 – 13.91, that the general approach by the appellant to the assessment of alternatives and producing the 'long list' has been robust and realistically pragmatic (IR13.91). The Secretary of State sees no reason to disagree with the Inspector's comments on the appellant's assessment of the long list sites (IR13.92 – 13.94).

35. The Secretary of State notes that, at the inquiry, the cases put forward by the Council and by STRIFE included argument in relation to London Gateway (LG) and that, in his conclusions the Inspector refers to LG at IR13.85 and IR13.88. A number of the representations submitted to the Secretary of State since his letter of 20 December 2012 have also referred to LG. In particular Anne Main MP (7 January 2014) and STRIFE (4 March and 15 April 2014) both state that the opening of the LG container port amounts to a material change in respect of this proposal. Barton Willmore in its letter of 27 March 2014, Network Rail in its letter of 26 March 2014 and you, in your representation of 28 March 2014, disagree with that view. The Secretary of State has given careful consideration to the views submitted alongside the Inspector's analysis and conclusions and he concludes that there is no good reason to consider that the opening of LG undermines the Alternative Sites Assessment or the Inspector's views on LG at IR13.85.

36. The Secretary of State has given very careful consideration to the Inspector's comments about the appellant's short listed sites (IR13.95 – 13.103). He sees no reason to disagree with the Inspector's remarks about the sites at Littlewick Green or Harlington (IR13.95 – 13.98).

37. With regard to the Upper Sundon site, the Secretary of State has taken account of the Inspector's remark that there was no suggestion by any party that Upper Sundon scored better than the appeal site and that the Inspector saw no reason to disagree with that (IR13.95). The Secretary of State observes that the 2014 version of the emerging DSCB includes policy 64 which allocates 5 hectares of land at Sundon for an intermodal rail facility and states that the Green Belt boundary follows the extent of the rail freight interchange. As the submission version of the DSCB has yet to be published, the Secretary of State considers that this limits the weight to be attributed to the document.

38. A number of representations (including those from Anne Main MP dated 27 January and 14 April 2014 and those from STRIFE dated 4 March and 15 April 2014) have pointed to the Upper Sundon site as offering a preferable alternative to Radlett. The Secretary of State observes that Network Rail, in its letter dated 26 March 2014, states that it has worked with the developers of both the Sundon and the Radlett schemes, that Sundon is a significantly smaller site than Radlett and that it does not consider that the two proposals fulfil the same purpose or act as alternatives to each other. The Secretary of State sees no reason to disagree with the view of the Department for Transport in its letter of 31 March 2014 that Network Rail, as both the owner and operator of the rail infrastructure and author of the Freight Market Study, may be regarded as authoritative on these matters and he gives the views of Network Rail full weight. In conclusion on this matter, the Secretary of State does not consider that the Sundon site can be regarded as a preferable alternative to the proposal before him.

39. The Secretary of State has had regard to the Inspector's assessment of the site identified at Colnbrook (IR13.99 – 13.103) and the fact that appeal reference: APP/J0350/A/12/2171967 was made on 5 March 2012. As indicated by the Inspector (IR13.100), the Strategic Gap designation has been brought forward in Slough's adopted Core Strategy. The Secretary of State observes that the Core Strategy states that development will only be permitted in the Strategic Gap if it is essential to be in that location. He has also had regard to the High Court judgment referred to at paragraph 3 above, in which the judge held (at paragraph 79) that the Slough Core Strategy sets an additional policy restraint beyond that which follows from the site's location in the Green Belt. In common with the Inspector (IR13.100), the Secretary of State attributes substantial weight to the Strategic Gap designation. In conclusion on this matter, the Secretary of State sees no reason to disagree with the Inspector's analysis and conclusions in respect of Colnbrook (IR13.100 – 13.103).

#### *Other benefits*

40. Having had regard to the Inspector's analysis at IR13.104, the Secretary of State shares his view that the Park Street and Frogmore bypass is a local benefit which carries a little weight. He also agrees with the Inspector's reasoning and conclusions with regard to the proposals for Areas 3 to 8 (IR13.105).

#### *The Planning Balance including Prematurity*

41. The Secretary of State agrees with the Inspector's comments at IR13.106. He has concluded (at paragraph 24 above) that the proposal would constitute inappropriate development and that further harm would arise from a substantial loss of openness,



significant encroachment into the countryside and that the development would contribute to urban sprawl. He considers that the harm arising thereby would be substantial and that, in addition, some further harm would be caused to the setting of the historic city of St Albans (IR13.106). In line with paragraph 88 of the Framework, the Secretary of State has attached substantial weight to the harm that the appeal scheme would cause to the Green Belt.

42. As set out at paragraph 25 above, the Secretary of State has concluded that the effect of the proposal on the landscape and visual impact would be moderately adverse and that it would be contrary to Policy 104 of the LP. In addition, he has found that conflict would arise in respect of LP Policy 106 and that the harm to ecological interests should be given more weight than in 2008 (paragraph 26 above).

43. In common with the Inspector (IR13.109), the Secretary of State concludes overall that harm would arise from the Green Belt considerations and also due to the impact on landscape and ecology.

44. Turning to the benefits offered by the appeal scheme, like the Inspector (IR13.110), the Secretary of State weighs in the scheme's favour the country park, the improvements to footpaths and bridleways, the provision of a bypass to Park Street and Frogmore, the predicted reduction of CO<sub>2</sub> emissions, and the employment benefits. The Secretary of State has had regard to the Inspector's comments at IR13.111 and, also bearing in mind his remarks at paragraph 31 above, he shares the Inspector's view that the need for SRFIs to serve London and the South East is a material consideration of very considerable weight.

45. The Secretary of State agrees with the Inspector's analysis at IR13.112 – 13.115. He agrees with the Inspector that the assessment of alternative locations for an SRFI conducted by the appellant has been sufficiently methodical and robust to indicate that there are no other sites in the north west area of search which would be likely to come forward in the foreseeable future which would cause less harm to the Green Belt (IR13.114).

46. For the reasons given by the Inspector at IR13.116 – 13.117, the Secretary of State agrees with the Inspector that there is no reason to conclude that determination of the proposal would be premature (IR13.117).

#### Conditions & Obligations

47. Having had regard to the proposed conditions set out at annex A of the Inspector's Report the Inspector's comments on conditions (IR12.1 – 12.19) and the parties' further representations on conditions, the Secretary of State is satisfied that proposed conditions 1-32 are reasonable and necessary, and meet the tests set out at paragraph 206 the Framework.

48. In his letter of 20 December 2013, the Secretary of State invited you to provide him with a planning obligation under section 106 of the Town and Country Planning Act 1990 which binds all those with an interest in the appeal site. On 20 December 2013 Hogan Lovells LLP submitted a Unilateral Undertaking dated 19 December 2013 and, as set out above, the Secretary of State gave parties the opportunity to comment on that document. The Secretary of State has given very careful consideration to the comments made including the concerns raised by the Council and the comments submitted on behalf of the appellant in respect of those concerns.

49. The Secretary of State takes the view that the 2013 obligation includes the same or substantially similar covenants as those within the 2009 obligation (evidence document 9/HS/INQ/11.0). Notwithstanding the provisions in the 2013 obligation that Hertfordshire County Council shall give reasonable assistance to the Council in respect of its fourth, sixth and seventh covenants, the Council has advised that it lacks expertise or power in respect of some measures in the obligation. The Secretary of State, however, sees little reason to anticipate that Hertfordshire County Council would not provide such reasonable assistance as might be required by the Council to ensure that the relevant covenants would meet their aims and indeed it would be against Hertfordshire County Council's own interests and responsibilities as highways authority not to provide that reasonable assistance. In any event, the Secretary of State takes the view that it is more likely that a developer would need to have control over all of the areas of the land which are required for the development including the land currently owned by Hertfordshire County Council in order to deliver the appeal scheme to which this decision letter relates. The Secretary of State has considered whether this is a case where there are no prospects at all of the development starting within the time limit imposed by the permission and he is satisfied that this is not such a case.

50. With regard to the points made by parties as to whether the costs set out in the 2013 obligation are adequate, as previously indicated, the Secretary of State considers them to be so.

51. In conclusion on this matter the Secretary of State considers that, as sought by his letter of 20 December 2012, the Unilateral Undertaking dated 2013 is a duly certified, signed and dated planning obligation which complies with the relevant statutory provisions of sections 106 and 106A of the Town and Country Planning Act 1990 and the CIL regulations 2010 as amended. He considers that the 2013 obligation binds that part of the land which was not bound by the 2009 obligation and that the entire site is now bound to necessary and sufficient planning obligations.

## **Conclusion**

52. In conclusion, the Secretary of State has found that the appeal proposal would be inappropriate development in the Green Belt and that, in addition, it would cause further harm through loss of openness and significant encroachment into the countryside. In addition the scheme would contribute to urban sprawl and it would cause some harm to the setting of St Albans. The Secretary of State has attributed substantial weight to the harm that would be caused to the Green Belt. In addition he has found that harms would also arise from the scheme's adverse effects on landscape and on ecology and that the scheme conflicts with LP policies 104 and 106 in those respects.

53. The Secretary of State considers that the factors weighing in favour of the appeal include the need for SRFIs to serve London and the South East, to which he has attributed very considerable weight, and the lack of more appropriate alternative locations for an SRFI in the north west sector which would cause less harm to the Green Belt. He has also taken account of the local benefits of the proposals for a country park, improvements to footpaths and bridleways and the Park Street and Frogmore bypass. The Secretary of State considers that these considerations, taken together, clearly outweigh the harm to the Green Belt and the other harms he has identified including the harm in relation to landscape and ecology and amount to very special circumstances. Despite the Secretary of State's conclusion that the scheme gives rise to conflict with LP policies 104 and 106, in the light of his finding that very special circumstances exist in

this case he is satisfied that, overall the scheme is in overall accordance with the development plan.

### **Formal Decision**

54. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants outline planning permission for the construction of a Strategic Rail Freight Interchange comprising an intermodal terminal and rail and road served distribution units (331,665m<sup>2</sup> in Use Class B8 including ancillary B1/B2 floorspace) within Area 1, with associated road, rail and other infrastructure facilities and works within Areas 1 and 2, (including earth mounds and a Park Street/Frogmore relief road) in a landscaped setting, and further landscaping and other works within Areas 3 to 8 inclusive to provide publicly accessible open land and community forest, at land in and around Former Aerodrome, North Orbital Road, Upper Colne Valley, Hertfordshire in accordance with application Ref 5/09/0708 dated 9 April 2009, subject to the conditions set out at Annex B.

55. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

56. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

57. This letter serves as the Secretary of State's statement under regulation 21(2) of the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999.

### **Right to challenge the decision**

58. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

59. A copy of this letter has been sent to St Albans City and District Council and to STRIFE. Notification letters have been sent to all other parties who asked to be informed of the decision.

**Christine Symes**

Authorised by the Secretary of State to sign in that behalf

**Post Inquiry correspondence received prior to 7 July 2010**

<b>Name</b>	<b>Date</b>
S Hedges	15/05/2010
P Dixon	17/05/2010
M Aldridge	04/06/2010
R Biddlecombe	15/06/2010
J Chattaway	15/06/2010
M Mark	15/06/2010
S Beesley	15/06/2010
A Russell	16/06/2010
P Matteucci	16/06/2010
J Rice	16/06/2010
C Horton	16/06/2010
S Statt	17/06/2010
J Byrne	17/06/2010
EK Kaye	17/06/2010
P Ruckin	18/06/2010
B Greenwood	18/06/2010
B Gardner	18/06/2010
M Novitt	19/06/2010
D Tribe	19/06/2010
R Tompkins	20/06/2010
J Bacall	20/06/2010
F & K Loud	21/06/2010
R Harrington	21/06/2010
E Thurston	21/06/2010
C Mitchell	23/06/2010
MJG Lewis	25/06/2010

**Post Inquiry correspondence following the Secretary of State's letter dated 15 September 2011**

<b>Name / Organisation</b>	<b>Date</b>
Ian La Rivière	06/10/2011
Mr S Walkington and Mr D Parry	10/10/2011
Paul Stimpson / Head of Planning – Slough Borough Council	11/10/2011
Erica Mortimer / CgMs for Helioslough	12/10/2011
Dick Bowler / Hertfordshire County Council	13/10/2011
Tim Wellburn / Department for Transport	13/10/2011
Howard Wayne / Wayne Leighton Solicitors for STRiFE Ltd	14/10/2011
Simon Flisher / Barton Willmore for Goodmans	14/10/2011
St Albans City and District Council	14/10/2011

**Post Inquiry correspondence following the Secretary of State's letter dated 19 October 2011**

<b>Name / Organisation</b>	<b>Date</b>
Anne Main MP for St Albans	08/11/2011
Paul Stimpson / Head of Planning – Slough Borough Council	09/11/2011
Howard Wayne / Wayne Leighton Solicitors for STRiFE Ltd	10/11/2011
James Clappison MP for Hertsmere	10/11/2011
Simon Flisher / Barton Willmore for Goodmans	10/11/2011
St Albans City and District Council	10/11/2011
Erica Mortimer / CgMs for Helioslough	11/11/2011
Tim Wellburn / Department for Transport - enclosing one from Richard Eccles, Director of Network Planning dated 01/11/2011	11/11/2011

**Post Inquiry correspondence following the Secretary of State's letter dated 29 November 2011**

<b>Name / Organisation</b>	<b>Date</b>
Howard Wayne / Wayne Leighton Solicitors for STRiFE Ltd	19/12/2011
Erica Mortimer / CgMs for Helioslough	20/12/2011
Mike Lovelady / St Albans City and District Council	22/12/2011
Simon Flisher / Barton Willmore for Goodmans	23/12/2011
Paul Stimpson / Head of Planning – Slough Borough Council	29/12/2011
Mr P Trevelyan / St Albans Civic Society	30/12/2011

**Post Inquiry correspondence following the Secretary of State's letter dated 29 March 2012**

<b>Name / Organisation</b>	<b>Date</b>
Howard Wayne / Wayne Leighton Solicitors for STRiFE Ltd	30/03/2012
Anne Main MP for St Albans	04/04/2012
Erica Mortimer / CgMs for Helioslough	10/04/2012
Polly Harris-Gorf / Hertsmere Borough Council	11/04/2012
Simon Flisher / Barton Willmore for Goodmans	16/04/2012
James Clappison - MP for Hertsmere	16/04/2012
Mike Lovelady / St Albans City and District Council	16/04/2012

**Post Inquiry correspondence following the Secretary of State's letter dated 18 April 2012**

<b>Name / Organisation</b>	<b>Date</b>
Howard Wayne / Wayne Leighton Solicitors for STRiFE Ltd	30/04/2012
Paul Stimpson / Head of Planning – Slough Borough Council	26/04/2012
Erica Mortimer / CgMs for Helioslough	26/04/2012
Mike Lovelady / St Albans City and District Council	25/04/2012

**Post Inquiry correspondence following the Secretary of State's letter dated 19 September 2012**

<b>Name / Organisation</b>	<b>Date</b>
Anne Main - MP for St Albans	25/09/2012
James Clappison - MP for Hertsmere	26/09/2012
Erica Mortimer / CgMs for Helioslough	27/09/2012
Simon Flisher / Barton Willmore for Goodmans	28/09/2012
Howard Wayne / Wayne Leighton Solicitors for STRiFE Ltd	01/10/2012

Paula Paley on behalf of Aldenham Parish Council	01/10/2012
Mr S Walkington and Mr D Parry	01/10/2012
Peter Evans / Aldenham Parish Council	01/10/2012
John Dean / Colney Heath Parish Council	01/10/2012
Mike Lovelady / St Albans City and District Council	02/10/2012
Graham Taylor / Radlett Society and GB Association	02/10/2012
Paul Stimpson / Head of Planning – Slough Borough Council	03/10/2012
Steve Baker / CPRE Hertfordshire	03/10/2012
Polly Harris-Gorf / Hertsmeire Borough Council	03/10/2012

**Post Inquiry correspondence following the Secretary of State's letter dated 12 October 2012**

<b>Name / Organisation</b>	<b>Date</b>
Mr S Walkington and Mr D Parry	18/10/2012
Hogan Lovells - solicitors for Helioslough	18/10/2012
Hogan Lovells - solicitors for Helioslough	25/10/2012
Mike Lovelady / St Albans City and District Council	26/10/2012
Peter Evans / Aldenham Parish Council	26/10/2012
Simon Flisher / Barton Willmore for Goodmans	26/10/2012
Paul Stimpson / Head of Planning – Slough Borough Council	29/10/2012

**Other post Inquiry correspondence - disclosed in the Secretary of State's letter of 20 December 2012**

<b>Name / Organisation</b>	<b>Date</b>
Mr Lindemann	27/10/2011
Mr Behrman	30/10/2011
Graham Taylor / Radlett Society and Green Belt Association	14/03/2012
Anne Main - MP for St Albans	29/03/2012
Anne Main - MP for St Albans	25/04/2012
Howard Wayne / Wayne Leighton Solicitors for STRiFE Ltd	30/04/2012
Bruce Vincent	26/05/2012
Mr Behrman	30/10/2011
Anne Main - MP for St Albans	14/08/2012
N Halliwell	28/09/2012
Ann Goddard	28/09/2012
H Lewis and G McDonald	03/10/2012
James Clappison - MP for Hertsmere	15/10/2012
Anne Main - MP for St Albans	08/11/2012

**Post Inquiry correspondence following the Secretary of State's letter dated 19 February 2014**

<b>Name / Organisation</b>	<b>Date of letter</b>
Howard Wayne / Wayne Leighton LLP obo STRIFE	04/03/2014
James Clappison MP	05/03/2014
Anne Main MP	05/03/2014
Steve Baker / CPRE Hertfordshire	05/03/2014
David Wood / Hogan Lovells International LLP obo Helioslough Limited	05/03/2014
Mike Lovelady / St Albans City and District Council	06/03/2014

Simon Flisher / Barton Willmore obo Goodman Logistics Developments (UK) Ltd	06/03/2014
Ian M LaRivière	07/03/2014

**Post Inquiry correspondence following the Secretary of State's letter dated 14 March 2014**

<b>Name / Organisation</b>	<b>Date of letter</b>
Peter Evans, Aldenham Parish Council	25/03/2014
James Clappison MP	26/03/2014
Simon Flisher, Director, Barton Willmore (obo Goodman Logistics Development (UK) Ltd	27/03/2014
Graham Taylor, Chairman, Radlett Society & Green Belt Association	27/03/2014
Steve Baker, CPRE Hertfordshire	28/03/2014
Michael Gallimore, Partner, Hogan Lovells International LLP (obo Helioslough Limited)	28/03/2014
Mike Lovelady, Head of Legal Services, St Albans City & District Council	28/03/2014
Sarah Pickup, Deputy Chief Executive, Hertfordshire County Council	28/03/2014
Paul Collins, Deputy Director, Rail Strategy, Department for Transport – enclosing one from Paul McMahon, Director Freight, Network Rail dated 26/03/2014	31/03/2014

**Post Inquiry correspondence following the Secretary of State's letter dated 1 April 2014**

<b>Name / Organisation</b>	<b>Date of letter</b>
Michael Gallimore, Partner, Hogan Lovells International LLP (obo Helioslough Limited)	04/04/2014
Simon Flisher, Director, Barton Willmore (obo Goodman Logistics Development (UK) Ltd	08/04/2014
Mike Lovelady, Head of Legal Services, St Albans City & District Council	09/04/2014
Anne Main MP	14/04/2014
Howard Wayne, Wayne Leighton LLP obo STRIFE	15/04/2014

**Other post inquiry correspondence**

<b>Name / Organisation</b>	<b>Date of letter</b>
Ken Herbert	21/06/2012
Hogan Lovells – for Helioslough	31/10/2012
Anne Main MP	17/12/2012
James Clappison MP	21/12/2012
Cllr Steve Bowes-Phipps	17/12/2012
Anne Main MP	21/12/2012
Clive Glover	21/12/2012
Alan Richardson (and further follow-up letter of 18/01/2013)	21/12/2012
Kate Steiner	21/12/2012
Nic Pearce (and further follow-up letter of 18/01/2013)	21/12/2012
Tim Price (and further follow-up letter of 28/01/2013)	21/12/2012
Malcolm Mark	21/12/2012
Charles O'Carroll	22/12/2012

Debbie Baker	23/12/2012
Angela Dixon	27/12/2012
Gary Davis (and further follow-up letter of 24/01/2013)	28/12/2012
Alison Evans	30/12/2012
Anthony Holden	30/12/2012
Eric Roberts	31/12/2012
John Barker	02/01/2013
Pam and Tony Elliott	02/01/2013
Catherine Nixon	02/01/2013
Daniel Deyong	03/01/2013
Anthony Oliver	03/01/2013
Jana Marmon (and further follow-up letter of 25/01/2013)	03/01/2013
Dr Nigel Brand	03/01/2013
Daniel Deyong	04/01/2013
Ken Herbert	04/01/2013
Catherine Ashton (and further follow-up letter of 30/01/2013)	05/01/2013
Margaret & Michael Morgan	05/01/2013
Hilary Robinson (and further follow-up letter of 28/01/2013)	06/01/2013
Kim Scrivener	06/01/2013
Valerie Argue	07/01/2013
Clive Glover	08/01/2013
James Clappison MP	08/01/2013
Gary Davis	08/01/2013 & 15/01/2013
RJ & Mrs PM Coller	09/01/2013
A W Turp	09/01/2013
Jill Godwin	10/01/2013
Patricia & George Old	10/01/2013
Fiona & Richard Todd	11/01/2013
Simon Gardner	11/01/2013
Daniel Barton (and further follow-up letter of 07/02/2013)	11/01/2013
Christopher Brown	11/01/2013
Mr J Freestone	11/01/2013
Anne Main MP	11/01/2013
Jeremy Caulton	12/01/2013
Pamela Roberts	12/01/2013
Roy McNee	13/01/2013
Clive Glover	14/01/2013
Irene Cowan	14/01/2013
Bruce Vincent	15/01/2013
Mark Brattman	17/01/2013
R Clarkson	18/01/2013
Mike Lovelady, St Albans City and District Council (two letters)	18/01/2013
Mr A Turp	22/01/2013
Vicki Hopcroft	22/01/2013
Erica Mortimer, CGMS	23/01/2013
Sandra Constable	23/01/2013
Jill Singer & John Thomson	23/01/2013
Corinne & Martin Lewis	25/01/2013
Jeremy Chattaway	25/01/2013
Malcolm Mark	25/01/2013
Caroline Syson	26/01/2013
Kirtida Mehta	26/01/2013



Bruce Gardner	26/01/2013
Darren Blencowe	26/01/2013
Stuart Beesley	26/01/2013
Mark Novitt (and further follow-up e-mails of 15/02/13)	27/01/2013
Richard Biddlecombe (Napsbury Park RA)	27/01/2013
Robert Harrison	27/01/2013
Emily Bowes	27/01/2013
P Nevitt	27/01/2013
Eric Hamill	27/01/2013
Chris Clarke	27/01/2013
G R Cooper	27/01/2013
Charles Taylor	28/01/2013
Alan Russell	28/01/2013
Stanley Statt	28/01/2013
Anthony Murray	28/01/2013
Simon & Laura Mitchell	28/01/2013
Lesley Field	28/01/2013
Jonathan Richards	28/01/2013
David Johnson-Stockwell	28/01/2013
Lorraine & Paul Ruckin	28/01/2013
Paul Matteucci	28/01/2013
Fiona Loud	28/01/2013
Richard Hoult	28/01/2013
Ken D Peak	28/01/2013
Amy Burnett	29/01/2013
Dawit W. Michael Gebre-ab	29/01/2013
Jonathan Carter	29/01/2013
Jeremy Kaye	29/01/2013
Robert & Kathleen Nevitt	29/01/2013
Murray Willows	29/01/2013
Christine Bee	29/01/2013
Sarah Cox	29/01/2013
Naveed Malik	29/01/2013
Sally McKean	29/01/2013
Fiona & Frederick Tong	29/01/2013
Patsy & Les Grundon	29/01/2013
Jeremy Pepper	29/01/2013
Peter Stallwood	29/01/2013
Christine Mitchell	29/01/2013
Helen Smith	29/01/2013
Jennie Harrison	29/01/2013
Ben Greenwood	29/01/2013
Minos Michaelides	30/01/2013
Nicholas Remzi	30/01/2013
Simon Dekker	30/01/2013
Deborah Dellinger	30/01/2013
Michael Wolfson	30/01/2013
Paul Cordell	30/01/2013
Katy Patino	30/01/2013
Christopher Horton	30/01/2013
Paul & Hilary Weitzman	30/01/2013
Dr Tim Wickham	30/01/2013
Joan & Dave Dayton	31/01/2013
Linda Banks	31/01/2013

Pamela & Malcolm Mark	31/01/2013
Clive Ireland	31/01/2013
Christopher Langdon	01/02/2013
Gary Davis	02/02/2013
Trevor Fox	03/02/2013
Billy Brown	06/02/2013
Robert Webb (and follow-up e-mail of 27/02/2013)	06/02/2013
Mrs V M Wilson	06/02/2013
Peter Celiz	07/02/2013
Anne Main MP	07/02/2013
Sheena Ellwood (and follow-up letters of 03/03/2013 and 22/03/2013)	08/02/2013
Hogan Lovells for Helioslough	08/02/2013
James Clappison MP (enclosing one from constituent, Stuart Bromley)	11/02/2013
Sonia Simmons	12/02/2013
Mark Novitt	15/02/2013
Mr & Mrs Kastro	16/02/2013
Chris Bladd	17/02/2013
J Freestone	17/02/2013
Peter Mason	18/02/2013
John Scoote	18/02/2013
Christopher Langdon	18/02/2013
Neil Magrath	18/02/2013
John Sharp	19/02/2013
Patricia McKinley	19/02/2013
Kelvin Smith	20/02/2013
Sam Humphries	21/02/2013
Bren Calver	21/02/2013
Rt Hon Dominic Grieve QC MP (enclosing one from constituent, Mrs Gray-Fisk)	21/02/2013
Dave Saul	22/02/2013
Gordon Shepherd	22/02/2013
Chris Hamby	22/02/2013
James Clappison MP (enclosing one from constituent, David Lavender)	22/02/2013
James Clappison MP (enclosing one from constituent, Christopher Langdon)	22/02/2013
Michael Ormiston	23/02/2013
Susan Bellamy (and follow-up e-mail of 15/03/2013)	25/02/2013
John Wood, Hertfordshire CC	26/02/2013
John Rae	28/02/2013
Michael Gallimore, Hogan Lovells	28/02/2013
A Maskall	01/03/2013
Mr & Mrs Chown	01/03/2013
Jack Beeston	01/03/2013
Chris Thorpe	04/03/2013
Anne Main MP	04/03/2013
Miranda Gerritson	06/03/2013
Mrs Kowolik	07/03/2013
Michael Gallimore, Hogan Lovells	07/03/2013
Mr R F Collins	08/03/2013

Leslie Diamond	10/03/2013
Dr Winkler	10/03/2013
David & Meryl Burleigh	11/03/2013
Daniel Graham	11/03/2013
Mrs Anne Main MP	12/03/2013
Mike Lovelady, St Albans City and District Council	13/03/2013
Stuart Bromley	14/03/2013
Mr & Mrs LaRivière	18/03/2013
Mrs Anne Main MP encl Gary Davis	22/03/2013
Mrs Anne Main MP	27/03/2013
Michael Gallimore, Hogan Lovells	27/03/2013
Mike Lovelady, St Albans City and District Council	28/03/2013
Gary Davis	01/04/2013 & 09/04/2013
Huw Smith	06/04/2013
Mrs Anne Main MP	08/04/2013
Michael Gallimore, Hogan Lovells	15/04/2013
Mrs Barbara Price	Undated – but received on 30/04/13
Michael Gallimore, Hogan Lovells	19/04/2013
Mrs Anne Main MP (with letter from Rt Hon Simon Burns MP (DfT))	02/05/2013
James Clappison MP constituent Mrs Fiona Todd	08/05/2013
Michael Gallimore, Hogan Lovells	10/05/2013
Mrs Anne Main MP	15/05/2013
John Thomson – St Albans Civic Society	16/05/2013
Michael Gallimore, Hogan Lovells	21/05/2013
Kerry Smith	27/05/2013
Michael Gallimore, Hogan Lovells	28/05/2013
Peter Trevelyan – St Albans Civic Society	03/06/2013
Mrs Anne Main MP	06/06/2013
Mrs Anne Main MP	21/06/2013
P Trevelyan / St Albans Civic Society (to DfT)	21/06/2013
Mrs Anne Main MP	24/06/2013
Sandra Constable	24/06/2013
Martin Threadgold	27/06/2013
Gary Davis	28/06/2013
Mrs Anne Main MP	28/06/2013
Mrs Anne Main MP (enclosing one from Gary Davis)	05/07/2013
Mrs Anne Main MP (enclosing one from Ian Troughton)	05/07/2013
James Clappison MP (enclosing one from Mr Lavendar)	16/07/2013
Heather Pownall	28/07/2013
Mrs Anne Main MP	01/08/2013
Beryl Munro	07/08/2013
Mrs Anne Main MP	19/08/2013
Ken Peak – London Colney Village Concern	05/09/2013
Mrs Anne Main MP (enclosing one from Martin Blencowe)	30/09/2013

James Clappison MP (enclosing one from Heather Pownall)	03/10/2013
Mike Penning MP	22/10/2013
Mrs Anne Main MP	28/10/2013
John Wood, Hertfordshire CC	29/10/2013
John Wood, Hertfordshire CC	31/10/2013
John Wood, Hertfordshire CC	01/11/2013
Erica Mortimer, CgMs	04/11/2013
Richard Hoult	12/11/2013
Diana Tribe	25/11/2013
James Clappison MP (enclosing one from Heather Pownall)	02/12/2013
Alison Rubinson	04/12/2013
Rt Hon Peter Lilley MP (enclosing one from Sheilagh Collingwood)	05/12/2013
Andy Love	10/12/2013
Mrs Vicki Hopcroft	11/12/2013
Laura Dekker	11/12/2013
Stephen Rose	11/12/2013
Nicholas Remzi	11/12/2013
Simon Angel	11/12/2013
Mark Castle	11/12/2013
Jeremy Kaye	11/12/2013
Hugh Howard	11/12/2013
Barbara McCabe	11/12/2013
Nick Louis	11/12/2013
Dr Tim Wickham	11/12/2013
Jane Rice	11/12/2013
Caroline Syson	11/12/2013
Diana Tribe	11/12/2013
Harvey Sokolsky	11/12/2013
Alan Ring	11/12/2013
Hardeep Lota	11/12/2013
Pamela & Malcolm Mark	12/12/2013
Mr Tim Becker	12/12/2013
Paul Weitzman	12/12/2013
Mrs Clovissa Horton	12/12/2013
Richard Biddlecombe	12/12/2013
Lesley Field	12/12/2013
Dr David Lee	12/12/2013
Stuart Beesley	12/12/2013
Simon Edwards	15/12/2013
Gary Davis	15/12/2013
P Nevitt	15/12/2013
Howard Wayne	16/12/2013
Sheena Ellwood	16/12/2013
Ian Christopher	16/12/2013
Cllr Stephen Bowes-Phipps	16/12/2013
Ian Lariviere	17/12/2013
Geoffrey Shalet	18/12/2013
Colin & Tricia Gibb	19/12/2013
Fiona & Richard Todd	19/12/2013
John Barker	19/12/2013

Chris Doyle	19/12/2013
Sarah Pickup, Hertfordshire CC	19/12/2013
Vicki Hopcroft	20/12/2013
David Turner	20/12/2013
Michael Gallimore, Hogan Lovells	20/12/2013
Nicola Graynoth	21/12/2013
Les and June Diamond	21/12/2013
Neil Conrad	22/12/2013
Gordon Townsend	22/12/2013
Violet LaRivière	23/12/2013
Stewart Rose	23/12/2013
Allan Lane	23/12/2013
Margaret Townsend	23/12/2013
Gary Clamp	23/12/2013
His Honour Judge Michael Kay QC	23/12/2013
Peter Moss	23/12/2013
John Stacey	23/12/2013
Dominic Mort	24/12/2013
Suzi Clarke	24/12/2013
Brian Gibbard	27/12/2013
Fiona & Richard Todd	28/12/2013
Natasha Deyong	29/12/2013
Kevin Naughton	29/12/2013
Lesley Field	30/12/2013
Catherine Davies	30/12/2013
John LaRivière	30/12/2013
Marcus Hooper	01/01/2014
Neil Magrath	01/01/2014
Brenda & Raymond Jenkinson	02/01/2014
Gerry Walden	03/01/2014
John Garrick	03/01/2014
Jamie Goodfellow	03/01/2014
Keith Macbain	03/01/2014
Peter Tiffany	05/01/2014
Mrs Peta McKeon	05/01/2014
Carole Heselton	05/01/2014
Melvyn & Michelle Smith	06/01/2014
John Collier	06/01/2014
Stephen & Ann Rutherford	08/01/2014
L & D Cazin	08/01/2014
Christopher Langdon	08/01/2014
Andrew Bailey	08/01/2014
Amanda Dickson	09/01/2014
Ian & Sue Getley	09/01/2014
Sally Temple	13/01/2014
A Ortega	13/01/2014
Dr Robert Wareing	15/01/2014
Anthony Baker	17/01/2014
Douglas Hirst	20/01/2014
Cllr Stephen Bowes-Phipps	21/01/2014
Dr A Chalmers	22/01/2014
Anne Main MP (& enclosing one from Doug Hirst dated 17 January 2014)	27/01/2014

Siobhan Barrett	07/02/2014
David & Sharon Harris	09/02/2014
Anne Main MP (& enclosing one from Doug Hirst dated 17 January 2014)	10/02/2014
Stephen Hammond MP (enclosing one from Rt Hon Cheryl Gillan MP dated 10 January 2014, enclosing one from Peter and Vanessa Martin dated 16 December 2013)	11/02/2014
Matthew Johns	18/02/2014
Jack Easton, St Albans District Green Party	17/03/2014

## **CONDITIONS**

### **COMMENCEMENT OF DEVELOPMENT**

1. The development hereby permitted shall be commenced 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.

Reason: In compliance with Section 92 of the T&CPA 1990 as amended

### **APPROVAL OF RESERVED MATTERS**

2. Application for approval of the Reserved Matters shall be made to the local planning authority before the expiration of three years from the date of this permission.

Reason: In compliance with Section 92 of the T&CPA 1990 as amended

### **DEVELOPMENT IN ACCORDANCE WITH KEY PARAMETERS PLAN**

3. The development shall be carried out in accordance with the Key Parameters Plan and the specified paragraphs of the Development Specification Document dated March 2009 and drawing number 394503-LV-074 referred to in condition 3(f) comprising:
  - (a) layout of the new buildings to the extent to which it is shown on the Key Parameters Plan together with para 4.3;
  - (b) the maximum ridge height of the new buildings as specified on the Key Parameters Plan together with para 4.4;
  - (c) the maximum length and width of the B8 distribution units and the administration and ancillary buildings as set out in para 4.5;
  - (d) the maximum total floorspace of the new buildings applied for as specified on the Key Parameters Plan together with para 4.6;
  - (e) the proposed finished site levels specified on the Key Parameters Plan together with para 4.7;
  - (f) the height of earth mounds shown on drawing number 394503-LV-074 together with para 4.8;
  - (g) various access and circulation routes shown on the Key Parameters Plan together with paras 4.9 and 4.10;
  - (h) access to lorry and car parking/storage areas as shown on the Key Parameters Plan together with para 4.11;
  - (i) proposed structure planting areas as shown on the Key Parameters Plan together with para 4.12.

Reason: This condition is necessary to ensure that the development does not materially depart from that applied for and considered in the ES.

**4. PARTIAL SIGNALISATION OF PARK STREET ROUNDABOUT**

4.1 None of the Units shall be occupied until the Park Street Roundabout Signalisation Works have been completed and brought into use.

4.2 The improvements shall include any revisions as required due to Road Safety Audit process and any revisions required to ensure the improvements comply with DMRB standards.

4.3 The improvements shall have:

(a) the required Road Safety Audits and Completion Certificates in accordance with the Design Standards for Roads and Bridges (DMRB), and

(b) the Health and Safety file required by the Construction (Design and Management) Regulations 2007.

Reason: This condition is necessary to ensure that the improvements to Park Street Roundabout are completed before the units are occupied.

**5. IMPROVEMENT TO TRAFFIC SIGNALS AT LONDON COLNEY ROUNDABOUT**

5.1 None of the Units shall be occupied until details of the London Colney Roundabout Improvements have been submitted for approval in writing by the local planning authority.

5.2 The London Colney Roundabout Improvements shall be completed in accordance with the approved details before the later of:

(a) two years of occupation of any of the Units, or

(b) twelve months of approval of the details of the improvements.

Reason: This condition is necessary to increase the capacity of the London Colney Roundabout

**6. PROVISION OF ACCESS WORKS AND PARK STREET BYPASS**

6.1 None of the Units shall be occupied until the Access Works and the Park Street Bypass Phase 1 Works have been completed and brought into use.

6.2 The works shall include any revisions as required due to Road Safety Audit process and any revisions required to ensure the improvements comply with DMRB standards.

6.3 The works shall have:

(a) the required Road Safety Audits and Completion Certificates in accordance with the Design Standards for Roads and Bridges (DMRB), and

(b) the Health and Safety file required by the Construction (Design and Management) Regulations 2007.

6.4 Not more than 230,000 square metres of floor area in the Units shall be occupied until a scheme for the Park Street Bypass Phase 2 Works (which shall include a programme for the



delivery of the works) has been submitted to and approved in writing by the local planning authority.

- 6.5 The Park Street Bypass Phase 2 Works shall be completed in accordance with the approved scheme.

Reason: This condition is necessary to ensure that the access is completed before the Units are occupied, including the Park Street Bypass with a 'temporary' connection to the A5183 at its southern end.

**7. IMPROVEMENTS TO JUNCTION 21A OF THE M25**

- 7.1 None of the Units shall be occupied until the M25 Junction 21A Improvements have been completed and brought into use.

- 7.2 The improvements shall include any revisions as required by the Road Safety Audit process and any revisions required to ensure the improvements comply with DMRB standards, or the improvements shall include the relevant approved Departures from Standards (DfS).

- 7.3 The improvements shall have:

- (a) the required Road Safety Audits and Completion Certificates in accordance with the Design Standards for Roads and Bridges (DMRB), and
- (b) the Health and Safety file required by the Construction (Design Management) Regulations 2007.

Reason: to mitigate the impact of the additional traffic generated by the development on the safety and capacity of the M25 Junction 21a.

**8. IMPROVEMENTS TO JUNCTION 22 OF THE M25**

- 8.1 Not more than 130,000 square metres of floor area in the Units shall be occupied until the M25 Junction 22 Improvements have been completed and brought into use.

- 8.2 The improvements shall include any revisions as required due to Road Safety Audit process and any revisions required to ensure the improvements comply with DMRB standards, or the improvements shall include the relevant approved Departures from Standards (DfS).

- 8.3 The improvements shall have:

- (a) the required Road Safety Audits and Completion Certificates in accordance with the Design Standards for Roads and Bridges (DMRB), and
- (b) the Health and Safety file required by the Construction (Design Management) Regulations 2007.

Reason: to mitigate the impact of the additional traffic generated by the development on the safety and capacity of the M25 Junction 22.

**9. TRAVEL AND FREIGHT MONITORING AND MANAGEMENT PLAN**

- 9.1 None of the Units shall be occupied until a Travel and Freight Monitoring and Management Plan substantially in accordance with the Draft Travel and Freight Monitoring and

Management Plan dated 18 December 2009 has been submitted to and approved in writing by the local planning authority.

- 9.2 The Travel and Freight Monitoring and Management Plan shall be submitted for approval no later than 12 months following the commencement of the Development.
- 9.3 The approved Travel and Freight Monitoring and Management Plan shall be implemented in accordance with the timetable contained therein and its requirements shall continue to be observed as long as any part of the development is occupied.

Reason: This condition is necessary to ensure that the measures proposed in the Travel Plan and Freight Management Plan to regulate movement to and from the development are carried out in the interests of (i) encouraging travel by means other than the private car and (ii) regulating the impact of HGV traffic on the surrounding network

### **CAR PARKING**

10. Car parking spaces shall be provided at a standard of not more than 1 space per 207 square metres of floorspace for each Unit within the development

Reason: This condition is necessary to limit the amount of parking on the site in order to encourage travel by means other than the private car.

### **CONTROL OVER SOUTHERN ROUNDABOUT**

11. None of the Units shall be occupied until a detailed scheme has been submitted to and approved in writing by the local planning authority to ensure that only pedestrians, cyclists and authorised public transport and emergency vehicles can use the eastern limb of roundabout Y on the Highways Plan. The scheme shall specify the physical measures to be incorporated and the management arrangements for the operation of those measures. The scheme shall be submitted for approval no later than 12 months following the commencement of the Development. The approved scheme shall be provided before any of the Units are occupied and the only users of the eastern limb shall be those authorised under the approved scheme.

Reason: This condition is necessary to ensure that the southern entrance to the SRFI is not used by employee's vehicles or goods vehicles in order to limit the impact of traffic generated by the development on the local road network.

### **12. RAIL RELATED WORKS**

- 12.1 None of the Units shall be occupied until the Midland Mainline Connection Works have been completed and until an operational rail link has been provided from such works to the relevant Unit.
- 12.2 A second track linking the reception sidings to the Midland Mainline shall be completed and become operational upon the earlier of:
- (a) as soon as reasonably practicable following the date on which the average number of trains arriving at and leaving Area 1 over a three month period exceeds seven per 24 hour weekday period, or
  - (b) 10 years following first occupation of any of the Units.
- 12.3 None of the Units shall be occupied until the Intermodal Terminal Phase 1 Works have been completed.

- 12.4 The Midland Mainline Connection Works and the rail links to each of the Units and the Intermodal Terminal once provided shall thereafter be managed and maintained such that they remain available and operational to serve the Units.
- 12.5 The Intermodal Terminal Phase 2 Works shall be completed as soon as reasonably practicable following the date on which the average number of trains arriving at and leaving Area 1 over a three month period exceeds four per 24 hour weekday period.
- 12.6 The Intermodal Terminal Phase 3 Works shall be completed as soon as reasonably practicable following the date on which the average number of trains arriving at and leaving Area 1 over a three month period exceeds eight per 24 hour weekday period.
- 12.7 The Intermodal Terminal shall be equally open to access by all licensed rail freight operating companies.
- 12.8 There shall be submitted to the Council at the expiry of every six months following the date of commencement of the Development a written report setting out the anticipated programme for the delivery of the rail works referred to in conditions 12.1, 12.2, 12.3, 12.5 and 12.6 until such works have been completed.

Reason: This condition is necessary to ensure that the rail facilities on the site and the connection to the main line are provided and maintained in a manner compatible with the intended use of the site as a SRFI.

**13. RAIL RELATED WORKS – GAUGE ENHANCEMENT TO THE MIDLAND MAINLINE**

- 13.1 Not more than 175,000 square metres of floor area in the Units shall be occupied until the Midland Mainline Gauge Enhancement Works have been completed such that the W10 gauge enhancement has been provided either:
- (a) from the development to Acton Yard, West London Junction and Willesden Junction (Acton Branch), or
  - (b) from the development to Junction Road Junction.
- 13.2 If Network Rail confirms in writing to the local planning authority before occupation of 175,000 square metres of floorspace within the Units that both sets of the works set out at condition 13.1 are required to be completed to meet the anticipated demand for train paths to the development, not more than 230,000 square metres of floorspace within the Units shall be occupied until a programme for such works has been approved in writing by the local planning authority. The works shall be completed in accordance with that programme.
- 13.3 There shall be submitted to the Council at the expiry of every six months following the date of commencement of the Development a written report setting out the anticipated programme for the delivery of the rail works referred to in condition 13.1 until such works have been completed.
- 13.4 There shall be submitted to the Council written notice of the anticipated date of occupation of 175,000 sq metres of floorspace within the Units, such notice to be served at least 6 months prior to such anticipated date of occupation.

Reason: This condition is necessary to ensure that the rail gauge enhancement works are completed in a timely fashion

## **CONSTRUCTION METHOD STATEMENT**

14. The Development shall not be commenced until there has been submitted to and approved in writing by the local planning authority a construction method statement. The construction method statement shall include:
- (a) details of the methods to be used to control dust, noise, vibration and other emissions from the site;
  - (b) details of all temporary buildings and compound areas including arrangements for their removal following completion of construction;
  - (c) details of areas to be used for the storage of plant and construction materials and waste;
  - (d) details of temporary lighting arrangements;
  - (e) hours of construction work.
  - (f) measures to ensure that construction vehicles do not deposit mud on the public highway.
  - (g) a scheme for the routing of construction vehicles accessing the site including measures to be taken by way of penalties if construction vehicles do not observe the identified routes.
  - (h) details of the construction earthworks methodology.

The construction of the development shall be carried out in accordance with the approved construction method statement.

Reason: This condition is necessary in the interest of controlling the construction works and limiting the impact of construction on surrounding residents.

## **15. LANDSCAPING**

- 15.1 The details to be submitted for approval under condition 2 in relation to landscaping for Areas 1 and 2 shall include:
- (a) a topographical survey of the Country Park within Area 1 and Area 2 comprising an updated version of drawing number 394503/LV/041 showing landform, water features, boundary structures, land uses, access roads and footpaths.
  - (b) proposed ground modelling, re-profiling and mounding with proposed contours to be at a maximum of 1 metre levels;
  - (c) a survey of existing trees and hedges (including ground levels at the base of all trees) in the Country Park within Area 1 and Area 2, the survey to show details of all trees and hedges to be removed and those to be retained and a scheme for the protection of retained trees during the construction of the development on Area 1 and Area 2. The

survey and the tree protection measures shall be in accordance with BS 5837 (2005) unless otherwise agreed in writing with the local planning authority;

- (d) the comprehensive treatment of planting and seeding areas including plans and sections at a scale of not less than 1:1250;
- (e) all boundary treatment, retaining walls and security fencing including materials to be used, typical elevations and heights;
- (f) acoustic fencing including materials to be used, typical elevations and heights and details of acoustic performance;
- (g) hard landscape works including access roads, parking areas, signage, seating, litter bins and picnic areas;
- (h) all existing, diverted (whether temporary or permanent) and proposed rights of way including footpaths, bridleways and cycleways and their proposed surfacing treatment and details of enclosures, gates and stiles;
- (i) works to Hedges Farm to provide the Country Park Visitor/Interpretation Centre;
- (j) a programme of implementation and a management plan.

- 15.2 The landscaping programme shall be implemented as approved and the landscaping shall be maintained in accordance with the approved management plan.

Reason: This condition is necessary to guide the submission of landscaping details required as part of the reserved matters application and to ensure that the landscaping in Areas 1 and 2 is carried out and appropriately maintained.

## **POLLUTION CONTROL**

16. Where any Unit or other facility in the development has oil fuel storage or chemical tanks serving such Unit, the relevant Unit shall not be occupied until a pollution control strategy in relation to such tanks has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the relevant approved strategy.

Reason: This condition is necessary to reduce the risk of any oil or chemicals stored on site polluting the environment.

## **17. DRAINAGE**

- 17.1 The development shall not be commenced on Area 1 and Area 2 until a detailed scheme of drainage for Area 1 and Area 2 has been submitted to and approved in writing by the local planning authority. Such scheme shall include:

- (a) the provision of sustainable urban drainage systems to control the run-off from the development;
- (b) the provision of storm water balancing swales and other storage facilities; and

- (c) details of the design of the drainage infrastructure to illustrate the discharge rates will be less than existing levels.

The development shall be carried out in accordance with the approved scheme.

- 17.2 The development shall not be commenced on Areas 3 - 8 respectively until it has been confirmed in writing to the local planning authority whether development on the relevant Area includes the provision of foul and surface water drainage. If such drainage is to be provided on any of Areas 3 - 8 the development shall not be commenced on the relevant Area until a written scheme has been submitted to and approved in writing by the local planning authority setting out the details of such drainage and its effect on groundwater. Foul and surface water drainage on the relevant Area shall be constructed in accordance with the approved scheme.

Reason: This condition is necessary to ensure that drainage of the developed areas of the site does not increase run-off into local watercourses.

**18. PILING**

Piling or the construction of any other foundations using penetrative measures shall not take place until a written scheme has been submitted to and approved in writing by the local planning authority setting out the details of such measures and their effect on groundwater. Piling or the construction of any other foundations using penetrative measures shall only take place in accordance with such approved scheme.

Reason: the site is in a sensitive location with respect to the potential contamination of groundwater. The construction of piles or other types of foundation could provide a potential pathway for contamination at the surface to migrate into the underlying major aquifer and Source Protection Zone.

**AREA 2 PONDS**

19. The development on Area 1 shall not be commenced until details of the provision (including the timing, monitoring and aftercare of the new ponds to be located in Area 2 have been submitted to and approved in writing by the local planning authority. The ponds shall be constructed in accordance with the approved details. None of the Units shall be occupied until the ponds on Area 2 have been constructed.

Reason: This condition is necessary to ensure that ponds are provided on Area 2 to provide appropriate habitat for newts and invertebrates.

**TRANSLOCATION OF ACID GRASSLAND**

20. The development shall not be commenced on the land forming part of Area 1 shown on EPR Map 11 until a mitigation strategy for the translocation of acid grassland from Area 1 to Area 2 (including timing, monitoring and aftercare) has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved strategy.

Reason: This condition is necessary to ensure that appropriate provision is made to mitigate for the loss of acid grassland on Area 1.

**PROTECTED SPECIES**

21. The development shall not be commenced until an up to date survey has been submitted to the local planning authority showing the location of any protected species (being reptiles and nesting birds protected under the Wildlife and Countryside Act 1981 (as amended)) within

Areas 1 or 2. Thereafter development shall not be commenced on any land forming part of Area 1 or 2 and identified by the survey as a location for a protected species, until a mitigation strategy for such species has been submitted to and approved in writing by the local planning authority. Development shall be carried out only in accordance with the approved strategy.

Reason: This condition is necessary to ensure that any protected species on the site are identified and that appropriate steps are taken to avoid harm to them.

## **BADGERS**

22. Not more than 6 months prior to the development being commenced on Area 1 or Area 2 the developer shall carry out a badger survey on the relevant Area and shall submit the results of such survey to the local planning authority. If appropriate the survey shall include a mitigation strategy for approval in writing by the local planning authority. Development shall be carried out only in accordance with the approved mitigation strategy.

Reason: This condition is necessary to ensure that any Badgers on the site at the time development is due to commence are identified and appropriate measures taken to mitigate the effects of the development on them.

## **ARCHAEOLOGY**

23. The development shall not be commenced within Areas 1, 2, 3 or 4 or the part of Area 6 shown on drawing CgMs Radlett/01 dated 13 December 2007 until a written scheme of archaeological work and protection in relation to the relevant Area has been submitted to and approved in writing by the local planning authority. The scheme shall make provision for the preservation in situ or, where that is not possible, the full excavation of remains considered to be of local or greater significance. The development shall be carried out in accordance with the scheme subject to any amendments approved in writing by the local planning authority. All remains preserved in situ shall be preserved in accordance with the scheme.

Reason: This condition is necessary in the interests of ensuring that appropriate provision is made for the recording or preservation of any archaeological remains that may be found on those areas of the site not previously disturbed by quarrying.

## **24. CONTAMINATION**

- 24.1 The development shall not be commenced on any Area until the following components of a scheme to deal with the risks associated with contamination of the relevant Area has been submitted to and approved in writing by the local planning authority:

- (a) A preliminary risk assessment which has identified:
  - (i) all previous uses
  - (ii) potential contaminants associated with those uses
  - (iii) a conceptual model of the site indicating sources, pathways and receptors
  - (iv) potentially unacceptable risks arising from contamination at the site.
- (b) A site investigation scheme, based on (a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

- (c) The site investigation results and the detailed risk assessment and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
- (d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

24.2 Any changes to the approved remediation strategy and the longer-term monitoring require the express consent of the local planning authority. The remediation strategy and longer-term monitoring shall be implemented as approved.

24.3 The development shall not be commenced on any Area until a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation on the relevant Area has been 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 any 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, and for the reporting of this to the local planning authority.

24.4 If during development of the relevant Area contamination not previously identified is found to be present at the site then no further development shall be carried out on that Area until the developer has submitted to and obtained written approval from the local planning authority for an amendment to the approved remediation strategy detailing how this unsuspected contamination shall be dealt with.

Reason: To ensure that an appropriate remediation strategy is undertaken as part of the development

## 25. **NOISE**

25.1 The development shall not be commenced on Areas 1 and 2 until a scheme has been submitted to and approved in writing by the local planning authority which specifies the details of the provisions to be made for the control of noise emanating from these Areas during the operation of the development. The development shall be operated in accordance with the approved scheme.

25.2 The level of noise emitted from the site shall not exceed 50dB LAeq, 8hr between 2300 and 0700 the following day as measured at 1 metre from the facade of any residential property. The measurement shall be made in accordance with British Standard 74451:2003.

25.3 The level of noise emitted from the site shall not exceed 60 dB LAFmax as measured at 1 metre from the façade of any residential premises between 23.00 and 07.00, every day.

Reason: This condition is necessary in the interests of preventing significant noise disturbance to residents living around the site.

## **EXTERNAL LOUDSPEAKERS**

26. No external loudspeaker systems shall be installed on any Area.



Reason: This condition is necessary in the interests of preventing residents living around the site being disturbed by (intermittent) noise from any external loudspeakers that may be installed on the site.

## **REFUSE**

27. The development shall not be commenced on any Area until details of the facilities for the storage of refuse on that Area have been submitted to and approved in writing by the local planning authority. The approved details shall thereafter be implemented and retained.

Reason: This condition is necessary to ensure that proper provision is made for the storage of refuse on the site.

## **RENEWABLE ENERGY**

28. Construction of the Units within Area 1 shall not be commenced until a report has been submitted to the local planning authority setting out the measures to be taken such that the predicted CO2 emissions of the development will be reduced by a target of 10% through the use of on-site renewable energy equipment and until such measures have been approved in writing by the local planning authority. The development shall be carried out incorporating such approved measures.

Reason: This condition is necessary in the interests of sustainable development and to comply with the requirements of RSS14.

## **LIGHTING**

29. No Unit shall be occupied until a detailed external lighting scheme for Areas 1 and 2 has been submitted to and approved in writing by the local planning authority. No external lighting other than that approved shall be provided on Areas 1 and 2.

Reason: This condition is necessary to ensure that the design and installation of external lights on the site pays due regard to the need to protect the amenities of local residents and the environment.

## **CYCLE STORAGE**

30. None of the Units shall be occupied until details of the cycle storage for employees of the Unit has been submitted to and approved in writing by the local planning authority. The approved cycle storage shall be provided and thereafter retained.

Reason: This condition is necessary in the interests of ensuring that appropriate provision is made for the storage of cycles on the site.

31. **COUNTRY PARK**

- 31.1 The development shall not be commenced until there has been submitted to and approved in writing by the local planning authority a Countryside Management Plan. The Countryside Management Plan shall include landscaping details for Areas 3 to 8 submitted for approval under Condition 2 above and shall be substantially in accordance with the following documents:

- (a) Countryside Management Plan – Overall Objectives and Design Principles dated 19 December 2007 and drawing numbers 394503-LV-042, 394503-LV-044, 394503-LV-046, 394503-LV-048, 394503-LV-050, 394503-LV-052, 394503-LV-054, 394503-LV-056, 394503-P-057 and 394503-LV-018 and EPR Maps 2, 3 rev A, 4, 5, 6, 7, 8, 9 and 10 Rev A; and
- (b) Countryside Management Plan – Objectives and Specific Measures for Areas 1 – 8, dated 19 December 2007.

31.2 The development shall not be commenced until there has been submitted to and approved in writing by the local planning authority a Landscape Management Plan substantially in accordance with the Draft Landscape Management Plan prepared by Capita Lovejoy in December 2008.

31.3 The approved Countryside Management Plan and the approved Landscape Management Plan shall be implemented and their requirements shall thereafter continue to be observed.

31.4 The Countryside Management Plan when submitted under condition 31.1 shall define the landscaping and countryside access works and the public access and the sport and recreation facilities referred to in condition 32.1 and the works to create waterbodies and related facilities for bird habitat referred to in condition 32.2. It shall also set out measures to protect the areas of ecological interest within the Country Park pending the completion of the Country Park.

Reason: This condition is necessary to ensure that details of the Country Park are settled at an early stage.

## 32. **DELIVERY OF COUNTRY PARK**

32.1 The landscaping and countryside access works in those parts of Areas 1 and 2 proposed for use as a Country Park and in Areas 3, 4 and 5 and in the southern part of Area 6 and the provision of public access and the sport and recreation facilities in Area 5 shall be completed prior to occupation of any of the Units. These works shall include the restoration of Hedges Farm as a working farm and as a Country Park Visitor/Interpretation Centre as approved under condition 15.1(i) above.

32.2 The works to create waterbodies and related facilities for bird habitat on Areas 5 and 8 shall be completed within twelve months following occupation of any of the Units.

32.3 The Country Park works on Areas 7 and 8 shall be completed no later than the occupation of 290,000 square metres of floor area in the Units.

32.4 The Country Park measures on the northern part of Area 6 shall be completed by the later of:

- (a) 12 months following completion of the restoration of Area 6 in accordance with the planning permission dated 27 March 2007 reference 5/1811-04(CM112) (and any variation thereof); or
- (b) occupation of more than 290,000 square metres of floor area in the Units.

Reason: This condition is necessary to ensure timely delivery of the Country Park.

## DEFINITIONS

"Access Works"	The creation of the new vehicular access to serve Area 1 from the A414 including the at grade signalised roundabout linking the A414 to the Park Street bypass
"Area"	The relevant area within Areas 1 – 8
"Area 1"	The area marked Area 1 shown edged red on drawing number 394503-LV-018
"Area 2"	The area marked Area 2 shown edged red on drawing number 394503-LV-018
"Area 3"	The area marked Area 3 shown edged red on drawing number 394503-LV-018
"Area 4"	The area marked Area 4 shown edged red on drawing number 394503-LV-018
"Area 5"	The area marked Area 5 shown edged red on drawing number 394503-LV-018
"Area 6"	The area marked Area 6 shown edged red on drawing number 394503-LV-018
"Area 7"	The area marked Area 7 shown edged red on drawing number 394503-LV-018
"Area 8"	The area marked Area 8 shown edged red on drawing number 394503-LV-018
"Country Park"	The country park to be provided on part of Area 1 and part of Area 2 shown coloured green on drawing number 394503-LV-077 and the Key Parameters Plan and on Areas 3-8
"Countryside Management Plan"	A plan setting out details of the long term management and maintenance of the Country Park
"Highways Plan"	Plan 6035/37A dated December 2007
"Intermodal Terminal Phase 1 Works"	The first phase of the on-site rail works comprising the construction of three reception sidings and two intermodal terminal sidings and associated works to facilitate its operation as an intermodal terminal including security, hardstanding and lighting substantially in accordance with the principles of drawing number IM/Radlett/01 dated 19 December 2007
"Intermodal Terminal Phase 2 Works"	The second phase of on-site rail works comprising the construction of two additional intermodal terminal sidings and new temporary hardstanding substantially in accordance

with the principles of drawing number IM/Radlett/01 dated 19 December 2007

<b>"Intermodal Terminal Phase 3 Works"</b>	The third phase of on-site rail works comprising the construction of two additional intermodal terminal sidings with the extension of the track to the reception sidings substantially in accordance with the principles of drawing number IM/Radlett/01 dated 19 December 2007
<b>"Intermodal Terminal"</b>	The intermodal terminal forming part of the development
<b>"Key Parameters Plan"</b>	Plan 394503-DSD-002a dated December 2008
<b>"Landscape Management Plan"</b>	A plan setting out details of the long term management and maintenance of the landscape areas within the Country Park
<b>"London Colney Roundabout Improvements"</b>	Improvements to the existing traffic signal controller at the London Colney Roundabout by the installation of the MOVA signal control system and other works to improve safety and capacity of the roundabout
<b>"M25 Junction 21A Improvements"</b>	Improvements to M25 Junction 21A as shown in principle on drawing number 11012495/PHL/01 Rev C
<b>"M25 Junction 22 Improvements"</b>	Improvements to M25 Junction 22 as shown in principle on drawing numbers 2495/SK/003 Rev A and 2495/SK/004 Rev A
<b>"Midland Main Line"</b>	The railway running from Bedford to St Pancras
<b>"Midland Main Line Connection Works"</b>	The formation of a southerly connection from the Midland Main Line northbound and southbound slow lines to the new branch line (including necessary signalling works) to serve Area 1
<b>"Midland Main Line Gauge Enhancement Works"</b>	<p>The gauge enhancement to the Midland Main Line to W9 and W10 loading gauge on the following routes;</p> <ul style="list-style-type: none"><li>(a) the development to Brent Curve Junction, and</li><li>(b) either;<ul style="list-style-type: none"><li>(i) Brent Curve to Acton Wells Junction; or</li><li>(ii) Brent Curve to Junction Road Junction (at Tufnell Road)</li></ul></li></ul>

**"Park Street Bypass Phase 1 Works"**

The provision of the Park Street Bypass from the A414 between points A and C on the Highways Plan

**"Park Street Bypass Phase 2 Works"**

The provision of:

- (a) a modification to the existing bridge over the M25; or
- (b) a new bridge over the M25 as shown in principle on Drawing 14297/BR/AIP/ST01/001-Rev A linking Area 1 with the A5183 by connecting roundabout Y and point D on the Highways Plan

**"Park Street Roundabout Signalisation Works"**

Improvements to the Park Street Roundabout as shown in principle on drawing no. 2495/SK/001 Rev A

**"Reserved Matters"**

Details of:

- (a) layout except as already approved for layout of the new buildings;
- (b) scale except as already approved for the maximum total floorspace of the new buildings and the maximum height, width and length of the new buildings;
- (c) appearance of the new buildings;
- (d) access except as already approved for rail, lorry and car access;
- (e) landscaping except as already approved for the location of the structure planting and earth mounds on Areas 1 and 2

**"Unit"**

Each of the respective warehouse units within Area 1 to be constructed as part of the development



# Report to the Secretary of State for Communities and Local Government

by A Mead BSc (Hons) MRTPI MIQ  
an Inspector appointed by the Secretary of State  
for Communities and Local Government

The Planning Inspectorate  
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Date: 19 March 2010

**Land in and around former aerodrome, North Orbital Road, Upper Colne  
Valley, St Albans**

**St Albans District Council**

Town and Country Planning Act 1990

Section 78 Appeal by Helioslough Ltd

**Proposed Strategic Rail Freight Interchange**

Inquiry held between 24 November – 18 December 2009

Site in and around Former Aerodrome, North Orbital Road, Upper Colne Valley, St Albans, Hertfordshire

File Ref: APP/B1930/A/09/2109433

## CONTENTS

1	Introduction and Procedural Matters	1
2	The Appeal Site and Surroundings	3
3	Planning History	5
4	The Proposal	10
5	Planning Policy	14
6	Other Agreed Facts	15
7	The Case for Helioslough Ltd	16
8	The Case for St Albans District Council	66
9	The Case for STRIFE	118
10	The Cases for other Interested Persons	142
11	Written Representations	151
12	Conditions and Unilateral Undertaking	155
13	Conclusions	159
14	Recommendation	182
	Documents	183
	Appearances	190
	Annex A: Conditions	192
	Annex B: Abbreviations	193

**File Ref: APP/B1930/A/09/2109433**

**Site in and around Former Aerodrome, North Orbital Road, Upper Colne Valley, Hertfordshire**

- 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 Helioslough Ltd against the decision of St Albans City & District Council.
- The application Ref 5/09/0708, dated 9 April 2009, was refused by notice dated 21 July 2009.
- The development proposed is the construction of a Strategic Rail Freight Interchange comprising an intermodal terminal and rail and road served distribution units (331,665m<sup>2</sup> in Use Class B8 including ancillary B1/B2 floorspace) within Area 1, with associated road, rail and other infrastructure facilities and works within Areas 1 and 2, (including earth mounds and a Park Street/Frogmore relief road) in a landscaped setting, and further landscaping and other works within Areas 3 to 8 inclusive to provide publicly accessible open land and community forest.

**Summary of Recommendation: The appeal be allowed subject to conditions.**

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## **1. Introduction and Procedural Matters**

1.1 The inquiry opened on 24 November 2009 and sat for 15 days before closing on 18 December. The appeal site and its surroundings were inspected on 21 December accompanied by representatives of the appellant, St Albans District Council and STRIFE. I visited the surroundings of the appeal site before, during and after the inquiry, visited the locations of sites which were suggested as possible alternatives for a Strategic Rail Freight Interchange (SRFI) at Slough, Wokingham and near Luton and I also observed another SRFI at DIRFT. The other visits were carried out unaccompanied, with the exception of Harlington, near Luton, where representatives of the appellants, the Council and a local landowner were present.

1.2 At the inquiry, an application for an award of costs was made by Helioslough Ltd against St Albans District Council. This application is the subject of a separate Report.

1.3 The appeal was recovered by the Secretary of State for his decision by a Direction dated 29 July 2009. The reason given for the Direction was that (i) the appeal involves proposals for development of major importance having more than local significance and (ii) the appeal relates to proposals of major significance within the Green Belt.

1.4 On 1 October 2008, following a public inquiry which closed on 20 December 2007, the then Secretary of State issued a decision to dismiss an appeal against the decision of the St Albans City and District Council to refuse outline planning permission for construction of an SRFI on the site of the current appeal. The proposal which was made then is the same as has been submitted for the current appeal. The appeal site is also the same now as before.

1.5 A Statement of Common Ground (SoCG) between the appellant and Council was submitted dated 30 September 2009. The SoCG stated that the descriptions of the appeal site, the planning history and the development proposal are the same as those agreed for the SoCG submitted in October 2007 for the previous inquiry. I



have also adopted, or adapted where appropriate, some of the previous Inspector's report which deals with the basic background information, including planning policies.

1.6 The application was submitted in outline with design and external appearance reserved for future consideration. Matters relating to means of access, siting and landscaping were submitted for consideration as part of the application, but only to the extent that they were described within the Development Specification Document.

1.7 Section 2 describes the appeal site and its surroundings. This is followed by sections describing the planning history, the current proposal, planning policies, agreed facts, the gist of the cases for the parties who appeared at the inquiry, the main points within the written representations about the appeal, possible planning conditions, my conclusions and finally, my recommendation.

1.8 Conditions which are recommended in the event that the appeal is allowed are listed in Annex A. Appearances at the inquiry are listed at the end of the report together with inquiry documents. A list of abbreviations used in the report is also attached.

## **2. The Appeal Site and Surroundings**

2.1 The following paragraphs are extracted from the description of the appeal site contained in the report of the previous inquiry. Nothing that I observed or has been given in evidence leads me to conclude that the description is anything other than an accurate summary. Therefore it is repeated.

2.2 "The appeal site covers eight separate parcels of land (Areas 1 to 8) with a total area of some 419ha. All areas fall entirely within the City and District of St Albans.

2.3 The SRFI would be located on Area 1, which has an area of 146ha. This is bounded by the A414 to the north, the Midland Main Line (MML) to the east and the M25 to the south. The settlements of Park Street and Frogmore lie to the west. The major part of Area 1 was once an airfield (Radlett Aerodrome), but this use was discontinued many years ago, following which gravel was progressively extracted from the site. This gravel extraction ceased in turn a few years ago and the majority of the site has now been restored to agricultural grassland. Groups of trees have been planted on some of the boundaries, fences erected and hedges planted. The site also contains two significant water bodies.

2.4 Land within Area 1 to the north of the former gravel extraction area comprises mainly farmland, with some woodland, particularly to the south of bridleway 51 which runs from Bury Dell, north-eastwards past Hedges Farm to the A414. Hedges Farm is a working farm with a range of buildings and a butcher's shop. Land farmed from the holding includes the agricultural land within Area 1, part of Area 2 and the whole of Areas 3 and 4.

2.5 Area 2, with an area of 26ha, lies immediately to the east of the MML. A new railway line is proposed through this area, with a bridge under the MML, to link the proposed rail sidings on the site to the public railway network. Parts of Area 2 have previously been worked for minerals.

2.6 Area 3 (29ha) lies to the north-west of Area 1 on the south side of the A414. It comprises farmland, used mainly for grazing cattle and sheep. The river Ver runs through this parcel of land, and some of the ground to the side of the river is low lying and wet. The route of the Ver Colne Valley Walk passes through the area running northwards from Bury Dell across the farmland and river to a bridge under the A414.

2.7 North of the A414 the Ver Colne Valley Walk continues northwards through the southern section of Area 4 up to Sopwell Manor Hotel which is situated on Cottonmill Lane. A secondary footpath (FP Nos 48 and 49) runs approximately north-west to south-east across the farmland, linking the housing areas at the southern end of St Albans to the Ver Colne Valley Walk and onwards to the A414.

2.8 Further sections of Area 4 lie to the north of Cottonmill Lane and to the south of the lane, east of the hotel grounds. The former parcel of land which lies to either side of the river Ver was once grazing land. The latter is open farmland. Currently there is no public access to or across either of these areas.

2.9 Area 5 (91ha) is a former gravel extraction area. It is varied in character with a significant area of woodland on either side of the river Ver and several attractive water bodies on its eastern side, close to Frogmore. Elsewhere the standard of restoration has been variable and much of the area to the south of the track linking Hyde Lane to How Wood and to the west of the Ver Colne Valley Walk is undulating and tussocky with encroaching scrub. A small geological SSSI is in the area. Two further footpaths cross the main body of the area to the south of the track, but the area is largely open and several informal paths also run through it. The western boundary of the site follows the single track Watford to St Albans Abbey branch railway line. The southern boundary follows the M25. A pedestrian footbridge carries the Ver Colne Valley Walk over the M25.

2.10 Area 6 (16ha) lies to the south of Area 5 on the opposite side of the M25. It is divided into two by Smug Oak Lane. The northern section comprises a poorly restored former gravel pit, mainly now used for grazing horses. The southern section comprises open farmland. There are two public footpaths through the northern section, but currently no public access to the area south of Smug Oak Lane.

2.11 Area 7 (27ha) lies immediately to the north of the M25. It too was a former gravel extraction area, but it has been fully restored and is now used for agriculture. The landform is domed to either side of the track which runs through it from south-west to north-east. There is no public access to the area.

2.12 Area 8 (32ha) comprises a poorly restored area of former gravel workings lying between the M25 and London Colney to the east of Shenley Lane. The main body of the site is undulating, tussocky and disused, but the ground is more level and appears to be of better quality nearer to the northern boundary. Footpath 15 crosses the area as does the Watling Chase Trail. A further footpath (No 23) skirts the northern boundary. The area is, however, criss-crossed with other paths."

2.13 The centre of the main development area, Area 1 is some 3.5km from the centre of St Albans. It is wholly within the Metropolitan Green Belt. It is bounded to the south by the M25 motorway and to the east by the four-track Midland Main Line (MML) which passes the main body of the site on embankment. The A414 dual

carriageway passes the site to the north. To the west, the A5183 runs from the M10/A405/A414/A5183 (Park Street) Roundabout through the settlements of Park Street and Frogmore before crossing over the M25 and continuing south to Radlett and Elstree. Development in Park Street and Frogmore between the road and the site is mainly residential, but there is a significant group of industrial and office buildings between the A5183 and the western site boundary (Curo Park). A further, much larger, group of warehouses and industrial buildings lies opposite the site on the south side of the M25 (Ventura Park) in the triangle of land between the M25, the MML and the A5183.

2.14 To the east of the MML opposite Area 1 there is open farmland, to the east of which is the former Napsbury Hospital, now redeveloped for housing in a parkland setting. The former hospital site is a designated conservation area. A further conservation area – Park Street and Frogmore – covers the core of the settlements, including the area around Bury Dell.

2.15 The major roads in the area comprise the M25, M10 and M1 motorways. The A405 dual carriageway links the M25 (Junction 21a) to the M10, A414 and A5183 at Park Street Roundabout. To the south of the M25, the A405 links to the M1 at Junction 6. Northwards from the Park Street Roundabout, the A5183 provides a link into St Albans. The A414 dual carriageway runs from Park Street Roundabout eastwards past the development site to the London Colney Roundabout. From here the A1081 dual carriageway links down to the M25 at Junction 22 and the A414 continues to the A1(M). A local link leads into London Colney.

2.16 Secondary roads include the B556 Harper Lane, which connects the A5183 to the M25 at Junction 22 and carries much of the HGV traffic from Ventura Park. Other local roads link Park Street and Frogmore to the A405 via How Wood and Bricket Wood.

2.17 The closest train station to the site is Park Street, on the Watford to St Albans Abbey branch line. On the MML, the nearest station is St Albans.

2.18 A description of the landscape in the area can be found in the Environmental Statement.

### **3. Planning History**

3.1 The material planning history is the same as for the previous inquiry with the addition of the consequent decision.

3.2 The proposed development site, Area 1, was used as a grass aerodrome in the 1930s by Handley Page Civil Aircraft. That use was extended in 1939 and it became a major centre for the production of bombers during WW2. Post 1945, the site was used for the production of air liners and the runways were then upgraded to concrete for air shows held on it in 1947 and 1948. Handley Page subsequently used the site for aircraft research, production and test flying, requiring further extension of the runways in 1952. The company went into liquidation in 1969 and ceased to exist in 1970.

3.3 The aerodrome was subsequently redeveloped, with hanger areas to the west and south converted and redeveloped for commercial uses including warehousing and

distribution at what are now the industrial estates at Frogmore and Colney Street. The construction of the M25 between 1975 and 1986 severed the Colney Street estate from the remainder of the aerodrome. Permission was granted in 1978, 1985 and 1990 for the use of most of the runway area for sand and gravel extraction, with the remainder left as open land. Mineral extraction ceased in 1997 and the site has been subject to a restoration programme which is nearing completion.

3.4 During the 1970s and 1980s, applications for temporary change of use of part of the Radlett aerodrome site were approved for development such as one day model aircraft competitions, police dog trials, ACU motor cycle races and bus and vehicle rallies.

3.5 On 1 October 2008, the decision by the Secretary of State was issued following the inquiry at the end of 2007 into the refused application for an SRFI on the appeal site. The Secretary of State agreed with the Inspector that the main issues were those he set out in his report, which can be characterised as harm to the Green Belt; other harm (landscape and visual impact, nature conservation, residential amenities, local highways and other rights of way and on passenger services between St Albans and London St Pancras); prematurity; and the very special circumstances, including the policy support for SRFIs, the various benefits claimed for the appeal site and whether alternative sites for an SRFI elsewhere are available elsewhere which could meet the need which it is argued the appeal site could deliver.

3.6 The conclusions of the Secretary of State on the various issues are summarised as follows:

#### *Harm to the Green Belt*

3.7 The Secretary of State stated that the proposal would constitute inappropriate development in the Green Belt and would therefore be in conflict with national and local policy. PPG2 and Development Plan policies required the appellant to demonstrate that harm to the Green Belt by reason of inappropriateness, and any other harm, would be clearly outweighed by very special circumstances that would justify granting planning permission.

3.8 Whilst the impact on the landscape of the proposal would be mitigated to some degree by the mounding and planting proposed, the proposal would have a substantial impact on the openness of the Green Belt and harm on this account could not be mitigated. The proposal would result in significant encroachment into the countryside, and would contribute to urban sprawl. The proposal would not lead to St Albans merging with Radlett, or Park Street and Frogmore merging with either Napsbury or London Colney.

3.9 With regard to the impact which the proposal would have on the setting and special character of St Albans as a historic town, the Secretary of State commented that there would be some harm to the setting of the city. The Secretary of State considered whether the proposals would also be harmful to the Green Belt purpose of assisting urban regeneration. However, in view of her decision in this case, it was not necessary for her to reach any overall conclusion on this.

#### *Other Harm*

3.10 The Secretary of State agreed with the parties that the current landscape value of Areas 1 and 2 should be categorised as “*high*” and that, at year 15, the proposed development would have a “*significant adverse*” landscape impact on Area 1. She stated that the impact in landscape terms on Area 2, whilst marginally adverse overall, would not be significant. In terms of visual impact, the mitigation proposed in the form of bunding and planting on Area 1 would be extensive and, particularly from some viewpoints, would appear artificial and intrusive. Whilst she noted that the scale of the proposed landscaping and associated planting was not criticised by the Council, the scale, bulk and nature of the development proposed on Area 1 would result in significant visual impact from some quarters; that passengers in passing trains on the Midland Main Line would have a clear view of the warehouses and their associated service yards; and that the upper parts of the warehouses would also remain open to view from some higher vantage points.

3.11 The Secretary of State observed that the landscaping proposed on Areas 3 to 8 would be beneficial. However, she considered that the works proposed for Areas 3 to 8 would do practically nothing to ameliorate the impact of the built development on Areas 1 and 2; rather the areas are for the most part discrete ‘stand alone’ areas with little or no visual connection to Areas 1 and 2. Overall, the degree of improvement to the landscape in Areas 3 to 8 would not be such as to offset the harm to the landscape caused by the proposed development on Area 1, and concluded that the overall impact on the entire site would be moderately adverse. The proposal was therefore in conflict with development plan policies for the protection of the landscape.

3.12 The impact of the proposed development on the Park Street and Frogmore Conservation Area would be positively beneficial, and the character and appearance of the Napsbury Conservation Area would be preserved. Any harm to the underlying ecological interest would not be significant.

3.13 The Secretary of State agreed with the Inspector’s assessment on noise matters and took account of the fact that the expert witnesses who appeared at the inquiry were agreed that increases in traffic noise affecting those living next to the railway line or those living near main roads would not be significant. She considered the appellant’s proposed condition 22 to be reasonable, and accepted that noise generated by activity on the site during the night would not be unacceptable, albeit that it would be readily perceptible to residents living in quieter areas about the site. Overall, she accepted that noise from the development would not bring the proposal into conflict with the development plan. Lighting on the site would not result in unacceptable sky glow or materially detract from the character or amenity of nearby residents living in Napsbury Park and stated that no conflict with the development plan would arise in these respects. In addition, air quality concerns should not constrain the development.

3.14 The Secretary of State attached weight to assurances from Network Rail and to their commitment to adopt best operating practices to regulate freight train access onto busy main lines. She was reasonably assured that freight trains running to and from the proposed SRFI would not materially prejudice the ability of the Midland Main Line to reliably carry passengers, or to accommodate the predicted growth in passenger numbers. On the issue of disruption from engineering works, the Secretary of State had regard to the view of Network Rail about effecting the main line connection and the gauge enhancement works, and to their general commitment

to working with all stakeholders to minimise the impact of possessions. Whilst some disruption to passenger services due to engineering works would be inevitable it would not be unusually severe. There was no reason to suppose that sufficient paths could not be made available to serve the terminal during the inter-peak hours and overnight.

3.15 With regard to highways, the Secretary of State had regard to the fact that the Highways Agency withdrew their remaining objection to the proposal, subject to a condition about the Park Street Roundabout being imposed on any permission granted. She also had regard to the fact that the Council agreed that improvements to the London Colney roundabout could be dealt with by condition.

3.16 The Secretary of State accepted that very limited weight should be attached to both the County and District Councils' concerns about the design of the Park Street roundabout and she considered that concerns regarding the proposed roundabout on the A414 could be overcome when detailed designs were submitted for approval and she therefore afforded the matter very limited weight. She also accepted that fears that the development would increase traffic congestion and rat-running were generally not supported by the evidence, and that there would be minimal risk that HGVs travelling to and from the site would use unsuitable roads. She concluded that the increase to traffic on the A5183 in peak hours was an issue to which limited weight should be attached. In addition, the harm to existing footpaths and bridleways would be outweighed by the appellant's proposals for improvements.

3.17 The Secretary of State did not consider it would be reasonable to refuse planning permission for the development on account of sustainability concerns relating to the workforce's likely pattern of travel to work.

3.18 The Secretary of State considered whether the proposals were premature in the absence of a region-wide study to establish the most suitable locations for SRFIs to serve London and the South East. However, she concluded that a refusal of planning permission for the appeal proposal on prematurity grounds would lead to a substantial delay in providing further SRFIs to serve London and the South East, contrary to the Government's declared aim of increasing the proportion of freight moved by rail. The Secretary of State did not agree with the Councils' prematurity argument.

#### *Other considerations*

3.19 On the proposed Park Street and Frogmore bypass, the Secretary of State accepted that traffic travelling through Park Street and Frogmore on the A5183 would be reduced, that the proposal's effect on the conservation area would be positive, and that it would bring about some improvement in the living conditions of residents living in houses fronting or close to the A5183. She afforded this benefit a little weight.

3.20 The Secretary of State accepted that the proposals for Areas 3 to 8 would not deliver a 'country park' in the sense that the term is generally understood. However, she concluded that the proposals would be beneficial to the countryside and saw no reason why the appellant's proposal should not be beneficial overall and add to the existing biodiversity interests present on the site. The proposals for Areas 3 to 8

would accord with the development plan and with the objectives of the Watling Chase Community Forest Plan.

3.21 The Secretary of State stated that the impact of the warehouses was a matter that should be taken into account in determining that appeal. However, she accepted that there was no reason per se to criticise the proposal on account of its size. Furthermore, she saw no reason why the proposed SRFI would become an essentially road-based operation or otherwise fail to operate as an SRFI.

3.22 The Secretary of State concluded that the former Strategic Rail Authority's (SRA) SRFI Policy gave no indication as to where the three or four SRFIs required to serve London and the South East should be located, and that there was no evidence to support the appellant's assertion that the SRA specifically identified Radlett as one of the those locations.

3.23 The Secretary of State considered that, given the site's Green Belt location, whether or not the need which the proposal sought to meet could be met in a non-Green Belt location, or in a less harmful Green Belt location, was a material consideration in that case and that, in the circumstances of this case, it was sensible and pragmatic to restrict the search for alternative sites to an SRFI at Radlett to broadly the north west sector studied by the appellant. However, the Secretary of State concluded that the Alternative Sites Assessment submitted by the appellants was materially flawed, its results were wholly unconvincing and little reliance should be placed upon the report as it stood.

#### *The Green Belt balance*

3.24 On the overall Green Belt balancing exercise, the Secretary of State concluded that the proposal would constitute inappropriate development in the Green Belt, and she attached substantial weight to this harm. She also identified that it would further harm the Green Belt because it would cause a substantial loss of openness, significant encroachment into the countryside and it would contribute to urban sprawl. She considered that the harm from loss of openness, encroachment and urban sprawl would be substantial. She also considered that limited weight should be attached to the harm she identified to the setting of the historic city.

3.25 In terms of landscape impacts, the Secretary of State concluded that, on the main SRFI site (Area 1) significant adverse impacts would result, but that the new rail line through Area 2 would have only a marginal adverse impact. The Secretary of State also concluded that, whilst the proposal's impact on Areas 3 to 8 would be beneficial, the degree of improvement to the landscape in these areas would not offset the harm to the landscape overall and the overall impact on the entire site would be moderately adverse. The Secretary of State attached limited weight to concerns about highways.

3.26 Having considered the harm which the development would cause, the Secretary of State went on to consider whether the appellant had demonstrated that there were other considerations which would clearly outweigh these harms.

3.27 The Secretary of State considered that there were a number of benefits with the proposal, including the appellant's proposals for the country park areas, improvements to footpaths and bridleways, and the provision of a bypass to Park

Street and Frogmore. She also attached some weight to the predicted reduction in CO<sub>2</sub> emissions identified in the Environmental Statement. Notwithstanding the uncertainty as to the number of workers at the SRFI who would live close to the site, the Secretary of State afforded some weight to the benefits which would be generated by employment at the site, and accepted that it would not be reasonable to refuse planning permission for the development on account of sustainability concerns relating to the workforce's likely pattern of travel to work.

3.28 The Secretary of State considered that the need for SRFIs to serve London and the South East was a material consideration of very considerable weight and, had the appellant demonstrated that there were no other alternative sites for the proposal, this would almost certainly have led her to conclude that this consideration, together with the other benefits referred to above, were capable of outweighing the harm to the Green Belt and the other harm which she identified in that case. However, she considered the appellant's Alternative Sites Assessment to be materially flawed and its results to be wholly unconvincing. She considered this failing to be critical. In view of this, she concluded that the appellant had not shown that the need for the proposal or the benefits referred to above constituted other considerations which clearly outweighed the harm to the Green Belt and other harm which that development would cause, and that very special circumstances to justify the development had not been demonstrated.

#### *Overall conclusions of the Secretary of State*

3.29 Consequently, the overall conclusions of the Secretary of State were that the proposal did not comply with the development plan as it was inappropriate development in the Green Belt, and that it would also cause substantial further harm to the Green Belt. She also identified limited harm from conflicts with the development plan in relation to landscape and visual impact and highways, but considered these would be insufficient on their own to justify refusing planning permission. The Secretary of State was not satisfied that the appellant had demonstrated that no other sites would come forward to meet the need for further SRFIs to serve London and the South East, and she was unable to conclude that the harm to the Green Belt would be outweighed by the need to develop an SRFI at Radlett and that this was therefore a consideration amounting to very special circumstances. Having balanced the benefits of the proposal against the harm to the Green Belt, she also concluded the benefits of the proposal taken either individually or cumulatively would not clearly outweigh the harm to the Green Belt and did not constitute very special circumstances.

3.30 The Secretary of State therefore concluded that there were no material considerations of sufficient weight which required her to determine the application other than in accordance with the development plan. She then dismissed the appeal.

## **4. The Proposal**

4.1 The current development proposals are set out in the SoCG for the appeal and are the same as for the previous appeal as described in the earlier SoCG which was agreed in October 2007. Therefore, the description which follows is based on the development proposal as summarised in the report of the previous Inspector from the previous inquiry. Details are included in the Development Specification Document.



4.2 The application was submitted in outline with details of siting, means of access and landscaping to be considered as part of the application *“to the extent that [these matters] are defined and described in the Development Specification”* (CD/1.3, para 1.5). Application plans comprise a “red line” Location Plan (Drg 3945-DSD-001) (CD/1.2) and a Key Parameters Plan (Drg 3945-DSD-002A - bound into CD/1.3). All other plans submitted with the application, including the Landscape Masterplan (Drg 3945-DSD-003 – also bound into CD/1.3) are illustrative.

4.3 The application site comprises eight separate parcels of land (Areas 1 to 8) with a total area of some 419ha (CD/1.2). The main body of the strategic rail freight interchange (SRFI) would be on Area 1 together with the connecting roadways. Area 2 would accommodate the rail link between the site and the Midland Main Line (MML). Areas 3 to 8 would generally remain in agricultural/woodland use, with improved public access and some areas given over to more formal recreational uses.

4.4 The Development Specification Document gives the area of built development proposed on Area 1 as 331,665m<sup>2</sup>. The Landscape Masterplan shows this as being laid out in five warehouses ranging in size from 44,592m<sup>2</sup> to 111,480m<sup>2</sup> together with ancillary vehicle maintenance units and a recycling centre (CD/1.3, para 3.3). All the proposed warehousing would be accommodated on a development platform with a finished ground level between 73.0 and 74.0m AOD. The maximum building height would be 20m above this finished ground level. Landscape mounds surrounding the development would generally rise to around 80m AOD, with significantly higher sections to the north of the site (see Key Parameters Plan).

4.5 The main access to the SRFI for heavy goods vehicles (HGVs), other goods vehicles and cars would be via a short section of dual carriageway which it is proposed to construct between the A414 and a roundabout at the site entrance. At its northern end this would link into the A414 at a new signalised roundabout constructed approximately 1km east of the Park Street Roundabout. The road between the site entrance roundabout and the A414 would be open to the public and would continue southwards between the development and Park Street/Frogmore to link into the existing A5183 where it crosses the M25 – the ‘Park Street and Frogmore Bypass’. A secondary vehicular access to the site would be provided near the southern end of this link, but use of this would be restricted to works buses, cyclists, pedestrians and emergency vehicles.

4.6 Rail access into the site would initially be via a new single track connection which would join the Midland Main Line (MML) just to the north of the M25 crossing. This would descend gently through Area 2 before looping under the MML into the site (see Key Parameters Plan). Within the site, the schematic rail layout shows it linking to new reception sidings located between the four southern warehouses, from which trains would be moved into and out of further loading/unloading sidings located adjacent to each unit or into sidings serving the proposed intermodal terminal. Whilst the connection between the MML and the site would initially be single track, it is proposed to lay it on a double track formation a condition provides for a second track linking the reception sidings to the MML to be completed as soon as practicable after the average number of trains exceeds seven per day, or no later than ten years after the first unit is occupied in any event.

4.7 At the northern end of Area 1 a small area of land, including Hedges Farm, would be retained in agricultural use, with structural planting alongside the A414 and the MML (see Key Parameters Plan). Land in Area 2 not used for the rail link would be landscaped and used to provide mitigation for the area of acid and neutral grassland lost to the development in Area 1, and ponds for invertebrates, reptiles and Great Crested Newts displaced from Area 1. The existing trees growing close to the eastern boundary would be retained.

4.8 As to Areas 3 to 8, all details of what is proposed in these areas are reserved. Notwithstanding this, illustrative plans show the landscaping proposals and ecological proposals for each area, together with proposed changes to the network of public footpaths and bridleways. A series of works designed to enhance the ecological value of the meadows and other grassland and the river corridor are proposed in Area 3, together with two new areas of screen planting adjacent to the A414 and the allotments at the southern end of the site. The Ver Colne Valley Walk would be retained on its existing route, with new footpaths provided on higher ground away from the river. A short section of bridleway is also proposed connecting through to the diverted bridleway 51 in Area 1.

4.9 In Area 4 (South) the proposals provide for ecological enhancement of the river corridor and several new areas of woodland planting. New footpaths are also proposed on either side of the river, with some new circular routes. To the north of Cottonmill Lane a new bridleway through the area is proposed, together with a new footpath, carried over the wetter areas on a boardwalk. Ecological works proposed include enhancement of the watercourse for wildlife, thinning of tree and scrub cover and restoration of meadow grazing areas with management for nature conservation. The field to the east of the hotel on the south side of Cottonmill Lane would be opened for public access with a circular footpath and tree planting around grazed grassland.

4.10 The objectives for Area 5 are to provide appropriate management of the open land on the western section of the area, with formal public recreation on the eastern section. The woodland between these two sections would remain with management to improve its diversity and open up the canopy over the existing water bodies. It is anticipated that scrub would be thinned and cleared to open up sight lines for birds and controlled grazing introduced to manage the grassland. Harrowed areas of bare ground would be provided for ground nesting birds and existing water bodies managed to enhance their ecological value. Trees would be planted alongside the M25 and the present route of footpath 33. Subject to the results of the site investigation, a new footpath or bridleway would be created around the southern and eastern boundaries of the site and footpath 33 closed seasonally to reduce disturbance to birds during the nesting season. The smaller area of open ground to the east of the river corridor would be developed with new sport and recreation facilities. More modest works would be carried out to the existing water bodies to improve their diversity and value for fish and other wildlife.

4.11 A landscaping, restoration and aftercare scheme has been approved for the section of Area 6 lying between the M25 and Smug Oak Lane and it is intended that this will be implemented as approved. On the section of Area 6 lying to the south of the lane, woodland would be planted and the grassland grazed to promote its botanical interest. A new circular footpath walk would be formed, possibly linked

through to the Ver Colne Valley Walk which runs close to the eastern boundary of this site.

4.12 Area 7 would be managed primarily as support grazing land for the other areas of the country park where grazing is aimed at enhancing the ecological diversity and interest of the land. Woodlands would be planted around the main grassland areas and along the boundary abutting the M25. Currently there is no public access to the area and no footpaths or bridleways are proposed through it.

4.13 The proposals for Area 8 include new sport and recreation facilities on the eastern section, between the Watling Chase Trail and the London Colney retail park. To the west of the trail, hedges would be removed to improve the area's openness and the grassland would be managed by grazing with cattle and sheep to improve its value for birds. New water bodies would be formed near the northern boundary, with adjoining areas of harrowed land to provide nesting opportunities for Lapwings and new screen planting alongside the existing footpath in order to reduce disturbance to birds. The areas closest to the southern boundary and the M25 would be mounded in part, with woodland planting. Footpath 15, which currently crosses the site diagonally would be seasonally diverted over part of its length in order to reduce disturbance to birds using the area.

4.14 Off-site works proposed include partial signalisation and other works to the Park Street Roundabout and improvements to the traffic signals and other works to increase capacity at London Colney Roundabout. The new road through the site would act as a bypass to Park Street and Frogmore. For most of its length, this road would run within Area 1. However, the tie in to the existing A5183 at the southern end of the bypass would be outside the site limits on highway land. On the railway, it is proposed that clearances on the MML to the south of the site should be enhanced to accommodate W10 gauge rolling stock.

4.15 Further off-site works secured through the S106 Undertaking include (i) traffic management measures, traffic calming measures and environmental improvements in Park Street, (ii) improvements to Park Street Station and (iii) measures to improve the service on the Watford to St Albans Abbey branch line. Funds would also be provided to implement the imposition of HGV restrictions on Harper Lane and the A5183 to the south of the site and a rail subsidy fund would be set up to be applied to measures to promote rail usage.

4.16 As to footpaths, bridleways and cycleways, a series of new routes and improvements would be provided in Areas 3, 4, 5, 6 and 8 as summarised above. In addition, a new bridleway is proposed passing around the edge of Areas 1 and 2, and connecting Hedges Farm to existing rights of way to the south-west of London Colney. Bridleway 51, which links Bury Dell to the A414 and currently passes through Area 1, would be diverted through and around the proposed landscape areas. In addition to this, funds would be provided through the S106 Undertaking to enable the County Council to improve and enhance the footpath, bridleway and cycleway network in the area surrounding the site.

4.17 With regard to phasing, the agreed conditions require the improvements to the Park Street Roundabout, and the Park Street Bypass Phase 1 Works (including construction of the main access into the site) to all be completed before any of the units are occupied. None of the units shall be occupied until a travel plan and freight

management plan has been submitted to and approved in writing by the local planning authority. The London Colney Roundabout improvements shall be completed no later than two years after the first unit is occupied.

4.18 As to the rail works, the rail link to the relevant unit shall be completed and the first phase of the intermodal terminal completed before any unit is occupied. Thereafter it defines triggers for completion of a second track linking the site to the MML (see para 4.6 above), and for completion of phases 2 and 3 of the intermodal terminal. No more than 175,000m<sup>2</sup> of floor area shall be occupied until such time as the gauge enhancement works have been completed.

4.19 All landscaping and countryside access works in Areas 3, 4, 5 and the southern part of Area 6 shall be completed prior to occupation of any units, together with the sport and recreation facilities proposed in Area 5. Similarly, works to create the water bodies and related facilities for bird habitat on Areas 5 and 8 are required to be completed prior to the first spring following occupation of any of the units. The remaining works are required to be completed no later than the occupation of 290,000m<sup>2</sup> of floor area in the units.

## **5. Planning Policy**

5.1 The planning policy context was agreed in the SoCG. The development plan comprises (a) the Regional Spatial Strategy (RSS) for the East of England – The East of England Plan; (b) the Hertfordshire Structure Plan Review 1991 – 2011 adopted 1998; (c) the City and District of St Albans Local Plan Review adopted 1994; (d) the Hertfordshire Minerals Local Plan Review 2002 – 2016, adopted 2007; and (e) the Hertfordshire Waste Local Plan 1995 – 2005 adopted 1999.

### *RSS 14*

5.2 Since the previous appeal, the RSS was published in May 2008, superseding the former Regional Planning Guidance for East Anglia (RPG6 2000) together with relevant sections of the former guidance for the South East and Thames Gateway (RPGs 9, 9A and 3P/9B).

5.3 Policies include SS1 sustainable development, SS2 Overall Spatial Strategy, SS7 Green Belt, SS8 The Urban Fringe, E1 Job Growth, E2 Provision of Land for Employment, E3 Provision of Strategic Employment Sites, T1 Regional Transport Strategy, T10 Freight Movement, ENV1 Green Infrastructure, ENV2 Landscape Conservation, ENV3 Biodiversity and Earth Heritage, ENV4 Agriculture, Land and Soils, ENV5 Woodland, ENV6 The Historic Environment, ENG1 Carbon Dioxide Emissions and Energy Performance, ETG6 Transport Infrastructure, HG3..... and LA1 London Arc.

### *Hertfordshire Structure Plan Review 1991 – 2011*

5.4 In 2007, the Secretary of State directed that only certain of the Structure Plan policies would continue in force after 27 September 2007. Since then the supporting document to the East of England Plan sets out which previously saved policies are replaced by RSS14. The only remaining saved policies are 3, 15, 24, 35 and 52. None of these are relevant to the appeal.

## *St Albans District Local Plan Review 1994*

5.5 Policies saved by the direction of the Secretary of State in 2007 comprise – Policy 1 Green Belt, Policy 2 Settlement Pattern, Policy 34 Highways Considerations in Development Control, Policy 35 Highway Improvements in Association with Development, Policy 39 Parking Standards, General Requirements, Policy 44 Business Use, Industrial and Storage and Distribution Parking Standards, Policy 69 General Design and Layout, Policy 73 Article 4 Directions, Policy 74 Landscape and Tree Preservation, Policy 80 Floodlighting, Policy 84A Drainage Infrastructure, Policy 85 Development in Conservation Areas, Policy 91 Location of Leisure Facilities, Policy 96 Medium Intensity Leisure Uses in the Green Belt, Policy 97 Existing Footpaths, Bridleways and Cycleways, Policy 102 Loss of Agricultural Land, Policy 106 Nature Conservation, Policy 111 Archaeological Sites where planning permission may be subject to recording condition, Policy 143 Land Use proposals in the Upper Colne Valley and Policy 143A Watling Chase Community Forest.

5.6 Other parts of the Development Plan to which no policy reference was made were the Hertfordshire Minerals Local Plan Review (2007) and the Hertfordshire Waste Local Plan (1999).

5.7 Other policy documents include the *St Albans City and District Core Strategy Development Plan Document* for which a consultation document has been published; the *Watling Chase Forest Plan Review (2001)*; *The South East Plan (May 2008)* which contains Policy T13 Intermodal Interchanges; the *London Plan Consolidated with Alterations since 2004 (February 2008)* which includes Policies 3C.25 Freight Strategy, Policy 3C.20 Strategic Rail Freight Interchange and the Strategic Rail Authority *Strategic Rail Freight Interchange Policy 2004*.

## *National Planning Policy Guidance*

5.8 Relevant guidance is contained in PPS1, PPG2, PPG4 (superseded by PPS4 after the close of the inquiry) PPS7, PPS9, PPS11, PPG13, PPG15, PPG16, PPG17, PPS23, PPG24 and PPS25.

## **6. Other Agreed Facts**

6.1 Network Rail submitted a Statement of Agreed Facts for the inquiry dated 23 October 2009. These were facts agreed between the appellants and Network Rail. Key points within the documents include:

- MML passes the site as a four track electrified main line with 2 “fast” lines and 2 “slow” lines.
- As it passes the site from 13 December 2009, there will be 495 booked passenger trains on an average weekday and 44 freight trains.
- Based on 0900 hrs 1600 hrs, Network Rail finds that of the two freight paths per hour in each direction provisionally allocated to existing freight customers, not all are currently used.
- 50% of the up direction paths are used, with capacity in the afternoon.
- 73% of the down direction paths are used, with capacity in the morning.
- Further capacity is available at night.
- Network Rail can offer no guarantees at this time that these paths will be available in the future as they are open to all licensed freight operators and all

paths required for the interchange will need to be bid for and are subject to the standard industry-wide timetable planning process.

- The route between Bedford and Acton Wells Junction is currently constrained to W7 loading gauge for through traffic.
- The route between Cricklewood and Carlton Road Junction is currently constrained to W6 loading gauge.
- The DfT SFN proposals identify the MML as a core trunk route.
- The Government's Rail White Paper 2007 included the aspiration to double passenger and freight traffic on the national rail network. In response, the draft MML RUS, SFN and ERUS include various proposals to enhance the capacity of the MML in order to accommodate additional freight and passenger traffic.
- Network Rail does not consider there to be any major technical obstacles to achieving a connection such as is proposed with the main line.
- The SRFI is limited by proposed planning condition to develop only half of the floorspace on site until W10 gauge enhancement is delivered into London. Network Rail does not consider there to be any major technical obstacles to achieving such enhancement works.
- Network Rail is committed to seek the least time intrusive possession for any engineering works required by the SRFI and would seek synergies with the Thameslink programme and other ongoing maintenance, renewals and enhancement works where possible.
- The SRFI has currently completed stage 1 of Network Rail's GRIP (Guide to Railway Invest Projects) process and is in GRIP stage 2, pre-feasibility. Subject to consent, the Development Services Agreement would then proceed through GRIP stages 3 and 4.

## **7. The Case for Helioslough Ltd**

### *The Earlier Decision by the Secretary of State*

#### *The Core of the Decision*

7.1 An identical application submitted in 2006 was refused by the Council on fourteen grounds in 2007. The appeal was dismissed by the Secretary of State ("the SoS") on the single issue of the robustness of the alternative sites assessment, the SoS not being satisfied that there was adequate evidence that there were no sites which could provide an SRFI with less harm to the Green Belt ("GB") in the north west sector ("NW Sector") of the M25: see Decision Letter ("DL") paras 42 and 58.

7.2 None of the other matters raised by the Council warranted refusal. The need for Strategic Rail Freight Interchanges ("SRFIs") was considered to be "almost certainly" sufficient to outweigh all the harm to the GB and the totality of the harm identified by the Inspector and the SoS on the full range of other issues. Neither the Inspector nor the SoS doubted that the site could appropriately operate as an SRFI in rail, road access or residential amenity terms without causing unacceptable harm including to the landscape or ecology. Given the way the Council now puts its case, the finding that the site could and would operate as an SRFI is key.

7.3 The only conclusion which can be drawn from the DL is that the SoS has decided that this site is capable of appropriately operating as an SRFI without

causing unacceptable impacts and the only remaining issue is whether there is another site which can so operate either outside the GB or with less harm to the GB.

### *The Status of that Decision*

7.4 The SoS has to make a fresh decision on this fresh application (as STRiFE contends). However, that does not mean that the Inspector or the SoS should re-make judgements already made; or reconsider issues where there has been no MCC. The DL should be the starting point for the decision making here<sup>1</sup>.

7.5 The SoS has given a very clear steer to Helioslough ("HS") as to what HS is required to address in order to secure a permission. The reasons given should "enable disappointed developers to assess their prospects of obtaining some alternative development permission": per Lord Brown in *South Bucks DC v. Porter (No.2)* [2004] 1 WLR 1953 at [36] or, by analogy and in the context of this case, should enable disappointed developers to know what they need to do to overcome the problems identified with their proposals. The SoS here has told HS what it needs to do in order to secure a planning permission. It would be plainly unfair, inconsistent and unreasonable for the SoS to subsequently move the goalposts.

7.6 This basic proposition applies both to consistency in treatment of different people and to consistency in treatment of the same person at different times: see *R (oao Kings Cross Railway Lands Group) v. Camden LBC* [2007] EWHC 1515 (Admin):

*"I accept the submission of Mr Hobson Q.C., on behalf of the Claimant, that the weight to be attached in any particular case to the desirability of consistency and decision making, and hence the weight to be attached to the [earlier] resolution was a matter for the Committee to decide in November 2006. However, given the desirability of in principle (to put it no higher) of consistency in decision making by local planning authorities, Mr Hobson rightly accepted that in practice the Committee in November 2006 would have to have a "good planning reason" for changing its mind. That is simply a reflection of the practical realities. If a local planning authority which has decided only eight months previously, following extensive consultations and very detailed consideration, that planning permission should be granted is unable to give a good and, I would say, a very good planning reason for changing its mind, it will probably face an appeal, at which it will be unsuccessful, following which it may well be ordered to pay costs on the basis that its change of mind (for no good planning reason) was unreasonable".*

7.7 That is the position HS adopts here<sup>2</sup>. See also PPS1: paras 7 and 8 which emphasise the need for consistency. On the facts here, there are no (never mind no very good) planning reasons for the SoS to revisit matters already grappled with in detail at the last inquiry (as explained below).

7.8 The DL is plainly a consideration of very considerable weight<sup>3</sup>: first, the previous decision was a decision of the SoS and not a decision of another Inspector. The significance of this point appears lost on the Council and STRiFE. The SoS

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<sup>1</sup> Correctly accepted by STRiFE in Opening at para 10

<sup>2</sup> See HS's "Position Statement for the Pre-Inquiry Meeting" – section 2

<sup>3</sup> See *North Wiltshire v. Secretary of State* [1992] JPL 955 and the cases referred to in the Encyclopedia at para P70.38.

recovered the last appeal because of its significance; and made careful conclusions on each issue raised. It is entirely inappropriate for the parties to go behind those conclusions without any MCC and, with respect, it would be inappropriate for the Inspector now to question or revisit the merits of the earlier conclusions of the SoS; and second, the 2007 Inquiry sat for 26 days in front of a very experienced Inspector with detailed cross-examination in respect of all the reasons for refusal delving into "minute detail"<sup>4</sup> on many matters. A comprehensive record of the evidence and the Inspector's conclusions is set out in the Inspector's Report ("IR"). In the above circumstances, it is plain that (absent MCCs) the conclusions of the previous Inspector would have to be accorded very significant weight by themselves. That weight is substantially enhanced by the fact that the conclusions were endorsed by the SoS in the DL.

7.9 The Inspector was therefore correct in identifying that his primary concern was the alternative site work and whether there had been any material change of circumstances ("MCC") in respect of other matters since the DL. The Appellant has approached this case throughout in that way. The criticisms of it so doing in the Closing Speeches of the other parties are misplaced and if the Inspector and the SoS proceeds in the way the appellant contends there will be no error of law.

7.10 In making the decision, the SoS is legally entitled to come to a different conclusion on aspects of the case or on the overall balance from the conclusions previously reached but absent any MCC there could be no rational reason for him to do so and such an approach would be plainly inconsistent with the SoS's policy as set out in B29 of circular 3/2009 which is only consistent with it being considered unreasonable to revisit issues previously determined in the absence of MCCs.

7.11 It is said that new evidence, better evidence, a different witness or a different planning judgment<sup>5</sup> on matters already grappled with can be used to justify revisiting earlier conclusions. That is simply unsustainable on the facts here<sup>6</sup>. The SoS has reached a conclusion after considering a report of the previous Inspector written after a full inquiry at which each party can be expected to have put their best possible case. It is fanciful to suggest that absent a MCC different conclusions would, on the facts here, be reached. Thus whilst the legal position on a new application is not in doubt, the decision making in this case cannot ignore the context summarised above. Given the history here, it would be entirely inappropriate for the SoS to revisit conclusions already reached when all parties had full opportunity at the last inquiry to set out their evidence.

7.12 The above approach does not mean the Council is prevented from calling whatever evidence it considers appropriate – and the Inspector made this clear at the PIM and in the PIM Note<sup>7</sup>. The Council has not been prevented from calling any evidence it so wishes. However, its choices as to which evidence to call would necessarily have been influenced by, in particular, para B29 of Circular 3/2009<sup>8</sup>.

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<sup>4</sup> EIC of RT (8<sup>th</sup> Dec)

<sup>5</sup> Put in various ways by SADC and STRIFE in XX of RT.

<sup>6</sup> Although note that RT accepted this in XX

<sup>7</sup> See Pre-Inquiry Meeting Notes para 6 page 1.

<sup>8</sup> HS is dismayed by the repeated correspondence and the assertions in the Council's closings which continue to imply that the Council has been prevented from calling evidence by reason of HS's approach and the Inspector's approach at the PIM. This is a thinly veiled attempt to create possible grounds for future challenge. The Inspector is invited to record and grapple with this issue in his



*The approach of the parties to the previous decision*

7.13 HS accepts the conclusions of the SoS (even where it disagrees with those conclusions). It is not seeking a second bite of the cherry. The appellant has considered under each issue whether there have been any MCCs which could affect the conclusions on that issue. Where there have been any MCCs those have been grappled with transparently. It has been shown that there are no MCC adverse to any of the conclusions reached by the SoS in the DL.

7.14 The approach of the Council's witnesses is not to start afresh and look at the proposals without regard to the SoS's DL but expressly to adopt the conclusions of the SoS when those conclusions are favourable to the Council's position and to explicitly assert that those conclusions should stand because there has been no MCC but, fundamentally, to reject and effectively ignore those conclusions with which it disagrees<sup>9</sup>. This is patently inappropriate.

*The application proposals**The onsite proposals*

7.15 The proposals are "identical"<sup>10</sup> to those considered at the 2007 Inquiry and summarised at IR3.3 and following. The application site covers about 400ha. Areas 1 ("the SRFI") and 2 ("the rail link") cover 172 ha. The buildings, hard-standing areas and roads comprise about 50% of these areas<sup>11</sup> – the remainder being used for landscaping, bunds and open drainage channels appropriately managed to maximise its ecological and natural interest. The maximum height parameter for the warehouses in the ES is 20m<sup>12</sup>. The remainder of the application site (areas 3 – 8) comprises about 60% of the total site area and would be utilised as the Country Park ("the CP"). The CP includes Hedges Farm ("the Farm"). The Farm buildings will be retained and ¾ of its grazing land will be retained<sup>13</sup>.

7.16 Nothing has changed since the 2007 Inquiry in relation to the CP or the Farm and on those matters the Inspector, after hearing full argument including from STRIFE<sup>14</sup>, reached clear conclusions<sup>15</sup> with which the SoS agreed<sup>16</sup>.

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report. The position is plain – the Council has not been prevented from calling any evidence it wished as the Inspector's PIM note makes plain. However, HS has been clear from the outset that if the Council insist on covering old ground then para B29 of the Costs Circular may be triggered. That is no more than a statement of fact. HS is under an obligation to warn SADC of any intention to apply for costs – for that to be thrown back at HS as an inappropriate costs threat is bizarre.

<sup>9</sup> See e.g. JH proof para 5.35 p22

<sup>10</sup> EiC of RT (8<sup>th</sup> Dec: 10.05)

<sup>11</sup> And thus about 20% of the total site area

<sup>12</sup> That does not mean that the warehouses will be built to that height – but the approach adopted is to assess the maximum height of the warehouses for ES parameter purposes

<sup>13</sup> See ES part 3 chapter 12 – 12.72, and 12.82

<sup>14</sup> IR8.15 – 8.26

<sup>15</sup> See IR16.39 (p163) IR 16.145 – 7 (p192)

<sup>16</sup> DL46

7.17 The Council does not substantively challenge the conclusions of the SoS in respect of the CP or the Farm and there is now no subsisting reason for refusal in respect of these matters<sup>17</sup>.

7.18 The evidence of STRIFE<sup>18</sup> in respect of these matters is based on an incorrect understanding of the proposals (i.e. the agricultural use will disappear<sup>19</sup>) and ignores the conclusions of the SoS referred to above<sup>20</sup>. STRIFE raises exactly the same points as previously raised<sup>21</sup> and rejected by the SoS.

7.19 The SoS should confirm IR16.201:

*"... Helioslough's proposals for the country park areas would accord with the development plan and the objective of the Watling Chase Community Forest Plan [16.177]. The proposals for these areas would, to my mind, clearly benefit local residents, albeit that the areas of land involved are not contiguous and access to some areas would be restricted [16.146]."*

### *Main Access Arrangements*

7.20 There has been repeated mis-statements and misunderstanding of the access arrangements. Those mis-statements/misunderstandings have given rise to significant public concern which on a correct understanding of that which is proposed is misplaced.

7.21 Fundamentally, all HGVs will be routed along the link road to the A414 roundabout and thence east or west to the Park Street or London Colney Roundabouts on the strategic road network. They will not be on the A5183<sup>22</sup>, the bypass or the alleged rat runs. Direct access is then to the M25 east and west – J22 and J21A respectively - and to the M1 (N) via junction 8 (M10) and M1(S) via junction 6<sup>23</sup>. There have been no changes in the access arrangements since the 2007 Inquiry or the means by which those access arrangements are to be enforced: see e.g. IR16.84–85 – conclusions all accepted by the SoS (DL35).

### *Off-Site Works*

7.22 The improvements to the A414, the Park Street Roundabout and the London Colney Roundabout are not contentious<sup>24</sup> and will ensure that, as agreed with the HA

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<sup>17</sup> The reason for refusal in respect of certainty of delivery not having been pursued.

<sup>18</sup> And some third party representations

<sup>19</sup> Mr Wallace's concern – contrary to his assumption, farming and the farm buildings will survive

<sup>20</sup> Claims such as the CP being "contrived and plastic": EIC of Mr Wallace

<sup>21</sup> See IR8.97 - 99

<sup>22</sup> Robust arrangements will be in place to ensure that HGVs do not use the A5183 to the south: see DL1.5 and see s.106

<sup>23</sup> The issue raised on J6 M1 by STRIFE (Ann Morton – STRIFE 9/05) and other third parties was raised at the last inquiry, is well known to the HA and the LHA but has not been raised by HA or LHA at either inquiry and was not a concern of the Inspector at the last inquiry despite being raised: IR14.26. The Inspector did not have concerns on this Junction – see IR16.85. There is plainly a long running local concern with J6. That concern does not arise from and is not related to the proposals. The approach in the Transport Assessment is clear – see p32 table 7.8 - and none of the statutory authorities have required the further disaggregation of flows.

<sup>24</sup> Compare the position of LHA at the last inquiry – which was rejected by the Inspector

and as not contested by HCC, existing levels of congestion will not be materially affected by the proposed development<sup>25</sup>.

7.23 The “long awaited”<sup>26</sup> bypass is plainly a substantial benefit of the proposals taking traffic off Park Street with significant environmental benefits in terms of disturbance, general amenity, noise and air quality - benefits which third party objectors ignored in their presentations.

7.24 Works to J21A and J22 have been addressed through co-operative working with the HA and are now agreed. As a result the proposals will not have a material adverse impact on the strategic highway network. There are no highway safety concerns raised by either HCC or the HA<sup>27</sup>.

### *Green Belt*

#### *Summary*

7.25 The SRFI constitutes inappropriate development in the GB and will cause substantial harm to the GB and to the purposes of including land in the GB. It will not result in the merging of towns. All the GB harm was properly taken into account by the SoS following a full debate at the last inquiry. There has been no MCC which would warrant a different approach.

#### *Inappropriate Development and GB Harm*

7.26 HS accepts, of course, that the development is “inappropriate development” in the GB. The policy harm to the GB is to be accorded substantial weight: DL19. The development will cause substantial harm to the GB and to purposes of including land in the GB: see IR16.1; IR16.5 - 16.9; 16.11 and 16.12<sup>28</sup> and DL19 - 20<sup>29</sup>. HS accepts the conclusions of the Inspector and SoS<sup>30</sup>. The GB issues were the subject of very detailed evidence and submissions at the last Inquiry for obvious reasons. Nothing has changed to warrant a revisiting of those conclusions.

7.27 It is plain that the SoS took into account the scale of the development and the scale of its impact on the GB in reaching the conclusion in DL19 – 20. Again nothing has changed in terms of the scale of development to warrant a different approach or a different test now<sup>31</sup>. It is plain that the Inspector<sup>32</sup> and the SoS was fully conversant with the prime importance of protecting the GB in coming to the conclusions set out in the DL (especially DL58 and DL59).

#### *Merging of Towns*

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<sup>25</sup> We grapple with third party concerns on the impact on the road network and congestion below

<sup>26</sup> Anne Main MP's position historically

<sup>27</sup> 9/CD/7.2

<sup>28</sup> Which largely reflect the case as put to the Inspector on GB harm by the Council and STRIFE – see e.g. IR7.11 and IR8.15.

<sup>29</sup> In which the SoS adopts much of the case put by the Council and STRIFE

<sup>30</sup> In respect of landscape harm, this is addressed elsewhere but again HS accept the conclusions of the IR and SoS as to this harm.

<sup>31</sup> “very, very special circumstances” has no warrant in policy terms.

<sup>32</sup> See e.g. this being the first main issue identified in IR16.3 p154

7.28 The Council (and STRIFE) seek to revisit the SoS's conclusions on the merging of towns without there having been any MCC. They say the Inspector's and SoS's conclusions are wrong. That issue was the subject of detailed debate<sup>33</sup> on the last occasion and the conclusions on it (IR16.10 and IR16.175) were adopted by the SoS (DL21).

7.29 There is no MCC in respect of the merging of towns either looking E/W (Park Street/London Colney) or N/S (St Albans/Radlett):

(a) in respect of E/W issue, the refurbishment/development at Napsbury Park was largely complete at the last inquiry and Hanbury Place was consented and under construction. Both were taken into account by the Inspector and thus the SoS;

(b) the only "change" in respect of the N/S merging of towns is the redevelopment of previously existing units on Ventura Park. It is impossible to describe that change as a material change on this issue.

7.30 STRIFE is therefore driven to seek to persuade the SoS to take a different approach by reference to an Inspector's decision on a different non – GB site where strategic gap ("SG") policies applied<sup>34</sup>. It is not understood on what basis conclusions reached on a different site elsewhere with a different policy framework can be relied on to put a gloss on the PPG2 merging of town's purpose.

#### *Level of Harm*

7.31 The Council and STRIFE appear to contend that the harm to the GB and to the GB purposes is greater than that found by the Inspector and the SoS on the last occasion. It is not explained what conclusion of the Inspector or the SoS is understated and it is difficult to see how greater harm could be identified.

#### *"Very Special Circumstances"*

7.32 It is appropriate to address this shortly at this stage. This issue will also be dealt with at the end of these Submissions.

7.33 In terms of the GB balancing exercise and very special circumstances ("VSC") the SoS adopted a standard approach in the DL. The SoS identified GB harm (DL19 – 23); assessed other harm (DL24 – 40); looked at alternative sites (DL41 - 44) and benefits (DL45 – 46). Having grappled with other matters and conditions and obligations the SoS pulled this all together in the GB balancing exercise: DL53. The harm (GB and other) is assessed (DL53 – 55), the benefits considered including need (DL56- 58) and then finds that no VSC because of the failure to demonstrate no alternative sites: DL58 and 59.

7.34 In respect of this balancing exercise:

(a) there has been no adverse<sup>35</sup> MCC in respect of the need: see below;

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<sup>33</sup> See e.g. para 8.22 for the way STRIFE put the case

<sup>34</sup> JH appendix 26 - Hartland Park, Ively Road, Farnborough and STRIFE 9/01(a) paras 435 - 7

<sup>35</sup> In the sense of adverse to the grant of permission

(b) there has been no MCC in respect of the harm side of the equation – see below; and

(c) there has been no MCC in respect of the benefits of the proposals addressed in DL57. HS does not go over the benefits which are not in dispute at this inquiry.

7.35 Following that assessment, the SoS concluded (DL58) as follows:

*“The [SoS] considers that the need for SRFIs to serve London and the South East is a material consideration of very considerable weight and, had the appellant demonstrated that there were no other alternative sites for the proposal, this would almost certainly have led her to conclude that this consideration, together with the other benefits she has referred to above were capable of outweighing the harm to the [GB] and the other harm which she has identified in this case.” (emphasis added)<sup>36</sup>*

7.36 There is nothing which has occurred materially to impact upon this conclusion. This case is therefore properly about the alternative site assessment; and not about the myriad of other issues which the Council continues to seek to raise. In respect of the alternative site assessment the approach adopted should respect the conclusions reached in respect of the Radlett site and with regard to the approach to alternative sites in the DL and not seek to revisit/re-open them under the guise of the alternative site assessment process.

#### *Other Harm*

7.37 Harm claimed to the rail network is addressed under “Would Radlett operate as an SRFI?” below.

#### *(1) Highways Issues*

7.38 The SoS’s conclusions are at DL34 – 35. At the last inquiry, the HA withdrew its objections and the concerns of HCC on physical infrastructure were rejected. Concerns on traffic congestion and rat-running were rejected and limited weight was attached to increased (non-HGV) flows on the A5183. On this application there were originally 2 reasons for refusal – the first concerning Highway Agency (“HA”) issues and the second (RFR14 added at the last moment) related to there being insufficient information to determine if there had been any MCC in respect of the local highway network<sup>37</sup>. Those reasons for refusal are not pursued and no authority with concerns for the highway network is claiming there is a sustainable highway objection. We grapple with the concerns of STRIFE and others at the end of this section.

#### *The Highway Agency*

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<sup>36</sup> This paragraph can only be read as saying that the SoS would have granted planning permission if she had been satisfied on the alternative site assessment.

<sup>37</sup> “Insufficient information has been submitted by the applicant to enable the Local Highway Authority

7.39 Following detailed, co-operative working with HA, all issues relating to the strategic road network have been satisfactorily addressed<sup>38</sup>. The Inspector and the SoS placed considerable weight on the fact that the HA objection was resolved on the last occasion: see IR16.72 and DL34 – 35. The same approach should be adopted here. The approach in the transport assessment ("TA")<sup>39</sup> has been approved by the HA including the trip generation.

7.40 Appropriate works will be carried out to J21A and J22 and combined with the comprehensive (and even more robust than last time) Freight Monitoring and Management Plan ("FMMP") there will be no material impact on the strategic highway network. The FMMP contains means of limiting the number of HGVs accessing and leaving the site in the peak hours<sup>40</sup>. The work with the HA does not take into account the net benefit of removing HGVs from the strategic road network by encouraging rail freight. HS relies on the agreed statement with the HA and the FMMP in support of its case that no significant impacts will be caused to the highway network by this development.

*Hertfordshire County Council – the Local Highway Authority*

7.41 HCC objected on highway grounds last time including on trip generation issues<sup>41</sup>. Its concerns were comprehensively grappled with and addressed: see IR7.144 – 7.175 and IR16.74 – 16.80.

7.42 In the light of those conclusions and the lack of any MCC since, HCC felt unable to support the reason for refusal on highways grounds: CD3.12. Thus despite considerable pressure on HCC to maintain its objection, Mr Humby has taken a correct approach – entirely consistent with the overall approach HS asks the SoS to take in this case (namely starting from the decision of the SoS and then assessing whether there have been any MCCs). It is plain from the work of Mr Findlay and the agreement of HCC/HA that there are no MCCs in highway terms.

*STRIFE and third parties*

7.43 STRIFE maintains its objections on highway grounds. Those objections proceed on the assumption that congestion will be worse as a result of the increased flows. There is simply no evidence for that assumption which is inconsistent with the conclusions of the Inspector<sup>42</sup> adopted by the SoS at DL35; the TA and the position of the HA.

7.44 A recurring theme is adverse impact on residential amenity. That point (especially coming from the residents of the Park Street area) reflects a failure to understand the impact of the bypass. HGVs will not be on Park Street but on the bypass. Employees will not access via Park Street. The environmental improvements will bring significant benefits to the Park Street area. Air quality, noise and residential

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<sup>38</sup> 9/CD/7.2

<sup>39</sup> The TA is in exactly the same form as at the last occasion it having been agreed with the HA that it represents a worst case and that updating to 2019 would show a better position than looking to 2016 given that the increase in traffic previously predicted has not in fact occurred. This does not appear to be contentious.

<sup>40</sup> The very hours when the congestion concerns arise.

<sup>41</sup> IR7.162 and resolved in IR16.74

<sup>42</sup> IR16.81 - "congestion would be no worse with the development than without" accepted by the SoS

amenity concerns in respect of increased HGV flows here are misplaced and are not pursued by the authorities with responsibility for these issues.

7.45 HGV flows will increase on the A414 and thence to the motorway network via the A405 and A1081. However, those roads are suitable roads for HGV flows being dual carriageway, without direct accesses onto houses and currently carry heavy flows. The works to the roundabouts will ensure that congestion on these roads will be improved. There is no significant impact in highway terms through these flows and road traffic noise is not (we understand) raised as an issue. Fears from residents of Napsbury Lane close to the A414 are misplaced.

7.46 Light vehicle flows on the A5183 further south will increase. That was fully recognised and taken into account in IR16.86 – 7 with which the SoS agreed. There is “minimal risk”<sup>43</sup> of HGVs using this or other unsuitable routes: see the combination of the TROs and the routing strategy required under the conditions.

7.47 Rat-running is addressed in detail in the IR<sup>44</sup>. It appears that the core concern is that when the motorways are blocked for whatever reason, ensuing gridlock on the A414 and A405 will mean HGVs will travel along unsuitable routes: see Ann Morton appendix 2<sup>45</sup>. This matter was addressed at the last inquiry: IR16.83 with which the SoS agreed. The more measured of the evidence from objectors recognises that total gridlock in both directions does not occur<sup>46</sup> and that the gridlock events are with vehicles moving albeit slowly and are rare.

7.48 There is no evidential basis to depart from the Inspector’s conclusion that: “It also seems to me that complete closure of all routes to the SRFI is unlikely, given that the new roundabout on the A414 leading to the SRFI would be located between the Park Street Roundabout (with direct access to the M10 and access via the A405 to the M25 and M1) and the London Colney Roundabout (with access via the A1081 to the M25 and via the A414 to the A1(M).” (IR16.83). Mr Findlay has provided a note on what would happen in the event of gridlock which should provide some additional reassurance in this regard<sup>47</sup>. In short all these concerns have been raised and comprehensively grappled with by the Inspector and the SoS.

7.49 There has been no MCC. Butterfly World is hardly material: see the HCC consideration of the position in the committee report (CD3.12).

### *Trip Generation*

7.50 A new point is raised in relation to trip generation. It is said that the trip generation may be understated because of: (1) the volume of the warehouses; and (2) the claimed fact that RDCs have higher throughput than NDCs. HS relies on 9/HS/4.6 in response to these new points.

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<sup>43</sup> DL35

<sup>44</sup> IR16.81 – 16.84

<sup>45</sup> STRIFE 9/05 A2

<sup>46</sup> And the assertions from some to the contrary are not credible

<sup>47</sup> 9/HS/4.5

7.51 The volume point presupposes that the surveys underlying the trip generation were based on 12m high warehouses. They were not<sup>48</sup>. At DIRFT some of the warehouses in operation in 2004 (the time of the survey) were 20m. The material produced by STRIFE shows in the area covered by it that about 43% of the floorspace was 18m high.

7.52 The trip generation has been set out in the TA for in excess of three years. The issue now raised has not been raised by anyone (through the process for this inquiry or the whole of the last) until provision of Mr Parry and Mr Brown's evidence in this case. It is supported by no evidence on any correlation between height/volume and HGV movements. It is to be noted that this point has not been taken or relied on previously here, or at any other inquiry. Nor is it referred to in any guidance or any methodology. TRICS does not disaggregate warehouses by volume. Mr Findlay explains why there are a large number of factors which could affect HGV movements making disaggregation by reference to a single issue impossible: para 1.4.4 – 5. Volume is not considered to be a significant parameter in any guidance or surveys.

7.53 HCC raised concerns on trip generation at the last inquiry: see IR7.161 – 3. After full consideration of these issues at the inquiry, HCC's concerns were not accepted: see IR16.74. It is plain that trip generation has been carefully considered previously by the HA (see the TA itself) and HCC. Neither has adopted the point now raised. The volume case proceeds on the assumption that all the warehouses will be built to 20m height. The 20m is a maximum parameter for the purposes of the ES. It does not follow that all or any warehouses will be built to this height. The TA has adopted a standard methodology enshrined in DfT Guidance: see 9/HS/4.6.

7.54 Even if the trip generation estimates were wrong, the FMMP operates to regulate HGV movements in those peak hours where congestion is an issue. Thus, even if the HGV trip generation could theoretically be higher than that predicted by reason of the points now raised, measures would have to be taken to ensure the targets were not exceeded: see FMMP table 7 and table 8. The volume issue was put as "a concern" – an issue to be thought about. It was not stated by the objectors to be correct but was a matter which should be looked into. The point amounts to little more than an assertion by people who, with respect, have no expertise in highway analysis, trip generation or the operation of warehouses.

7.55 The inspector can confidently report that:

(a) the TA is exactly the same as that presented with the last application. Nothing adverse to the application has changed;

(b) the trip generation (9/CD2.6 page 29) has been robustly tested by the HA and HCC – including through HCC's concerns at the last Inquiry which were not accepted. The HA has just reconfirmed acceptance of the trip generation. HCC does not attempt to revisit trip generation;

(c) the trip generation is based on surveys<sup>49</sup> at appropriately comparable locations including at DIRFT which includes warehouses of 20m. In respect of Magna Park, it is clear that the trip rates there are higher than those from

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<sup>48</sup> 9/HS/4.9

<sup>49</sup> The detail has been provided in 9/HS/4.6



comparable distribution centres for Sainsbury's and Tesco's<sup>50</sup> so the suggestion that food retailers generate more trips than other warehouses does not appear to be justified on the evidence;

(d) there is no evidence of a correlation between volume and trip generation and this new point has not been taken by any highway expert at any stage anywhere;

(e) even if the point has any force, the FMMP will restrict HGVs in peak hours.

7.56 The claim that RDC's generate more HGVs than NDCs is backed by no evidence and is based on Mr Garrett's assertion at KIG. The assertion is simply not accepted (and we understand is in issue at that inquiry).

### *Conclusion on highway issues*

7.57 The SoS should conclude that no significant harm is caused by reason of the impact of these proposals on the highway network (whether local or strategic). There is no reason to revisit the substantial benefits provided by the bypass and other mitigating works to which now should be added the net benefit of the works to J21A and J22 in terms of their operations and the enhanced FMMP.

7.58 In terms of traffic noise, no evidence is presented to call into question the conclusions of the IR and the SoS (following the Noise agreed facts at the last inquiry) that increases in traffic noise would not be significant: DL30 and IR16.43 and 16.180.

### *(2) Landscape and Visual Impact*

7.59 In short, this issue was considered in detail at the last inquiry (HS case: IR6.18 – 6.33; SADC IR7.25 - 7.44) and detailed conclusions reached: IR16.13 – 16.22 with which the SoS agreed: DL 24 – 27. In respect of area 1 the conclusion is that the landscape impacts would be significant adverse. There is no higher category of landscape harm. That conclusion (along with the other landscape and visual impacts) has been carried forward into the balancing exercise at DL58 and DL59.

7.60 HS accepts the conclusions of the SoS on landscape and visual impact issues. The Council seeks to revisit them but largely only to confirm the conclusions already reached. There has been no MCC. The matters Mr Billingsley relies on as justifying revisiting the conclusions of the SoS are plainly not material for the reasons put in cross examination and covered in the rebuttal from Mr Kelly<sup>51</sup>.

### *(3) Conservation Areas*

7.61 There is no reason for refusal in respect of Conservation Areas. The conclusions of the SoS at DL28 stand and far from showing any harm (as claimed by some third party witnesses) demonstrate "positively beneficial" impacts.

### *(4) Footpaths*

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<sup>50</sup> See 9/HS/4.6 para 1.3.3 (see technical report 2 p6 section 6 and tables 3 and 4

<sup>51</sup> 9/HS/5.3.

7.62 The reason for refusal in respect of this is not pursued. There is no MCC in respect of the implications for the footpath network and no reasons to revisit the conclusions of the SoS at DL36- 37. Witnesses for STRIFE and third parties misunderstood the proposals and therefore seriously overstated the impacts on the footpath network.

#### *(5) Noise*

7.63 This issue was the subject of considerable debate at the last inquiry: for the case of HS see IR6.64 – 6.75; for SADC see IR7.58 - 7.90 and for STRIFE: IR8.28 – 8.52.

#### *Rail Noise*

7.64 In respect of rail noise, the Inspector accepted the conclusions of the noise experts in the statement of common ground that rail noise was “unlikely to constitute a significant impact” (IR16.42). That conclusion was adopted by the SoS (DL30). Nothing has changed to justify revisiting that issue.

7.65 In respect of the rail flange noise issue raised by Mr O’Keefe, there is no reason to consider this will be an issue<sup>52</sup>: (1) the radii are not tight enough to induce flange squeal; and (2) even if there was a problem it could be easily addressed.

#### *Operational Noise*

7.66 The Inspector having considered the competing arguments for the different approaches promoted by the parties concluded that the approach recommended by SADC should be adopted: IR16.50<sup>53</sup> even though it is plain that this was a finely balanced decision. So the attempt to re-run arguments on the correct methodology, the tonal correction and table 7.1 are misplaced. On all those matters, the ultimate conclusions of the Inspector and SoS were in accord with the cases put by the Council and STRIFE<sup>54</sup>.

7.67 However and fundamentally, even after having considered that the approach of SADC was correct, the Inspector concluded that:

*“This... is not the end of the matter, as the night time rating levels assessed by Dr Hawkes which led to this conclusion are 60 and 61dB (LPA 3.1 table 7.1<sup>55</sup>). These levels were derived from the modelled noise levels, taken from the ES and Mr Sharp’s evidence to which Dr Hawkes added a 5dB tonal correction. This would be the normal way of proceeding. However, in this case the conclusion is questionable as the base (modelled) noise levels underpinning it (55db and 56dB<sup>56</sup>) are themselves well above the level*

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<sup>52</sup> 9/HS/6.3 para 3.1 – 3.9

<sup>53</sup> Mr O’Keefe’s proof to this inquiry wrongly proceeded on the basis that HS’s recommended approach in section 6 of the IR had been adopted by the SoS. In fact the issues with which he raises were ultimately adopted by the SoS.

<sup>54</sup> See for example Mr O’Keefe accepting that the core of his case was that BS4142 with a tonal correction should be made (para 2 of his proof)

<sup>55</sup> The same table as put in by STRIFE at this inquiry

<sup>56</sup> Namely the predicted noise levels without the tonal correction

*specified in the noise condition proposed by Helioslough (50db at night measured 1m from any residential facade....) It follows from this that, if the base noise level is reduced to the level stipulated by the condition, the differences reduce as does the impact assessed using the BS4142 methodology".*

7.68 The core issue for the Inspector was whether the noise level proposed in the condition was acceptable and could be complied with. In both respects the clear answer was yes [IR16.53 - 16.55] conclusions with which the SoS agreed [DL30].

7.69 In summary therefore, the Inspector and SoS concluded that:

- (a) BS4142 should be used (IR16.46);
- (b) On balance (IR16.48/49) a tonal correction should be applied;
- (c) Using Dr Hawkes' table 7.1, the maximum predicted noise environment with the tonal correction was 60/61dB (IR16.50/16.51);
- (d) These rating noise levels equate to measured noise levels of 55 /56 dB (IR16.51);
- (e) The condition required these levels to in fact be significantly lower at 50db;
- (f) Thus the question was whether the conditioned level would lead "to an unacceptable impact" (IR16.52) and whether it could be achieved;
- (g) In the assessment, the equivalent internal noise was slightly higher than the WHO guideline (IR16.53) but lower than the existing noise level "at many locations around the appeal site" and the condition level was 5db lower than the 55dB limit which the Council argued should be used (see how the Council put their case at IR7.63);
- (h) With the noise condition in place, whilst operational noise from the site would be readily perceptible at the quieter locations, the impact would be "marginal": IR7.90 in BS4142 terms (adopted by the Inspector at IR16.54<sup>57</sup>)

7.70 Given (h) above, and the clear terms of the Council's case on the last occasion as summarised in IR7.90, the detailed submissions from the Council on noise can be seen to be misplaced. It was the Council and its expert's positive case that with a noise condition set at 50db the scope for noise complaints was "marginal". That conclusion was adopted. There is no new evidence from Mr Stephenson which requires that issue to be grappled with afresh.

7.71 It is surprising that the Council has not drawn attention to IR16.48 in which the characteristics of the noise are specifically addressed in the context of the road traffic noise. It should be noted that the Inspector expressly acknowledged the "clangs" in concluding that the tonal correction should apply and concluded it was prudent to remember that this conclusion is essentially a conservative move which would tend

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<sup>57</sup> The reference to "7.70" in IR16.54 must be a typographical error with the correct reference being to IR7.90.

to overestimate the noise impact of the development: IR16.49. The very point raised in Closing has already been directly faced and taken into account in the approach adopted. As we have already noted, the Inspector then went on to consider the effect of the condition in the context of BS4142 but that was having carefully considered the tonal component. The Council's case ignores the carefully structured approach of the Inspector.

7.72 Absent a MCC, there is no reason to revisit those conclusions. However, that is what Mr O'Keefe and Mr Stephenson attempt to do. It is respectfully submitted that their arguments (and those in closing for the Council) fail to understand the logic of the Inspector and the conclusion which he has reached that it is the achievability of the noise condition which makes the noise environment acceptable and on that he was satisfied from Mr Sharp's evidence that the noise condition would be capable of being achieved. The proposed condition at this inquiry is exactly the same as that which the Inspector was grappling at the last inquiry.

*Noise: Material Changes in Circumstances*

7.73 There has been no MCC for the reasons given by Mr Sharps<sup>58</sup> and put to Mr Stephenson and Mr O'Keefe in cross examination.

7.74 WHO guidelines: 9/HS/6.1 para 4.14. In short, WHO has not radically revised its night guideline values downwards. The 1999 WHO guidelines were set in different terms to those of 2009. However, even if the criteria were the same, the 1999 WHO guideline value of 45dB applicable at the facade of a dwelling on a given night is not materially different to the 2009 WHO guidance value of 40dB applicable in free-field averaged over many nights. The appropriate correction would be 3db making the difference 1999 to 2009 being at most 2dB.

7.75 Further, the averaging of values over many nights as required by the 2009 guidelines is also significant. The references made by the Council to the relevance of the  $L_{Amax}$  levels is simply not consistent with the 2009 WHO guidance upon which they rely. That Guidance states (Stephenson appx 6) at p XVIII of the Executive Summary that the earlier references to correlation of sleep disturbance with an  $L_{Amax}$  value have been overtaken by new research which takes account of the sound pressure level and the number of events. The new guidance adopts a yearly average approach.

7.76 The only conclusion is that if the 2009 guidelines (or the draft 2006 guidelines) had been employed at the last inquiry, this would not have affected the way noise was assessed or the conditioned noise limit.

7.77 Revision of BS5228 9/HS/6.1 para 4.21. This document is a code of practice (COP) referenced in PPG24 in the context of other controls available to control construction noise using the COPA approach. Mr Stephenson accepted that the approach identified in PPG24 is a recognised and appropriate approach. Construction noise can be appropriately controlled under the Control of Pollution Act (COPA) as agreed between the noise experts at the last inquiry.

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<sup>58</sup> 9/HS/6.1 – section 4 and 5.

7.78 New Development: Mr O'Keefe claimed that new development at Hanbury Place constituted a MCC. This is wrong. This development was known about at the time and the noise environment at that location was taken into account in the noise assessments and by the Inspector.

7.79 Witness Expertise: It is plain that Mr O'Keefe is not and does not claim to be an expert in environmental noise issues. The fact that he did not understand what an LA90 was, and that he thought it represented the peak noise which is not exceeded for 90% of the time, rather than the noise troughs which are exceeded for 90% of the time puts the rest of his "technical" evidence into context.

7.80 It is not understood why a new/different expert has been appointed by the Council and HS is sceptical as to the reasons for this change. It is clear that having dropped Dr Hawkes the Council moved to Mr Stigwood (whose views are plainly extreme and not supported by any other witness – see the way the WHO change is described in the report to committee). The Council then moved to Mr Stephenson. Mr Stephenson clearly did not agree with Mr Stigwood but then set about constructing a new case, which is inconsistent with the Council's earlier case, at odds with the Inspector and the SoS's conclusions and not supportable by reference to the guidance he appeared to rely on.

#### *Conclusion on Noise*

7.81 There is no reason to revisit the conclusions of the SoS on Noise. There is no error in the Inspector's approach on the last occasion, the condition is the same and there has been no MCC.

#### *(6) Air Quality*

7.82 The reason for refusal on this has not been pursued. The issue was grappled with at the last inquiry (and see DL31). The remaining concerns of local residents are based on their misconceptions as to the highway proposals and in particular the assumption of HGV flows on Park Street. In that respect of course the position will improve as a result of the bypass rather than deteriorate.

#### *(7) Ecology*

7.83 HS is justifiably seriously aggrieved by the way this issue has evolved. All the matters now raised by the Council, STRIFE and third parties<sup>59</sup> were raised and addressed in detail by the Inspector at the last inquiry (IR16.25 – 16.40) in conclusions with which the SoS agreed at DL29. No objection was or is raised by Natural England.

7.84 In respect of the grassland, the Inspector proceeded on the basis that the grasslands met the criteria for designation as a county resource: IR16.27 (even though it was secondary in nature and of relatively low botanical interest). There has been no MCC in respect of its quality and none is claimed. The designation adds nothing. Appropriate conditions (imposed on the last occasion and promoted by HS here) will ensure successful translocation.

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<sup>59</sup> E.g. the Barn owls raised by Mr Parry

7.85 In respect of birds, the only change is the designation. None of the data has changed and, contrary to the criteria for designation, no new studies have been undertaken. The Council's recent submission<sup>60</sup> shows that it still does not understand that the deficiency in approach is related to the criteria it has established not other criteria used elsewhere for other purposes.

7.86 The Council does not pursue the reason for refusal relating to delivery of the Country Park and the implications of non-delivery. Appropriate mechanisms are in place to secure delivery.

#### *(8) Sustainability*

7.87 In relation to this issue the Inspector and the SoS carefully considered it and concluded that whilst proximity to workforce is one of the key factors listed by the former SRA and that the appeal site performed poorly against this criteria this was not a critical factor in as much as the site would be able to function as an SRFI providing workers were available who could travel to the site: DL38. The SoS went on to conclude that only a small proportion of workers would live locally was a disadvantage in terms of the relative sustainability of the travel to work pattern. However she agreed with the Inspector that how workers would travel to the site would be regulated by the provisions of the draft travel plan and she did not consider that it would be reasonable to refuse planning permission on account of the likely pattern of travel to work. There has been no MCC and the conditions and the travel plan are the same.

#### *(9) Prematurity*

7.88 This issue was addressed at the last inquiry in the context of the planning policy position at that stage<sup>61</sup>. The evolution of that planning policy context since has been considered above.

#### *Region Wide Study*

7.89 The Council's case at the last inquiry was based on the absence of a region wide study to establish the most suitable locations for SRFIs to serve London and the South East (IR16.110 – 16.111). Whilst that could theoretically have been the basis for a prematurity argument, the Inspector's reasoning for rejecting the argument was, in summary, that the lack of commitment to or a timetable for such a study (IR16.112 – 113) and the fact that there was no means by which the results would be binding (IR16.112) meant that the inevitable result would be: "substantial delay in providing further SRFIs to serve London and the South East. Such an outcome would inevitably lead to a substantial delay in providing further SRFIs to serve London and the South East. Such an outcome would be contrary to the Government's declared aim of increasing the proportion of freight moved by rail and the emerging regional policy...."

7.90 This is a complete answer to the "what's the rush, why can't we wait" approach of various witnesses.

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<sup>60</sup> 9/LPA/3.5

<sup>61</sup> IR16.111

7.91 In respect of the regional study, the basic position remains exactly the same. There is no evidence of any progress whatsoever of such a study now two years later. The “intent” of SEEDA<sup>62</sup> and EERA<sup>63</sup> in this regard envisaging a joint study is just the same as it was two years ago and there has been no progress. There is no reasonable prospect of a joint study being likely to be undertaken and its findings accepted as binding on the various authorities affected within a reasonable timeframe: see IR16.110.

7.92 The position appears to be now taken that the local authorities cannot make progress until there has been progress on the NPS<sup>64</sup>. We grapple with the NPS and prematurity below.

7.93 The position is plain and overwhelming. The plan led system is simply not delivering allocations for SRFIs and, whilst giving strategic support for SRFIs, has proved itself incapable of providing site specific direction binding on LAs. This is why there has been not a single m<sup>2</sup> of SRFI allocated in any policy document since 2001<sup>65</sup>. This puts the whole approach of the Council to the developers into context. The Council states that “developers are incapable of objectively assessing appropriate sites”. In the absence of allocations, the only means by which SRFIs are to be delivered is by developers promoting applications and those applications being tested at public inquiry (as here). What more can be done?

#### *The Core Strategy*

7.94 The new point (not raised in RfR<sup>66</sup> or in any document prior to the proofs) is that the application is premature to the CS. This argument was rejected at the last inquiry and should robustly be rejected again. The CS is not significantly further forward in the statutory process than at the last inquiry – in respect of which see IR16.110. The CS is hardly likely to allocate the site for an SRFI and nor is there any indication of a policy framework which would be in any respect more restrictive of development in this location than was present under the Local Plan.

#### *The NPS*

7.95 The Government advice on prematurity does not extend to NPSs<sup>67</sup>. An NPS draft will be produced sometime next year. The planning system is not “on hold” pending the NPS and there is no guidance to that effect. Further, it is simply misconceived (and another sign of desperation) to contend that the Government considers that it is appropriate to wait on the production of NPSs before making decisions. The guidance from the DCLG is directly contrary to such a proposition<sup>68</sup> and there would be no logic for the SoS imposing on himself an obligation to

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<sup>62</sup> JH appendix p119 – that letter was before the last inquiry – 5<sup>th</sup> December 2007 – and there has been no progress since.

<sup>63</sup> See JH Appx p65 letter from EERA dated 5<sup>th</sup> October 2009 – does not show any progress

<sup>64</sup> See e.g. JH page 120

<sup>65</sup> Even now the only emerging document in the whole of the wider South East supportive of any SRFI is in Sundon (Luton). That emerging policy does not envisage Sundon being one of the 3 – 4.

<sup>66</sup> And of course since then the timescale for the CS has slipped again.

<sup>67</sup> XX of Hargreaves.

<sup>68</sup> See RT rebuttal appendix 1 para 15 - 18 – the whole thrust of which is that decisions should not be held up by the NPSs. There are no proposals to amend the development plan (either RSS or LDF) which will materially impact on the SRFI issue.

determine applications within three months pending the NPS whilst saying "I may still reject the application which I am committed to determining in 3 months on NPS prematurity grounds".

7.96 There is no indication that the NPS will be site specific (indeed all the indications are to the contrary). It is important to note that as a matter of law unless the NPS is subject to site specific strategic environmental assessment, the NPS cannot be site specific. There is no indication that this work has been or is being done and of course the parties here would have known if that level of detailed analysis was being undertaken within Government because they would necessarily have been involved in the iterative and inclusive process required under the Directive.

*Howbury Park (HP) and London Gateway (LGW)*

7.97 Plainly, there is no warrant in Government policy for a prematurity argument (or a "wait and see" argument) in respect of development at HP or LGW. Waiting and seeing what happens at HP is a recipe for very substantial further delay in meeting the need which has been recognised in policy since 2001<sup>69</sup> and is simply inconsistent with the 3 – 4 policy aspiration. There is no evidence of the commencement of development at LGW and it is a port related development. It was considered by the Inspector at the 2007 Inquiry, it is not one of the 3 – 4 and is plainly in the wrong location.

*Conclusion on Prematurity*

7.98 This RfR is misconceived. There is no relevant MCC since 2007. The matters raised are either not capable of giving rise to a "prematurity" ground under Government policy; or are simply a re-run of arguments on which the conclusions of the Inspector and the SoS are clear and where there have been no MCCs since.

*(10) Overall conclusion on other Harm*

7.99 The overall conclusion on other harm is that there has been no MCC adverse to the proposals and a number of MCC's beneficial to them.

*E: Would the Development operate as an SRFI?*

7.100 In this section we consider whether the development will operate as an SRFI (and in so doing assess whether there will be harm to passenger services). This is in response to the repeated claim that this development will operate as a Trojan horse for road based warehousing (raised and rejected last time see IR16.150 and IR16.157)

7.101 We do not consider "need"/"demand" in this section but in the "Policy and Need" section below. We consider only:

(a) Conditions and s.106;

(b) Pathing issues;

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<sup>69</sup> See RT EIC – up to 10 years from now before one knows whether HP is meeting the need.



- (c) Gauging issues including engineering works;
- (d) The enhanced status of the MML; and
- (e) Miscellaneous Issues.

### *Introductory Comments*

7.102 Before the detail it is worth pausing to put the objections into context:

- (a) Railtrack had identified this site for an SRFI prior to any involvement from HS or any private sector operator. This is not a private developer led identification of a site<sup>70</sup>;
- (b) prior to HS becoming involved, the 2004 Midland Mainline RUS identified the SRFI at Radlett<sup>71</sup>. There was no suggestion that gauging or pathing constraints made it unsuitable;
- (c) finding a site which can operate as an SRFI without causing unacceptable residential amenity, highway, landscape, or ecological impacts is a very difficult task. As the SoS concluded on the last occasion, this has been achieved here;
- (d) Network Rail as the guardian of the network support the proposals. That support is given in the context of Thameslink and not despite it;
- (e) all stakeholders (with the exception of FCC – considered below - and the Council) recognise the need for SRFIs in the south east and none identify issues with this location;
- (f) DBS through Mr Smith<sup>72</sup> with all its accumulated expertise as the biggest rail distributor in Europe and well aware of the concerns of the Council, FCC and STRIFE, does not share those concerns and considers that this site is “ideally suited” to serve London and the South East. Here as nowhere else in the south east, an operator of the intermodal facility has been identified and heads of terms agreed. It is inconceivable that DBS would have gone to the trouble of agreeing heads of terms and appearing at this Inquiry unless it was satisfied that a commercially viable intermodal facility will be established here. It has significant in-house expertise and whilst it does not pretend to have undertaken a detailed 2015 timetabling exercise, it sees no reason why pathing or gauging issues cause a problem here.
- (g) the conditions and s.106 obligation proposed (and accepted by the Inspector last time: IR 16.151 - 153) provide a robust framework which

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<sup>70</sup> 9/CD/7.4 para 2.13. This is highly material given the way the Council impugns the ability of the private sector to identify suitable sites objectively.

<sup>71</sup> 9/HS/2.5 para 6.18

<sup>72</sup> Highly respected in this field, often giving advice to select committees, representing the freight industry at the highest levels and awarded an MBE for services to rail freight

ensures that the rail infrastructure is provided in tandem with the warehousing with pump priming funds available to encourage occupiers to use rail freight.

*The condition and the s.106*

7.103 The conditions ensure that:

- (a) A rail – link to each warehouse is completed and connected to the main line before that warehouse is occupied;
- (b) A second track to the main line will be provided as soon as the average number of trains to the site exceeds seven per day or after ten years in any event;
- (c) phase 1 of the inter-modal terminal will be provided (at very substantial expense) before any warehouse is occupied;
- (d) the rail works are managed and maintained so as to always be available to serve the warehouses; and
- (e) only 175,000m<sup>2</sup> may be occupied until the gauge clearance works are provided.

7.104 In addition, of course, the conditions/s.106 are structured so that no works at all can commence until all the land is bound (see below) and the s.106 contains provision for the £3m subsidy. This suite of conditions will require very substantial upfront investment in rail infrastructure at the time the development is built. That structure was sufficient to satisfy the Inspector and the SoS on the last occasion: see IR16.154 and DL 48.

7.105 In addition, of course, the HGV levels in the FMMP provide a powerful new incentive to the developer to maximise the use of rail freight. And of course having DBS on board provides significant further assurance above that available to the SoS on the last occasion.

7.106 The SoS can be entirely confident that the necessary rail infrastructure to allow rail freight to operate effectively from here will be in place. As the Inspector concluded on the last occasion, there is sensibly nothing further that can or need be done to ensure the SRFI actually operates as such and:

*“...the policy on SRFIs seeks to facilitate the development of a network of Interchanges, which, in turn, is seen as facilitating the transport of goods by rail (CD6.1 pp3 and 4<sup>73</sup>). At the outset SRFIs are expected to accommodate both rail and non-rail served businesses, with an expectation of increasing the proportion of rail servicing over time (ibid para 4.5).”*

7.107 The further conditions suggested by the Council and STRIFE:

- (a) go far further than the SoS considered it appropriate/necessary to go on the last occasion;

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<sup>73</sup> Now 9/CD/6.1

(b) are far more rigorous than those imposed at HP;

(c) are plainly designed to frustrate the development coming forward even if the SoS concludes that permission should be granted. They are correctly referred to as commercially wrecking conditions; and

(d) more importantly, they are simply unnecessary on a correct understanding of the scale of investment in rail infrastructure, the structure of the conditions and the self-evident and increasing demand for rail linked warehousing.

### *Pathing*

7.108 The pathing issue was addressed by the Inspector under the heading “Effect on Passenger Services” [IR16.63]. The way the Council and STRIFE put their case is that the pathing requirements for freight trains into the site are inconsistent with passenger services in the future. HS’s case is that there is no reason to doubt that adequate paths can be provided and very significant reassurance that they can be.

### *The process of timetabling*

7.109 The system for allocating paths is necessarily complex and subject to careful regulation under other legislation. TOCs or FOCs wishing to operate services have to apply for paths through one of two routes:

(a) Spot bids – not relevant here; and

(b) Through the Part D Network Code Process.

7.110 Part D encompasses a two year timetabling plan cycle in which all users ask for the paths they require. Detailed work is then undertaken by NR to accommodate as many of those requests as possible. Issues are grappled with through well understood co-operative processes designed to maximise the use of the infrastructure<sup>74</sup> consistent with NR’s licence conditions.

7.111 The process for 2015 would normally start in 2013 although of course the preliminary work for Thameslink has already started. To have any feel for what a timetable will look like and how the use of the infrastructure can be maximised one needs:

(a) knowledge of all passenger and freight services operating in 2015 in terms of the operator, the speed, their origin and destination and for passenger services where they stop en route; and

(b) the rules of the route appropriate to the services being envisaged, the rolling stock, the signalling then in place and the mix of users of the line<sup>75</sup>.

7.112 The information is not available in sufficient detail yet to allow this exercise to be carried out. It would thus be impossible for the guarantees the Council and

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<sup>74</sup> All agreed by Mr Clancey in XX

<sup>75</sup> All agreed by Mr Clancey in XX

STRIFE require to be provided. The consequence is that on their approach no SRFI could ever be consented and that necessarily the SoS was wrong to grant consent at HP.

#### *The Position at the Last Inquiry*

7.113 The impact on the MML was the subject of intense debate at the last inquiry including in a proof from Mr Thorne which traversed many of the same issues now raised by Mr Wilson: see IR16.182 – 184 – in respect of availability of train paths. The Inspector concluded:

*“Network Rail did not attend the Inquiry, but there is no doubt that they fully support the proposal. As the guardians of the railway network, I take the view that their opinions should be given weight. Accordingly, whilst inevitably there can be no guarantee that sufficient train paths would be available to serve the proposed SRFI, my view is that the [SoS] can nonetheless be reasonably assured that sufficient paths could be made available outside the peak hours to properly service the facility if built” (Inspector’s underlining).*

7.114 The position of NR was supported by work prior to the previous inquiry by Atkins Rail on behalf of HS (who looked at whether trains could access the site using RailSys) and Interfleet work was presented to the Inquiry. The Thameslink programme was known about and taken into account at the last Inquiry although (as now) the “final pattern for this service has not yet been established”<sup>76</sup>. That remains the position<sup>77</sup>.

7.115 The Inspector rightly highlighted that:

- (a) The most intense use associated with TL is during the peaks when “freight trains do not generally run”: IR16.64<sup>78</sup>;
- (b) NR were “more than alive to the [TL] situation”
- (c) The off peak paths “currently available for freight trains per hour [in each direction] would not be reduced by future timetable changes”<sup>79</sup> (cf. para IR15.7); and
- (d) “critically they could see no reason why [HS’s] anticipated requirement for 12 intermodal freight paths to the site should not be met.”

7.116 There has been no material change in respect of any of those matters.

#### *Network Rail’s position*

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<sup>76</sup> IR16.64

<sup>77</sup> 9/CD/5.5 page 69

<sup>78</sup> It is no part of HS’s case that it will be able to use peak hour paths.

<sup>79</sup> IR16.65 – confirmed by Mr Clancey in XX.

7.117 NR is (along with the ORR) the guardian of the rail network<sup>80</sup>. As we are repeatedly reminded, it has been entrusted with huge sums of public money to deliver Thameslink and it is inconceivable that it would act in a way which would jeopardise the benefits to be gleaned from that investment: see also NR SOAF para 2.14: “[NR] will not compromise its current customers track access rights or wider operational responsibilities including key safety and performance targets”. This is fundamental when considering the Council’s pathing case.

7.118 NR’s internal processes (as explained orally by Mr Gallop) mean that its position is carefully considered before it supports proposals which impact on the rail network. It would not have entered into the BSA if it considered these proposals were incompatible with its obligations in respect of the rail network (see NR SOAF para 2.21). It does not (compare the position of the Council) require the proposals to be worked up to higher levels of GRIP at this stage or before it can support the proposals (para 2.22 and para 2.15). Nor would it have signed the NR SOAF or expressed its support for these proposals. As NG noted “NR does not just rubber stamp applications”. It should be noted here that the GRIP process is an internal NR process geared to NR’s requirements. It is not a part of the planning system.

7.119 The Inspector should conclude that the NR SOAF is a carefully considered document. The answers to further questions raised with NR have elicited careful and complete responses (and no party raised any further questions). The position of NR should be accorded very significant weight.

7.120 In terms of pathing, after having concerns repeatedly raised with it including through now a total of about 79 questions<sup>81</sup>, it raises no concerns: see NR SOAF para 2.3 – although of course (as at the last inquiry) it can offer no guarantees. Plainly if NR had any concerns there has been ample opportunity for it to say so. The degree of engagement by NR here has “been far more than in some other cases”<sup>82</sup>:

*The Extent of the Pathing Issue*

7.121 It is clear that there are adequate paths on the MML and no party appears to contend to the contrary: see NR SOAF para 2.3<sup>83</sup>. In stark contrast to the position at the last inquiry there is no issue on capacity on cross London routes. It therefore appears that the extent of the pathing issue is now limited to the ability to gain access to the terminal across the up slow line. On this we submit the evidence is now clear notwithstanding the attempts of some to obfuscate.

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<sup>80</sup> As accepted by many stakeholders – in the letters in appendix A to Mr Hirst’s evidence. They all look to NR and the ORR to protect and develop the rail network – see e.g. EMT letter at appendix A1.2.

<sup>81</sup> The Inspector’s refusal of Ann Main’s request for a witness summons was entirely correct. We invite the Inspector to record the request and the reasons for its rejection in the Report. In short, Ms Main did not claim that there was any further information or document she required but the whole tenure of her submission was that NR should attend for cross examination. That is not the purpose of the witness summons procedure which should, in any event, only be used as a last resort.

<sup>82</sup> NG in evidence in chief. He referred to Rossington where all that was sought was confirmation from NR that Rossington was capable of accessing the busy ECML there.

<sup>83</sup> And the percentage figures there set out are by reference to “booked” paths. Even with Mr Clancey’s update to the schedule of actually used paths, it is plain that many of the booked paths are not in fact used. On a timetable review, a “use it or lose it” approach applies to freight paths: confirmed by Clancey in XX.

7.122 Mr Wilson proceeded on the basis of a series of assumptions which Mr Smith's evidence has demonstrated were wholly inappropriate ranging from the number of FCC trains running on the slow line through to the performance characteristics of the trains, the dwell times at stations, the headways, the signalling arrangements and the physical infrastructure. We have noted that those matters were not progressed in cross examination when Mr Smith identified them. The SoS therefore has the unchallenged considered views of one of the most experienced rail freight experts in the country to support the view that Mr Wilson's assumptions are wrong and the conclusions therefore simply inappropriate and it seems self-serving from the point of view of the Council's case.

7.123 As to the number of FCC trains on the slow line, Mr Wilson's assumption was 10<sup>84</sup> and although there has been a quite brazen attempt to move away from Mr Clancey's evidence it is clear that FCC's view is that there will be a maximum of 8 on the slow line past the site. We note that FCC committed itself in July 2009 to 6 on the slow line past the site a figure which was not corrected in Mr Morgan's evidence and which Mr Clancey confirmed was what FCC was planning towards. The combination of the inappropriate assumptions and the use of the wrong number of trains leaves Mr Wilson's evidence devoid of any credibility<sup>85</sup>.

7.124 The SoS now has advice from a variety of sources [that include: (1) Interfleet acknowledged experts in the field<sup>86</sup>; (2) DBS - independent and experienced freight operators with their own in-house expertise and rail planners; (3) NR as guardians of the network with of course considerable knowledge and expertise; (4) Mr Gallop - an independent and experienced rail consultant] all reaching a clear and uniform conclusion that there will not be any difficulty in accessing the terminal twice in each non-peak hour during the day with necessarily the conclusion that overnight further paths would be available. Even Mr Clancey does not now claim to the contrary<sup>87</sup>

7.125 There is, in the circumstances, no basis for the assertion that the terminal would be unable to operate as an SRFI on 24/7 basis. The most heavily weighted factor in the Council's evidence is found to be predicated on a wholly false premises and a fundamental plank of its case fails.

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<sup>84</sup> This was based on the draft RUS p69. From that it was assumed that 12 off peak FCC trains would be passing the site in total (compare the 10 in Mr Morgan's letter of July and in the KO2 document (STRIFE/9/10/01) which Mr Clancey confirmed was what FCC was planning to deliver) even though the RUS is in draft and the services are said to be "indicative".

<sup>85</sup> Mr Wilson is the only person involved who perceives a problem. His pathing analysis is wrongly based on 10 not a maximum of 8 trains on the slow lines; assumes that freight trains would have to stop before arriving at the junction rather than being on a path which allows continuous running into the site; and assumes that any start of a freight train leaving the site other than on green is impermissible. On all these matters he is wrong and significantly out of step with all the other experts on this matter.

<sup>86</sup> Who identified paths in the current timetable even when adding in additional TL trains and services to the SRFI. The fact that paths can be found in the current timetable should provide very significant additional comfort given the additional scope through the timetabling process to maximise efficient utilisation.

<sup>87</sup> Mr Clancey raised a concern that access could not be "guaranteed". However as he fairly admitted his concern was derived from Mr Wilson's evidence and his pathing paper and as Mr Clancey accepted that document was wrongly based on 10 FCC trains on the slow lines each way per hour in the interpeak.

*Gauge pending enhancement\**

7.126 In order for an SRFI to operate as such it must be capable of being accessed by wagons carrying containers from around the UK and from the deep – sea ports and the Channel Tunnel.

7.127 Radlett is capable of being so accessed now (and, with the gauge enhancement works envisaged in the s.106, will in the future become even more easily accessible to the larger containers on standard wagons). On the last occasion the SoS accepted occupation of no less than 175,000m<sup>2</sup> before any gauge enhancement works were necessary. On the current gauge intermodal trains can access the site without any enhancement works. DBS has no concerns about operating the intermodal facility on the current gauge pending gauge enhancement works and regularly runs services on the lower loading wagons that would be used here pending gauge enhancement.

7.128 There is no reason to suppose that, pending gauge enhancements, services will be uneconomic and will require subsidy and it was telling that there was no cross examination of Mr Smith on this issue which lies at the heart of the Council's case. There is no reason why profitable, unsubsidised services cannot be operated from this site prior to the gauge enhancement works.

7.129 At the last inquiry, based on Laser Rail work, it was assumed that the MML was W7 gauge. Mr Thorne did not claim that on that W7 basis the current gauge caused substantial difficulties. HS was positively criticised by the Council for using gauge constraints to reject alternative sites. We now know that the MML is in fact W8 to Cricklewood<sup>88</sup>. The current position is materially better than that assumed at the last inquiry.

7.130 In respect of the cross London routes, para 2.6 of the Statement of Agreed Facts with Network Rail<sup>89</sup> ("NR SOAF") is clear and no questions have been raised on it. On the route to Acton Wells Junction, whilst further detailed gauging work is required, "preliminary gauging assessment indicates that scope may exist to carry [9 foot 6 inch] containers carried on FAA wagons<sup>90</sup>. This would provide for FAA (not the low loaders) to carry the largest containers to the Channel Tunnel and Southampton – wagons which DBS currently use on a significant number of routes. In respect of Felixstowe, the low loaders (KTA) could gain direct access through Carlton Road junction.

7.131 It can thus be seen that even now and even on current assessment the gauge allows for access to all routes. Para 2.8 of NR SOAF is important:

*"Subject to further gauging analysis by Network Rail, it is possible that other combinations of inter-modal wagons and containers can operate on the MML in line with relevant Railway Group standards."*

7.132 DBS has run trains on routes which are identified as too low a gauge but which in fact can accommodate their trains. Mr Smith explained the process used by

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<sup>88</sup> 9/HS/3.2 - Network Rail Route Plan Midland & Continental.

<sup>89</sup> 9/CD/7.4

<sup>90</sup> If correct this is a further material improvement on the position assumed at the last Inquiry.

NR. NR is in the process of looking more closely at what a line can practically take rather than what gauge it is theoretically identified as accommodating.

7.133 Detailed work on current gauge will of course be undertaken as part of the process of working up rail access proposals for the SRFI (prior to gauge enhancement). Even if it demonstrates no enhanced accessibility, the position is plain – freight trains can access the SRFI from all the key destinations.

#### *Engineering Work*

7.134 The engineering requirements for gauge enhancement have been grappled with by the Inspector at IR16.66 - 67 and nobody claims any MCC in this regard.

*"[NR] does not consider there to be any major technical obstacles to achieving [W10] enhancement works"<sup>91</sup>".*

7.135 As Mr Gallop pointed out the works to deliver Thameslink create a significant window of opportunity for these engineering works to be carried out in existing possessions: see also NR SOAF para 2.20. In any event, NR has a good record of planning such possessions: see Mr Hirst Appendix A1.2 letter from EMT. It is to be noted that, of course, these works will be inevitable anyway if the MML is to fulfil its new role as part of the Strategic Freight Network ("SFN").

#### *MML as a core freight route*

7.136 At the last inquiry much was made of the MML not being a core freight route. In that regard, of course, there is a significant MCC in favour of the proposals with the MML being identified as a part of the SFN. This is backed up by RUS and proposed electrification. There is also the opportunity to clear the MML to continental standards (UIC) – NG para 4.17 p11.

#### *Miscellaneous Points*

7.137 The south - facing only connection was considered at the last inquiry by the Inspector [IR16.67 – 16.68] and was not criticised. The SRA policy (para 4.32) relied on by the Council to show that the lack of two way access is a material disbenefit was current at the last inquiry. The SRA policy in any event makes clear the latitude to consider other arrangements: see para 4.33. SIFE has an eastward facing connection only.

7.138 The future potential for the northward connection is a significant benefit: NR SOAF para 2.18 although it is accepted that that has not been subject to environmental assessment.

#### *F: Need and Policy*

##### *Need for additional SRFIs to serve London and the South East*

#### *Summary*

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<sup>91</sup> NR SOAF para 2.19



7.139 The SoS concluded in 2008 that the need for SRFIs to serve London and the South East is a material consideration of very considerable weight. The need is increasing and none of the need referred to in DL58 has been met. Further developments since the last inquiry enhance rather than undermine the need case. We consider need in the NW quadrant below.

#### *The Decision Letter*

7.140 DL58 is quoted above. The Council effectively ignores it. DL58 is fundamentally inconsistent with the Council's case on need. The Government would not have the 3 – 4 policy or have adopted the position in DL58 unless it thought that need existed and should be met. The policy is reinforced by CD5.4 Annex D which is very clear and up to date.

#### *"The Need"*

7.141 The need is a need to provide the facilities which will give distributors the opportunity to transfer the primary distribution legs of their distribution chains from HGV on the motorways to rail. The whole purpose of the policy framework is to stimulate provision to provide the means for this transfer. Plainly, if there is not an appropriate network of SRFIs, industry will not be able to move to this substantially more sustainable travel by rail with all the benefits this brings: see CD5.1 Appx G last 2 paras.

#### *Meeting the Need and progress since the DL*

7.142 The core need identified in the SRA SRFI Policy March 2004 and underpinning the conclusions referred to above remains. The position is stark:

*"...there still remains a significant under-provision of rail-linked floorspace in some parts of the country particularly in London, the South East and Eastern England. Further SRFI capacity is therefore needed, to ensure that rail freight services can start and finish as close to the points of consumption as possible, to minimise the final collection and delivery mileage by road".<sup>92</sup>*

7.143 No relevant permissions have been granted in London and the South East (since the DL) and not a single m<sup>2</sup> of SRFI capacity has been delivered to meet the 3 – 4 need since the DL. Further, far from undermining the need for a site in the NW quadrant, the permission for HP enhances the logic for making provision in that quadrant<sup>93</sup>. LGW does not contribute to meeting the need but even if it was considered that it did, and even if HP were constructed there would still remain a need for at least 1 – 2 and one of those would need to be in the NW quadrant consistent with the SoS's reasoning in the DL.

#### *The Market*

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<sup>92</sup> See Parliamentary Under SoS's letter at 9/HS/9.1

<sup>93</sup> IR p185 16.126

7.144 It is telling that that which the Inspector predicted at IR16.156<sup>94</sup> is being proved correct. The further evidence since the last inquiry shows how the market is recognising the opportunities rail freight and SRFIs offer:

(a) Tesco<sup>95</sup>: its letter reflects the comments of the Inspector at IR16.156 and shows how the major largest retailer in the UK sees the potential for rail and what is required to allow it to transfer much of its distribution to rail. Its aspirations are fully compliant with the Government's ambitions which underpin the 3 – 4. It wants to use more trains. That aspiration cannot be fulfilled unless there are appropriately located SRFIs. "To continue these significant steps in Southern England Tesco would welcome a network of rail freight interchanges in the South East, ideally located close to the M25. The North West sector (of the Home Counties) seems to represent one such good location".

(b) DBS<sup>96</sup>: the largest rail distributor in Europe sees the potential for very substantial growth in intermodal traffic if SRFIs are provided. It is "establishing working relationships with most major retailers and with many of their largest suppliers" with a view to encouraging major transfer of freight from road to rail<sup>97</sup>. It made an unsolicited approach to HS<sup>98</sup> here based on its understanding of what its customers required and how Radlett could assist in meeting those requirements "We could see a major opportunity for developing freight on rail...We are of the view it is a prime site"<sup>99</sup>. DBS sees a need just for 2 SRFIs in the south east<sup>100</sup>;

(c) The combination of the UK's largest retailer and Europe's largest operator is extremely powerful evidence of need;

(d) Mr Wilson's market research<sup>101</sup> shows exactly that which the Inspector predicted at IR16.156 – the market is increasingly interested in moving to rail;

(e) Stakeholders are unanimous in recognising the need for SRFIs<sup>102</sup> to deliver the transfer to rail: see e.g. Mr Hirst App A document 1.5 – "freight cannot use the railways without suitably located terminals for it be loaded and unloaded. Whilst there is rail freight terminal capacity in some parts of the country there is currently no rail freight interchange north of London"; and

(f) Professor McKinnon recognises the factors referred to by the Inspector.

7.145 The DfT letter records how intermodal market has grown by 50% (9/HS/9.1)<sup>103</sup>. All the indications are of very substantial future growth if the

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<sup>94</sup> See also approach at Howbury Park ("HP") 9/CD6.1.

<sup>95</sup> 9/HS/2.8

<sup>96</sup> Evidence of G Smith – personally a key leader in the field of rail freight and in leading the shift to rail which the government desires

<sup>97</sup> See 9/HS/1.3 para 7

<sup>98</sup> Commercial heads of terms have been agreed. That is the appropriate position to have reached at this stage. The terms are commercially sensitive for obvious reasons.

<sup>99</sup> EiC of G Smith

<sup>100</sup> Para 13 9/HS/3.1

<sup>101</sup> BW Appendix E

<sup>102</sup> See Hirst Appendix A: STRIFE 9/04.

<sup>103</sup> See also 9/HS/3.1 para 8 for a summary of the position

necessary provision is made. The Government is taking major steps to provide the physical rail infrastructure to accommodate that growth<sup>104</sup>. If SRFI provision is made, the Government's sustainability agenda and business requirements can be and, the SoS can be confident, will be met. Developments in the industry (increasing in train lengths, gains in efficiency) are creating the opportunity for major growth - if SRFIs are provided<sup>105</sup>.

*"[the industry needs] to be able to handle containers on and off the trains quickly, efficiently and cheaply if it is to increase its market share against road and provide the associated economic and environmental benefits"*

7.146 The SRFIs need to be of a critical size. The SoS found no issue on size here on the last occasion<sup>106</sup>. In Annex D of the Vision "large" means something of this scale. "Size is critical":

*Floorspace Cap?*

7.147 The floorspace is not capped to 400,000m<sup>2</sup>:

*"...this [appendix G and 400,000m<sup>2</sup>] does not in itself constitute a target or a ceiling on the level of rail-linked floorspace which might be considered desirable to support wider Government policy in promoting modal shift."*<sup>107</sup>

*Policy*

7.148 The policy position at the last inquiry is summarised at IR16.116-120 and IR16.126. At that time the Inspector concluded that there was no policy support for the sectoral approach –IR16.125 but even in that context considered the NW Quadrant approach was justified.

*Overview of changes since the last Inquiry*

7.149 The only claimed significant relevant change in regional policy is the adoption of the final version of T10.

7.150 The position in respect of the local plan and saved policies is unchanged from the last inquiry. The supercession of the Structure Plan does not materially alter the planning policy framework.

7.151 The Core Strategy is at an extremely early stage (as at the last inquiry: IR16.110) and can be accorded no weight.

7.152 The London Plan issues raised by the Council go nowhere. It is relevant to note that TfL in a very recent and up to date letter is fully supportive of SRFIs<sup>108</sup>.

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<sup>104</sup> See para 11 9/HS/3.1 para 10-11

<sup>105</sup> See para 12 9/HS/3.1 para 12

<sup>106</sup> DL47

<sup>107</sup> 9/HS/9.1

<sup>108</sup> Hirst Appendix 1.1

7.153 The policy framework at the national level remains essentially the same as at the 2007 Inquiry<sup>109</sup>. There is no adverse MCC in that respect. The policy framework is, on the contrary, strengthening.

7.154 The claimed MCC is thus limited to the forthcoming network NPS.

*RSS - T10<sup>110</sup>:*

7.155 T10 provides that priority should be given to the efficient and sustainable movement of freight, maximising the proportion of freight carried by e.g. rail including that:

*"provision should be made for at least one strategic rail freight interchange at locations with good access to strategic rail routes and the strategic highway network, unless more suitable locations are identified within London or the South East for all three to four interchanges required to serve the Greater South East" (emphasis added).<sup>111</sup>*

7.156 Properly understood, this is strongly supportive of an SRFI being provided in the NW Quadrant.

7.157 Para 7.25 states as follows:

*"Currently, the movement of freight in the region is largely by road. To increase movements by rail... there is a need for interchange locations. The 2004 Strategic Rail Authority Strategic Rail Freight Interchange Policy identified a need for three to four strategic rail freight interchanges for the Greater South East and the 2006 Eastern Regional Planning Assessment for the Railway envisaged development of strategic sites around the M25. Given that the region includes a third of the M25 ring and that all the main rail lines from London to the North and Scotland cross the M25 within the East of England it is likely that at least one of the required strategic interchanges will need to be in the region."*

7.158 The main rail lines referred to are of course the ECML, the MML and the WCML – all of which are in the appellant's north west sector. Those are the "strategic rail routes" referred to in the policy text itself.

7.159 Para 7.25 clearly envisages provision being made close to where these lines intersect the M25 – that is the "strategic highway network" referred to in the policy text itself. This text is precisely referring to the NW Sector. This is the very policy support for an SRFI close to the M25 in the NW region that was not explicitly in place at the last inquiry<sup>112</sup>. It has "provided a clearer framework of policy support for the

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<sup>109</sup> The SRA 2004 policy has been retained as guidance pending the NPS – see below.

<sup>110</sup> East of England Plan CD4.1

<sup>111</sup> 9/HS/1.12 - in the draft policy the SRFI was to serve London and the region – not London and the Greater South East. The text has broadened and that broadening further strengthens the sectoral approach.

<sup>112</sup> See XX of RT. The references to the IR given are 16.118, 119 and 125. The very document being referred to in IR16.119 (DfT Eastern Regional Planning Assessment for the Railway) which was there described as "not a policy statement" is now expressly referred to and endorsed in the EEP and taken forward in the text in para 7.25.

NW Quadrant than in the draft at the 2007 Inquiry”<sup>113</sup>. There is no rational way of reading the policy along with the supporting text other than saying that an SRFI will be required in the NW sector and that it is likely that it would be required to be in the East of England region<sup>114</sup>.

7.160 The changes to T10 are materially supportive of the sectoral approach (NW Sector) and for sites close to the main lines intersection with the M25. Thus far from being an adverse material change since the last inquiry, the amendments to policy T10 materially enhance the policy case for the proposed development<sup>115</sup>. The imperative in T13 towards joint working is no different from the position at the last Inquiry. There has been no change to this paragraph and no progress on it. That joint working will not be binding on any LPA.

### *Core Strategy*

7.161 This was not raised in the report to committee or the reasons for refusal but appeared for the first time in Mr Hargreaves’ proof. The Core Strategy is at such an earlier stage that it cannot be accorded any weight.

### *National Policy Position*

7.162 There is no adverse MCC.

7.163 The DfT “Strategic Rail Freight Network – The Longer Term Vision” (“the Vision”)<sup>116</sup> appendix D is a robust very recent statement of the Government’s SRFI policy. The approach there is entirely consistent with the need case promoted by HS and with the provision of a network of SRFIs in the south east located near key business markets they will serve.

7.164 As that document states:

(a) SRFIs are “a key element in reducing the cost to users of moving freight by rail and therefore are important in facilitating the transfer of freight from road to rail” – second para;

(b) “SRFI’s represent major gateways to the national rail network which allow business to move freight by rail for distances and in quantities appropriate to their operational and commercial priorities. They are therefore key features of national rail infrastructure” – third para; and thus

(c) “It is important that SRFIs are located near the key business markets they will serve, which will largely focus on major urban centres or groups of centres and key supply chain routes” – fourth para.

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<sup>113</sup> RT EIC

<sup>114</sup> It is to be noted of course that the EEP says it is likely that at least one of the 3 – 4 will be in the East of England region – that is a recognition that there may need to be more than one of the 3 – 4 in that region.

<sup>115</sup> There is nothing in DL9 to suggest any conclusion of the SoS to the contrary – she was rejecting the appeal because within the NW Quadrant, she was not satisfied with the alternative site work. In that context, T10 could not assist HS on the then available ASA work.

<sup>116</sup> 9/CD/5.4 – September 2009

7.165 This is powerful support for SRFIs generally and for locational decisions which locate them close to key business markets and key supply chains. Radlett is located near to key business markets and key supply chains.

#### *NPS*

7.166 There is no indication that the draft NPS will change any of the basic parameters for an SRFI from those contained in the SRA policy. Those parameters are of course a reflection of the basic requirements for such facilities and, given that, it would be highly surprising if the basic parameters were to change.

7.167 Further, the DfT letter<sup>117</sup> is unambiguous:

*"The Department is satisfied that the guidance contained in Chapter 6 of the SRFI policy remains relevant to the need for SRFI , in terms of both number of SRFI needed in each region and the key criteria where suitable sites are likely to be located, for example 3 or 4 SRFI where the key rail and road radials intersect with the M25. The National Policy Statement will seek to build on this guidance."*

#### *G: Alternative Sites*

##### *The Task*

7.168 SRFIs necessarily and inevitably have exacting siting requirements. Sites must:

- (a) be very large, relatively level and appropriately shaped;
- (b) have the ability to connect appropriately onto the rail network on lines from which freight trains can access the key destinations – ports, the channel tunnel etc..;
- (c) have the ability to access onto suitable roads (without large numbers of HGVs being routed on unsuitable roads or through residential areas) without exacerbating congestion (a significant challenge in the south east);
- (d) be close to the population centres they will serve - so as to maximise sustainability benefits in terms of HGV km savings and to maximise the attractiveness of the use of rail for future occupiers;
- (e) be capable of being developed without causing unacceptable harm to residential amenity (noise, air quality, impact on rights of way, traffic congestion), the landscape and/or ecology;
- (f) be in locations where staff can travel to and from work without unacceptable sustainability implications; and of course
- (g) if in the GB, to cause as little harm as is possible to the purposes of the GB for a development of this size and importance.

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<sup>117</sup> From the Parliamentary Under Secretary of State (Wilson Appx M and 9/HS/9.1)

7.169 As the Government recognises, identifying suitable sites for SRFIs especially in London and the South East is very difficult. Given the density of development, key geographical features (topography, valleys and ridges), landscape constraints (Green Belt and AONB), ecological designations (SPAs, SSSIs), the need for such sites to be well related to both suitable rail and road infrastructure and the congested nature of the rail and road systems, finding suitable sites is extremely difficult<sup>118</sup>.

7.170 The SoS should be in no doubt that suitable opportunities to develop SRFIs are few and far between. This is demonstrated by:

(a) The alternative site search of both the appellant and the Council. Of a very long list of sites which meet some basic size and locational criteria, only a handful merit detailed consideration because the remainder exhibit one or more features which make them simply unsuitable for an SRFI – long list stage;

(b) The fact that even now and even in the light of the SoS's conclusions in the DL as to the need being likely to be sufficient to warrant construction of an SRFI in the GB, still only three other sites are being actively promoted: (1) Colnbrook; (2) Harlington – which can immediately be counted out because its rail access is to the fast lines; and (3) Upper Sundon which is being promoted through the LDF for a much smaller facility and which it is not suggested will be one of the 3 – 4 serving London and the South East. The lack of actual proposals and of developer interest is telling. Identifying sites which can work in operational, locational and environmental terms is very difficult even before one considers impact on GB purposes.

7.171 If the task was not so difficult DBS would not have been here.

7.172 This highlights the lack of credibility of BW's (diminishing) shortlist of now we believe 13 sites<sup>119</sup>.

#### *(2) The Purpose of an Alternative Site Assessment*

7.173 The purpose of the ASA is to assess whether there is a site which can appropriately operate as an SRFI whilst causing less harm to the Green Belt. In assessing whether it can appropriately operate as an SRFI there is a need to look at other harm – noise impacts, landscape and visual impacts<sup>120</sup> and other harm

7.174 It is not to find the best site in rail operational terms for an SRFI.

7.175 The core issue for the alternative site assessment is "whether or not the need which the proposal seeks to meet could be met in a non-Green Belt location, or in a less harmful Green Belt location, is a material consideration in this case": see DL42 and IR16.121.

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<sup>118</sup> 9/CD/5.4 Annex D

<sup>119</sup> 9/HS/1.13

<sup>120</sup> XX of RT (9.50a, 9<sup>th</sup> Dec)

7.176 That question has been answered by the appellant. It has not been addressed by the Council in SDG Appx I – there being no comparative assessment of whether an alternative site causes less harm to the GB or GB purposes.

*(3) The Correct Starting Point*

7.177 The correct starting point is the SoS's DL. That is clear and unambiguous that the Radlett site is in all respects including rail an appropriate site for an SRFI. SDG ignore this fundamental starting point, score Radlett "nil" on rail grounds and seek to demonstrate that the other sites are better in rail terms. That is with respect an entirely misconceived approach.

*(4) The Degree of Knowledge*

7.178 It is plain that the appellant has undertaken a huge amount of work and has a huge amount of detailed site specific knowledge which it has brought to its task. More than 500 miles on footpaths have been walked exploring the sites. He has an intimate knowledge of that which he has assessing.

7.179 That means that he has able to bring practical commonsense to the analysis, for example:

(a) The issue of topography and whether a new 5km rail connection can sensibly be considered through the 60m ridges of the AONB;

(b) Availability of land – employment land and housing allocations; and

(c) The approach of taking forward the best site in any given location for further analysis and not taking forward all "duplicate" sites.

7.180 His is a practical examination in the real world of sites which could meet the need.

7.181 The contrast with the approach of SADC is stark. Both in criticising the appellant's work, and in their own ASA, SDG have adopted a theoretical rather than a real world exercise. This has led them to require consideration of, for example, (1) areas separated from any rail infrastructure by 60m ridges in the AONB; (2) sites at Wokingham which are covered by a strategic housing allocation; (3) the possibility of redeveloping employment sites<sup>121</sup>; (4) duplicate sites when it is obvious and plain that there is a better site in the same location which is being carried forward to the short list – see e.g. sites 14 – 18 (considered below).

*(6) The Appellant's Approach*

*(a) The Methodology*

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<sup>121</sup> Even though any such redevelopment would require relocation of hundreds of businesses (no doubt into the GB given the employment land supply constraints close to the M25), for a development which would accommodate dramatically lower numbers of jobs; and would be prohibitively expensive.



7.182 The appellant recognised that, in the light of the SoS's conclusions it was necessary to completely revisit the alternative site approach.

7.183 Using the methodology in the Howbury Park ("HP") alternative site assessment ("HP ASA") as its starting point<sup>122</sup>, CgMS prepared a methodology which suitably modified the HP ASA to meet the concerns of the previous inspector (eg: using 5km from railway as opposed to 2km at HP) - a methodology subsequently adopted, peer reviewed and endorsed by Doncaster Council at Rossington.

7.184 That methodology was provided to the Council in good time<sup>123</sup> for comment to ensure that the co-operative and transparent working which are so important in such an exercise were built into the process from the start. No response was received despite the fact that SDG were appointed precisely for the purposes of commenting on that methodology<sup>124</sup>.

7.185 The methodology was applied in the Appellant's Alternative Site Assessment ("ASA")<sup>125</sup> which was provided as part of the Application 8 months ago.

7.186 The SoS is asked to note that those opposed to this development have had a very considerable time to:

- (a) Raise factual questions on the ASA;
- (b) Seek information on factual matters which underpin the ASA;
- (c) Ask questions about the judgments which have been raised and to challenge those judgements; and
- (d) request sensitivity tests.

7.187 It is further relevant to note that the appellant has responded fully and comprehensively and convincingly to all questions and requests when they have been raised.

7.188 The criticisms in XX of RT in respect of not producing the full documentation are misconceived. He has provided all the more detailed material requested expeditiously and had other matters been raised with him at the appropriate time he would have similarly responded. The core point here is that when SDG raise issues with any degree of clarity and particularity these are comprehensively responded to and SDG then accepts the answers or raises other more detailed questions.

7.189 The SoS can be entirely satisfied that the appellant would have been able to provide all the necessary documentation to demonstrate the correctness of their

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<sup>122</sup> Approved by the Inspector and the SoS in HP – it is wrong to infer that the study was not the subject of detailed scrutiny. The Savilles work in 2004 was subject to detailed assessment by Bexley and the GLA and NLP prepared a further report. That shows the sort of analysis one would expect – the fact that it was not subject to minute dissection at the inquiry was precisely because it had passed muster through the process referred to above.

<sup>123</sup> 9/HS/1.11 – 16<sup>th</sup> February 2009

<sup>124</sup> See letter of instruction of SDG. – 9/LPA/6.12

<sup>125</sup> Technical Report 6 – CD2.8 – and where there were departures from the methodology these were specifically and carefully highlighted - see e.g. Denham Aerodrome.

assessment had questions been raised at the appropriate time rather than in trying to trip RT up in XX<sup>126</sup>. The correct approach is not to seek to trip up the ASA but to provide evidence to the Inspector/SoS which will assist them in considering this nationally important issue.

*(b) The ASA: The Initial Site Search and the Long List*

*NW Sector: Summary*

7.190 The Inspector and the SoS reached clear conclusions on the appropriateness of the NW Sector approach<sup>127</sup>. The permission for HP reinforced that conclusion<sup>128</sup>. The Council's case on lack of market evidence of a NW Market is substantially the same as at the last inquiry. There has been no MCC. King Sturge ("KS") and Lambert Smith Hampton ("LSH") provide additional support for the NW sector approach. The NW sectoral approach is further strengthened by the EEP policy T10 and para 7.25 as explained above which can only be read as supportive of the NW Quadrant approach.

7.191 It is for those reasons that the ASA was limited to the NW Quadrant. In the circumstances described above, it is plainly not open to the SoS to now reverse the position and require a wider search.

7.192 A sensitivity test (in response to the SDG Report) extending the area to the M3 has not revealed any available sites<sup>129</sup>.

*North West Sector - support for NW Sector approach*

7.193 The market need and demand case generally is addressed above including Tesco and others support for sites in the NW quadrant.

7.194 Professor McKinnon does not advance the SDG position any further but rather reinforces the HS approach acknowledging that much locational decision making remains fairly intuitive<sup>130</sup>. The idealised depot requirement in regions used by Professor McKinnon does not bear any close examination alongside the practical decision making processes used by the real world as evidenced by Mr Gallop's evidence with regard to Marks & Spencers and others<sup>131</sup>.

7.195 In the real world, if you are going to have: (1) a network; and (2) 3 – 4 around London it makes clear, sustainable sense to provide the facilities in a range of locations well related to the major transport corridors. That approach is recognised as we have indicated in the EEP policy T10, was adopted by the Inspector and the SoS on the last occasion and is recognised by Tesco and DBS as well as being supported by many of the stakeholders, the market survey<sup>132</sup> and the market evidence obtainable from the LSH report<sup>133</sup>.

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<sup>126</sup> MR in XX of RT said he would be "tripping you up later on" - which is symptomatic of the Council's overall approach.

<sup>127</sup> IR 16.123 – 127 and DL42

<sup>128</sup> IR16.126

<sup>129</sup> The Wokingham sites are the subject of a strategic housing allocation

<sup>130</sup> BW appendix D para 1.4

<sup>131</sup> 9/HS/2.4 appx A

<sup>132</sup> BW appx E and the critique of that by Mr Gallop in 9/HS/2.4

<sup>133</sup> BW appx F

7.196 The LSH report, which Mr Wilson had not properly analysed or understood, clearly supports the existence of different market areas as between even, for example, the north and north west of London and west London (Heathrow/Park Royal). The LSH report is referred to and relied upon by KS in their analysis of the extent to which Radlett would compete with either Sundon or Colnbrook: an analysis which is supported by the LSH report and not gainsaid by any market evidence produced by the Council<sup>134</sup>.

7.197 The Council's approach that HS has to demonstrate that the SRFI will exclusively serve the NW Quadrant is misconceived, contrary to the approach of the Inspector and the SoS and not supported by any market evidence from a suitably qualified agent. The reality is, of course, just as the previous Inspector identified and as Mr Gallop demonstrates commercial organisations recognise it will be convenient and sustainable to serve a very large area such as London from a variety of locations well related to different parts of that area. Which parts of the area are served by a facility located in the NW quadrant will necessarily depend on the company concerned, the nature of its business and the facilities which it operates or serves in that area. The fact that some of those facilities may be outside of the NW Quadrant to some degree does not rob the sectoral approach of either its essential good sense and market reality or its sustainability. It is plain that occupiers of any SRFI will choose locations which reflect the centre of gravity of their operations and they will locate in such a way that best enables them commercially to meet their distribution needs. Hence the good sense of the requirement for 3 – 4 in London and the South East.

7.198 The Council's approach driven by the obsession with regional facilities only occurring once in a region is apt to produce unsustainable results by forcing distribution patterns which would result in locations in west London being serviced by facilities in east London something which is inherently undesirable both commercially and in sustainability terms. It is an approach however which enables us to see that the Council's approach is driven more by semantics than by a proper consideration of real world or real sustainability considerations. Such an approach is particularly inappropriate in the massively populated tri – region (London, South East and East of England) where there is already considerable traffic congestion and where all the railway lines are heavily used.

7.199 The consequence of the Council's approach of seeking to locate the facilities in one general location would mean that existing heavily used infrastructure would not be able to bear the additional burden.

7.200 The Council suggested that the area of search should be extended to the M3. This has been done as part of a sensitivity test. The evidence now clearly demonstrates the absence of any alternative site in the Wokingham area. The continued pursuit of this issue is bizarre. Even if the access, distance from London and strategic gap issues could be overcome, area 3 (through which all road infrastructure would have to pass in order to link areas 1 and 2 to the A329) is the subject of a strategic housing allocation, precipitated by the South East Plan and far advanced through the statutory processes<sup>135</sup>. SDG is then left in the absurd position

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<sup>134</sup> 9/CD2.8 TR6 appendix 10

<sup>135</sup> 9/HS/1.13 paras 18 - 19

of suggesting a site allocated to meet strategic housing requirements could be released for an SRFI. That is simply untenable in the context of the pressing housing needs of the south east.

*The Other Parameters for the Long List*

7.201 Within the NW Sector the following parameters were used to identify the long list:

(a) Minimum site area;

(b) Proximity to rail infrastructure - 5km;

(c) Proximity to road infrastructure – 5km from a motorway junction or A road;

7.202 The only issue on these appears to be the proximity to rail infrastructure. A sensitivity test has been run looking at disused lines and removing the 5km limit.

7.203 In respect of the disused lines, as with so many of the points taken, an answer has been provided<sup>136</sup> and no further point appears to be taken.

7.204 The pursuit of the 5km point in respect of any of the remaining sites demonstrates graphically the difference between the appellant's approach and the SDG approach. The SDG approach - not informed by examination of contoured maps<sup>137</sup> and physical inspection, insist on considering sites which involve traversing two ridges each some 50m higher than the adjacent valley floors over distances of up to 10km in areas which have been designated as GB extensions and where the detailed boundaries are in the process of being settled through the North Herts Core Strategy<sup>138</sup>.

7.205 We have provided a response in relation to each of the sites which arises with regard to these criteria but having regard to the stark difference in approach illustrated above, we do not in closing address each of them.

*Summary on Long List*

7.206 Even at this late stage and after now two inquiries, no additional site for the long list is identified. The SoS can have complete confidence in the appellant's long list - and the XX of Mr Tilley on this merely demonstrated the thorough and practically rooted approach which Mr Tilley has adopted contributing materially to the robustness of the conclusions reached.

7.207 As soon as the appellant was notified of the details of SDG's criticisms of the ASA with the very late release of the SDG Report, a comprehensive response was provided (9/HS/1.5) addressing all relevant issues to which no response was received and which illicited no further questions or requests for additional information

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<sup>136</sup> 9/HS/1.5 page 5/6

<sup>137</sup> Indeed inexplicably the plans relied upon by SDG do not have contours

<sup>138</sup> 9/HS/1.13 paras 12 - 15

and even in Mr Wilson's proof of evidence appears to have been largely ignored in pursuit of an approach which was quite clearly unconnected with reality.

#### *ASA – Long List to Short List*

7.208 The criteria to assess the long listed sites were:

- (a) Topography;
- (b) Rail connection;
- (c) Road access; and
- (d) Availability.

7.209 As expressly stated, sites within the AONB or SSSI were excluded. Duplicates within the same general location were excluded.

7.210 At this stage of course the aim is to identify sites that have potential to operate as an SRFI. In that context there is no point in considering a range of detailed issues such as noise and visual impact in relation to sites which may simply not be suitable for the proposed use.

#### *Topography*

7.211 Eventually SDG requested further information as to how this had been applied. Now, in the light of that information, the rejection of no site on topography grounds is criticised. The remaining criticisms of this criteria therefore lead nowhere. In any event those criticisms are unreal: to create a level plateau where there are significant topography constraints would require such massive engineering works and consequential landscape impacts as to be wholly unacceptable and unsustainable.

#### *Rail Connection*

7.212 The appellant considered whether there were major engineering problems<sup>139</sup>. The use of that phrase is criticised but that language is clearly analogous to the language used by SDG<sup>140</sup>. All sites excluded on this ground are now agreed. Denham is considered below.

#### *Road Access*

7.213 There is considerable overlap here with the duplication issue below. As with so many aspects of the appellant's report (in contrast with the SDG approach) the approach of the appellant has involved practical, on site consideration by specialist consultants to consider the road access constraints<sup>141</sup>.

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<sup>139</sup> 9/CD/2.8 TR6 para 7.14

<sup>140</sup> See its assessment: BW Appendix I para 3.7 and 3.8 for example.

<sup>141</sup> 9/HS/1.5 para 42

7.214 With regard to site 6, the basis of its exclusion is explicit in para 7.21<sup>142</sup> since it involves building an entirely new road which when built does not avoid the difficulties inherent in the use of the A4 which itself is substandard. The exclusion is in any event merited by the inclusion of SIFE/Colnbrook. Mr Tilley has explained why these road issues are not capable of being simplified to a points system. They involve a number of judgements and a single score obscures rather than illuminates the detail. Far better, as with so many judgement in the planning field to set out the reasons for the judgements reached. SDG express disagreement with the conclusions reached but do not explain why the judgements which are clearly set out and open to examination are, or may be, wrong. In such circumstances it is not sufficient to say “we disagree”.

#### *Availability*

7.215 There are no issues on sites removed solely on this ground. However, the approach of Mr Wilson is again highly surprising criticising the criteria as if housing sites or existing employment areas should have been considered. A reality check shows the nonsense of this approach: see Mr Tilley’s evidence in chief and cross examination pointing out the very real practical difficulties in areas such as Slough in releasing employment land of a sufficient scale – replacing hundreds of companies and many thousands of employees with a much less dense employment use<sup>143</sup>. The suggestion that housing allocations should have been considered deserves no further comment<sup>144</sup>.

7.216 Once again, Mr Wilson’s approach in its lack of reality fails to grapple with the important principles which emerge from PPG13 and PPS3 and the very real distinctions drawn between the approach to freight and warehousing development on the one hand and housing and other employment uses on the other.

#### *AONB/SSSI*

7.217 The Council’s case appears to rely on the proposition that because development might be permitted in an AONB in the circumstances identified in PPS7 sites within the AONB should not have been excluded. That approach is not supported by reference to either any decision of the SoS, other alternative site assessment or other planning policy and ignores the requirement within PPS7 to be satisfied that there is no non-AONB site available. It should be noted that AONBs are designated on the basis of landscape considerations designed to protect areas of very high quality from precisely this type and scale of development. We are not aware of anything other than relatively small scale development ever having been permitted in an AONB (other than minerals). The position is entirely to the contrary in the GB where both the earlier decision at Radlett and the decision at HP demonstrate that although the SoS wishes to consider the availability of alternative sites the considerations which bear on acceptability of such a proposal in the GB have led to positive conclusions – a process which is on going on an even larger scale at

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<sup>142</sup> 9/CD2.8 TR6

<sup>143</sup> Slough Industrial estate – 400 companies, 17000 jobs. If these companies and staff were displaced where would alternative accommodation be provided? In the circumstances of the south east and the shortage of employment land there would have to be a new employment allocation in the GB.

<sup>144</sup> 9/HS/1.5 para 31 and 32

Doncaster/Rossington. In any event most of the AONB is in the GB and is affected by the topographical constraints identified above.

7.218 In respect of SSSI, Site 65 was the only site excluded on this basis but it is subject to other very significant constraints not least access from the Abbey Line<sup>145</sup>.

### *Duplicate Sites*

7.219 Once again the SDG approach loses touch with reality. In effect it requires that a series of sites all in the same general location should be subject to short list assessment in circumstances where it is neither sensible nor practicable to do so bearing in mind the overall purpose of the exercise.

7.220 The reasons for the exclusions of duplicate sites have been set out and although SDG expressed disagreement that disagreement is not reasoned by reference to the circumstances of the sites and as such can be accorded no weight.

7.221 A good example of this approach is the treatment of sites 14 – 18. Site 15 has been taken forward on the basis that it provides a right side of the railway connection and is closest to the road link and there are no other distinguishing features which would make it appropriate to select one of the other sites. In short, for reasons which are patent, the best site has been assessed once again respecting the overall purpose of the exercise.

7.222 In respect of Denham aerodrome (30) CgMS is criticised for not applying the criteria rigidly. The decision made on (30) fully vindicates the judgement driven methodology. The site could not be dismissed wholly on road access grounds under the methodology<sup>146</sup>. However TR6 table 3 clearly sets out the reservations about road access and sets out that the final decision to exclude was based on a number of contributing issues which taken together would make it wholly unsuitable for an SRFI. That reasoning is now bolstered by the further information provided<sup>147</sup> which demonstrates the serious rail connection problems with that site.

7.223 With regard to the duplicate sites excluded, we note that as with so many other points this has no practical outworking with regard to a site or sites being taken forward by SDG for further consideration.

### *Short List*

7.224 There were five sites included in the short list:

- (a) Radlett
- (b) Colnbrook
- (c) Upper Sundon
- (d) Harlington

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<sup>145</sup> 9/HS/1.13 para 10

<sup>146</sup> 9/CD2.8/TR6 para 7.16 – 7.21

<sup>147</sup> 9/HS/1.9 para 35 - 36

(e) Littlewick Green.

7.225 We do not propose to rehearse all of the evidence advanced with regard to the short listed sites but consider particularly Colnbrook and Harlington upon which emphasis has been placed by objectors.

7.226 Harlington: The site is reviewed at 9/CD2.8 TR6 (8.127 – 8.160) to which reference should be made. The promoter has not seen fit to attend this inquiry. CgMS's assessment was on the explicit basis that access could only be affected from the slow lines to the east involving a grade separated rail junction with the main line. That plainly cannot be delivered for availability reasons and so the promoters are forced to advance an access to the fast lines, the practicality of which is rejected even by Mr Wilson.

7.227 The assertions in the latest representations<sup>148</sup> have no support from SDG, NR or any TOCs and are simply assertions<sup>149</sup> based on circumstances related to other locations which have no site specific relevance.

7.228 As to the landscape difficulties which are not addressed satisfactorily by the promoter's response we have provided a clear view as to why landscape considerations remain as originally assessed in TR6<sup>150</sup>. "There would be an adverse impact on the setting of the Harlington Conservation Area and the AONB, there are views to the site from the higher ground (180m AOD) within the AONB to the south east."

7.229 Colnbrook: The SDG enthusiasm for Colnbrook is clearly rooted in a fundamental misunderstanding of the policy position in relation to this site. SDG have apparently relied on and endorsed the policy analysis set out by Barton Willmore in Mr Wilson's Appx K which amongst other glaring errors, asserts that the strategic gap ("SG") policy is "historic"<sup>151</sup>.

7.230 The policy position in respect of the SG can be summarised as follows:

(a) There is an up to date (December 2008) adopted core strategy which identifies not only that the site is in the GB but that it is also part of a SG;

(b) The SG policy and its continued application was explicitly considered in detail by the inspector in the light of PPS7 and endorsed as to its ongoing appropriateness without any intervention from the SoS as a consequence of conflict with national guidance;

(c) The SG is the subject of a saved policy from the Slough Local Plan which has been saved in accordance with the DCLG policy approach set out in the Protocol<sup>152</sup> ;

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<sup>148</sup> 9/CBwG/1.2

<sup>149</sup> 9/HS/1.15

<sup>150</sup> 9/HS/1.15

<sup>151</sup> Para 3.42

<sup>152</sup> 9/HS/1.7



(d) The SG and its function is highly locationally specific as shown by the relatively tight geographical extent<sup>153</sup> and has been considered in the context of the earlier application on this site with the conclusion of the SoS (Decision Letter August 2002<sup>154</sup>) that:

*"...seen from elevated viewpoints east of the M25 the function of the open land to the west in helping to demarcate and separate London from Slough was clear to the Inspector (IR13.114). The Secretary of State agrees with the Inspector that the effects of the LIFE development would be very considerable" (para 12).*

7.231 The Inspector's conclusions had specific regard to the policies protecting the GB and the SG between Slough and London (IR13.368) which have just been replicated in the core strategy.

7.232 Further, contrary to the position at Radlett, there are in addition a suite of development plan policies ranging from a regional policy to further saved local plan policies and the Core Strategy which highlight the significance including at a regional level of the Colne Valley Park ("CVP"). The regional policy WCBV5 (SEP) effectively converts into policy the objectives of the CVP which are substantially driven by landscape considerations: see CD4.2 p246. The Core Strategy Core Policy 2 and the saved local plan policy CG1 have the same objectives in protecting this important area from development in the absence of evidence that it is "essential to be in that location"<sup>155</sup>.

7.233 There are thus two additional very substantial up to date development plan policy hurdles which have to be surmounted by any development proposed in this location. Earlier attempts to surmount such hurdles have proved unsuccessful for reasons which are clear from the Inspector's report and SoS Decision. There is no reasonable basis for supposing that those policy impediments could be overcome by any new proposal when there is an available alternative site not subject to such additional layers of policy protection and which at the same time explicitly offers landscape benefits the existence of which has been previously endorsed – namely Radlett and the country parks contribution to the Watling Chase Community Forest. Given that policy context, the SoS cannot rationally conclude that the Colnbrook site could meet the need in a less harmful way: DL42.

7.234 In the light of submissions made by objectors, we have considered whether or not the evidence would support the conclusion that Colnbrook could perform in a materially better way as an SRFI. In the light of the unchallenged evidence from Mr Smith such a suggestion is clearly groundless particularly since all trains accessing Colnbrook will have to access from the east and contend with sections of the GWML which carry 26 trains per hour in each direction (12 per hour on the slow line). The claimed gauge advantages are illusory having regard to the limitation to W8 to the east via Feltham and the view taken by NR with regard to Radlett set out at para 2.6 NR SOAF (9/CD7.4). Mr Wilson's suggested advantages with regard to access to

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<sup>153</sup> See 9/HS/5.3 Mr Kelly's rebuttal.

<sup>154</sup> 9/HS/1.6

<sup>155</sup> 9/HS/5.3 appendix 5 page 23

ports are not only undone by the considerations referred to above but also by the analysis of distances which has been undertaken<sup>156</sup> and not challenged.

7.235 Upper Sundon: in the light of the fact that one of the world's largest developers of logistics facilities has taken the considered view that Upper Sundon is not a competing facility to Radlett because it is not being promoted as one of the 3/4 SRFI for London and the South East we make no further submissions and to the extent necessary rely on the information contained in the ASA. We note that nobody else is suggesting it scores better than Radlett.

7.236 Littlewick Green: the conclusion that Littlewick Green would perform materially worse than Radlett in terms of suitability or availability is, we submit, unassailable for the reasons identified in the ASA and not the subject of cross examination.

### *SDG Approach Appendix 1*

7.237 The first point to be made here is that this work has been undertaken in a secret way notwithstanding the encouragement in the PINS guidance for co-operative working between LPAs and Appellants. In the context of the importance of this issue to the SoS's earlier DL it is wholly unacceptable for the Council to have first revealed that it had undertaken such a piece of work over a period of many months at the point of disclosure of its evidence. The practical consequences of that approach have been that there has been no opportunity for the Appellants to have any input to the methodology adopted or its application on the facts and the Appellants have had very limited opportunity to examine the methodology used or its application.

7.238 Notwithstanding that limited opportunity it is however apparent that the methodology and its application have shortcomings which are fatal to its credibility as an exercise to identify genuine alternatives to Radlett. Among other problems it suffers from the deficiencies of adopting a methodology which is numerically driven and which for example aggregates scores where the factors concerned are a combination of soluble constraints and absolutely accept/reject decisions<sup>157</sup>. The use of aggregate overall scores across groups of factors is not recommended.

### *The Criteria*

7.239 The North West Sector – the approach adopted does not respect the Inspector's and SoS's conclusions as to the appropriate search area now bolstered by T10.

7.240 Not an SRFI: It reaches a conclusion that Radlett cannot operate as an SRFI solely on the basis of Mr Wilson's analysis related to rail access considerations (which are wrong for the reasons already addressed) and fails to reflect or to take into account the SoS's and Inspector's conclusions on this very issue.

7.241 The Process: the process was contributed to by expert attendees at a workshop (Messrs Hargreaves, Billingsley and Wilson among them) who have made it clear that in respect of the Radlett site they did not accept the Inspector's and SoS's

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<sup>156</sup> 9/HS/1.8 para 18

<sup>157</sup> 9/HS/1.4 appendix 4

conclusions from the previous inquiry – so that all judgments with regard to Radlett in the comparative exercise would be tainted by that approach. Further because they have not grappled with the real issue left outstanding from the DL, they have not asked themselves the right question.

7.242 The Fit with Primary Freight flows: far from concentrating on comparative GB harm which would of course have favoured Radlett over Colnbrook, the approach adopted utilises criteria which fundamentally misunderstand the purpose of the policy which undergirds the provision of 3 – 4 SRFI. Among the criteria used is “fit with primary freight flows”<sup>158</sup>. The criteria used has excluded primary road freight flows and has not considered the fit with them further and is entirely focussed therefore on existing rail freight flows with the key variable being the journey time required rather than the distance because of rail specific delays. Points were awarded on the basis of primary freight flow connections particularly rail freight. Such an approach ignores important parts of the SRA guidance<sup>159</sup> which makes clear that SRFI will normally accommodate rail and non-rail served businesses at the outset and this mixed nature is essential for the longer term development of rail freight. Accordingly accommodation of only existing commercial rail users would fail to present the opportunity and encouragement for wider business conversion to rail and therefore the adoption of the criteria operates not to fulfil but to defeat the policy objective. That the Appellant’s view of this aspect is correct is supported by the clear guidance within the SRA document<sup>160</sup>. It is quite inexplicable that the approach taken by SDG should have been adopted in the light of the guidance and in particular appendix F and its identification of the road freight flows by reference to HGV traffic density - albeit in that instance omitting domestic road freight.

7.243 If SDG had not been so committed to ignoring the Inspector’s and SoS’s conclusions on the last occasion, they would have noted that the Inspector had expressly referred to the need for SRFIs at the outset to accommodate both rail and non-rail served businesses<sup>161</sup>.

7.244 As Mr Smith has pointed out<sup>162</sup> there are no flows on the MML at present because there are no terminals. The consequence of SDG’s approach is that despite the Inspector’s and SoS’s firm conclusion as to the appropriateness of Radlett as a location for SRFI in the SDG assessment on this criterion Radlett scores very poorly<sup>163</sup>.

7.245 Planning policy and environmental considerations including Green Belt: The extent to which sites conflicted with GB purposes should have been at the heart of the assessment. Instead, GB is scored only as a pass or fail simply on whether a site is in or outside the GB and then that score contributes less than 1/8<sup>th</sup> of the score under criterion 8 (which considers a range of factors covering such widely divergent matters as GB and AONB and local footpaths and local biodiversity treating them all in the exercise as of equal value). The GB contribution is then further diluted by the

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<sup>158</sup> BW Appx I para 2.13

<sup>159</sup> 9/CD/5.1

<sup>160</sup> 9/CD/5.1 paras 4.17, 4.20, 4.21, 4.25, 7.8

<sup>161</sup> IR16.154

<sup>162</sup> 9/HS/3.4 para 3.1

<sup>163</sup> Appendix I table 3.9 p34

fact that the planning policy and other environmental issues contribute just 16% to the exercise. We deal separately with the sensitivity test.

7.246 The scoring system which is awarding a score out of 8 oddly involves consideration of 9 factors. In addition, as is plain from appendix I4, the planning policy and other consideration scores have involved significant errors as identified with Mr Billingsley in XX and subsequently.

7.247 We have not had the time or opportunity to examine the approach with regard to each site but instance the following as examples of an approach which is fundamentally misconceived and produces a flawed and inevitably therefore biased result:

(a) the failure to properly identify the policy framework for Colnbrook has already been identified. Bizarrely however with regard to its planning status and land use designation Colnbrook scores positively apparently ignoring its GB and SG status, and relying on the fact that a very small part of the site is in employment use whereas the part proposed for the SRFI is covered by the very restrictive policies referred to. There are in addition difficulties in reconciling the planning policy assessment tables in appendix I4 with table 3.10 since table 3.10 has the criterion as "national landscape" and the appendix simply "landscape designation". The conflict produces, at Colnbrook, the result that a site which is subject to SG and CVP designations is not apparently reflected in the criteria;

(b) the approach at Radlett involved the erroneous attribution of a landscape designation which related to a policy in the Council's local plan which had not been saved and the failure to acknowledge that the site was included in an area for landscape improvement to which the proposal would materially contribute;

(c) the net effect of this is to inflate Colnbrook's score and deflate Radlett's when on a correct basis the respective position of the sites would have been reversed.

(d) We have also considered by way of example only, the so called Barking & Dagenham site which, it transpires, is substantially within Havering. This site is outside the NW quadrant. In respect of this site new information has been provided<sup>164</sup> but it does nothing to overcome the fundamental deficiencies in the exercise undertaken because it fails to identify that the correct site is subject to up to date Core Strategy and development control policies which identify it as a strategic location (Beam Reach Business Park) which is prioritised for advanced manufacturing uses and other modern industries in the B1b, c and B2 use classes which provide a similar quality and intensity of employment and DC9 to the same effect<sup>165</sup>. Notwithstanding those policies in the assessment undertaken the site receives a positive score for its planning status – a score which is fundamentally inconsistent with the use of the site for an SRFI.

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<sup>164</sup> 9/LPA/1.6

<sup>165</sup> 9/HS/1.14

7.248 Rail Connection: This is a heavily weighted factor: 20%. The objective of the alternative sites exercise, Mr Wilson agreed, was not to see if there was a better rail connection site available but whether there was a non-GB or a less harmful GB location. The scoring system adopted in appendix I produces the result for Radlett of a "0" on the basis of the factors set out at para 3.8. It is quite clear that those factors have been shaped to reflect Mr Wilson's view with regard to rail issues and Radlett so that with regard to gauge conclusions are reached as to a criteria quite inconsistent with the Inspector's and SoS's views on the last occasion<sup>166</sup>.

7.249 Other criteria related to significant deviation from main freight routes, unused freight capacity or difficulties in pathing were likewise inconsistent with earlier findings with regard to the suitability of the location for an SRFI<sup>167</sup>

7.250 Proximity to commercial customers this is a very important consideration: see the most up to date policy statement in the Longer Term Vision – appendix D – the Policy Statement – "it is important that SRFIs are located near the key business markets they will serve") which has been downgraded in the scoring system because of the approach adopted of ignoring the NW Quadrant and so treating all the sites as effectively equal because of their proximity to parts of London.

7.251 Road Access: with respect to road access the approach is weighted to consider distance as more important than the suitability of roads: the split is 75/25, with the result that the national policy approach in PPG13 is effectively bypassed. This is a good example of the inability of a scoring methodology to produce a credible or useful answer in relation to proposals of this kind. The contrast with the appellant's approach with an open and clear professional judgment taking into account the PPG13 factors and careful analysis of the site specifics could not be more stark.

### *Conclusions*

7.252 The overall effect of these and the other shortcomings identified in XX with each of the Council's witnesses who contributed to this exercise is alternative site assessment which is of no practical value in identifying whether there are suitable alternative sites and which is in any event fundamentally flawed as to its methodology and the application of that methodology.

7.253 It seems clear from the re-examination of Mr Wilson that the Council hopes that the manifest inadequacies of its alternative sites assessment might be rescued by the so-called sensitivity test set out at the end of Mr Wilson's Appendix I.

7.254 The sensitivity test proceeds on the basis that it is accepted that the method undertaken to determine the relative significant of the chosen criteria despite the presence of experts from a number of disciplines could be open to criticism of lacking objectivity: see para 4.6 of Appendix I. That criticism has already been made good and is supported by Mr Wilson's answers in cross examination. However the sensitivity test proceeds on the basis that in order to disprove the suggestion the

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<sup>166</sup> With conditions allowing 175,000 sq m before the necessity for any gauge improvements. Such a conclusion is inconsistent with the view that the gauge clearance at Radlett was inadequate to support a substantial quantum of SRFI development.

<sup>167</sup> IR16.70

sensitivity test has been undertaken. In carrying out the sensitivity test it said that a high significance has been applied to criteria against which the appeal site scores well, namely road access, proximity to commercial customers and 24/7 operation, whilst other criteria have had their significance reduced accordingly see the sensitivity test revised weighting criteria set out at table 4.4.

7.255 From the revised criteria the following should be noted:

- (i) The deficiencies with regard to the criteria identified noted in cross examination of Mr Wilson remain. Thus the road access criteria still contains the same deficiencies that it does not address the matters which undergird the advice in PPG13 with regard to avoiding congested central areas and sensitive uses such as housing and focuses by way of only 25% of the value of the criteria on simply the class of road being used. Mr Tilley's evidence addresses that deficiency;
- (ii) The proximity to commercial customers' criteria carries the ongoing difficulty that it does not respect the Secretary of State's decision with regard to the use of the north west quadrant and the ability of sites to access that market area;
- (iii) The freight flows criteria contains the very obvious deficiencies identified by Mr Wilson in cross examination that it relates to rail freight flows and so acts against the objectives of the SRA policy (CD5.1);
- (iv) The planning policy and other environmental considerations criteria carries with it the deficiencies identified in cross examination, particularly with regard to the performance of sites relative to green belt purposes;
- (v) The landscape and visual impact criteria again carry with them the deficiencies identified with Mr Billingsley in particular as to the approach with regard to landscape policy designations.

7.256 At least as significant as the difficulties with the criteria and their definition are the significant problems that arise because of the deficiencies in the assessment. The cross examination of both Mr Billingsley and Mr Hargreaves exposed the shortcomings of the exercise with regard to both landscape and visual impact and the planning policy issues. Relying on the assessment process that has been undertaken in the way that has been described in the context of the sensitivity test does nothing to relieve the exercise of the difficulties which emerged. In the sensitivity test just the last three criterion freight flows, planning policy and other environmental and landscape and visual amount to 30% of the proportional weighting and are criterion the application of which is manifestly deficient. The sensitivity test accordingly does nothing to rescue the SDG alternatives exercise from the deficiencies identified with regard to its consideration of the appeal site. The deficiencies which have been identified in the SDG alternatives site assessment have emerged having had a very limited period of time to consider Appendix I because the preparation of it was kept secret until the evidence was disclosed. It is to be noted that the exercise is one which took a long time to undertake. Mr Billingsley's evidence demonstrates that it was being undertaken at least in June and no doubt with regard to the planning policy aspects a great deal of work was involved in looking at the policies which were applicable in respect of each of the sites. The cross examination of Mr Hargreaves

demonstrated the errors which have arisen both with regard to the appeal site in Colnbrook. There are no means of knowing the extent to which similar errors have arisen elsewhere because of the manifestly unreasonable and “cloak and dagger” approach taken by the Council with regard to the preparation of the assessment.

7.257 In these circumstances the sensitivity test, which was not considered robust enough to be put to Mr Tilley in cross examination, does nothing to rescue the SDG exercise from the deficiencies identified.

#### *H: Conditions and Undertakings*

7.258 A separate note dealing with the conditions and undertakings and the relationship between the two in respect of binding area 1 is attached and we have set our views with regard to other aspects of conditions suggested by objectors elsewhere in our submissions and in very substantial detail orally. Those matters are not repeated.

7.259 The SoS should note that in respect of both the conditions and the undertaking save where necessary to reflect any change as a consequence of the area 1 issue or as a consequence of discussion with the HA and Environment Agency, the conditions and undertaking remain in substantially the form they were in at the time of the previous decision.

7.260 Accordingly they represent a comprehensive and acceptable package which the SoS has already decided would deliver an SRFI together with the benefits identified in the evidence.

#### *I: Conclusions*

7.261 The national and strategic importance of SRFI has been made clear in an up to date statement of Government policy<sup>168</sup>. The urgency which attaches to the provision of such facilities in the South East is reinforced by the growing concern related to the climate change agenda and the links between the achievement of the objectives of that agenda and continued growth in road freight.

7.262 HS fully understands the importance which the Government attaches to the preservation of the GB. It has, however, long been recognised and was recognised at the earlier inquiry (DL58) that the provision of SRFI to serve the South East and London was likely to involve the use of the GB. The ASA undertaken for the purposes of this application demonstrates beyond any reasonable doubt that that conclusion is correct and that of the sites available within an appropriately defined area, Radlett is to a significant degree, the best site to deliver the objectives identified in Government policy.

7.263 Whilst the concerns that emerge from the local community are recognised, as evident from the case presented by STRIFE, those concerns have been carefully and fully considered now on two occasions. The care and attention paid to every aspect of the application proposals and the provision at significant cost of beneficial elements such as the Bypass are testament to the Appellant’s commitment to ensure that

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<sup>168</sup> 9/CD/5.4 annex D

wherever possible any impacts on the local community are relieved and appropriately mitigated.

7.264 In these circumstances the grant of planning permission subject to appropriate conditions is entirely appropriate

## **8. The Case for St Albans Council**

8.1 The Council's submissions are divided into the following sections:

(a) Green Belt harm.

(b) Harm to other matters/other reasons for refusal including:

(i) Landscape and visual impact;

(ii) Noise;

(iii) Sustainability;

(iv) Prematurity;

(v) Ecology;

(c) Whether very special circumstances exist including:

(i) Whether the development will operate as an SRFI;

(ii) Whether alternatives to Radlett exist;

(iii) The quality and significance of other benefits, like the Country Park and by-pass;

(iv) Conditions and the unilateral undertaking.

(d) The balance of harm against very special circumstances.

### *The Approach to be taken in this Case*

8.2 Before setting out the Council's case, the approach which should be taken towards the issues in this case is dealt with in the light of Inspector Phillipson's report and the Secretary of State's decision dated 1 October 2008 and, in particular, relevant matters of law relating to that approach.

8.3 First, there is no duty to decide a case in the same way as a previous decision<sup>169</sup>.

8.4 Second, there is no principle of estoppel in planning law<sup>170</sup>.

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<sup>169</sup> *R (on the application of Rank) v East Cambridgeshire District Council* [2002] EWHC 2081, see paragraph 16.

<sup>170</sup> There is no concept of estoppel in the context of decisions on planning merits, like an appeal against a refusal of planning permission: see *Thrasyvoulou v Secretary of State for the Environment* [1990] 2 AC 273, 287, *R (Reprotech) v East Sussex County Council* [2002] UKHL 8, *Porter v Secretary of State for Transport* [1997] JPL 635, 643.



8.5 Third, while previous relevant decisions should be taken into account, an Inspector has to exercise his/her own judgment and is free to disagree with the earlier decision, although the decision must deal adequately with the earlier decision. The approach to be taken towards previous decisions has been set out in the Planning Encyclopaedia in the following way<sup>171</sup>:

*The Court accepted that whilst relevant previous decisions were a material consideration (North Wiltshire District Council v. Secretary of State for the Environment [1992] J.P.L. 955), an inspector had to exercise his own judgment and was free to disagree with the earlier decision (Rockhold v. Secretary of State for the Environment [1986] J.P.L. 130). However, he must deal adequately with such a decision and give reasons for any material disagreement (Barnet London Borough Council v. Secretary of State for the Environment [1992] J.P.L. 540), except where the difference related to a matter of judgment and opinion where it might not always be possible for the decision-maker to give reasons for his different view, except simply to say "I disagree" (R. v. Secretary of State for the Environment, ex p. Gosport Borough Council [1992] J.P.L. 476).*

8.6 Fourth, the most recent approach to the relationship between earlier and later decisions of the same body is dealt with in *Kings Cross Railway Lands Group v London Borough of Camden*<sup>172</sup> in which the following was stated:

*I accept the submission of [Counsel for] ... the Claimant, that the weight to be attached in any particular case to the desirability of consistency and decision-making, and hence the weight to be attached to the March 2006 resolution, was a matter for the Committee to decide in November 2006. However, given the desirability in principle (to put it no higher) of consistency in decision-making by local planning authorities, Mr Hobson rightly accepted that in practice the Committee in November 2006 would have to have a "good planning reason" for changing its mind. That is simply a reflection of the practical realities. If a local planning authority which has decided only eight months previously, following extensive consultations and very detailed consideration, that planning permission should be granted is unable to give a good and, I would say, a very good planning reason for changing its mind, it will probably face an appeal, at which it will be unsuccessful, following which it may well be ordered to pay costs on the basis that its change of mind (for no good planning reason) was unreasonable.*

*Mr Hobson submits, correctly, that while a material change of circumstances since an earlier decision is capable of being a good reason for a change of mind, it is not the only ground on which a local planning authority may change its mind. A change of mind may be justified even though there has been no change of circumstances whatsoever if the subsequent decision taken considers that a different weight should be given to one or more of the relevant factors, thus causing the balance to be struck against rather than in favour of granting planning permission.*

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<sup>171</sup> At P70.38.

<sup>172</sup> [2007] EWHC 1515, pg 4.

*An example canvassed during the course of submissions was that of a local planning authority which resolved to grant planning permission for an inappropriate development in the green belt, subject to a section 106 agreement, on the basis that the very special circumstances prayed in aid by the applicant outweighed the harm to the green belt and other harm. On revisiting the matter when the section 106 agreement was finalised, that local planning authority could properly reverse its earlier decision if, on reflection, it considered the harm was not outweighed by the special circumstances. Thus, it was not necessary for the Committee in November 2006 to be satisfied that there had been any material change of circumstances since March 2006. It was entitled to conclude that, having regard to all the circumstances considered in March 2006, a different balance should be struck.*

*Neither the defendant nor the interested party dissented from the proposition that, as a matter of law, there did not need to have been a material change of circumstances in order to justify a different decision in November 2006. A change in circumstances was one of the more obvious reasons which might justify a change of mind by a local planning authority, but it was not the only possible reason.*

8.7 From the above, the following propositions can be derived:

- (a) The decision-maker on a fresh application is considering the application as a new application.
- (b) The decision maker should reach a conclusion taking into account all relevant matters, including any previous decision of relevance.
- (c) The need to establish a "good reason" for a change of mind from an earlier decision applies where the later decision, if decided in a particular way, would be inconsistent with the previous decision.
- (d) What will amount to a "good reason" is not a closed list.
- (e) A good reason may be a change of circumstances, but need not be that.
- (f) The decision-maker may have a "good reason" to reach a different decision simply because he takes a different view from the previous decision maker or decides that the balance should be struck in a different way.
- (g) Given that a good reason may be a simple change of view, a new argument or a new piece of evidence or the compelling nature of the way the evidence is presented may also amount to a good reason.

8.8 As a result of the above, it is absolutely clear that there is no principle at all that, where there has been a previous decision which has been made favourably towards a development, consideration is limited to whether there has been a change of circumstances since it was made; such an approach would amount to an error of law. In particular, care should be taken to ensure that the decision-maker does not proceed on the basis that he should not return to a particular issue because it has already been considered at an earlier stage.

8.9 There will be no need to establish a “good reason” to depart from a previous decision if the later decision is consistent with the previous decision. In short, it is only where a decision, if made, would be inconsistent with an earlier decision that it is necessary to establish good reasons to depart from the decision. In circumstances where there has been an unfavourable previous decision, there will be no inconsistency with the later decision if that, too, is unfavourable.

8.10 If, however, there is a potential for an inconsistent later decision, then, given that a “good reason” is one which can simply be a decision to reach a different planning judgment, it must follow that a “good reason” can be:

(a) a new argument not raised at the previous time. It cannot be said that a new argument is prevented from being raised at a later stage. To do so would be to incorporate the concept of estoppel into planning decision-making which is wrong in law<sup>173</sup>;

(b) the provision of new and significant evidence on a particular point;

(c) a view given by an expert who is found to be compelling by the decision-maker, even if contrary to another view given by an earlier expert. The tribunal of fact, as an Inspector at an inquiry is, is in the best position to judge how compelling a particular point is – that decision-maker sees the witnesses and reaches a decision accordingly. A compelling expert witness provides a sound basis for concluding that a particular issue should be decided in a particular way, irrespective of how it may earlier have been decided.

(d) Simply, a decision that different weight should be placed on a particular factor from that decided earlier.

8.11 In the present case the application is a different application from that considered previously and needs to be considered afresh. The previous decision was not favourable to the appellant. It was a decision by the SoS to refuse permission. A later decision to refuse is not inconsistent with that decision.

8.12 As a result, it is not incumbent, as a matter of principle for the Council to establish that there is a “good reason” for departing from the previous decision. Each one of the issues should be considered afresh and account need only be taken, in the usual way, of all material factors including the views of the Inspector and the SoS at the last inquiry.

8.13 This is, of course, no different from the position taken by Mr Tilley<sup>174</sup> who accepted that the Inspector is fully entitled to take a different view in this case on each of the issues decided upon at the earlier inquiry and may do so based upon different arguments presented in this case, the same arguments presented differently or simply a change of mind.

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<sup>173</sup> See above at footnote 2.

<sup>174</sup> See RT, XX.

8.14 In spite of these principles, the appellant has sought to pursue its case, almost entirely<sup>175</sup> on most of the principal issues, by reference to whether there has been a material change of circumstances justifying a different decision. This approach simply does not engage at all with whether there are any new arguments or new evidence which has been raised or as to whether a different view should be given. It has meant that, on certain issues, witnesses have not been called to justify the appellant's case and it has meant that numerous points raised by the Council have not been rebutted by way of evidence of any significant weight. That, as will be established in this closing, has meant that the Appellant has failed to make out its case in this appeal.

8.15 The appellant has suggested that the fact that the Council has not dissented from the conclusions of the previous Inspector in this case on certain issues is inconsistent with the approach of contending that all matters are open to argument<sup>176</sup>. The same point is made where the Council has relied upon a material change of circumstances. That is an inaccurate depiction of the Council's case. The Council, first, has not queried the Inspector's and the SoS's assessment of various issues on which it did not disagree. Second, on a number of issues the Council deliberately stepped back (following its committee decision on 14 October 2009) from arguing against the Inspector's and SoS's conclusions on certain issues because of the threat of costs which had been made if the council pursued various issues without identifying a change of circumstances. While it did not (and does not) agree with the contention that costs would apply in such circumstances, the Authority nevertheless felt it was incumbent on it to limit its costs exposure as a result of the points made in the pre-inquiry meeting and restricted itself on certain issues accordingly. That was a perfectly reasonable approach, but it was also absolutely clear that this was done in a way which would not impinge upon the Council's ability to disagree with Inspector Phillipson and the SoS in more fundamental ways<sup>177</sup>. There was clearly no inconsistency in its approach and any suggestion to the contrary fails to connect with the Council's clearly documented approach.

### *Harm*

#### *Harm to the Green Belt*

8.16 In a case lasting some 4 weeks, a large part of which is devoted to considering the appellant's case on very special circumstances, it is easy to overlook the extraordinary nature of what is proposed. The development is massive<sup>178</sup>, with 331,665 square metres of warehousing floorspace up to 20 metres high, associated infrastructure, car parking, service yards, screening bunds, rail sidings and a new road. It will replace what is restored open land of a rural nature which stands between 4 settlements, separating them and, in part, defining them and their boundaries.

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<sup>175</sup> Except for its alternatives analysis

<sup>176</sup> See EC RT and XX, MR JH.

<sup>177</sup> See the officer's report 9/CD3.10 on those reasons where there was to be no change to the approach being taken.

<sup>178</sup> RT XX PS

8.17 The proposals would result in substantial harm to the Green Belt on account of the loss of openness<sup>179</sup>, an impact which is fundamental and cannot on this account be mitigated<sup>180</sup>. The “most important attribute” of the Green Belt is, of course, its openness<sup>181</sup>; this is one of the purposes which are of “paramount” importance<sup>182</sup>.

8.18 The development would undermine and contravene a number of the purposes of including land in the Green Belt; it would result in significant encroachment in the countryside<sup>183</sup>; land which is well on its way to restoration would be developed mainly for warehousing. The proposals would contribute to urban sprawl<sup>184</sup>, which is a “fundamental aim” of Green Belt policy<sup>185</sup>, building out urban features in the countryside which would be fundamentally different in character to the nature and form of development found in Park Street/Frogmore, Radlett, Napsbury Park and St. Albans<sup>186</sup>. It would significantly change the nature of the view towards St. Albans across the site from the MML: massive warehouses would replace open areas of countryside and the glimpses of the historic skyline of St. Albans would be lost<sup>187</sup>.

8.19 As there exists numerous alternatives where an SRFI may be sited which are better than Radlett and as other SRFI’s have been granted permission<sup>188</sup>, the total effect would be that the proposal would contravene the purpose of assisting urban regeneration by encouraging the recycling of derelict and other urban land<sup>189</sup>.

8.20 The proposals will, contrary to the view of Inspector Phillipson, also lead to the merging of Park Street/Frogmore and Napsbury/London Colney. As both Mr Billingsley and Mr Hargreaves have made absolutely clear, there is no requirement for development to be similar to that which it will be developed near to, to give the impression that urban forms are merging together in the Green Belt and no requirement that they be similar. Nor, in order to contravene this purpose of including development in the Green Belt is there a requirement that the result will be that the development is actually enclosing wholly the open space between two separated settlements. The purpose can be contravened through the contribution that a development makes to such a closing up.

8.21 As a result, the proposed SRFI would contribute significantly to the merging of those settlements and the fact<sup>190</sup> that area 2 will remain between the SRFI and Napsbury/London Colney and Park Street/Frogmore can do nothing to ameliorate this effect. To give a sense of the degree of merging which will exist, the rail link will be visible from Napsbury at a distance of about 240 metres<sup>191</sup> and the bypass will be only some 50 metres from the nearest part of Park Street.

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<sup>179</sup> Inspector's Report, 9/CD/8.2, 16.7.

<sup>180</sup> Inspector's Report, 9/CD/8.2, *ibid*.

<sup>181</sup> Para. 1.4, PPG2.

<sup>182</sup> Para. 1.7, *ibid*.

<sup>183</sup> Inspector's Report, 9/CD/8.2, 16.8.

<sup>184</sup> Inspector's Report, 9/CD/8.2, 16.9

<sup>185</sup> PPG2, para. 1.4

<sup>186</sup> Inspector's Report, 9/CD/8.2, *ibid*.

<sup>187</sup> Inspector's Report, 9/CD/8.2, 16.11.

<sup>188</sup> That is, London Gateway and Howbury Park, which I deal with shortly.

<sup>189</sup> Inspector's Report, 9/CD/8.2, 16.12.

<sup>190</sup> See Inspector's Report, 9/CD/8.2, para. 16.10.

<sup>191</sup> JH Proof, 5.38.

8.22 As will have been noted from the above, the Council has, to a considerable extent, followed the assessment of the Inspector in relation to the degree of impact on the Green Belt and has, accordingly, considered it appropriate to adopt those findings, but not wholly. It has decided that it is appropriate not to agree with Inspector Phillipson on the question of whether the development will contravene the purpose of preventing settlements from merging with one another.

8.23 The appellant criticises the Council for this, and suggests that the Council has acted inconsistently in applying Inspector Phillipson's conclusions at certain times, and at other times not. The Council has followed the Inspector's approach when it accords with its own. However, in order to give the appellant's criticisms some context, it is worth noting that the appellant has, until very late in its case, adopted a similar approach to the issue of Green Belt harm in one regard<sup>192</sup>.

#### *Other Harm and Specific Reasons for Refusal*

##### *Landscape and Visual Impact*

8.24 The Council's assessment of the landscape and visual impacts of the proposals in this case again is in similar terms to Inspector Phillipson's conclusions (as agreed by the SoS). Mr Billingsley has given considerable evidence as to why Inspector Phillipson was right to reach the conclusions he did on the landscape and visual impact case.

8.25 The landscape value of areas 1 and 2 is high<sup>193</sup> and the landscape impact of the proposals on area 1 and at year 15 would be "significant adverse"<sup>194</sup>. The mitigation earthworks would be "artificial and intrusive". There would be "significant visual impact" from some quarters, including the Midland Mainline, from which the impact would be "significant and adverse"<sup>195</sup>. The upper parts of the warehouses would remain open to view from higher vantage points, including the Shenley Ridge<sup>196</sup>.

8.26 The impact of areas 1 and 2 in landscape and visual terms cannot be offset by the proposals for areas 3 - 8. This was specifically followed by Inspector Phillipson<sup>197</sup>. Inspector Phillipson recognised that the promise of tree planting on Areas 3 - 8 should not be a basis for allowing unwelcome development as was identified in the Watling Chase Community Forest Plan Review<sup>198</sup>. That is unsurprising since the landscape quality of areas 3 - 5 is "good" and of areas 6-8 is "ordinary".

8.27 Inspector Phillipson rejected the idea put forward by Mr Kelly (who nevertheless continued with the same approach for the purposes of the ES for this appeal<sup>199</sup>) that the enhancement of areas 3 - 8 could be taken into account in mitigating these impacts. Such an approach, Inspector Phillipson considered, was "a step too far"; areas 3 - 8 were "discrete stand alone areas with little or no visual

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<sup>192</sup> See paragraph 28 below.

<sup>193</sup> Inspector's Report, 9/CD/8.2, para. 16.14.

<sup>194</sup> Inspector's Report, 9/CD/8.2, para. 16.14.

<sup>195</sup> Inspector's Report, 9/CD/8.2, para. 16.17.

<sup>196</sup> Inspector's Report, 9/CD/8.2, para. 16.18.

<sup>197</sup> Inspector's Report, 9/CD/8.2, para. 16.21.

<sup>198</sup> Inspector's Report, 9/CD/8.2, *ibid*.

<sup>199</sup> 4.172, Chapter 4, ES, CD/2.3.

connection to areas 1 and 2"<sup>200</sup>. Mr Kelly only stepped back from taking the view that areas 3 – 8 could be taken into account in dealing with landscape and visual impacts (including in relation to his views on openness) at rebuttal stage<sup>201</sup>. So much for the appellant accepting, without question, the approach of Inspector Phillipson. Even if the approach was taken of balancing all the areas together, the overall impact was judged by Inspector Phillipson as being moderately adverse<sup>202</sup>.

8.28 Mr Billingsley largely agreed with these aspects, although he has considered the matter further, and, on certain issues, has taken the view that there would be additional significant impacts; there are further impacts<sup>203</sup> in respect of the creation of the embankments and cuttings for the rail route. He also considered the scale of the impact to be moderate adverse from viewpoints on Shenley Ridge. His evidence were measured and well-considered and should be given significant weight when compared to the case put forward by the appellant, which chose to put forward no witness to give evidence and face questions.

8.29 The importance of the impacts identified by the Council should not be underestimated and must weigh heavily in the balance against the development. Their significance is rooted in a range of policy provisions which make clear the extent of their impact:

(a) PPS7<sup>204</sup>, key principles requires (irrespective of any Green Belt designation) new building development to be strictly controlled and should be "in keeping and scale with its location, and sensitive to the character of the countryside".

(b) PPS1<sup>205</sup> emphasises the need to protect and enhance the countryside. It is apparent that the requirement is to both preserve and enhance the countryside (at paragraphs 17, 18 and 27), not simply preserve it.

(c) The East of England Plan<sup>206</sup> requires<sup>207</sup> that there should be the enhancement and conservation of the natural environment and states<sup>208</sup> that areas of green infrastructure should be protected and enhanced, including community forests. The aim of planning authorities should be to recognise, protect and enhance the diversity and local distinctiveness of the countryside character<sup>209</sup>.

(d) The Local Plan recognises the need to protect landscape within its area<sup>210</sup> and particularly, the Watling Chase Community Forest<sup>211</sup>.

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<sup>200</sup> Inspector's Report, 9/CD/8.2, para. 16.21.

<sup>201</sup> MK's rebuttal, para. 2.2.

<sup>202</sup> Inspector's Report, 9/CD/8.2, *ibid*.

<sup>203</sup> See para. 3.2, JB Proof.

<sup>204</sup> Para. 1

<sup>205</sup> Para. 1

<sup>206</sup> CD/4.1.

<sup>207</sup> Para. 8.2

<sup>208</sup> ENV1

<sup>209</sup> ENV2

<sup>210</sup> Policies 69 and 74 together of CD/4.6.

<sup>211</sup> Policy 143a.

8.30 This policy context makes all the more plain why it is that this proposal will have very significant effects. The harm will, in the light of this contravention, be all the greater.

8.31 There was much concentration by the Appellants in cross-examination on – unsurprisingly given the restricted approach it has taken in the inquiry – the changes of circumstances since the last appeal. The Council, and indeed, Mr Billingsley were not actually seeking to rely on significant changes of circumstances in support of the landscape and visual impacts case put before this inquiry as was made clear in its report of 14 October 2009<sup>212</sup>. Nevertheless, there are a number of changes of circumstances which enhance Inspector Phillipson's overall conclusions that the proposals on areas 1 - 2 would have considerable adverse effects.

8.32 Mr Billingsley pointed out that the widening of the M25 has commenced, which was not a clear and detailed proposition before Inspector Phillipson<sup>213</sup>. This development has the potential to contribute to the effect of the SRFI, primarily through the proposed lighting. Mr Billingsley was criticised<sup>214</sup> for not producing plans of this widening but he gave evidence that he had studied the M25 ES and it is notable that nothing by way of rebuttal was produced by Mr Kelly to dispute his conclusion. Mr Billingsley also noted the fact that the development of Handley Place at Park Street has now been built out so an appreciation of the actual effect of the development from houses within it can now be made. Of course, it is right that Inspector Phillipson had the plans of that development before him, but the point is that those areas are now capable of being scrutinised in their real, built form<sup>215</sup>. Finally, Mr Billingsley was criticised for not having gone onto Area 1 until November 2009. However, the important point is that he had visited the area on several occasions since July and scrutinised the site from public viewpoints. In truth, no part of the cross-examination undermined the compelling nature of Mr Billingsley's assessment.

8.33 The result, ultimately, is that that the development would create significant and unacceptable landscape and visual impacts.

#### *Noise*

8.34 The development will have a significant impact in noise terms on local residents.

8.35 The Council has indicated why, on the evidence it has presented, the decision previously reached on the noise issue by Inspector Phillipson should not be followed.

8.36 Mr Stephenson has established plainly why it is that there will be a significant effect particularly on parts of Napsbury and Park Street and Frogmore. This, as for the landscape and visual impact issue, was another matter on which the Appellant refused to put forward any witness whose statements and allegations in writing could be tested; very little weight should be given to what is said by Mr Sharps in writing accordingly.

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<sup>212</sup> CD/3.10.

<sup>213</sup> See Inspector's Report, 9/CD/8.2, pg. 172, fn 1.

<sup>214</sup> MK XX JB.

<sup>215</sup> See JB, XX, MK.



8.37 Inspector Phillipson previously accepted that the appropriate form of assessment for judging whether there would be adverse effects in noise from the site was by way of BS4142<sup>216</sup>. He also accepted that, in judging how that BS4142 assessment should be undertaken, it was appropriate to make a 5dB correction for operational noise to reflect the fact that there would be metallic clangs arising from handling operations in the intermodal terminal<sup>217</sup>.

8.38 The conclusions which the Council contends in this case should not be accepted are, first, that the proposed condition to control noise would be achievable<sup>218</sup> and, second, that it would have the effect of adequately protecting residents, even if achievable<sup>219</sup>.

8.39 Mr Stephenson's evidence was compelling; the first issue is the extent to which the condition, even if achievable, would protect residents against adverse noise from on-site operations. The primary issues with which Mr Stephenson was concerned about were the effect of intermittent noise and  $L_{Amax}$  events.

8.40 As to the question of intermittent noise, Mr Stephenson identified, in a similar way to that identified by Inspector Phillipson, the extent to which, without any conditions, the proposals would, following BS4142, cause unacceptable impacts; the development would lead to levels of up to plus 20 dB, which would mean that complaints would be likely<sup>220</sup>.

8.41 It is only if the condition is imposed that levels would reduce. However, as Mr Stephenson pointed out, even with the condition in place, the levels would still be such as to make complaints likely<sup>221</sup>. This conclusion was different to the Inspector's conclusion that, with the condition in place, complaints would reduce to "marginal" under BS4142<sup>222</sup>.

8.42 The difference in that conclusion is to be found in the fact that Mr Stephenson applied a 5dB correction as part of the BS4142 assessment with the noise condition<sup>223</sup> which was not undertaken by Mr Sharps previously<sup>224</sup>. The result is that, as Mr Stephenson has pointed out, even if the condition was achievable it would still lead to complaints being likely because of the intermittent nature of the noise levels.

8.43 The defect in the condition proposed by the appellant is that it does not control intermittent noise, as Mr Stephenson pointed out. Had the 2009 guidelines been available, this may have drawn the Inspector's attention to the need to consider the extent to which intermittent noise was capable of being dealt with by the condition<sup>225</sup>

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<sup>216</sup> Inspector's Report, 9/CD/8.2, para. 16.46.

<sup>217</sup> Inspector's Report, 9/CD/8.2, para. 16.49

<sup>218</sup> Inspector's Report, 9/CD/8.2, para. 16.55.

<sup>219</sup> Inspector's Report, 9/CD/8.2, para. 16.54.

<sup>220</sup> See also 16.50-16.51, Inspector's Report, 9/CD/8.2.

<sup>221</sup> See Table 5.2, SS Proof, LPA/4.1.

<sup>222</sup> Inspector's Report, 9/CD/8.2, para. 16.54.

<sup>223</sup> See Table 5.2, SS proof, LPA/4.1.

<sup>224</sup> See 9/LPA/6.9, Mr Sharps' revised table 7.1.

<sup>225</sup> SS EC.

(Mr Stephenson was careful to point out, however, that the 2009 guidelines did not lead to a reduction in noise levels<sup>226</sup>).

8.44 It was suggested that Mr Stephenson was at fault for not having undertaken his own noise measurements; Mr Stephenson indicated clearly<sup>227</sup> why it was that he had sufficient information to assess the likely noise levels without needing his own noise levels; that was because he was content<sup>228</sup> with the noise levels produced by Mr Sharps.

8.45 The second defect in the condition is that it does not deal with  $L_{Amax}$  events. Mr Stephenson's evidence was clear on the point that the proposed condition would allow, potentially, 60 very loud "impact" events per night, every night, each with an  $L_{Amax}$  of around 85 dBA<sup>229</sup>. He gave evidence that, from his calculations,  $L_{Amax}$  levels of around 60dBA can be expected at properties in Napsbury<sup>230</sup>.

8.46 Inspector Phillipson did not have to deal with the question of  $L_{Amax}$  issues at the last inquiry since it was not a point pursued by the Councils at that time. It is being pursued at this inquiry, because of the patent problems that are likely to arise<sup>231</sup>. Mr Stephenson's conclusions on these likely levels have not been rebutted by evidence which is capable of being tested.

8.47 There was a suggestion that Mr Stephenson was not in a position to construct his own assessment of likely impacts, because he did not know the detail of the model<sup>232</sup>. That was not his assessment; he considered he had enough information: he was aware of the distance of properties from the sound source and was aware of the likely sound power levels (and had, in fact underestimated them when compared against Mr Sharps' analysis in the ES)<sup>233</sup>.

8.48 As a result of these matters, there will be complaints and adverse impacts arising from the development, even if the conditions are regarded as achievable.

8.49 Turning next to the proposed noise limit condition<sup>234</sup>. It is proposed that a condition which restricts noise levels at the façade of properties to 50dB Laeq will deal with noise. It will not; Mr Stephenson has provided considerable evidence as to why the noise level will not be achievable. First, his experience is that developers can ask for conditions which are later found to be unachievable; that meets one of Inspector Phillipson's considerations as to why the condition would be achievable<sup>235</sup>.

8.50 Second, Inspector Phillipson had relied on Mr Sharp's conclusion that his model would over-predict noise levels<sup>236</sup>. As to this, Mr Stephenson's own experience of the

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<sup>226</sup> SS, EC.

<sup>227</sup> SS, EC.

<sup>228</sup> XX, SS, MK

<sup>229</sup> Para. 5.3.9, SS Proof.

<sup>230</sup> Para. 5.3.4, SS Proof and Rebuttal, para. 6.1 et seq.

<sup>231</sup> See paras. 7.58-7.90, Inspector's Report, 9/CD/8.2.

<sup>232</sup> DS Rebuttal, 2.37.

<sup>233</sup> SS, EC.

<sup>234</sup> Draft condition 25.

<sup>235</sup> Para. 16.55, Inspector's Report, 9/CD/8.2.

<sup>236</sup> Para. 16.55, Inspector's Report, 9/CD/8.2.

model (ISO 9613), which was considerable, indicated that the model was robust<sup>237</sup> in part on the basis of research he had undertaken on behalf of DEFRA.

8.51 Mr Stephenson also demonstrated how the reasoning presented by Mr Sharps at the last inquiry that the noise model systematically over-predicted noise levels was wrong and based on a misunderstanding of the model<sup>238</sup>. He was aware of Mr Sharps' arguments on this, because Mr Sharps told him about them at their meeting. As to this, Mr Stephenson's evidence was clear that, first, ISO 9613 does not double account for ground effects and the containment of sound within a hemisphere during propagation. Rather, it starts from spherical propagation and corrects that propagation to hemispherical propagation subsequently; as a result, the 3dB correction factor is not systematically added onto an initial correction factor; there is one single correction at the receiver<sup>239</sup>. There was no engagement by Mr Sharps with this criticism.

8.52 The second point is that Mr Sharps argued that, given that the method of measurement under the condition proposed at the last inquiry will not be under conditions favourable to sound propagation (since it will be measured applying a long-term average sound level), and ISO 9613 measures sound levels on conditions that are favourable, ISO9613 will over-predict levels as against the condition<sup>240</sup>. However, as Mr Stephenson has pointed out, the measurement under the condition will actually be measured under conditions favourable to noise propagation. Consequently, there will not be a favourable result under the model. Again, this point has been simply ignored.

8.53 The appellant's approach has to been to constantly reiterate that there has been thorough debate at the previous inquiry on all noise issues. However, it is notable that there has been no evidence establishing that either of these points was debated at the earlier inquiry and it was not alleged during cross-examination that they were. The points that were sought to be made in cross-examination were generalised, unspecific ones.

8.54 Finally, Mr Stephenson has indicated how<sup>241</sup> the ambient level will increase dramatically through this development which will lead to adverse effects. Again, the appellant has not grappled with this point.

8.55 The appellant's approach in this case has been, in fact, not to engage with the points that have been raised by Mr Stephenson at all. The position is summed up in the written statement of Mr Sharps that he has been "advised that it is not appropriate to cover that ground when clear conclusions" had been reached in the previous inquiry and adopted by the SoS<sup>242</sup>. As an example of the appellant's approach, it sought to suggest that Mr Stephenson's conclusion that it was unclear how Inspector Phillipson got to the view that the noise levels would only lead to a "marginal" situation with the condition in place was explained by the fact that Mr Stephenson was not aware of "the correct version of [table 7.1] which was provided

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<sup>237</sup> Para. 5.4.10, SS Proof.

<sup>238</sup> See para. 5.4.13, SS Proof.

<sup>239</sup> SS, EC and 5.4.14, SS Proof.

<sup>240</sup> 5.4.14-5.4.15, SS Proof and SS, EC.

<sup>241</sup> See Table 5.4, SS Proof

<sup>242</sup> See DS Rebuttal, para. 2.38.

to the inquiry”<sup>243</sup>. However, it will be noticed that this “corrected” table was not an agreed table at all<sup>244</sup> and it did not include the 5 dB character correction which Dr Hawkes<sup>245</sup> (and Mr Stephenson’s<sup>246</sup>) tables did. And if Dr Hawkes’ table is referred to, it will be seen that it largely corresponds with the conclusion that complaints would be likely even with the noise condition. Had Mr Sharps engaged with the point, this point is likely to have been made clear in evidence. The approach taken by the appellant on this particular issue is also displayed by the criticism made of Mr Stephenson<sup>247</sup> that he did not have details of the model by which to assess the impacts of it but it was clear<sup>248</sup> that he had asked for the model from Mr Sharps and was told that the appellant was not legally obliged to give it and so he did not give it to him.

8.56 Nevertheless, as a result of its approach, the appellant has no evidence to rebut any of the following issues raised by Mr Stephenson:

- (a) The regularity of the likelihood of  $L_{Amax}$  breaches of the 1999 WHO guidelines, even though that was not a matter on which any conclusions were previously reached and which was not concluded upon at the last inquiry.
- (b) The reasons why the noise model used by Mr Sharps (ISO 9613) is robust and does not overestimate noise levels.
- (c) The reasons why Mr Stephenson is of the view that the noise condition will not be achievable and will not protect residents.
- (d) The degree to which ambient noise levels will be raised to a significant and unacceptable level as a result of the development.
- (e) The extent to which the 2009 WHO guidelines would have drawn Inspector Phillipson’s attention to the need to consider whether the proposed condition could adequately deal with impulsive noises.

8.57 The evidence presented by Mr Stephenson should, consequently, be accepted.

#### *Construction condition*

8.58 Finally, Mr Stephenson indicated why a construction condition measured under BS5228 should be employed in order to protect against amenity, as opposed to the Control of Pollution Act 1974 which protects only against nuisance. The relevant condition has been proposed in the draft presented to the inquiry.

#### *Prematurity*

8.59 There is a stronger case for prematurity in the present case than was the case in the previous appeal. The Council points to the changed circumstances from the

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<sup>243</sup> See Mr Sharps Rebuttal, para. 2.30.

<sup>244</sup> See LPA/6.9.

<sup>245</sup> LPA/6.9 original table 7.1 (page 21).

<sup>246</sup> Table 5.2, SS Proof, LPA/4.1.

<sup>247</sup> XX, SS.

<sup>248</sup> RX, SS.

previous appeal in support of this part of its case (as was indicated in its report to committee on 14 October 2009<sup>249</sup>). Inspector Phillipson recognised that, on the basis of PPS1, there was a case for prematurity.

8.60 Inspector Phillipson recognised the exception to the general approach taken in PPS1<sup>250</sup> (as Mr Tilley acknowledged<sup>251</sup>) and considered that there could be prematurity in circumstances other than in relation to a forthcoming DPD. He stated that there could not be prematurity against either the St Albans LDF or the (then) emerging regional strategy<sup>252</sup> but carried on:

*But is, as the Councils argue, refusal of planning permission on prematurity grounds nonetheless justified? With regard to this matter, there is no doubt that (i) the proposal is for significant development and (ii) it is of such a nature that only a very limited number of SRFIs (three or four) are required to serve London and the South East. Accordingly, granting permission for a SRFI at Radlett, in addition to the permission already granted for a SRFI at Howbury, would reduce the number of further SRFIs required to serve London and the South East to one or two only and hence materially prejudice the outcome of any regionally based study to determine the optimum sites for them. In this sense it could be argued that the application is premature.*

8.61 Inspector Phillipson took the view, however<sup>253</sup>, that the argument only held good if there was a reasonable prospect that such a study was both likely to be undertaken and its findings accepted as binding on the various authorities within a reasonable timeframe. Here, he found, the evidence to be thin. That was because:

- (a) The East of England Plan ("EEP") did not propose a strategic assessment;
- (b) The South East Plan ("SEP") maintained a criteria-based policy which was an indication of a desire to allow developments in the interim.
- (c) The possible timetable for a study was some 5-6 years.

8.62 The position has moved on, however, since that time.

8.63 First, policy T10 of the EEP now does point to a comparative analysis being undertaken of proposed sites, albeit stopping short of a strategic interregional study. In short, if other better sites outside the EEP area are identified, there will be no support for an SRFI. It therefore is relevant that both SEERA, SEEDA, EERA and EEDA have indicated a need for an interregional assessment of the position<sup>254</sup>. As to the timescale for such work, the patent reason why nothing as yet has come forward is because the DfT, in its response provided in June 2008<sup>255</sup> (which was not taken into account by the Secretary of State on this decision)<sup>256</sup> indicated that such a study would be taken up by the NPS. In the event that it is not, then, since the DfT has

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<sup>249</sup> CD/3.9.

<sup>250</sup> General Principles, at paragraph 17.

<sup>251</sup> MR XX RT.

<sup>252</sup> Para. 16.110, Inspector's Report, 9/CD/8.2.

<sup>253</sup> Para. 16.112, Inspector's Report, 9/CD/8.2.

<sup>254</sup> See the letters, EERA; JH Apps page 66, last paragraph and SEERA: Appx JH19.

<sup>255</sup> JH Apps.

<sup>256</sup> Agreed, RT, XX, MR.

indicated the use of joint working both in that letter and in its general guidance for DaSYSTs, the timescale has the potential to be short.

8.64 Second, the relevant NPS is due for production shortly. As Mr Tilley accepted, in the event that it is site specific and does not refer to Radlett, the permission for Radlett would be premature<sup>257</sup>. It is clear, in those circumstances, that, until the content of the NPS is known, permission should not be granted. The point goes further, of course, because the initial publication will be a consultation draft and, given the calls for an interregional analysis of sites from the Regional Assemblies, the potential nevertheless for a site specific list is there even if such a list is not provided in the first draft. The consequence is that, until it is known that a site specific list of sites will not be identified through the NPS, this remains an additional basis for holding the current application to be premature.

8.65 Mr Tilley has suggested that the DCLG guidance to local authorities on the NPS system<sup>258</sup> indicates that there is a clear intention that proposals should not be regarded as premature to the production of an NPS. In fact, read properly, the system suggests that prematurity decisions can still be made. The guidance points out that in circumstances where no NPS is in place when an application comes before the IPC, the decision will be given over to the Secretary of State<sup>259</sup>; the obvious reason for that is so that, should the Secretary of State consider that it is inappropriate to allow the decision because of what may be in the NPS, he would be able to refuse it. In short, one of the purposes is to allow the Secretary of State to refuse permission because of the potential for prematurity. Mr Tilley accepted the logic of this<sup>260</sup>.

8.66 There is another aspect to this argument. Should there be doubt about the likelihood of this site achieving its stated promise of being an SRFI, then the degree of force behind the prematurity argument increases. At the same time, it is to be borne in mind that with the grant of Howbury and London Gateway, the degree of need is such that prematurity in the current context – the prospect of other, better sites being compromised – becomes that much more significant.

### *Sustainability*

8.67 As was made clear in opening and on the basis of the Council's Statement of Case and the officer's report of 14 October 2009<sup>261</sup>, the Council's sustainability objection to the proposal is based on the degree to which the proposal will offend against sustainability policy given that it will not amount to an SRFI. The objection itself is thus based on the Council's rail case and on the changes of circumstances which have occurred since the previous decision which have laid greater stress on sustainability issues.

8.68 As for the policies themselves, the following has emerged since the previous decision:

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<sup>257</sup> MR XX RT.

<sup>258</sup> Appx 1, RT Rebuttal.

<sup>259</sup> See paragraph 8 of the Guidance.

<sup>260</sup> MR XX RT.

<sup>261</sup> CD/3.10.

(a) The East of England Plan has laid considerable stress on the requirement to enhance sustainability<sup>262</sup>;

(b) The Government has published:

(i) the low carbon transport strategy<sup>263</sup>;

(ii) the UK renewable energy strategy<sup>264</sup>;

(iii) the UK low carbon industrial strategy.

(c) These place greater stress on sustainable development and seek to produce significant cuts in emissions.

8.69 The importance of these documents is that still greater weight has been placed on the need to ensure that sustainable development strategies are actually workable and achieve the aims that they set out to achieve. Since this development will fail to achieve its stated aim of becoming an SRFI, it will, still more significantly than hitherto, undermine the sustainable transport policies that are so much more prevalent and pressing in their tone. In circumstances where the policy support for SRFIs is for 3-4 in London and the South-east, granting permission for one that will not achieve its purpose will be a lost opportunity of the greatest magnitude.

### *Ecology*

8.70 The Council's case on ecology has, as has been pointed out in the report of 14 October<sup>265</sup>, relied on the changes in circumstances which have taken place since the last inquiry. In relation to the importance of Area 1 for birds, Inspector Phillipson was clear about its importance, particularly for over-wintering waders and breeding birds<sup>266</sup>. He also concluded that the proposed mitigation of the bird interest by the provision of habitat on parts of the Country Park would "not be sufficient to fully offset the likely losses"<sup>267</sup>; and considered that the lack of adequate mitigation "should tell against the proposal"<sup>268</sup>.

8.71 The ultimate conclusion of Inspector Phillipson that harm to the ecological interest (that of providing for the birds' welfare) would not be significant<sup>269</sup> was based on two matters:

(a) the absence of any ecological or other designation which would operate to protect the current habitat of interest on Area 1; and,

(b) the uncertainties as to the restoration proposals for Area 1.

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<sup>262</sup> See pages 67 – 69, JH Proof.

<sup>263</sup> JH Appx 35.

<sup>264</sup> JH Proof 9.31.

<sup>265</sup> CD/3.10

<sup>266</sup> Para. 16.33, Inspector's Report, 9/CD/8.2.

<sup>267</sup> Para. 16.36, Inspector's Report, 9/CD/8.2.

<sup>268</sup> Para 16.179, Inspector's Report, 9/CD/8.2.

<sup>269</sup> Para. 16.37, Inspector's Report, 9/CD/8.2.

8.72 There are two changes of circumstances in this case which bear on these aspects and which lead to a clear conclusion that the extent of harm should be regarded as more significant than the harm found by Inspector Phillipson. It is to be remembered that the Inspector did find harm on this issue. The question is whether the extent of that harm should now be regarded as more significant: the Council says that that must be the conclusion on the basis of the following matters.

8.73 First, the lapwing has now been included on the UK Biodiversity Action Plan list. The enhanced significance of this bird should not be underestimated. Sections 40 – 41 of the Natural Environment and Rural Communities Act 2006 provide for greater protection to be given to BAP list species over and above the general duty contained in the Act to take into account the need to preserve nature conservation interests in decisions which may affect them.

8.74 While these sections of the 2006 Act were before Inspector Phillipson previously, the enhanced duty to protect this particular bird was not taken into account and, indeed, the lack of the ecological protection which accompanies its higher status was part (albeit referential to a site protection) of the Inspector's reasoning leading him to his ultimate conclusion as to the extent of the harm occasioned by the proposals.

8.75 Second, the site has now been designated as a county wildlife site, in part, for its bird interest in November 2009. The primary issue which has emerged between the ecologists on qualification is the degree to which it was right to designate the site as a county wildlife site. The Appellant's ecologist, Mr Goodwin, takes the view<sup>270</sup> that the data which was relied upon – 2004 and 2005 – is too old to allow a designation to be made.

8.76 Mr Hicks has pointed out that there is no sufficient data for other years<sup>271</sup> and in those circumstances<sup>272</sup> such data was sufficient for the site to qualify as a county site. Mr Hicks has also explained<sup>273</sup> why the data was sufficient for the purpose and why data more than 2 years old is nevertheless capable of sufficiently indicating an area's merit to qualify as a designated site.

8.77 It has been suggested<sup>274</sup> that the site designation was self-serving. That is, frankly, a bizarre allegation, alleging (again) unprofessionalism of Council officers and (now) others, without any foundation. It is even more curious given that the panel which reaches the conclusion on whether to designate a site includes a representative from Natural England, a body which the Appellant itself prays in aid in support of its case.

8.78 As for the uncertainty apparent in relation to the restoration proposals, these remain, but they are capable of being easily reversed as Mr Hicks has indicated in his written statement; the ability to reverse the planting schemes which have been undertaken was, of course, acknowledged by Inspector Phillipson.

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<sup>270</sup> See TG Rebuttal, 9/HS/7.3 pges 3-4.

<sup>271</sup> See para. 2.9, MH Rebuttal, LPA/3.3.

<sup>272</sup> See TG Rebuttal, 9/HS/7.3, Appx 1 page 2, last paragraph.

<sup>273</sup> See 9/LPA/3.5.

<sup>274</sup> See the costs application of the appellant



8.79 As for the acid grassland issue, Inspector Phillipson considered that the proposals to translocate should not tell against the proposal, though he agreed that the translocation, if not carefully planned and executed could fail and the resource would be lost (see paragraph 16.28 of the Inspector's report).

8.80 Again, this site has now been identified as a county wildlife site and its importance has been emphasised by the small heath butterfly, which is a priority species under the UK Biodiversity Action Plan. The wildlife designation finds protection under policy ENV2 of the RSS and policy 106 of the Local Plan. A failure in the translocation will, in such circumstances, be all the more significant.

8.81 As a result of each of these matters, the degree of significance of the impacts in this case should be increased as well. The weight to be placed on this negative impact which had been identified by Inspector Phillipson should increase as well.

*Very Special Circumstances*

8.82 The Appellant relies on a number of matters which it says, together, amounts to very special circumstances justifying the proposal:

- (a) Whether the development will operate as an SRFI.
- (b) The lack of alternatives for the site.
- (c) The benefits of the country park.

8.83 The Appellant may suggest that the Secretary of State had reached the conclusion that, subject to providing an acceptable alternative sites assessment, very special circumstances would exist. That is wrong if such a submission is made. The Secretary of State did not actually go through the process of reaching the judgment as to where the balance would lie if there had been a satisfactory alternatives analysis; she indicated that "this would almost certainly have led her to conclude that this consideration, together with the other benefits she has referred to above were capable of outweighing the harm to the Green Belt and the other harm which she has identified in this case". The issue of the weight to be applied to the balancing process and each of the factors prayed in aid of the Appellant's case is, even on the Council's case, wholly open.

*(A) Whether the Development Will Operate as an SRFI*

*(a) SRA and other Rail Policy*

8.84 The policy support in favour of this development is limited, as Mr Tilley accepted<sup>275</sup>. If the development proposed does not amount to an SRFI, there is no support for it. Mr Tilley accepted that if the development did not become an SRFI because of a limited rail connection, that would be an unacceptable result<sup>276</sup>. It would also be unacceptable, he agreed, if the result of it not becoming an SRFI is that other, better locations would be prevented from coming forward.<sup>277</sup>

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<sup>275</sup> XX, MR, RT.

<sup>276</sup> RT, XX, MR.

<sup>277</sup> XX, MR, RT.

8.85 The question, of course, that this begs is when a development either will or will not be an SRFI. That is to be determined and can only be determined, by the guidance which has informed, and continues to inform Government policy<sup>278</sup>, namely, the SRA guidance on interchanges<sup>279</sup>.

8.86 This makes clear that an SRFI must be “capable now or in the future of supporting their commercial activities by rail”<sup>280</sup>. Mr Gallop accepted the importance of rail connection in order to create an SRFI. He acknowledged that the SRA guidance was clear that, while there should be good connections to the primary road network, “high quality links to the rail network are ... essential”<sup>281</sup>. It also points out that the key factors in considering site allocations include: access “on rail freight routes with capacity and avoiding congestion”, including access in both directions. This is reiterated in Appendix B which indicates that the transport requirements include “rail links need high capacity and good loading gauge”<sup>282</sup>.

8.87 The whole purpose of the SRFI is to enable traditionally road-based distribution operations to shift over to rail use:

*[SRFI's] “should be seen not simply as locations for freight to access the railway but also sites for the accommodation of businesses capable now or in the future of supporting their commercial activities by rail”<sup>283</sup>.*

8.88 Mr Gallop accepted that good rail access had to be ensured to provide a prospect of enticing road users from their habits<sup>284</sup>. It is, in order to do this, that it has been made clear in the policy that the shift has to be capable of being made.

8.89 The requirement that an SRFI actually does achieve what it is said that they should achieve is also indicated in the draft London Plan which is notably changing the emphasis contained in the London Plan from one of general support, to a support conditional on demonstrating, on a “robust” basis, that an overall reduction in traffic will be sufficient to justify any loss of the Green Belt. The development “must” also achieve a modal shift from road to rail<sup>285</sup>.

8.90 It is, put simply, insufficient for a development to be regarded as an SRFI if it is not able, through its location, to enable that shift from road to rail to occur. Such a development, while it may have the name of an SRFI, will not fulfil its purpose.

8.91 The importance, of course, of considering whether what is proposed will actually be an SRFI is that, without the Government support contained in the SRA guidance, there is simply no justification for the development. When looking at the ability of the development to operate as an SRFI, the Secretary of State must be convinced that it will operate as an SRFI. In the previous decision there was an

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<sup>278</sup> See the DfT, 9/HS/9.1

<sup>279</sup> 9/CD5.1, as applied by the DfT, see their statement at 9/CD5.2: note that it is chapters 4, 5, 6 and 7 which are relevant, see NG, XX, MR.

<sup>280</sup> Para. 4.5.

<sup>281</sup> Para. 4.23.

<sup>282</sup> Referred to at para. 4.6 of 9/CD/5.1.

<sup>283</sup> Para. 4.5.

<sup>284</sup> XX, MR.

<sup>285</sup> See JH Apps pg. 3, policy 6.15 and written statement para. 6.46.

indication<sup>286</sup> that a “reasonable assurance” (in relation to pathing, particularly) was a sufficient test by which to conclude that a particular matter had been established. Given the importance of what is proposed and the extent of the impact it will have on the Green Belt, to the extent that this test imports some relaxation of what must be established in a Green Belt very special circumstances case, it should be rejected.

*(b) Summary of the Council's Position*

8.92 The Council has provided clear and compelling evidence in this case that the development will not operate as an SRFI. The site is compromised fatally in being able to achieve the cross-over from road based distribution to a part rail-based operation<sup>287</sup>, in the following ways:

- (i) There will be no movements in or out of the site by rail between 0600 – 2200.
- (ii) It will receive no channel tunnel traffic until the gauge has been enhanced to W9.
- (iii) It is in a poor location to compete with rail from the primary deep sea ports.
- (iv) It has poor accessibility to the primary rail route for competing with the road-based domestic market, the west coast mainline (“WCML”).
- (v) It requires a rail subsidy and gauge enhancement to assist with its competitiveness which will be insufficient in the circumstances.
- (vi) Additionally, as part of the context for assessing this issue, any doubt should be resolved against the development since the need to 2015 is currently capable of being met by other developments.

*(c) Pathing*

8.93 Mr Wilson’s pathing analysis is absolutely clear. The 2015 Thameslink service will prevent trains from crossing into the site at any point between 0600 and 2200.

8.94 As a starting point, it is for the appellant to establish its very special circumstances for the development and thus the availability of access. It is not for the Council to have to do so. Put simply, the appellant has not, at all, made out its case. Mr Wilson’s calculations themselves have not been undermined at all. The assessment was undertaken using the Railsys modelling system (that used by Network Rail) which indicated that, on the 2015 peak off-peak timetable set out in the draft East Midland Rail Utilisation Strategy, there would be one path of 7 minutes every 30 minutes to enable trains to gain access to and from the site. Given that a train would require 8 minutes to enter the site and 12 minutes to exit it, this path would be insufficient<sup>288</sup>.

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<sup>286</sup> 16.184, Inspector's Report, 9/CD/8.2.

<sup>287</sup> That is, using rail for the first leg of the distribution journey.

<sup>288</sup> See paragraph 11.38, BW Proof.

8.95 The appellant has not established that there will be paths. The appellant has relied, heavily, on the views of Network Rail in this case to suggest that the development can work. Critically, however, as Mr Gallop agreed, Network Rail has not undertaken any analysis against the Thameslink 2015 service. Further, it should be noted that Network Rail's approach towards the site is more circumspect in respect of paths than it was at the last inquiry. The most that is confirmed is that there are two rail paths on the MML that pass-by the site. At the previous inquiry, Network Rail confirmed (a matter which Inspector Phillipson described as "critical") that they could see "no reason" why Helioslough's requirement for 12 intermodal paths (24 in total) could not be met<sup>289</sup>. Such a statement is now notably lacking in either the agreed statement<sup>290</sup> or Network Rail's letter to the inquiry<sup>291</sup>; their position is significantly more circumspect as, rightly, it should be: *"Network Rail can offer no guarantees at this time that these paths will be available in the future as they are open to all licensed freight operators and all paths required for the interchange will need to be bid for, and are subject to the standard industry-wide timetable planning process"*. It is to be remembered that Network Rail has undertaken no assessment of the degree to which there would be the potential to gain access to the site.

8.96 It seemed that the appellant was seeking to place some weight on Inspector Phillipson's conclusions on pathing in order to seek to establish that the Thameslink 2015 service had been accounted for but, from a reasonably careful reading of the Report, what the Inspector was formerly concerned with is entirely different from that now before the inquiry. The Inspector was not concerned with Thameslink in its future state. Indeed, not only was there, at that stage, no timetable for the 2015 Thameslink service<sup>292</sup> but, in fact, the evidence being given by Network Rail at the time of the last inquiry was that the off-peak service would not change, which view was adopted by the Inspector<sup>293</sup>. As a result, Inspector Phillipson was not being asked to assess the current objection in any way and no comfort can be gained by the appellant from his conclusions on this issue.

8.97 The appellant has suggested that the Thameslink 2015 timetable set out in the draft East Midlands RUS will change. It is correct that the RUS indicates that the service specification is stated to be indicative<sup>294</sup>, but there is no indication that it will change, let alone change positively to the appellant's favour, which would require a lessening of the specification from its current position. The likelihood of a lessening of the specification is plainly low given that the timetable in November 2008 involved a lower specification than the current draft RUS, which had two of the semi-fast off-peak services going no further than Brent Cross<sup>295</sup>. The intent for Thameslink is that it will be a more comprehensive service, not a lesser one. Again, this is to be seen in the context of the 2007 statement on Thameslink that there would be no change in the Network Rail offpeak. There has been a steady increase in the service requirements over time; how then can it be concluded that it will be reversed?

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<sup>289</sup> Paragraph 16.65, Inspector's Report, 9/CD/8.2.

<sup>290</sup> 9/CD/7.4, para. 2.3.

<sup>291</sup> 9/HS/INQ 2.0.

<sup>292</sup> See the Interfleet Report (based on the then current 2007 timetable: 9/LPA/6.8).

<sup>293</sup> See para.s 15.7 and 16.65, Inspector's Report, 9/CD/8.2.

<sup>294</sup> See page 93, CD/5.5.

<sup>295</sup> See Strife 9/10/01.

8.98 Looking at the detail of Mr Wilson's analysis, what the appellant has sought<sup>296</sup> to do is to criticise and undermine the pathing analysis by floating a myriad of different factors the aim of which has been to muddy the clear message provided by Mr Wilson.

(a) it was suggested that the use of a double junction would provide more opportunity. Mr Wilson answered this in his note to the inquiry<sup>297</sup>.

(b) it is contended that the use of a cross-over diamond instead of a ladder design would make a difference. Mr Wilson answered this in his note.<sup>298</sup>

(c) it is contended that making use of entry and exit on caution would be significant. Mr Wilson answered this issue in his note<sup>299</sup>.

(d) it is contended that the Rules of the Plan can be altered to give greater flexibility. Mr Wilson answered this issue in his note<sup>300</sup>.

(e) it has been suggested that the use of the fast lines may free up capacity. Mr Wilson answered this issue in his note<sup>301</sup>.

8.99 Mr Wilson has dealt with each of these by way of his note to the inquiry<sup>302</sup> and none of it has even been commented upon, even less rebutted, by Mr Smith or anyone else. Quite clearly, the appellant has realised the hopelessness of arguing on these points further and has ignored them.

8.100 Rather, the appellant tried to deal with the issue by putting before the inquiry a full timetable analysis produced by Interfleet<sup>303</sup>. This was introduced 3 weeks into the inquiry, in spite of Mr Wilson having raised the point in his proof. The appellant had, in short, some 7 weeks to provide this document and introduced it at a surprisingly late stage in the process. This is surprising since, throughout the inquiry, the appellant has continually contended, without foundation, that the Council has been seeking to surprise it. It is, however, an indication of the degree to which the appellant was concerned about the points raised by Mr Wilson that they sought to "trump" him in this way.

8.101 Nevertheless, the analysis was, frankly, totally worthless. First, the timetable was totally unworkable, with a semi-fast service (the 10.24 Luton semi-fast) running down another service (the 10.16 slow St. Albans service). Mr Smith suggested that this would not occur. However, given the 8 minute difference between the services at Radlett, with a 4 minute headway between services in the Rules of the Plan (considered to be not outlandish though not agreed by Mr Smith<sup>304</sup>, and see Mr

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<sup>296</sup> See XX, BW.

<sup>297</sup> LPA/6.6.

<sup>298</sup> Ibid.

<sup>299</sup> Ibid.

<sup>300</sup> Ibid.

<sup>301</sup> Ibid.

<sup>302</sup> LPA/6.6

<sup>303</sup> 9/HS/2.8.

<sup>304</sup> GS, XX.

Wilson's evidence identifying 4 minute gap as the case<sup>305</sup>), three extra stops on the slow St Albans service<sup>306</sup> and a journey time penalty per stop of 2.5 – 3 minutes (comprising 30 seconds dwell time<sup>307</sup>, a c. 1 minute deceleration and c. 1 minute acceleration), the timetable was, as Mr Smith accepted, unworkable on that basis<sup>308</sup>.

8.102 More importantly, the timetable was based on a service pattern that involved 8 trains on the slow line rather than 10. As Mr Gallop acknowledged, if the Thameslink specification as contained in the RUS is followed, then there will necessarily be 10 trains on the slow line. That is because, at present, there are 6 trains on the slow line with 2 trains which would otherwise be on the fast line being on the slow line due to the fast EMT services and, as Mr Gallop acknowledged, a reduction in such services is unlikely. Given the pressure on the fast line (again, accepted by Mr Gallop), each of the additional 4 services on the 2015 Thameslink timetable will have to go onto the slow line. The result is that, should the 2015 Thameslink timetable take effect, there will be 10 Thameslink trains on the slow line, not 8<sup>309</sup>.

8.103 As Mr Gallop accepted<sup>310</sup>, should there be 10 Thameslink trains on the slow line, the Interfleet timetable, showing two 15 minute gaps, will only be able to accommodate the Thameslink trains and there would be no paths, whether into or out of the site for the freight trains. The Interfleet timetable establishes, in those circumstances, what Mr Wilson said would happen.

8.104 The only issue is whether the Thameslink specification will be reduced either through the Government's own accord or through negotiation and other means under the rail regulation processes. As a Government sponsored service of some £5.5 billions which is declared as supplying "substantial benefits to rail passengers"<sup>311</sup>, it is patently unlikely that the Government would willingly wish to see a reduction in the specification and the specification has increased over time, not decreased.

8.105 This means that the specification is likely to be reduced only if the matter is resolved through negotiation or by way of a determination through the access provisions ultimately to be adjudicated upon by the ORR. As Mr Gallop fairly acknowledged, should there be a requirement to resolve whether Radlett or Thameslink's specification should prevail, Thameslink would win. Mr Gallop did not resile from that in RX.

8.106 In short, there is simply no evidence that this issue is likely to be resolved in a way that is positive to the Appellant; all the indications are that there will not be access in the off-peak period.

8.107 Reliance was sought to be placed on the evidence of Mr Clancy that there would be 8 services on the slow line. In cross-examination it was plain that Mr Clancy was basing his view on the older specification and the letter of Mr Morgan

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<sup>305</sup> As well as Network Rail indicating in its answers that there would be no alteration of the Rules of the Plan with Thameslink 2015.

<sup>306</sup> Hendon, Cricklewood and Kentish Town.

<sup>307</sup> Regarded as not outlandish by Mr Smith.

<sup>308</sup> GS, XX.

<sup>309</sup> A point confirmed by Mr Wilson in his note, at LPA/6.6.

<sup>310</sup> XX, NG.

<sup>311</sup> Network Rail Q 19.

within his appendices, neither of which looked at the up to date situation contained within the RUS. Strife have given their note of what Mr Clancy said and, if right, indicates that Mr Clancy was looking at the specification as it was at the time that it was written down in the November 2008 specification, not some more up to date version than has been indicated in the RUS.

8.108 As indicated previously, Inspector Phillipson's approach towards this issue – namely, that it is sufficient for there to be a "reasonable assurance" that the site would have sufficient pathing access – should not be regarded as undermining the very special circumstances test. Nevertheless, even if applied, it simply cannot be concluded that there is a "reasonable assurance" of very special circumstances. If it is right that the appellant would not be able to get access to the rail network in the off-peak, what does this mean for the development?

8.109 This is resolved, of course, by Mr Gallop who confirmed: there would be no access during the peak (7-10 am and 4 – 7 pm); the off-peak is likely to be 6-7 am and 7-10 pm; so that access would only be possible, if restricted in the off-peak, to the hours 10 pm to 6 am. In those circumstances, the development would not, he agreed, amount to an SRFI<sup>312</sup>. This analysis is consistent with the conclusions of Mr Geldard<sup>313</sup> who indicated that the development would fail if access could only be gained at night.

8.110 The reality is that this point is fatal to the development: it simply cannot be concluded that access would be gained, or, should the test apply, that the SoS can be "reasonably assured" that the development would have access to the rail network.

#### *(d) Rail Market Connectivity*

##### *(i) General Matters*

8.111 Radlett will not be well-located to receive freight. It may, of course, be said that other locations will have similar difficulties. That is, however, nothing to the point. The question is whether, on the basis of the circumstances presented in this case – that is, the rail promotion fund, the trigger for gauge enhancement, the type of gauge enhancement proposed or the extent of access - the proposals will have a connectivity to rail destinations and origins such that it will achieve the stated aim of SRFIs to achieve the modal shift from road to rail. If there is little confidence that it will achieve its stated aims, that will tell against it. The issue of location should not, in those circumstances be compared in isolation against other proposed locations, but weighed in the balance of each of the other restrictions when deciding whether the development will be an SRFI. Other locations may, for example, have other options available which would support, in greater ways than is offered by the appellant in this appeal, the carriage of freight by rail.

8.112 Mr Wilson has assessed the locations from which Mr Gallop has said that rail freight is assumed to arrive from and where it will go to. The Appellant says that it is unimportant from where the destinations will go, given that traffic will come to the site, if it is constructed. As Mr Wilson has pointed out, however, it is important<sup>314</sup> to

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<sup>312</sup> XX, NG.

<sup>313</sup> Appendix G, BW Proof.

<sup>314</sup> See his proof (LPA/2.2) at section 9.

understand the significance of the potential destinations and origins since, should the primary destinations/origins be ill-suited to service by rail from Radlett this will further hamper the success of the development.

8.113 It is to be noted, in that regard, that Inspector Phillipson's belief was that the site would operate as an SRFI, in part, because it would be receiving freight from a range of locations<sup>315</sup>; patently, if it is not able to receive freight from one of those destinations, that will be significant. The locations from which freight will arrive and where it will go to and in what proportions was identified by Mr Gallop in the ES<sup>316</sup>: in short, the significant elements would be from the Deep Sea ports (primarily Felixstowe and Southampton), the Channel Tunnel and the domestic intermodal market. From the identified proportions some 82% of the total freight traffic would derive from the Channel Tunnel and Deep sea ports, while only 11% would be domestic traffic.

8.114 That is patently unrealistic given that the Scenarios and Long Distance Forecasts RUS<sup>317</sup> identification of domestic traffic as the basis for intermodal growth (see para. 8.5.3) and the GB Model outputs produced by Mr Wilson (which have not been criticised)<sup>318</sup> which identified that domestic growth increased by reference to the creation of rail linked sheds and deep sea traffic was not affected at all. Mr Gallop did not disagree with these calculations<sup>319</sup>. The significance of this is that it identifies the importance of being able to achieve a good accessibility to the domestic markets.

*(ii) Domestic Access*

8.115 It is, it appears, common ground (and has been accepted by Mr Gallop) that the primary route to access the domestic markets is the West Coast Mainline ("WCML"). Mr Wilson has described the problems that exist in gaining access to the WCML<sup>320</sup>. This routing takes more time than a heads-on route; it introduces a degree of uncertainty, along with greater cost and complexity. As such it cannot be described, at all, as an optimal route. This problem is compounded by the fact that, without gauge enhancement, the site will also be at a greater cost disadvantage when the subsidy runs out.

8.116 The problem of gaining access to the WCML was not specifically dealt with at the previous inquiry; the assessment was based, primarily, on the problems of, generally, crossing London, not with movements necessary to get onto the MML<sup>321</sup>.

8.117 It is for that reason that the Long Distance forecasts RUS does not refer to the MML as a main route for growth<sup>322</sup>, but, rather, the WCML and other routes. Mr Smith's suggestion that this was because the MML would feed London, which was not a long distance, ignores the fact that the main locations for freight were from the

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<sup>315</sup> See Inspector's Report, 9/CD/8.2, para. 16.70.

<sup>316</sup> TR3.

<sup>317</sup> BW Gallop Rebuttal, 9/LPA/2.19, Appendix A, pges 83-84.

<sup>318</sup> Pg. 5-6, BW Gallop Rebuttal, 9/LPA/2.19.

<sup>319</sup> XX, MR

<sup>320</sup> BW Proof 9/LPA2/2, para. 9.28 – 9.29.

<sup>321</sup> See Inspector's Report, 9/CD/8.2, para. 7.273 – 7.279 and 16.70.

<sup>322</sup> BW Rebuttal to NG, Appx A, pg 84.



North and other long distances, a point he acknowledged<sup>323</sup>. While he was on the steering group which was consulted on that RUS, he did not write any part of it and could not recall if there was any comment by his steering group on the relevant part of the document<sup>324</sup>.

8.118 It was in part for this reason that the appellant has concentrated on the likelihood of the MML being upgraded or having the potential to take up the stress which is likely to be experienced on other lines. However, the MML will itself, like the WCML<sup>325</sup> be at capacity in 2020<sup>326</sup>.

8.119 As for the likelihood of upgrades being proposed on the MML, the numerous instances of proposals being made to upgrade rail facilities should be noted<sup>327</sup>, only to be either delayed very significantly or not carried into effect. Mr Gallop did not disagree with Mr Wilson's examples in his rebuttal<sup>328</sup>.

8.120 The appellant has relied heavily on the Strategic Railfreight Network strategy<sup>329</sup> to suggest that the MML is likely to be upgraded. It is to be noted that while a number of possibilities (and that is all they are) are proposed, a key aspect will be the Routes to the North study which may discount this route entirely from further works. The dependency of the MML upgrading on this study was confirmed by Mr Gallop.

8.121 It is also to be noted there are specific examples where the apparent upgrading of the MML is considerably less than certain. In the Network Rail RUS<sup>330</sup>, in respect of electrification, the potentially unlimited benefits of electrification were noted. However, by July 2009, it was pointed out<sup>331</sup> that the Government was considering the proposals and, in the East Midlands draft RUS<sup>332</sup> (August 2009), the potential for electrification was still being considered.

8.122 In a similar way, it is clear from the Network Rail Business Case<sup>333</sup> that there are some significant doubts about the business case for upgrading of the MML and, in looking at ways to assist with deep sea intermodal rail carriage, no schemes are considered to be relevant by the DfT<sup>334</sup>. Those points are compounded by the fact that of the schemes identified by Mr Gallop as likely to happen with the proposals, none have committed funding<sup>335</sup>; this was not rebutted by Mr Gallop.

8.123 In order to suggest that Radlett will be able to overcome the patent disadvantage that it has in encouraging traffic from the domestic market, the appellant has referred to the potential for obtaining a northbound connection to the site. This is a wholly speculative suggestion and should be given no weight in this

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<sup>323</sup> See GS, Xx.

<sup>324</sup> XX, MR.

<sup>325</sup> See Gallop Apps, Appx L.

<sup>326</sup> See extract, para. 1.9.

<sup>327</sup> BW Gallop Rebuttal, pg. 7.

<sup>328</sup> XX, MR.

<sup>329</sup> 9/CD/5.4.

<sup>330</sup> Gallop Appx J page 76.

<sup>331</sup> See Appx K, Gallop.

<sup>332</sup> See pages 9-10, 9/CD/5.5.

<sup>333</sup> Gallop, Appx H, pages 38, 43-44.

<sup>334</sup> See BW Appx N, pages 71-72.

<sup>335</sup> BW, EC.

case; Mr Gallop accepted that he was placing no weight on it. In addition, first, this connection is not proposed as part of this application. Second, there is no evidence that it is feasible. Third, there is no evidence that the appellant controls sufficient land to enable this to happen. Fourth, it was not, as Mr Tilley acknowledged, the subject of assessment in the ES<sup>336</sup>. The reason why the appellant is perhaps intent on referring to it is that they are mindful of the SRA guidance which indicates the need for a two-way connection<sup>337</sup>.

*(iii) Channel Tunnel Traffic*

8.124 As Mr Gallop accepted, in the absence of W9 gauge, no intermodal trains will be able to get to the site. It is, of course, as a result of this, that the appellant has now agreed to undertake gauge clearance to W9 as part of its conditions. It is said that this was offered at the time of the last inquiry. This was not identified in the statement of agreed facts with Network Rail and it was not in the conditions offered at the time of this inquiry. There was no suggestion that this was actually being offered, whatever was the belief of Mr Cleland in the letter he produced previously<sup>338</sup>. It is certainly clear that the W9 clearance is not achieved automatically through W10 gauge enhancement and W9 is not “nested” in W10.

8.125 It should also be noted that the inability to gain access from the Channel Tunnel because of the gauge restrictions was not something that had been raised before Inspector Phillipson. As a result, it is important to decide what the significance of this is. Inspector Phillipson considered that, as part of the reasoning why the development would act as an SRFI, there would be access to various destinations. As a result of the W9 gauge restriction, no intermodal service from the channel Tunnel can access the Site until gauge clearance is undertaken.

*(iv) Deep Sea Intermodal*

8.126 The problem with Radlett is that it is a short distance from the primary deep sea ports, particularly Felixstowe and Southampton; at distances under 120 miles or less rail is commercially not cost effective against road movements to ports<sup>339</sup>; Mr Gallop accepted that as a generality, that was so<sup>340</sup>. It will be recalled that, in RX, it was suggested that this contradicted what Mr Wilson said about short distance haulage domestically<sup>341</sup>; that is an unfair depiction of his evidence which distinguishes between the economics of short haul in the context of deep sea port traffic<sup>342</sup> and domestic traffic – that is unsurprising given that different considerations apply to each. In any event, Mr Smith accepted that short haul, if not used as an intensive service (which he would not define), would be uneconomic without a rail promotion fund. His examples of movements to ports given in EC were all notably long-distance<sup>343</sup>.

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<sup>336</sup> RT, I's Qs.

<sup>337</sup> Para. 4.32, 9/CD/5.1.

<sup>338</sup> CB/1.9

<sup>339</sup> Para. 9.5, BW.

<sup>340</sup> NG, XX.

<sup>341</sup> See paragraph 9.26.

<sup>342</sup> Para. 9.5, BW Proof.

<sup>343</sup> XX, GS, MR.

8.127 The purpose of the rail promotion subsidy<sup>344</sup> is specifically to make up for the additional disadvantage that would be caused to the rail offer pending enhancement. It is to be remembered that the rail promotion subsidy is required in addition to the Government rail subsidy (REPS) which will be insufficient because it is calculated on an efficient use of the rail system, that is, by standard wagons amongst other matters.

8.128 Mr Wilson has indicated how long the subsidy would last using pocket and well wagons; on the basis of the subsidy currently provided to Felixstowe (and it is clearly stated as being so in his rebuttal<sup>345</sup>), it would last about 125 days; while this may be longer with fewer trains or when applying the subsidy for Southampton, it would not be significantly greater. Mr Gallop did not seek to disagree with the calculations that had been undertaken by Mr Wilson<sup>346</sup>. Even if other assumptions are used, it is clear that the Appellants were previously suggesting the fund would only last for 2 years<sup>347</sup>; once it has run out, deepsea traffic will be uneconomic.

8.129 The ability to make the rail offer more attractive must, ultimately, rest on the necessary gauge enhancement and not on a finite and limited rail promotion fund.

*(e) The Cost of Gauge Enhancement*

8.130 In the absence of gauge enhancement, the facility will inevitably fail to be an SRFI. It simply cannot, in the absence of a gauge greater than W8 achieve the competitiveness associated with it once the rail promotion fund has run out.

8.131 Inspector Phillipson was content that the conditions which were proposed would be fulfilled and that the further works, including gauge enhancement would be carried out<sup>348</sup>. That conclusion was based on the belief that it was unlikely that a development would "incur expenditure on the scale required to provide the rail facilities and then not use them" and that occupiers, who would be expected to pay for the services "would have little incentive to come to the Radlett site, as opposed to another non-rail connected facility nearby, if they did not intend to make use of the rail facilities provided". There are two points to note on this conclusion. First, the decision to upgrade would be based primarily on financial considerations (albeit informed by Government subsidies) and no evidence was provided to the inquiry as to likelihood that the costs, in the region of £30 millions, would make this viable. Mr Gallop confirmed that was the case. Second, the conclusion as to what occupiers might do was reached without any market research or the level and extent of the service charges either with or without gauge enhancement. Again, that was confirmed by Mr Gallop<sup>349</sup>. Inspector Phillipson's conclusion was, with respect, reached without any detailed evidence being presented on the point at all.

8.132 In the present appeal, again, the Appellant has provided no evidence to establish that the economics of the further gauge enhancement would clearly favour enhancement; nor is there any evidence that the service charges would be such as to

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<sup>344</sup> See the section 106 agreement.

<sup>345</sup> See para 7.10, BW Rebuttal Gallop, 9/LPA2.19.

<sup>346</sup> Confirmed, XX, NG.

<sup>347</sup> Inspector's Report, 9/CD/8.2, para. 7.289.

<sup>348</sup> Inspector's Report, 9/CD/8.2, 16.153.

<sup>349</sup> XX, NG.

discourage occupation by anybody other than persons who wanted to use rail. The decision to upgrade will now, as before, be decided on economic grounds. It is to be remembered that, as drafted, the development is capable of being built out to 275,000m<sup>2</sup> if Network Rail requires gauge enhancement to W9 and W10 on both the Junction Road junction and Dudding Hill legs before further trains are allowed on the network. On this basis, the floorspace could be built out almost totally without any gauge enhancement being carried out at all.

8.133 In order to avoid the obvious potential for either of these unacceptable eventualities, the Council has put forward alternative conditions<sup>350</sup> which have been wholly rejected by the appellant and described as yet another attempt to taint the Council with malpractice, as “wrecking conditions”; that is a surprising suggestion since, if the appellant is so sure that there will be gauge enhancement, the conditions ensure that they will be done. It is to be recalled that the Council’s suggestions do not require works to be done any sooner than the appellant’s conditions suggest (although the appellant did not seem to understand that); they simply require approval sooner.

*(f) The Context: Current Need and Other Facilities*

8.134 The merits of this proposal must be seen against the backdrop of other, recently permitted developments. It is right, of course, that Inspector Phillipson’s conclusion was that there was still a need for SRFI in spite of permission having been granted for London Gateway and Howbury Park which together provide some 1,200,000m<sup>2</sup> of rail-connected warehousing floorspace.

8.135 However that was a conclusion reached on the basis of him having limited knowledge about London Gateway<sup>351</sup> and being ultimately unconvinced that it was capable of being an SRFI: his “understanding” was that the proposal was “essentially for a port and associated port-related development and there is no evidence that its owners propose or intend to permit it to be used more widely”<sup>352</sup>.

8.136 That understanding has been corrected in the evidence provided by Mr Wilson<sup>353</sup> in which it is clear that London Gateway is not being regarded simply as a port development: “In addition to a major deep sea facility, London Gateway port will combine with Europe’s largest logistics park, offering 9.5 million square feet ... for distribution, manufacturing and high tech sectors. The logistics park will offer individual units in excess of one million square feet”. The Inspector also took that view because it appeared that EERA was of the view that London Gateway was a port; that is not what they have indicated in the most recent letters<sup>354</sup>. Mr Gallop accepted that London Gateway is capable of being an SRFI<sup>355</sup> and is not restricted to port users.

8.137 It is clear, then, that matters have moved on since the analysis of Inspector Phillipson<sup>356</sup>. It is also to be noted that Mr Gallop acknowledged that, just as is the

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<sup>350</sup> Proposed condition 12.

<sup>351</sup> Page 191, Inspector’s Report, 9/CD/8.2.

<sup>352</sup> Ibid.

<sup>353</sup> Appx A, pg. 2.

<sup>354</sup> JH Apps. Pg. 66.

<sup>355</sup> NG, XX.

<sup>356</sup> See Inspector’s Report, 9/CD/8.2, pg. 191(iii).

situation in the West Midlands, London Gateway is capable of subsisting with Howbury Park, despite their close proximity<sup>357</sup>. It is also notable that Mr Smith pointed out that DBS would be serving London Gateway.

8.138 The further difference between the current assessment of Howbury Park and London Gateway and that which was the subject of consideration by Inspector Phillipson is that, in the present case, there is significant and compelling evidence that the distribution area of potential occupiers is such that these two sites will be capable of meeting the strategic need.

8.139 In these circumstances, where there can be nothing less than (and the Council says there should be considerably more than) clear doubts about the ability of Radlett to operate as an SRFI and in circumstances where Radlett will do such massive damage to the Green Belt, there is no especial need or urgency which should override such uncertainties.

8.140 The recent correspondence from the DfT<sup>358</sup>, properly understood, in fact supports this approach. The letter points out that Appendix G informed SRA policy on the number of SRFI required and that the SRA policy remains relevant. Appendix G identifies that only some 400,000 square metres was to be provided to achieve the London and the South East targets.

8.141 The letter notes that more than the predicted amount of floorspace has been provided in particular areas, but that there remains a significant under-provision in some parts, particularly London, the South-East and Eastern England; it is looking at the amount actually provided, as opposed to what has been permitted<sup>359</sup>.

8.142 What this does not say is that, should Howbury and London Gateway be built out, there would still be a requirement for 3-4 SRFI. Given the relevance of Appendix G of the SRA policy<sup>360</sup>, it follows that, should these come forward within the relevant timescale, they will take up that floorspace requirement. It is, of course, right that this level of floorspace is not a ceiling; the point, however, is that the level of need is significantly reduced. That means that, when looking at Radlett, the position has changed: it is not needed to meet the need identified to 2015 and the weight which should be attached to Radlett should be correspondingly reduced.

*(g) General Support of Network Rail*

8.143 The appellant prays in aid the support of Network Rail in support of Radlett. Mr Wilson, rightly, described that support as "very weak"<sup>361</sup>.

8.144 It should be noted that their support is "in principle" only and in circumstances where the progress of Radlett through the formal approval process (the GRIP process), has only (as it was previously) passed the first stage, GRIP stage 1. There is also a Basic Services Agreement which is acknowledged by Mr Gallop as an agreement where all that is required is *prima facie* feasibility.

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<sup>357</sup> NG, XX.

<sup>358</sup> Appx M, BW Proof 9/LPA2/2.

<sup>359</sup> Agreed, NG, XX, MR.

<sup>360</sup> 9/CD/5.4.

<sup>361</sup> BW XX MK

8.145 It is quite clear from their recent responses to the inquiry<sup>362</sup> that it is Network Rail's statutory responsibility to engage with the appellant. It is also quite clear that they are significantly less committed in their support than they were previously, particularly about the availability of paths. In the event that it became clear that the development could not gain access to the network, it is obvious that their support would not cease. Inspector Phillipson placed considerable reliance on the fact that Network Rail, as the "guardians of the UK rail network"<sup>363</sup> were "fully supportive"<sup>364</sup> of the proposal. Their "in principle" support is considerably more circumspect than it was when, in 2007, it was said there were "no concerns"<sup>365</sup> about gaining access to the site from the MML. That statement has not been repeated in this inquiry.

*(h) DB Schenker's Support*

8.146 Considerable weight was placed by Mr Tilley<sup>366</sup> on the support of DB Schenker for Radlett. An agreement has, we are told, been entered into between the Appellant and DB Schenker but, despite being sought by the Council in October 2009, it was not disclosed on the basis of commercial confidentiality. It cannot be seen, therefore, whether there is a number of trains below which DBS can walk away. It cannot be seen what, if any, is the financial investment being made by DBS.

8.147 It is, to say the least, surprising that this is commercially confidential – why, for example, can the financial elements not be blanked out? As a result of the refusal to give any information at all about the document when questioned upon it (on issues which cannot be regarded as confidential matters), the significance of the support provided by DBS must be reduced in weight.

8.148 It was also noteworthy that Mr Smith indicated that there was no particular reason why Radlett was chosen by DBS; it was very probably because DB Schenker was looking to expand.

*(C) Alternatives*

8.149 The appellant accepts that it is necessary to show that there is no better site than Radlett. Mr Tilley accepted that the "evidential burden"<sup>367</sup> was upon the Appellant to meet the test set out by Inspector Phillipson that "unless and until a convincing case is presented showing that there is no suitable and available alternative to the appeal proposal which would meet the need for an additional SRFI to serve London and the South East, and in doing so cause less harm to the Green Belt than would be the case at Radlett planning permission for the appeal proposal should be refused".

8.150 The appellant has failed, again, to provide an adequate assessment of alternatives in this case. There are two essential bases on which this is the case:

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<sup>362</sup> 9/HS/INQ 2.0.

<sup>363</sup> Para. 16.71, Inspector's Report, 9/CD/8.2.

<sup>364</sup> Para. 16.71, Inspector's Report, 9/CD/8.2.

<sup>365</sup> Para 15.2, Inspector's Report, 9/CD/8.2.

<sup>366</sup> EC, RT.

<sup>367</sup> Para 204, Inspector's Report, 9/CD/8.2.

(a) First, it has restricted its search to the north-west sector;

(b) Second, and in any event, even if it was correct to restrict its search to the north-west sector, the assessment was wholly inadequate.

8.151 It is to be noted that each of these aspects contributed to the reason for refusal<sup>368</sup>.

*(a) Whether the Assessment should have been restricted to the North West Sector*

*(i) Introductory Remarks*

8.152 The decision to restrict the site search to the north-west sector is critical; Mr Tilley accepted that should the Secretary of State decide that the search should have gone beyond the north-west sector, the analysis was fatally flawed<sup>369</sup>.

8.153 The basis of the appellant's decision<sup>370</sup> to restrict the alternatives site search was because of the Inspector's conclusion in, essentially, one paragraph of the report<sup>371</sup>; it is worth repeating this paragraph:

*To my mind, a sectoral approach to the identification of sites for SRFIs has considerable merit, notwithstanding the lack of policy support for the approach. I say this because given the size of London and the levels of traffic congestion prevalent in the region, it is, in my opinion, very questionable as to whether a SRFI located to the east of London in, say, the Thames Gateway could efficiently serve development to the west of London such as that found around Heathrow, Slough and outwards along the M4 corridor. Journey times by lorry between these areas would be significant, which would increase road haulage costs and potentially reduce the environmental advantage which rail haulage to the SRFI would confer. Indeed, when challenged on this point the Council's rail witness, Mr Thorne, conceded that it would not be sensible to serve the north west sector of London from London Gateway. Equally he agreed that a site at Alconbury would not effectively served north-west London.*

8.154 As Mr Tilley agreed<sup>372</sup>, this analysis was based on the lorry mileage benefits that would derive from locating an SRFI in one part of London as opposed to another and was the only significant basis for Inspector Phillipson's view of the appropriateness of the North West sector.

8.155 As Mr Tilley accepted, however, if the occupiers of SRFI warehousing distribute on a regional basis comprising London and the South East, there is no benefit in lorry mileage terms in being in one part of London as opposed to another, so long as the site is reasonably close to London<sup>373</sup>.

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<sup>368</sup> See the Council's SoC, para. 8.2 and R for R 4.

<sup>369</sup> RT, XX, MR.

<sup>370</sup> See para. 2.4 of Technical Report 6, 9/CD/2.8.

<sup>371</sup> Para. 16.125, Inspector's Report, 9/CD/8.2.

<sup>372</sup> XX, MR, RT.

<sup>373</sup> XX, MR, RT.

8.156 It is clear from his analysis that the Inspector's assessment of the North West sector was, given the above, based on an assumption that the distribution area of those likely to occupy the premises would be within the North West sector. He had no evidence to that effect. There was no market-based evidence before Inspector Phillipson which informed that conclusion. Mr Tilley accepted the extent of the evidence before Inspector Phillipson which informed the Inspector's conclusions<sup>374</sup>; it contained no market analysis and was in very limited terms. It simply did not provide a basis for the conclusion that was reached.

8.157 It is plainly critical to understand the distribution systems of those expected to occupy the SRFI. If there is the potential for all, or a majority, of those who will be occupying the premises to distribute to locations on a regional basis comprising London and the South East, there is simply no basis for the restriction.

8.158 It seems, given the evidence of Mr Gallop, that it is likely to be argued that it is impossible to identify what distribution areas of the potential occupiers of Radlett is likely to be. If that is its case, that must be regarded as a wholly unacceptable basis for reaching the judgment the search area for an SRFI should be restricted to the North West sector.

8.159 Additionally, it is likely that there will be a concentration by the Appellant on whether there is a market within the North West sector for the SRFI. Care should be taken to discount that point in the context of the alternatives issue; it is relevant to whether there is a market for warehousing in the North West sector but it is irrelevant to whether the search for warehousing to meet the need is to be restricted to that area. Mr Tilley was clear that the demand for warehousing in a particular area would not be a reason for restricting an alternatives site search to a particular area in circumstances where it was not contended that there was no market outside that area<sup>375</sup>.

8.160 The point is that the alternatives assessment is to undertake a proper search as to whether other better alternatives exist for the limited SRFI need in London and the South East. If the evidence is that the SRFI are footloose because of the distribution areas that either all or the majority of potential occupiers could have, then the fact that there may be a market for warehousing in a particular area does not impact on that at all. As Mr Gallop acknowledged, acting fairly, the search should in those circumstances be widened.

*(ii) The Appellant's Evidence on Distribution Areas*

8.161 The evidence which was presented by the appellant to this inquiry, to the extent that it engages with the distribution area of potential occupiers at all, is either unpersuasive or indicates what the appellant alleges.

8.162 The basis of the appellant's case on this issue is set out in one section of the ES as informed by Appendix A10<sup>376</sup>. Technical Report 3 sets out in effect, in two sections, the entirety of its case for the restriction to the North West sector.

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<sup>374</sup> See JH Rebuttal evidence, pages 9 – 10.

<sup>375</sup> XX, MR, RT

<sup>376</sup> Technical Report 3.



8.163 The first is at 3.2.1 which is an analysis based on roads not informed by any market analysis. The second is at paragraph 3.2.2 which refers to the evidence note provided by King Sturge at Appendix 10 of Technical Report 6. The majority of that document refers to the market demand and supply of areas in the North West sector without any reference to the scale of the occupiers or their distribution areas by reference to such scale. The only part of the document which does that is contained in one paragraph of the appendix; this refers to larger users which are more 'footloose' than smaller occupiers. The "large distributors" referred to in the King Sturge report are those occupying the scale of warehousing proposed at the site (the smallest unit will be 500,000 sq ft); the example (in fact, the only example in the document) given of such occupiers was AS Watson, who moved from Croydon to Dunstable<sup>377</sup>; that indicates its distribution area was to the whole of London and the South East, not simply a sector of London. In RX, it was suggested that King Sturge were aware of this move; that is, of course, significant – given the context of the statement (that bigger facilities are 'footloose'), it establishes the distribution area is wider than simply sectoral.

8.164 In RX of Mr Tilley, it was suggested that the King Sturge report did more than look only at the market area; reference was made to the section of the Report which referred to the Lambert Smith Hampton report<sup>378</sup> but that document simply deals, again, with market areas, not what distribution areas the occupiers are serving. There was also some concentration in RX of Mr Tilley on the rental levels of various areas in the LSH report<sup>379</sup>; that is no evidence, at all, of the distribution areas of the occupiers of the units. Again, the point needs to be made absolutely clear but that the relevant issue is not the market in which the buildings are to be located but the distribution area of its occupant.

8.165 Turning to other live evidence, Mr Gallop confirmed that he did not indicate anywhere in his evidence what the distribution area of potential occupiers might be<sup>380</sup>. While in his rebuttal he referred to the distribution area of certain food retailers, he confirmed that he was putting forward no evidence to indicate: (a) the degree of interrelationship between distribution areas of each of the distribution centres; (b) the extent to which certain centres dealt with particular lines and had distribution areas over a regional basis in that way; (c) whether there was a move to consolidating any of those distribution centres. Mr Gallop also indicated that, in terms of occupiers "the observed situation" is that there is a "mixture" and is constituted by "shades of grey, not black or white". The picture he described was of various locations having different sorts of occupiers; that suggested, perhaps for the first time, that the distribution areas could be wider than the north west sector. It cannot properly be concluded, therefore, that the SRFI will be occupied by distributors distributing to the north-west sector; in such circumstances, restriction to the north-west sector was, quite plainly, unjustified.

8.166 The only other piece of evidence provided in the Technical Reports is contained in paragraph 3.3 of Technical Report 3 which is a description of the GB freight model which does not show a breakdown by reference to London and does not establish that the market is in some way restricted to the north west sector.

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<sup>377</sup> See 9/LPA/6.11.

<sup>378</sup> See BW's Appendix F.

<sup>379</sup> Page 9-10, Appx f, BW Apps.

<sup>380</sup> XX, MR

8.167 Mr Smith confirmed<sup>381</sup> that he was not providing any evidence on where potential occupiers of the SRFI would be distributing to, in spite of suggestions from Mr Gallop and Mr Tilley that he would; that is unsurprising given that he has no direct experience of dealing with intermodal sheds.

8.168 It appeared at one stage that Mr Smith would be providing evidence on the distribution areas of potential occupiers. The appellant relies on the evidence of DB Schenker and the distribution centres of food retailers within the London area<sup>382</sup>.

8.169 In short, the appellant's evidence is entirely lacking that the units will be occupied primarily by those who will be distributing to within the north west sector. Further, as Mr Tilley accepted, the appellant has no evidence that the majority of the units will be occupied by distributors who will be distributing to within the northwest sector. In spite of this evidence, it is noticeable that within the Technical Reports to the needs case, there is no recognition that there will be delivery outside the North West sector.

*(iii) The Council's Evidence*

8.170 On the other hand, there is a considerable amount of evidence indicating that the North West sector is not the primary distribution area of those likely to be occupying an SRFI. It is clear, even from a cursory glance at the Council's case previously<sup>383</sup>, that the extent of evidence now relied upon is considerably greater than previously and looked, essentially, at the market basis for locating within the North West sector, rather than the distribution area of those occupying the SRFI.

8.171 Mr Gallop indicated that he would be interested if a public body had indicated what the likely distribution areas of likely occupiers of the SRFI would be. The SRA guidance indicates clearly what that distribution area will be:

(a) SRFI "operate such as to serve regional areas, they are also key components in a national and international network"<sup>384</sup>;

(b) "Occupiers are likely to be major logistics service companies and national and multi-national manufacturers and retailers";

(c) SRFI "will include intermodal (container) handling and also the accommodation of large-scale warehousing, processing or manufacturing facilities. Occupiers of such Strategic RFI will often include businesses which choose to locate their national and regional distribution centres at such strategic locations."

8.172 Given that the SRA felt able to identify what the distribution areas of likely occupiers would be, it is surprising that Mr Gallop did not.

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<sup>381</sup> XX, MR, GS.

<sup>382</sup> See Gallop Rebuttal, appx A.

<sup>383</sup> Section 7.205-212.

<sup>384</sup> 4.4, CD/5.1

8.173 In terms of regional policy (T10 of the East of England Plan<sup>385</sup> and T3 of the South East Plan<sup>386</sup>) these refer to SRFI serving London and the South East, not some sectors. In addition, T10 no longer refers to an SRFI being located in the Northern Quadrant as it did before Inspector Phillipson; that accords with the view of EERA who believe that there is no support for an SRFI to be located in this quadrant<sup>387</sup>. It was suggested<sup>388</sup> that the description at 7.25 strengthens the North West sector; that attempt was one which ignores the fact that the previous<sup>389</sup> draft indicated that an SRFI would be in the northern quadrant but now does not. The description is describing the "region" in paragraph 7.25, not the North West sector.

8.174 Professor McKinnon's assessment (whose expertise was not challenged<sup>390</sup>) has indicated the extent to which non-food retailers will generally have about 3 distribution centres and that food retailers have a different role<sup>391</sup>. The most that could be said by Mr Tilley as a criticism of this analysis is that it<sup>392</sup> was "broadbrush"; not the most extreme criticism.

8.175 SDG commissioned market research to establish the extent to which distributors would be likely to occupy the SRFI. It was suggested that the number of responses was insignificant. However, there are two points to note about this criticism. First, the companies themselves were significant concerns who distribute in aggregate, millions of miles. Second, absolutely no rebuttal evidence was provided by the Appellant to establish the contrary position. The conclusions arising from research are absolutely clear: the approach of potential occupiers would be to locate a single distribution centre in the South East which would serve that area.

8.176 Mr Wilson was cross-examined on the basis of various documents which it was suggested indicated there was a sectoral approach to warehousing in London. The patent shortfall in this line of XX was that it concentrated on the sectoral approach to the location of warehousing, rather than the actual distribution areas of those likely to occupy the SRFI; in that sense, it entirely missed the point. The Lambert Smith Hampton report<sup>393</sup> simply describes the areas of market demand, not the distribution areas of those who occupy the warehousing; the same is true of the DfT report on container freight<sup>394</sup>.

8.177 Finally, as a simple point to note, no other search area for an SRFI has been as localised as the appellant's<sup>395</sup> which either looked at the whole of London ("KIG") or large parts of it (at Howbury).

*(iv) The SDG Alternatives Assessment*

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<sup>385</sup> 9/CD/4.1.

<sup>386</sup> 9/CD/4.2.

<sup>387</sup> JH Rebuttal, Appx WH11, October 09 letter.

<sup>388</sup> RX RT.

<sup>389</sup> HS1.12.

<sup>390</sup> RT, XX, MR.

<sup>391</sup> See Appx D, BW Apps, para. 1.3.

<sup>392</sup> See RX RT

<sup>393</sup> Appx F, BW Apps.

<sup>394</sup> Appx N, BW Apps.

<sup>395</sup> See the plan at page 84, BW Proof 9/LPA2/2.

8.178 In summary, therefore, the evidence establishes quite clearly that the search assessment should have been undertaken on a much wider basis.

8.179 Had that been done, as the SDG analysis<sup>396</sup> has shown, there are many sites which are better able to provide an SRFI whilst causing less harm than Radlett. However, as Mr Tilley acknowledged<sup>397</sup>, the appellant, whilst it may have criticised parts of the methodology, did not suggest that any of the ultimate criticisms were wrong.

8.180 In these circumstances, there can be no real doubt that, had an assessment reflected the regional nature of the distribution occupiers who are likely to occupy the SRFI, other, better locations would have been found. The alternatives analysis is, consequently, wholly flawed.

8.181 Finally, one issue which may be raised by the appellant in support of the submission that there was no need to go beyond the North West sector, is that the Howbury Park study, on a wider search, did not find a site better than Howbury. No weight should be put on such an argument if it is made (and it should be noted that it was not put in XX), for two reasons. First, it was no part of the appellant's case that it had not verified the accuracy of the results contained in the Howbury analysis. Second, the Howbury Park analysis simply looked at alternatives as to whether they were better or worse than Howbury, not whether they were better or worse than Radlett. In those circumstances the fact that the Howbury analysis searched outside the Radlett area is not a basis for justifying the appellant's failure to undertake its own alternatives analysis.

*(b) The Analysis of Alternatives in the North-West Sector*

8.182 In any event, even were it to be considered that the appellant was correct to consider only the north-west sector, the analysis itself is so defective on numerous levels that it should be regarded as unfit for its purpose.

*(i) The choice of methodology*

8.183 The appellant took essentially the approach of following the alternatives site assessment carried out in the Howbury Park appeal<sup>398</sup> on the basis, it appears, that it had been accepted in that appeal by various parties. The acceptance of that methodology does not, however, justify its use in this case. There was no specific endorsement of the analysis by Inspector Phillipson in the Radlett appeal\*. No party had criticised its methodology and, consequently, Inspector Phillipson had little reason to look at it further. A very good example of his lack of scrutiny of the analysis in that case is demonstrated by the fact that Inspector Phillipson accepted a 2 km limit from a rail link as an appropriate sifting criterion; that approach was, however, rejected by Inspector Phillipson in the Radlett appeal<sup>399</sup>. It was suggested<sup>400</sup> that the study was looked at "quite thoroughly" in the lead up to the inquiry but

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<sup>396</sup> BW Appx J.

<sup>397</sup> RT XX MR.

<sup>398</sup> 9/CD/6.2.

\* Inspector Phillipson dealt with both the Howbury Park appeal and the first Radlett appeal.

<sup>399</sup> See Inspector's Report, 9/CD/8.2, pg. 186, fn 2.

<sup>400</sup> RX RT

nothing more specific was given to how it was looked at and for what purpose. It was suggested that the approach was also consistent with that taken in KIG<sup>401</sup>; there was no evidence, at all, however, to support that contention.

8.184 When each of the stages of the analysis is considered there are numerous problems with it. It is to be noted that each of these problems, on which the Council's decision was based, were pointed out to the Appellant on 25 August, some 3 months before the appeal. The continual suggestion that the Council had not indicated its concerns must be seen in the light of that fact.

*(ii) The initial site search*

8.185 The appellant used a number of criteria and methods in order to identify sites for the initial stage of consideration. A number of these were either unnecessarily restrictive or had the ability to remove potentially good sites. Only the primary problems are dealt with.

8.186 First, the search removed from consideration those sites which were regarded as unavailable because they were either allocated for<sup>402</sup> housing or amounted to existing employment land unless the remaining vacant area was greater than 40 hectares. The effect of taking such a restricted area was to quite clearly unnecessarily restrict the opportunities for finding alternative sites.

8.187 As for residential allocations, the effect of taking this restricted approach has been to exclude potential sites. The logic of the appellant's approach was flawed. Mr Tilley suggested that the sites which were allocated for housing simply could not receive planning permission for an SRFI; this was because there was a "huge pressure"<sup>403</sup> for housing. It is to be noted, of course, that the appellant's basis for its current application is that there is an overriding need for SRFI which is sufficient to justify planning permission in the Green Belt. The needs are countervailing, but to simply reject potential sites on the basis of another need is plainly doing away with sites which may be appropriate alternatives<sup>404</sup>. The illogicality in rejecting such allocations is compounded by the fact that allocations of a mixed nature were considered; it is difficult to understand why a mixed use including residential can be separated from an allocation for housing and treated differently. The potential for smaller areas of housing (that is, smaller than 40 hectares) to be considered as part of a larger area for the location of an SRFI was also rejected. This issue of availability was raised by SDG in August 2009, but was not acceded to.

8.188 Reference was made to PPG13<sup>405</sup> in reinforcing the reason for rejecting housing<sup>406</sup>. It is to be noted, however, that this was not a factor used in the assessment and was raised, in fact, in RX. In any event, it is a bad point – if PPG13 is so relevant to the issue, then mixed uses should not have been considered either, but they were.

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<sup>401</sup> RX RT

<sup>402</sup> See para. 5.1.5 of Technical Report 6, 9/CD/2.8.

<sup>403</sup> RT, EC and XX, MR.

<sup>404</sup> CD

<sup>405</sup> Para. 18

<sup>406</sup> RX RT.

8.189 The approach towards employment sites was similarly restrictive. Unless sites with vacant employment allocations of 40 ha were found, existing employment sites were rejected. Mr Tilley's answer to this was that there were not many employment sites in the north-west sector and it would be impossible to bring the many interests on an employment site together to construct an SRFI. However, the example he cited of Slough Industrial Estate cannot be regarded as a fair example – he was describing a large industrial estate, not a smaller, less successful estate. The fact that Mr Tilley stated that such estates did not exist cannot be regarded as credible and, importantly, was not justified by any audit of sites that had been rejected on this basis. Mr Tilley suggested that in his response<sup>407</sup> he had given information on industrial sites; he did not; in fact, he simply rejected SDG's criticism on this point<sup>408</sup>.

8.190 Another part of the initial search system was to exclude sites which were more than 5 kms from a railway line<sup>409</sup> (see paragraph 5.2.3). The reason for excluding sites beyond this distance was two-fold. First, it was determined by a financial assessment of the cost and, second, it was determined by the difficulties of topography over this distance and the environmental effects of undertaking the connection<sup>410</sup>. As for the financial aspect, that was, quite plainly, an impermissible criterion; such an approach had, rightly, been rejected by Inspector Phillipson when he concluded that using financial elements as a justification for the criteria was impermissible in the absence of an overall viability analysis<sup>411</sup>.

8.191 As to the topographical justification, no detailed analysis had been undertaken to establish that there was an unacceptable environmental effect when accessing these areas (as opposed to an engineering issue which was subsumed within the financial element). There has been a suggestion that this point was somehow raised late in the day. It was, however, a point raised in August and SDG's critique was peremptorily dismissed. The appellant has now been, through this inquiry, trying to plug the gaps on this issue.

8.192 What is notable, however, is that some of the areas which were rejected by CGMS in their response to this criticism<sup>412</sup> (Areas 1 and 3) were not in the Green Belt<sup>413</sup>; patently, the decision to exclude these sites had the effect of removing potentially very meritorious sites without any detailed scrutiny at all. Further information<sup>414</sup> has again been provided on these areas, detailing some of the topography. Again, the points that are made seem to be an exercise in providing detail without giving any indication of how that establishes unacceptability: there is no reference to any of the topographical descriptions producing an unfeasible connection to a rail line. Moreover, it is now suggested that a further matter of relevance to one of the areas is that it is *proposed* Green Belt, which is, to say the least, an odd ground for restricting the search, given Radlett's location.

8.193 Part of the problem with the analysis is that it is not possible to identify what CGMS used as a definition for a "site" in their analysis. Again, this was a point which

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<sup>407</sup> HS/1.5

<sup>408</sup> Para. 31.

<sup>409</sup> Paragraph 5.2.3, Technical Report 6, 9/CD/2.8.

<sup>410</sup> See paragraphs 2.2.1. – 2.2.3 of Technical Report 6, 9/CD/2.8.

<sup>411</sup> Para. 16.30 and fn2, pg 186, Inspector's Report, 9/CD/8.2.

<sup>412</sup> Appendix 4 of 9/HS/1.5.

<sup>413</sup> 9/LPA/6.10.

<sup>414</sup> See RT response to LPA/6.13

had been raised by SDG in its August 2009 report. Mr Tilley's reply to these points<sup>415</sup> did not actually describe what definition the appellant was using to identify a site. It was only in XX that Mr Tilly indicated in detail some of the criteria, including the need for the site to be "as flat as possible", "the right shape" and that the sites, from the map search which were actually taken forward were "representational" of a particular area of which there were 1000's of sites<sup>416</sup>. This "representational" aspect was a site search criterion that had not been referred to before. There had, quite plainly, been an earlier, unrecorded site sifting process which had led to the removal of numerous other sites.

8.194 These aspects are critical. Even if a considerable number of the sites which the Council was concerned about in the context of the Long List analysis have now been resolved, these points remain outstanding.

8.195 The overly restricted approach can be seen in CGMS' approach to the M3 sites. SDG had pointed out to CGMS, in its critique, that an area of land between the M3 and M4 had not been considered by CGMS as part of its site search. CGMS accepted the point<sup>417</sup> and undertook a search. 3 sites were found to the south of Wokingham but these were rejected on the basis that a road connection would have to go through Wokingham<sup>418</sup>. It was clear, however, that this was incorrect as it was possible to connect to the south-east of Wokingham onto the A329 and then to the A322 (which, as Mr Tilley later acknowledged, was an effective bypass to Bracknell) onto the M4 at a distance of some 27 kms to the M25.

8.196 The later response of Mr Tilley as to why these sites should remain removed<sup>419</sup> was on the basis of road issues again (which assessment did not apply, as Mr Tilley acknowledged, to the eastern most site) and the fact that the area had been included in a draft allocation to the Wokingham Core Strategy for housing. The allocation was stated to have been endorsed by an Inspector. However, inclusion in a draft allocation was not one of his criteria. In any event, this aspect was not known about at the time of the alternatives analysis. This negative approach might well be justified were it not the fact that none of these sites is in the Green Belt.

8.197 A further attempt was made to undermine these sites<sup>420</sup> by referring to the lack of road access<sup>421</sup>, but the key point is that, on the southern route referred to by Mr Tilley, it remains a high standard strategic route, well trafficked by HGVs.

### *(iii) The Long List Sifting*

8.198 The next stage of the process, having obtained the initial list of 118 sites was to apply a series of criteria, including a rail criterion. Before dealing with these various issues, it will be said that a large number of those questionably removed sites have now been resolved so that SDG's points are academic.

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<sup>415</sup> 9/HS/1.5.

<sup>416</sup> RT, XX, MR.

<sup>417</sup> Para. 25, 9/HS1.5.

<sup>418</sup> See 9/HS1.5, Appx 3.

<sup>419</sup> See 9/HS1.9, last 2 pages.

<sup>420</sup> CGMS response to LPA/6.13.

<sup>421</sup> Para. 4.

8.199 First, the point, if made, is inaccurate. There are still numerous sites that should have been considered at the short list stage<sup>422</sup>; Mr Tilley's most recent note has not resolved the position<sup>423</sup>. Second, the point is that each of the sites whose issues have been resolved have only been resolved by additional work being undertaken by Helioslough. The initial analysis was inadequate and it is not for the Council to make good defects in the appellant's own alternatives case particularly where the point has been raised by the Council at an earlier stage. The Council provided the critique to inform the debate, but it is not incumbent on the Council to fill the gaps in the appellant's case. It is wrong as a matter of principle to place a responsibility on the Council to do so.

8.200 In any event, it should be noted that, of all of the points raised in the critique by SDG as to sites which should stay in, none of them were accepted by CGMS, not one; its approach has not actually been to engage with the points raised by SDG but to reject them.

8.201 The appellant's long list sifting analysis is then considered. The points dealt with below derive from the critique undertaking by SDG.

8.202 With regard to the rail criterion in the Technical Report<sup>424</sup>, the appellant's only description of those aspects that would lead to a removal are phrases like "major engineering works" or when rail links will be in a "significant cutting" or if the rail line is "heavily used". Such phrases are wholly unclear; they do not amount, at all, to applicable criteria which would ensure that a particular site is excluded on clear and identifiable bases. These points did make a difference, in spite of what Mr Tilley indicated<sup>425</sup>, given that Denham was rejected, in part, on this basis. It was suggested that the alternatives site analysis by SDG used similar wording, but the point was that there was a clear scoring system applied to that, not simply criteria based on words alone.

8.203 A further, inherent failing in the assessment was the choice of criteria at the short list stage which had the effect of removing sites without any consideration being given of the degree to which they had rail benefits greater than, or landscaping impacts and other impacts lesser than, Radlett.

8.204 For example, there was no consideration of landscaping or other harm at all during the long list stage in respect of any of the sites; nor was this considered in the initial identification stage which produced the first list.

8.205 In short, the effect of the assessment was to remove 113 sites without looking at any of the harm issues, in spite of the fact that this was one of the primary issues being considered by Inspector Phillipson as necessary to establish that Radlett was a better site than others. The point is that, had these been identified, a more proactive approach towards road or rail issues would have been taken because of the clear benefits in landscape/visual/harm terms a site may have had.

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<sup>422</sup> See 9/LPA/6.3

<sup>423</sup> 9/HS/1.9.

<sup>424</sup> See para. 7.14, Technical Report 6, 9/CD/2.8.

<sup>425</sup> RX, RT.



8.206 Similarly, rail gauge was removed as a criterion in total (although it was kept in at Howbury<sup>426</sup>). Of course, had it been used as a sifting criterion in the same way as it was used in Howbury (which applied W8 as the cut off), Radlett would have failed. Again, the quality of the rail connection was a matter which Inspector Phillipson considered was a necessary consideration as part of the assessment. The additional importance of this approach is that the benefits of better gauge are wholly ignored at this stage; they do not allow a site to be weighed up against Radlett.

8.207 An example of a site which should properly have got through the long list was Langley, site 6<sup>427</sup>. Site 6 was excluded on the road access criterion at the long list stage; the road access criterion allowed new road building, but only if it did not then go through residential areas<sup>428</sup>. A new road was feasible but ended up accessing the A4 which had a small section of residential area. However, what was not considered was that this access was also the access used in the LIFE scheme in respect of which no overriding issue was raised by the appeal Inspector, Mr Self (see para. 13.364<sup>429</sup>); it is also the access being proposed in SIFE which, of course, went through to the short list stage.

8.208 The result of that approach, which was plainly wrong and unnecessarily restrictive, is that a site which had the potential to get through to the short list stage and thus have landscape and other impacts considered as part of the balancing process was unnecessarily rejected. It was suggested that the "better site" had got through<sup>430</sup>, but there had been no analysis of whether it was "better" in terms of other impacts, like landscaping.

8.209 Availability was another criterion which led to unfair removals. The approach in Technical Report 6 was to remove those sites which were regarded as being unavailable; one such site was White Waltham (site 14). This was regarded as being unavailable because it was in use as an aerodrome; it was then removed on the "duplicate" basis. That is surprising to say the least. However, as Mr Tilley acknowledged, should a site do well in the alternatives analysis of the appellant, it had a much greater likelihood of becoming available. It is also to be noted that other aerodrome sites, like Denham (site 30)<sup>431</sup> was not removed for being unavailable.

#### *(iv) The Mid Point Rejection*

8.210 Following the long list rejection, the appellant undertook a further stage of rejection<sup>432</sup>. Again, at this stage of the process at the application stage, there was no assessment of the degree of landscape and visual impact or noise impacts predicted by the use of the site as an SRFI so any comparative benefit of such sites was not considered.

8.211 There was no standard approach to this sifting stage. Some sites were rejected on the basis of being compared with other nearby sites and the best site was allowed to go through. This was the case for sites 15 – 18. Sites 16, 17 and 18

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<sup>426</sup> See 9/CD/6.2, para. 3.9.

<sup>427</sup> See Appendix 6, Technical Report 6, 9/CD/2.8 and see RT, XX, MR.

<sup>428</sup> See para. 7.18 – 7.21, Technical Report 6, 9/CD/2.8.

<sup>429</sup> 9/HS1.6.

<sup>430</sup> RT, RX.

<sup>431</sup> See Appendix 6, Site 30, Technical Report 6, 9/CD/2.8.

<sup>432</sup> Para. 7.32, Technical Report 6, 9/CD/2.8.

were removed from the short list because site 15 was better on road grounds. There was, at this stage, no other basis for the rejection. In short, no consideration was given at this stage as to how the other sites would fare against Radlett in relation to any other aspects of relevance.

8.212 Notably, it is only in Mr Tilley's further response <sup>433</sup> (despite the point first having been raised by SDG in August 2009) that these other sites were then tested against other matters, including Green Belt and landscape impacts. There was, as Mr Tilley acknowledged, however, no assessment of comparative landscape impacts in any detail and certainly nothing from Mr Kelly on this; in spite of the further notes that have been produced by Mr Kelly, there has been nothing more.

8.213 Further, what is noticeable is that the appellant's approach of simply comparing and contrasting these sites, in order to remove some of them from the list of assessment, prevented consideration of these sites being looked at in combination. Sites 15, 16 and 17 (as well as White Waltham) are all contiguous, lying in part on either side of the railway line (just like Areas 1 and 2 of Radlett), but they were not considered in that fashion. The result is that a combined site with greater potential benefits was not taken forward.

8.214 The Council submitted a note in order that <sup>434</sup> it could not be said that by not answering Mr Tilley's further response <sup>435</sup> it had acceded to his points on the duplicate sites points, which was the suggestion that was being made by the appellant during RX of Mr Tilley. The further response produced by Mr Tilley states that one of these sites is an irregular shape <sup>436</sup> and suggests that new points have been taken by Mr Wilson about some sites, which were not <sup>437</sup>.

8.215 A different approach was taken towards Denham Aerodrome (site 30) in the sifting process; it did not <sup>438</sup> fail any of the criteria, but in spite of this, it was removed because of a combination of ½ failings. Not only is there no basis for ½ failings, but the result of removing the site has been to prevent it from being considered on a comparative basis on those matters which were not considered but which were critical for Inspector Phillipson, like landscape and visual impact; that is, the benefits that might derive from development of this site, as against any other.

8.216 Now, however, a further point is taken in respect of Denham, that of rail connection <sup>439</sup>; again, there has been no detailed assessment of the degree to which the issue is capable of being overcome on engineering terms; this, again, is a cost issue and floated at the last possible stage.

8.217 Yet another approach was taken towards Tring (site 50) <sup>440</sup>. This is a site in the AONB and was rejected entirely on the basis of that allocation, in spite of the fact that there is an allowance for nationally significant projects (which, Mr Tilley

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<sup>433</sup> 9/HS1.9, paras. 8 – 13.

<sup>434</sup> LPA/6.13.

<sup>435</sup> HS/1.9.

<sup>436</sup> Para. 8

<sup>437</sup> Paragraph 9 suggests that LPA/6.13 raised concerns about Site 50 for the first time – that is wrong as the SDG notes show.

<sup>438</sup> See Table 3, Technical Report 6, 9/CD/2.8, page 32.

<sup>439</sup> See 9/HS1.9.

<sup>440</sup> Appx 6, Technical Report 6, 9/CD/2.8.

accepted, it was his case SRFI were) to be granted permission. Again, however, no consideration was given as to whether the development was capable of being more adequately accommodated than at Radlett in landscape, visual impact and other terms; it was rejected as a matter of principle. It should be remembered that the site did pass<sup>441</sup> each of the long list elements. The point was not, therefore, “academic” but had the potential to be taken forward for further consideration<sup>442</sup>.

8.218 The effect of undertaking the midway sifting was to remove a number of sites from the potential shortlist. None could go forward to have their merits considered.

*(v) The Short List Stage*

8.219 The short list stage was made up of two essential aspects: operational/market considerations and sustainability considerations.

8.220 No real faith can be placed on the short list assessment. It was quite plainly subjective in respect of the market/operational considerations that were taken into account; there were no criteria for this issue that were capable of being understood and scrutinised.

8.221 There was, in contrast, a series of criteria which were applied to the sustainability analysis. Yet, even here, there was no ability to scrutinise the weight that CGMS had placed on a particular issue in order to reach a conclusion as to whether it was a reasonable assessment.

8.222 Mr Tilley’s point on the purpose of this form of analysis was that it allowed a decision-maker to reach their own decision as to which was the best site. As an initial point, the assessment was not in neutral terms, allowing a decision-maker to pick and choose: a clear view as to why Radlett was better was made at each stage of the analysis. Second, if the purpose was to allow the decision-maker to choose the best site for him or herself, it is necessary for the assessment to be sufficiently clear in order to allow the decision to be made. Given the lack of clarity as to what weighting was being placed on any particular issue, the decision-maker simply could not, even were that to be the approach, reach his/her own decision. For example, it was said that “substantial weight” was given to the proximity of the site to London<sup>443</sup>. If it was decided that substantial weight should not be given to this issue, what then is the decision-maker to do?

8.223 No, the reality is that this was an alternatives analysis which aimed to reach a conclusion as to which site was the best, it was not simply a description of each of the sites allowing the decision-maker to make up their minds. As an example of the opacity of the assessment, Mr Tilley pointed out that no weight was given to gauge issues in the assessment – that was not apparent from anything in the documents provided by CGMS and only became so in XX.

8.224 The approach taken in the shortlist analysis is considered.

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<sup>441</sup> Acknowledged by RT, RX.

<sup>442</sup> As was suggested in RX.

<sup>443</sup> Para. 8.11, Technical Report 6, 9/CD/2.8.

8.225 First, given the fact that no scoring has been undertaken and no clear weighting placed on a particular issue, it is not possible to undertake any sensitivity testing to the analysis.

8.226 Second, there was no basis for placing “substantial weight” on the distance of a site from London. Of course, the Council’s case is that, given the likely occupation of the premises by regional distributors, the proximity to London is of little significance. However, even on the basis of the Appellant’s own case, which was limited to the north-west sector, to place such weight on proximity to London would necessarily undermine those which had passed the initial criteria for distance from the M25. There is also no logic to placing such weight on distance to London when Inspector Phillipson placed greatest weight on matters like Green Belt, landscape and other impacts; so long as a site was capable of being an SRFI (rather than being the best SRFI), the greatest weight should then have been placed on landscape and visual impacts rather than proximity to London; that was Inspector Phillipson’s point and placing what appears to be the primary weight on distance to London negated its significance. The consequence has been to favour Radlett when other sites were more favourable from the point of view of impacts<sup>444</sup>.

8.227 Third, no weight was placed on the rail criterion. It was said that this issue was treated as neutral because Radlett was regarded as being adequate by Inspector Phillipson. The general approach of putting rail in a neutral position is wholly unjustified – it is a critical factor as the SRA criteria makes plain. Mr Gallop<sup>445</sup> accepted that a W8 gauge is better and more efficient in rail carriage terms than W7. However, Mr Gallop also accepted<sup>446</sup>, that in the alternative sites study, sites were compared in their existing rail state and not in an upgraded state. He also acknowledged that Radlett was only regarded by Inspector Phillipson as being acceptable in rail terms as a result, in part, of gauge enhancement; the premise of the acceptability of the Radlett proposals in rail terms was predicated on the upgrading. In consequence, the approach of treating rail as neutral unfairly and unjustifiably assisted Radlett in the alternatives assessment.

8.228 It was suggested<sup>447</sup> that Inspector Phillipson thought that the proposal was acceptable up to 175,000m<sup>2</sup> without gauge enhancement; that is so, but the important point is that Radlett was being considered as a whole in terms of its floorspace when assessed at the alternatives stage, not in part; treating Radlett as a whole development as acceptable in rail terms in the alternatives assessment when it was not acceptable in such terms was quite obviously wrong and favoured Radlett against other better sites in this regard, like Colnbrook.

8.229 In order to bypass the obvious failing of the alternatives assessment, it was argued that Radlett was actually primarily W8 so as to display its comparability to Colnbrook; this was done, first, by reference to the route plan which Mr Gallop, in his own evidence<sup>448</sup>, considered to be wrong and then by Mr Smith who, by reference to the Sectional Appendix<sup>449</sup>, indicated that large parts of the MML were gauged at W7.

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<sup>444</sup> See for example, Upper Sundon, which was found to have, overall lower landscape and visual impacts in Appendix 8 of TR6, last page.

<sup>445</sup> NG, XX.

<sup>446</sup> XX, NG, MR

<sup>447</sup> NG, RX

<sup>448</sup> NG Proof, pg 32, fn 4.

<sup>449</sup> At writing, unnumbered.

Both of these witnesses acknowledged<sup>450</sup>, however, that the Interfleet report before Inspector Phillipson was the only evidence of a detailed analysis of gauge and Mr Gallop acknowledged it showed 28 x W8 Substandard structures and 1025 x foul clearances at W8 and neither knew of anything more recent. In addition, and in any event, Mr Gallop accepted that in order to get onto the MML from the south, there had to be gauge clearance works undertaken.

8.230 The patent failing of this approach towards rail was that it failed to recognise the additional benefits which could be provided by other sites in rail terms.

8.231 Fourth, the approach that was taken towards ownership issues plainly favoured Radlett unjustifiably. The description of the other 4 sites was largely in negative terms. In Colnbrook, it was pointed out that the developer did not “appear to control” all of the required interests<sup>451</sup>; in Harlington there were potential difficulties in land assembly<sup>452</sup>. Of Littlewick Green there was no evidence of it being “promoted”<sup>453</sup>. In respect of Radlett, however, at the previous inquiry, it was said that the County Council had not “indicated an unwillingness”. The difference of emphasis is perfectly plain.

8.232 Fifth, the approach of the shortlist assessment systemically favoured Radlett. The approach was to consider each of the sites against Radlett, with Radlett offering the benefits that are currently offered<sup>454</sup>. Patently, given that Radlett is a mature proposal it is likely to bring forward benefits which other sites which have not yet been fully developed can offer. A site like Littlewick Green cannot compete with Radlett in these circumstances (even when considered in isolation, rather than with sites 16 and 17) even though, with further development, it could. This meant that the most that was said about Littlewick Green in the assessment is that it had the potential to provide “some benefit”<sup>455</sup>.

8.233 Sixth, the scale of development used as the basis of comparison favoured Radlett, particularly in the context of Colnbrook. The current Colnbrook development comprises a development of a considerably lesser scale than Radlett; this would lead to a reduced impact in relation to a number of different matters like noise<sup>456</sup> as against the scale of the development which was looked at on the Colnbrook site.

8.234 In spite of the fact that CGMS knew about this lesser scale of development, they considered that it was not appropriate to test Colnbrook by way of what was actually going to happen as against some theoretical scale of development which was not proposed. That is quite obviously a wrong approach.

8.235 It has meant that there has been no landscape and visual impact assessment of this lesser scale of development even though, when considered against biodiversity and noise it did have a reduced impact. Given that the scale of the

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<sup>450</sup> XX, NG and GS.

<sup>451</sup> Para. 8.21, Technical Report 6, 9/CD/2.8.

<sup>452</sup> Para. 8.137-8, *ibid*.

<sup>453</sup> Para. 8.58, *ibid*.

<sup>454</sup> See paragraph 8.84, Technical Report 6, 9/CD/2.8.

<sup>455</sup> See paragraph 8.82, Technical Report 6, 9/CD/2.8.

<sup>456</sup> See Appx 8, Technical Report 6, last page summary, footnotes.

development is considerably less (200,000 sqm as against 300,000 sqm) it will patently make a difference – the extent of that difference can be seen clearly<sup>457</sup>.

8.236 The problem goes further. The appellant has laid considerable stress in this case on the degree to which the Colnbrook site is covered by a strategic gap designation, but the degree of harm to that gap (on the assumption it adds anything to the overall considerations), will be affected by the degree of built development. The difference that would occur with the actual proposal at Colnbrook is of clear relevance as to how it would compare to Radlett. By ignoring the actual development at Colnbrook it has plainly disadvantaged that site. The approach of Radlett might have had some logic if the development proposed at Colnbrook could not amount to an SRFI, but there is no dispute that it would. It was suggested<sup>458</sup> that the Secretary of State<sup>459</sup> had not criticised the scale of Radlett (and nor had the inspector). That misses the point. The “need” is for an SRFI, not of the scale of the warehousing proposed at Radlett; the point would be relevant if SIFE was not to be an SRFI, but it plainly is. In that sense, there is no difference in the “need” (relied upon by the appellants) to be met in this case.

8.237 It was suggested that the proximity of Colnbrook to Heathrow is something that would hinder it in its use as an SRFI<sup>460</sup>; evidence was being given by Mr Tilley without any expert basis on this issue (since he relied upon King Sturge for his market evidence).

8.238 Further, the appellant has made mistakes in its assessment, which, had it consulted Goodmans, would have no doubt been corrected well in advance of this inquiry, instead of by a note in the 3<sup>rd</sup> week of the inquiry<sup>461</sup>. The appellant now acknowledges that there is no difficulty with access to the Colnbrook line<sup>462</sup> in comparison to the issues they had in the original report. The appellant accepts that the footpath severance will be only 2000m, not 5050m as previously measured and now acknowledge that the rail gauge is W8 on the Colnbrook line. Even if the last issue (only on the basis of the appellant’s flawed approach) is disregarded, it is obviously incorrect to take the view that none of these issues is relevant, but it displays the largely negative approach taken to any criticisms that have been lodged by the Council or anyone else.

8.239 Much of the appellant’s time in XX on Colnbrook was spent in seeking to establish the significance of the Strategic gap<sup>463</sup>. Mr Hargreaves was right in his approach towards this issue. His view<sup>464</sup> was that the strategic gap policy did nothing to enhance the protection of the Green Belt in the vicinity of Colnbrook. This approach is supported by the fact that the assessment of harm to the gap was considered in the LIFE decision<sup>465</sup> in relation to the substantive effect on the gap, as opposed to its designation. Reference was made to part of the report<sup>466</sup> but this

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<sup>457</sup> HS1.8, last page, aerial photograph.

<sup>458</sup> RX RT

<sup>459</sup> Para. 42; and Inspector’s Report, 9/CD/8.2, 16.148.

<sup>460</sup> RT I’s Qs.

<sup>461</sup> 9/HS/1.8.

<sup>462</sup> Para. 25 of 9/HS/1.8 and para. 8.17 of Technical Report 6, 9/CD/2.8.

<sup>463</sup> See, for example, MK XX of JH and JB.

<sup>464</sup> EC, JH.

<sup>465</sup> See para. 13.129 and the summary, 9/HS/1.6.

<sup>466</sup> 13.367-8.

referred to the on-going pressure for housing as a result of the Radlett development, not the proposals themselves. In any event, as Mr Tilley accepted, the question, substantively, of the gap, is the degree to which there will be an effect on openness in this area and on this point, Mr Kelly's view was that<sup>467</sup> in respect of "openness" both Colnbrook and Radlett would be affected to the same extent.

8.240 In any event, the gap policy contained in the Core Strategy<sup>468</sup> is not up to date. The South East Plan requires a reconsideration of the gap policy<sup>469</sup> which post-dated the core strategy and is very different from the former CC10b which does not specify any reconsideration; that was made clear by Mr Hargreaves<sup>470</sup>. The fact that PPS7 predated the draft core strategy does not affect this point – there is still a requirement for reconsideration.

8.241 Additionally, the appellant has referred to the Colne Valley Park. There is an air of unreality about this point. The simple fact is that the same sort of designation – the Watling Chase Community Forest – which is protected in a similar way under the East of England Plan<sup>471</sup> lies over Radlett. As Mr Hargreaves pointed out<sup>472</sup>, it was possible to identify the same aims in the Colne Valley and Watling Chase plans. Reliance was placed<sup>473</sup> on the LIFE decision<sup>474</sup> and the degree to which there would be a conflict from inappropriate development; that is exactly the position with regard to the Watling Chase Community Forest – the Inspector considered that, while the country park would be in accord with its aims, it would not on Areas 1 and 2 and, in relation to the landscape would be ultimately harmful<sup>475</sup>.

#### *(vi) Summary*

8.242 The result, ultimately, is that very little weight can be placed on the alternatives assessment. It simply has not been shown with any degree of persuasiveness, that there is no better site than Radlett. Again, it is important to be clear that the evidential burden is upon the appellant and, in order to show very special circumstances, must establish that there is no better site than Radlett. To place weight on the alternatives assessment, it should have been shown to be clearly the best site in terms of the impacts it would cause; it has not done that.

#### *(vii) The SDG Assessment*

8.243 Further, the SDG Assessment found that 2 of the sites, Littlewick Green and Colnbrook, were better sites than Radlett. Before dealing with the analysis in more detail, it is important to note the purpose of the assessment. As Mr Hargreaves stated (and indeed as Mr Wilson pointed out<sup>476</sup>), the purpose was not to look at each of the sites identified by CGMS. It was to look at only those sites which were publicly

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<sup>467</sup> See the summaries for Colnbrook and Life in Appendix 8 of Technical Report 6, 9/CD/2.8.

<sup>468</sup> See Kelly Rebuttal, Appx 4, HS/5.3.

<sup>469</sup> See page 242, SE Plan, 9/CD/4.2.

<sup>470</sup> See RX, JH.

<sup>471</sup> Policies ENV1 and 2, CD/4.1.

<sup>472</sup> EC.

<sup>473</sup> RX RT

<sup>474</sup> Para. 13.122

<sup>475</sup> Inspector's Report, 9/CD/8.2, para. 16.177.

<sup>476</sup> XX, BW and JH.

identified as potential SRFI sites; that is unsurprising given the time constraints that the Council was under to prepare for the inquiry.

8.244 It was suggested that the Council had not stated in its Statement of Case that it was undertaking an alternatives analysis. That is a patently bad point. The Council did identify that it considered that other better alternatives existed. There was no requirement to say that it was going to provide evidence, as it did, to demonstrate that; the fact that it had used a particular method was not an important part of that process. Had it said that it was undertaking a scored alternatives analysis, it would obviously<sup>477</sup> not have disclosed that until it was finalised since it had to be sure that the results were robust. What was important to point out was that the Council believed that other, better alternatives existed and that it would be demonstrating that, which is what it did state. In any event, the point is without substance since the alternatives that were being analysed were only those, in the North West sector, that the Appellant had assessed and the remainder were outside the North West sector which the Appellant considers to be irrelevant to its case.

8.245 The SDG analysis used a scoring methodology; this had the clear advantage of being capable of scrutiny – it allowed someone to understand clearly what the Council's approach was to each site. Mr Tilley's primary criticism with the SDG approach was that it used a scoring system.

8.246 That is quite obviously an unfair criticism. First, the Inspector did not complain, at all<sup>478</sup>, about the use of a scoring system (and neither did either the Councils<sup>479</sup> or STRIFE); the point was the means by which such scoring was undertaken that rendered the previous alternatives assessment inadequate. Similarly, the employment land review guidance relied upon by Mr Tilley<sup>480</sup> does not reject scoring but points out that a scoring system is capable of being used<sup>481</sup>.

8.247 Other points were taken on the value of the report. It was pointed out that, in respect of Radlett, the landscape and visual assessment was based on Mr Billingsley's assessment, even where it diverged from Inspector Phillipson's analysis (which was not significant as his proof demonstrates) and that the assessment of Colnbrook ignored the conclusions identified in LIFE. It is notable, first, that it was not shown, nor attempted to be established, that any changes as a result of that, would make a significant difference. In any event, the alternatives analysis was rightly considering the matter on the basis of the judgments reached by those involved in the assessment. Their judgments were readily observable, understandable and accessible. To that extent, they differ markedly from the CGMS report.

8.248 It was suggested that Mr Billingsley's assessment of landscape impacts in respect of each of the sites was flawed for not taking into account landscape policy issues (like local designations at Radlett) in spite of what the LCA Topic Paper 6 indicated, namely that it should be included<sup>482</sup>. That, however, was a criticism which

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<sup>477</sup> See JH, ReX.

<sup>478</sup> See paragraph 16.133-134, Inspector's Report, 9/CD/8.2.

<sup>479</sup> That is, Hertfordshire County, Hertsmere and St Albans Councils.

<sup>480</sup> See RT Rebuttal, Appx 3.

<sup>481</sup> RT Rebuttal, Appx 3, para. 3.41.

<sup>482</sup> XX, JB, 9/HS/5.2.



went nowhere because Mr Hargreaves, as part of his policy analysis for the sites, did take that into account<sup>483</sup>. It was also suggested that Mr Billingsley was wrong to use the LCA Topic Paper 6<sup>484</sup> as against the GLVIA, given that it was not as evolved as the GLVIA. However, the Topic Paper actually post-dated the GLVIA (and specifically referred to it). The topic paper approach adopted by Mr Billingsley had the merit<sup>485</sup> of being able to gauge sensitivity in a contextual sense rather than requiring consideration of a specific form of development.

8.249 It was contended that the SDG assessment was flawed because it scored equally, for example, between impacts on the Green Belt and impacts on local footpaths. That may have been right, but the effect of that approach was to enhance the scoring of Radlett against other non-Green Belt alternatives. It is difficult, in those circumstances, to understand how the criticism actually amounts to anything.

8.250 It was suggested<sup>486</sup> that the analysis had failed to take into account the importance of SRFI being sited close to good road connections. That was a wholly unpersuasive point; first, because the analysis had laid down a considerable weighting for road connections and, second, a sensitivity test had been undertaken which had placed road as one of the most important criteria<sup>487</sup>.

8.251 The Study was criticised on the basis that the weighting to market was give 2% of the total scores<sup>488</sup>. That is entirely logical given that the sites were within the London and South East area and would thus be located within the distribution areas that distributors would serve as Mr Wilson explained<sup>489</sup>.

8.252 It was contended that the road criterion was defective because it failed to consider the quality of the route by which the roads were accessed<sup>490</sup>. First, Mr Wilson explained why it was that the quality of roads (that is, A roads) was a proxy for a reasonable route. Second, and importantly, no particular site was identified which, it was said, this criterion made a difference to its overall categorisation.

8.253 The result is that, on a clear and understandable basis, two sites within the north-west sector, come out better than Radlett. This conclusion acts to confirm that the Appellant's alternatives study, when properly assessed, is inadequate and cannot be relied upon.

### *(C) Country Park and Bypass*

#### *(i) Securing the Benefits Relied Upon (including other Rail funds and other mitigation matters)*

8.254 The Secretary of State was clear that very little weight should be placed on the section 106 undertaking because it did not include all parties who owned the

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<sup>483</sup> JH, XX, MK

<sup>484</sup> 9/HS/5.2

<sup>485</sup> EC, JB

<sup>486</sup> BW XX MK

<sup>487</sup> See Appx J, BW Apps.

<sup>488</sup> BW XX MK

<sup>489</sup> Ibid.

<sup>490</sup> XX, BW

sites and because a condition to enter into the section 106 was used as the mechanism for overcoming the issue.

8.255 The appellant now uses three alternative mechanisms to seek to overcome this defect<sup>491</sup>. The first method is that which was used at the last inquiry and is now put forward again. This should have as little weight as when it was before the Secretary of State in 2008. The second option prevents the development of site 1 until site 2 is developed (and the unilateral undertaking prevents the development of site 2 until a unilateral undertaking is entered into).

8.256 Following the decision in *Merritt*, Circular 11/95, paras. 38-40, have been amended by the Secretary of State so that it now states: "when there are no prospects at all of the action in question being performed within the time-limit imposed by the permission negative conditions should not be imposed"<sup>492</sup>. This is set in general terms and does not deal with specific contexts, particularly where the conditions purport to provide benefits of relevance to the very special circumstances case. In circumstances where the burden is specifically placed on the appellant to prove its case, as is the case here where the appellant has to establish very special circumstances, the burden should be on the appellant to show that there are prospects of the condition being satisfied before the time limit has expired.

8.257 The third alternative appears simply to defer the issue of the payment of money, to a later stage in many respects, and, to that extent will impermissibly require the payment of money under a condition; it is both unlawful and contrary to the Secretary of State's guidance<sup>493</sup>.

8.258 As a result, the matters offered up in the section 106 agreement or by way of the condition should be given very little weight.

*(ii) The Significance of the Country Park and the Bypass*

8.259 If weight is to be given to the provisions of the section 106, the Council recognises the merit of the Country Park and the Bypass, but the degree of benefit should not be overestimated. As Mr Billingsley has pointed out<sup>494</sup> the proposals for areas 3 – 8 are more in the nature of upgrades to existing areas of open space and agricultural land than new benefits. In particular, area 6 has restoration proposals which would deliver access and landscape enhancements; there is a reasonable amount of public access across a number of the sites, particular areas 3, 4 and 8 and area 5; and other areas which do not have existing access (area 7) would still not have such access<sup>495</sup>.

8.260 In that regard, Inspector Phillipson acknowledged that the "areas of land that would make up the country park are not contiguous and there would be only limited visitor facilities and parking"<sup>496</sup> and that some of new footpaths and bridleways would duplicate existing paths nearby<sup>497</sup>; he reached a similar conclusion in respect of the

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<sup>491</sup> See draft condition 33.

<sup>492</sup> HS/INQ/4.

<sup>493</sup> Circular 11/95, Annex, para. 83.

<sup>494</sup> Para. 5.8, JB Proof.

<sup>495</sup> See para. 5.2, JB Proof.

<sup>496</sup> Inspector's Report, 9/CD/8.2, para. 16.146.

<sup>497</sup> Para. 16.146, Inspector's Report, 9/CD/8.2.

ecological value of these sites which have ecological value and which are currently designated for their wildlife value<sup>498</sup>. Ultimately, while there was a benefit, he noted the restrictions.

8.261 The extent of the proposed benefits are, consequently, limited.

#### *Conditions and the Section 106*

8.262 The contamination condition<sup>499</sup> amendments are not agreed; they should be incorporated because the condition needs to make plain that the decontamination scheme will deal with the potential pollution that is arising from the landfill area in order to accord with the Secretary of State's concerns that the condition should ensure that the development if permitted ensures that the land it covers is no longer capable of ascription as contaminated land.

8.263 The requirement for sustainable construction conditions was dealt with in the second conditions session. Mr Hargreaves has indicated in his proof the enhanced sustainability agenda<sup>500</sup> that now exists; this will achieve that aim in part.

#### *Assessment of the Reason for Refusal and the Green Belt Balance*

8.264 The Council's reasons for refusal individually establish why it is that planning permission should be refused.

8.265 Looking, however, at the matter in the context of the Green Belt test, there will be very considerable harm caused to the Green Belt by this development, by which it will undermine a large number of the purposes of including land in the Green Belt. There will be significant landscape and visual impacts caused from a range of locations which will be incapable of being mitigated. There will be significant adverse effects on local residents because of the intermittent nature of noise arising from operations on the site and the potential for very significant  $L_{Amax}$  events. There will be harm to the sustainability agenda given that the development will not operate as an SRFI and the development will be premature against a regional wide assessment and a forthcoming national policy statement. There will be harm to significant ecological interests which will not be adequately mitigated.

8.266 It is against the harm by reason of inappropriateness and the other harm that the very special circumstances case relied upon by the Appellant must be judged. Radlett will not become an SRFI. The alternatives analysis is defective because it has failed to search outside the northwest sector and because of its inherent and ingrained flaws. The country park and the bypass are beneficial but are to be provided or controlled, in part, through a defective section 106 agreement. These circumstances cannot, in short, overcome the massive harm that will be caused.

8.267 In such circumstances, it is respectfully requested that the appeal be dismissed.

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<sup>498</sup> Para. 16.147, Inspector's Report, 9/CD/8.2.

<sup>499</sup> Proposed condition 24.

<sup>500</sup> See Part 1 of my Closing under Sustainability.

## 9. The Case for STRIFE

9.1 Opening submissions<sup>501</sup> on behalf of STRIFE stated that to permit Radlett now would raise a spectre which all should fear – a massive warehouse development in the Green Belt, permitted on the false prospectus that it can meet a need for the interchange of freight between rail and road, only for it to operate as a predominantly road to road depot, something for which no very special circumstances could be prayed in aid. The evidence at the inquiry has not altered those remarks.

9.2 Under the spotlight of scrutiny, the appeal proposal has been exposed for the “Trojan Horse” development local residents always feared: a Strategic Rail Freight Interchange for which not only can no guarantee be given that a single train will ever be permitted access, but one which, on the balance of probabilities<sup>502</sup>, could never be so used. It is in order to prevent that outcome, and the wholesale undermining of Green Belt policy which it would entail, that STRIFE seeks a halt to this spurious rail-related proposal.

### *The Proper Approach*

9.3 The approach to take to this repeat application is now agreed, all of it set out in opening submissions<sup>503</sup> and all of it conceded by Mr Tilley in answers to cross examination. It is, however, not an approach which is merely within the Inspector’s discretion, it is an approach that is compelled by law.

9.4 STRIFE not only acknowledges but positively asserts that the Secretary of State’s decision letter<sup>504</sup> following the previous Inquiry (and the Inspector’s Report<sup>505</sup> with which the Secretary of State largely agreed) are plainly material considerations in the determination of this appeal: they are “the starting point” for consideration of the appeal proposals. However, they are just the starting point; not the end point. As Mr Tilley agreed, the Inspector retains full discretion to make recommendations on all of the issues to which this Inquiry gives rise, and on the balance of the evidence which is now available.

9.5 Moreover, the Inspector is not just *free* to agree or disagree with the views previously expressed; he is *obliged* in law to consider whether there is a good planning reason to agree or disagree with those prior views, and to do so upon the basis of the best and most up to date information available. That is decided law<sup>506</sup>, as more fully described in Appendix A to this closing, to which extracts from the relevant authorities have been attached.

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<sup>501</sup> STRIFE 9/02

<sup>502</sup> The requisite standard of proof: see Tilley XX

<sup>503</sup> STRIFE 9/02 §§10-12

<sup>504</sup> 9/CD/8.1

<sup>505</sup> 9/CD/8.2

<sup>506</sup> See: *Price Brothers Limited v. Department of the Environment* [1979] 38 P&CR 579 at 591; *North Wiltshire District Council v Secretary of State for the Environment* (1992) 65 P&CR 137 at 145; and *R. (Kings Cross Railway Lands Group) v. LB Camden* [2007] EWHC 1515 (Admin) at paras.18/19, 20 and 22.

9.6 As set out in the Appendix, where the Inspector is inclined to disagree with the view of the previous Inspector and/or Secretary of State, the requisite “good planning reason” can properly be sourced, of course, in an intervening material change of planning circumstances. But it can also be sourced elsewhere – in an argument put previously, but more compellingly put today; in evidence adduced which was not adduced before the last Inspector; or simply in a different view of the planning merits as a matter of judgment<sup>507</sup>. These propositions were all, rightly, accepted by Mr Tilley in cross examination.

9.7 So it is that, just as Mr Kingston QC will seek to persuade, on new arguments and new evidence, that the Secretary of State can now decide differently the issue as to whether an alternative site is able to meet such need as survives for SRFIs to serve the region of London and the South East, so STRIFE is entitled to seek to persuade, on new arguments and new evidence: that such need no longer exists; that this proposed development could not meet that need even if it does still exist; that even if this proposed development might meet such need, other sites can meet it better and from both within and without the “North West Sector”.

9.8 In short, and as stated in opening, the last decision letter is not a mantra that can simply be chanted as an answer to any of the planning arguments before this inquiry. However, and despite his agreement to the above approach in cross examination, Mr Tilley chanted that mantra continuously<sup>508</sup>, and was joined in that chorus by the written words of Mr Sharps<sup>509</sup>, all under the careful orchestration of Mr Kingston QC and Mr Forsdick. Time beyond number we either heard orally, or read in evidence, the recital – *“there have been no material changes in circumstances since the last Inquiry, thus...”*

9.9 If that would be an erroneous approach to take, it is also an erroneous approach for the appellant to have taken, and a dangerous one too - for not only is it an entreaty which, if followed, would lead into challengeable legal error, it is an approach which has acted as a self-denying evidential ordinance for the appellant itself.

### *The Proposed Development*

9.10 The appellant’s cavalier approach to the consideration of their appeal proposal is only properly contextualised, however, when one appreciates the true extent of that which they are actually promoting. Mr Tilley commented in his evidence, without either complaint or demur, that the scale of the proposed development had been graphically illustrated in opening submissions by noting that the largest shed of the 5 proposed would be bigger than Terminal 5 at Heathrow, and the 4 other sheds

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<sup>507</sup> See: *Price Brothers Limited v. Department of the Environment* [1979] 38 P&CR 579 at 591; and *R. (Kings Cross Railway Lands Group) v. LB Camden* [2007] EWHC 1515 (Admin) at paras.18/19.

<sup>508</sup> In cross examination he accepted that he had limited his planning exercise to only material changes in circumstances.

<sup>509</sup> Regrettably, Mr Sharps was not available for cross examination. However, his approach is clear from paragraph 2.38 of his Rebuttal Proof (9/HS 6.3) in which he stated “These were all matters grappled with at the last inquiry. I have been advised that it is not appropriate to go over that ground when clear conclusions have been reached by the Inspector and adopted by the Secretary of State”. In cross examination by Mr Reed, Mr Tilley in no way distanced himself or the Appellant from that approach, merely indicating that he could not say whether Mr Sharps was relying on something said by Mr Tilley or by someone else in the Appellant’s team.

not very much smaller. Even that is not the limit of the proposal, however. Alongside those buildings, and the inappropriate Green Belt uses to which they would be put, would come all of the associated road and rail infrastructure works and movements, and the bunding necessary to shield local residents from just some of the impacts thereby occasioned.

9.11 The proposal entails even more, then, than the loss of a huge tract of Green Belt land to inappropriate development, but all manner of attendant and additional externalities and harms, including those generated by both on and off-site activities.

9.12 There would be noise and sleep disturbance caused by on-site operations and plant<sup>510</sup>. There would be yet more noise and disturbance caused by road and rail movements, the former unconstrained throughout day or night (so as to add to the congestion chaos on local roads in the peak hours; the latter, on all of the available evidence, likely confined to the most noise-sensitive night hours)<sup>511</sup>.

9.13 There would be disruption and inconvenience to users of both rail and road: trains which are either delayed by freight movements (if any) or by the engineering works necessary to increase the loading gauge on the surrounding network in order potentially to accommodate them<sup>512</sup>; drivers caught up in gridlocked roads, especially the A414 – already all but at capacity but nonetheless the sole proposed link between the site and the motorway network because the Highways Agency will not allow direct access to the M25<sup>513</sup>.

9.14 And those externalities would include, of course, the impaired enjoyment of the Green Belt by local residents and visitors, ramblers and horse riders, not the least through the unavoidable damage done to the local landscape by 330,000 sq. m of built floorspace, 20 m high, and surrounded by earth bunds. The impact on the openness of that part of the Green Belt which currently separates St Albans from Radlett and London Colney from Park Street and Frogmore<sup>514</sup> would be massive.

### *The Green Belt*

9.15 And yet that protective Green Belt designation, a designation which lies at the very heart of the proper consideration of this huge inappropriate development, is designed to prevent such harms from being occasioned. It is a protection intended not as a temporary bulwark against inappropriate development but – save in the most exceptional circumstances – a *permanent* prohibition; a protection which *must*, not may, be maintained as far as can be seen ahead<sup>515</sup>.

9.16 The planning imperatives which flow inexorably from that protective designation are well known to this inquiry. They nonetheless bear repeating in closing, so fundamental are they to the decision at issue.

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<sup>510</sup> The noise evidence will be reviewed below under Q4.

<sup>511</sup> Tilley XX

<sup>512</sup> Mr Clancy in chief

<sup>513</sup> Mr Hirst in chief

<sup>514</sup> Mr Wallace in chief

<sup>515</sup> PPG2 para 2.1

9.17 Where inappropriate development is proposed within the Green Belt, not only do the general policies aimed at controlling development in the countryside apply with full force, but an additional presumption is raised against that development so that it can never be permitted except in very special circumstances<sup>516</sup>. The foundation of that presumption lies in the acknowledgement by Government that inappropriate development is, by definition, so harmful to the Green Belt that it attracts substantial weight<sup>517</sup>.

9.18 As was correctly conceded by Mr Tilley under cross-examination, if that is the case with respect to any inappropriate development within the Green Belt, so much more must it be the case when the inappropriate development is on the scale here proposed. In Mr Tilley's words, the level of impact is commensurate with the scale of development; and this is an inappropriate Green Belt development on a truly gargantuan scale. It is, to the best of Mr Tilley's knowledge, the largest inappropriate Green Belt development ever proposed for the Metropolitan Green Belt in London and the Southeast; indeed he could only think of one larger proposal which has ever come forward in the entirety of the country. And this proposal is in a peculiarly sensitive location; it lies in an open gap which currently separates four settlements, and in the vicinity also of historic St Albans and its cathedral.

9.19 That being the case, this appeal proposal occasions planning harms which are similarly gargantuan. Given all of this, Mr Wallace's lay-words<sup>518</sup> describe the reality aptly – *very, very special circumstances* would need to be demonstrated for permission to be given.

9.20 It is not even contested but that this proposal offends against three of the first four purposes for which the Green Belt was established<sup>519</sup>: Mr Tilley conceded that the development would amount to a sprawl of a built up area into open Green Belt land; that it would result in the encroachment of huge warehouses into the countryside; and that views of the Cathedral from the Thameslink line would be compromised, we say severely<sup>520</sup>.

9.21 STRIFE, however, suggests that the appeal proposals also offend against a fourth Green Belt objective<sup>521</sup>: that they would harm both the functioning and the integrity of the gap in which the SRFI would be located – a gap which the Green Belt is designed to protect every bit as much as a Strategic Gap designation itself.

9.22 In support of that proposition, the rationale which lies behind the legal submissions already made should be noted: the importance of consistency in the decision-making process, so that a good planning reason is required to depart from previous decisions in respect of similar applications.

9.23 Given this, the Farnborough decision letter of the SoS exhibited at Mr Hargreaves' Appendix 26 assumes genuine importance so far as the issue of separation and coalescence is concerned.

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<sup>516</sup> PPG2 para.3.2

<sup>517</sup> *Ibid.*

<sup>518</sup> In answer to Inspector's questioning on 1 December 2009

<sup>519</sup> *i.e.* those at PPG2, para.1.5.

<sup>520</sup> Mr Wallace's oral evidence and sections 4(3)-(5) of his Proof of Evidence (STRiFE 9/01)

<sup>521</sup> PPG2 para.1.5

9.24 The context for the Farnborough decision letter is to be found in the Inspector's Report to the Secretary of State, the relevant extract of which STRIFE submitted to this Inquiry<sup>522</sup>. The factual similarities to the instant appeal are obvious. In that case, also, the developers were seeking a significant logistics park development in a protected gap between settlements: a previously developed site within the Gap was proposed to be extended by about 2.2 hectares of additional built development.

9.25 Whilst the policy protection was there afforded by a bespoke Strategic Gap Policy rather than Green Belt, the Inspector noted at paragraph 435 of her Report that:

*"The primary purpose of a Strategic Gap is to prevent the coalescence of settlements and to protect their separate identity. In fact it has a very similar purpose in this respect to a Green Belt."*

9.26 The Inspector continued at paragraph 436 of her Report, and Mr Tilley agreed under cross-examination, that coalescence is a process that can occur gradually, and from development within the Gap as well as from expansion development at settlement edges.

9.27 The Inspector further went on to state at paragraph 439 of her Report as follows:

*"It is not just the distances between the edges of the proposed development and the settlement boundary that are important. Indeed, as the Appellants demonstrate at its nearest points these would actually increase. Rather, it is the outward expansion of the developed site as a whole that is critical. Taking this into account, I consider that a net increase in built development of over 2 hectares around the edges of the site would result in a small but nevertheless significant diminution of the Strategic Gap. Physically it would reduce the amount of land available to form the separation function. Visually it would introduce built form onto that land thus reducing the openness in this part of the Gap. This would significantly reduce the effectiveness of the Gap in terms of its function as a tool for spatial separation, in my judgment."*

9.28 The Secretary of State agreed with that judgment at paragraph 17 of his Decision Letter.

9.29 The implications are clear. If an expansion of built development on previously developed land within a Strategic Gap of just 2.2 hectares significantly reduces the effectiveness of that Gap in terms of its function as a tool of spatial separation, even though the distance between the development and surrounding settlements increases, then the new-build development of 330,000 sq.m. of B8 floorspace, in buildings 20 metres high, must have a correspondingly larger impact upon the functioning and integrity of the Green Belt planning tool which also provides for the spatial separation of affected settlements.

9.30 So it was that Mr Wallace, on behalf of STRIFE, expressed his bewilderment that this was not fully appreciated by the Inspector who last considered this proposed development at Radlett.

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<sup>522</sup> STRIFE 9/01(a)



9.31 It is inconceivable that development of the scale here proposed, located as it is within a gap dividing St Albans to the north, London Colney to the east, Radlett to the south and Park Street and Frogmore to the west, does anything other than very significantly reduce the functioning and integrity of the gap which the Green Belt designation is designed to secure. The gap would be all but destroyed, both in real terms and as a matter of perception.

9.32 Rarely can there have been any proposed development which causes such significant Green Belt harm, with four of the purposes of the Green Belt offended against, and by the largest inappropriate development proposed, to the best of our knowledge, in this part of the country. And to all of that harm must be added the other harms attendant on this proposal<sup>523</sup>: noise so loud as to make complaints likely in a number of residential properties<sup>524</sup>, with the probability of sleep disturbance increased; and increased congestion on roads where road congestion is already acute<sup>525</sup>. It is only if the totality of that harm is not just outweighed, but *clearly* outweighed, by very special circumstances that the appellant will have demonstrated that this hugely damaging and inappropriate proposal might nonetheless be allowed to proceed<sup>526</sup>.

9.33 In STRIFE's submission that is a burden which the appellant has manifestly failed to discharge to the requisite evidential standard.

#### *Very Special Circumstances*

9.34 The only very special circumstance which the appellant prays in aid at this Inquiry is the same one which the appellant prayed unsuccessfully in aid at the last: the support within the Strategic Rail Freight Interchange Policy (March 2004)<sup>527</sup> for three or four new SRFIs to serve London and the South East<sup>528</sup>. The appellant's argument failed on the last occasion and in STRIFE's submission it should even more emphatically fail again in the light not just of intervening changes of circumstance, but new information.

#### *The Secretary of State's Decision Letter*

9.35 In order to appreciate quite how far short of making the requisite case the appellant falls, it is vitally important to understand and interpret the last decision letter<sup>529</sup> properly and, in particular, the pivotal passage at paragraph 58:

*"The Secretary of State considers that the need for SRFIs to serve London and the South East is a material consideration of very considerable weight and,*

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<sup>523</sup> PPG 2, para 3.2

<sup>524</sup> In relation to noise, see the careful critique of the previous Inspector's conclusions on noise by J&S Consulting Ltd (STRIFE 9/03). STRIFE also fully endorse the conclusions of Mr Stephenson for the Council on noise issues.

<sup>525</sup> See in particular the evidence of the local Residents Associations (STRIFE 9/05 – 9/09) whose concerns, based as they are on longstanding and detailed knowledge of the local area, should be given substantial weight.

<sup>526</sup> PPG 2, para.3.2.

<sup>527</sup> 9/CD/5.1

<sup>528</sup> At paras 6.9-10

<sup>529</sup> 9/CD/8.1

*had the appellant demonstrated that there were no other alternative sites for the proposal, this would almost certainly have led her to conclude that this consideration, together with the other benefits she has referred to above were capable of outweighing the harm to the Green Belt and the other harm which she has identified in this case."*

9.36 In particular, so far as the first clause of the above passage is concerned, if there is still a need for SRFIs to serve London and the South East, noting that it is the *whole* of London and the South East which needs to be served and not any particular sector within that area, then that plainly is a material consideration to which very considerable weight should be given. However, and as Mr Tilley readily agreed, that assumption begs two preliminary question:

(1) Is there still a need to be met for SRFIs to serve London and the South East?

(2) If there is still a need, will the Radlett site properly operate as an SRFI to meet that need?

9.37 Moreover, the remaining part of the above passage from paragraph 58 of the Secretary of State's decision letter plainly begs three further preliminary questions, all of which were also agreed by Mr Tilley when he was cross examined:

(3) If there is a remaining need for SRFIs to serve London and the South East, has the appellant this time demonstrated that there are no other sites capable of meeting that need better (and we would add "especially in terms of their ability to function as an SRFI")?

(4) If there are alternative sites which could meet that need better, could they do so without occasioning the same extent of harm as occasioned at Radlett?

(5) If there are no such sites available, is the extent of the remaining need such that the harm to the Green Belt, and the other identified harms, is clearly outweighed?

9.38 However, the five questions which are agreed to arise from paragraph 58 of the last decision letter beg an even more fundamental issue - as to whether now is the time and this the place at which they should even be determined.

9.39 In particular, and as Mr Tilley again readily conceded, those questions raise strategic planning issues of national importance concerning a development which statute defines to be a nationally significant infrastructure project<sup>530</sup>. It was precisely to address issues of this nature, and on a national and strategic basis guided by National Policy Statements (NPSs)<sup>531</sup>, that the Government enacted the Planning Act 2008 and established the Infrastructure Planning Commission (IPC)<sup>532</sup>. This recently established regime is a material planning change in circumstance of the utmost importance, and raises a sixth question for consideration:

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<sup>530</sup> See: Section 14(l) of the Planning Act 2008.

<sup>531</sup> See: Section 5 of the Planning Act 2008.

<sup>532</sup> See: Section 1 of the Planning Act 2008.

(6) Will any decision to permit an SRFI at Radlett at this time be premature, potentially undermining the very processes which national Government has established for the consideration of infrastructure developments of national and strategic importance?

9.40 Before these questions are addressed, it is important to make three preliminary submissions arising from the quoted passage from paragraph 58 of the decision letter.

9.41 Firstly, it is to be noted that the Secretary of State was careful to say in paragraph 58 only that if there were no such sites, this would be "*capable*" of outweighing such harm. The Secretary of State's use of the word "*capable*" in that regard was entirely deliberate, and it is notably different from the Inspector's own wording at paragraph 16.202 of his Report where he said that, had he been convinced that the appellant's evidence had demonstrated that there were no other alternative sites, he "*would*" have taken the view that harm was outweighed by need.

9.42 The Secretary of State quite deliberately did not go that far, and for good reason. In particular, the balancing exercise of harm against need simply could not be undertaken on the necessary comparative basis, site against site, precisely because the appellant's alternative sites assessment was so inadequate. Accordingly, if and when that comparative balancing exercise is undertaken, it will therefore be against the backcloth that the Secretary of State has never done so.

9.43 Secondly, it is vitally important to understand the nature of the comparative balancing exercise, site against site, which is required to be undertaken by the Alternative Sites Assessment: it is the exercise inherent to the last Inspector's description of the relevant, and fundamental, issue at paragraph 16.121 of his previous Report, which – in turn – must be read in the context of the appellant's submissions on the relevant matter as reported at paragraph 6.109.

9.44 In particular, and on the assumption that there remains a need for SRFI development to serve London and the South East, the alternative sites exercise requires considering whether that need could be met either in: (1) a non-Green Belt location; or (2) on a Green Belt site which "*would, taking all matters into consideration, perform materially better than the appeal site.*"

9.45 It is beyond any sensible argument, however, that what (ii) above contemplates is not just (or even principally) the question as to whether an alternative SRFI site in the Green Belt causes *less Green Belt harm* than Radlett (by necessity, all alternative sites will be of a comparable size and identically inappropriate development in the Green Belt); rather, it plainly contemplates the question as to whether one or more of the alternative Green Belt sites performs materially better *as an SRFI* so as to be a preferred site to meet the asserted need.

9.46 One would have thought that that was an obvious and common-sense point. It can be tested very simply. If there are two Green Belt sites capable of meeting the asserted need to serve London and the South East, but one has significantly greater gauge problems over the other, and would also prejudice the delivery of the largest Government investment into passenger lines to the capital when the other would not, the less problematic site should clearly be preferred because it would "perform

materially better” as an SRFI so to meet the need asserted to justify the exception to Green Belt policy.

9.47 Moreover, that was precisely the case put by the Appellant on the last occasion. Mr Kingston QC’s submissions in this regard are faithfully reported by the Inspector at paragraph 6.109 of his Report:

*“The issue therefore is whether the need that the appeal proposal seeks to meet could be met ... on another Green Belt site which, having regard to all of the relevant issues (including ... the ability to meet SRFI criteria ..., would perform materially better than the appeal site.”*

9.48 That is why, when the appellant undertook its previous Alternative Sites Assessment, it relied heavily upon the input of Mr Gallop, the rail expert. It is also why, when the Inspector came to consider the relevant issue, he made frequent reference to the comparative benefits, or disbenefits, of the suggested alternative sites in railway terms. He did so, for example, at paragraphs 16.130, 16.132 and 16.136 of his Report.

9.49 Thirdly, however, and bizarrely, the appellant’s second Alternative Sites Assessment, tendered with a view to remedying the evident defects of the first effort, entirely ignores, indeed deliberately eschews, any comparative analysis of site against site in terms of rail accessibility. As Mr Tilley conceded under cross-examination, all of the alternative sites were identically rated, irrespective of any facility to perform better in rail terms one against the other.

9.50 That approach is plainly wrong. Indeed, it is so wrong that the entire Alternative Sites Assessment undertaken by the appellant for this second inquiry is misconceived. It is falsely founded and, in consequence, entirely incapable of providing the solid evidential foundation required to discharge the burden imposed upon them. For this reason alone, it cannot be recommended to the SoS in terms any different to the preceding recommendation at para IR16.138 of the report:

*“... Helioslough’s Alternative Sites Assessment was materially flawed ... To my mind ..., the results are wholly unconvincing and little reliance should be placed on the report as it stands.”*

9.51 However, when addressing the six questions to which this appeal gives rise, the above error is just the first of three reasons for placing little reliance upon the Alternative Sites Assessment. Each of them taken individually, let alone accumulatively, totally undermines the appellant’s case.

#### *The Six Questions*

(1) Is there still a need to be met for SRFIs to serve London and the South East?

9.52 As matters stand in advance of publication of the National Policy Statement on SRFIs, high level national policy support remains for three to four SRFIs to serve London and the South East. Appendix G to the 2004 Policy Document<sup>533</sup> indicates that, up to 2015, this could be met by 400,000 sq. m of rail-related warehouses.

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<sup>533</sup> 9/CD/5.1

Whilst that may not, indeed is not, a ceiling on that which is permissible, it is nonetheless the only stated, and quantified, assessment by Government as to need.

9.53 Since the last Inquiry in respect of Radlett however, Howbury Park has been permitted. In addition, the London Gateway development is also approved. Together, they amount to well in excess of 1,000,000 sq. m of rail-related warehouses - more than 2½ times that which is needed by 2015 to serve London and the South East.

9.54 If it is determined, then, that: (1) the above developments could, on the balance of probabilities, operate as an SRFI; (2) that there is no obvious impediment to them being delivered; and (3) that, if delivered as SRFI, they would serve London and the South East, then the entire need case will, quite simply, have been transformed.

#### *Operable as an SRFI*

9.55 So far as the first issue is concerned, there is no doubt at all that Howbury Park is permitted as an SRFI and would operate as such. Neither, on the balance of the evidence, can any reasonable question mark now be raised in these regards against London Gateway. The last Inspector accepted that the site could operate as an SRFI at paragraph 16.142(iii) of his Report. Moreover, whilst he went on to state his understanding that the proposal was essentially for port-related activities, that was on information which he conceded to be limited as to whether its owners proposed to let it be used more widely. However, the evidence of Mr Wilson<sup>534</sup> at paragraph 6.11 and Appendix A<sup>535</sup>, indicates that there will be no restrictions on occupiers of that development being port users. Accordingly, on the balance of probabilities and in the light of new information, the site will operate as an SRFI. (Indeed, its proximity to both a port and the M25 mean it also fulfils the requirements for an SRFI in the East of England, as sought in the East of England Regional Freight Strategy).

#### *Deliverable as an SRFI*

9.56 Further, and so far as the second issue is concerned, no evidence has been adduced to the effect that either Howbury Park or London Gateway might not be delivered. They must therefore, on the balance of the evidence, be assumed to be readily available to operate as SRFIs.

#### *Serving London and the South East as an SRFI*

9.57 Finally, and so far as the third issue is concerned: (1) Mr Wilson's evidence was compelling; and (2) the appellant's evidence was negligible.

9.58 Whereas Mr Wilson's evidence to the effect that Howbury Park and London Gateway would both serve the whole region as SRFIs was supported by detailed analysis of the market, of the logistics sector and of operators, the appellant did no more than chant its mantra, reciting and relying upon the Inspector's previous "pragmatic" view<sup>536</sup>, which was one to which he came without the benefit of Mr

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<sup>534</sup> 9/LPA/2.2

<sup>535</sup> 9/LPA/2.3

<sup>536</sup> IR16.126

Wilson's evidence. That is simply not good enough to deal with the many substantive points that Mr Wilson made, especially when, as the Inspector previously concluded, there was no policy support<sup>537</sup> whatsoever that could be prayed in aid of the appellant's sectoral, sub-regional approach. Indeed, paragraph 4.4 of the 2004 SRFI Policy Document<sup>538</sup> expressly acknowledges that SRFIs "operate such as to serve regional areas".

9.59 Consistent with this, and as Mr Wilson demonstrated, the distribution areas for SRFIs, and occupiers of larger warehouses within SRFIs, is on a regional basis, not a sub-regional basis. So it is that occupiers at Howbury Park would serve the whole of the London and South East region, including the North West Sector, just as would occupiers of any potential SRFI within the North West Sector itself.

9.60 The impact of this reality, demonstrated by the evidence and consistent with the 2004 Policy document, is clear. The appellant's need case has, indeed, been transformed since the last inquiry by both: (1) the recent permission for Howbury Park; and (2) our new appreciation of the way in which both Howbury Park and London Gateway will operate as SRFI's, each serving London and the South East. Capacity is already on stream to meet such need as may arise within the region for many years hence.

9.61 Moreover, the appellant's error as to the market and the region which would be served by the above SRFI developments not only impacts hugely upon its need case, it is a second fundamental flaw undermining the fresh Alternative Site Assessment. The appellant has limited its area of search to the North West Sector when to do so is unjustified by any proper analysis of the regional basis upon which SRFIs as a whole, and occupiers of very large warehouses within them, operate. That means, as we shall see when we come to address the fourth question to which this inquiry gives rise, that the appellant has looked for potential alternative sites in too small an area, thereby missing out on such obvious alternatives as Howbury Park, London Gateway and several other sites besides.

(2) *If there is still a need, will the Radlett site properly operate as an SRFI to meet that need?*

9.62 Whilst neither STRIFE nor FCC decries the ambition to put more freight on the rail network, and on the MML as part of that endeavour, they do assert that the location at Radlett as a site for an SRFI poses very profound difficulties indeed. Their position in this regard is entirely consistent with the letters appended to Mr Hirst's evidence.

*Inappropriate location to serve demand*

9.63 Firstly, and as Mr Wilson also comprehensively demonstrated, Radlett is inappropriately located to serve any of the anticipated demand for freight by rail. We endorse entirely the expert evidence that he gave. Quite simply, Radlett is insufficiently far from the ports to make it an economically attractive site to non-bulk carriers. It is served, as we know, by a gauge insufficient to accommodate Channel Tunnel rail freight, hence the reliance upon sub-optimal low chassis wagons. And it is

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<sup>537</sup> IR16.124

<sup>538</sup> 9/CD/5.1

poorly positioned for rail freight movements to and from populous urban centres in the North West of the country<sup>539</sup>, having tortured access only to the West Coast Main Line.

*Lack of any connection to the North*

9.64 Secondly, the 2004 Policy document<sup>540</sup> upon which the appellant rests its entire needs case, establishes as a necessary criterion for an SRFI rail connections in both directions. Radlett does not offer this. There is no connection proposed by this appeal to the north. Any trains seeking access from or egress to the north will have to be routed via London.

9.65 Moreover, it is wholly wrong for the appellant to seek to bury this issue by reference to schematic suggestions of a future northerly connection for which no application has been made, no feasibility or viability assessment undertaken, no indication given as to potential land take, and no assessment offered as to the impact of the possibility on the noise environment for Napsbury residents.

*Lack of paths due to Thameslink Programme*

9.66 Even more critically, however, the evidence now demonstrates that no trains could ever enter or leave the Radlett site other than at night. Before dealing with evidence about pathing, there are two preliminary submissions.

9.67 Firstly, and as conceded by Mr Gallop under questioning from Mr Reed, it was not until Mr Wilson's analysis for the purpose of this inquiry that anyone had ever assessed the accessibility of the Radlett site by freight against the Thameslink Programme timetable. That exercise was not undertaken at the last inquiry and all of the evidence on the issue is completely new evidence never before considered.

9.68 Secondly, no party other than Mr Wilson has ever undertaken an assessment of the accessibility of the Radlett site by freight in accordance with the *latest and most up-to-date Thameslink Programme timetable*. The only other body to have attempted a comparable exercise to Mr Wilson's was Interfleet, who were not called to give evidence or susceptible to cross-examination, and who worked only to a prior timetable, since superseded.

9.69 The context within which Mr Wilson undertook his assessment is that the MML south of Bedford is already one of the most intensively used passenger lines on the whole network, and host to the above Thameslink Programme, the greatest single investment currently being undertaken by the Government for passenger lines in the country. That Programme is of national significance and it is absolutely vital, as agreed by all parties, that it is not prejudiced. That, indeed, is why Network Rail aver that they will not allow any freight movements in or out of the proposed SRFI at Radlett which would interrupt or inconvenience those projected passenger services; and, also, as Mr Gallop correctly conceded in cross-examination by Mr Reed, is why, in a head-to-head battle between an SRFI at Radlett and the Thameslink Programme itself, the latter would prevail.

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<sup>539</sup> expressly referred to at page 84 of the Network Route Utilisation Strategy document at Appendix A to Mr Wilson's rebuttal of Mr Gallop's Proof of Evidence (9/LPA/2.20)

<sup>540</sup> 9/CD/5.1

9.70 However, on the expert evidence now before the inquiry, the consequence of Network Rail's stated position will be that freight train access and egress to and from the proposed site can only be at night time. Mr Wilson's evidence in this regard is compelling. Using the industry-standard Railsys model, the same model that Network Rail would use to assess pathing and performance issues and working to the most up-to-date Thameslink Programme timetable, Mr Wilson could not identify a single path to access an SRFI at Radlett between the peaks.

9.71 Moreover, it is no answer to Mr Wilson's evidence that: (1) that trains could be timetabled to pass signals on amber; or (2) that access could be gained by crossing the intervening lines (using a diamond box junction) rather than the weaving movement described by Mr Wilson's modelling; or (3) that there are aspirational plans to electrify and gauge clear the MML; or (4) the proposed Thameslink Programme is indicative only; or (5) that the service specification put forward by Mr Clancy<sup>541</sup> shows that, in the off peak, 2 trains per hour on the Luton service stop short at Brent Cross.

9.72 So far as the first point is concerned, it is simply not right to adopt non-standard industry scheduling practices and assume timetabling that is programmed upon the basis of passing signals on amber rather than green<sup>542</sup>.

9.73 So far as the second point is concerned, diamond box junctions are unlikely ever to be approved – they are expensive and maintenance costly<sup>543</sup>.

9.74 So far as the third point is concerned, unlike the Thameslink Programme (which is to be treated as committed) the proposed electrification and gauge clearance of the MML is aspirational only – for example, Appendix K to Mr Gallop's evidence clearly indicates that the electrification of the MML is still subject to further cost-benefit review.

9.75 So far as the fourth point is concerned, it is plain that the Thameslink Programme is to be treated as a commitment<sup>544</sup>, and not just a commitment but the largest Governmental rail passenger commitment that exists. Three points follow.

9.76 First to treat the Thameslink Programme as merely indicative is to undermine its obvious strategic importance massively. Second, if the Thameslink Programme is to be treated as a commitment, as Network Rail avers it must, that means for all present purposes – not just rail planning purposes, but for Town and Country Planning purposes also. Third, the nature of the Thameslink Programme which is to be so treated as a commitment in that the scheme is incorporated into the RUS baseline and contained in the Draft East Midlands RUS itself<sup>545</sup>.

9.77 The above affords, moreover, the entire answer to the fifth point. In particular, whereas the specification to which Mr Clancy spoke in chief gives 8 trains per hour passing the site on the slow lines and not the 10 which Mr Wilson assumes, Mr

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<sup>541</sup> STRiFE 9/10/01

<sup>542</sup> Wilson and Clancy in chief

<sup>543</sup> Evidence of Clancy in chief

<sup>544</sup> East Midlands RUS Draft Sept 2009 (9/CD/5.5)

<sup>545</sup> 9/CD/5.5 page 4



Wilson was – quite rightly – working from the *later* draft East Midlands RUS service specification which supersedes Mr Clancy's. That RUS specification is the latest and most up-to-date available. It is that specification that is to be treated as a commitment in accordance with the requirement of the Draft RUS. And that specification does envisage all 4 trains per hour of the Luton service running through, meaning a total of 10 trains per hour running on the slow lines past the site.

9.78 At that level of usage, as Mr Gallop confirmed when cross-examined by Mr Reed, the Interfleet suggested time-tabling was simply "unworkable". The site could not be accessed other than at night (between the hours of 10pm and 6am). That means it could not operate as an SRFI<sup>546</sup>. And that means both that Network Rail would not, in the end, support the proposal<sup>547</sup> and that the Appellant's very special circumstances come to nothing.

9.79 The self-serving, foreshortened, incomplete and misleading note of Mr Clancy's evidence produced on behalf of the appellant in re-examination of Mr Gallop changes this analysis not one iota, rooted as it is in the legal requirement to decide upon the best and most up-to-date information available<sup>548</sup>, and the requirements of the Draft RUS described above.

9.80 Mr Clancy commented that if 12 trains ran off peak on the MML with only 10 passing the site it would be more difficult to gain access; the more trains off peak, the greater the difficulty of access. On being cross examined, Mr Clancy accepted that the Council's pathing note based on 10 trains instead of 8 was contrary to the assumption, but the information was based on his information at July 2009.

9.81 However, the recommendation should not be based on the July information, but upon the subsequent scheme as set out in the Draft RUS which is to be treated as a commitment. That is in no way to denigrate the evidence of Mr Clancy. His evidence was that trains could not be pathed into and out of Radlett on either the earlier July timetable or the subsequent timetable incorporated in the draft RUS (with the latter being even more difficult for obvious reasons). The Interfleet evidence<sup>549</sup>, insofar as it has any relevance, only addresses Mr Clancy's evidence as to the former timetable and not the latter.

#### *Network Rail's position*

9.82 Moreover, the appellant's reliance upon Network Rail's support for their proposed development has now been shown both to be manifestly overstated, and also to be no answer whatsoever to the Wilson analysis.

9.83 Firstly, as stated in opening<sup>550</sup>, and as has been confirmed by all of the evidence, this proposal is at a pre-feasibility stage only – GRIP Stage 2. As such, the claimed support of Network Rail is virtually meaningless for the purposes of this inquiry; their position is evidence of nothing more than their contractual duty to share information *before any of the requisite assessment as to feasibility has even*

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<sup>546</sup> Mr Gallop XX by Mr Reed

<sup>547</sup> Mr Gallop XX by Mr Reed

<sup>548</sup> *Price Brothers Limited v. Department of the Environment* [1979] 38 P&CR 579 at 591

<sup>549</sup> 9/HS/2.8

<sup>550</sup> STRIFE 9/02 para.25

*been undertaken.* No comfort can be gained from Network Rail in respect of the fundamental issues as to whether, on the balance of probabilities, paths would be available: they have, as already explained, never undertaken any detailed assessment of the site's accessibility by freight compatible with the Thameslink Programme. That is why, in terms, they offer no guarantee that any paths will be available<sup>551</sup>.

9.84 Secondly, and importantly, such support as they have expressed for the Radlett proposal has only ever been stated to be "support in principle"<sup>552</sup>. They have never stated their full, still less their unconditional, support as suggested by Mr Tilley in paragraph 9.9 of his Proof of Evidence.

9.85 Thirdly, neither has Network Rail ever expressed any preference for Radlett over any of the potential alternative sites. Their position in that regard is expressly stated at paragraph 2.1 of their letter to the last Inquiry dated 7 December 2007<sup>553</sup>.

### *Conclusion on Pathing*

9.86 The consequence of the above 4 points, sourced in the expert evidence of Mr Wilson which the previous Inspector did not have the benefit of considering, is clear. The appellant has failed to discharge the evidential burden upon it to prove, on the balance of probabilities, that a single train could enter or leave its proposed SRFI other than under the cover of night.

9.87 That means that the appellant cannot demonstrate, to the requisite evidential standard, that the proposed site would even operate as an SRFI; and that means that they cannot make out their case for very special circumstances.

9.88 Of itself, this is sufficient reason to dismiss this appeal, before we even come to the crux of the appellant's case – whereby, through its second Alternative Sites Assessment, it seeks to address the reason why the last inquiry resulted in a refusal of permission for an identical development to that proposed today.

*(3) Has the appellant demonstrated that there are no other sites capable of meeting the need for SRFIs to serve London and the South East?*

9.89 Since this question lies at the heart of the appellant's appeal, albeit that its appeal must fail for the reasons given above, addressing the relevant issues to which it gives rise in the following order: (1) the correct lesson to learn from the appellant's flawed Alternative Sites Assessment at the last inquiry; (2) the fundamental errors undermining the second Alternative Sites Assessment; (3) the failure of the Radlett site to fulfil the criteria of an SRFI as guided by the 2004 Policy Document; and (4) the capacity of other sites to perform materially better than Radlett in rail terms.

### *The correct lesson from the last ASA's rejection*

9.90 It is a matter of record that the appellant's argument that there were no alternative sites which would perform better as an SRFI failed upon the last occasion

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<sup>551</sup> Paragraph 2.3 of the Agreed Statement of Facts

<sup>552</sup> 9/CB/1.8 Letter from Network Rail to last inquiry dated 7 December 2007 para.2.1

<sup>553</sup> *Ibid*

it was raised. It is helpful, however, to understand precisely why that argument failed, why the Inspector concluded that their earlier Alternative Sites Assessment was so materially flawed as to be “wholly unconvincing”<sup>554</sup>.

9.91 When so concluding the Inspector referred in terms to the criticisms raised against that earlier Alternative Sites Assessment by STRIFE. Moreover, Mr Tilley volunteered in evidence that it was STRIFE’s attack against the earlier Alternative Sites Assessment (together with the attack made by Mr Reed on behalf of the Local Planning Authority) which demolished the appellant’s case and led to the earlier Inquiry holding against the proposed development.

9.92 Perusal of the relevant paragraphs of the Inspector’s Report in which the STRIFE criticisms are set out is revealing. Paragraphs 8.117 – 8.125 describe the litany of errors which were made by the appellant on the last occasion in its assessment of the alternatives. When those errors were corrected, Radlett did not even come top of the appellant’s *own* assessment of alternatives. A non-Green Belt site fared better.

9.93 It is in the light of that past fiasco that Mr Tilley presided over a completely different methodology for the assessment of alternative sites for the purposes of this Inquiry. Unlike the earlier methodology, the new methodology contains no numeric ranking of any site by reference to any of the assessment criteria. All of the judgments inherent to the exercise are reduced to prose alone.

9.94 Whilst we can all readily sympathise with Mr Tilley’s reluctance to put his head on the same block as Mr Tucker on the last occasion, that reticence should be seen for what it is.

9.95 Mr Tilley had, like Mr Gallop, been entirely willing to utilise the numeric methodology on the last occasion until their errors were exposed by interview. His reluctance to use a numeric methodology on this occasion is designed to avoid any exposure to a similar cross-examination at this Inquiry.

9.96 And yet there is nothing wrong with the numeric methodology if it is properly undertaken and provided that the numbers are justifiable. Indeed, there is very much to commend it. Yes, it does incorporate subjective judgments, but through reducing those judgments to numbers, it allows the Alternative Sites Assessment, and the judgments inherent to it, to be subject to not just scrutiny but interrogation. Those numbers are the benchmarks by which comparison between sites, and forensic investigation of those comparisons, can be undertaken.

9.97 Indeed, had the appellant not adopted its numeric approach on the last occasion, it may very well have got away with a wholly unprofessional Alternative Sites Assessment, the litany of errors lost in prose and never exposed.

#### *The fundamental errors undermining the second ASA*

9.98 The failure to use any numerical benchmarking to allow for interrogation of the Alternative Sites Assessment, or forensic scrutiny of the comparative merits of the alternatives it purports to consider, is the third critical flaw in the appellant’s new

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<sup>554</sup> IR§16.138

Alternative Sites Assessment, alongside their wholly mistaken assumption of rail neutrality between the alternatives and their unjustified restriction of the search area to the north west sector. Taken together, this triumvirate of errors renders the entire second exercise as unfit for purpose as the first.

9.99 In particular, in order for it to provide a secure basis upon which to compare the merits of any of the suggested alternative sites as potential SRFIs, the second Alternative Sites Assessment would have had to entail: (1) a search area wide enough to identify all of the alternatives capable of serving London and the South East; (2) numeric evaluation of all of the relevant selection criteria; and (3) appropriate weighting in respect of the critical matter – the capability of the site to operate as a rail-related depot, a Strategic Rail Freight Interchange. The appellant's Alternative Sites Assessment fails on all three fronts.

*The failure of the Radlett site to fulfil the criteria of an SRFI as guided by the 2004 Policy Document*

9.100 Paragraph 7.10 of the 2004 SRFI Policy Document states in terms that the characteristics identified in that document “must be recognised in ... assessment criteria” of SRFIs. Those characteristics are detailed and considered by Mr Hirst in his evidence<sup>555</sup>. Closing deals with the following criteria in particular: the need for high quality road access; the particular locational requirements for rail connections; the need for an economic local employment base; the need to be away from residential development; and the need to be able to expand. It is notable that Radlett signally fails to match up to any of them.

*(a) High quality road access*

9.101 Whilst the 2004 Policy requires a Strategic Rail Freight Interchange to be located where there are high quality links to motorways and the trunk road network, and whilst the appeal site is adjacent to the M25 to the south, direct access to the M25 has been denied by the Highways Agency on safety grounds. The consequence is that the projected 3,200 daily HGV movements will all have to be routed via the A414 in order to access the motorway network.

9.102 And yet the A414 is already heavily congested and almost at capacity. Moreover, there is overwhelming evidence that those local roads are at gridlock whenever incidents occur on the M1 and M25. Irrespective of the issue as to whether there is an independently sustainable highways reason for refusal of the proposal, the inexorable conclusion is that the appeal site does not enjoy the high quality road links which the national Policy document demands.

9.103 Moreover, if the Inspector correctly noted at the last Inquiry that traffic conditions were already poor, especially at peak periods (when HGV's generated by the proposed development would be travelling)<sup>556</sup>, that situation will get progressively worse in the future. The M1 has been widened and will attract yet more traffic. Butterfly World has been opened and will entice up a million visitors a year. Plans have been produced for a hotel and conference centre just 400 metres from Butterfly World. And the M25 widening has already started.

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<sup>555</sup> STRiFE 9/04

<sup>556</sup> IR16.187

9.104 Furthermore, and as Mr Hirst identified, no answer has ever been given by either the appellant or a previous Inspector as to what contingency there is when gridlock is occasioned by incidents on adjacent motorways. Quite simply, in STRIFE's view there is no such contingency that could properly address the problem.

9.105 In addition, on the balance of the evidence, the highways problems attendant on this proposal may be worse than STRIFE and local residents feared, and worse than the Highways Authority contemplated. There are two interrelated reasons for this.

9.106 Firstly, it has only recently been appreciated that the sheds proposed for Radlett may be 66% higher than most of those built at DIRFT<sup>557</sup>, upon which the appellant relied in predicting the HGV movements generated by their proposal. Their trip-generation assessment was, however, based on floorspace only and took no account of height. It ignored, therefore, the potential, and obvious, implications of the increased shed capacity which might result. That is deeply disturbing, given that Mr Gallop conceded in cross examination that the appellant has no idea who will occupy those sheds or for what purpose; and when he also conceded that many occupiers – for example those trading in heavier goods – will generate more HGV movements per cubic metre storage space than others.

9.107 The evidence therefore opens up the obvious possibility, nowhere reflected in the highways evidence, of occupation of sheds at Radlett by similar users to those at DIRFT, and in similar proportions per square metre, thereby generating up to 66% more HGV movements than predicted. Indeed, the traffic analysis upon which the appellant relies is contingent upon a radically different occupation to that which is taking place at DIRFT, notwithstanding that: (1) it has purported to rely on DIRFT as the evidential basis for their calculations; and (2) it has adduced no evidence for suggesting a radically different user profile.

9.108 Secondly, the only end users specifically referred to by the appellant have been major retailers, whose occupation of the sheds can reasonably be anticipated to generate far quicker throughput, and far more HGVs, than other occupiers.

9.109 At the very least the traffic assessment is not a worst case scenario. It clearly permits the very real possibility that more HGV movements will be generated than predicted, with attendant potential implications both for congestion and for noise.

#### *(b) Rail connections*

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<sup>557</sup> STRIFE were emailed during the inquiry by the appellant indicating that in closing it intended to contend that at least one building at DIRFT was of comparable height to those proposed at Radlett. There was no indication as to why this had not been produced earlier, despite the height issue having been raised by STRIFE in opening (para.29). It would appear that the information on which the Appellant is relying may be references to DIRFT II, which was not permitted at the time of the Appellant's transport assessment. It is clear from the indicative masterplan in the Prologis brochure to DIRFT II (Appendix B to these submissions) that the majority of buildings are 12.5m high (clear internal height) and only one is 18m high. And it is clear from paragraph 3.6 of the Daventry District Council Main Development Constraints document (also at Appendix B) that building heights in DIRFT II will be limited to the height created by the skyline of those built in DIRFT I. Since it is common ground that SRFI sites require to be flat, the clear implication is that DIRFT I buildings are only 12.5m high, consistent with the third parties' position at this Inquiry. Due to time constraints since receipt of the Appellant's email, it has not been possible to research this issue further.

9.110 Likewise the 2004 Policy document goes on to make it clear that SRFIs have quite particular locational requirements in terms of rail connections. They must enable mainline access in either direction; and be accessed by rail links with both high capacity and a good loading gauge. However, there is no provision for trains to have direct access to the Radlett site in both directions, so that rail traffic will have to enter and leave the site to and from the London direction only. Moreover, the appeal proposal does not propose any northerly connection to address that gaping hole.

9.111 If that was not enough, on the balance of the expert evidence available, not only is there no guarantee that rail paths could enter and egress the site other than at night, there is no likelihood that they would be able to. The implementation of the Thameslink Programme is, quite simply, incompatible (on all available evidence) with this appeal proposal.

9.112 Furthermore, and so far as loading gauge is concerned, upon the most detailed assessment of the issue – the Laser Rail analysis (as agreed by Mr Gallop in cross-examination) - the MML is restricted to W7 only, thereby limiting the type and size of containers that could currently be carried on standard freight wagons. This is in stark contrast to the position at Colnbrook (W8) and still more so to London Gateway (W10). Moreover, whilst the appellant claims a commitment to increase the loading gauge to W10 south of Radlett, (1) it continues to highlight the use of less efficient low chassis wagons; (2) no gauge clearance works have ever been costed; and (3) there would be very considerable disruption caused to economically vital commuter routes by the considerable construction works necessary to increase the loading gauge of the MML to W10<sup>558</sup>.

*(c) Local workforce*

9.113 It is expressly stated in the 2004 Policy document that access to a reliable and skilled workforce, employable at economical cost, is of high importance to the location of an SRFI<sup>559</sup>. And yet, as Mr Tilley openly conceded, St Albans has low unemployment, unlike Slough. St Albans is one of the most prosperous areas in the country. Quite simply there is not a large, available workforce local to the site. The net result, as concluded by the last Inspector, would inevitably be mass in-commuting<sup>560</sup>, mostly by car, all of which is contrary to Government Policy set out in PPG13.

9.114 The irony is almost painful. The Government is promoting SRFIs in order to advance the cause of sustainability; and the appellant promotes a proposed Strategic Rail Freight Interchange in a wholly unsustainable location.

*(d) Away from residential development*

9.115 The 2004 Policy document states in terms that SRFI are not considered suitable adjacent to residential uses, since homes are necessarily sensitive to the impact of noise and movements. And yet the majority of Frogmore and Park Street residents live between 500-800 metres from the proposed intermodal, with 183 new

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<sup>558</sup> STRIFE 9/10 and oral evidence on 2 Dec 2009

<sup>559</sup> Para.4.27

<sup>560</sup> IR16.190-16.191

Park Street dwellings built since the last Inquiry, now occupied, and all within 600 metres of that intermodal. A further 500 Napsbury dwellings are within 500 metres of that intermodal. Many hundreds of homes will therefore be affected, and so much so that in several locations there are likely to be both complaints about noise and increased risk of sleep disturbance.

*(e) Ability to expand*

9.116 Finally, whilst the 2004 Policy document identifies the potential for expansion as a valuable characteristic of an SRFI site<sup>561</sup>, the Radlett site has no such potential. This, again, is to be contrasted starkly with Colnbrook, where the smaller proposal shortly to come before the Council (itself amounting to 200,000 sq. m of SRFI floorspace) does allow for expansion to the west, as Mr Tilley agreed.

*The Alternatives*

9.117 If the Radlett site fairs so poorly as a potential site for an SRFI (indeed it could not operate as an SRFI on the best available evidence), the same is manifestly not true for many of the alternatives. The permitted sites are dealt with first; then with the other alternatives beyond the unduly restricted North West sector of Helislough's search; and then the alternatives even within that limited sector.

*The permitted sites - Howbury Park and London Gateway*

9.118 Two of those alternatives are already permitted – Howbury Park<sup>562</sup> and London Gateway, the latter already gauge-cleared to W10. As we have seen, both can properly operate as SRFI and both would serve the relevant region of London and the South East. They more than meet any need to serve that region for decades to come.

*The other sites outwith the North West sector - Barking and Dagenham, Kent International Gateway and Redhill Aerodrome*

9.119 Alongside Howbury Park and London Gateway there are several other sites, outwith the over-restricted North West Sector within which the appellant was looking, which similarly could serve London and the South East. Barking and Dagenham is favoured by Transport for London as a freight terminal to serve the capital and is possessed of excellent rail links, without gauge restrictions, between the terminal and the Channel Tunnel Rail Link. Moreover, it is previously developed industrial land, and in a despoiled, industrialised landscape. It is an obvious contender.

9.120 Likewise, and for the reasons given by Mr Wilson (which we endorse) both Kent International Gateway and Redhill Aerodrome also would be readily developable as SRFIs, and if so developed capable of meeting the need (such as it is) in London and the South East. Through its flawed methodology however, whereby the appellant has Nelsonian blindness to any alternative site which lies beyond their North West Sector, even if it could serve London and the South East, all of the above sites have simply been ignored.

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<sup>561</sup> Para. 7.8

<sup>562</sup> See 9/CD/6.1 and 6.2

*The Alternative North West Sector sites – Sundon, Littlewick Green and Colnbrook*

9.121 However, even within the North West Sector, the appellant's limited area of search, there are further alternatives available to meet the need: Sundon, Littlewick Green and – of course – Colnbrook.

9.122 Colnbrook is shortly to come before Slough Borough Council again as an application site for an SRFI. That site is, as Mr Tilley openly concedes, degraded land. It is in close proximity to a sewage treatment plant, a waste incinerator facility, an industrial estate and Heathrow Airport. It is served by the A4, and is within 1½ miles of the M4 (and a further mile or so from the M4/M25 junction). In addition, it is adjacent to an operational rail link which provides access to the GWML, gauge-cleared to W8, and offers head-on access to Southampton via Feltham without any need for turnaround<sup>563</sup>. As above, it is not constrained and is able to expand. It is in an area of low employment and with good links to public transport. It is, and quite obviously, an alternative to Radlett. Moreover, it is an alternative which, unlike Radlett, is unencumbered by the Thameslink Programme, and remote from any building of comparable importance to St Albans cathedral.

9.123 Neither is there any case for arguing that there is a compelling Local Plan policy objection which can be raised against Colnbrook, differentiating it from Radlett. So far as the Strategic Gap is concerned, and for all of the reasons covered by reference to Farnborough, the designation within such a gap does not offer any additional policy protection against inappropriate development over and above Green Belt designation. In the Green Belt very special circumstances have to be demonstrated sufficient to justify permission being granted; and where they are so demonstrated, especially by reference to the asserted need for an SRFI, the exception to Strategic Gap policy will also be made out.

9.124 That there is no policy embargo upon SRFI development at Colnbrook is made absolutely clear upon close examination of the Slough Borough Council's Core Strategy<sup>564</sup>. The only sensible reading of that Strategy is that the Council appreciate the potential of the site for an SRFI development; understand the tests against which such a proposal will be determined; and are of the view that they should be applied in the context of a planning application rather than the proposal being ruled out through the LDF process.

9.125 The only rational conclusions are that there are alternative sites which could meet such need if any as exists for SRFIs to serve London and the South East; that many of those sites would perform materially better as SRFIs than the Radlett site (which appears not to be able even to operate as an SRFI other than at night); and that the appellant's Alternative Sites Assessment is so error-strewn, so misconceived, that it provides no sound basis for concluding otherwise.

*(4) Could the alternative sites meet that need without occasioning the same extent of harm as at Radlett?*

9.126 The harms which would be occasioned should the appeal proposal be permitted have already been described - the loss of a huge tract of Green Belt land

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<sup>563</sup> Gallop XX

<sup>564</sup> See: Hargreaves Proof of Evidence at §7.16 and §5.72 of his Appendix 25.



to inappropriate development, with four of the purposes of Green Belt designation offended against; harm to visual amenity and local landscapes; noise and sleep disturbance, caused by both on and off-site activities; disruption and inconvenience to users of rail, with trains delayed by freight movements or engineering works; and increased congestion, with drivers caught up in gridlocked roads, especially the A414, whenever an incident occurs on the nearby motorways.

9.127 So far as roads are concerned, the points previously made are not repeated. Suffice it to say that the roads are already congested and this development would make them more so; there remains no credible contingency plan should an incident occur on the motorways, with access and egress to the site being along a single road only; and that all of these effects may have been very considerably under-estimated by the Highways Authority given the evidence about the height of the sheds in comparison to DIRFT and about the potential of this development to attract large retail occupiers.

9.128 So far as noise is concerned, STRIFE endorses the conclusions of Mr Stephenson for the Council on cognate issues and also invites attention to the careful critique of the previous Inspector's conclusions on noise by J&S Consulting Ltd<sup>565</sup>.

9.129 First, it is clear that Mr Sharps cannot justify his assertion that his own modelling over-predicts by 5dB, a truly astonishing claim in any event given that this is his *own* noise prediction and, if inaccurate to that extent, would be a several-fold over-estimation of the total noise energy. In particular, none of the factors Mr Sharps relied upon accounts for the over-prediction he claims - for all of the reasons given by Mr Stephenson (who, unlike Mr Sharps, was available for cross examination).

9.130 Second, the evidence clearly demonstrates that, properly assessed in accordance with BS4142 (agreed to be the correct methodology by the last Inspector despite Mr Sharps' evidence to the contrary), and even upon the current inputs as to usage, the noise from the depot will give rise to a likelihood of complaints.

9.131 Third, and again on current inputs, the evidence also demonstrates that, properly assessed, the noise from the depot and associated activities will, at several locations, cause sleep to be disturbed, especially in the summer months when bedroom windows will more likely be left open.

9.132 Fourth, however, the current inputs manifestly do not represent a worst case scenario so far as noise is concerned, and for two reasons. So far as trains are concerned, since none (or very few) could access the site by day, all (or most) would do so at night, with all of the consequential operational noises generated in the most noise-sensitive hours. And so far as HGVs are concerned, and by reason of both the height of the sheds and the potential occupation by retailers, there may be many more HGV movements than currently predicted.

9.133 Fifth, the evidence also demonstrates that the condition proposed by Helioslough, accepted on the last occasion, is incapable of being complied with in any event, and that – even if it could be complied with – would not prevent sleep from being disturbed. That condition seeks only to control average noise levels at night,

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<sup>565</sup> STRIFE 9/03

when it is not an average that wakes one up or prevents one from going back to sleep. The condition suggested during the last inquiry could be complied with and still mask numerous sleep-disturbing incidents every night.

9.134 Set against the above, it is quite clear that some at least of the alternative sites would not only meet the SRFI need better than it is at Radlett, they would do so without inflicting the savage planning harm which an SRFI at Radlett would occasion. By way of just one very short example, it is inconceivable that an SRFI at Barking would cause planning harm of a comparable magnitude to that caused at Radlett, a sensitive Green Belt location close to an historic town and very many residential dwellings, and accessed on roads which are already so heavily congested and inevitably will become more so.

*(5) If there are no sites available, is the extent of the remaining need for an SRFI to serve London and the South East such that the harm to the Green Belt and other identified harms, is clearly outweighed?*

9.135 The weighing of the planning balance of harm against need was never undertaken by the SoS on the last occasion, so we know not the SoS's view on the evidence before her. Since then, however, the extent of any remaining need has considerably diminished, if not been eradicated, through subsequent planning permissions. Even if a residual need for an SRFI development to serve London and the South East has survived, the question arises as to whether it is so large as to justify 330,000 sq. m of warehouse development, all of it 20 metres high, in this particular Green Belt location.

9.136 Irrespective of the fact that Appendix G to the 2004 SRFI Policy document imposes no ceiling on SRFI development, it is equally a fact that, in consequence of that Appendix, just 400,000m<sup>2</sup> of SRFI development is stated to be required to serve the need of London and the South East up to 2015. If three or four SRFIs are anticipated to meet that need, each would be approximately 100,000m<sup>2</sup> in extent.

9.137 Radlett, however, is an application for in excess of three times that floorspace and, *by itself*, would comprise in excess of 75% of the floorspace for which the 2004 Policy sought provision, even ignoring the permissions already granted. Radlett would also have sheds which appear to be 66% higher than those developed at DIRFT or proposed at Hollingbourne, with an equivalently greater volume of storage capacity, potentially generating proportionately additional HGV movements.

9.138 So far as height alone is concerned, this presents an intractable dilemma: how can that additional height conceivably be justified in Green Belt terms, even by reference to a need for SRFIs in the light of other SRFIs operating with just 12.5m sheds when 20m sheds are here proposed?

9.139 Accordingly, and whether by reference to floorspace or height, and even if any demand for an additional SRFI does survive, incapable of being met elsewhere, it is quite apparent that the Radlett proposal amounts to a massive overdevelopment, unjustified by need and beyond the contemplation of the 2004 Policy. As such, it will cause additional, and unjustifiable, harm in terms of its impact on the openness of the Green Belt, on landscape, on the roads, and on residential amenity.

*(6) Would the grant of planning permission for an SRFI at Radlett be premature?*

9.140 In STRIFE's submission, moreover, it would be plainly premature to grant planning permission now for Radlett<sup>566</sup>. In particular, the context within which all of the above 5 questions fall to be answered is about to be transformed by the publication of the NPS in respect of SRFIs, out for consultation very shortly and anticipated to be designated sometime next year.

9.141 The statute specifically contemplates that such Statement may set out all of the following: (1) the amount, type and size of SRFI development which is appropriate, either nationally or for a specified area; (2) the criteria to be applied in deciding whether a location is suitable or potentially suitable; (3) the relative weight to be given to the specified criteria; and (4) the locations which are suitable or potentially suitable, or indeed unsuitable, for SRFI development.

9.142 The Statement will, in all of these regards, be underpinned by a national and strategic assessment by the Government of need and market, of economic viability, of impact on other nationally important infrastructure (such as intensively used passenger rail lines) and other site-specific planning and topographical considerations.

9.143 It would, in STRIFE's respectful submission, be wholly wrong to pre-empt that Statement, and the assessments which will underpin it, by granting consent now for so substantial an SRFI. To do so might, quite obviously, cut across completely the detailed, and binding, policy pronouncements which the Government is about to make, potentially derailing their strategic planning assessments as to how much SRFI floorspace should be provided, and where that floorspace is best located.

9.144 This can easily be demonstrated. The requirement for SRFIs to serve London and the South East is both finite and limited<sup>567</sup>. Imagine, then, that the Statement promotes Colnbrook as a preferred location to Radlett, or acknowledges that Howbury Park, London Gateway and, therefore, Barking can serve the entire region and that the latter is also a preferred location. The end result will be that the Statement will have identified all of the preferred locations and not one of them will be Radlett. And yet if Radlett is already permitted, one or other of Colnbrook or Barking would not – in all likelihood – come forward, which is exactly the opposite of that which the new system is designed to achieve.

9.145 However, the proposal is also premature in other ways. As we have seen, the level of assessment on all pertinent railway matters is currently wholly inadequate. On pathing, there is no certainty at all that a single off-peak train could enter or exit the site other than at night. So far as even Network Rail is concerned, the project is at a *pre-feasibility* stage only. Moreover, and as already emphasised, the proposed northerly connection is not actually proposed at all – it is nothing more than a schematic possibility for which passive accommodation only is suggested.

9.146 In all of these regards the proposal is brought to the inquiry before it is ready for determination: it pre-empts the NPS; it cannot be demonstrated even to operate

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<sup>566</sup> See section 14 of the Proof of Evidence of Douglas Hirst (STRIFE 9/04) and the evidence of Mr Hargreaves, which STRIFE endorses.

<sup>567</sup> IR16.195

as an SRFI; its feasibility is wholly unproven, indeed untested; and the development embraced by the appeal application is obviously incomplete.

### *Conditions*

9.147 Moreover, taken together, all of the above demonstrate that to permit Radlett now would raise the spectre of a massive warehouse development in the Green Belt, permitted on the false prospectus that it can meet a need for the interchange of freight between rail and road, only for it to operate as a predominantly road to road depot, something for which no very special circumstances at all could be prayed in aid.

9.148 It was precisely to prevent this Trojan Horse that the Council proposes its conditions, which STRIFE endorse, tying the development to achievement of rail infrastructure improvements. However, even these are not enough, as experience at Alconbury so aptly demonstrates.

9.149 Imagine that those works are all completed but that, as at Alconbury (and as predicted by Mr Wilson), the pathing issues cannot be overcome. In that event, Network Rail would prevent freight trains from crossing the lines in protection of the Thameslink Programme. And yet Helioslough could, and undoubtedly would, then use their site as a road-only depot.

9.150 That is why STRIFE proposed their addendum to condition 9. It ties the amount of HGV movements to the number of train movements, all within the existing projections of the Environmental Assessment. It does not prevent the development from going ahead exactly as promoted, it facilitates it. There is nothing whatsoever in that condition for Helioslough to fear, provided that the confidence they invite the SoS to repose in their rail case is well-placed. If Helioslough object to that condition, it can only be because they have no confidence in their rail case. And if they do not have confidence in their own case, sufficient to sign up to so innocuous a condition – one designed only to ensure that something promoted as an SRFI, permissible only if it is an SRFI, actually functions as an SRFI, neither should the SoS.

### *Conclusion*

9.151 Accordingly, and for all of the reasons given, and in fidelity to Green Belt policy, and in accordance with the legal authorities, and upon the compelling evidence, the appeal should be dismissed and the Trojan Horse expelled in terms that prevent it ever from returning. This is no location for an SRFI and this valued part of Green Belt land should ever be protected from the huge road-based depot that this development would inevitably become.

## **10. The Cases for other Interested Persons**

10.1 **Mrs Anne Main MP**<sup>568</sup> was particularly concerned about the contribution of Network Rail to the inquiry and its lack of attendance to be questioned, particularly in view of its support for the appellants in the previous appeal. Network Rail is unable to offer guarantees that the proposal would be viable. 10 of the inter-peak period paths are used now, which only leaves 4 during the day, and these are only in the

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<sup>568</sup> 9/AM/1.1

morning. Given that the industry standard is 80% usage, there would only be one train per day between 6am and 7 pm. The remaining 11 of the proposed freight trains would have to be in the night between 7pm and 6am with the consequent impact due to noise and light pollution. Network Rail have not provided any detailed study of path availability. It is not sensible to approve the application on this basis. The new Thameslink commitments have not been factored into future prediction for path availability. Network Rail is only able to use data from an old timetable and cannot project availability for the period when the SRFI would be operational. Network Rail has a commercial interest in getting freight on line.

10.2 The proposal is premature in that Network Rail has stated that *“development work is currently ongoing (18 November 2009) to develop the committed Thameslink Programme and like Radlett, this is still in the development stages of the GRIP process. The timetable development work for this project commences in January 2010 and will be completed by the end of March 2010.”* In addition, the Rail Minister has indicated that the National Network National Policy Statements being published later in 2010 will set out the case for the establishment of a network of SRFIs in the regions and will supersede the Strategic Rail Policy for SRFIs published in 2004.

10.3 London Overground Rail Operations Ltd indicated that rail freight is to be supported but must be as part of a strategy which examines capacity across the country and it is an area for which a regional strategy would be beneficial to balance conflicting requirements.

10.4 Passenger Focus commented that it would be absurd if, after the much needed investment in central London, the proposed Thameslink timetable cannot be operated in full. Paths to operate the proposed timetable must not be jeopardised. In addition, future investment in high speed rail has to be taken into account. The regional distribution of SRFIs should be properly planned, not led by speculative developments such as this.

10.5 A repeat of the situation at Alconbury should not be allowed, where sufficient rail paths were dependant on alterations being made to the East Coast Main Line; they did not materialise and the scheme stalled, with a subsequent planning permission granted for residential development.

10.6 The Freight Transport Association are concerned about the lack of motorway access and any delays to lorries due to heavily congested local roads. The lorry delays would lead to a build up of air pollution. Night time noise will be a problem as recognised in a recent appeal for a Metal Recycling Centre at Kings Langley, Hertfordshire<sup>569</sup>. The proposal would have a huge impact on the views of the city centre along many lines of sight. The view of the Cathedral from the main railway line would disappear as a result of the earth bunds to be built around parts of the site.

10.7 **Mr James Clappison MP**<sup>570</sup> agreed that there would be substantial harm to the Green Belt and agreed with the submissions of STRiFE and Hertsmere Borough Council that this particular part of the Green Belt is not large and is in a sensitive location. It is one of last significant areas of open Green Belt which separates St

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<sup>569</sup> 9/AM/1.2

<sup>570</sup> 9/James C/1.1

Albans from Radlett and London Colney. Special circumstances to justify such damaging encroachment onto the Green Belt do not exist.

10.8 **Mr S Walkington**<sup>571</sup> queried the basis of the traffic generation data which have been derived from actual vehicle movements at Daventry International Railfreight Terminal (DIRFT) and at Magna Park, in that floorspace has been used as a comparator, whereas a volume comparison would offer a more accurate assessment. The warehousing at the appeal site would have a maximum height of 20m which would require automated rail guided loading and unloading systems. The older warehousing at DIRFT and Magna Park is 12m high. Therefore, the storage capacity at the appeal site would be far greater per m<sup>2</sup> of floorspace than at the comparator sites used to generate the forecast. Consequently the likely HGV traffic into and out of the site has been underestimated.

10.9 This same comment applies in relation to the predictions for Kent International Gateway (KIG) and Colnbrook, nr Slough. Therefore all the assumptions must be re-examined. If there is to be such a large increase in HGV traffic, there should be a commensurate increase in trains, otherwise the development is really a road distribution centre with a few sidings, rather than a genuine rail freight interchange.

10.10 There is a significant conflict between the existing demand for rail freight paths and the ambitions for commuter rail traffic into and out of London. Furthermore, a maximum W9 gauge and a rail connection only to and from the south fatally undermine the pretensions of the appeal site to be an SRFI. If it is not strategic, the destruction of the Green Belt nor the impact on local infrastructure cannot be justified. The view of St Albans and skyline would also be damaged irreparably.

10.11 **Revd Cllr R Donald**,<sup>572</sup> as Leader of the District Council, stated the public opposition to the application has grown not declined since the first inquiry. The site contributes to the unique character of the District. The openness of the Green Belt would be destroyed by the 330,000m<sup>2</sup> of built floorspace, 20m high with the associated infrastructure and noise bunds. 173ha would be permanently lost. If the development is permitted, the southern villages, separate communities and city would merge in a short time, which could set a precedent which could lead to the coalescence of St Albans, Radlett, Borehamwood and Mill Hill. This could extend around the whole of north London bordering the M25.

10.12 The recent Sustainable Communities Strategy (SCS) and Draft Local Development Framework (LDF) Core Strategy have clearly prioritised the protection of the Green Belt. The Core Strategy does not support the need for or the development of an SRFI locally to ensure the economic future of the District.

10.13 The proposals are estimated to generate daily movements of about 3,200 HGVs and 6,500 associated lighter vehicles which would cause further congestion, especially on the A41 and would substantially add to the District's carbon footprint. St Albans has the second worst CO<sub>2</sub> emissions after Winchester. Although freight would be taken off roads and put on trains, it would have the opposite effect by putting more container lorries and employees cars on the roads.

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<sup>571</sup> 9/SW/1.1

<sup>572</sup> 9/RD/1.1

10.14 It is likely that, if permitted, the development would not be a rail freight interchange but a road freight interchange. There is currently inadequate capacity and paths available to accommodate the additional volume of freight trains required to service the interchange. The gauge alterations and necessary associated bridge and tunnel reconstructions have not been adequately scoped or costed, nor any funding identified. Good rail connections to the north and to any deep ports are lacking.

10.15 The Government's requirements for 400,000m<sup>2</sup> of rail related warehouses has already been met and so the need for the development has diminished since the first inquiry. The appellants' analysis of alternative sites has not been robust or sufficiently wide ranging. In addition, there have been no measures proposed to alleviate the adverse effects of the development on the Cunningham Ward of the District, north east of the site, particularly from the traffic congestion caused by the proposal and the already permitted Butterfly World scheme. There would also be a threat of expansion of the North Orbital Commercial Park onto adjoining Green Belt to provide more lorry parking or warehouse space. Residents would suffer increased noise and air quality pollution from cars and lorries, the SRFI itself and the freight trains.

10.16 **Mr M Saunders**<sup>573</sup> stated that the application should be fully considered and judged afresh. Although Policy T10 of the East of England RSS states that provision will be made for at least one SRFI within the east of England to serve London and the region, the Government has indicated that it intends to revise the policy. If there is a change in Government, the RSS will be abolished. A study has not been carried out by the East of England Regional Authority, only the private sector which cannot do it in a disinterested way.

10.17 The damage to the very sensitive area of Green Belt so close to London would be enormous. It is difficult to imagine any set of circumstances which would clearly outweigh the harm brought by the development. It is still the intention of Herts CC to develop the land as a series of public open spaces with public footpaths.

10.18 The proposed country park does not meet the normal criteria for country parks. It is just a disjointed patchwork of land holdings and would be very high maintenance. Employment has never been a major problem in this part of Hertfordshire. A project such as this ought to be directed towards a regeneration zone.

10.19 The junction of the A5183 with Harper Lane is substandard. There is a need to reduce through traffic from Radlett. Elstree Crossroads on the A5183 already causes problems and is an Air Quality Management Site. Rail freight originating from the north would have to travel to Cricklewood to then return to the site. There is a lack of capacity. Increased noise at night from freight traffic would be unacceptable.

10.20 If allowed, planning conditions should be imposed to: (a) ensure that the SRFI does not become a road freight interchange; and (b), provide for a substantial contribution to solving traffic congestion at Harper's Bridge off the A5183 north of Radlett, other traffic calming measures in Radlett, solving the problems at Elstree crossroads and to fund the revenue loss of the proposed country park; (c)

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<sup>573</sup> 9/MS1.1

10.21 **Mr LaRiviere** <sup>574</sup>commented on the rural atmosphere of the area and supported the reasons for refusal of the Council and wished to concentrate on the highways objections. The addition of the 3000 lorry movements per day from the development on top of the existing traffic, plus the cars belonging to workers and ancillary traffic would add a huge burden to the road system, despite minor improvements to the A414. There can be no certainty that the SRFI would not develop in to a road to road interchange.

10.22 Herts CC does not support the SRFI and has been intimidated by the prospect of financial reprisals for stating their continued concern. The A414 is one of the busiest roads in Hertfordshire. The impact of an SRFI on traffic flow in Park St would be tremendous. The congestion would also be exacerbated by the Butterfly World development and a new Hilton Hotel at Chiswell Green. Road safety would be prejudiced. Air quality would suffer from motor fume pollution and excessive noise pollution would disturb night time sleep.

10.23 The projected population increase in the area will result in a population increase of about 25,000 over the next 20 years, resulting in about 8,000 more road users. Frogmore, Park St, How Wood, Chiswell Green and Bricket Wood are identified as "large villages excluded from the Green Belt" in which housing development will take place. Harperbury Hopsital is identified as a location for 350 dwellings and the site of the former Building Research Establishment as a location for 150 dwellings. Over 200 houses have been built as infill in Park Street since the last inquiry. The only factor in favour of the development is the flat site. On all other considerations, the scheme fails.

10.24 **Mr Roberts** <sup>575</sup>as a former timetable planner and manager with various rail companies, questioned the ability of the appellants and Network Rail to deliver reliability and a full SRFI. Although the appellants operation is for 12 loaded and 12 empty freightliner trains in and out of the terminal each day, Network Rail has been reported as not being able to guarantee the pathways. The loading gauge restriction prohibits the carrying of 9'6" continental containers, unless on special wagons.

10.25 The Thameslink programme must not be overlooked and requires almost split second timing otherwise a large part of the inner and outer suburban network will be disrupted. The MML is already a very busy railway with limited additional pathway capacity, particularly during the day and, most certainly, not in the morning and evening peak hours. There are currently just 5 slots into the terminal during the day off peak and that is without the additional Thameslink programme. If the freightliners cannot come by day, the operation will be predominantly at night time which would have impacts from noise, light pollution and road transfer vehicles. A full draft working timetable is required to include all the proposed passenger services, especially on the up and down slow lines where the proposed SRFI's access points would be. Rail capacity and pathways are compromised as trains slow down, stop or cross over at junctions. This should be presented in detail.

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<sup>574</sup> 9/ILaR/1.1

<sup>575</sup> 9/ER/1.1



10.26 **Mr Trevelyan** <sup>576</sup> stated the St Albans Civic Society wishes to see the appeal dismissed and supports the arguments submitted by the Council and STRiFE. The development would lead to the merging of Radlett and St Albans. It would effectively close the gap between Park St and London Colney and so be contrary to the second, third and fourth purposes of including land in the Green Belt. The site has been successfully transformed from a former mineral working to agricultural countryside. It is usual practice in traffic assessment to find comparative developments which are similar to that proposed. If the height or volumes of the comparators are significantly different, the traffic generation estimates could be seriously in error.

10.27 **Mr Parry** <sup>577</sup> supported the cases submitted by the Council and STRiFE and had further objections based on ecology and traffic. The appeal site is a good hunting area for Barn Owls, a declining species in Hertfordshire, but which bred successfully at a location about 1.2 km away. The previous ecological survey is flawed.

10.28 There is also a fundamental flaw in the traffic assessment in that floor areas of comparative developments at DIRFT and Magna Park (nr Milton Keynes) are used and not the respective volumes. The HGV traffic would be at least double of that claimed by the appellants, Herts CC and the Highways Agency. Even a minor traffic incident on the A1M, M25, M1, A405 or A414 can result in gridlock and Park St being cut off from St Albans. This can happen about once per fortnight.

10.29 **Mr Bell**, <sup>578</sup> on behalf of the Chiswell Green Residents Association, also commented critically on the traffic implications of the proposal, especially when there would be incidents on the M25 or M1. Furthermore, no consideration has been given by the appellants to alternatives should the site access road or the rail access become blocked. Alternative sites, which are workable and sustainable, should be assessed by independent specialists and not rely on reports produced by the appellants.

10.30 **Mr Taylor**, <sup>579</sup> of the Radlett Society and Green Belt Association, referred to the reason for refusal dealing with the Green Belt and commented that the suitability of a site does not amount to very special circumstances. The Green Belt in this location has prevented the outward spread of London, has helped to retain the separate character of Hertfordshire's towns and villages, has prevented the merging of settlements and has preserved the visual amenity and openness of the site. The loss of the site will harm the openness and visual amenity of the Green Belt.

10.31 In the assessment of Alternative Sites, the North Pole International Depot has been omitted and it would appear to require little change to rail infrastructure. Moreover, the north west to south east orientation of the proposed buildings on the relatively elevated appeal site would be unsustainable in terms of energy loss. The introduction of the Park St relief road from the A41 to the A5183 south of the M25 would open up even more what is already an intolerable rat run, especially when either the M1 or M25 is closed. Radlett is a small town and cannot be bypassed. There are 54 schools served mainly by coach. The additional traffic generated by the proposal could unduly extend school journey times.

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<sup>576</sup> 9/PT/1.1

<sup>577</sup> 9/DP/1.1 & 1.2

<sup>578</sup> 9/JB/1.1

<sup>579</sup> 9/RSGBA/1.1

10.32 The junction of Harper Lane and the railway bridge is substandard and no longer fit for purpose. There is a need for the bridge to be rebuilt. The Elstree crossroads further down the A5183 is also problematical. HGV drivers might be tempted to drive a longer but less congested route using Harpers Lane, rather than the A41 and A1081, should traffic conditions be difficult. The site is not ideally located in terms of the strategic highway network.

10.33 The overall increase in noise would be harmful, especially the effects caused by night time freight services on properties close to the railway, particularly in the shallow valley through the centre of Radlett. The scheme, if allowed, should have buildings fitted with solar panels. The proposal is not in the public interest because of its location in the Green Belt. Although a claim is made that lorries would be taken off roads, the evidence indicates that the site would become a predominantly road – road logistics park for which no very special circumstances can be argued in support.

10.34 **Mr Peak**<sup>580</sup>, of the London Colney Village Concern, referred to the issues concerning external traffic around London Colney which are still not resolved. Problems with lorry parking, excessive noise and the impact on safety and comfort have appeared with the approval of various Business Parks built near the junctions 21A and 22 of the M25. Consideration of the proposal at the appeal site should take the cumulative impact into account.

10.35 **Miss Pudsey**<sup>581</sup> spoke on behalf of the St Albans Community Forest Association and concurred with many of the objections by others but concentrated on the direct impact of the proposals on the Watling Chase Community Forest (WCCF) and the objectives of the Watling Chase Forest Park (WCFP), and whether the country park proposal constitutes sufficient mitigation and amelioration to contribute to special circumstances.

10.36 The proposals constitute unacceptable development in the Green Belt and contradict central policies in the WCFP. Watling Forest, covering 72 square miles, is one of 12 community forests set up in England and aims to increase woodland cover whilst working for the conservation of nature and provision of recreation, education and employment opportunities. The SRFI proposals, even in conjunction with the country park, fall foul of both PPG2 and the WCFP, as was agreed by the previous Inspector.

10.37 There would be the loss of a genuine working landscape at Hedges Farm, which combines environmental and recreational benefits with traditional land use. A sustainable local enterprise would be lost in the interest of moving large amounts of goods over long distances.

10.38 Many of the best landscape areas of the country park are already accessible to the public via existing RoW and, whether accessible to the public or not, a large part of the area already fulfils WCFP objectives, and all of it already fulfils the main purposes of the Green Belt. The country park would be incoherent. The current high

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<sup>580</sup> 9/KP/1.1

<sup>581</sup> 9/SACFA/1.1 – 1.4

volume of traffic discourages people from using the WCCT sites. The increased traffic from the proposal would not improve that situation.

10.39 There could be benefits from a new country park but it is not clear how the park would be administered, nor is the level of funding sufficiently guaranteed, the loss of amenities, including views, open spaces, wildlife and farming areas from WCCF would be considerable, as would be intrusions due to increased traffic volumes. The harm would not be outweighed by the country park.

10.40 If allowed the SACFA would wish to see stringent conditions and an adequate S106 funding secured: ensure the development operates as an SRFI not a lorry park; ensure all necessary sustainability, mitigation and other measures are fully and correctly applied; ensure secure adequate and sustainable funding for the development and management of the country park; and to provide for suitable input from a wide range of stakeholders in the design, development and management of the country park; restrict the use of the buildings for anything other than rail freight and ancillary uses only. If rail freight becomes unviable, there should be a requirement for the buildings to be demolished and the site restored to green field status.

10.41 **Mr Johns**<sup>582</sup> on behalf of Park St Primary School opposed the proposal because of various reasons. The SRFI would adversely affect the health and sleep patterns of pupils during construction and operation. Strategic Noise Maps show that the Radlett Aerodrome already suffers seriously from noise pollution due to major roads and railway with an average volume level of over 65dB during daylight. Similarly, the area has a level of night noise more than 55dB everywhere with many locations more than 60dB. Both during the day and night that area has noise levels which the EU noise directive describes as "annoyance" during the day and "sleep disturbance" at night. Noise levels would increase were the proposal to go ahead. The scheme does not interpose between locations in Park St and the primary noise sources.

10.42 The appellant has acknowledged that the development would affect the water table of the surrounding area. Additional houses have been built along the Radlett road. The risk of flooding has been increased during peak rain activity. The flood risk has increased significantly since the previous inquiry. The inadequate assessment provides insufficient evidence that the infrastructure would be able to support the additional water flow associated with the proposed scheme. Little thought has been given to site security and the storage of hazardous materials.

10.43 The local roads are not capable of accepting additional traffic and the increases of up to 3,000 more HGVs and 6,000 cars would place the children who attend the school at greater risk. The extra traffic would also worsen the health of children with breathing difficulties like asthma.

10.44 Green Belt would be lost. The water meadows of the Ver would be replaced by a small artificial habitat. Some local populations of several species would be permanently lost from the area, especially in the wetlands. The local open farm and bridleways would be lost. Several thousand transient workers would pass through the area each day bringing added risks to school pupils. There would be a failure to

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<sup>582</sup> 9/MJ/1.1

return the former mineral working to its original state. The proposed SRFI buildings would not be hidden by the earthworks.

10.45 The appellant has land south of the M25 and in Harrow and Luton which could be used for the development. That land is in areas where there is a greater need for jobs and where the environmental impact of the scheme would be less. The development would not be an SRFI. The rail line connection is simply to obtain planning permission in the Green Belt. It is highly geared towards road freight. It is unlikely that the rail freight capacity can be met by a single unidirectional line sharing a major commuting line.

10.46 The proposal is premature until the NPS on National Networks has been published, which should be within months. There is no evidence of demand for warehouse facilities. The appellant has failed to demonstrate that there are adequate paths in the wider national rail network to support the number of freight trains the facility is intended to serve, especially in view of the growth in passenger numbers. Landscape has been inadequately addressed given that 200 additional homes have been built since the last inquiry. The proposals would also lead to harmful air quality conditions; no attempt has been made to update the assessment. The country park proposals are unacceptable. Insufficient information on traffic and highways has been submitted to enable the proposal to be adequately assessed.

10.47 **Mr Carter** <sup>583</sup>commented on the increase in traffic on the A5183 and the consequent noise and vibration. The SRFI would lead to even more traffic, even more damage to roads and houses and air pollution. In addition, there are no acceptable proposals for dealing with surface water run-off.

10.48 **Mr D Brown** <sup>584</sup>claimed that the proposal has not been thought through. At the junction of the SRFI with the A414, a roundabout would be cheaper for the developer but would maximise CO<sub>2</sub> emissions and carbon particulates, cause collisions and result in delays to vehicles and a waste of time for people in them. A grade separated junction would be more expensive.

10.49 **Mr R Webb** <sup>585</sup>commented on the dangers which would be caused by the increase in traffic, air and light pollution and on the lack of a comprehensive alternative site survey. If it is a new application, all the facts must be considered.

10.50 **Mrs E Brown** <sup>586</sup>stated that, given the existing permissions at London Gateway and Howbury Park exceed current needs, there are no special circumstances which justify the development of this land in the Green Belt. Even if there is an eventual carbon emission reduction as a result of the scheme, the actual construction works would cause very large carbon expenditure. In any event, the reduction would be based on the site operating as an SRFI and that suitable paths can be found in the future. The appellant has said that it would take 10 – 15 yrs to build up to 10 – 12 trains per day.

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<sup>583</sup> 9/JC/1.1

<sup>584</sup> 9/DB/1.1

<sup>585</sup> 9/RW/1.1

<sup>586</sup> 9/EB/1.1

10.51 The appellant predicts that the forthcoming SIFE proposal at Colnbrook would result in a slightly lower carbon emission reduction, but the buildings would be lower in height and less extensive and hence the carbon expenditure from construction would be lower. It appears that Colnbrook would have greater accessibility to the necessary freight paths.

10.52 There would be increased noise near to the development. Windows would have to be kept closed. There would be sleep deprivation. Travelling would become more difficult, which is especially concerning for emergency vehicles.

10.53 **Mr C Brown**<sup>587</sup> referred to the decision by the Secretary of State at Alconbury Airfield where the development was permitted subject to a condition which indicated that no part of the development could be occupied until a rail link to the ECML is provided. The rail paths would be sufficient provided that alteration were made to the ECML. The alterations were not made. The freight path situation here is less clear and there is nothing to show that the unused paths could be used to enter the site now or in the future when the Thameslink Programme is fully operational.

10.54 In this case, if the scheme is allowed, a condition should be imposed so that no ground work shall be permitted to commence of the site until all Gauge Enhancement works have been completed and the Spur and Under Bridge have also been completed. The S106 Agreement should also place a limit on the number of vehicles which could use the site. It is not certain that the site would operate as an SRFI even with expenditure on the rail connection due to the possibility of attracting high rents for modern warehousing, albeit road connected.

10.55 If the DIRFT warehouses are 12m high and the appeal site warehouses 20m high, this would increase the volume available for storage by 67% and so could lead to 5333 HGV movements per day, rather than 3200.

10.56 Based on comparisons of the relative volumes of the development at Kent International Gateway (KIG) with the appeal site, the possible stock turnover with the storing of temperature controlled stock, and the likelihood of the SRFI receiving food goods from East Anglia and Lincolnshire, the road traffic forecasts may well be understated. Radlett could operate almost entirely as a Regional Distribution Centre (RDC) which will be entirely road based with substantially more HGV movements than the 5333 suggested above.

10.57 If the HGV movements are compared to cubic volume, the proposed scheme would need about 2062 m<sup>3</sup> per HGV, which is about 70% more than KIG and 130% more than Colnbrook. For each train, Radlett would take up about 65% more land than KIG and 90% more than Colnbrook.

## **11. Written Representations**

### ***Network Rail***

11.1 Network Rail submitted a Statement of Agreed Facts for the inquiry (see para 6.1 above).<sup>588</sup> Network Rail also supplied written answers to questions which were

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<sup>587</sup> 9/CB/1.1 – 1.8

<sup>588</sup> 9/CD/7.4

put to them in a joint submission during the inquiry.<sup>589</sup> Answers included the following:

11.2 In answer to the question seeking confirmation that the Rules of the Plan and the Rules of the Route in the Radlett area on the MML will be unchanged following completion of the Thameslink programme, Network Rail stated that there would be no alteration to the headways in the Radlett area within the Rules of the Plan. The Rules of the Route is an evolving document which changes from year to year dependent on engineering work.

11.3 Network Rail does not recognise that 80% represents the ceiling of capacity that can be used viably for passenger or freight. Network Rail is aware that statements of this kind have been made but there has been no evidence to confirm the statistics. In a regular pattern timetable, all the pathing opportunities are constructed robustly to comply with "Rule of the Plan" and, as such, they should be useable if operators want to bid for them. The circumstances in which access to spare capacity might not be granted are theoretical and Network Rail would need very strong grounds to deny an applicant access into spare capacity and 89% utilisation would be very unlikely to satisfy those criteria.

11.4 Network Rail does not consider there to have been any material changes in the capabilities of the rail network since 2007, and in relation to the conclusions of the previous inquiry reference is made to para 2.3 of the 2009 Statement of Agreed Facts (para 6.1 above).

11.5 Network Rail continues to express a desire to work with the applicant to achieve a technical solution to the issues raised by the provision of the new rail facility. Network Rail is obliged to do this under its Licence Conditions and Dependent Persons Code.

11.6 If any aspect of the development work calls into question the feasibility of the proposed railway works, Network Rail will discuss possible solutions with the developer.

***Cliff Bassett with Goodman (Harlington)*<sup>590</sup>**

11.7 Harlington, north of Luton, adjoins the M1 and the MML and was rejected by the appellants as a more suitable alternative to the appeal site. The appellants claimed that Radlett would clearly perform better than the Harlington site in meeting the assessed need for an SRFI. Three reasons are given: Harlington is significantly further from London; it would be difficult to achieve a rail connection to Harlington without causing significant harm to local environmental conditions; and a development at Harlington is unlikely to provide any additional planning benefits.

11.8 Harlington falls within the "North West of London" area of search and would provide intermodal connectivity with rail access from the MML and a link to the Strategic Road Network (SRN) via the M1, M10 and M25. The Hanger Lane Gyratory on the North Circular Road was chosen by the appellant as the point from which to assess lorry kilometre savings. On that basis, the distance between Harlington and

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<sup>589</sup> 9/HS/INQ/1.0

<sup>590</sup> 9/CBwG/1.1

London compared to Radlett by road is about 26km, which equates to a modest 15 – 18 minutes. A similar travel time and distance by rail is insignificant in the context of moving freight long distances.

11.9 The rail access to the Harlington site would allow for direct routing to the north and south of the site at entry and exit speeds appropriate to the MML. Therefore, it would function better than Radlett in relation to the Strategic Rail Freight Network. The capacity of the M1 and the nearby Junction 12 of the M1 are to be improved and, so far as road access is concerned, the comparison of Harlington and Radlett is neutral.

11.10 The appellant acknowledges that Harlington offers the potential for a higher proportion of workplace trips to be made by non car modes. It is also likely that trips would be shorter and that the development would draw its labour force from communities such as Luton and Dunstable where there are greater concentrations of unemployment. In addition, alternative development configurations are possible on the Harlington site in order to meet market requirements.

11.11 The harm to the Green Belt by reason of inappropriateness would be substantially the same at both Harlington and Radlett. However, the perceived harm to openness would be less at Harlington because of the relative containment of the site. Overall effect on air quality should be less at Harlington than the appeal site due to the fewer number of car borne commuters to the site. Noise, archaeological interests and biodiversity are not determining issues in the comparison.

11.12 In terms of landscape, the appellant's assessment of the comparison between the two sites is that there is little material difference, but that is not correct because the effects at Harlington would be "moderate adverse" rather than "significant adverse" and the visual effects would be "low to moderate adverse" rather than "moderate adverse". The issue of need for an SRFI is common to both, although Harlington would be more effective in meeting the need and so is to be preferred to Radlett and weighs heavily in its favour. This would carry more weight than the benefits of the Park Street bypass and new country park.

11.13 The appellant's assessment overstates the likely effects of an SRFI on the Harlington site in a number of respects. Whilst the harm to the Green Belt by reason of inappropriateness would be similar in each case, Harlington would cause less harm in terms of perception of openness; would cause less other planning harm (notably in terms of landscape and visual effects); would meet the need for an SRFI more effectively as part of the planned SRFN; operate more effectively in terms of sustainability and economic development and could also offer wider planning and landscape benefits.

11.14 Therefore, there is demonstrably a materially better site which is available that would meet the needs for an SRFI more effectively and following the reasoning of the Secretary of State the appeal should be dismissed.

***Goodman (SIFE)*<sup>591</sup>**

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<sup>591</sup> 9/G/1.1 and 9/LPA/2.13 (Appendix K: Wilson)

11.15 Representations were received from Goodman who own land at Colnbrook which has been short listed as an alternative SRFI location to the appeal site. It is claimed that, in assessing the alternatives, the appellant made inaccurate statements in the "Need Case for a Strategic Rail Interchange", where the SIFE site is referred to as Site 9/10. Therefore, the conclusion that the appeal site is the best in the north west sector is flawed and incorrect. The representations suggest that the developers are at a very advanced stage in the preparation of a planning application for an SRFI on the site. Reference is made to the site at Colnbrook in the Slough Borough Council Core Strategy DPD which was adopted in 2008.

11.16 The appellant's conclusions regarding the relative merits of SIFE and the appeal site are factually incorrect. SIFE is located immediately adjacent to the west of the Colnbrook branch line which serves the existing Thorney Mill aggregates depot and the former Heathrow T5 construction compound. The branch line is fully operational and connects with the Great Western Mainline immediately west of West Drayton station and West Drayton junction.

11.17 The appellant implies that the branch line is limited to only W6 freight, whereas it is cleared to W8 on the Network Rail Freight Utilisation Strategy (RUS) and is also capable of accommodating the full range of intermodal units on standard height platform wagons. By the time the SIFE site would open, all rail routes serving the site would be cleared to at least W9, probably W10. The line would not have to cross third party land to reach the site. At least one freight path per off peak hour per direction will be available to serve the site (agreed with the Office of Rail Regulation, Network Rail, DfT and Crossrail).

11.18 Benefits that could form part of a proposal for SIFE include provision of new dedicated cycle infrastructure, enhanced bus transport, improvements to footpaths and bridleways in accordance with the aspirations of the Colne Valley Park and various landscaping and biodiversity improvements. The SIFE site could be developed to avoid areas of floodplain. There is a large potential workforce which does not compete with Heathrow.

11.19 In Green Belt terms, the SIFE site is relatively well contained visually and does not contribute towards the openness beyond its immediate confines. There are few surrounding locations that currently gain any benefit from its existing undeveloped nature. The proposal is consistent with the five purposes of including land within the Green Belt. The Strategic Gap designation in the Slough Local Plan is not used or applied consistently by other authorities, especially in more recently adopted planning policies, not by any local planning authorities that adjoin the SIFE site and not by St Albans District Council. Therefore little weight should attach to it.

11.20 There are few features of intrinsic landscape value or interest. The landscape is in poor condition and of low landscape sensitivity. Only about 2000m of public rights of way would require diverting as opposed to 5000m suggested by the appellants. Although the appeal site is closer to the M25, SIFE is nearer to a motorway, the M4. Goodman anticipate that the use of the range of available sustainable modes of transport at SIFE would comprise 55% after 3 years and 59% after 5 years, compared to the appellant's claim that only 6% would arrive at the SIFE site by bus and 4% would walk or cycle.



11.21 Both SIFE and the appeal site at Radlett would perform similarly so far as air quality is concerned and, in terms of numbers of vehicles generated, the latter might be worse. It cannot be claimed by the appellant that the SIFE scheme would have more than a slight noise impact on the residential community. There would be no adverse archaeological effects. The majority of the site has been quarried. There would be an overall minor positive benefit on biodiversity interests due to potential habitat creation and enhancement work.

11.22 Although the appellant claims that there has been little demand for large new distribution centres in the locality in recent years due to its limited capacity and high cost base, there is potential to accommodate an SRFI here because it would cater for West London, Heathrow and the Thames Valley; it is a mature area which serves a wide range of markets; the local area includes Southall, Hayes, Brentford, Iver, Slough, Thorpe and Sunbury where there are less or no direct airport related facilities; excellent accessibility to the strategic road network (M25, M40, M4, M3 and A3) which means that it would serve a wide area including Central London, M25 West, M25 North West and M25 South West.

### ***Others***

11.23 The written representations received from the many individual and other organisations followed the same themes as those who appeared at the inquiry, including the Council and STRIFE, and others who gave evidence against the scheme, other than one letter of support from Freight on Rail. The letters are included as part of the documentation together with the proofs of evidence and appendices.

11.24 Areas of concern raised in the representations included the effect on the Green Belt and the merging of settlements; the impact of the traffic generated by the scheme; the effect of noise, especially on those who live near the appeal site and the effect of a deterioration of air quality on health.

## **12. Conditions and Unilateral Undertaking**

12.1 There were two sessions at the inquiry where planning conditions were discussed which culminated in an agreed list, with reasons, being submitted on the closing day. Sections highlighted as LPA/STRIFE additional, or alternate, wording showed the areas of disagreement. (Docs 9 /HS/INQ/7 – 9)

12.2 Conditions 1 to 8 were agreed by the appellants, the Council and STRIFE. Condition 1 imposes a 5 year commencement period and I agree that, in this case, it is justified due the complexity of the scheme and the time which may be required to agree details.

12.3 However, I have recommended the deletion of “substantially” from Condition 3 due to the lack of precision and consequent unenforceability should the word be included. I have recommended the deletion of the phrase “unless otherwise agreed in writing by the local planning authority” from most of the relevant conditions in order to prevent a process which would otherwise enable the developer and planning authority to sidestep the planning application process for items which might have a significant environmental impact. I have also recommended the deletion of the phrase “in consultation with ...” from those conditions where it occurs and which is contrary to advice in Circular 11/95.

12.4 STRIFE seek additions to Condition 9 in the form of Conditions 9.4 – 9.7. The additions aim to monitor the number of HGVs entering and leaving the site and would place a limit (Cap) on the number of lorry movements based on the mean average daily train movements calculated over the monitoring period. The reason for the additional conditions is to ensure that the development would act as an SRFI and not a “road to road” interchange which would not constitute a very special circumstance justifying being granted planning permission in the Green Belt.

12.5 My concern about the proposed additional conditions is that, in capping the number of HGV movements to the number of trains, albeit measured by a mean average of trains over a specified period, there would be insufficient flexibility to attract developers to the site. This would defeat the purpose of the SRFI which is to encourage and enable freight operators to send goods by rail. SRFIs will normally accommodate both rail and non rail served businesses from the outset, with an expectation of increasing the proportion of rail served over time. (CD 5.1 para 4.5). Therefore, I do not support the condition suggested by STRIFE.

12.6 Conditions 10 and 11 were agreed.

12.7 The Council seek an alternative Condition 12 to the appellants. This deal with the provision of rail related works. A primary aim of the Council is to avoid significant destruction of the Green Belt for a facility which it considers would not function as an SRFI. The Council considers that there is a very real prospect of the rail connections not being approved. Therefore, a key difference between the parties in the first part of the condition is that the appellant suggests that the condition should state that “None of the units should be occupied until...works have been completed, etc...”. Whereas a variation proposed by the Council is that “The development shall not commence until...works have been completed, etc...”.

12.8 I note the comment of the appellant that the Conditions were discussed at the previous inquiry where agreement was reached with the Council about conditions addressing Rail Related Works. I also realise that some rail related issues were discussed at this inquiry in more depth than at the previous inquiry. However, I consider that the suggested conditions by the Council do not meet the test of reasonableness in Circular 11/95. For example, in Condition 12.1 agreement would have to be sought with Network Rail, which conflicts with Circular 11/95 Para 38 (Conditions depending on others’ actions). In addition, I consider that Condition 12.2 which varies the MML connection works, has requirements which are too detailed and for which there might be preferable alternatives when implemented. The appellant’s conditions more properly reflect the advice in Circular 11/95 and I shall recommend that they be imposed should the appeal be allowed.

12.9 Condition 13 considers Gauge Enhancement to the MML. The Council has sought a variation to the condition suggested by the appellant to require a Feasibility Study to be agreed by Network Rail prior to the commencement of development. As stated above, I consider that such a requirement is not reasonable and fails the test of Circular 11/95 para 38. In addition, the restriction on occupation of the units until completion of the works would be contrary to the development of an SRFI as envisaged by the SRA.

12.10 Condition 14 is agreed subject to the noise issue discussed below.

12.11 Condition 15 is disputed and I agree with the appellant that the degree of detail of planting and seeding sought by the Council is excessive.

12.12 Conditions 16 to 18 are agreed.

12.13 The detail of Condition 19 is disputed and I agree with the appellant that the degree of detail sought by the Council on marginal and aquatic planting is unnecessary.

12.14 Conditions 20 to 23 are agreed.

12.15 Condition 24 on contaminated land is disputed but I note that the wording suggested by the appellant has been agreed with the Environment Agency. In my opinion, the additional phrase proposed by the Council is unnecessary and would be superfluous given the remaining words of the condition.

12.16 Condition 25 deals with noise. The Council and STRIFE have made proposals to vary the conditions suggested by the appellant. I do not agree with the proposals to control construction noise. Construction noise can be adequately addressed under the Control of Pollution Act, as accepted at the previous inquiry. However, I agree that a noise management scheme should incorporate monitoring measures and that the  $L_{Amax}$  threshold as proposed in the Council's Condition 25.3 should be incorporated in order to safeguard the residential amenities of those who live nearby. I consider that the additional Condition 25.1 (b) proposed by STRIFE lacks precision and is unreasonable. The two conditions suggested by the appellant meet the tests of Circular 11/95 and I shall support them.

12.17 Conditions 26 and 27 are agreed.

12.18 Condition 28 is disputed. I consider that the additional words sought by the Council to the first paragraph of the condition lack precision. Therefore I do not support them. The remainder of the suggested alterations by the Council lack precision and are unreasonable in terms of Circular 11/95. Therefore, I do not agree with them.

12.19 Conditions 29 to 32 are agreed.

12.20 Condition 33 is disputed and is related to the Unilateral Undertaking in that it seeks to ensure that various positive works and financial contributions which are essential to the implementation of the scheme are secured. However, the majority of Area 1, which is where the built development of the SRFI would take place, is owned by Hertfordshire County Council which has declined to enter into the undertaking in respect of its land. The appellant has therefore suggested three alternative Grampian conditions to address the situation that the land owned by the County Council is not bound at this stage by the Unilateral Undertaking. (*See Doc 9/HS/INQ/8.0 for the full text of the submissions*)

12.21 Alternative 1 and Alternative 2 would prevent the development being commenced until the whole of Area 1 is bound by the terms of the undertaking. Alternative 3 would prevent the Units within the development being occupied until a detailed scheme has been submitted to and approved in writing by the local planning

authority. The scheme would be consistent with the obligations contained in the unilateral undertaking and would address the same matters covered by the obligation, as listed at (a) – (i) of Alternative 3.

12.22 At the previous inquiry, the appellant proposed Alternative 1 and submitted a detailed note of justification which is attached to Doc 9/HS/INQ/8.0. In her decision letter, the Secretary of State queried whether the condition complied with para 13 of the Annex to Circular 11/95. However, the condition was not rejected by the Secretary of State. She stated at para 52 of the decision that “in view of her conclusion on the planning merits of the proposal, she did not consider it necessary to pursue the matter further.”

12.23 The appellant is still firmly of the view that the condition (Alternative 1) remains valid and is not contrary to para 13 of the Circular 11/95 Annex. Para 13 states that: “Permission cannot be granted subject to a condition that the applicant enters into a planning obligation under Section 106 of the Act or an agreement under other powers.” Whereas the Council considers that the condition would conflict with advice in para 13, I agree with the appellant that the condition proposed at Alternative 1 does not require the applicant to enter into a Section 106 obligation but prevents development being commenced until an appropriate obligation has been secured. Therefore, for that reason I consider that the condition would be reasonable and shall recommend it.

12.24 Alternative 2 has been submitted in order to address any concerns there may be about Alternative 1. It has the effect of preventing works in Area 1 until the approved rail works have been commenced in Area 2. This has to be read in conjunction with Clause 14 of the completed unilateral undertaking which binds the whole of Area 2. In effect, development would not be commenced in Area 2 until a binding Section 106 obligation to bind all those parts of Area 1 not bound by the terms of the completed undertaking has been completed. A criticism made by the Council is that when there are no prospects at all of the action in question being performed within the time-limit imposed by the permission, negative conditions should not be imposed. However, there is no reason to presuppose that the County Council, like any other landowner, would maintain its current stance in the face of the significant financial benefits which would occur were planning permission to be granted for the scheme. Therefore, in that regard, I have no reservations about Alternatives 1 and 2.

12.25 Alternative 3 would prevent any of the units being occupied until a detailed scheme has been submitted to and approved in writing by the local planning authority. The matters to be covered by the scheme would reflect those addressed in the covenants on the part of the owners contained in the undertaking and is a further option should Alternatives 1 and 2 be considered inappropriate. The Council suggested that Alternative 3 would be unlawful in that it would require the payment of money by condition and, following advice in Circular 11/95 Annex para 83, I agree.

12.26 So far as any other outstanding issues are concerned on the unilateral undertaking, I note the concerns of others including the County Council, but having regard to the submission of the appellant (Doc 9/HS/INQ/10.0), I am satisfied that the undertaking is necessary to make the proposed development acceptable. It is

directly related to the development and is fairly and reasonably related in scale and kind to the development.

### **13. Conclusions**

*[The numbers in square brackets refer to the source paragraphs in the report]*

#### ***Introduction***

13.1 The proposal is to build a Strategic Rail Freight Interchange (SRFI) with a rail link to the adjoining Midland Main Line (MML) and with road access onto the A414 dual carriageway, which then leads to the M10, the A405 and the M25. The appeal site lies within the Metropolitan Green Belt about 3.5km from the centre of St Albans and in a gap between the built up areas of London Colney, Colney Street and Park Street/Frogmore.

13.2 The entire scheme comprises eight separate parcels of land (Areas 1 to 8), with the main body of the SRFI and connecting roadways being on Area 1 (146ha), which is mostly restored mineral workings, following its former use as Radlett Aerodrome. Area 2 (26ha) would accommodate the rail link to the MML. Areas 3 to 8 would generally remain in agricultural and woodland use with improved public access and some areas given over to more formal recreational uses. The description of the proposal includes these areas of land as a country park. The scheme would also include a bypass along the western edge of the site which would link the A5183 to the A414 around the build up areas of Park Street and Frogmore. [2.2 – 2.18, 4.1 – 4.19]

13.3 The application is in outline with details of siting, means of access and landscaping to be considered as part of the application to the extent that these matters are defined and described in the Development Specification. The development on Area 1 would include 331,665m<sup>2</sup> of buildings most which would be warehousing up to 20m in height, together with ancillary vehicle maintenance units and a recycling centre. [1.8, 4.2]

#### ***The Previous Appeal***

13.4 In October 2008, following a public inquiry, the Secretary of State dismissed an appeal against a refused application for an identical proposal on the same site. The overall conclusions of the Secretary of State were that the proposal did not comply with the development plan as it was inappropriate development in the Green Belt, and that it would also cause substantial further harm to the Green Belt. She also identified limited harm from conflicts with the development plan in relation to landscape and visual impact and highways, but considered these would be insufficient on their own to justify refusing planning permission. [3.5 – 3.30]

13.5 The Secretary of State was not satisfied that the appellant had demonstrated that no other sites would come forward to meet the need for further SRFIs to serve London and the South East, and she was unable to conclude that the harm to the Green Belt would be outweighed by the need to develop an SRFI at Radlett and that this was therefore a consideration amounting to very special circumstances. Having balanced the benefits of the proposal against the harm to the Green Belt, she also concluded the benefits of the proposal taken either individually or cumulatively would not clearly outweigh the harm to the Green Belt and did not constitute very special circumstances.

13.6 The Secretary of State therefore concluded that there were no material considerations of sufficient weight which required her to determine the application other than in accordance with the development plan. She then dismissed the appeal.

### *Environmental Statement*

13.7 An Environmental Statement (ES) was submitted in accordance with the 1999 Regulations, as amended. In my opinion, the ES meets the requirements of the 1999 Regulations, and I have taken its contents into account in arriving at the recommendation in this report, together with all the other environmental information considered at the inquiry and submitted in connection with the appeal.

### ***Legal Submissions***<sup>592</sup>

13.8 All three legally represented parties at the inquiry, the appellants, the Council and STRIFE made references in opening and closing submissions about how the current case should be approached in view of the previous decision on the appeal site by the Secretary of State. [7.4 – 7.14; 8.2 – 8.15; 9.3 – 9.9]

13.9 The stance of the Council and STRIFE was that there is no duty to decide a case in the same way as the previous decision and that, whilst previous relevant decisions should be taken into account and dealt with adequately, an Inspector (or Secretary of State) has to exercise his/her own judgement and is free to disagree with the earlier decision. This has been set out in the Planning Encyclopaedia (P70.38) where references are made to judgements in the cases of *North Wiltshire District Council v. Secretary of State for the Environment* [1992] J.P.L. 955; *Rockhold v. Secretary of State for the Environment* [1986] J.P.L. 130; *Barnet London Borough Council v. Secretary of State for the Environment* [1992] J.P.L. 540 and *R. v. Secretary of State for the Environment, ex p. Gosport Borough Council* [1992] J.P.L. 476. [8.5, 9.6]

13.10 As a result of reviewing the judgements, the Council submitted that (a) the decision-maker on a fresh application is considering the application as a new application; (b) the decision maker should reach a conclusion taking into account all relevant matters, including any previous decision of relevance; (c) the need to establish a “good reason” for a change of mind from an earlier decision applies where the later decision, if decided in a particular way, would be inconsistent with the previous decision; (d) what will amount to a “good reason” is not a closed list; and (e) a good reason may be a change of circumstances, but need not be that; (f) the decision maker decides that the balance should be struck in a different way and (g) a new argument or a new piece of evidence or the compelling nature of the way the evidence is presented may also amount to a good reason. [8.7]

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<sup>592</sup> At the inquiry, I was formally requested by Mrs Anne Main MP to issue a witness summons against an employee of Network Rail in order to compel that person to attend the inquiry to be cross examined. Notwithstanding the submissions by the appellant that a witness summonsed in that way would be there to give evidence rather than answer questions, after I indicated that the person initiating the summons would be responsible for meeting the expenses incurred by the witness, and taking into account the willingness of Network Rail to supply written answers to questions which had been put collectively by the main parties earlier in the inquiry and were awaited the following day, I declined the request. The matter was not pursued further and after receipt of the answers from Network Rail, no more questions were put to that body.

13.11 The appellants stated that the previous decision letter should be the starting point for this appeal and that clear guidance is thus given as to what is required to be addressed in order to secure permission. The reasons given for refusing permission should *"enable disappointed developers to assess their prospects of obtaining some alternative development permission"*: per Lord Brown in *South Bucks DC v. Porter (No.2)* [2004] 1 WLR 1953 at [36] or, by analogy and in the context of this case, should enable disappointed developers to know what they need to do to overcome the problems identified with their proposals. The Secretary of State here has told the appellant company what it needs to do in order to secure a planning permission. The appellant stated that it would be plainly unfair, inconsistent and unreasonable for the Secretary of State to subsequently move the goalposts. [7.4, 9.4]

13.12 This basic proposition applies both to consistency in treatment of different people and to consistency in treatment of the same person at different times: see *R (oao Kings Cross Railway Lands Group) v. Camden LBC* [2007] EWHC 1515 (Admin): *"... However, given the desirability of in principle (to put it no higher) of consistency in decision making by local planning authorities, Mr Hobson rightly accepted that in practice the Committee in November 2006 would have to have a "good planning reason" for changing its mind. That is simply a reflection of the practical realities. If a local planning authority which has decided only eight months previously, following extensive consultations and very detailed consideration, that planning permission should be granted is unable to give a good and, I would say, a very good planning reason for changing its mind, it will probably face an appeal, at which it will be unsuccessful, following which it may well be ordered to pay costs on the basis that its change of mind (for no good planning reason) was unreasonable"*. PPS1 paras 7 and 8 also emphasise the need for consistency. (Inspector's emphasis) [7.6, 8.6]

13.13 The appellants accepted that the Secretary of State was legally entitled to come to a different conclusion to that previously reached, but unless there were any material changes in circumstances (MCCs) there could be no rational reason for him to do so and would be inconsistent with paragraph B29 of Circular 3/2009. However, in my opinion, the *Kings Cross Railway Lands Group* judgement above supports the submission of the Council that a good reason may be sufficient for the decision maker to come to a decision which is inconsistent with one made earlier. Indeed, I would suggest that the phrase within the *Kings Cross Railway Lands Group* judgement indicating *"a very good planning reason"* describes the appropriate test for a change of mind. Therefore, in my opinion, it follows that, in relation to the current appeal, the point can be applied to either the Secretary of State, Inspector or Council and that an MCC need not be the sole reason for a conclusion or decision to differ from one made previously. [7.10]

13.14 This opinion is reinforced by a quote from the case of *North Wiltshire District Council v. Secretary of State for the Environment* [1992] J.P.L. 955: *"To state that like cases should be decided alike presupposed that the earlier case was alike and was not distinguishable in some relevant respect. If it was distinguishable then it usually would lack materiality by reference to consistency although it might be material in some other way. Where it was indistinguishable then ordinarily it had to be a material consideration. A practical test for the Inspector was to ask himself whether, if he (the Inspector) decided this case in a particular way was he necessarily agreeing or disagreeing with some critical aspect of the decision in the*



*previous case? The areas for possible agreement or disagreement could not be defined but they would include interpretation of policies, aesthetic judgments and assessment of need. Where there was disagreement then the Inspector had to weigh the previous decision and give his reasons for departure from it. These could on occasion be short, for example in the case of disagreement on aesthetics. On other occasions they might have to be elaborate” (Mann LJ). Therefore, the Inspector was not precluded from disagreeing with some critical aspect of a case indistinguishable from a decision in a previous case, only that reasons had to be given.*

13.15 However, the Council also submitted “...simply ... a change of view...” was a sufficiently good reason for a decision maker to come to a different decision. I consider that this is far too simplistic. A mere change of view or opinion which then resulted in a different decision, would have to be supported by an adequate chain of logic, otherwise it would be too easy for that decision to appear unsound. Accordingly, whereas I agree that an MCC could result in a different conclusion or decision, such a change could also be prompted by another “very good planning reason”. [8.7]

13.16 Therefore, following the findings in the *Kings Cross Railway Lands Group* case, whereas for reasons of consistency I accept that identical cases should be decided alike, I consider that neither I nor the Secretary of State are bound to follow either the conclusions of the previous Inspector or the decision provided that there are very good planning reasons, which are clearly explained, why such disagreement has occurred.

13.17 I note that the Council deliberately stepped back from arguing against certain conclusions by the previous Inspector and Secretary of State because of the “threat” of costs which had been made if it had pursued various issues without identifying a change in circumstances. The Council did not agree with the contention that costs would apply in such circumstances, but felt incumbent to limit the costs exposure as a result of the points made at the PIM.

13.18 However, at the inquiry, neither the Council, nor any other party, was prevented from calling any evidence to support its case, which was consistent with what I advised at the PIM, notwithstanding the comments I made about the risk of unreasonableness in relation to paragraph B29 of Circular 3/2009. It seems to me that, if the Council elected not to present evidence on an issue and that decision was based on a consideration of an award of costs being made against it, there is a tacit admission of possible unreasonableness and a recognition that a very good planning reason for challenging a particular previous conclusion of the Secretary of State might not exist. [7.12]

13.19 Therefore, in my opinion, the Secretary of State may consider that, if there is a very good planning reason, he is able to differ from the conclusions or decision of his predecessor.

### ***Main Considerations***

13.20 Accordingly, after hearing the evidence at the inquiry, reading the written representations and inspecting the site and surroundings, including the alternative sites shortlisted by the appellant, I believe that the main considerations in the case,

having regard to the aims of the adopted planning policies for the area and the previous decision of the Secretary State are:

- (a) the extent to which the proposal would result in harm to the openness of the Green Belt and the purposes of including land within the Green Belt;
- (b) the extent to which the proposal would cause other harm;
- (c) whether other considerations clearly outweigh the totality of any harm identified;
- (d) and, if they do, whether the circumstances of the case are very special and justify granting permission.

### ***The Development Plan***

13.21 **The East of England Plan** (RSS) published in 2008 includes Policies T1 and T10 to which references have been made in the reasons for refusal of the planning application. Policy T1 describes regional transport strategy objectives and also the outcomes which should arise if those objectives are successfully achieved. An objective of the policy is to manage travel behaviour and the demand for transport to reduce the rate of traffic growth and greenhouse gas emissions. This could lead to an increased proportion of freight movement by rail and safe, efficient and sustainable movements between homes, workplaces etc. [5.2]

13.22 Policy T10 provides that priority should be given to the efficient and sustainable movement of freight, maximising the proportion of freight carried by e.g. rail including that: *"provision should be made for at least one strategic rail freight interchange at locations with good access to strategic rail routes and the strategic highway network, unless more suitable locations are identified within London or the South East for all three to four interchanges required to serve the Greater South East"*. [5.3]

13.23 Para 7.25 of the Plan states that *"Currently, the movement of freight in the region is largely by road. To increase movements by rail... there is a need for interchange locations. The 2004 Strategic Rail Authority Strategic Rail Freight Interchange Policy identified a need for three to four strategic rail freight interchanges for the Greater South East and the 2006 Eastern Regional Planning Assessment for the Railway envisaged development of strategic sites around the M25. Given that the region includes a third of the M25 ring and that all the main rail lines from London to the North and Scotland cross the M25 within the East of England it is likely that at least one of the required strategic interchanges will need to be in the region."*

13.24 **The South East Plan** was published in 2009. The appeal site is not within the South East for the purposes of the Plan and so is not part of the development plan for the area. However, Policy T13 deals with Intermodal Interchanges and seeks the provision within the region of up to three intermodal interchange facilities well related to rail and road corridors capable of accommodating the anticipated level of freight movements, the proposed markets and London. [5.7]

13.25 Potential sites should meet a number of criteria such as being of sufficient size, have rail connectivity, the potential for adequate road access and be situated away from incompatible land uses. The Plan states that suitable sites are likely to be located where the key rail and road radials intersect with the M25.

13.26 There are no saved policies in the **Hertfordshire County Council Structure Plan Review 1991 – 2011** which are relevant to the current proposals. [5.4]

13.27 **The St Albans District Plan Review 1994** includes Policies 1, 97, 104, 106 and 143. Policy 1 deals with the Metropolitan Green Belt and describes the circumstances in which planning permission might be granted for certain types of development, none of which include an SRFI. Policy 97 seeks to safeguard footpaths, bridleways and cycleways. Policy 104 aims to preserve and enhance the quality of the landscape throughout the District. Policy 106 provides for taking account of ecological factors when considering planning applications. Policy 143 provides for visual and ecological improvements in the Upper Colne Valley and encourages measures to promote the enjoyment of the countryside. [5.5]

13.28 No policies in the **Minerals Local Plan** or the **Waste Local Plan** are referred to in the reasons for refusal. An Issues and Options Consultation paper for the **St Albans City & District Core Strategy Development Plan Document** was published in July 2009 and so the Core Strategy is at such an early stage in its preparation that I accord little weight to it. [5.6, 5.7]

### ***Other Policies [5.7]***

13.29 The London Plan Consolidated with Alterations since 2004 published in 2008 encourages the provision of SRFIs (Policy 3C.20). A New Plan for London (2009) has been published for consultation and supports the provision of SRFIs setting out features which the facilities must deliver and recognising that they can often only be located in the Green Belt.

13.30 The Strategic Rail Authority (SRA) published a Strategic Rail Freight Interchange Policy in March 1994. Although the SRA has ceased and the responsibilities for Route Utilisation Strategies (RUSs) and identifying impacts on the rail network has now transferred to Network Rail, the document is still a source of advice and guidance.

13.31 The aim of the policy is to facilitate the development of a network of commercially viable rail freight interchanges with the right facilities and in appropriate locations to support the required growth of freight on rail. Key factors in considering site allocations at the recommended scale of regional planning include suitable road and rail access, ability for 24/7 working, adequate level site area and potential for expansion, proximity to workforce, proximity to existing and potential customers, fit with the primary freight flows in the area, the ability to contribute to the national network by filling gaps and to fit with strategies promulgated by the then SRA including Freight Strategy, RUSs and Regional Planning Assessments.

13.32 The SRA policy suggests that London and the South East, as then constituted, could meet the required capacity by the provision of 3 or 4 new SRFIs in the region, supplemented by smaller locations within the M25 ring. The qualitative criteria to

deliver the capacity mean that suitable sites are likely to be located where the key road and rail radials intersect with the M25.

13.33 In 2009 the DfT published The Longer Term Vision for the Strategic Rail Network. This seeks the delivery of items including longer and heavier trains, efficient operating characteristics, a 24/7 capability, W12 loading gauge on all strategic container routes, increased freight capacity, and the development of SRFIs and terminals.

13.34 As the Council accepted in evidence, the need for SRFIs is stated and restated in a number of documents.

### ***Green Belt***

13.35 When dismissing the previous appeal for an SRFI at the site in 2008, the Secretary of State concluded that it would be inappropriate development in the Green Belt and would conflict with national and local policy. The Secretary of State agreed with the previous Inspector that, whilst the impact on the landscape of the proposal would be mitigated to some degree by the mounding and planting proposed, the proposal would have a substantial impact on the openness of the Green Belt and harm on this account could not be mitigated. The Secretary of State also concluded that the proposal would result in significant encroachment into the countryside, would contribute to urban sprawl and would cause some harm to the setting of St Albans. The appellant, the Council and STRIFE did not dissent from those conclusions which were also reflected in the representations from many members of the public. I have no reason to disagree. [7.26 – 7.36; 8.16 – 8.23; 9.15 – 9.34, 10.7, 10.10, 10.11, 10.17, 10.30]

13.36 However, the Secretary of State also concluded that the proposal would not lead to St Albans merging with Radlett, or Park Street and Frogmore merging with either Napsbury or London Colney. In taking a contrary view, the Council argued that there was no requirement for a proposal to be similar to the development to which it would be near in order to create the impression that urban forms were merging. Neither was there a requirement that the proposal should have to actually enclose the open space between two separated settlements in order to have merged. [7.28 – 7.30; 8.18 – 8.22; 9.23 – 9.31, 10.26]

13.37 In considering the issue of the merging of neighbouring towns, the previous Inspector commented that, given the areas of open land which would remain between Radlett and St Albans with the development in place, there was little merit in the contention that they would have merged. Similarly, he stated that the built up area of the SRFI would be located to the west of the Midland Main Line (MML) with open fields between the MML and Napsbury/London Colney.

13.38 The new railway line to give access to the SRFI would be built on land between the MML and Napsbury. However, an open gap would continue to exist and, although I accept that the gaps between the various settlements would be significantly eroded by the SRFI, they would not merge as a consequence of the development. New development may have been built at Frogmore, Colney Street and Napsbury Park since the previous inquiry, but they were commitments known about and assessed at that time and I do not take the view that the proposal would lead to the merging of neighbouring towns.

13.39 STRIFE submitted an appeal decision at Farnborough in which it was explained by the Inspector and endorsed by the Secretary of State that the effectiveness of a Strategic Gap could be reduced even though the distances between development and surrounding settlements increased. I do not disagree with that proposition, but I do not accept that, in this appeal, the proposed development would lead to merging. The physical gaps would still remain, although I acknowledge that the SRFI would be a visually dominant feature.

13.40 The fifth purpose of including land in the Green Belt is to assist in urban regeneration by encouraging the recycling of derelict and other urban land. I do not accept that there were any strong contenders within the assessment of alternative locations for the SRFI which were at sites where derelict land or other urban land could be recycled, especially due to the need for good transport links to the motorway and rail networks and the size of site to accommodate the development which is proposed. Therefore, in this case, the aim to encourage the recycling of derelict and other urban land would not be frustrated by the proposal.

### ***Other Harm***

#### *Landscape and Visual Impact*

13.41 The Council submitted that its assessment of the landscape and visual impact of the proposal was similar to that of the previous Inspector as agreed by the Secretary of State. The landscape value of Areas 1 and 2 is high and the landscape impact of the proposals on Area 1 and at Year 15 would be "significant adverse". The landscape impact in Areas 1 and 2 would not be offset by the proposals for Areas 3 – 8. Overall, balancing all the Areas together, the Secretary of State agreed with the conclusions of the Inspector that the impact would be moderately adverse. [8.24 – 8.33; 9.126]

13.42 Whereas the Council largely agreed with the Secretary of State's assessment from the previous inquiry, it suggested that there would be additional significant impacts caused by the embankments and cuttings for the rail route. Furthermore, the scale of impact of the scheme when viewed from viewpoints on Shenley Ridge would be moderate adverse. I agree that the visibility of the warehouses when seen from wider viewpoints, including Shenley Ridge would place the impact on the landscape at moderate adverse, but this does not increase the severity of the impact as was concluded previously by the Secretary of State. Similarly, I agree that the embankments and cuttings for the new rail link would have a moderate adverse impact visually and on the landscape. Nevertheless, this would not be inconsistent with the overall conclusions of the Secretary of State on the first appeal.

13.43 In addition, although the widening of the M25 has commenced to the south of the site, I would expect that new lighting would be designed to best practice standards, with full directional cut-off lights and would not add significantly to any prominence and visual harm which would be caused by the SRFI. In any event, the Council was not seeking to rely on significant changes of circumstances to support the landscape and visual impacts of the case.

13.44 The previous Inspector and Secretary of State noted that the upper parts of the warehouses would be open to view from some higher vantage points. Advice in

PPS7 and PPS1 and emphasised in Policy ENV2 of the East of England Plan and the St Albans Local Plan Review aims to safeguard the countryside. However the guidance and the policies were in place at the time of the previous decision. The effect of the proposal on the landscape and the visual impact would be moderately adverse and would be contrary to Policy 104 of the Local Plan. Therefore I do not dissent from the previous conclusions of the Secretary of State. Neither, it appears from submissions, does the Council, albeit it claims that the effects would be unacceptable. In my opinion, the acceptability or otherwise cannot be judged until the final balance of harm and other considerations are evaluated. [7.59 – 7.60]

### *Ecology*

13.45 In the previous decision, the Secretary of State concluded that the harm to ecological matters resulting from the proposed development would not be significant. Since then, the Council has indicated that the lapwing has been included on the UK Biodiversity Action Plan List and that the site is now defined as a County Wildlife Site (CWS) in part for its bird interest. Although the soundness of the definition is somewhat undermined by the paucity of data, the designation has been made and which attracts consideration under Policy 106 of the Local Plan. Policy 106 indicates that planning applications will be refused for proposals which adversely affect sites of wildlife importance. Therefore, the proposal is in conflict due to the harm to the CWS. [7.83 – 7.86; 8.70 – 8.81, 10.27]

13.46 Accordingly, to that extent, despite there being no more bird species recorded than there were at the time of the previous inquiry and despite the lack of objection from Natural England, I agree with the Council that more weight should be attached to the harm to ecological interests. The designation of the area of acid grassland within the appeal site as a CWS reinforces that view, although there is no reason to doubt that translocation would be successful if were to be carefully planned and executed and the harm mitigated.

### *Sustainability*

13.47 The Council's sustainability objection to the proposal is based on the degree to which it would offend against sustainability policy given that, in the Council's opinion, it would not function as an SRFI. I shall deal with that issue below. So far as travel to work is concerned, "proximity to workforce" is one of the key factors listed by the former Strategic Rail Authority to be taken into account when selecting sites for an SRFI. [8.67 – 8.69]

13.48 In the previous decision, the Secretary of State concluded that the appeal site would perform poorly against this criterion. The Secretary of State considered the fact that only a small proportion of workers would live locally would be a disadvantage in terms of relative sustainability of the travel to work pattern of the workforce and that the site is not well placed to encourage workers to travel to it by means other than the private car. Taking the draft Travel Plan into account, the Secretary of State did not consider that it would be reasonable to refuse planning permission for the development on account of sustainability concerns relating to the likely pattern of travel to work by the workforce. I consider that there has been no sound evidence advanced which would contradict that earlier conclusion. [7.87; 9.113 – 9.114]

## *Highways*

13.49 At the previous inquiry, the Highways Agency (HA) withdrew its objections. The concerns of the Hertfordshire CC (HCC) as highway authority were largely rejected. The Secretary of State attached limited weight to concerns about highways. In the current appeal, there were originally two reasons for refusal concerning highways, but neither were pursued at the inquiry by the local highways authority or the Highways Agency. [7.38, 7.39, 7.41, 7.42]

13.50 The approach in the Transport Assessment (TA), including trip assessment, was approved by the HA. Appropriate works would be carried out to Junctions 21A and 22 of the M25. The appellant claims that implementation of the The Freight Monitoring and Management Plan (FMMP) would result in there being no material impact on the strategic highway network. The Agreed Statement between the appellant and the HA is consistent with that conclusion. There was no objection from the highway authority at the inquiry. [7.40]

13.51 STRIFE contended that the appeal site does not enjoy the high quality road links which national policy demands. The projected 3,200 daily HGV movements would have to be all routed via the A414 to gain access to the motorway network, but the A414 is already heavily congested and the local roads become “gridlocked” whenever there is an incident on the M25 or M1. [7.43, 9.101, 10.21, 10.43]

13.52 The appellant accepts that the traffic on the A414 would increase in order to gain access to the motorways via the A405 and the A1081 and states that those roads are suitable for the HGV flows being dual carriageway, without direct access from houses, and currently carry heavy flows. The improvements to the Park Street and London Colney roundabouts would ensure that traffic congestion should be no worse, and might even improve. Following the previous inquiry, the Secretary of State concluded that the fears that the development would increase traffic congestion were generally not supported by the evidence. There has been no change to the evidence of any significance which would lead me to a different conclusion. [7.45, 10.32, 10.34]

13.53 Concerns were expressed about the risk of “gridlock” and related rat running to avoid the consequent congestion. The previous Inspector concluded that he had no reason to expect that HGV drivers would risk the fines and other penalties that should be imposed if they flout weight restrictions. A “gridlock” might well occur from time to time, but anecdotal evidence suggests they are rare and this bears out my experience of using the M25 and its supporting road network. [7.47 – 7.48; 9.102 – 9.104, 10.29]

13.54 As the appellant indicates, HGV drivers would be unlikely to leave the SRFI to join a traffic queue which is not moving. Arriving vehicles would most likely be in the queue and would just have to wait. The previous Inspector commented that traffic conditions in the area are often poor, but then concluded that, with the road improvements that would be secured by condition, congestion on the network would be no worse with the development than without. The Secretary of State agreed with the conclusions and I have no reason to disagree.

13.55 STRIFE raised the issue of trip generation and claimed that the warehouses may be 66% higher than those built at DIRFT upon which the appellant relied in

predicting the HGV movements generated by the proposal. This is because the estimate was based on floorspace and no account was taken of height and, consequently, shed capacity. The appellant has indicated that the Traffic Assessment is the same as was presented at the last inquiry. The trip generation has been robustly tested by the HA and the local highway authority. The HA has confirmed its acceptance of the trip generation and the highway authority has not attempted a reassessment. [7.50 – 7.56; 9.106- 9.107, 9.109, 10.8, 10.9, 10.28, 10.55 – 10.57]

13.56 The appellant stated that the trip generation was based on surveys at comparable locations and there is no evidence of a correlation with volume. Variables could also include actual internal racking heights and spacing, occupier, nature of operation, level of automation, density of stacking, stock turnover, the relative volume and weight of goods, the efficiency and type of the vehicles used. [7.52]

13.57 In my opinion, whether or not the DIRFT buildings are 12.5m, 18m or 20m high, the evidence submitted suggests that trip generation is more complex than a simple volumetric ratio. Whereas, if all other factors were equal, a propensity for a larger volume to result in more traffic would be a reasonable assumption, the reality appears to be far more complicated. I place greater reliance on the judgment of the HA and the local highway authority, given that neither body having chosen to challenge the trip generation forecasts. In any event, as the appellant indicates, the FMMP would restrict the HGVs in peak hours. There is no substantive evidence to support the assertion that the only occupiers of the warehouses would be major retailers or those trading in heavier goods which might lead to a higher number of HGV trips than average. [7.53]

13.58 Any impact of traffic on residential amenity because of noise or air quality should be mitigated by the provision of the Park Street bypass which would be used by traffic travelling to and from the appeal site rather than along Park Street itself. Neither the District Council nor the County Council expressed adverse comments about the effect of the Butterfly Farm development and the proposed new hotel on overall traffic flows when combined with that relating to the SRFI. Accordingly, in the face of the lack of objection from the highway authority and Highways Agency and the lack of concern expressed by the County Council about the design of the Park Street roundabout at this inquiry compared to the one previously, I do not consider that there would be any significant harm in relation to highways issues or that there would be any conflict with the development plan. [10.15, 10.19, 10.22, 10.23, 10.47, 10.48, 10.49]

#### *Noise*

[7.63 – 7.81, 8.34 – 8.58. 9.128 – 9.133, 10.41, 10.52]

13.59 Following the previous inquiry, the Secretary of State agreed with the conclusions of the Inspector on noise and noted that the expert witnesses who appeared at that inquiry agreed that increases in traffic noise which would affect those living next to the railway line or those living near main roads would not be significant. The Secretary of State considered that the condition proposed which included the limitation of night time noise to 50dB  $L_{Aeq}$ , 8hr between 2300 and 0700 the following day to be reasonable and agreed with the Inspector that the noise generated by activity on the site during the night would not be unacceptable, albeit



that it would be readily perceptible to residents living in the quieter areas about the site.

13.60 In summary, the appellant submitted that there have been no material changes in circumstances on noise since the last inquiry and there is no need to revisit the conclusions of the Secretary of State. There was no error in the Inspector's approach at the last inquiry and the condition which was deemed acceptable by the Secretary of State, which is suggested at the inquiry, is unchanged.

13.61 The conclusions which the Council contend in this case should not be accepted are that the proposed condition to control noise would be achievable and that it would have the effect of adequately protecting residents, even if achievable. The Council was especially concerned with intermittent noise and  $L_{Amax}$  events. Using BS4142 as guidance, the Council estimated that noise from the development would lead to levels of exceedance of background noise by up to 20dB which would mean that complaints would be likely.

13.62 There is no new survey data at this inquiry. The appellants in supplying a written statement and in making submissions and the Council and STRIFE in the evidence of their witnesses and in submissions relied on the information gathered for the previous inquiry.

13.63 The degree of exceedance of the background noise level claimed by the Council was not directly challenged in cross examination at this inquiry and there was no evidence submitted which could be tested in order to counter the claim. However, I note that 5 dB of the excess is made up of the character correction for the tonal variations which would be caused by the irregularity of the noise and bangs and clatters. This correction was also applied by the previous Inspector, but with two reservations.

13.64 The first was that the noise from the site would be made up by contributions from many individual sources which would, to some degree, combine to create a more continuous tone, less distinguishable from traffic noise. The second reservation was that the noise sources would generally be several hundred metres from the residential properties of concern with intervening earth mounds which would have the effect of muffling individual sounds. The Inspector commented that this would result in the noise impact from the development being over-estimated.

13.65 I also note from the Environmental Statement that the property identified by the Council as receiving 20dB in excess of background would not remain in residential use with the proposed scheme. Moreover, my interpretation of the noise contours presented in Appendix 7.A8vi of the ES (2011 with scheme, night) does not show that noise levels for Rosemary Drive would exceed 60 dBA. The boundary is close, but the houses are not on the noisier side of the boundary judging from the map base. In any event, I consider that the map representation and modelling would have a degree of tolerance and the difference on the map between the noise levels in this location "with the scheme" compared to "without the scheme" are so small that the implication is that the noise levels would remain very similar, mostly because of the dominance of the nearby MML.

13.66 The Council indicated in evidence that even if the +5 dB penalty was not applied to the BS4142 rating, the difference would still range from +5 to +10 resulting in an assessment from “marginal” to “complaints likely”, but the +10 dB shown is for the property described as not in residential use with the proposed scheme. Therefore, bearing in mind the reservations which I share with the previous Inspector about the use of applicability of the 5 dB tonal penalty, the probable noise levels would not necessarily be as extreme as portrayed by the Council and less than those which would make complaints likely on an 8 hour averaging basis.

13.67 The Council claimed that short duration events with higher noise levels as expressed as  $L_{Amax}$  should be used to assess the development as presented in the 2009 WHO Night Noise Guidance. Although the Council suggested that the WHO Guidance is a material change in circumstances, the appellants submitted it was available as a draft to be used at the previous inquiry and, in any event, the new guidance adopted an average yearly approach which has overtaken the emphasis on  $L_{Amax}$ .

13.68 It was accepted by the previous Inspector, following the Statement of Common Ground for the earlier inquiry, that rail noise would be unlikely to constitute a significant impact. In addition, there is no substantive evidence to suggest that flange squeal would be an issue for the rail radii which are proposed. Construction noise could be controlled under the Control of Pollution Act as agreed at the previous inquiry. [10.33]

13.69 The appellant suggested two conditions which could be imposed which are consistent with those discussed and agreed at the last inquiry. One deals with the submission of a scheme, the other would set a noise level of 50dB  $L_{Aeq, 8hr}$  between 2300 and 0700. The Secretary of State agreed with the Inspector at the previous inquiry that these proposed conditions would be reasonable.

13.70 The Council has submitted that this condition would provide insufficient protection for residents due to the lack of control on loud noises which would exceed the 50dB threshold, but be of short duration. A limited number of such noises could be enabled by the proposed condition where the time for consideration is for 8 hours with the averaging process. The Council suggested a further condition based on  $L_{Amax}$  and, although the appellants resisted such a condition at the inquiry, I consider that it is essential in order to protect the living conditions of nearby residents.

13.71 Therefore, subject to the inclusion of the three conditions on noise which are recommended should the appeal be allowed, I am satisfied that the noise generated by the activity on the site during the night would not be unacceptable, albeit it would be noticeable to residents living in the quieter areas around the site. On that basis, the noise from the development would not bring the proposal into conflict with the development plan.

#### *Additional Matters*

13.72 The reason for refusal based on air quality was not pursued at the inquiry and I agree with the appellant that the living conditions along Park Street should improve because of the proposed bypass, rather than deteriorate.

13.73 The Secretary of State previously concluded that lighting on the site would not result in unacceptable sky glow or materially detract from the character or amenity of nearby residents living in Napsbury Park. I have not read or heard any convincing evidence which would constitute a very good planning reason for me to differ from that conclusion. Therefore, I do not consider that air quality or lighting issues would bring the proposal into conflict with the development plan.

13.74 Similarly, as the Secretary of State previously concluded, I consider that the impact of the proposed development on Park Street and Frogmore would be beneficial due to the construction of the Park Street bypass and the consequent traffic reduction through Park Street and Frogmore. The character and appearance of the Napsbury Conservation Area would still be preserved because of its distance from the scheme.

13.75 So far as footpaths and bridleways are concerned, the need for one bridleway and one footpath to be diverted to accommodate development on Areas 1 and 2 have to be balanced against the proposals by the appellant for new routes, footpaths and bridleways and also footpath improvements outside the site. The Secretary of State considered that, overall, the harm to the existing footpaths and bridleways would be outweighed by the appellant's proposals for improvements. I have no good planning reason to differ from that conclusion.

### ***Other considerations***

#### *Whether the development would operate as an SRFI?*

[6.1, 7.100 – 7.138; 8.84 – 8.148; 9.52 – 9.116, 10.1 – 10.6, 10.10, 10.14, 10.16, 10.24 – 10.25, 10.45, 10.53, 10.54, 11.1 – 11.6]

13.76 The Council submitted that there would be no rail movements in or out of the site between 0600 and 2200; it would receive no channel tunnel traffic until the gauge has been enhanced to W9; it is in a poor location to compete with rail from the primary deep sea ports; it has poor accessibility to the primary rail route for competing with the road based domestic market, the west coast mainline (WCML); it requires a rail subsidy and gauge enhancement to assist with its competitiveness which would be insufficient in the circumstances; and any doubt should be resolved against the proposal since the need to 2015 is currently capable of being met by other developments.

13.77 The appellant claimed that there are adequate paths on the MML and that no party contends to the contrary and I agree that generally this is the case. Indeed Network Rail stated that between 0900 and 1600 two freight paths per hour in each direction are provisionally allocated to existing freight customers, and not all are currently used. Further capacity is available at night. The rail dispute between the main parties primarily centred on access to and egress from the site. I note that, at the previous inquiry, the Inspector concluded that sufficient freight train paths were then currently available to serve the SRFI facility, but that the detail of whether the paths enabled access to the site was not tested.

13.78 The Council emphasised that the 2015 Thameslink service would prevent trains from crossing into the site between 0600 and 2200, but that claim is based on the details of timetabling implementation yet to be confirmed. There was conflicting evidence about the number of First Capital Connect (FCC) trains which would run on

the MML past the site, whether 8, 10 or 12. Indeed it appears as though the number of FCC trains to run past the site has increased from 6 as stated in July 2009 to 10 as claimed at the inquiry. Although assumptions were made by the Council at the inquiry about matters including dwell times at stations, the headways, the signalling arrangements and possible junction layouts, it is quite apparent that variables such as the degree of investment in junctions and the performance of new rolling stock for Thameslink in reducing dwell time would influence the timetabling outcomes.

13.79 The timetabling process would enable negotiations to be conducted between those who would wish to run services, both passenger and freight, and the regulatory authorities until the timetable becomes firm. Network Rail does not consider that there are any major technical obstacles to achieving a connection such as is proposed at the site. They can offer no guarantee that the currently available paths will be available in the future because they are open to all licensed freight operators. All paths required for the SRFI would need to be bid for and are subject to the industry wide timetable planning process.

13.80 Network Rail function as guardians of the UK rail network and as concluded by the Secretary of State in the previous decision, I attach weight to assurances given by them and to their commitment to adopt best working practices to regulate freight train access onto busy main lines. Network Rail has stated that the SRFI would enable both the growth of rail freight and mode shift from road to rail which it considers entirely consistent with Government and Network Rail objectives and that it does not consider there to have been any material changes in the capabilities of the rail network since 2007. Therefore, on that basis, I consider that the timetabling and bidding process should ensure that sufficient paths to enable access to be gained would be made available to serve the SRFI during the interpeak hours and overnight.

13.81 Turning to gauging, in order for the development to act as an SRFI, it must be capable of being accessed by wagons carrying containers from around the UK, from the deep sea ports and from the Channel Tunnel. Subject to the appeal being allowed, the conditions would provide for gauge enhancement works. There is no reason to suppose that, pending gauge enhancements, the services would be uneconomic and require subsidy. However, these are commercial considerations rather than those relating to land use. The Council also stated that the proposal was not at an advanced stage in Network Rail's Guide to Railway Investments Projects (GRIP) system which manages investment schemes, but that is an internal NR evaluation method and not part of the planning process.

13.82 The appellant also states in evidence that the enhancement works would provide for a W10 gauge link to the Haven and north Thames side ports and the West Coast Main Line, a W9 gauge link to the Channel Tunnel via Acton and Kew, and a W8 gauge link to Southampton and Thamesport. Should W10 gauge enhancement be delivered in due course along the Great Western Main Line, this would create a W10 gauge link from Radlett to Southampton via Acton and Reading. Network Rail does not consider there to be any major technical obstacles to achieving enhancement works to W10 gauge into London. Moreover, as the appellant indicates, the works to deliver Thameslink would also create an opportunity for those engineering works to be carried out. Therefore, I do not doubt the ability of the SRFI to be accessed from all the key destinations.

13.83 The MML has been identified as part of the Strategic Freight Network of trunk freight routes with its attendant eventual upgrading to continental standards. Therefore, I have no doubt that the MML will develop as a key part of the rail freight network and that the aim of Network Rail and rail regulators will be to enable freight to be carried efficiently, albeit without compromising its passenger carrying ability.

### ***Alternatives***

[7.168 – 7.257; 8.149 – 8.253; 9.117 – 9.134, 10.31, 10.50, 10.51, 11.7 – 11.14, 11.15 – 11.22]

### ***The North West Sector***

13.84 In the consideration of the Alternative Sites Assessment following the previous inquiry, the Secretary of State concluded, in the circumstances of that case, that it was sensible and pragmatic to restrict the search for alternative sites for an SRFI at Radlett to broadly the north west sector studied by the appellant. The Council sought to dismiss the concept of there being a north west sector for SRFI purposes, commenting that the analysis which led the previous Inspector to conclude on the appropriateness of the north west sector which was endorsed by the Secretary of State, was based on lorry mileage benefits that would derive from locating an SRFI in one part of London as opposed to another.

13.85 I also note that the previous Inspector concluded that there was no policy support in the SRAs SRFI Policy or elsewhere for limiting the search in this way. However, I share his doubts that an SRFI at London Gateway could efficiently serve development to the west of London. This view is emphasised in the SRFI Policy statement of March 2004 by the SRA that the location of interchange facilities in relation to ultimate journey origin or destination is critical in making the rail option attractive to business customers. Furthermore, London Gateway was proposed on the basis of being a ship to shore facility. I am not aware of any evidence to suggest there is road and rail capacity sufficient for it to act as an SRFI in addition to a port complex, despite the reported comments from the developers that the site could be available for such a function.

13.86 The SRA policy further states that the required capacity for rail freight growth in the London and the South East would be met by 3 or 4 new SRFIs in the region, supplemented by smaller locations within the M25 ring. In addition, the policy states that qualitative criteria to deliver the capacity mean that suitable sites are likely to be located where the key rail and road radials intersect with the M25. Therefore, I consider that the policy statements indicate that SRFIs serving London and the South East would not normally be located closer to London than the M25 and that the optimum locations are on the intersections of the M25 with key rail and road routes into and out of London.

13.87 As indicated in the East of England Plan, given that the region includes a third of the M25 ring and that all the main rail lines from London to the North and Scotland cross the M25 within the East of England it is likely that at least one of the required strategic interchanges will need to be in the region. The main rail lines referred to are the East Coast Main Line (ECML), the Midlands Main Line (MML) and the West Coast Main Line (WCML), all of which are in the north west sector as described by the appellant and which gives further credence to the concept of there being a north west sector for the purposes of the assessment of alternatives.

13.88 The Council advanced an argument based on a market approach which suggested that the north west sector is not a primary distribution area of those likely to be occupying an SRFI. Nevertheless, as also indicated in the Council's evidence, much locational decision making remains fairly intuitive and I consider that, like the Inspector at the previous inquiry, restricting the assessment of alternative sites for an SRFI at Radlett to the north west sector is sensible and pragmatic, especially in view of the SRFI which has been permitted at Howbury Park in the London Borough of Bexley even if London Gateway were to operate as an SRFI. It does not seem credible to envisage a small cluster of SRFIs to serve London and the South East all in the same general location. The Council accepted that the degree of spread of accessibility is a material consideration and I consider that the broad approach of the appellant in focusing on the north west sector in the assessment of alternatives is reasonable.

#### *Selection Criteria*

13.89 The appellant was criticised for excluding sites which were regarded as unavailable due to being allocated for housing or being existing employment land. However, I consider that the suggestion that an SRFI could be sited on land allocated for housing is unrealistic. Not only would the residential allocation have to be relocated elsewhere within a region where housing land is scarce, even if property values were sufficiently compatible to enable this displacement, but the SRFI could find itself embedded within a "nest" of surrounding houses which would not be consistent with the need to reduce harm to adjoining properties. Therefore, I support the approach of the appellant in discarding areas which have been allocated for housing purposes. Similarly, I consider the notion of including employment land as a potential SRFI site is unrealistic. Such land would have issues of availability and land assemblage and the need to seek alternative premises for those uses which would be displaced by the SRFI.

13.90 Parameters used to identify a "long list" of sites were: a 40ha minimum site area; being located within 5km of rail infrastructure and being located within 5km of a motorway junction or Class A road. A criticism of the assessment by the Council was the exclusion of possible sites beyond 5km from a railway line. However, I agree with the appellant that a realistic judgement has to be made about distance, taking into account the terrain through which any rail connection would have to be made and so I do not support the points made by the Council.

13.91 The Council has repeatedly suggested that the assessment is flawed due to the appellant seeking to add further information during the inquiry. Nevertheless, I consider that the appellant was merely responding to comments made and it would have been even more open to criticism had it failed to respond. In my opinion, the general approach by the appellant to the assessment of alternatives and producing the "long list" has been robust and realistically pragmatic.

13.92 The appellant used topography, rail connection, road access and availability to assess the long list sites. Sites within an AONB or an SSSI were excluded. The Council claimed that sites very close to others (duplicated sites) were inappropriately discarded, but I do not agree. I consider that it would have been unnecessary to examine all possible sites within a general area where that particular location was

subject to a dominant constraint which applied to the selected site. Furthermore, I agree that it was sound to use the AONB and SSSI status of land as hard constraints.

13.93 The availability criterion was questioned by the Council, but given the unlikelihood of employment land in areas such as Slough being released or strategic housing allocations such as in Wokingham becoming superfluous, I consider that the appellant is being realistic. Similarly, I have no issue with the way in which the appellant has applied the criteria of rail connection, where there was no substantive dispute about which sites were excluded, and road access. Denham Aerodrome was an exception, but was rejected for a combination of reasons of road and rail connectivity and availability.

13.94 The Council commented that there was no consideration of landscaping or other harm during the long list stage in respect of any of the sites but, as stated by the previous Inspector, it is often very easy for those who are critical of a proposal to expose flaws in any study of alternative sites carried out by a promoter of a scheme, given the vast amount of data that needs to be collected and analysed. The appellant has used a methodology which is transparent and has undertaken sensitivity tests to illustrate that considering areas greater than 5km distance from a railway line makes no difference to the result and that there are no suitable sites in the area around to the M3 motorway.

#### *The Short List*

13.95 The appellant's short listed sites comprised the appeal site and four others: Upper Sundon, Littlewick Green, Harlington and Colnbrook. There was no suggestion by any party at the inquiry that **Upper Sundon** scored better than the appeal site and I have no reason to disagree. Although the assessment by the Council found that **Littlewick Green** and Colnbrook performed better than the appeal site, I consider that the former site, west of Maidenhead is relatively poorly located to serve London. The appellant claimed that an SRFI here would have a significant adverse effect on the landscape, have an adverse impact on the setting of the conservation area to the north, cause possible harm to local residents due to noise and could have adverse effects on archaeological interests, as well as being located within the Green Belt. I agree and I do not consider that it performs overall markedly better than Radlett.

13.96 **Harlington**, north of Luton, located close to the M1 motorway and adjacent to the Midland Main Line (MML), was the subject of a planning application for an SRFI in 2008, albeit the application was subsequently withdrawn. The Council did not claim that Harlington outperformed Radlett in its assessment of alternatives. The appellant claimed that Radlett would perform better than Harlington due to the latter being significantly further from London, the difficulty of making a rail connection and the unlikelihood of providing any additional planning benefits.

13.97 The rail connection at Harlington would enable links to be made in both a northerly and southerly direction, unlike Radlett, at which it is currently proposed to link only to the south. The connections would be made to the fast tracks, albeit with significant engineering works, but I do not consider that the disadvantages would be so great that the comparison with Radlett would significantly suffer. Like Radlett, the site is within the Green Belt. However, in my opinion, Harlington would be very

prominent when seen from the AONB to the south and would have a greater visual impact on the open countryside than Radlett.

13.98 Some of the comparators between the sites would perform similarly, such as air quality, noise and archaeology. I am also not convinced that the lack of planning benefits, such as the provision of a country park of the type proposed at Radlett, weighs significantly against the Harlington site. However, I consider that the location of Harlington is inferior to Radlett as an SRFI to serve London and the South East. The greater distance along the M1, away from the M25 would reduce the versatility offered by the Harlington location compared to Radlett which virtually adjoins the M25/M1 intersection and offers significantly greater accessibility. I realise that the appellant measured the lorry kilometre savings from the Hanger Lane Gyratory on the North Circular Road. Nevertheless, in my view, Radlett would perform more effectively as an SRFI than Harlington and that reason together with the greater adverse effect on the landscape is why I conclude that it is not a preferred alternative location, were a single SRFI required within the north west sector.

13.99 The site identified by the appellant at **Colnbrook** is also referred to as SIFE (Slough Intermodal Freight Interchange), where it is the subject of interest by developers who are promoting a scheme for an SRFI through the development plan process. The site lies between the M4 and A4 east of Slough, close to the M25 and just to the west of Heathrow. The appellant accepts that the site would be well located to serve the London market. Indeed, the site is readily accessible to the M25, M40, M4, M3 and A3, which means that it could serve a wide area including central London, the M25 West, M25 North West and M25 South West.

13.100 The appellant stated that the site would perform materially worse than Radlett in providing an SRFI due to its location in a designated Strategic Gap in the Green Belt between Slough and London, and that it would be unlikely to provide any significant planning benefits. The Strategic Gap designation is the subject of a saved policy in the Slough Local Plan and has been brought forward in the adopted Core Strategy, although I note that it is not used or applied consistently by other local planning authorities which adjoin the SIFE site, nor by St Albans District Council. Moreover, the South East Plan suggests that authorities operating gap policies will need to review them carefully to ensure that there is a continuing justification in view of the need to avoid duplication of other protection policies such as Green Belt. Nevertheless, the Strategic Gap designation is a policy to which substantial weight should be applied. In 2002, when the then Secretary of State dismissed an appeal for a freight exchange on the site (the "LIFE" proposal), he commented that seen from the elevated viewpoints east of the M25, the function of the open land to the west in helping to demarcate and separate London from Slough was clear to the Inspector.

13.101 The site is also within the Colne Valley Regional Park where regional and local policies seek to promote countryside recreation, and landscape and biodiversity enhancement. Whereas this is another policy consideration which weighs against Colnbrook in the comparison exercise with Radlett, a proposal for an SRFI could offer opportunities for improvements to the footpath and bridleway network, biodiversity and landscape in the same way that the appeal scheme is promoting a country park.

13.102 The developers of Colnbrook state that the branch line is cleared to W8 and is capable of accommodating the full range of intermodal units on standard height



platform wagons. They further state that by the time SIFE would open, all rail routes serving the site would be cleared to at least W9, probably W10, and at least one freight path per off peak hour per direction would be available to serve the site. The appellant contends that Colnbrook would not perform in a materially better way as an SRFI than the appeal site, but that is difficult to ascertain in view of the absence of evidence from the Colnbrook developer which could be tested in the inquiry. However, I have no reason to disagree with the data showing that the appeal site is closer than Colnbrook to Felixstowe and the Channel Tunnel in rail miles, although more distant from Southampton. There are conflicting views on the availability of paths in each direction on the GWML which is incapable of resolution in the absence of the opportunity to test the developer's evidence at the inquiry.

13.103 There are other comparative factors which both the appellant and developer raise in written submissions including noise, air quality, archaeology, sustainability, proximity to workforce and biodiversity, but the differences appear to be of less significance than Green Belt considerations and may well be capable of resolution should a scheme at Colnbrook be progressed to the same extent as the current proposal at Radlett. Nevertheless, due to the site being located in a Strategic Gap within the Green Belt, I agree with the appellant that it cannot be rationally concluded that Colnbrook would meet the needs for an SRFI in a less harmful way than the appeal site.

*Other benefits*

[7.22 – 7.24; 8.354 – 8.261, 10.18, 10.35 – 10.40]

13.104 The scheme would bring about certain local benefits, of which two were highlighted by the Secretary of State in the decision on the previous appeal. On the proposed Park Street and Frogmore bypass, the Secretary of State agreed with the previous Inspector that traffic travelling through Park Street and Frogmore on the A5183 would be reduced. She also agreed that the effect on the conservation area would be positive and that it would bring about some improvement of living conditions of residents fronting or close to the A5183. She afforded this benefit a little weight and, following the evidence heard at this inquiry, I have no good reason to disagree with her views.

13.105 With regard to the provision of the country park, the Secretary of State agreed with the previous Inspector that the proposals for Areas 3 to 8 would not deliver a "country park" in the sense that the term is generally understood, but accepted that there would be benefits to the countryside. These would include significant areas of new woodland, which would accord with the aims of the Watling Chase Community Forest Plan. New footpaths and bridleways would also be created which would facilitate circular walks and rides in the area. On ecology, the Secretary of State previously saw no reason why the proposals should not be beneficial overall and add to the existing biodiversity interest present at the site. However, with the recent definition of the CWS I now find that the proposals would be contrary to the development plan where ecology is concerned. The Secretary of State concluded that the proposals for Areas 3 to 8 would accord with the development plan and with the objectives of the Watling Chase Community Forest Plan. There has been no convincing evidence submitted to this inquiry to cause me to come to a different conclusion.

*The Planning Balance including Prematurity*

### *Green Belt*

13.106 The Secretary of State previously concluded that the proposal would constitute inappropriate development in the Green Belt and she attached substantial weight to that harm. She also identified that it would further harm the Green Belt because it would cause a substantial loss of openness, significant encroachment into the countryside and would contribute to urban sprawl and she considered that the harm would be substantial. The evidence I heard at this inquiry reaffirmed those conclusions. The Secretary of State also previously concluded that limited weight should be attached to the harm to the setting of the historic city of St Albans and there is no sound reason why I should depart from those views.

### *Other Harm*

13.107 The Secretary of State previously concluded that significant adverse landscape impacts would occur on the main SRFI site (Area 1) but that the new rail line through Area 2 would only have a marginally adverse impact. Furthermore, whereas the impact of the proposal on Areas 3 to 8 would be beneficial, the degree of improvement would not offset the harm to the landscape overall. The Secretary of State concluded that the overall impact on the entire site would be moderately adverse and, based on the evidence I have heard at this inquiry, I agree with that conclusion.

13.108 I consider that there has been no convincing evidence to justify departing from the previous conclusions of the Secretary of State concerning sustainability, air quality, lighting, conservation areas, or impact on footpaths and bridleways where either no demonstrable harm was identified or there was an overall beneficial effect. However, on ecology, I conclude that the proposal would now be in conflict with Policy 106 of the Local Plan.

13.109 In view of the lack of objection from the highway authority and the Highways Agency and the lack of concern expressed by the County Council about the design of the Park Street roundabout at this inquiry compared to the one previously, I do not consider that any significant harm would be caused by highways issues or that there would be any conflict with the development plan. Similarly, subject to the inclusion of the conditions on noise which are recommended should the appeal be allowed, I am satisfied that the noise generated by the activity on the site during the night would not bring the proposal into conflict with the development plan. Therefore, overall, I consider that harm would arise from the Green Belt considerations and also due to the impact on landscape and ecology.

### *Benefits*

13.110 So far as benefits are concerned, those more locally site specific include the proposal by the appellant for a country park, the improvements to footpaths and bridleways and the provision of the bypass to Park Street and Frogmore. The Secretary of State previously attached "some weight" to the predicted reduction on CO<sub>2</sub> emissions identified in the Environmental Statement. I have no reason to disagree with that conclusion. Some weight was also afforded by the Secretary of State to the numbers of people who would work at the SRFI, albeit not necessarily living close to the site.

13.111 On a general basis, there is no dispute about the need for an SRFI. It is stated and restated in a number of documents and encouraged in PPG13 (paragraph 45). Government policies have consistently supported shifting freight from road to rail. SRA Policy (2004) suggests that 3 or 4 new SRFIs could serve London and the South East located where key road and rail radials intersect the M25. The indication in the SRA Policy that 400,000m<sup>2</sup> of rail connected warehousing floorspace would be needed in the South East by 2015 does not constitute a target or a ceiling. In the previous decision in 2008, the Secretary of State concluded that the need for SRFIs to serve London and the South East was a material consideration of very considerable weight. No new SRFIs have been developed since the earlier decision. Therefore, the weight has not diminished.

#### *Alternatives*

13.112 The Secretary of State also concluded that, given the site's Green Belt location, whether or not the need which the proposal seeks to meet could be met in a non-Green Belt location, or in a less harmful Green Belt location, was a material consideration in that case. I consider that is still the same position for this appeal and I also endorse the concept of assessing a possible alternative location for an SRFI in the broad sector north west of London, as previously accepted by the Secretary of State.

13.113 The Secretary of State previously indicated that had the appellant demonstrated that there were no other alternative sites for the proposal, it would almost certainly have led her to conclude that this consideration, together with the other benefits referred to, would have been capable of outweighing the harm to the Green Belt and the other harm identified. However, she considered that the appellant's Alternative Sites Assessment was materially flawed and its results to be wholly unconvincing.

13.114 In this particular case, I am satisfied that the assessment of alternative locations for an SRFI conducted by the appellant has been sufficiently methodical and robust to indicate that there are no other sites in the north west area of search which would be likely to come forward in the foreseeable future which would cause less harm to the Green Belt. The sites which I consider are the most comparable are those at Harlington and Colnbrook, both of which have schemes which are being progressed by intending developers.

13.115 At Harlington, although the harm to the Green Belt might be broadly similar to that at Radlett, I consider that the visual impact of an SRFI would be greater, and its location north of Luton, albeit easily accessible to the M1, makes it less attractive to serve London and the South East. I consider that the location of Colnbrook within the Green Belt in a Strategic Gap between Slough and London weighs heavily against preferring it to the appeal site as an alternative location for an SRFI. Nevertheless, should a scheme be developed to the same extent as the appeal proposal, it is possible that, under the challenge of evidence tested under cross examination at an inquiry, the differences between the two locations, other than the Green Belt issue would be marginal.

#### *Prematurity*

[7.88 – 7.98; 8.59 – 8.66; 9.140 – 9.146]

13.116 The Secretary of State had considered whether the previous proposal was premature in the absence of a region-wide study to establish the most suitable locations for SRFIs to serve London and the South East. She had concluded that a refusal of planning permission of the scheme on prematurity grounds would lead to a substantial delay in providing further SRFIs to serve London and the South East, contrary to the Government's declared aim of increasing the proportion of freight moved by rail. There are no signs of any substantive progress in the initiation of inter or intra regional studies on the need for and locations of SRFIs to serve London and the South East.

13.117 The Council has indicated that a National Policy Statement (NPS) including the consideration of SRFIs is due for production shortly. However, although a draft publication is imminent, there is no suggestion that the NPS will be site specific and there is no Government advice that proposals which might be influenced by the content of an NPS should be deemed premature pending its publication and subsequent designation. Consequently, I have no reason to conclude that determination of the proposal would be premature.

### *Overall Conclusion*

13.118 Accordingly, I conclude that the proposal would constitute inappropriate development in the Green Belt which, in itself, would cause significant harm to which substantial weight should be attached. Harm would also be caused to the Green Belt because of a loss of openness, significant encroachment into the countryside and the contribution to urban sprawl. There would be an adverse effect on the setting of St Albans, although the Secretary of State concluded previously that only limited weight should be attached to this. Harm would also arise from the adverse effects on landscape and ecology. Therefore, the proposal would conflict with Policies 1, 104 and 106 of the adopted Local Plan Review.

13.119 However, other considerations including, particularly the need for SRFIs to serve London and the South East and the lack of more appropriate alternative locations for an SRFI in the north west sector which would cause less harm to the Green Belt, together with the local benefits of the proposals for a country park, improvements to footpath and bridleways in the immediate area and the provision of the Park Street and Frogmore bypass, lead me to conclude that very special circumstances exist in this case which outweigh the conflict with the development plan and therefore the appeal should be allowed subject to conditions discussed in Section 12 and attached as Annex A.

13.120 Should the Secretary of State disagree with my conclusions and recommendation, he may wish to consider the circumstances of the provision of SRFIs to the north and west of London where schemes at Harlington and Colnbrook are currently being developed. At the date of completion of the report, the proposals have not been progressed to the application stage.

### **Conditions**

13.121 The appellant has asked the Secretary of State to note that in respect of both the conditions and the undertaking, save where necessary to reflect any change as a consequence of the Area 1 issue, or as a consequence of discussion with the HA

and Environment Agency, the conditions and undertaking remain in substantially the form they were in at the time of the previous decision. Accordingly, they represent a comprehensive and acceptable package which the Secretary of State has already decided would deliver an SRFI together with the benefits identified in the evidence.

## **14 Recommendation**

14.1 I recommend that the appeal be allowed and planning permission be granted subject to the conditions recommended in Annex A.

*A Mead*

Inspector

## DOCUMENTS

### Planning Application Documents

- 9/CD/1.1 Covering Letter, Planning Application Form, Certificate of Ownership & Agricultural Holding Certificate dated (8 April 2009)
- 9/CD/1.2 Drawing No 3945-DSD-001 Location Plan (December 2008)
- 9/CD/1.3 Illustrative Masterplan (December 2008)
- 9/CD/1.4 Development Specification Document (April 2009)
- 9/CD/1.5 Sustainability Statement (April 2009)

### Documents Submitted in Support of the Application

- 9/CD/2.1 Environmental Statement Part 1 - Non Technical Summary
- 9/CD/2.2 Environmental Statement Part 2 - Project Information
- 9/CD/2.3 Environmental Statement Part 3 - Reports and Analysis
- 9/CD/2.4 Environmental Statement Part 4 – Appendices
- 9/CD/2.5 Design and Access Statement
- 9/CD/2.6 Transport Assessment
- 9/CD/2.7 Planning Policy Report
- 9/CD/2.8 The Needs Case
- 9/CD/2.9 Consultation Statement

### Post Application Documentation

- 9/CD/3.1 Planning Referral Committee Report, 20 July 2009
- 9/CD/3.2 Minutes of Planning Referral Committee, 20 July 2009
- 9/CD/3.3 Refusal of Planning Permission Notice, 21 July 2009
- 9/CD/3.4 Hertfordshire County Council Development Control Committee Report, 23 June 2009
- 9/CD/3.5 Helioslough Statement of Case
- 9/CD/3.6 St Albans City & District Council Statement of Case
- 9/CD/3.7 Highways Agency Statement of Case
- 9/CD/3.8 STRiFE Statement of Case
- 9/CD/3.9 SDG The Suitability of Radlett to Accommodate an SRFI Report July 2009
- 9/CD/3.10 Report for Planning Referrals Committee Meeting 14 October 2009
- 9/CD/3.11 HCC Committee Report 20 July 2009
- 9/CD/3.12 SADC Committee Report of 12 November and the Technical Assessment, Conclusions and Appendix 1 of the HCC Highways Report

### Development Plan and Related Documents

- 9/CD/4.1 RSS for East of England May 2008
- 9/CD/4.2 South East Plan May 2009
- 9/CD/4.3 Hertfordshire Structure Plan Review 1991-2011, adopted April 1998
- 9/CD/4.4 Hertfordshire Minerals Local Plan Review 2002-2016, adopted March 2007
- 9/CD/4.5 The London Plan (Consolidated with Alterations since 2004), February 2008
- 9/CD/4.6 The St Albans City and District Local Plan Review, adopted November 1994
- 9/CD/4.7 St Albans Local Plan List of saved policies (14 September 2007)

- 9/CD/4.8 St Albans City and District Consultation Core Strategy, July 2009 & Appendices
- 9/CD/4.9 Watling Chase Community Forest: Forest Plan, January 1995
- 9/CD/4.10 Watling Chase Community Forest: Forest Plan, Review 2001

### **Transportation, Rail and Highways**

- 9/CD/5.1 Strategic Rail Freight Interchange Policy, SRA March 2004
- 9/CD/5.2 Status of the SRA Strategic Rail Freight Interchange Policy, DfT, October 2005
- 9/CD/5.3 East of England Freight Strategy November 2008
- 9/CD/5.4 DfT Strategic Freight Network - The Longer Term Vision September 2009
- 9/CD/5.5 E Midlands Rail Utilisation Strategy Draft September 2009

### **Miscellaneous**

- 9/CD/6.1 Howbury Park Decision Letter and Inspectors Report December 2007
- 9/CD/6.2 Howbury Park NLP Alternative Sites Assessment report

### **Statements of Common Ground and Agreed Facts**

- 9/CD/7.1 Statement of Common Ground
- 9/CD/7.2 Statement of Common Ground – Highways Agency
- 9/CD/7.3 Statement of Common Ground - Hertfordshire County Council Highways (**not received**)
- 9/CD/7.4 Statement of Agreed Facts – Network Rail

### **The Decision on the 2006 Application**

- 9/CD/8.1 Secretary of State's Decision Letter 1 October 2008
- 9/CD/8.2 The Inspectors Report 4 June 2008
- 9/CD/8.3 Unilateral Undertaking 16 January 2008

### **Inquiry Documents**

- 9/HS/INQ 1.0 Questions and Answers from Network Rail
- 9/HS/INQ 2.0 Email Correspondence dated 01 December 09
- 9/HS/INQ 3.0 Schedule of Correspondence between Lovells and the Council regarding Draft Conditions and S106 Obligation
- 9/HS/INQ 3.1 Lovells letter to the LPA dated 14 December 09 regarding Conditions and S106 Unilateral Undertaking
- 9/HS/INQ/4.0 Chief Planning Officer Letter dated 25/11/02 regarding Circular 11/95
- 9/HS/INQ/5.0 Herts CC Letter dated 17 December 2009 regarding Indexation under Unilateral Undertaking
- 9/HS/INQ/6.0 HS Reply to 9/HS/INQ/5.0
- 9/HS/INQ/7.0 Draft planning conditions (agreed as at 18 December 2009 apart from sections highlighted as LPA/SRIFE additional or alternate wording)
- 9/HS/INQ/8.0 Appx A – additional note to closing submissions regarding proposed condition in relation to Area 1 and Area 2.
- 9/HS/INQ/9.0 Appx B - Appellant's comments on draft conditions which

- are not agreed
- 9/HS/INQ/10.0 Appx C - Appellant's comments on the provisions of the  
Unilateral Undertaking which are not agreed
- 9/HS/INQ/11.0 Unilateral Undertaking

### **Documents Submitted by Helioslough**

- 9/HS/0.1 Opening Statement
- 9/HS/0.2 Closing Submission
- 9/HS/0.3 Application for Costs
- 9/HS/0.4 Reply to LPA Response to HS Cost Application
- 9/HS/1.1 R Tilley Proof of Evidence
- 9/HS/1.2 R Tilley Appendices
- 9/HS/1.3 R Tilley Summary
- 9/HS/1.4 R Tilley Planning and Alternative Sites Rebuttal
- 9/HS/1.5 R Tilley Response to SDG Report
- 9/HS/1.6 Extracts from LIFE Decision
- 9/HS/1.7 CLG protocol for handling proposals to save adopted Local  
Plan, UDP and Structure Plan policies beyond the 3 year  
saved period
- 9/HS/1.8 Colnbrook - Response to Barton Willmore (Wilson Appendix  
K)
- 9/HS/1.9 Mr Wilson's 15 Extra Short Listed Sites - HS Response
- 9/HS/1.10 Harlington - HS Response to Cliff Bassett's Representation  
(Doc 9/CBwG/1.1)
- 9/HS/1.11 Correspondence between CgMs and St Albans City and  
District Council
- 9/HS/1.12 East of England Plan Secretary of State changes to the draft  
Revision to the Regional Spatial Strategy December 2006
- 9/HS/1.13 HS Response to 9/LPA/6.13
- 9/HS/1.14 Extracts from LB Havering Core Strategy and Development  
Control Policies DPD
- 9/HS/1.15 Harlington - HS Response to Savills' Representation 9Doc  
9/CBwG/1.2)
- 9/HS/2.1 Mr N Gallop Proof of Evidence
- 9/HS/2.2 Mr N Gallop Appendices
- 9/HS/2.3 Mr N Gallop Summary
- 9/HS/2.4 Mr N Gallop Rebuttal
- 9/HS/2.5 Mr N Gallop Proof of Evidence from 2007 Inquiry
- 9/HS/2.6 Section 13 of Mr Thorne's proof from 2007 Inquiry
- 9/HS/2.7 Letter from Tesco's dated 24 November 09
- 9/HS/2.8 Interfleet Letter to Intermodality dated 11 December 09
- 9/HS/2.9 Note of Evidence of Mr Clancy
- 9/HS/3.1 Mr G Smith Proof of Evidence
- 9/HS/3.2 Network Rail Route Plan Midland & Continental & East Anglia
- 9/HS/3.4 Mr G Smith Rebuttal
- 9/HS/4.1 Mr N Findlay Written statement
- 9/HS/4.2 Mr N Findlay Appendices 1
- 9/HS/4.3 Mr N Findlay Summary 1
- 9/HS/4.4 Mr N Findlay Rebuttal 1
- 9/HS/4.5 Gridlock Condition Note from WSP dated 10 December 09
- 9/HS/4.6 WSP Trip Generation Note including Appendices. Appendix A



	(PCC Data), Appendix B (DTA Tech. Note), Appendix C (Statement of Agreed Facts with Highways Agency and Appendix D (Trics Data)
9/HS/4.7	Letter from CBRE dated 24 November 09
9/HS/4.8	Appendix 2 Extracts from Barton Wilmore
9/HS/4.9	DIRFT Buildings Height
9/HS/5.1	Mr M Kelly Written Statement
9/HS/5.2	LCA Topic Paper 6
9/HS/5.3	Mr M Kelly Rebuttal
9/HS/5.4	Colne Valley Action Plan
9/HS 5.5	Extracts from GLVIA
9/HS/6.1	Mr D Sharps Written Statement
9/HS/6.3	Mr D Sharps Rebuttal
9/HS/7.1	Mr T Goodwin Written Statement
9/HS/7.2	Mr T Goodwin Appendices
9/HS/7.3	Mr T Goodwin Ecology Rebuttal 1
9/HS/7.4	Mr T Goodwin response to 9/LPA/3.5
9/HS/9.1	Response from the Secretary of State for Transport (Intermodality, 15 October 2009)
9/HS/9.2	Letter to the Secretary of State for Transport (Intermodality, October 2009)
9/HS/9.3	Original Report to SADC Planning Referrals Committee 20 <sup>th</sup> July 2009

#### **Documents Submitted by St Alban's District Council**

9/LPA/0.1	Opening Statement
9/LPA/0.2(a)	Closing Submission Part 1
9/LPA/0.2 (b)	Closing Submission Part 2
9/LPA/0.3	LPA Response to HS Cost Application
9/LPA/1.1	Mr J Hargreaves Summary
9/LAP/1.2	Mr J Hargreaves Proof of Evidence
9/LPA/1.3	Mr J Hargreaves Appendices
9/LPA/1.4	Mr J Hargreaves Rebuttal
9/LPA/1.5	Mr J Hargreaves Appendices
9/LPA/1.6	Addendum to Mr J Hargreaves Evidence
9/LPA/2.1	Mr B Wilson Summary
9/LPA/2.2	Mr B Wilson Proof of Evidence
9/LPA/2.3	Apps A and A2
9/LPA/2.4	App B
9/LPA/2.5	App C
9/LPA/2.6	App D
9/LPA/2.7	App E and E2
9/LPA/2.8	App F
9/LPA/2.9	App G
9/LPA/2.10	App H
9/LPA/2.11	Apps I, I2, I3, I4 and I5
9/LPA/2.12	Apps J and J2
9/LPA/2.13	App K
9/LPA/2.14	App L
9/LPA/2.15	App M

9/LPA/2.16	App N
9/LPA/2.17	App O
9/LPA/2.18	App P
9/LPA/2.19	Rebuttal of Mr Gallop's Evidence
9/LPA/2.20	Rebuttal App A
9/LPA/2.21	Rebuttal App B
9/LPA/2.22	Rebuttal App C
9/LPA/2.23	Rebuttal App D
9/LPA/2.24	Rebuttal App E
9/LPA/2.25	Rebuttal of Mr Smith's Evidence
9/LPA/2.26	Rebuttal of Mr Tilley's Evidence
9/LPA/2.27	SDG Errata Sheet
9/LPA/3.1	Mr M Hicks Statement of Ecological Issues
9/LPA/3.2	Mr M Hicks Appendices
9/LPA/3.3	Mr M Hicks Rebuttal
9/LPA/3.4	Mr M Hicks Rebuttal Appendices
9/LPA/3.5	Mr M Hicks Comments on Mr Goodwin's Rebuttal
9/LPA/4.1	Mr S Stephenson Proof of Evidence
9/LPA/4.2	Apps Volume I & Volume II
9/LPA/4.3	Mr S Stephenson Summary
9/LPA/4.4	Mr S Stephenson Rebuttal
9/LPA/5.1	Mr J Billingsley Proof of Evidence
9/LPA/5.2	App 1
9/LPA/5.3	Apps 2-10
9/LPA/5.4	Mr J Billingsley Summary
9/LPA/5.5	Mr J Billingsley Rebuttal
9/LPA/6.1	Mr J Billingsley Instructions from the LPA
9/LPA/6.2	SDG Access to the Radlett Site – Time Table Issues
9/LPA/6.3	Response to Mr Tilley – Rebuttal App 2
9/LPA/6.4	Rail Connection Scores
9/LPA/6.5	Criterion 1 Scoring Commentary
9/LPA/6.6	SDG Access to the Radlett Site – Further Timetable Issues
9/LPA/6.7	Meeting Note – Discussion of Common Ground – Rail and Alternative Sites
9/LPA/6.8	Interfleet Timetable Analysis
9/LPA/6.9	Dr Hawkes Proof Of Evidence Table 7.1 and Mr Sharps Comments and Alternative Table
9/LPA/6.10	Map of Areas above 5km from a railway line shown over Green Belt and Areas of Outstanding Natural Beauty
9/LPA/6.11	Map of A Watson's UK Regional Distribution Centres
9/LPA/6.12	Steer Davies Gleave Instructions from the LPA
9/LPA/6.13	SDG Response to 9/HS/1.9

#### **Documents Submitted by STRiFE**

STRiFE 9/02	Opening Statement
STRiFE 9/01	Mr A Wallace Proof of Evidence
STRiFE 9/01	Mr A Wallace Summary
STRiFE 9/01	App to Document No 9/01
STRiFE 9/01(a)	App 2 Hartland Park Report Consideration One: The Strategic Gap and Inspectors Report
STRiFE 9/01(b)	App B Figure 4.45 Existing Area 3

STRiFE 9/03 J&S Consulting Proof of Evidence  
STRiFE 9/04 Mr D Hirst Proof of Evidence  
STRiFE 9/04 Mr D Hirst Summary  
STRiFE 9/04 Apps  
STRiFE 9/04 (a) KIG Assessment of Railway Connectivity & Site Layout  
STRiFE 9/04 (b) Letter dated 08 August 2008 from Mike Garratt (for  
Alconbury Developments Limited)

STRiFE 9/05 Mrs A Morton Proof of Evidence  
STRiFE 9/05 App 1  
STRiFE 9/05 App 2

STRiFE 9/06 Mr P Pryce Proof of Evidence  
STRiFE 9/06 (a) Memo from Sandra Constable dated 02 December 2009

STRiFE 9/07 Mr M Mark Proof of Evidence

STRiFE 9/08 Mr A Wilkinson Proof of Evidence

STRiFE 9/09 Mr B Pryce Proof of Evidence

STRiFE 9/10 Mr J Morgan First Capital Connect  
STRiFE 9/10 Apps  
STRiFE 9/10/01 Draft Thameslink Programme Specification  
STRiFE 9/10 (a) Introduction to Hugh Clancy on behalf of First Capital  
Connect  
STRiFE 9/10 (b) FCC Comments on Appendix Q of Nick Gallop's Proof  
STRiFE 9/10 (c) FCC Comments on Completeness of Appendix A of  
Helioslough's Technical Report 4

STRiFE 9/11 Closing Submissions

#### **Documents submitted by Interested persons**

9/AM/1.1 Anne Main MP statement

9/AM/1.2 Emailed copy of Decision for Proposal at ASM  
Metal Recycling Centre, Kings Langley

9/AM/1.3 Letter from Anne Main 16th December 2009

9/James C/1.1 James Clappison MP statement

9/CBwG/1.1 Clive Basset with Goodman (Written Representations)

9/CBwG/1.2 Letter from Savills dated 16th December 2009

9/SW/1.1 Mr S Walkington statement

9/RD/1.1 Cllr R Donald statement

9/MS/1.1 Mr M Saunders statement (on behalf of Cllr Caroline  
Clapper)

9/ILaR/1.1 Mr I LaRiviere statement  
9/ILaR/1/2 Appendices

9/ER/1.1 Mr E Roberts statement

9/ER/1.2	App 1	
9/PT/1.1	Mr Peter Trevelyan statement	
9/PT/1.2	Appendices	
9/DP/1.1	Mr D Parry statement	
9/DP/1.2	App A Analysis of Traffic Generation from the proposed Rail Freight Terminal at Radlett	
9/DP/1.1	Mr J Bell statement	
9/RSGBA/1.1	Mr G Taylor statement	
9/KP/1.1	Mr K Peak statement	
9/SACFA/1.1	Miss C Pudsey statement	
9/SACFA/1.2	Appendix 1	
9/SACFA/1.3	Appendix 2	
9/SACFA/1.4	Appendix 3	
9/MJ/1.1	Mr M Johns statement	
9/JC/1.1	Mr J Carter statement	
9/DB/1.1	Mr D Brown statement	
9/RW/1.1	Mr R Webb statement	
9/EB/1.1	Mrs E Brown statement	
9/CB/1.1	Mr C Brown statement	
9/CB/1.2	App 1 Table of Comparison of Radlett – KIG- Howbury	
9/CB/1.3	App 2 A4 Page from Needs Case for a Strategic Rail Freight Interchange Technical Report 1: Background Context submitted by HS	
9/CB/1.4	App 3 Letter from Network Rail dated 11 11 09	
9/CB/1.5	App 4 Letter from Sainsbury's	
9/CB/1.6	App 5 SoS Letter for Alconbury Development	
9/CB/1.7	App 6 S106 Agreement for Alconbury Development	
9/CB/1.8	App 7 SEEDA Letter 19 11 09	
9/CB/1.9	App 8 Letters from Network Rail dated 29 10 2007; 07 12 07	
9/G/1.1	Barton Willmore on behalf of Goodman (SIFE): written representation	
PLANS	Location Plan 001	)
	Key Parameters Plan 002A	) are contained within the ES
	Indicative Master Plan 003	)

## **APPEARANCES**

### **FOR THE LOCAL PLANNING AUTHORITY:**

Mr M Reed of Counsel; instructed by Head of Legal Services, St Albans District Council

Who called

Mr J Billingsley MA(Oxon)  
BPhil MLI

Mr S Stephenson BSc  
(Hons) MIOA CEng

Mr J Hargreaves DipTP  
MRTPI

Mr B Wilson CEng  
BSc(Hons) MIMechE

### **FOR THE APPELLANT:**

Mr M Kingston of Queens Counsel, assisted by

Mr D Forsdick of Counsel; instructed by Ms E Mortimer Managing Director, CgMs Ltd

Who called

Mr R Tilley

Mr G Smith

Mr N Gallop

### **FOR STRIFE:**

Mr P Stinchcombe of Counsel, assisted by

Mr N Helm of Counsel; instructed Fladgate LLP

Who called

Mr A Wallace

Mr D Hirst

Mr J O'Keefe

Mr H Clancy Commercial Director, First Capital Connect

Mrs A Morton Bricket Wood Residents Association

Mrs P Pryce Park Street and District Residents Association

Mr B Pryce	St Stephen Parish Council
Mr N Mark	Napsbury Park Residents Association
Mr A Wilkinson	Napsbury Lane Residents Association

**INTERESTED PERSONS:**

Mrs Anne Main MP	House of Commons
Mr James Clappison MP	House of Commons
Cllr Robert Donald	St Albans District Council
Mr E Roberts	St Albans Civic Society
Mr P Trevelyan	St Albans Civic Society
Mr J Bell	Chiswell Green Residents' Association
Mr G Taylor	Radlett Society & Green Belt Association
Miss C Pudsey	St Albans Community Forest Association
Mr M Johns	Park Street and How Wood Primary Schools
Mr S Walkington	Local Resident
Mr M Saunders	Local Resident
Mr D Parry	Local Resident
Mr K Peak	Local Resident
Mr J Carter	Local Resident
Mr I LaRiviere	Local Resident
Mr R Webb	Local Resident
Mr D Brown	Local Resident
Mrs E Brown	Local Resident
Mr C Brown	Local Resident

## **ANNEX A**

### **RECOMMENDED CONDITIONS**

Definitions of the terms used in the conditions can be found at the end.

#### **COMMENCEMENT OF DEVELOPMENT**

1. The development hereby permitted shall be commenced 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.

Reason: In compliance with Section 92 of the T&CPA 1990 as amended

#### **APPROVAL OF RESERVED MATTERS**

2. Application for approval of the Reserved Matters shall be made to the local planning authority before the expiration of three years from the date of this permission.

Reason: In compliance with Section 92 of the T&CPA 1990 as amended

#### **DEVELOPMENT IN ACCORDANCE WITH KEY PARAMETERS PLAN**

3. The development shall be carried out in accordance with the Key Parameters Plan and the specified paragraphs of the Development Specification Document dated March 2009 and drawing number 394503-LV-074 referred to in condition 3(f) comprising:
  - (a) layout of the new buildings to the extent to which it is shown on the Key Parameters Plan together with para 4.3;
  - (b) the maximum ridge height of the new buildings as specified on the Key Parameters Plan together with para 4.4;
  - (c) the maximum length and width of the B8 distribution units and the administration and ancillary buildings as set out in para 4.5;
  - (d) the maximum total floorspace of the new buildings applied for as specified on the Key Parameters Plan together with para 4.6;

- (e) the proposed finished site levels specified on the Key Parameters Plan together with para 4.7;
- (f) the height of earth mounds shown on drawing number 394503-LV-074 together with para 4.8;
- (g) various access and circulation routes shown on the Key Parameters Plan together with paras 4.9 and 4.10;
- (h) access to lorry and car parking/storage areas as shown on the Key Parameters Plan together with para 4.11;
- (i) proposed structure planting areas as shown on the Key Parameters Plan together with para 4.12.

Reason: This condition is necessary to ensure that the development does not materially depart from that applied for and considered in the ES.

#### **4. PARTIAL SIGNALISATION OF PARK STREET ROUNDABOUT**

- 4.1 None of the Units shall be occupied until the Park Street Roundabout Signalisation Works have been completed and brought into use.
- 4.2 The improvements shall include any revisions as required due to Road Safety Audit process and any revisions required to ensure the improvements comply with DMRB standards.
- 4.3 The improvements shall have:
  - (a) the required Road Safety Audits and Completion Certificates in accordance with the Design Standards for Roads and Bridges (DMRB), and
  - (b) the Health and Safety file required by the Construction (Design and Management) Regulations 2007.

Reason: This condition is necessary to ensure that the improvements to Park Street Roundabout are completed before the units are occupied.



**5. IMPROVEMENT TO TRAFFIC SIGNALS AT LONDON COLNEY ROUNDABOUT**

- 5.1 None of the Units shall be occupied until details of the London Colney Roundabout Improvements have been submitted for approval in writing by the local planning authority.
- 5.2 The London Colney Roundabout Improvements shall be completed in accordance with the approved details before the later of:
- (a) two years of occupation of any of the Units, or
  - (b) twelve months of approval of the details of the improvements.

Reason: This condition is necessary to increase the capacity of the London Colney Roundabout

**6. PROVISION OF ACCESS WORKS AND PARK STREET BYPASS**

- 6.1 None of the Units shall be occupied until the Access Works and the Park Street Bypass Phase 1 Works have been completed and brought into use.
- 6.2 The works shall include any revisions as required due to Road Safety Audit process and any revisions required to ensure the improvements comply with DMRB standards.
- 6.3 The works shall have:
- (a) the required Road Safety Audits and Completion Certificates in accordance with the Design Standards for Roads and Bridges (DMRB), and
  - (b) the Health and Safety file required by the Construction (Design and Management) Regulations 2007.
- 6.4 Not more than 230,000 square metres of floor area in the Units shall be occupied until a scheme for the Park Street Bypass Phase 2 Works (which shall include a programme for the delivery of the works) has been submitted to and approved in writing by the local planning authority.
- 6.5 The Park Street Bypass Phase 2 Works shall be completed in accordance with the approved scheme.

Reason: This condition is necessary to ensure that the access is completed before the Units are occupied, including the Park Street Bypass with a 'temporary' connection to the A5183 at its southern end.

**7. IMPROVEMENTS TO JUNCTION 21A OF THE M25**

- 7.1 None of the Units shall be occupied until the M25 Junction 21A Improvements have been completed and brought into use.
- 7.2 The improvements shall include any revisions as required by the Road Safety Audit process and any revisions required to ensure the improvements comply with DMRB standards, or the improvements shall include the relevant approved Departures from Standards (DfS).
- 7.3 The improvements shall have:
- (a) the required Road Safety Audits and Completion Certificates in accordance with the Design Standards for Roads and Bridges (DMRB), and
  - (b) the Health and Safety file required by the Construction (Design Management) Regulations 2007.

Reason: to mitigate the impact of the additional traffic generated by the development on the safety and capacity of the M25 Junction 21a.

**8. IMPROVEMENTS TO JUNCTION 22 OF THE M25**

- 8.1 Not more than 130,000 square metres of floor area in the Units shall be occupied until the M25 Junction 22 Improvements have been completed and brought into use.
- 8.2 The improvements shall include any revisions as required due to Road Safety Audit process and any revisions required to ensure the improvements comply with DMRB standards, or the improvements shall include the relevant approved Departures from Standards (DfS).
- 8.3 The improvements shall have:
- (a) the required Road Safety Audits and Completion Certificates in accordance with the Design Standards for Roads and Bridges (DMRB), and
  - (b) the Health and Safety file required by the Construction (Design Management) Regulations 2007.

Reason: to mitigate the impact of the additional traffic generated by the development on the safety and capacity of the M25 Junction 22.

**9. TRAVEL AND FREIGHT MONITORING AND MANAGEMENT PLAN**

- 9.1 None of the Units shall be occupied until a Travel and Freight Monitoring and Management Plan substantially in accordance with the Draft Travel and Freight Monitoring and Management Plan dated 18 December 2009 has been submitted to and approved in writing by the local planning authority.
- 9.2 The Travel and Freight Monitoring and Management Plan shall be submitted for approval no later than 12 months following the commencement of the Development.
- 9.3 The approved Travel and Freight Monitoring and Management Plan shall be implemented in accordance with the timetable contained therein and its requirements shall continue to be observed as long as any part of the development is occupied.

Reason: This condition is necessary to ensure that the measures proposed in the Travel Plan and Freight Management Plan to regulate movement to and from the development are carried out in the interests of (i) encouraging travel by means other than the private car and (ii) regulating the impact of HGV traffic on the surrounding network

**CAR PARKING**

10. Car parking spaces shall be provided at a standard of not more than 1 space per 207 square metres of floorspace for each Unit within the development

Reason: This condition is necessary to limit the amount of parking on the site in order to encourage travel by means other than the private car.

**CONTROL OVER SOUTHERN ROUNDABOUT**

11. None of the Units shall be occupied until a detailed scheme has been submitted to and approved in writing by the local planning authority to ensure that only pedestrians, cyclists and authorised public transport and emergency vehicles can use the eastern limb of roundabout Y on the Highways Plan. The scheme shall specify the physical measures to be incorporated and the management arrangements for the operation of those measures. The scheme shall be submitted for approval no later than 12 months following the commencement of the Development. The approved scheme shall be provided before any of the Units are occupied and the only users of the eastern limb shall be those authorised under the approved scheme.

Reason: This condition is necessary to ensure that the southern entrance to the SRFI is not used by employee's vehicles or goods vehicles in order to limit the impact of traffic generated by the development on the local road network.

## **12. RAIL RELATED WORKS**

- 12.1 None of the Units shall be occupied until the Midland Mainline Connection Works have been completed and until an operational rail link has been provided from such works to the relevant Unit.
- 12.2 A second track linking the reception sidings to the Midland Mainline shall be completed and become operational upon the earlier of:
- (a) as soon as reasonably practicable following the date on which the average number of trains arriving at and leaving Area 1 over a three month period exceeds seven per 24 hour weekday period, or
  - (b) 10 years following first occupation of any of the Units.
- 12.3 None of the Units shall be occupied until the Intermodal Terminal Phase 1 Works have been completed.
- 12.4 The Midland Mainline Connection Works and the rail links to each of the Units and the Intermodal Terminal once provided shall thereafter be managed and maintained such that they remain available and operational to serve the Units.
- 12.5 The Intermodal Terminal Phase 2 Works shall be completed as soon as reasonably practicable following the date on which the average number of trains arriving at and leaving Area 1 over a three month period exceeds four per 24 hour weekday period.
- 12.6 The Intermodal Terminal Phase 3 Works shall be completed as soon as reasonably practicable following the date on which the average number of trains arriving at and leaving Area 1 over a three month period exceeds eight per 24 hour weekday period.
- 12.7 The Intermodal Terminal shall be equally open to access by all licensed rail freight operating companies.
- 12.8 There shall be submitted to the Council at the expiry of every six months following the date of commencement of the Development a written report setting out the anticipated programme for the delivery of the rail works referred to in conditions 12.1, 12.2, 12.3, 12.5 and 12.6 until such works have been completed.

Reason: This condition is necessary to ensure that the rail facilities on the site and the connection to the main line are provided and maintained in a manner compatible with the intended use of the site as a SRFI.

**13. RAIL RELATED WORKS – GAUGE ENHANCEMENT TO THE MIDLAND MAINLINE**

- 13.1 Not more than 175,000 square metres of floor area in the Units shall be occupied until the Midland Mainline Gauge Enhancement Works have been completed such that the W10 gauge enhancement has been provided either:
- (a) from the development to Acton Yard, West London Junction and Willesden Junction (Acton Branch), or
  - (b) from the development to Junction Road Junction.
- 13.2 If Network Rail confirms in writing to the local planning authority before occupation of 175,000 square metres of floorspace within the Units that both sets of the works set out at condition 13.1 are required to be completed to meet the anticipated demand for train paths to the development, not more than 230,000 square metres of floorspace within the Units shall be occupied until a programme for such works has been approved in writing by the local planning authority. The works shall be completed in accordance with that programme.
- 13.3 There shall be submitted to the Council at the expiry of every six months following the date of commencement of the Development a written report setting out the anticipated programme for the delivery of the rail works referred to in condition 13.1 until such works have been completed.
- 13.4 There shall be submitted to the Council written notice of the anticipated date of occupation of 175,000 sq metres of floorspace within the Units, such notice to be served at least 6 months prior to such anticipated date of occupation.

Reason: This condition is necessary to ensure that the rail gauge enhancement works are completed in a timely fashion

**CONSTRUCTION METHOD STATEMENT**

14. The Development shall not be commenced until there has been submitted to and approved in writing by the local planning authority a construction method statement. The construction method statement shall include:

- (a) details of the methods to be used to control dust, noise, vibration and other emissions from the site;
- (b) details of all temporary buildings and compound areas including arrangements for their removal following completion of construction;
- (c) details of areas to be used for the storage of plant and construction materials and waste;
- (d) details of temporary lighting arrangements;
- (e) hours of construction work.
- (f) measures to ensure that construction vehicles do not deposit mud on the public highway.
- (g) a scheme for the routing of construction vehicles accessing the site including measures to be taken by way of penalties if construction vehicles do not observe the identified routes.
- (h) details of the construction earthworks methodology.

The construction of the development shall be carried out in accordance with the approved construction method statement.

Reason: This condition is necessary in the interest of controlling the construction works and limiting the impact of construction on surrounding residents.

## 15. **LANDSCAPING**

15.1 The details to be submitted for approval under condition 2 in relation to landscaping for Areas 1 and 2 shall include:

- (a) a topographical survey of the Country Park within Area 1 and Area 2 comprising an updated version of drawing number 394503/LV/041 showing landform, water features, boundary structures, land uses, access roads and footpaths.
- (b) proposed ground modelling, re-profiling and mounding with proposed contours to be at a maximum of 1 metre levels;

- (c) a survey of existing trees and hedges (including ground levels at the base of all trees) in the Country Park within Area 1 and Area 2, the survey to show details of all trees and hedges to be removed and those to be retained and a scheme for the protection of retained trees during the construction of the development on Area 1 and Area 2. The survey and the tree protection measures shall be in accordance with BS 5837 (2005) unless otherwise agreed in writing with the local planning authority;
- (d) the comprehensive treatment of planting and seeding areas including plans and sections at a scale of not less than 1:1250;
- (e) all boundary treatment, retaining walls and security fencing including materials to be used, typical elevations and heights;
- (f) acoustic fencing including materials to be used, typical elevations and heights and details of acoustic performance;
- (g) hard landscape works including access roads, parking areas, signage, seating, litter bins and picnic areas;
- (h) all existing, diverted (whether temporary or permanent) and proposed rights of way including footpaths, bridleways and cycleways and their proposed surfacing treatment and details of enclosures, gates and stiles;
- (i) works to Hedges Farm to provide the Country Park Visitor/Interpretation Centre;
- (j) a programme of implementation and a management plan.

15.2 The landscaping programme shall be implemented as approved and the landscaping shall be maintained in accordance with the approved management plan.

Reason: This condition is necessary to guide the submission of landscaping details required as part of the reserved matters application and to ensure that the landscaping in Areas 1 and 2 is carried out and appropriately maintained.

#### **POLLUTION CONTROL**

16. Where any Unit or other facility in the development has oil fuel storage or chemical tanks serving such Unit, the relevant Unit shall not be occupied until a pollution control strategy in relation to such tanks has been submitted to and approved in writing by the local planning

authority. The development shall be carried out in accordance with the relevant approved strategy.

Reason: This condition is necessary to reduce the risk of any oil or chemicals stored on site polluting the environment.

## **17. DRAINAGE**

17.1 The development shall not be commenced on Area 1 and Area 2 until a detailed scheme of drainage for Area 1 and Area 2 has been submitted to and approved in writing by the local planning authority. Such scheme shall include:

- (a) the provision of sustainable urban drainage systems to control the run-off from the development;
- (b) the provision of storm water balancing swales and other storage facilities; and
- (c) details of the design of the drainage infrastructure to illustrate the discharge rates will be less than existing levels.

The development shall be carried out in accordance with the approved scheme.

17.2 The development shall not be commenced on Areas 3 - 8 respectively until it has been confirmed in writing to the local planning authority whether development on the relevant Area includes the provision of foul and surface water drainage. If such drainage is to be provided on any of Areas 3 - 8 the development shall not be commenced on the relevant Area until a written scheme has been submitted to and approved in writing by the local planning authority setting out the details of such drainage and its effect on groundwater. Foul and surface water drainage on the relevant Area shall be constructed in accordance with the approved scheme.

Reason: This condition is necessary to ensure that drainage of the developed areas of the site does not increase run-off into local watercourses.

## **18. PILING**

Piling or the construction of any other foundations using penetrative measures shall not take place until a written scheme has been submitted to and approved in writing by the local planning authority setting out the details of such measures and their effect on groundwater. Piling or the construction of any other foundations using penetrative measures shall only take place in accordance with such approved scheme.



Reason: the site is in a sensitive location with respect to the potential contamination of groundwater. The construction of piles or other types of foundation could provide a potential pathway for contamination at the surface to migrate into the underlying major aquifer and Source Protection Zone.

## **AREA 2 PONDS**

19. The development on Area 1 shall not be commenced until details of the provision (including the timing, monitoring and aftercare of the new ponds to be located in Area 2 have been submitted to and approved in writing by the local planning authority. The ponds shall be constructed in accordance with the approved details. None of the Units shall be occupied until the ponds on Area 2 have been constructed.

Reason: This condition is necessary to ensure that ponds are provided on Area 2 to provide appropriate habitat for newts and invertebrates.

## **TRANSLOCATION OF ACID GRASSLAND**

20. The development shall not be commenced on the land forming part of Area 1 shown on EPR Map 11 until a mitigation strategy for the translocation of acid grassland from Area 1 to Area 2 (including timing, monitoring and aftercare) has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved strategy.

Reason: This condition is necessary to ensure that appropriate provision is made to mitigate for the loss of acid grassland on Area 1.

## **PROTECTED SPECIES**

21. The development shall not be commenced until an up to date survey has been submitted to the local planning authority showing the location of any protected species (being reptiles and nesting birds protected under the Wildlife and Countryside Act 1981 (as amended)) within Areas 1 or 2. Thereafter development shall not be commenced on any land forming part of Area 1 or 2 and identified by the survey as a location for a protected species, until a mitigation strategy for such species has been submitted to and approved in writing by the local planning authority. Development shall be carried out only in accordance with the approved strategy.

Reason: This condition is necessary to ensure that any protected species on the site are identified and that appropriate steps are taken to avoid harm to them.

## **BADGERS**

22. Not more than 6 months prior to the development being commenced on Area 1 or Area 2 the developer shall carry out a badger survey on the relevant Area and shall submit the results of such survey to the local planning authority. If appropriate the survey shall include a mitigation strategy for approval in writing by the local planning authority. Development shall be carried out only in accordance with the approved mitigation strategy.

Reason: This condition is necessary to ensure that any Badgers on the site at the time development is due to commence are identified and appropriate measures taken to mitigate the effects of the development on them.

## **ARCHAEOLOGY**

23. The development shall not be commenced within Areas 1, 2, 3 or 4 or the part of Area 6 shown on drawing CgMs Radlett/01 dated 13 December 2007 until a written scheme of archaeological work and protection in relation to the relevant Area has been submitted to and approved in writing by the local planning authority. The scheme shall make provision for the preservation in situ or, where that is not possible, the full excavation of remains considered to be of local or greater significance. The development shall be carried out in accordance with the scheme subject to any amendments approved in writing by the local planning authority. All remains preserved in situ shall be preserved in accordance with the scheme.

Reason: This condition is necessary in the interests of ensuring that appropriate provision is made for the recording or preservation of any archaeological remains that may be found on those areas of the site not previously disturbed by quarrying.

## **24. CONTAMINATION**

- 24.1 The development shall not be commenced on any Area until the following components of a scheme to deal with the risks associated with contamination of the relevant Area has been submitted to and approved in writing by the local planning authority:

- (a) A preliminary risk assessment which has identified:
  - (i) all previous uses
  - (ii) potential contaminants associated with those uses
  - (iii) a conceptual model of the site indicating sources, pathways and receptors

- (iv) potentially unacceptable risks arising from contamination at the site.
  - (b) A site investigation scheme, based on (a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
  - (c) The site investigation results and the detailed risk assessment and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
  - (d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
- 24.2 Any changes to the approved remediation strategy and the longer-term monitoring require the express consent of the local planning authority. The remediation strategy and longer-term monitoring shall be implemented as approved.
- 24.3 The development shall not be commenced on any Area until a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation on the relevant Area has been 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 any 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, and for the reporting of this to the local planning authority.
- 24.4 If during development of the relevant Area contamination not previously identified is found to be present at the site then no further development shall be carried out on that Area until the developer has submitted to and obtained written approval from the local planning authority for an amendment to the approved remediation strategy detailing how this unsuspected contamination shall be dealt with.

Reason: To ensure that an appropriate remediation strategy is undertaken as part of the development

**25. NOISE**

- 25.1 The development shall not be commenced on Areas 1 and 2 until a scheme has been submitted to and approved in writing by the local planning authority which specifies the details of the provisions to be made for the control of noise emanating from these Areas during the operation of the development. The development shall be operated in accordance with the approved scheme.
- 25.2 The level of noise emitted from the site shall not exceed 50dB LAeq, 8hr between 2300 and 0700 the following day as measured at 1 metre from the facade of any residential property. The measurement shall be made in accordance with British Standard 74451:2003.
- 25.3 The level of noise emitted from the site shall not exceed 60 dB LAFmax as measured at 1 metre from the façade of any residential premises between 23.00 and 07.00, every day.

Reason: This condition is necessary in the interests of preventing significant noise disturbance to residents living around the site.

**EXTERNAL LOUDSPEAKERS**

26. No external loudspeaker systems shall be installed on any Area.

Reason: This condition is necessary in the interests of preventing residents living around the site being disturbed by (intermittent) noise from any external loudspeakers that may be installed on the site.

**REFUSE**

27. The development shall not be commenced on any Area until details of the facilities for the storage of refuse on that Area have been submitted to and approved in writing by the local planning authority. The approved details shall thereafter be implemented and retained.

Reason: This condition is necessary to ensure that proper provision is made for the storage of refuse on the site.

**RENEWABLE ENERGY**

28. Construction of the Units within Area 1 shall not be commenced until a report has been submitted to the local planning authority setting out the measures to be taken such that the predicted CO2 emissions of the development will be reduced by a target of 10% through the

use of on-site renewable energy equipment and until such measures have been approved in writing by the local planning authority. The development shall be carried out incorporating such approved measures.

Reason: This condition is necessary in the interests of sustainable development and to comply with the requirements of RSS14.

## **LIGHTING**

29. No Unit shall be occupied until a detailed external lighting scheme for Areas 1 and 2 has been submitted to and approved in writing by the local planning authority. No external lighting other than that approved shall be provided on Areas 1 and 2.

Reason: This condition is necessary to ensure that the design and installation of external lights on the site pays due regard to the need to protect the amenities of local residents and the environment.

## **CYCLE STORAGE**

30. None of the Units shall be occupied until details of the cycle storage for employees of the Unit has been submitted to and approved in writing by the local planning authority. The approved cycle storage shall be provided and thereafter retained.

Reason: This condition is necessary in the interests of ensuring that appropriate provision is made for the storage of cycles on the site.

## **31. COUNTRY PARK**

- 31.1 The development shall not be commenced until there has been submitted to and approved in writing by the local planning authority a Countryside Management Plan. The Countryside Management Plan shall include landscaping details for Areas 3 to 8 submitted for approval under Condition 2 above and shall be substantially in accordance with the following documents:

- (a) Countryside Management Plan – Overall Objectives and Design Principles dated 19 December 2007 and drawing numbers 394503-LV-042, 394503-LV-044, 394503-LV-046, 394503-LV-048, 394503-LV-050, 394503-LV-052, 394503-LV-054, 394503-LV-056, 394503-P-057 and 394503-LV-018 and EPR Maps 2, 3 rev A, 4, 5, 6, 7, 8, 9 and 10 Rev A; and

- (b) Countryside Management Plan – Objectives and Specific Measures for Areas 1 – 8, dated 19 December 2007.

- 31.2 The development shall not be commenced until there has been submitted to and approved in writing by the local planning authority a Landscape Management Plan substantially in accordance with the Draft Landscape Management Plan prepared by Capita Lovejoy in December 2008.
- 31.3 The approved Countryside Management Plan and the approved Landscape Management Plan shall be implemented and their requirements shall thereafter continue to be observed.
- 31.4 The Countryside Management Plan when submitted under condition 31.1 shall define the landscaping and countryside access works and the public access and the sport and recreation facilities referred to in condition 32.1 and the works to create waterbodies and related facilities for bird habitat referred to in condition 32.2. It shall also set out measures to protect the areas of ecological interest within the Country Park pending the completion of the Country Park.

Reason: This condition is necessary to ensure that details of the Country Park are settled at an early stage.

## **32. DELIVERY OF COUNTRY PARK**

- 32.1 The landscaping and countryside access works in those parts of Areas 1 and 2 proposed for use as a Country Park and in Areas 3, 4 and 5 and in the southern part of Area 6 and the provision of public access and the sport and recreation facilities in Area 5 shall be completed prior to occupation of any of the Units. These works shall include the restoration of Hedges Farm as a working farm and as a Country Park Visitor/Interpretation Centre as approved under condition 15.1(i) above.
- 32.2 The works to create waterbodies and related facilities for bird habitat on Areas 5 and 8 shall be completed within twelve months following occupation of any of the Units.
- 32.3 The Country Park works on Areas 7 and 8 shall be completed no later than the occupation of 290,000 square metres of floor area in the Units.
- 32.4 The Country Park measures on the northern part of Area 6 shall be completed by the later of:

- (a) 12 months following completion of the restoration of Area 6 in accordance with the planning permission dated 27 March 2007 reference 5/1811-04(CM112) (and any variation thereof); or
- (b) occupation of more than 290,000 square metres of floor area in the Units.

Reason: This condition is necessary to ensure timely delivery of the Country Park.

#### **CONDITION IN RELATION TO AREA 1<sup>593</sup>**

- 33. **(Alternative 1)** [The development shall not be commenced until a written planning obligation under Section 106 Town and Country Planning Act 1990 substantially in the same terms as the Unilateral Undertaking dated 16 January 2008 and binding the rest of Area 1, has been entered into by all relevant parties, completed and submitted to the local planning authority. ]
- 33 **(Alternative 2)** [The development shall not be commenced within Area 1 until the approved rail works forming part of the development have been commenced on Area 2]
- 33 **(Alternative 3)** [None of the Units shall be occupied until a detailed scheme has been submitted to and approved in writing by the local planning authority securing the matters listed in (a) - (i) below. The approved scheme shall be implemented in accordance with its terms, which shall include both a timetable for the implementation of each component part of the scheme and a framework to provide for the enforcement of the scheme. The scheme shall be consistent with the terms of the Unilateral Undertaking dated [ 2009].
  - (a) a mechanism to ensure that Heavy Goods Vehicles use appropriate roads in respect of their routing to and from Area 1;
  - (b) the provision of the Park Street/Frogmore Environmental Improvements;

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<sup>593</sup> 3 alternative versions of condition 33 are set out. Alternative 1 is the same condition proposed by the Appellant and recommended by the Inspector at the previous inquiry. The Secretary of State raised queries on that condition (para 52 of the decision letter). The Appellant considers that the condition is appropriate and will be making submissions at the inquiry to that effect. If the Secretary of State is not satisfied regarding the condition, the second and third alternative versions are put forward by the Appellant as alternative options. Alternative 2 needs to be read in conjunction with the obligation in clause 14 of the Section 106 undertaking which restricts development from taking place on Area 2 until all of the application site is bound by the Section 106 obligation.

Additional definitions are included in square brackets at the end of the Definitions section to define the additional terms used in Alternative 3.

- (c) the provision of the Park Street Railway Station Improvements;
- (d) the provision of the Watford Branch Railway Line Improvements;
- (e) the appointment of the Travel/Freight Management Plan Co-ordinator prior to the occupation of any of the Units. The scheme shall contain details of the Co-ordinator's express responsibility for the promotion of rail freight at the development and to the surrounding area;
- (f) the provision, operation and maintenance of the fixed rail infrastructure within the development and the branch line to the Midland Mainline;
- (g) the funding of the costs of managing and maintaining the Country Park in accordance with the Countryside Management Plan and the Landscape Management Plan;
- (h) the inclusion in the lease of any Unit prior to the occupation of such Unit or in the lease of the Intermodal Terminal prior to its occupation an obligation that the relevant tenant shall comply with conditions 25.1 and 25.2 in relation to noise and the scheme shall require the enforcement of such lease provisions;
- (i) the provision of the Footpaths, Bridleways and Cycleways Improvements]

Reason: this condition is necessary to ensure that the planning obligations which have been entered into in relation to areas 2 - 8 are also secured in relation to the whole of area 1.

## DEFINITIONS

<b>"Access Works"</b>	The creation of the new vehicular access to serve Area 1 from the A414 including the at grade signalised roundabout linking the A414 to the Park Street bypass
<b>"Area"</b>	The relevant area within Areas 1 – 8
<b>"Area 1"</b>	The area marked Area 1 shown edged red on



	drawing number 394503-LV-018
<b>"Area 2"</b>	The area marked Area 2 shown edged red on drawing number 394503-LV-018
<b>"Area 3"</b>	The area marked Area 3 shown edged red on drawing number 394503-LV-018
<b>"Area 4"</b>	The area marked Area 4 shown edged red on drawing number 394503-LV-018
<b>"Area 5"</b>	The area marked Area 5 shown edged red on drawing number 394503-LV-018
<b>"Area 6"</b>	The area marked Area 6 shown edged red on drawing number 394503-LV-018
<b>"Area 7"</b>	The area marked Area 7 shown edged red on drawing number 394503-LV-018
<b>"Area 8"</b>	The area marked Area 8 shown edged red on drawing number 394503-LV-018
<b>"Country Park"</b>	The country park to be provided on part of Area 1 and part of Area 2 shown coloured green on drawing number 394503-LV-077 and the Key Parameters Plan and on Areas 3-8
<b>"Countryside Management Plan"</b>	A plan setting out details of the long term management and maintenance of the Country Park
<b>["Footpaths, Bridleways and Cycleways Improvements"]</b>	<p>improvements to footpaths, bridleways and cycleways in the vicinity of the application site to include:</p> <p>(a) formation of new or upgrading of existing footpaths or bridleways outside the application site as shown</p>

on Figure 56B; and/or

- (b) the upgrade of the pavement on the southern side of the A414 to a combined pavement and cycleway in the vicinity of the application site; and/or
- (c) improvements to the pedestrian bridges and underpasses in the vicinity of the application site]

**["Heavy Goods Vehicle"**

any goods vehicle which has an operating weight exceeding 7.5 tonnes]

**"Highways Plan"**

Plan 6035/37A dated December 2007

**"Intermodal Terminal  
Phase 1 Works"**

The first phase of the on-site rail works comprising the construction of three reception sidings and two intermodal terminal sidings and associated works to facilitate its operation as an intermodal terminal including security, hardstanding and lighting substantially in accordance with the principles of drawing number IM/Radlett/01 dated 19 December 2007

**"Intermodal Terminal  
Phase 2 Works"**

The second phase of on-site rail works comprising the construction of two additional intermodal terminal sidings and new temporary hardstanding substantially in accordance with the principles of drawing number IM/Radlett/01 dated 19 December 2007

**"Intermodal Terminal  
Phase 3 Works"**

The third phase of on-site rail works comprising the construction of two additional intermodal terminal sidings with the extension of the track to the reception sidings substantially in accordance with the principles of drawing number IM/Radlett/01 dated 19 December 2007

<b>"Intermodal Terminal"</b>	The intermodal terminal forming part of the development
<b>"Key Parameters Plan"</b>	Plan 394503-DSD-002a dated December 2008
<b>"Landscape Management Plan"</b>	A plan setting out details of the long term management and maintenance of the landscape areas within the Country Park
<b>"London Colney Roundabout Improvements"</b>	Improvements to the existing traffic signal controller at the London Colney Roundabout by the installation of the MOVA signal control system and other works to improve safety and capacity of the roundabout
<b>"M25 Junction 21A Improvements"</b>	Improvements to M25 Junction 21A as shown in principle on drawing number 11012495/PHL/01 Rev C
<b>"M25 Junction 22 Improvements"</b>	Improvements to M25 Junction 22 as shown in principle on drawing numbers 2495/SK/003 Rev A and 2495/SK/004 Rev A
<b>"Midland Main Line"</b>	The railway running from Bedford to St Pancras
<b>"Midland Main Line Connection Works"</b>	The formation of a southerly connection from the Midland Main Line northbound and southbound slow lines to the new branch line (including necessary signalling works) to serve Area 1
<b>"Midland Main Line Gauge Enhancement Works"</b>	<p>The gauge enhancement to the Midland Main Line to W9 and W10 loading gauge on the following routes;</p> <p>(a) the development to Brent Curve Junction, and</p> <p>(b) either;</p>

- (i) Brent Curve to Acton Wells Junction; or
- (ii) Brent Curve to Junction Road Junction (at Tufnell Road)

**"Park Street Bypass Phase 1 Works"**      The provision of the Park Street Bypass from the A414 between points A and C on the Highways Plan

**"Park Street Bypass Phase 2 Works"**      The provision of:

- (a) a modification to the existing bridge over the M25; or
- (b) a new bridge over the M25 as shown in principle on Drawing 14297/BR/AIP/ST01/001-Rev A linking Area 1 with the A5183 by connecting roundabout Y and point D on the Highways Plan

**["Park Street/Frogmore Environmental Improvements"**      environmental improvements at Park Street/ Frogmore to include;

- (a) traffic management measures to be introduced to restrict Heavy Goods Vehicles from using the A5183 in the vicinity of Park Street/ Frogmore save for those vehicles delivering to addresses in the vicinity of Park Street/ Frogmore and/ or;
- (b) traffic calming measures and/or;
- (c) footway widening and/or;
- (d) associated townscape and landscape works to improve the environment and residential amenity]

**["Park Street Railway Station Improvements"**      improvements to passenger facilities at Park Street Railway station and improvements to the street layout in the vicinity

of Park Street Railway Station]

**"Park Street Roundabout  
Signalisation Works"**

Improvements to the Park Street Roundabout as shown in principle on drawing no. 2495/SK/001 Rev A

**"Reserved Matters"**

Details of:

- (a) layout except as already approved for layout of the new buildings;
- (b) scale except as already approved for the maximum total floorspace of the new buildings and the maximum height, width and length of the new buildings;
- (c) appearance of the new buildings;
- (d) access except as already approved for rail, lorry and car access;
- (e) landscaping except as already approved for the location of the structure planting and earth mounds on Areas 1 and 2

**["Travel/Freight Management  
Plan Co-ordinator"**

a person appointed under the terms of the Travel/Freight Management Plan referred to in condition 9.1 to co-ordinate the initiatives under the plan]

**"Unit"**

Each of the respective warehouse units within Area 1 to be constructed as part of the development

**["Watford Branch Railway Line  
Improvements"**

the provision of a passing loop on the St Albans Abbey to Watford Junction branch line to facilitate a two way rail service, or alternative improvements to the rail service on the St Albans Abbey to Watford Junction branch line]

**Annex B****ABBREVIATIONS**

SA	Alternative Sites Assessment
CA	Conservation Area
CMP	Countryside Management Plan
COPA	Control of Pollution Act
DBS	DB Schenker Rail (UK) Ltd
DCLG	Department of Communities and Local Government
DEFRA	Department for Environment, Food and Rural Affairs
DfT	Department of Transport
Drg	Drawing
DIRFT	Daventry International Rail Freight Terminal
DL	Decision Letter
DoE	Department of the Environment
EERA	East of England Regional Assembly
EH	English Heritage
EiC	Examination in Chief
EiP	Examination in Public
ES	Environmental Statement
FCC	First Capital Connect
FMMP	Freight Management and Monitoring Plan
FOC	Freight Operating Company
GB	Green Belt
GLA	Greater London Authority
GOSE	Government Office for the South East
GRIP	Guide to Railway Investments Projects
HA	Highways Agency
HBRC	Hertfordshire Biological Records Centre
HCC	Hertfordshire County Council
HGV	Heavy Goods Vehicle
HMWT	Herts and Middlesex Wildlife Trust
HP	Howbury Park
HS	Helioslough (appellant)
IR	Inspector's Report
LGW	London Gateway
LIFE	London International Freight Exchange
LPA	Local Planning Authority
MCC	Material Change in Circumstances
MLL	Midland Main Line
NDC	National Distribution Centre
NPS	National Policy Statement
NR	Network Rail
ORR	Office of the Rail Regulator
PIM	Pre Inquiry Meeting
PPG	Planning Policy Guidance
PPS	Planning Policy Statement
RDC	Regional Distribution Centre
RFR	Reason for Refusal
RPG	Regional Planning Guidance
RUS	Route Utilisation Survey

RSS	Regional Spatial Strategy
RX	Re-examination
SACDC	St Albans City and District Council
SOAF	Statement of Agreed Facts
SoCG	Statement of Common Ground
SoS	Secretary of State
SRFI	Strategic Rail Freight Interchange
SRA	Strategic Rail Authority
TA	Transport Assessment
TL	Thameslink
TOC	Train Operating Company
XX	Cross Examination
WHO	World Health Organisation

## 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 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**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. 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 under this section must be made within six weeks from 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 permission 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**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

### **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 report of the Inspector's report of the inquiry or hearing within 6 weeks of 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.