



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

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Date: 19 October 2012

HIGHWAYS ACT 1980

ACQUISITION OF LAND ACT 1981

**The A46 Trunk Road (Newark to Widmerpool Improvement and Slip
Roads) Margidunum Roundabout (Detrunking) Order 20..,**

**The A46 Trunk Road (Newark to Widmerpool Improvement and Slip
Roads) Supplementary (Side Roads) Order Number 1 20..,**

AND

**The A46 Trunk Road (Newark to Widmerpool Improvement and Slip
Roads) Supplementary Compulsory Purchase Order Number 1 20..,**

Inquiry Opened: 08 November 2011

Ref: DPI/L3055/11/16

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CASE DETAILS

- These draft Orders would be made under sections 10, 12, 14, 125, 239, 240, 246, and 326 of the Highways Act 1980, and under section 2 of the Acquisition of Land Act 1981 and are known as;
 - **The A46 Trunk Road (Newark to Widmerpool Improvement and Slip Roads) Margidunum Roundabout (Detrunking) Order 20..**,
 - **The A46 Trunk Road (Newark to Widmerpool Improvement and Slip Roads) Supplementary (Side Roads) Order Number 1 20..**,
 - **The A46 Trunk Road (Newark to Widmerpool Improvement and Slip Roads) Supplementary Compulsory Purchase Order Number 1 20..**
- The Secretary of State for Transport (hereafter referred to as “the authority”) proposes to make the Orders.
- The draft Orders were published on 12 May 2011, and there were 4 objections outstanding to the Orders at the commencement of the local inquiries.
- **The A46 Trunk Road (Newark to Widmerpool Improvement and Slip Roads) Margidunum Roundabout (Detrunking) Order 20..**, [SD003] is an Order under sections 10 and 12 of the Highways Act 1980 which would identify the roads which the Secretary of State proposes to de-trunk as part of the scheme.
- **The A46 Trunk Road (Newark to Widmerpool Improvement and Slip Roads) Supplementary (Side Roads) Order Number 1 20..**, [SD002] is an Order under sections 12, 14, 125 and 326 of the Highways Act 1980 which as a consequence of the scheme and Order would enable the Secretary of State to stop up and provide new private means of access to premises affected by the scheme.
- **The A46 Trunk Road (Newark to Widmerpool Improvement and Slip Roads) Supplementary Compulsory Purchase Order Number 1 20..**, [SD001] is an Order under sections 239, 240 and 246 of the Highways Act 1980, and under section 2 of the Acquisition of Land Act 1981 which would authorise compulsory acquisition of land and rights for the following purposes:
 - The construction of the new Trunk Road in the Parish of Farndon, in the District of Newark and Sherwood in the County of Nottinghamshire;
 - The construction and improvement of highways and the provision of new means of access in pursuance of The A46 Trunk Road (Newark to Widmerpool Improvement and Slip Roads) Supplementary (Side Roads) Order Number 1 20..;
 - The improvement of the Trunk Road in the said Parish and District;
 - The diversion of watercourses and the execution of other works on watercourses in connection with the construction of the new Trunk Road and the construction and improvement of other highways;
 - Use by the Secretary of State for Transport in connection with such construction and the improvement of highways and the execution of other works mentioned above;

Summary of Recommendations: I recommend that the Orders be made subject, in the case of the SSRO and the SCPO, to the modifications proposed.

1 PREAMBLE

- 1.1 I was appointed, pursuant to section 13(2) of the Acquisition of Land Act 1981 and paragraph 7 of Schedule 1 of the Highways Act 1980, to hold concurrent public local Inquiries into the above draft Orders, and to report to the Secretary of State for Transport and the Secretary of State for Communities and Local Government. For ease of reference, I propose hereinafter to refer to the concurrent Inquiries as "the Inquiry".
- 1.2 The Inquiry opened on Tuesday 8 November 2011 at Newark Town Hall to hear representations and objections concerning an application made by the authority to make the above-mentioned draft Supplementary Side Roads Order (SSRO) and the draft Supplementary Compulsory Purchase Order (SCPO) Orders. It sat for 18 days and closed on 20 July 2012. No objections were received which related to the draft Detrunking Order and no representations were presented to the Inquiry in respect of this Order.
- 1.3 In the absence of a pre-Inquiry meeting I issued an Inquiry Procedural Note [INQ1] on 4 October 2011 to assist those intending to appear at and give evidence to the Inquiry. It set out the regulatory framework for the Inquiry and the way in which it would be managed and highlighted the statutory tests. The administration and programming of the Inquiry were dealt with by the independent Programme Officer (PO), Mrs. Jayne Hallam.
- 1.4 The authority indicated that the purpose of the draft supplementary Orders was to address a number of small inconsistencies identified in the Orders made in relation to the A46 Newark to Widmerpool Improvement Scheme in 2009, following consideration of the draft Orders for the scheme at public Inquiry held in 2007, and to deal with unresolved issues relating to proposals for a revised access for landowners at Farndon, Nottinghamshire and more particularly at and in the vicinity of Farndon Roundabout, at the junction of the A46 with the B6166, Farndon Road.
- 1.5 I made a separate unaccompanied inspection of the Farndon Roundabout area on Monday 7 November 2011 before the opening of the Inquiry. I carried out accompanied site visits on Thursday 10 November 2011, during the Inquiry. These included not only the International Logistics Centre (ILC) operated by one of the objectors PA Freight (PAF) and the adjacent Farndon Roundabout area, which is the focus for the concerns of objectors, but also the Swinderby facility of PAF, situated some 10 miles from their Farndon site.
- 1.6 I was also able to visit the house of one objector, Mrs D Paver (OBJ/001), the land in the ownership of another objector, Mr M R Walmsley (OBJ/002)

and the property of a supporter, Mr C Lawrence (SUP/002).

- 1.7 I also carried out unaccompanied site visits, particularly in the vicinity of the Farndon Roundabout and the proposed private means of access from the roundabout, at various times during the Inquiry. These included visits at various times of day and evening. I also inspected adjoining land between the Farndon Roundabout and the nearby River Devon.
- 1.8 During the Inquiry I conducted round table discussion sessions in which I examined the draft Orders, Plans and proposed Modifications.
- 1.9 Five objections to the SSRO and SCPO were received during the formal advertising period, three of which were from statutory objectors; Mr M R Walmsley (OBJ/002), PA Freight (OBJ/003) (PAF) and Mr C Lawrence (formerly OBJ/004). Before the commencement of the Inquiry Mr Lawrence formally withdrew his objection¹ and appeared at the Inquiry as a supporter (SUP/002). The two non-statutory objections were from Mrs D Paver (OBJ/001) and from Mr Patrick Mercer OBE MP (OBJ/005). One other representation of support was received from Nottinghamshire County Council (SUP/001). Four other representations were received; Mrs M J Clarkson (REP/001), Natural England (REP/002), Newark & Sherwood District Council (REP/003) and M, A, E & D Rowan (REP/004).
- 1.10 Two statutory and two non-statutory objectors appeared at or gave evidence to the Inquiry;
- PAF (OBJ/003)
 - Mr. M R Walmsley (OBJ/002)
 - Mrs D Paver (OBJ/001)
 - Mr Patrick Mercer OBE MP (OBJ/005), who appeared as a witness with the PA Freight objection.
- 1.11 Mr Lawrence (SUP/002) gave evidence as a supporter.
- 1.12 The main grounds of objection relate to the impact of the proposed revised access arrangements from Farndon Roundabout and from Farndon Road for the business of PAF, for local residents and property owners, in the vicinity of this junction.
- 1.13 In September 2011 PAF submitted an Application for Outline Planning Permission² to the local planning authority, Newark and Sherwood District

¹ OBJ/004/1

² OBJ/3/7/1, Appx E

Council (NSDC). This included provision for an additional 240 sq.m. of office space, an additional 85 sq.m. of storage/distribution together with a proposed new access road directly from the Farndon Roundabout. This access road would follow a different line from that proposed by the Highways Agency (HA) that is the subject of the current Draft Orders.

- 1.14 This was put forward by PAF as an alternative alignment for the private means of access (PMA) from Farndon Roundabout to serve the properties of PAF, Mr Walmsley and Mr Lawrence. It was received in response to the scheme publication and the subsequent public consultations and publicity. Notification of this alternative together with the relevant plan was sent on 21 September 2011, to those parties that would be affected, inviting them to make representations regarding the alternative access and advising them of the arrangements for the Inquiry [HA/013, Tab 6].
- 1.15 During the Inquiry the authority tabled a modified alternative to its published PMA scheme to enable segregated access to Mr Walmsley's land, this option became known as the "*Walmsley loop*" during the Inquiry. Whilst not actively promoting this option the HA left it before the Inquiry as an alternative that could be adopted and which would not require additional land. Mr Walmsley did not pursue this alternative during the Inquiry.
- 1.16 The authority, which was represented at the Inquiry by the Highways Agency (HA), confirmed that it had complied with all necessary statutory procedures [HA/013]. The National Planning Policy Framework was introduced during the course of the Inquiry. No party referred to or relied on this Framework.
- 1.17 This report contains a brief description of the site and its surroundings, the gist of the cases presented, together with my conclusions and recommendations. Lists of Inquiry appearances and documents are attached, as is a Glossary of acronyms used in this report. A list of all documents and plans submitted to the Inquiry, including proofs of evidence, are attached. The proofs are as originally submitted, in other words unless expressly stated they do not take account of how evidence may have been affected by cross-examination or other aspects of the Inquiry. References to Inquiry documents are set out in footnotes to the text and/or in square brackets [].

2 DESCRIPTION OF THE SITE AND ITS SURROUNDINGS

- 2.1 The A46 trunk road connects the East and West Midlands. The A46 Newark to Widmerpool Improvement Scheme ("the Scheme"), which was considered at the 2007 and 2009 Inquiries [para 1.4 above] involves the provision of a new 28km long two lane dual carriageway from the A606 two level junction at Widmerpool, south of Nottingham, to an improved roundabout at Farndon, just south of Newark. At the time of the opening of the Inquiry the Scheme was nearing completion and had been opened by close of the Inquiry.

Farndon Roundabout/B6166

- 2.2 The existing access to PAF is off the B6166 Farndon Road some 70m from the old (pre-Scheme) roundabout³. This provides access for a number of individuals and businesses, including: Mr Charles Lawrence (SUP/002), owner and occupier of the property Cranleigh Park, (sometimes referred to as 153A Farndon Road); Mr Maurice Walmsley (OBJ/002), owner of the plot of land to the east of the access some 85m from Farndon Road; and PAF (OBJ/003), giving access to their lorry parking area and their secure ILC. Pedestrians and cyclists may also use the access off Farndon Road to gain access to these properties.
- 2.3 Provision was made in the Scheme for a PMA to feed off Farndon Roundabout in a south easterly direction to serve this nearby land and properties, and to enable the subsequent closure of the existing PMA. I note that the bellmouth entry and approximately 50m connection to this previously-proposed PMA has been constructed at the roundabout as part of the Scheme and now forms the link to the access to Farndon Fields Farm (Mrs Clarkson) and to property owned by Mr Hardy.
- 2.4 This general area of land to the south east of Farndon Roundabout, and lying to the south west of the existing PMA, is relatively flat agricultural land and I observed that it is, in part, grazed by sheep. It sits at a lower level than the adjacent trunk road roundabout. It is bounded to the south east by the River Devon which lies some 60-70m from the trunk road in this immediate area⁴.

3 LEGAL/PROCEDURAL SUBMISSIONS

Inspector's Note: During the Inquiry I received legal submissions from the objector PAF on a number of issues ((i) *Alleged covert surveillance*, (ii) *The question of the PAF alternative*, (iii) *Whether or not the HA scheme comprises EIA development*); these submissions are set out fully in the referenced documents. Matters of law are not for me to determine. I nevertheless address the submissions regarding these issues in paragraphs 8.3-8.24 of this report.

The material points are

³ See drawings appended to OBJ/003/7/2 at Appx A (Create Report Ref: JPC/CS/220/07)

⁴ A general view of the area, including the existing access, the 'old' Farndon roundabout, the PAF lorry park & ILC site and adjacent properties and land can be seen in` aerial photograph SD2/2/3, Fig.1

Alleged Covert Surveillance

The Objector's (PAF's) Submissions^{5 6 7}

- 3.1 Before the Inquiry, and without prior notice or warning, the HA installed first one and then a second CCTV camera on a street light in the vicinity of the PAF access from Farndon Road⁸. The capture, via CCTV, of images of individuals, and the subsequent retention and use of those images, amounts to the processing of 'personal data'. The HA is responsible as data controller for the lawful obtaining and processing of this material pursuant to the Data Protection Act 1998 (DPA). Furthermore the HA's conduct contravened the Information Commissioner's CCTV *Code of Practice*.
- 3.2 The capture and use of images via CCTV also engages rights under the European Convention on Human Rights (ECHR) Article 8 (as against the HA as a public authority) and the parallel common law about the misuse of private information. Where information is obtained covertly in circumstances where there is a reasonable expectation of privacy – even in relation to activities taking place in public – the law requires a balance to be struck between the rights of the natural or legal person to whom the information relates and the public interest served by the capture and use of the information.
- 3.3 A public authority may immunise itself from the liability under those heads of law by arranging for directed surveillance under the Regulation of Investigatory Powers Act 2000 (RIPA), Part 2. The authorising officer must be satisfied that the surveillance is necessary and proportionate in pursuance of a prescribed purpose.
- 3.4 Material obtained in breach of the DPA, the ECHR, the ordinary law of confidence or the RIPA regime is not automatically inadmissible in civil or Inquiry proceedings. Rather the decision-maker is required to carry out a balancing exercise.
- 3.5 On the facts of this case – in particular the lack of disclosure of the intended surveillance and the deliberate concealment of its true purpose – it appears that 'personal data' have been acquired and processed in clear breach of the data protection principles. For similar reasons the surveillance operation and subsequent use of the fruits of surveillance also amount to an interference with rights under Article 8 ECHR and parallel rights of confidence protected by the common law, which in the

⁵ OBJ/3/35 Letter from Laytons to TSol 23 November 2011

⁶ OBJ/3/60 Bundle of documents including Legal Advice from Gordon Nardell QC & Angela Rainey (OBJ/3/60/1)

⁷ OBJ/3/96 Letter from Laytons to TSol 22 February 2012

⁸ See photographs in OBJ/3/60/3; camera CCTV 1 was the small dome camera, CCTV 2 was the pole-mounted camera

circumstances cannot be regarded as proportionate or justified in the public interest.

- 3.6 The HA cannot rely on the immunity offered by RIPA since no authorisation was sought or granted for the operation in question (and in any event, on the facts, is it unlikely that an authorisation could properly have been granted even if sought).
- 3.7 So far as the Inquiry evidence is concerned, the balance seems to strongly favour the exclusion of the fruits of the surveillance operation. That conclusion is reinforced by the fact that the use of the captured images in the course of the Inquiry, and in the decision-making process that follows it, would itself amount to further processing of data which, as noted above, appear to have been obtained in breach of the DPA framework.
- 3.8 In addition to possible complaints under the DPA and/or RIPA, the remedies available to those affected by the HA's surveillance operation may include a claim for damages under Human Rights Act 1998 (HRA) s.8, or for the tort of misfeasance in public office.
- 3.9 In view of all the above the data should be ruled as inadmissible as evidence to the Inquiry.

The Authority's Submissions^{9 10 11}

- 3.10 The vehicle count data generated by the cameras is not 'personal data' within the meaning of the DPA, which requires that such data must relate to a living individual and that it must be possible to identify that individual¹². There must be a direct connection between the individual and the subject matter of the data; the data should have the individual as their focus or be biographical of that individual in a significant sense see: Durrant v Financial Services Authority [2003] EWCA Civ 1746, [2004] FSR 28 at [27]-[28]. This is clearly not the case here and their use is not governed by the Act.
- 3.11 The processing of those data was lawful, fair and satisfied a condition in Schedule 2 to DPA¹³, so that the first data protection principle was not contravened and none of the other data protection principles were contravened.

⁹ HA/35 Letter from TSol to Laytons 14 December 2011

¹⁰ HA/55 Letter from TSol to Laytons 13 January 2012

¹¹ HA/79 Legal Opinion from Philip Coppel QC & Charles Bourne 24 January 2012

¹² See images in photos from 'Lorry Counting Camera No.1 in photo 2, OBJ/003/60/3

¹³ s.33 of the DPA exempts certain processing of 'personal data' research purposes, including statistical purposes [HA/79, paras20-24]

- 3.12 The HA's conduct in installing and operating the cameras, which were counting and classifying vehicle types and movements, did not contravene the Information Commissioner's CCTV *Code of Practice* as it applies to the viewing or recording of images of motor vehicle movements which do not include images of the individuals.
- 3.13 The cameras mounted on the street light were visible¹⁴. As the surveillance was not 'covert' within the meaning of s26(9) of RIPA; the Act has no application to the camera's installation.
- 3.14 Turning to the matter of alleged contravention of ECHR, the Convention does not protect the capturing or use of images of motor vehicle movements where there is no property in those images and where the creation or use of those images does not impinge upon either the commercial well-being of an organisation or the privacy of an individual.
- 3.15 Provided that the data generated by the cameras are relevant to the issues before the Inquiry, including relevant to establishing the credibility or otherwise of the evidence before the Inquiry, the data generated by the cameras are admissible.

The Question of the PAF Alternative

Inspector's Note: At the opening of the Inquiry I asked PAF [Transcript Day 1, pp7, 8 & 9] for submissions as to the admissibility, within the SSRO/SCPO Inquiry forum, of its alternative access scheme, which was submitted as part of its objection to the Orders before this Inquiry. I did not receive this until 6 July 2012 [OBJ/003/110]. PAF confirmed [Transcript Day 1, p7, lines 13-15] that the PAF alternative had been published as part of an application for planning permission for further development of the ILC, not as the part of the procedures for this Inquiry. *"....So far as the scheme that we are promoting at this inquiry is concerned, that which is going through planning, yes, it has been formally advertised, albeit not under the guise of this Inquiry."*

The Authority's Submission¹⁵

- 3.16 Section 125(1) of the Highways Act 1980 ("the 1980 Act") provides, so far as relevant, that an order under section 14 of the 1980 Act may authorise the appropriate authority (a) to stop up any private means of access to premises adjoining or adjacent to land comprised in the route of the relevant road, or forming the site of any works authorised by the order or by any previous order made under the same enactment; and (b) to provide a new means of access to any such premises.
- 3.17 Section 125(3) provides that no order authorising the stopping up of a means of access to premises shall be made or confirmed by the Secretary of State by virtue of section 125(1)(a) unless he is satisfied (a) that no access to the premises is reasonably required; or (b) that another reasonably convenient means of access to the premises is available or will

¹⁴ See photo 3, OBJ/003/60/3

¹⁵ HA/36 Interim Submissions on behalf of the Highways Agency

be provided in pursuance of an order made by virtue of section 125(1)(b) above or otherwise. In the present case, all the parties agree that it is not the case that "*no access to the premises*" owned and occupied by objectors (and by Mr Lawrence) is required. The relevant statutory provision therefore, is that contained in section 125(3)(b).

- 3.18 There are several points to be made about the above statutory test. First, section 125(3)(b) refers to "*another reasonably convenient means of access to the premises*". The question that arises, therefore, is, what is the "other" reasonably convenient means of access to which that section intends to refer (i.e. by use of the word "*another*"). The answer must be the existing means of access to "*the premises*". Thus, section 125(3)(b) proceeds on the basis of an assumption that the existing means of access to the premises concerned is (at least) "*reasonably convenient*", and requires that the substitute PMA must also be "*reasonably convenient*", but specifically does not require that the substitute PMA should be an improvement upon the existing PMA. In this connection, regard should be had to the observation of Floyd J in Carpenter v Calico Quays Limited [2011] EWHC 96 (Ch) (at para 45(ii)) that: "*In deciding what is a 'reasonably convenient means of access' it seems to me that one can have regard to what existed before ...*".
- 3.19 In short, in the HA's submission, the exercise involved in undertaking a comparison between the existing access to premises and a proposed PMA is not determinative of the question of whether the proposed PMA constitutes "*another reasonably convenient means of access*", but is highly relevant to it.
- 3.20 The second question to arise concerns the identity of the "*premises*" referred to in section 125(3)(b). The answer, in the HA's submission, is clear: namely, that the premises concerned are those in existence, with planning permission, or in respect of which planning permission has been granted (and implemented), as at the date when Notice to Treat was served on the owner of the premises concerned. Consequently, the "*premises*" with which the Inspector is concerned, in considering the application of the test comprised by section 125(3)(b) in the circumstances of the present case, are (inter alia) the premises comprised by the existing logistics facility owned and occupied by PAF, together with the lorry park in respect of which planning permission was retrospectively granted in 2007. So far as PAF are concerned, it is clear that no other premises are in issue.
- 3.21 In the HA's further submission, the primary consideration is whether or not its proposed PMA, as set out in drawing no 459D¹⁶, constitutes "*another reasonably convenient means of access*" to PAF's existing premises, by way of a substitute for the existing PMA which is due to be stopped up. If, having heard the evidence, the Inspector is satisfied that that question falls

¹⁶ With or without the "Walmsley loop", this being put forward as something which would be acceptable to the HA, if it assuages Mr Walmsley's concerns, and without prejudice to its case that the said proposal satisfies the test set out in section 125(3)(b).

- to be answered in the affirmative, then there is no good reason why he should not recommend that the SSRO should be made, and, indeed, it would be unreasonable for him not to make such a recommendation.
- 3.22 The question that then arises is as to the nature of the options open to the Inspector and/or Secretary of State in circumstances where a decision is reached that the section 125(3)(b) test is not satisfied. It is at this point that the question of "*alternatives*" may potentially become relevant.
- 3.23 Procedural provision for the submission of a proposed alternative route for a highway is contained in paragraph 19 of Schedule 1 to the 1980 Act. Thus, in summary, by paragraph 19(1) of Schedule 1, where objections to the making or confirmation of an order pursuant to that Schedule are to be the subject of a local Inquiry, the Secretary of State may direct that any person who intends at the Inquiry to submit (inter alia) that any highway or proposed highway to which the order in question relates should follow an alternative route shall send to him within such period as may be specified in the notice (being a period not less than 14 days and ending not less than 14 days before the date fixed for the holding of the Inquiry) sufficient information about (inter alia) the alternative route to enable it to be identified.
- 3.24 Paragraph 19(2) of Schedule 1 provides that where the Secretary of State has given a direction under paragraph 19(1) in relation to an Inquiry, the person holding the Inquiry, and the Secretary of State may disregard so much of any objection as consists of a submission to which the direction applies unless the person making the objection has complied with the direction.
- 3.25 The present Inquiry, however, is not concerned with the route of a proposed highway but with a PMA. Consequently, the provisions of paragraph 19 of Schedule 1 to the 1980 Act have no application in these proceedings.
- 3.26 Paragraphs 1-9 of Schedule 1 are concerned with, inter alia, proposed orders relating to trunk roads under section 14 of the 1980 Act. By paragraph 8(1), after any objections to the proposed order which have not been withdrawn have been heard; and, where a local Inquiry has been held, the report of the person who has held the Inquiry has been considered, the Secretary of State may make the order either without modifications or subject to such modifications as he thinks fit. By paragraph 8(3), where the Secretary of State proposes to exercise the power to make or confirm the order subject to modifications, and the modifications will in his opinion make a substantial change in the order, he must, in short, notify persons likely to be affected of the proposed modifications, provide those persons with the opportunity to make representations; and consider those representations before making the order.
- 3.27 In the present case, however, PAF's proposed scheme cannot reasonably be regarded as involving a "modification" to the draft SSRO, whether significant or otherwise. Rather, the access route which they favour

comprises an integral part of an entirely new, independent scheme, and provides a means of access, not to "the premises" for the purposes of section 125(3)(b) of the 1980 Act, but to the new premises forming the subject-matter of their application for planning permission to NSDC. Consequently, in the HA's submission, the Secretaries of State lack the power, whether pursuant to the provisions of Schedule 1 to the 1980 Act (or, in the HA's further submission, otherwise) to make a modified order incorporating PAF's proposals.

- 3.28 Thus, as the "Notes for the Guidance of Inspectors Holding Inquiries into Orders and Special Roads Schemes" ("the Inspectors' Guidance Notes") explain, in connection with paragraph 8.3 of Schedule 1 (at para 6.14): *"The re-routing of the whole or substantial part of a scheme is likely to amount to a major change and could not be considered as a modification for the purposes of paragraph 8(3) This is ultimately a matter for the Secretary of State to decide and could result in the publication of new orders by the promoter"*.
- 3.29 Similar considerations apply to the question of whether PAF's proposed scheme amounts to an "alternative" to the HA's proposals.
- 3.30 The issue of "Alternative Proposals" is dealt with at paragraph 9.51 of the Inspectors' Guidance Notes, which states: *"Although the Inspector is not in a position to make a recommendation on any alternative proposal, any such proposal (and any counter-objections to it) must be given due consideration, and its apparent advantages and disadvantages compared with the proposal. This is because the Inspector will need to be in a position to advise the Secretary of State/NAW on whether the alternative in question appears to warrant further investigation in the event of the Inspector coming to the conclusion that, whilst the proposal may be justified in principle, the objections to its siting are sufficiently overwhelming to lead the Inspector to recommend against it"*.
- 3.31 This raises the question, however, of whether PAF's proposed scheme may reasonably be regarded as an alternative, properly so-called, to the HA's PMA. In the HA's submission, the short answer to that question is that it may not.
- 3.32 In order for a proposed PMA to amount to an alternative, properly so called, to a route promoted by the HA, it must be capable in principle of meeting the test comprised by section 125(3)(b) of the 1980 Act. PAF's proposal is incapable in principle of meeting that test. This is because, irrespective of whether it may be "*reasonably convenient*", it is not a means of access to "*the premises*", i.e. the existing logistics centre/lorry park. Nor, by the same token, does it amount to "another" reasonably convenient means of access to those premises, in that it is not a substitute for the existing route. Rather, as pointed out above, it forms a key part of a new scheme, and a means of access to a new development, requiring planning permission. Thus, in the HA's submission, while a different route from "A" (viz, off the Farndon Roundabout) to "B" (viz, into the existing lorry park) (and back again) to that promoted by the HA might well be regarded as a genuine

alternative for the purposes of the Inspectors' Guidance Notes, a PMA that describes an entirely different route to a new development does not.

- 3.33 In the HA's submission, therefore, for the above reasons, not only do the Inspector and Secretaries of State have no duty to consider PAF's "alternative" proposal: they lack the power, statutory or otherwise, to do so. That proposal is entirely a matter for PAF and the local planning authority and, given that it does not involve a "modification" to the draft SSRO, and does not involve an "alternative" to the HA's proposal comprised thereby, is irrelevant to the present Inquiry.
- 3.34 Finally, so far as this matter is concerned, the HA will no doubt be subjected to criticism by PAF for stating its case with respect to its so-called "alternative" at this stage in the proceedings. The HA would respectfully suggest that any criticism should be directed the other way. If PAF wished to put forward something which they considered to be an alternative to the HA's proposal, then it was incumbent upon them, at the outset, to explain the statutory or other basis upon which, in their view, it fell to be considered by the Inspector, in order that the Inspector could be assured that he did indeed have the power to consider it, and that doing so would not involve a waste of Inquiry time. It is not for the HA to explain to the parties and the Inspector how PAF should put their case, or, more specifically, not put their case. Be that as it may, the HA has made its position clear now, and would respectfully invite the Inspector to endorse it. The main issue before the Inquiry is whether the HA's proposal amounts to "*another reasonably convenient means of access to the premises*" for the purposes of section 125(3)(b) of the 1980 Act.

The Objector's (PAF's) Submissions^{17 18}

- 3.35 The position of this Objector is that the HA's interpretation and application of section 125(3)(b) of the Highways Act 1980 ("the 1980 Act") is wrong and distorts the facts to suit its case.
- 3.36 The HA sought to rectify this fundamental omission, the thrust of the conclusion to its submissions is that the Inquiry should deal with the HA's scheme alone. That is not only wrong, but is also tantamount to asking the Inspector to rule on a point of law before he has heard the entirety of the evidence as well as a breach of these Objectors' applicable human rights¹⁹.
- 3.37 The issues of reasonableness, convenience, and, the physical form of "*the means of access*" raised by s.125(3)(b) of the 1980 Act are all issues of fact upon which the Inspector is obliged to hear substantive evidence.

¹⁷ OBJ/3/64/1, PAF response to HA's Interim Submission on Alternatives

¹⁸ OBJ/3/110, Letter to TSol, 5 July 2012, Interim Submission – Powers of SoS

¹⁹ The right to property (Article 1 of the First Protocol to the ECHR) as well as the right to a fair hearing (Article 6)

- 3.38 In the HA's submissions reference is made to the *Calico Quays* case²⁰. The full quotation from the judgment of Floyd J at para 45(ii) is as follows: *"In deciding what is a 'reasonably convenient means of access', it seems to me that one can have regard to what existed before. If what existed before included safe pedestrian access on grass verges, then it is reasonable to expect the new access to provide a similar facility and not force pedestrians to walk in the road."* (additional text underlined)
- 3.39 Accordingly, the exercise is not just a comparative one with that which is being replaced but is one that looks at qualitative considerations too (including construction costs and temporary works and disruption).
- 3.40 Therefore, in order for the decision-maker to form a view as to whether what is being proposed meets the statutory requirement (i.e. *"another reasonably convenient access"*) the determination exercise must embrace consideration as to whether an alternative proposal, if promoted by the affected objector, can better achieve that purpose than that being promoted by the responsible authority. That alternative can also serve as a comparator to test whether the promoted proposal meets the statutory requirements of section 125(3(b) of the 1980 Act.
- 3.41 Accordingly, here the Inspector is not solely limited to reviewing the promoted scheme in front of him, nor are these Objectors prevented from placing evidence of an alternative access before the Inquiry. Rather, it is a question of evidential weighting by the Inspector. It should be added, for the avoidance of doubt, that that evidence gathering exercise is not precluded if the HA decides to maintain its stance of not commenting upon the alternative (either by calling evidence or cross-examining).
- 3.42 It is agreed that *"the premises"* must include those for which there is a lawful use²¹. However, it is a naive analysis of planning law to assert that only premises with an implemented planning permission are relevant; for the Town and Country planning regime has long recognised the existence of lawful use by effluxion of time; and whilst a certificate of lawfulness is a formal process to confirm the legality of a use (and the permitted development rights that can then operate) the issue turns essentially on whether or not it is expedient for the local planning authority to take enforcement action in terms of the expiry of recognised time periods²².
- 3.43 Whilst this has no direct application to the *"premises"* operated by these Objectors it is relevant to that owned by Mr Maurice Walmsley.
- 3.44 In the light of the foregoing, the HA's submission that the issue of

²⁰ Full transcript at OBJ/3/64/2

²¹ HA/36, para. 7, HA Interim Submission on Alternatives & EIA Regs

²² See the terms of s.171B of the Town and Country Planning Act 1990 (as amended)

"alternatives" only arises "where a decision is reached that the s.125(3)(b) test is not satisfied" puts the matter too simply. It also conflates the evidence gathering and reporting exercises of the Inspector with the determination exercise of the Secretary of State. Whilst the Inspector's duties here, procedurally, include the making of recommendations (with reasons), they cannot in advance, and in themselves, be determinative.

3.45 Furthermore, the HA's submission that these Objectors' proposed scheme cannot be regarded as a modification to the draft SSRO, is wrong for the following reasons:

- (1) Land is only to be acquired in the public interest if there is a "*compelling case*"²³;
- (2) The scheme which the HA is promoting embraces land which it has acquired under the 2009 CPO or seeks to acquire under the draft SCPO. Therefore, the Secretary of State has to determine whether the additional land sought under the SCPO is essentially required or not.
- (3) The Objectors' alternative access uses land solely within the 2009 CPO or within its ownership. Accordingly it is open to the Secretary of State to determine that that additional land is required to discharge the s.125(3)(b) obligation.
- (4) The new means of access being promoted by these Objectors is still to "*the premises*"; for it will continue to serve the secure depot, warehousing and office accommodation.
- (5) The application for planning permission to NSDC is for a comprehensive scheme, including the relocation and reconstruction of some of the existing buildings, of which the access route and lorry park form part. However, they are divisible elements. Furthermore, the scheme is capable of being, and has been requested to be, implemented in a phased manner.

3.46 Accordingly, the Secretary of State does have the power, and sound reasons, to effect a modification of the Supplementary Orders.

3.47 Whilst the Inspectors' Guidance notes are informative and instructive they are not procedurally binding. Nor do they specifically cover the instant situation.

3.48 It must be emphasised, for the avoidance of doubt that the PAF alternative does comprise a substitute to the existing route, because that is being stopped up due to the proposed changes to the Farndon Road.

3.49 The Objectors accept that the extent of the "stopping up" shown on Site

²³ Circular 06/2004

Plan 1A is capable of being justified if a "*new means of access*" is to be delivered through the SSRO process. However, this is without prejudice to their argument that the HA's scheme does not meet the statutory requirements. Furthermore, it has been noted that the draft SSRO Site Plan 1B does not identify the entirety of the new access scheme being promoted by the HA (on behalf of the Secretary of State for Transport) at the current Inquiry²⁴. This is, in effect, the SK459D scheme²⁵. Accordingly, the SSRO cannot be confirmed in its present draft form and would need to be modified²⁶. The Objectors' understanding of the required modifications is shown on Plan 1²⁷. A further modification will, additionally, be required if the 'Walmsley Loop' proposal²⁸ continues to be considered.

- 3.50 Whilst authority has been sought by the HA (on behalf of the Secretary of State for Transport) to use the power of revocation and variation under s.326(2) of the 1980 Act, it is the Objectors' understanding that this has been so as to substitute a new access scheme for that previously confirmed under the SRO.
- 3.51 It is also to be noted that s326(6) the 1980 Act states the following: "*Subject to the following provisions of this sectionan order varying or revoking an order made or confirmed under section 14above may contain such consequential provisions as appear to the Minister to be expedient*".
- 3.52 The phrase "*consequential provisions*", in effect, addresses the outworking of any revocation or variation²⁹. However, given that the underlying purpose of the SSRO is to effect full delivery of the Scheme (including all necessary stopping up and new means of private access) this clause cannot be used by the HA, in consequence of which significant variations of Site Plan 1B would be required to give full effect to the promoted scheme. Accordingly, the Secretaries of State would need to consider modifications in any event.
- 3.53 Given that the Scheme being promoted by the HA under the draft SSRO is dependent for its delivery upon confirmation of the draft SCPO, the HA must satisfy the Secretaries of State not only that the Scheme meets the "*reasonably convenient route*" test but also that there is a "*compelling case*

²⁴ See OBJ/3/7/1, paras 10.3 to 10.4

²⁵ Drawing No. I/PD0285/GD/SK/459 in SD2/2/3

²⁶ Inspector's Note: Modified drawings were submitted on the final day of the Inquiry; HA/104 (amended)

²⁷ Attached to OBJ/3/110

²⁸ HA/18

²⁹ Arden J in *Re UCT (UK) Ltd (In Administration)*[2001]1 WLR 436

in the public interest" for so doing.

- 3.54 Accordingly, the consideration of alternatives cannot be disengaged from the confirmation process. By way of example, in R. v Secretary of State for the Environment ex parte Melton Borough Council (1986) 52 P. & C.R. 318, the local authority, which had made a compulsory purchase order on land required for a service road, sought judicial review of the Secretary of State's decision to refuse confirmation of the order because he was not satisfied that there was not an alternative route which would be more satisfactory.
- 3.55 The Court (Forbes J.) held that it was the duty of the acquiring authority not only to show that the proposed acquisition was necessary but also to lay before the confirming authority the information necessary to convince him of that fact. If they did not do so he was entitled to refuse to confirm the order (at para 326): *"The Secretary of State is entitled to assume, because the onus is on the acquiring authority, that the acquiring authority is putting before him all the information which it considers necessary to support its contention that the acquisition is required in the public interest. It would be wholly wrong, it seems to me, to suggest that the Secretary of State, in doing that, must in some way search around..... supply the inadequacies or lacunae which may occur in the acquiring authority's case. That would seem to me to be a wholly wrong way of looking at it. Because it is the acquiring authority's duty to show that the acquisition is necessary it is its duty to lay before the Secretary of State the necessary..... to convince him of that fact. If they fail to do so the Secretary of State is fully entitled to say: "I refuse to confirm this order"."*
- 3.56 Given that one of the stated purposes of the CPO, and, the principal purpose of the draft SCPO is *"the provision of new means of access"* the question then arises as to the necessity of acquiring additional land. The current stark position is shown on Plan 2. However, if that *"new means of access"* can be achieved without the need to resort to a further SCPO then such a determination must be made in the interests of proportionality (given the engagement of the Objectors' human rights), and, in the public interest (given the saving in acquisition costs). Furthermore, in the interests of fairness, the Secretary of State is obliged to consider this issue, and, in context.
- 3.57 If, as is the case here, these Objectors are willing and able to make their land available, together with that of Mr Walmsley, to achieve the PAF Alternative then it must also follow that the *"compelling case"* argument is, effectively, removed. The only exception is the area, hatched green, over which the Objectors do not have control but over which the HA has, having taken possession of parcel No 24/4D from the summer of 2010 onwards³⁰.

³⁰ Mr Bethel in XX, Transcript Day 10 pp77-78

The altered position is shown on Plan 3³¹.

- 3.58 As regards their outworking, the powers of variation and modification of the Secretary of State for orders under the 1980 Act are to be found in Schedule 1, para 8 of the 1980 Act. The use of the words "*as [he/the Minister] thinks fit*" in Schedule 1, paras 8(1) & 8(2) enables the Secretaries of State to review and apply the changes identified by these Objectors. Provision is also made for confirmatory powers, in respect of compulsory purchase with modification, under s.13A(5)(b) of the 1981 Act.
- 3.59 In the instant circumstances, upon a purposive application of these powers and duties the Secretaries of State can take the following courses of action:
- Decline to confirm the draft SSRO and/or the draft SCPO;
 - Decline to confirm the draft SSRO and/or the draft SCPO unless certain modifications are made;
 - Confirm the draft SSRO and/or the draft SCPO subject to modification³².
- 3.60 This Submission is intended to demonstrate the desire and willingness of the Objectors to achieve a deliverable solution as soon as practicable. It may be concluded that it is well within the capacity of the powers of the Secretaries of State to modify the draft SSRO and draft SCPO, if necessary, to give effect to the alternative access solution promoted by these Objectors.³³

EIA Considerations

The Objector's (PAF's) Submissions

- 3.61 Following two high court cases, one of which went to the European Court, the Government was obliged to issue, for consultation, a replacement to the 1998 EIA Regulations in the summer of 2010, which led to the publication of the 2011 Regulations, which came into force in August 2011.
- 3.62 Two necessary corrections, related to two matters that are relevant to the matters that are engaged by the Highways Environmental Assessment

³¹ Attached to OBJ/3/110

³² This is without prejudice to the position of PAF which is that (excluding legal impediments to implementation) the currently proposed 459D scheme is unsafe, not fit for purpose and would not work.

³³ Inspector's Note: Notwithstanding this submission it was confirmed by the advocates for both the principal parties that the only way in which the PAF alternative may be pursued is by way of further draft orders; see Transcript Day 17, pp105-106 & Transcript Day 18, p3.

Regulations, and, of course, forming part of the process under the Highways Act 1980, as amended.

- 3.63 The first was the case of Baker³⁴, which dealt with the issue of re-screening, where you are extending a project that is EIA development. The second is Mellor, which went to the European Court and concerned reasons for negative screening opinion.
- 3.64 Curiously, the Highways Environmental Assessment Regulations have not been amended in the way that 1999 regulations have been, through actual substitute regulations. However the principles of law must be good, unless we have misunderstood what the courts have been saying.
- 3.65 The point arises in this way; in the absence of any exercise of screening, or re-screening, by the Secretary of State, the decision-maker does not know what the answer is, other than an assertion that is now backed up, this is an emergence of the statement of case from the HA, repeated in Mr Bethel's proof, Section 7, by a technical note³⁵ that has only emerged late in the Inquiry as a result of a question of clarification from PAF. That technical note is dated Nov 2011.
- 3.66 The executive summary indicates that in terms of the environmental assessment process that the initial ES was published in December 2005, revised/republished in January 2007, addendum published in March 2007 and a further addendum published in October 2009 to accompany the publication of draft supplementary orders in respect of amendments made to orders in relation to other aspects of the Scheme. *"Further draft supplementary orders were published in May 2011 to correct minor omissions and propose a new access arrangement at PA Freight, Farndon. This technical note has been prepared to confirm that the changes to the scheme as a result of these orders are of a minor nature and that there are no further significant environment impacts over and above those assessed previously. Results of the previous assessments are still valid, and no further assessment work is recommended. Any localised amendments to the mitigation design will be addressed during the detailed design stage."*
- 3.67 The first point, under the issue of 'Landscaping' says, *"The approval and subsequent implementation of planning consent does not result in any additional residential receptors or represent a significant change in the nature of the operations on site to that assessed during the original environmental statement and subsequent addenda. Therefore the assessment in the original environmental statement and subsequent addenda remains valid."*
- 3.68 PAF submit that is patently misleading, for three reasons. First of all, the

³⁴ R (Baker) v Bath and North East Somerset Council [2009] EWHC 595 (Admin)

³⁵ HA/28

scheme that was being considered then was what may be called the cul-de-sac stub. Secondly, the district council has formally objected. Furthermore the level of landscape change, in terms of built form has changed further because of the amended scheme. This would particularly include the Walmsley loop. But the point is nobody has produced any report.

- 3.69 No landscape evidence has been called by any witness on behalf of the HA. The HA's response to the District Council's objection is dismissive and does not engage with the matters of detail and substance.
- 3.70 An anomaly appears when looking at the 2009 addendum; there was a private means of access for a property further down the A46. It was a private means of access to Newfield Farming Company³⁶. That was included as a matter of consideration in an environmental statement addendum for far lesser works than those which are proposed by the HA. Reliance is placed on the 2009 addenda, and, it is appropriate to see the approach taken then, and the extent to which it is or is not applicable in the instant circumstances.
- 3.71 The next matter is 'Ecology and Nature Conservation'. *"The design modifications are matters of detail and are not sufficiently significant to alter the impact assessment, the assessments in the original environmental statement and subsequent addenda remain valid."*
- 3.72 The nature and conservation chapter looked at the issue of great crested newts and water voles, being European protected species. The short point is the surveys that were carried out³⁷, which, go up as far as 2009, did not take in the Farndon Roundabout area, the areas were further to the west. But we know that the aquatic regime has changed already as a result of the works that have taken place, and again in the absence of any survey work to show that there has not been a migration of great crested newts and water voles towards Farndon, at the moment, the decision-maker cannot be sufficiently satisfied.

The Authority's Submissions³⁸

- 3.73 Regrettably, the points which PAF seek to make with respect to the requirement or otherwise for a screening opinion to have been undertaken with respect to the HA's proposed PMA represent another red herring.
- 3.74 It is to be noted in the first place that the Regulations applicable to the A46 Scheme as a whole are the Highways (Assessment of Environmental Effects) Regulations 1999 ("the Highways Regulations"), which are

³⁶ SD18, page 9 & see drawing at Fig. 4.1.3

³⁷ SD18, Figs 9.5.2 & 9.8.2

³⁸ HA/36 Interim Submissions on behalf of the HA

incorporated into Part VA of the 1980 Act. An Environmental Impact Assessment with respect to that scheme was conducted at an early stage pursuant to the Highways Regulations. No amendments comparable to those introduced by the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 ("the 2011 Regulations") have been made with respect to the Highways Regulations. The only basis upon which it could be contended that the HA acted unlawfully in (allegedly) failing to undertake the exercise contemplated by the 2011 Regulations, therefore, would be by reference to the concept of direct effect as it pertains to the EIA Directive. This, clearly, is not a matter for the Inspector. Any such argument would, in any event, be academic and misconceived for the reasons spelt out below.

- 3.75 So far as is relevant for present purposes, the change which the 2011 Regulations introduced vis a vis the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 was to modify paragraph 13 of Schedule 2 to the Regulations by including amongst the forms of development listed in Column 1 of Schedule 2, inter alia, *"(a) Any change to or extension of development of a description listed in Schedule 1 (other than a change or extension falling within paragraph 21 of that Schedule) where that development is already authorised, executed or in the process of being executed. (b) Any change to or extension of development of a description listed in paragraphs 1 to 12 of column 1 of this table, where that development is already authorised, executed or in the process of being executed"* such that any such "change or extension" is, by the definition of "Schedule 2 development" contained in regulation 2(1) of the Regulations, capable of amounting to EIA development in circumstances where, first, it (or part of it) is to be carried out in a sensitive area (as defined in regulation 2(1)), or, second, any applicable threshold or criterion in the corresponding part of Column 2 of that table is respectively exceeded or met in relation to it. Specially, if the change or extension in question satisfies either one of the latter criteria (and so is "Schedule 2 development") and is likely to have significant effects on the environment by virtue of its nature, size or location, then it will amount to EIA development.

- 3.76 The applicable threshold or criterion set out in Column 2 of the table with respect to the development listed in paragraph 13(a) (in Column 1) is:

"Either –

(i) the development as changed or extended may have significant adverse effects on the environment; or

(ii) in relation to development of a description mentioned in a paragraph in Schedule 1 indicated below, the thresholds and criteria in column 2 of the paragraph of this table indicated below applied to the change or extension are met or exceeded ...". [The various paragraphs of Schedule 1 are then listed and cross-referred to the relevant paragraphs of the table in Schedule 2.]

3.77 The threshold or criterion applying with respect to paragraph 13(b) is:

"Either –

(i) The development as changed or extended may have significant adverse effects on the environment; or

(ii) in relation to development of a description mentioned in column 1 of this table, the thresholds and criteria in the corresponding part of column 2 of this table applied to the change or extension are met or exceeded".

3.78 This change was introduced to address the decision in R (Baker) v Bath and North East Somerset Council [2009] EWHC 595 (Admin), in which the Court held that paragraph 13 of Schedule 2 to the 1999 Regulations failed properly to implement the EIA Directive, because it limited consideration of the environmental effects of a change or extension to the change or extension itself, rather than looking at the effects of the development as a whole, and as modified.

3.79 The Explanatory Memorandum to the 2011 Regulations explains (p 4):

"... The wording that was of concern to Justice Collins in Schedule 2.13 of the 1999 Regulations, "and not to the development as changed or extended", has been removed. Also, an amendment has been made to the second columns of both 2.13(a) and 2.13(b) of these Regulations which takes into account the Baker judgment and the concerns expressed in consultation responses about the consultation draft. The criteria and thresholds used in the 1999 Regulations are retained.

The effect of the changes is to require developers and local planning authorities to consider if significant adverse environmental effects may result from an existing or approved development being changed or extended, whereas the 1999 Regulations only required the effects of the change or extension alone had to be considered [sic] ... (emphasis in original)".

3.80 Thus, in short, the difference of approach arising out of the introduction of the 2011 Regulations is as follows: under the 1999 Regulations (if the HA's proposal fell to be considered there under, rather than under the Highways Regulations), the HA would have been required to consider the effects, pursuant thereto, of its proposals viewed in isolation;³⁹ whereas under the 2011 Regulations, it would (again, on the same hypothesis) be required to consider the cumulative effects of the A46 Scheme as a whole, taking into

³⁹ In fact this oversimplifies the matter somewhat, since pursuant to Schedule 3 to the 1999 Regulations, the characteristics of development were required to be considered having regard, inter alia, to "the cumulation with other development". That requirement, however, was not reflected in the version of para 13 of Column 1 in the table contained in Schedule 2 to the 1999 Regulations: hence the requirement that that paragraph should be amended.

account the proposals comprised by the SSRO.

- 3.81 In neither case, however, whether under the 1999 Regulations or under the 2011 Regulations, would it have been, or be, incumbent upon the HA to produce a screening opinion (positive or negative) dealing with its proposals, irrespective of how minor those proposals might be. Thus, the abovementioned Explanatory Memorandum goes on to say (p 4):

"... If a view is reached that the change or extension will not have significant adverse effects there is no requirement to screen the development. This is, for example, likely to be the outcome in the vast majority of cases involving a minor change or extension, and minor development which may have permitted development rights."

- 3.82 An Explanatory Memorandum to a piece of legislation does not, of course, have the force of law. Nevertheless, in the HA's submission, it would be odd if the Secretaries of State were to demur from the Memorandum, and the above remark in particular, in the present instance. Rather, in the HA's submission, the Inspector would be right and entitled to assume that they will not.

- 3.83 In any event, the question of whether the effects of a given development, including the effects of a modification of or extension to a development viewed cumulatively, will have a significant adverse effect on the environment is one for the discretion and judgement of the relevant planning authority, subject to the proviso that it must exercise that judgement rationally. Thus, the issue of whether the HA lawfully approached the question of whether a screening opinion was required to be produced dealing with the SSRO scheme (together with the A46 Scheme as a whole), turns on two questions: first, did the HA ask itself the right question; and second, did it provide a reasonable answer to that question.

- 3.84 The answer to each of these questions is self-evidently "yes". Thus, in the first place, for the purposes of its "Record of Environmental Assessment: Impact Assessment of Supplementary Orders at Farndon Roundabout"⁴⁰ it assessed the impacts of the SSRO scheme, in light of the existing impacts of the A46 Scheme as a whole, i.e. cumulatively and in a manner that was entirely consistent with the requirements of the 2011 Regulations. Moreover, it is clear from page 11 of that document that its author was aware of the 2011 Regulations and of the changes which they introduced. In the second place, it is impossible to fault the assessment that was carried out, whether on the basis that that assessment was irrational or otherwise (and the HA would invite the Inspector to note that PAF have not purported to fault it). Rather, it was lawfully conducted, and led its author to reach conclusions which it was open to her to reach.

- 3.85 If PAF were to apply for permission to challenge any decision arising out of

⁴⁰ HA/28

his recommendations by reference to the issue discussed above by way of a claim for judicial review that application would fail. This is because, for the reasons given above, any such challenge would be entirely unmeritorious. Secondly, however, PAF would face a further obstacle to any such claim, amounting to the “knock out blow” that Administrative Court Judges habitually seek before refusing permission to proceed.

- 3.86 PAF and their advisers appear to have overlooked the fact that, if they are of the view (and if they remain of the view, notwithstanding the above) that a screening opinion is required for the HA's scheme, they have the opportunity to ask for one. Thus, by regulation 4(8)(b) of the 2011 Regulations, the Secretary of State may make a screening direction if requested to do so in writing by any person.⁴¹ That provision does not require the Secretary of State to make a screening direction. In the absence of any such request to him by PAF, however, there is no doubt that permission to seek judicial review would be refused.
- 3.87 It may be that, having been alerted to the above mentioned provision, PAF will request the Secretary of State for a screening direction. It may also be that they might seek to challenge a decision by him either not to make a screening direction, or to issue a negative screening direction. This can only be a matter of speculation on the HA's part. In the meantime, given all of the considerations adverted to above, and given that the HA's decision that a screening opinion is not required to be undertaken is, in effect, not susceptible to challenge, the Inspector can, and, in the HA's respectful submission, must, proceed on the basis that the latter decision is entirely lawful.
- 3.88 It may also be that, again, PAF will seek to criticise the HA for the fact that it has taken it until now to state its case with respect to the EIA issues which they have raised. As to this, the HA would repeat the point which it made above. It is for PAF to put its case, and to demonstrate how the HA has failed to comply with the EIA regime, if it is their view that the HA has done so. For the reasons given above, any such opinion would be misconceived.

The Objector's (PAF's) Further Response⁴²

- 3.89 It is clear from the submissions that the HA does not wish to address the point as the promoter. Rather, it contends that these Objectors should address this legal impediment by contending, (a) that the Objectors should seek a screening opinion, and, (b) that this should be undertaken under the 2011 EIAR even though it is common ground that the relevant EIA process

⁴¹ Note that according to the Explanatory Memorandum, regulation 4(8) was introduced by way of a clarification. This suggests that the Secretary of State has an inherent power to issue a screening direction with respect to a development of any kind including one falling to be assessed under the Highways Regulations; and that power plainly does not derive solely from the latter regulation.

⁴² OBJ/3/63

is under the Highways Act 1980 ("the 1980 Act").⁴³

- 3.90 This response explains why the EIA impediment does need to be properly addressed, and, why the stance taken by the HA continues to be wrong.
- 3.91 It appears to be accepted by the HA, by implication, that the provisions in Part VA of the 1980 Act do not fully implement Directive 85/337/EEC (as amended and consolidated) ("the Directive"), because no amendment has been made to the 1980 Act following the Baker case unlike in respect of the EIAR with regard to screening.
- 3.92 Article 4.2 of the Directive sets out the methods which the Members States may adopt to decide whether an Annex II project requires an EIA. Article 4.4 states that '*Members states shall ensure that the determination made by the competent authorities under paragraph 2 is made available to the public*'. Thus, where a project is an Annex II project, the competent authority must determine whether an EIA is required, and must publish that determination.
- 3.93 Annex II projects include, by virtue of paragraph 13 of that Annex, '*Any change or extension of projects listed in Annex I or Annex II, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment*'. The case of R (Baker) v Bath and North East Somerset Council [2009] EWHC 595 (Admin) confirmed that this provision brings projects within Annex II of the Directive if the development, as changed or extended, may have significant adverse effects on the environment, i.e. the cumulative effect of the existing development or planned development plus the changes or extensions may have significant adverse effects on the environment (see, for example, paragraph 22 of the judgment⁴⁴).

⁴³ Part VA inserted by The Highways (Assessment of Environmental Effects) Regulations 1999. The applicable provisions are ss. 105A and 105B of the 1980 Act

⁴⁴ '*It is not surprising that it is considered unnecessary to have an automatic need for an environmental impact assessment where there is a modification of an existing Annex I project. [word(s) missing from transcript] falls within Annex II, and so, it will be possible, indeed necessary, to consider the overall effect of the modification and to decide whether because of that there is a need for a new environmental impact assessment. An existing Annex I development will have had an environmental impact assessment and so another will not be necessary unless there is some additional impact. It may be that modifications within themselves will be such as to require an independent assessment, and it is clearly desirable that that should take place, if they are of sufficient magnitude. But it is equally desirable, in my view, that the effect of them could be considered and that is what Annex II is dealing with at paragraph 13. It is very difficult to divorce changes and extensions from the effect of those changes or extensions, and for reasons which will become apparent, it would, in my judgment, be contrary to the whole approach that has been adopted by the European Court of Justice to the construction of the Directive and, indeed, to the purpose of the Directive if the overall effect of the changes or extensions or modifications was not able to be taken into account. '*

- 3.94 Under Part VA of the 1980 Act the Secretary of State is the competent authority for the purposes of EIA. Sections 105A and 105B of the 1980 Act contain provisions relating to the Secretary of State's determination as to whether a project falls within Annex I or Annex II of the Directive, and, requires an EIA (s. 105A(2)). Section 105A(3)(b) states that if the Secretary of State '*considers that it is a relevant project falling within Annex II and determines, having regard to the selection criteria contained in Annex III, that it should be made subject to an environmental impact assessment in accordance with the Directive*', he must prepare an environmental statement and publish notice of it. Furthermore, section 105B(1) states: '*The Secretary of State must ensure that any determination made by him as to whether or not a relevant project should be made subject to an environmental impact assessment in accordance with the Directive is published*'.
- 3.95 The provisions in the 1980 Act relating to any determination as to whether an Annex II project requires an EIA do not give full effect to the Directive. '*Relevant project*' is defined in section 105A(1) by reference either to the size of the completed works or the area occupied during construction, or to the location of the works. Paragraph 13 of Annex II, by contrast, focuses only on whether the project may have significant adverse effects on the environment. In contrast, the EIAR, under paragraph 13 of the table in Schedule II of the Regulations, specifies that changes or extensions to a development are within the Schedule by reference either to the possibility that they may have significant adverse effects on the environment or to the size of the development.
- 3.96 The failing in the 1980 Act is that a project may be within paragraph 13 of Annex II of the Directive by virtue of its possible impact on the environment, but not within the definition of '*relevant project*' in the 1980 Act because it does not occupy a sufficient area or lie within a '*sensitive area*'. In such circumstances, the Secretary of State would not be required by the 1980 Act to make a determination as to whether an EIA was required, or to publish such a determination, even though he would be so required by the Directive.
- 3.97 Here, either the Secretary of State was required to make and publish a determination by reference to section 105A(3)(b) or section 105B(1) of the 1980 Act, if the project is a '*relevant project*', or he was required to do so by reference to the Directive itself, if the project fell within Annex II but was not a '*relevant project*'. The effect of *Baker* is that the project must have fallen within Annex II, since the original project, to which the latest project was an extension, did so.
- 3.98 The judgement of Collins J in *Baker* sets out the case law on direct effect at paragraphs 33 and 34. Paragraph 33 considers the judgment in *Pfeiffer v Deutsches Rotes Kreuz Kreisverband Waldshut eV* [2005] IRLR 137, [2005] ICR 1307. Paragraph 103 of *Pfeiffer* confirms that '*whenever the provisions of a directive appear, so far as their subject-matter is concerned, to be unconditional and sufficiently precise, they may be relied upon before the national courts by individuals against the State where the latter has failed to implement the directive in domestic law by the end of the period*

prescribed or where it has failed to implement the directive correctly'. In the instant case, that principle is applicable with regard to the 1980 Act and the Directive.

- 3.99 However, the HA submission seeks to dismiss the significance of the point by asserting that the issue of direct effect is not for the Inspector, and, in any event the argument is academic and misconceived.
- 3.100 Rather, there is a clear lacuna in the provisions of the 1980 Act, post Baker, that the HA has not even sought to address by seeking even an informal screening direction from the Secretary of State. Furthermore, the assertion that neither under the 1999 EIAR or the 2011 EIAR would it have been, or is now, incumbent upon the HA to produce a screening opinion is wrong, given the clear inapplicability of these EIAR to the project in question.
- 3.101 Insofar as the HA submission, seeks to rely upon the Explanatory Memorandum to the 2011 EIAR, only a partial quote is provided, as follows:

"... If a view is reached that the change or extension will not have significant adverse effects there is no requirement to screen the development. This is, for example, likely to be the outcome in the vast majority of cases involving a minor change or extension, and minor development which may have permitted development rights."

- 3.102 However, the next paragraph of the Explanatory Memorandum has been omitted, this states:

"However, where it is clear that a development to be changed or extended may lead to significant adverse environmental effects the application for development consent must be screened. In this case permitted development rights are removed and can only be restored where the local planning authority issues a negative screening opinion."

- 3.103 This makes it clear that it is the potential impact of the original development (the 'development to be changed or extended' – emphasis added) together with the change or extension that must be considered when the authority is considering whether there may be significant adverse environmental effects.
- 3.104 The Explanatory Memorandum therefore confirms that even in the context of the 2011 EIAR Regulation 7 read with Regulation 5 means a project falling within Schedule II of the 2011 EIAR should be subject to a screening opinion.
- 3.105 The HA's submissions seek to address the question of whether the HA asked the right questions. Even allowing for the use of rhetoric presentation, the short answer is "no". Patently, even as an executive body/agency, the relevant officials of the HA did not ask themselves any specific question on this issue; for as a matter of record the HA has produced nothing factual that purports to be any decision-making process

e.g. an exchange of emails or other contemporaneous memoranda. Nor did the HA ask itself about even the potential applicability or inapplicability of the Directive, again, in the absence of any memoranda, and, by reason of the way in which the issue has been addressed in its written evidence and submissions to date.

- 3.106 Accordingly, it is inappropriate and wrong for it to be asserted⁴⁵ that its purported decision-making exercise was lawful. Furthermore, the HA has stated⁴⁶ that the issue of “direct effect” is not for the Inspector; so it cannot have it both ways.
- 3.107 Further speculative assertions are made⁴⁷ about what these Objectors should do, and in so doing, fail. However, these assertions fail to address the fact that it is the HA which is the promoter, upon whose shoulders the burden rests regarding the legality of the process. For this reason these Objectors are under no duty to seek the resolution of this issue either through any application of their own to the Secretary of State. Any application for judicial review at this stage would be premature; and speculating upon the prospect of legal grounds of challenge of the Secretary of State’s decision is equally fanciful and inappropriate.
- 3.108 Since the relevant legislation is the 1980 Act, not the 2011 EIAR, it is the Secretary of State which is the competent authority for the purposes of EIA determinations. Whilst the 1980 Act contains no express provision allowing a person to request the Secretary of State to issue a screening direction, it remains open to the HA, as the development consent applicant, to seek an opinion on a non-statutory basis, given the direct effect of the Directive to the instant circumstances.

4 THE CASE FOR THE ORDER MAKING AUTHORITY

The material points are:

Background and History⁴⁸

- 4.1 The original draft Orders for the main A46 Scheme were considered at Inquiry in 2007. The Secretaries of State for Transport and Communities and Local Government announced their decision⁴⁹ to make the Orders on 19th December 2008; and the Orders were made on 31st January 2009.

⁴⁵ HA/36, para. 33

⁴⁶ HA/36, para. 23

⁴⁷ HA/36, paras. 34-37

⁴⁸ SD2/1/1, Section 2

⁴⁹ SD011

- 4.2 The A46 Scheme was accelerated in November 2008 as part of the Department for Transport's £1 billion fiscal stimulus package. Originally it was programmed to start in 2012 with completion in 2016. The current programme reduces the construction period to three years with completion in 2012⁵⁰. Main construction activities commenced on 14 July 2009.
- 4.3 Subsequently, the HA addressed a number of design issues arising in connection with the Scheme, and identified some minor changes to the Orders which required to be made. These changes resulted in the publication of draft Supplementary Orders on 24th April 2009. Objections and representations made with respect to the draft Supplementary Orders were considered at an Inquiry held between January and April 2010; and the Secretaries of State announced their intention to make the Supplementary Orders on 27th July 2010. The Supplementary Orders were then made on 15th October 2010.

Need for the current (2011) Supplementary Orders

- 4.4 After the 2010 Supplementary Orders had been made, the HA discovered that there were unresolved issues concerning access to properties owned by landowners at Farndon. These arose as a result of the fact that PAF had constructed, and retrospectively successfully applied for planning permission for, a lorry park adjacent to their existing ILC site in Farndon; and the HA had not been informed of this fact during the course of the 2009 Inquiry. As a result of the fact that the lorry park was not in existence when the draft Orders were published in 2007, it was not taken into account in the HA's initial design.
- 4.5 When designing a road or roundabout of any description, the HA will only take into account nearby developments that have been granted planning permission,⁵¹ since it cannot be expected to accommodate unlawful development. PAF, who appeared as an Objector at the 2007 Inquiry, neglected to draw the lorry park to the HA's or the (2007) Inspector's attention. The issue could and should have been dealt with at that Inquiry. It was only subsequently that the HA became aware of the fact that the lorry park not only existed, but had planning permission, such that it would require revisions to the new access off the new Roundabout.
- 4.6 The amendments that require to be made are contained in further draft Supplementary Orders⁵² published on 12th May 2011 ("the 2011 draft Supplementary Orders") and listed above under Case Details.
- 4.7 No objections or representations have been made with respect to the draft

⁵⁰ Inspector's Note: The A46 Scheme was opened during the course of the Inquiry.

⁵¹ Mr Bethel, XX by JPS, Transcript 11th November 2011, p 83, lines 11-15.

⁵² A description of the effect of each of the Supplementary Orders is set out in section 4 of the HA's Statement of Case [SD019]

Detrunking Order which relates to the Margidunum Roundabout.

- 4.8 The effect of the 2011 draft Supplementary Side Roads Order is to make changes to the 2009 Order by stopping up two length of private means of access which formerly connected Farndon Road to Sproakes Lane, and to modify that Order by removing the stopping up of the existing private means of access from Farndon Road to land owned, respectively, by Mr Walmsley, Mr Lawrence and PAF, retaining that private means of access for pedestrian and cycle traffic only.
- 4.9 The draft Supplementary CPO authorises the compulsory purchase of land and rights for a number of purposes⁵³. In particular, it would enable the Secretary of State for Transport to acquire compulsorily land interests of PAF, Mr Walmsley and Mr Lawrence in order to enlarge PAF's lorry park; provide a replacement access to the lorry park; and provide Mr Lawrence with an improved, separate access. In addition, the Order would enable the Secretary of State to improve drainage for the above three parties. It is the HA's intention⁵⁴ to agree licences over the land to undertake the necessary works, and if this is not possible, title would be taken.

Development of the 2011 Supplementary Orders

- 4.10 Representations made in spring 2009 by PAF stated that the original design for changes to their access would not be adequate. The changes were required because of the creation of a new, enlarged roundabout at the junction of the A46 Trunk Road and Farndon Road, authorised under the original 2009 Orders.
- 4.11 PAF had made representations at the 2007 Public Inquiry in respect of the original draft Orders, but raised no specific concerns about the effect of those Orders on their business. The concerns related instead to unspecified access issues and the potential impact on their land of possible proposals for a Newark Southern Relief Road, which does not form part of the Secretary of State for Transport's programme of highway improvements.
- 4.12 Subsequently, a proposal for a connection to a Newark Southern Relief Road has been promoted by a private developer, Catesby Estates (Residential) Ltd, which obtained planning consent in April 2011 from the local planning authority, NSDC, for a new roundabout, approximately 1km south of Farndon Roundabout on the dualled A46 to link with a relief road.
- 4.13 No objections or representations were made in respect of the 2007 Draft Orders by Charles Lawrence, whose access was affected by the 2007 Orders, and who has objected to the 2011 draft Supplementary Orders. An objection by Marjorie Clarkson, whose access was also affected by those

⁵³ listed in para 4.3 of SD019

⁵⁴ para 4.3V, SD019

Orders, was also considered at the 2007 Public Inquiry.

4.14 Discussions held between PAF and the HA relating to the company's concerns about the design for their revised access were held on the following dates:

- January and September 2005, in connection with the planning application for an ILC.
- 1 April and 7 May 2009, to discuss concerns about the HA access design.
- 28 January, 5 March and 3 August 2010, to discuss design changes with PAF and their designers and 23 August 2010, to discuss PAF's revised options for their access design.
- 2 September 2010, visit by HA representative to PAF's site to observe, discuss and understand method of operations.
- January 2011, meeting with Patrick Mercer MP, to discuss the HA's approach to the access design.
- 7 February 2011, mediation, to try and resolve outstanding issues.

4.15 No solution put forward was acceptable to both parties. However, the mediation gave the HA a better understanding of PAF's requirements. The proposals have been necessitated because of the NSDC's failure to comply with the statutory procedures and consult the HA in respect of PAF's retrospective application for planning permission for their lorry park.

Environmental Assessment of the Supplementary Orders Proposals

4.16 The 2011 draft Supplementary Orders correct a number of minor errors and omissions from the previous Orders and provide for revised PMA arrangements at Farndon; no change in the main scheme design is associated with them.

4.17 Therefore no further consideration has been given to these draft Supplementary Orders as the assessment made in the original Environmental Statement, published in January 2007 and subsequent Addenda No. 2, published in October 2009 remains valid.

The Existing Private Means of Access (PMA) and PAF Lorry Park

4.18 The existing access to PAF is off the B6166 Farndon Road⁵⁵. This currently

⁵⁵ See aerial photograph SD2/2/3, Fig.1

provides access for a number of individuals and businesses, these being Mr Lawrence, owner and occupier of the property Cranleigh Park; Mr Walmsley, owner of the plot of land to the north west of the access 85m from Farndon Road; and PAF, giving access to their lorry parking area and their secure ILC depot. Pedestrians and cyclists also use the access off Farndon Road. The existing lorry park is marked out with 9 x 18m long vehicle parking spaces.

- 4.19 All traffic, vehicular and pedestrian/cycle, enters the site via a single entrance off the B6166 Farndon Road. This entrance is approximately 7m wide at the pinch point created by the entrance to No 153 Farndon Road and the south western edge of the entrance. It is therefore not possible to have two-way movement through this entrance with all vehicles. This single entrance has to be kept clear, in order that incoming vehicles do not have their access impeded to either the lorry park, or along the light vehicle/pedestrian access.
- 4.20 When vehicles within the lorry park need to proceed into the secure depot, they have to cross or join the path of the light vehicle and pedestrian route to enter at the secure access gate. This area of conflict is made more complicated by the fact that Mr Lawrence has the right to use the light vehicle and pedestrian route for vehicular access. His use of this area will be ad-hoc as necessary and may occur at any time.
- 4.21 Abnormally long vehicles may proceed directly through to the secure gate into the secure depot. This has similar implications over the shared space identified above. If the vehicle is required to wait, then the logical place to park would be in bays 1 – 5, thus leaving the entrance off Farndon Road clear. This requires it subsequently to reverse before going in forwards through the secure access gate.
- 4.22 If the vehicle is required to enter the secure depot in reverse, then this involves it in executing a U-turn in the lorry park. Should this manoeuvre be necessary then the remainder of the lorry park will need to be vacant, due to the space required. There are obvious limitations as to the size of vehicles that would be able to undertake this manoeuvre.
- 4.23 Thus even though it may be possible for a number of large vehicles to enter the lorry park, full use of the space is limited by the manner in which the vehicles are required to enter the secure depot gates.
- 4.24 Vehicles arriving and leaving the existing access were recorded on a sample of days in August and September 2011⁵⁶. These surveys recorded all vehicles' (i.e. cars, light goods and lorry) movements. From the observations it was not possible to identify which of the land parcels was being accessed by which vehicles.

⁵⁶ SD2/3/3 Appendices to Mr Elliott's Traffic Evidence, Appendix G

- 4.25 The AM peak hour has an average of 15 vehicles going in, and 5 vehicles leaving the sites. The PM peak hour has an average of 3 vehicles going in, and 9 vehicles leaving the sites. Over an average weekday, the total number of vehicles entering and leaving the sites was 74. These vehicles included some large goods vehicles (i.e. HGV). On average there were one or two HGVs in each hour entering and leaving the sites during the peak hours. The maximum was 5 HGV, which left the site during the AM peak hour on Thursday 11 August 2011⁵⁷. All relatively light traffic flows.
- 4.26 The existing access takes the form of a priority Tee-junction, onto the B6166 Farndon Road, and is located approximately 70 metres on the Newark side of the old Farndon Roundabout. However the significant increase in diameter of the roundabout as a result of the main scheme construction has brought this PMA junction much closer to the roundabout.
- 4.27 Resultant geometric layout and safety aspects prevent the retention of this existing PMA junction with the new Farndon Roundabout arrangement. A typical 16-metre long vehicle turning right into the Access would need to wait on a left-hand bend in the alignment of the B6166 and the rear of the vehicle would be less than 20 metres from the new Farndon Roundabout exit. Should a second vehicle be waiting to turn right then the distance from the new Farndon Roundabout exit would be further reduced. In addition, long vehicles turning left out of the existing access would be constrained by the geometry of the B6166 approach to the new Farndon roundabout. This turning movement would be very difficult for large vehicles.
- 4.28 The solution, in the interests of public safety, is to stop-up the existing access and divert the access to join the highway network via a fifth arm at the new roundabout. The provision of a new PMA for PAF is included in the Supplementary Orders to replace the access which will be closed by the 2009 made Orders.

The Proposed Replacement Access and Lorry Park (The Draft Supplementary Orders 2011)

- 4.29 The replacement access is shown in Drawing I/PD0285/GD/SK/459 Rev D⁵⁸. It would form a private cul-de-sac limb off the new Farndon Roundabout and would serve the following users; Mr Walmsley, Mr Lawrence, PAF, Mrs Clarkson, (Farndon Fields Farm) and Mr Hardy. The latter two users would use the access immediately off to the right after leaving the roundabout, which they are now able to do following the opening of the main A46 Scheme.
- 4.30 Pedestrians and cyclists wishing to go to land owned by Mr Walmsley or PAF

⁵⁷ SD2/3/2 paras 3.7.5-8

⁵⁸ SD2/2/3, Appx 1

- would use the current route from Farndon Road. However, this would be a dedicated route for pedestrians and cyclists only, with any light or other traffic excluded up to the point where they would need to cross the shared space into the secure entrance. In this way, they are able to be controlled in a more organised manner than with the existing access.
- 4.31 Traffic for Cranleigh Park (Mr Lawrence) would have its own single track access, leading directly off the roundabout. This would ensure that Mr Lawrence would have unrestricted access to his property, reducing potential conflict with commercial traffic. His separate access would also include a turning area for larger vehicles. This would improve upon the current situation where these vehicles initially have to leave the B6166 in reverse and then have to reverse a considerable distance to the property.
- 4.32 Traffic for PAF and Mr Walmsley would use either of the two accesses connecting the junction off the roundabout to the lorry park. The lighter vehicles would use the first exit. The larger vehicles would use the direct link to the lorry park. These would remove the width limitation exhibited by the existing access. The proposed accesses would be appropriately signed to give drivers on the roundabout an indication of this layout [see Drawing I/PD0285/GD/SK/459 Rev D⁵⁹].
- 4.33 The exit from the roundabout into the lorry park on the HA's proposal follows a similar radius to the other exits⁶⁰; the access into the lorry park beyond the exit follows a smooth alignment, and there is no reason to believe that abnormal vehicles would leave the roundabout extremely slowly. However, even if they were to do so, that would not represent an increased risk of accidents, because the abnormal vehicle would be highly visible to other road users approaching and circulating the roundabout. The roundabout has been designed to TD16/07, the appropriate design visibility distance of 70 metres has been provided in accordance with the Standard. Mr Elliott also answers PAF's other concerns, as set out in their letter of objection, in his Proof;⁶¹ comprehensively and persuasively.
- 4.34 Traffic analysis of the Farndon Roundabout, including the new access spur, indicates that it would operate acceptably in the design year.
- 4.35 The proposed lorry park would be marked with 9 x 30m long parking bays. Additionally, an area of 35m x 8m would be provided. This area would be hatched and would provide a temporary waiting area or if necessary, an overspill facility for a potential four more 16.5m vehicles.
- 4.36 This is in marked contrast to the existing situation where the 9 bays can

⁵⁹ In SD2/2/3

⁶⁰ SD2/3/2, para 4.2.1

⁶¹ SD2/3/2.

each accommodate a lorry of up to 18m in length, but that none of the bays is large enough to accommodate a 30m lorry; and that if a 30m lorry does enter the lorry park, it is not possible to receive another 8 x 30m lorries concurrently.

- 4.37 Depending upon the needs of the secure depot, larger vehicles would have the option either to park into the marked bays or to proceed directly, either forwards or in reverse, into the secure depot. In order to reverse in, they would use the hatched area that would normally be kept clear. The layout of the bays is such that all nine could be used and there would still be the ability for subsequent movements into the secure depot.
- 4.38 Furthermore while the existing lorry park is approximately 1,020 sq.m in area, the proposed lorry park would be some 2,200 sq.m, an increase in size which would be beneficial to PAF.
- 4.39 The HA proposal would provide significant advantages over the existing arrangement⁶². Under the existing arrangements, the turning area is not separate from the parking area, such that, if other vehicles are already parked, the arriving vehicle needs to wait for space or to make reverse manoeuvres. Abnormal length vehicles need space outside of the dedicated area in which to turn. Other vehicles, pedestrians and cyclists travelling to the PAF site and the adjacent properties are free to pass through the area in which the large vehicles are turning, and there is no warning of reversing vehicles. Other vehicles passing through the lorry park would be subject to give way markings on entry to the lorry park, effectively giving priority to HGV movements.
- 4.40 The HA's proposal, by contrast, would remove vehicles from the dedicated pedestrian and cycle path, and would involve fewer conflicts, thereby reducing the risk of an accident.
- 4.41 The HA's proposed access would be safer than the current arrangements, which would require vehicles to make turns from the Farndon Road in close proximity to the new, enlarged, roundabout⁶³.
- 4.42 A safety audit of the proposal has been effected and measures are put forward to address the issues raised⁶⁴.
- 4.43 On the question of logistics, PAF apparently do not keep, and so were unable to provide, any data concerning the volume and frequency of abnormal loads, including 30m lorries, that currently require access to the lorry park, whether on a daily, weekly or monthly basis.

⁶² HA/15, para 2.3.1

⁶³ SD2/3/2, paras 3.8.5-6

⁶⁴ SD2/2/3, Appx 2

- 4.44 While PAF have complained repeatedly that the HA does not understand their operation, they themselves have been unable to assist by providing it with any information concerning the numbers or types of vehicles that visit their sites. The HA maintains that, having visited the site on numerous occasions, if anything, have over-accommodated for the needs which PAF, or any similar sized haulage operation, could conceivably have.
- 4.45 Furthermore it is clear that use of 30m HGVs is quite rare. Interpretation of data supplied by Nottinghamshire Police indicates that approximately 432 abnormal lorry movements occur per month across the whole of Nottinghamshire⁶⁵. It is therefore highly unlikely that PAF would require capacity for nine 30m loads on any one occasion. Nonetheless, they would have this capacity on the HA's proposal, should they require it. This only serves to underline the fact that the HA has done more than necessary to cater for the needs of their operation.
- 4.46 It should also be highlighted that⁶⁶, according to PAF⁶⁷ *"At present, any HGV entering the existing lorry park can park safely to the south of the main access whilst waiting for instructions on which bay to park"*, and that *"At present, any HGV entering the lorry park is instantly directed into the lorry bays to the south of the main access road into the secure depot"*. This plainly indicates that PAF's staff are deployed to receive HGVs and issue parking instructions on a regular basis.
- 4.47 In the HA's proposal, as a rule it should not be necessary to have staff to hand for this purpose, given its size and the clear visibility which it will offer to drivers. Nonetheless, if PAF have concerns about the manoeuvring of vehicles in the lorry park, there is no reason why the current arrangements could not continue. Similarly, it is acknowledged that a core aspect of PAF's operation concerns the receipt and dispatch of abnormal loads, but such loads may well require the presence of an escort, thereby reducing the potential for conflict⁶⁸.

Summary

- 4.48 All of the above evidence provides strong support for the conclusion that the draft Orders meet the statutory test set out in section 125(3)(b) of the 1980 Act and can and should be made. Further, in the HA's submission, nothing in the Objectors' evidence serves to gainsay that conclusion.

⁶⁵ SD2/4/1, paras 3.4.6.9-11

⁶⁶ SD2/4/1, para 4.3.7.

⁶⁷ OBJ/003/7/2, App C, paras 3.25-3.26.

⁶⁸ See the 'Brisbane' video OBJ/003/66

5 THE CASE FOR THE SUPPORTERS

The material points are:

Mr C C S Lawrence^{69 70}

- 5.1 Mr Lawrence supports the HA's scheme as it provides an appropriate well thought out design which would not result in significant betterment. It would be more than adequate to cope with both the existing traffic and enhanced usage.
- 5.2 Mr Lawrence raised an issue regarding the status of Sproakes Lane, which HA contend has already been stopped-up.

6 THE CASE FOR THE OBJECTORS

The material points are:

P A Freight^{71 72}(OBJ/003)

Introduction

- 6.1 The SRO and CPO Statutory Tests have been set out⁷³ and PAF's case is focussed around the HA's proposals and inability to comply fully with these Tests.
- 6.2 With regard to the SSRO, the HA has accepted, through its promotion of the SK459D scheme ("the Promoted Scheme") that it needs to provide a new access to the ILC. However, it is the route and layout of that alternative access, from the new Farndon Roundabout, with which these Objectors take issue. In short, it is not fit for purpose, incapable of reasonable modification and should be rejected. Furthermore, there remain serious

⁶⁹ SUP/002/001

⁷⁰ Inspector's Note: Mr Lawrence made a number of submissions that relate to the PAF planning application and other local planning and ancillary matters that have no locus in this Inquiry.

⁷¹ Inspector's Note: I have based this section of my report on the original evidence, the subsequent rebuttal evidence and the closing submissions on behalf of PAF

⁷² Inspector's Note: Two witnesses who appeared before the Inquiry for PAF, Mr F Taylor RHA and Mr P Young BIFA, tendered Proofs of Evidence (OBJ/003/4/1 & OBJ/003/3/1) which contained significant elements of identical text. Unfortunately no satisfactory answer was given as to who actually wrote this text. There was clearly collaboration; however I find it difficult to accept the arguments put forward that each witness wrote his own evidence in its entirety. This did not assist the Inquiry. In view of the above I attach little weight to these elements of their evidence. However both witnesses did assist me by independently answering my questions of clarification.

⁷³ INQ/01, Annex A; Inspector's Procedural Note

impediments to the implementation of the Promoted Scheme.

- 6.3 In respect of the SCPO, the Objectors' principal submission is that as the access scheme promoted under the SSRO is flawed no compelling case has been made for acquisition of their land in the public interest. Furthermore, given the ability to provide an alternative access without the need for the SCPO, it is also the Objectors' submission that the interference with their human rights is not justified in this instance.
- 6.4 The promotion of the PAF Alternative provides both a yardstick by which to assess the Promoted Scheme and an opportunity to report that there is another access solution that would meet the statutory requirements.

The Discharge of the Statutory Duty

- 6.5 Both by reason of the form of wording found in s.125(3)(b) of the Highways Act 1980, and, according to the HA's own internal guidance (2006)⁷⁴: *"An alternative access should be reasonably convenient for the types of traffic which would need to use the access"*. Moreover, *"... A reasoned judgment should be made and financial considerations should not outweigh everything else"*.
- 6.6 Furthermore, it must be fit for purpose i.e. be so designed (and reasonably capable of construction) so as to be reasonably safe, operable and not place undue burdens upon the occupier. In other words, the landowner should be in no worse position as a result of the new PMA, taking into account the change in the form of the access.
- 6.7 It must also be designed in sufficient detail to demonstrate that it can meet current applicable standards, and, of physical delivery without undue disruption.
- 6.8 It must follow, then, as a matter of approach that a sufficient understanding should be gained before the design, the subject-matter of the promoted scheme, and its land take are fixed and then made the subject of the draft (Supplementary) Orders. Equally, if further or conflicting information is obtained then the promoter should be willing and able to seek appropriate modification and variation of the draft Orders.

The Needs of the Business⁷⁵

- 6.9 The PAF group operates a multi-million pound business specialising in the packing and shipping of large and high-value goods for road delivery within the UK and abroad. Many of the items are then exported by air and sea

⁷⁴ HA/021, pp 12-13

⁷⁵ OBJ/003/6/1, Evidence of Mr Andrew Morris, Managing Director of PAF

around the world. Such is the skill and expertise that has been gained that, despite the current economic recession, the business turnover has continued to grow.

- 6.10 PAF operates its main business centre from the ILC at Farndon, Newark. This is where specialist packaging in secure DfT-Licensed accommodation takes place, including out-of-gauge (OOG) items. An allied substantial facility is also operated from a rented former hangar at Swinderby. It also has several port offices around the UK. Neither the group nor the operations at the ILC are in anyway small scale in nature or requiring the lesser form of access arrangements being promoted by the HA. This was made clear not only through the failed mediation exercise in February 2011 but also in pre-Supplementary Order correspondence⁷⁶.
- 6.11 Contrary to the flawed traffic counting exercises undertaken by the HA and upon which so much of the HA's evidence is erroneously predicated, the volume of vehicles entering and leaving the ILC during the extended working day and week is, in fact, reflective of the highly specialised business undertaken at the ILC⁷⁷⁷⁸. There is also a range of large HGVs/LGVs/OOGs etc. that arrive and leave the ILC which, in terms of numbers and space, must be adequately accommodated. It is the current logistical ability to manage the unexpected that makes the requirement for this level of "reasonably convenient" replacement access so necessary.
- 6.12 The ILC, with its current access from the Farndon Road, has been able to operate successfully and without accident; it is the ILC's current flexible operational capacity and layout that provide PAF's capability to deal with its specialism of packing and dispatching abnormal loads. The ILC is a significant facility for PAF, crucial to its future success.
- 6.13 From PAF's perspective the Promoted Scheme is not reasonable nor convenient because:
- It will result in an unsafe access and workplace;
 - It will lead to increased operational costs;
 - It will bring into serious question its ability to maintain insurance cover;
 - It will increase the potential for inconvenience to two immediate

⁷⁶ OBJ/003/6/1, Appx D

⁷⁷ Confirmed in the range from 150-300 vpd, Mr Cage in RX; Transcript Day 17, 17 July 2012, p. 59 (but see next footnote)

⁷⁸ Inspector's Note: In answer to my question Mr Cage indicated potential for some 160-200 movements per day (as well as up to 8 larger loads). Transcript Day 17, 17 July 2012, p. 45

neighbours (Mrs Paver and Mr Walmsley).

- 6.14 The inability of the Promoted Scheme to provide a reasonably convenient replacement access will have a serious and adverse effect on the ability of the ILC to meet its current commercial demands. The likelihood that the ILC will cease to be used or at best will be significantly downgraded is a real and genuine concern. This would inevitably impact upon the financial success of the business as well as on the labour market in Newark (an issue of particular concern to the local MP, Patrick Mercer⁷⁹), and, PAF's other operating centres.

Design Standards

- 6.15 The HA chose not to refer to any design standard in the development or support of its proposal, even though there are a number of industry standard design documents that are used when designing lorry parks and similar facilities adjacent to trunk roads, such as the Freight Transport Association Designing for Deliveries, the Notts County Council 6C Design Standards for Industrial Roads⁸⁰ as well as the DfT Circular 01/2008 Policy on Service Areas and Other Roadside Facilities on Motorways and All Purpose Trunk Roads in England⁸¹. There is also a considerable amount of guidance enclosed in the HSE document: Workplace Transport Safety⁸².
- 6.16 The HA used engineering first principles when producing the Promoted Scheme⁸³. Normally, this would be a course of last resort for a professional engineer after exhausting all available reference documents; but it would also require a detailed understanding and knowledge of the safety and operational requirements of PAF, which was clearly not the case with the HA's designer.
- 6.17 The lack of any proper application of DMRB standards to the trunk road elements of the Promoted Scheme, even with the convenient detachment of the highway boundary at the back of the splitter island⁸⁴, is yet further evidence of the casual approach of the HA to the application of relevant design standards.

⁷⁹ 003/5/1; & Transcript Day 4, 11 November 2011, pp.164-165

⁸⁰ OBJ/3/30, Appendix C

⁸¹ OBJ/003/79

⁸² OBJ/003/41 and OBJ/003/65/2

⁸³ Transcript Day 6, 29 November 2011, p.81

⁸⁴ HA/010 for plan SD2/2/2, paragraph 3.9.1 states that the HA proposals are all in accordance with the guidance and standards contained in the DMRB and require no Departures from these Standards. This statement is misleading; for whilst there is no change to the roundabout design itself, this is clearly not the case with the location and design of the new access road.

The Level of Detail

- 6.18 The Promoted Scheme has to be fit for purpose and assessed in accordance with current design standards. The HA has asserted that the way in which it operates is to demonstrate in sufficient detail that the Scheme is deliverable⁸⁵, justifying the broader parameters within which has chosen to present its evidence at the Inquiry. In contrast, PAF has been accused of being unduly "*forensic*" in its approach⁸⁶. Whilst acknowledging that supplementary material is always part of the Inquiry scrutiny process, this does not absolve the HA of the duty to present sufficient evidence that the constituent components have been adequately addressed.
- 6.19 This was highlighted in its approach to two particular issues. The first concerned flood risk and drainage issues and the second, pollution control. It is noteworthy that it was only through PAF's reminder of the HA's duties and sustained pressure for the requisite information that even basic details were supplied of drainage measures which, in turn, led to the identification of the need for more land take⁸⁷. The decision to impose no pollution control measures, even in the lorry park, was based on the erroneous belief that none were required because none were in the existing lorry park⁸⁸.

The PAF Alternative

- 6.20 On Day 7 of the Inquiry (30 November 2011), the Objectors learned for the first time that the HA had decided not to assess the alternative scheme that has come to be known as "the PAF Alternative"⁸⁹. Since that date, the HA has attempted to prevent this Inquiry from reporting on the PAF Alternative to the Secretaries of State, despite the Inspector's clear and unambiguous desire to do so⁹⁰. However, they have continued to misinterpret the Inspector's desire to report fully to the Secretaries of State in correspondence⁹¹.
- 6.21 Despite, seemingly, encouraging the Objectors to pursue an alternative solution⁹², noting that a change was required to the drafting of the then

⁸⁵ Transcript, Day 16, 16 July 2012, p.12

⁸⁶ Transcript, Day 17, 17 July 2012, p.11

⁸⁷ OBJ/003/110, Plans 1A, 1B and 2A & HA/104

⁸⁸ SD 2/2/2, para. 3.6.8

⁸⁹ Transcript Day 7, 30 November 2011 pp.167 etc.

⁹⁰ Transcript, Day 8, p.5.

⁹¹ HA/101; HA/102

⁹² Second TSol letter dated 06.01.12[HA/066]

TR110 condition⁹³ they proceeded, in contradiction, tactically to use the TR110 direction powers in order to delay the release of planning permission for the PAF Alternative⁹⁴, seemingly, in order to delay or frustrate that process. A growing realisation of the shortcomings and impediments of the Promoted Scheme seems to be the most obvious interpretation of this course of conduct.

The Current Impediments

- 6.22 Initially PAF identified⁹⁵ five impediments: (1) safety concerns; (2) EIA considerations; (3) flood risk issues; (4) pollution control measures; (5) construction achievability.
- 6.23 After considerable pressure from PAF for the HA to provide an adequate level of technical justification, issue (3) has been sufficiently addressed, now, such that it may be reported that, whilst there are still outstanding matters, this impediment appears capable of being surmounted⁹⁶. Issue (4) has now been addressed by HA's acceptance, in principle, of the need to provide interceptors⁹⁷.
- 6.24 Issue (5) remains of significant concern, reflective of the ill-considered nature of the Promoted Scheme, particularly the level of disruption to the PAF business and the absence of any health & safety review. Issues (1) and (2) remain outstanding as fundamental impediments, the former of which, it is submitted, is now incapable of resolution.

The Absence of any Health & Safety Assessment

- 6.25 The significance of this impediment has been identified through evidence⁹⁸. In summary, the replacement lorry park, through which new access will be provided to the ILC, will constitute a workplace. Accordingly, there is a legal duty upon the designer, under the Construction (Design and Management) Regulations 2007⁹⁹ ("CDMR"), to ensure, as part of that process, that an assessment has been undertaken of his design to eliminate hazards which

⁹³ First TSol letter dated 06.01.12 [HA/065]

⁹⁴ See OBJ/003/7/4 for history

⁹⁵ OBJ/003/25, paras. 16 & 18

⁹⁶ Inspector's Note: HA (Mr Nwanodi (TSol) in open session on Day 18) confirmed its acceptance that this matter may be addressed by the addition of two small elements of land to the CPO (1/1J & 1/1I) – see Transcript Day 18, 20 July 2012, p11, lines 8-14.

⁹⁷ Mr Bethel XX JPS Transcript, Day 5, p.20, lines 5-7

⁹⁸ OBJ/003/2/1 & OBJ/003/65/9

⁹⁹ Reg 11, Construction (Design and Management) Regulations 2007.

may give rise to risks and to reduce risks from any remaining hazards¹⁰⁰.

- 6.26 There is also a duty to inform the client (HA) and the "end user" (PAF) of any risks associated with ongoing use, maintenance and the like. Given the admission by HA¹⁰¹ that it had not considered the health and safety implications of the Promoted Scheme it must follow that there has been a comprehensive failure to address the duties imposed by regulation 11 of the CDMR.
- 6.27 The Promoted Scheme is a standalone project to which current Health & Safety legislation applies. These works do not have some exempted status just because it is the HA which is the promoting authority¹⁰² or that they happen to be "accommodation works"¹⁰³. Furthermore it is the legislative legacy and consequent burden falling on PAF¹⁰⁴, as the employer/owner, and the insurance implications in terms of the potential inability to gain appropriate levels of cover¹⁰⁵ that further raise the significance of this impediment.
- 6.28 Given the clear terms in which the relevant Regulations are framed it may not be reported that the Promoted Scheme is capable of meeting Health & Safety requirements. Rather, it is the opposite given the Objectors' evidence as to the manifest shortcomings. Indeed, such is the fundamental significance of this impediment that the Promoted Scheme should be recommended for rejection on this basis alone.

The Absence of an Adequate Road Safety Audit

- 6.29 A number of road safety audits (RSA) have been undertaken with respect to the main A46 Farndon Roundabout and a purported Stage 1 RSA of the promoted PMA to the ILC. Unfortunately, the HA has not demonstrated full compliance with the required safety audit procedure as specified in HD 19/03¹⁰⁶ which recommends that a Stage 1 Audit should be undertaken prior to Order Publication Report Stage¹⁰⁷. In fact, this audit was

¹⁰⁰ See sections 6.4 and 6.5 of Mr Ashworth's report [003/65/9]

¹⁰¹ Mr Wildgoose XX JPS, Transcript Day 9, 18 January 2012, p.79

¹⁰² HSE Approved Code of Practice, section 1, esp paras 1.4.1 [003/65/5]

¹⁰³ See HSE Approved Code of Practice, paras 1.3.2 and 1.3.3 [003/65/5]

¹⁰⁴ Mr Watts in Chief, Transcript Day 16, p24

¹⁰⁵ Letter dated 26.01.12 from Brett & Randall Ltd [003/88]

¹⁰⁶ SD/097 & OBJ/003/40

¹⁰⁷ Para. 2.21

undertaken in August 2011 and finally issued on 28 September 2011¹⁰⁸. The audit was undertaken by the same auditors that had undertaken the Audit of the overall A46 Scheme. However, the HA has never disclosed either the designer's brief or the designer's response.

- 6.30 A Stage 2 RSA was undertaken for the main A46 Farndon Roundabout scheme on 22 February 2011, with the designer's response being issued on 17 August 2011¹⁰⁹. However, no reference was made or considered within this Stage 2 Audit to the potential change in the proposed PMA to the ILC¹¹⁰.
- 6.31 Furthermore, the audit considered the scheme as shown on Drawing No 459 Rev C. No other alternative schemes were considered by the Audit team; and the majority of the roundabout and the proposed arm serving the PMA had already been constructed at the time of the audit.
- 6.32 This RSA was limited in scope, poorly briefed and clearly not independent¹¹¹. This audit should have been undertaken prior to any element of the roundabout scheme being constructed. It is questionable whether even its recommendations are capable of achieving the desired results even if they could be implemented, which, in the case of signage (Problem A2) is not achievable within the current regulations¹¹². Any further RSA of the Promoted Scheme would be so influenced by the fact that the main scheme is now complete that it would be incapable of being impartial.
- 6.33 No safety audits have been undertaken at all with respect to the Walmsley Loop option. Accordingly, it seems inconceivable how this contrived

¹⁰⁸ The extent of the instruction is set out in the brief email exchange of July 2011 found in the documents forming HA/010. See Second T Sol letter dated 04.11.11 item 2.1

¹⁰⁹ HA/017. The scheme which was the subject to this audit was as shown on Drg No PD0285/RM/500/143, which showed the access to the ILC identical to that which was on the 2009 Confirmed Orders, even though at this stage the HA were now promoting an alternative proposal the subject of these Supplementary Orders.

¹¹⁰ In response to requests for details of the designer's response and briefs for the various safety audits undertaken the HA submitted Inquiry Document HA/068. This document included two safety audits, a Stage 2 Safety Audit undertaken in August 2010 which considered the traffic management that was proposed on the original Farndon Roundabout, and a further Stage 3 Audit which appears to have been undertaken on 1 February 2011, which considered the traffic management again on the existing Farndon Roundabout. None of these Audits extended far enough along Farndon Road to consider the safety implications that the works would have on the access to the ILC. Even though, it is at this point on the network that large HGVs manoeuvre slowly in and out of the access causing a significant risk to other road users. There is no evidence that either a Stage 2 or a Stage 3 Safety Audit has been undertaken of the current proposed arrangement even though the enlarged Farndon Roundabout is open for use, again not meeting the specific requirements of HD19/03.

¹¹¹ OBJ/003/030, para. 14.7

¹¹² OBJ/003/1/1 para. 5.3

"alternative" can be seriously considered.

- 6.34 Finally, it is to be noted, as a "black box" requirement that HA19/03 states at para 2.10 that *"When incorporating Road Safety Audit recommendations into scheme designs, the Design Team shall be responsible for reviewing and amending any design risk assessments required by health and safety legislation"*.

The Shortcomings of the Promoted Scheme¹¹³

Access Issues (i) Access Alignment and Location

- 6.35 The start of the diverge for the car access would be only 11m from the circulatory carriageway of the roundabout and for the HGV access some 19m spacing from the roundabout. This would introduce significant risk with vehicles leaving the roundabout at some speed¹¹⁴, particularly as the proximity of the two accesses to each other could give rise to confusion. This is not a matter that may be addressed by recognised signing¹¹⁵. It is further complicated by the presence of the pedestrian and cycling route crossing the access road in this area. Furthermore there would be no room for error, with the proposed access leading on to Mr Lawrence's land.
- 6.36 The HGV ramp would be too short (32m) and this could lead to an abnormal (30m) load taking up much of the ramp if it stopped at the give way entry to the lorry park. This would prevent other vehicles entering, a factor exacerbated by the alignment and width of the HGV ramp which would effectively prevent simultaneous entry/exit of two 30m loads. These factors could lead to partial blockage back on to the roundabout.
- 6.37 The lorry park access ramp would form an undesirable cross roads alignment with the access road to Farndon Farm, with the potential for vehicle conflicts. Furthermore there are inadequate radii and steep gradients into the proposed field access points which would cause significant difficulties for appropriate agricultural vehicles.
- 6.38 The steepness and sharp curve at the end of the car access road would be

¹¹³ Inspector's Note: PAF highlighted some 28 separate issues with respect to HA's proposed PMA – under the general heading of Access Issues. Several of these issues overlap and I have reported them under 3 headings ((i) Access Alignment & Location; (ii) Lorry Park; (iii) Abnormal Load Issues). The details of these issues arise out of consideration of how the HA proposal would meet the constraints which PAF consider any alternative access would need to meet and are set out in OBJ/003/7/1 & OBJ/003/112.

¹¹⁴ Inspector's Note: PAF provided a Technical Note [OBJ/003/90] regarding circulatory carriageway speeds on Farndon Roundabout. However these speeds (average 26mph, 85thile 29mph) were measured for vehicles travelling from A46 to A46 across the north west side of the roundabout, a longer circulatory length than the critical eastern side which is also influenced by the Farndon Road and PMA arms.

¹¹⁵ Transcript Day 17, 17 July 2012, pp89-90, Inspector's Question to Mr. Cage

likely to lead to vehicles crossing lanes.

Access Issues (ii) Lorry Park

- 6.39 The arrangements proposed by the HA would result in a number of vehicles all entering the same area without guidance, routeing or clear priorities. This would be on top of HGVs potentially moving between lorry parking bays and the hatched turning area, as well as vehicles preparing to leave the lorry park. In the absence of any Health & Safety assessment, there is no measure as to how all these movements could be safely and practically managed.
- 6.40 HA's lack of understanding of the operation of the current lorry park has led it to erroneously argue that its proposal would reduce conflicts. The only area where all vehicles currently visiting the site merge is a short section in advance of the depot's secure gate. Most of the HGV movements currently are undertaken within the lorry park with only the abnormal loads requiring to use this area when turning round. Mr Walmsley's traffic and Mr Lawrence's traffic do not have to enter the lorry park at all, with Mr Lawrence's service vehicles being able to turn around inside his own property as they did before the lorry park was constructed. Traffic entering the Walmsley land with the HA proposal would be in conflict with parking HGVs.
- 6.41 Furthermore in the proposal the arrangement of lorry parking bays at 90° to the approach would cause problems for visiting drivers in terms of assessing bay availability and would introduce additional reversing manoeuvres across the lorry park and access route. Indecision may lead to blockages in the park and on the access road.
- 6.42 Certain manoeuvres into lorry park bays or into the Depot from certain bays would be complicated if all 9 bays were occupied by 30m vehicles. These movements would be very inefficient and lead to additional vehicle conflicts at the entrance to the revised lorry park, which again could cause vehicles to queue back onto the Farndon Roundabout.

Access Issues (iii) Abnormal Loads

- 6.43 PAF often has vehicles visiting the site with extra wide loads ranging from 4.6m to 4.8m wide. These are delivered and then packaged and dispatched in wider cases. Vehicles carrying loads this wide have their own characterisation and constraints.
- 6.44 The track runs shown on drawing Number 220/03/186 demonstrate that two loads of this size cannot pass each other at the site entrance and that access to the revised lorry park generally would be restricted. The track runs also show that the load would significantly overhang the adjoining splitter island which would also be used as a crossing point for cyclists and pedestrians.
- 6.45 HA argues that the above drawing makes an unfair comparison of the HA's

proposals and existing conditions at the lorry park. Again, HA fails to appreciate the significance in the change of the access arrangements. The HA scheme now has a direct free flowing access into the new lorry park whereas the current arrangement is a priority junction. At present, any abnormal load wishing to gain access into the existing lorry park has to wait in the carriageway whilst the entrance becomes clear.

- 6.46 The Promoted Scheme allows abnormal vehicles to drive straight into the lorry park; and the driver of any vehicle coming in the opposite direction would not necessarily expect the vehicle to pass into the oncoming lane. This would result in vehicles potentially clipping each other, or having to brake quickly when they realise they would not be able to pass each other¹¹⁶.
- 6.47 The vertical alignment of the proposed lorry park and access route would introduce the potential for grounding of abnormal loads, particularly the introduction of the "v" feature, where the extension to the existing lorry park is to be achieved. To remove the sharp change in gradient would require the introduction of vertical sag curve between the two gradients which would require the reshaping of the existing lorry park¹¹⁷.

Amenity Issues

- 6.48 These arise in connection with the potential impacts on the occupants of No 153 Farndon Road from the effects of headlights and noise¹¹⁸. PAF is concerned that the situation is not worsened.
- 6.49 The Objector disagrees¹¹⁹ with the HA's contention¹²⁰ that there would be no difference in the visual impact of headlights compared with the existing situation drawing attention to the change of linear movements. Furthermore, the HA has only tested standard headlights and not the high level used on HGV tractor units to guide the driver in non-illuminated environments, as in the instant circumstances¹²¹.
- 6.50 In respect of noise and vibration, the hatched waiting/manoeuvring bay upon which the Promoted Scheme relies for its purported operational success introduces a new noise source and one closer to No 153.

¹¹⁶ In contrast, the PAF alternative scheme allows two 30m long vehicles to enter and exit the site easily without intruding into the adjoining lane.

¹¹⁷ OBJ/003/30, para 6.12 & Transcript, Day 17, 17 July 2012, pp.64-65

¹¹⁸ See Section 6.68-6.71 below setting out Mrs Paver's objection

¹¹⁹ OBJ/003/62/5

¹²⁰ HA/024 and HA/040

¹²¹ See illustrative drawings at OBJ/003/092; Transcript, Day 14 p.164

Nonetheless, the HA contends that the situation is made no worse¹²² and that drivers can switch off their engines. The Objectors disagree¹²³, highlighting the fundamental change in the operating regime.

Water Issues

- 6.51 The loss of flood volume as a result of the construction of the new Farndon Roundabout has not been effectively compensated within the sub catchment which contains the ILC. The site is currently in Flood Risk Zone 3 and this will not change as a result of the roundabout. However, the loss of flood volume would result in the PAF land flooding quicker on lower order events¹²⁴.
- 6.52 Turning to land drainage, the main scheme construction has removed a number of existing land drainage ditches which provided storage within the fenland system in periods of heavy rainfall and high river levels at the outfall on the River Devon. This has significantly affected the ability for the ditch system in the area to provide the required surface water storage which will again increase the risk of flooding to PAF land¹²⁵.
- 6.53 It is now proposed to introduce a swale into the ditch system to provide a level of surface water attenuation before discharging into the ditch¹²⁶. The outfall of the ditch into the River Devon is often submerged and therefore any design proposed for the new drainage system must be designed to allow for a submerged outfall. The preliminary calculations provided to date for the HA scheme do not allow for a submerged outfall and as a result do not provide sufficient storage.

Construction Issues

- 6.54 The HA has not considered how its Promoted Scheme would be constructed without impacting on the adjoining landowners, especially PAF. It would be impossible to continue to operate the lorry park whilst the works are being constructed without some considerable restrictions. Furthermore, to mitigate them adequately a temporary lorry park would be required in the same location as that proposed for the PAF Alternative¹²⁷.
- 6.55 Furthermore there is no significant difference between the cost estimates

¹²² HA/024 , HA/042 and HA/071

¹²³ OBJ/003/62/6

¹²⁴ OBJ/003/30 (Tech Note C); OBJ/003/74 & /77

¹²⁵ OBJ/003/7/1, paras. 9.2 to 9.4

¹²⁶ HA/039 and HA/067

¹²⁷ OBJ/003/7/1 (section 11); OBJ/003/030 (section 11); OBJ/003/039; OBJ/003/62/10; HA/045

for the Promoted Scheme against the PAF Alternative¹²⁸. On the other hand, the Promoted Scheme fails to utilise the 2009 CPO access works already constructed, with a large proportion of this work either needing to be reconstructed or removed.

The Walmsley Loop

6.56 On the morning of Day 1 of the Inquiry, the HA approached Mr Walmsley to discuss a proposed alternative access arrangement to his site. This drawing was subsequently issued to the Inquiry¹²⁹, since which time supplementary drawings have been issued¹³⁰ but not progressed in terms of detail or buildability.

6.57 PAF's main concerns relating to this scheme are as follows:

- i. The sharp bend forming the access to the lorry park would be located too close to the main roundabout.
- ii. The vertical alignment issues would still remain.
- iii. The loop would not be wide enough to accommodate two way traffic, including cars.
- iv. The lengths of lorry parking bays 1 to 3 have been reduced.
- v. The waiting area has been moved further into the lorry park, resulting in the abnormal vehicles having to cross further into the exit lane.
- vi. The access to the loop would be far too close to the bend and entry radii would not comply with any design standard.
- vii. The lights of vehicles using the loop would interact with those on Farndon Road, resulting in driver confusion.
- viii. The proposed increases to the impermeable area of the Scheme would add additional stress to the adjoining ditch system.
- ix. No further drainage design information has been provided.
- x. Operational difficulties would remain within PAF's lorry park.
- xi. It is not clear who would be able to use the access; if it is intended to serve Mr Walmsley's potential HGV movements then these would still require PAF's lorry park to enter/exit his land.

¹²⁸ OBJ/003/62/10: £713,108.04 against £723,183.40 on a "like for like" comparison.

¹²⁹ HA/020

¹³⁰ HA/044 (Item 5)

- xii. If the loop were to be used for cars and LGVs then, whilst this would remove these movements from the main lorry park area, Mr Walmsley's HGVs would still have to mix with cars and LGVs unless they were directed through the lorry park.
- xiii. Visibility coming out of the area would be difficult as cars/HGVs would effectively be coming from behind the vehicle.
- xiv. The access loop removes the dedicated footpath/cyclist link which the HA were promoting as a major benefit of their original proposals.
- xv. It would reduce the size of the vehicle waiting area.

6.58 Therefore, the Walmsley Loop would provide little or no benefit to Mr Walmsley and would impact significantly on PAF's proposed operations.

The Issue of Alternatives¹³¹

6.59 The PAF proposal is an alternative, for the purposes of s.125(3)(b) of the Highways Act 1980, as it manifestly provides access to the existing ILC, the boundaries of which remain unchanged in terms of the offices and the secure depot. Furthermore, it has now been accepted, through the Promoted Scheme, that, in effect, a replacement lorry park has to be provided. It also needs to be recalled that although NSDC requested a comprehensive scheme for the whole site it is only upon the access element that attention needs to be focussed¹³².

6.60 The PAF Alternative scheme provides a design which achieves the following:

- i. Safe and acceptable access to PAF, within design standards, to ensure no issues in relation to the operation of the Farndon Roundabout.
- ii. An efficient operational lorry park which meets Health & Safety requirements.
- iii. An alternative access to Mr Walmsley's land which provides for current and possible future occupiers.
- iv. An access to Mr Lawrence's land that is identical to that provided for in the original 2009 CPO.

¹³¹ Inspector's Note: The legal submissions on the PAF Alternative are set out in Section 3 of this report.

¹³² It should also be borne in mind that NSDC officers had made clear that there was a fundamental objection to WSP's previous Option C (2010) [ATM in RX], Transcript Day 14, p.56

- v. Efficient use of existing infrastructure.
 - vi. An Environment Agency approved flood risk/drainage design solution.
 - vii. A scheme which can be efficiently constructed minimising construction time and impact on adjoining landowners.
- 6.61 By close of the Inquiry there was no formal grant of planning permission, despite a favourable resolution being made by NSDC on 13 March 2012. However there are no land use planning reasons why the PAF Alternative would not be acceptable. It also meets the s.125 test, more efficaciously, in respect of an alternative access for Cranleigh Park (i.e. no betterment)¹³³. Therefore, other than providing the necessary Highways Act orders to secure its delivery, there is no obvious impediment to its achievement.

Mr Patrick Mercer OBE MP^{134 135}

- 6.62 PAF operate high quality, bespoke specialist services in support of UK exporters on a worldwide basis. Their commercial and local relationships have always been highly professional and ethical.
- 6.63 Their continual business growth in support of UK exports has created additional jobs locally and the Group is one of the most significant employers in the constituency. This growth has coincided with both the national economic downturn and a particularly difficult local recession and reflects the importance of their specialist services to serve major clients in this area from their ILC at Farndon.
- 6.64 Mr Mercer actively supported and promoted attempts to resolve perceived operating issues arising out of the HA's proposed revised access scheme, through correspondence and meetings to mediate between the HA and PAF's representatives. However it did not prove possible to deflect HA from its view that the PAF alternative scheme would result in the mis-use of public funds to provide betterment for this private company which was actively seeking planning permission for its revised access scheme and associated buildings.

Mr M R Walmsley (Walmsley Autos Ltd) (OBJ/002)¹³⁶

- 6.65 The area of 'Walmsley land', which lies immediately to the north west of the

¹³³ OBJ/003/91, Tech Note E; Letter dated 8.01.12 [OBJ/003/55]

¹³⁴ Inspector's Note: Mr Mercer has been MP for the Newark Parliamentary constituency since June 2001. He appeared as a PAF witness at the Inquiry.

¹³⁵ OBJ/003/5/1

¹³⁶ OBJ/002/2

PAF ILC site¹³⁷, is currently leased to and used by PAF. Entry and exit is via the PAF lorry park access without the need to cross manoeuvring HGVs in the lorry park.

- 6.66 There is no guarantee that PAF would continue to use this land, there may be the need in future to relocate the storage of new and used vehicles to this compound from its existing location. This would result in some 20 movements per day into this area.
- 6.67 With the HA proposal these vehicles would be in conflict with HGVs reversing and manoeuvring as the proposed access would be across the centre of the proposed realigned lorry park. In order to address this safety issue a separate access should be provided around the outside of the lorry park.

Mrs D Paver (OBJ/001)¹³⁸ No 153 Farndon Road

- 6.68 The alignment of the HA-proposed PMA would result in glare from vehicles' headlights in bedrooms of No 153 Farndon Road.
- 6.69 The access to No 153 is too narrow for cars to turn without reversing on to the busy Farndon Road.
- 6.70 The realignment of the lorry park, which represents a significantly larger HGV parking facility, would result in HGVs parking and manoeuvring close to the dwelling with the resultant harmful impact on the objector's family's living conditions by reason of noise and disturbance.
- 6.71 The alternative route proposed by PAF would result in a significantly improved layout and would allow improvement to the objector's access and turning area, with parking away from the residence thereby reducing impact on living conditions.

7 REBUTTAL BY ORDER MAKING AUTHORITY^{139 140}

The material points are:

Introduction

- 7.1 The merits of the Farndon Roundabout were thoroughly examined and

¹³⁷ See plan attached to OBJ/002/1

¹³⁸ OBJ/001/1

¹³⁹ HA/105

¹⁴⁰ OBJ/003/5/1

tested at the previous (2007) Inquiry, and it was not found to be wanting. It is not the purpose of the present Inquiry to revisit the merits of that design; it must be regarded as wholly adequate and acceptable.

- 7.2 The sole question, to be addressed is that deriving from section 125 of the Highways Act 1980, concerning whether the HA's proposed means of access into the lorry park provides "*another reasonably convenient means of access*" to those premises. The HA is not required to go beyond that, or to provide the owner or occupier of the premises with an improved means of access, or a superior means of access, or an access which that person considers ideal for his present and/or future purposes. Indeed, not only is the HA not required to do this; but it lacks the power to do so, since such conduct would amount to deploying public money for private gain.
- 7.3 It follows from the above that it is not necessary or appropriate to compare and contrast a proposal submitted by the HA with one put forward by an Objector. PAF's so-called "alternative" is not in reality an alternative to the HA's proposal. Rather, it is part of an entirely new scheme for the ILC as a whole, including the secure site. The only way in which an alternative means of access could be considered with a view to implementation, including the scheme promoted by PAF, would be by way of the publication of new draft Orders¹⁴¹. Given that Mr Lawrence (and possibly other affected parties) would (presumably) object to any such scheme, the entire Inquiry process would then require to be repeated.
- 7.4 PAF make significant criticism of detailed design points. An important point requires to be made; as the HA has explained,¹⁴² it is not its practice, where draft Orders such as the ones in issue in this Inquiry are concerned, to produce a final detailed design of the proposed access. Rather, its concern is with the basic principle, and matters of detailed design, which do not require to be the subject of an Order, are dealt with at a later stage.
- 7.5 The only question is whether the HA's proposed access is deliverable within the confines of the land covered by the draft CPO. The HA has no doubt that it is, in its entirety, and including matters connected with drainage.
- 7.6 Furthermore, HA's proposal unquestionably does not involve EIA development, and it had no obligation to produce a screening opinion with respect to it.

The Main Issues

- 7.7 The parties appear to be in agreement that the main issues between them

¹⁴¹ Transcript Day 18, p3, lines 4-10 submission by Ms Busch to the Inquiry

¹⁴² See eg Mr Bethel in XX by Mr Scriven, Transcript Day 1, 8th November 2011, p 28 and p 30. ("*... the scheme is never substantially designed before construction started. We have an outline of the design of the scheme and the details of the scheme will be designed as we go through it ...*")

are as follows. Firstly the suitability of the exit off the Roundabout, including in particular the question of whether this should have been designed by way of an adaptation of one or other of the standards produced by the Department for Transport; or whether, instead, given that there is no standard applicable to a PMA, it was appropriate to design the exit and access in accordance with engineering first principles and by reference to the specific circumstances of the case.

- 7.8 Secondly, manoeuvrability within the lorry park, including the extent to which the HA's proposal does or does not compare favourably with the existing situation in this regard.
- 7.9 Thirdly, safety issues arising in connection with the fact that the HA's design requires vehicles to cross the lorry park in order to gain access to the secure site and the land owned by Mr Walmsley.
- 7.10 In the HA's submission, PAF's concerns with respect to the above issues (and other more detailed issues discussed at the Inquiry) are artificial, over-stated, without foundation and forensic. Their real objective is to attempt to compel the Secretary of State to fund their own proposed scheme. This, however, goes far beyond anything which the Secretary of State has a statutory duty to do, and involves a demand that he should do that which he lacks the power to do.

Reasonableness of HA Alternative Access Proposal

- 7.11 The HA's proposal is not only a reasonable alternative to the existing access, but in many respects represents an improvement on it. The key points are highlighted earlier¹⁴³. Further elements of PAF evidence below highlight the reasonableness of the HA proposal.
- 7.12 PAF confirmed the restricted manoeuvrability of the current lorry park, agreeing that it is not presently possible for an extra long vehicle to undertake either a 90 or a 180 degree turn while the bays in the park are occupied.¹⁴⁴ PAF also concurred with the proposition that it was standard practice for communications to take place between lorry drivers, their managers and PAF in order to explain where the lorry driver can manoeuvre and park,¹⁴⁵ Mr Jones (PAF's Highway Safety witness) remarking "*Yeah, where that's possible, yes, yes*". He confirmed that the manoeuvre depicted on HA's drawing number 451/B was not particularly complex, noting instead that it seemed "*quite straightforward*".¹⁴⁶ He gave the same confirmation

¹⁴³ See in particular paras. 4.29-4.47

¹⁴⁴ Mr Jones XX LB, Transcript Day 15, 27 February 2012, p 10, lines 18-22.

¹⁴⁵ Mr Jones XX LB, Transcript Day 15, 27 February 2012, pp 12-13, lines 22-23 and 1-3.

¹⁴⁶ Mr Jones XX LB, Transcript Day 15, 27 February 2012, p 13, lines 1-8.

with respect to the manoeuvre shown on drawing no 453/B.¹⁴⁷ His agreement in this regard was completely contrary to his own original evidence to the effect that vehicle movements on the HA's proposal were contrived and complex, and he merely remarked "*Mm hmm*" when this was pointed out to him.¹⁴⁸

- 7.13 Mr Jones informed the Inquiry that PAF's site was the first lorry park that he had dealt with; and he agreed that there must be lorry parks throughout Great Britain and Europe in which drivers were required to make 90 degree turns, and that there was nothing particularly unusual or complex about such manoeuvres.¹⁴⁹ He agreed that on the current arrangements, as depicted in drawing no 454, when the lorry park is fully occupied movement is very restricted.¹⁵⁰ He agreed that drawing no 458, concerning the HA's proposal, showed a 26.5 m lorry exiting the site on to the public highway in forward gear; and, while he remarked that the picture showed the vehicle encroaching into the in-bound lane on the way out, he also agreed that the highway network itself was not designed to accommodate extra-long vehicles and that precautions had to be made with respect to them.
- 7.14 Mr Jones agreed that a critical element of highway safety, in terms of access and egress, impact on the Roundabout, etc, concerned the numbers of vehicles using the lorry park on a day-to-day basis.¹⁵¹ He himself, however, was not aware of the numbers of vehicles which visit PAF on any particular day, and had not enquired. Consequently he was simply not in a position to make an informed assessment of any hazards and/or risks which the HA's proposal might present, as he effectively agreed.¹⁵²

Detailed Issues

- 7.15 PAF highlight¹⁵³ 17 constraints which any alternative access proposal would need to meet. These are clearly met by the HA's proposal.
- 7.16 Far from presenting problems in terms of visibility, as suggested by PAF¹⁵⁴, the HA's proposal would provide good visibility from all relevant vantage

¹⁴⁷ Mr Jones XX LB, Transcript Day 15, 27 February 2012, pp 14-15, lines 19-24 and 1-2.

¹⁴⁸ As pointed out at Mr Jones XX LB, Transcript 27 February 2012, p 15, lines 6-10.

¹⁴⁹ Jones XX LB, Transcript Day 15, 27 February 2012, pp 15-16, lines 20-24 and 1-7.

¹⁵⁰ Jones XX LB, Transcript Day 15, 27 February 2012, p 17, lines 5-8.

¹⁵¹ Jones XX LB, Transcript Day 15, 27 February 2012, p 23, lines 7-13.

¹⁵² Jones XX LB, Transcript Day 15, 27 February 2012, p 24, lines 20-22.

¹⁵³ OBJ/003/7/1, para 2.32

¹⁵⁴ OBJ/003/1/1 Mr Jones Proof of Evidence

- points. On the HA's proposal¹⁵⁵ the approach into the lorry park is from an elevated aspect and there is extremely good visibility on the ramp. Furthermore the visibility when exiting the depot would be improved, when compared with the current arrangement.
- 7.17 Standards such as, for example, those comprised by the Nottinghamshire County Council Design Standards for Estate Roads¹⁵⁶ ("the 6Cs' Design Guide") are not applicable to a PMA. The access into the lorry park, both existing and proposed, is not and will not be a major industrial access road¹⁵⁷. Instead of applying such standards, therefore, the HA proceeded by applying basic, first principle, engineering standards,¹⁵⁸ having regard to the particular characteristics of the access that fell to be designed and employing professionally qualified engineers with significant pertinent design experience.
- 7.18 The exit off the Roundabout has been properly designed and can comfortably be regarded as safe. The safety auditors who produced the road safety audit¹⁵⁹ identified similar problems to those highlighted by PAF, and were able to make simple recommendations to address them. PAF's attempt to undermine the soundness of the reasoning and conclusions of the authors of this document, on the basis that they were somehow "constrained"¹⁶⁰ or compromised were ill-judged and misplaced. The auditors have serious responsibilities which have direct and significant ramifications for the safety, and even lives, of members of the public. They operate independently from the designers and from the HA itself. The suggestion that they would compromise themselves in the performance of their duties simply for reasons of expediency is completely untenable; it should be rejected.
- 7.19 PAF made unrealistic criticism of the alignment of the proposed access and the potential for glare. However it is clear that the exposure to the sun would be no worse than anywhere else on the network and the situation as regards the proposed access would not be an unusual situation for highway users^{161 162}. A point conceded by PAF's Highway Safety witness (Mr

¹⁵⁵ Transcript Day 1, 8 November 2011, pp 54-55.

¹⁵⁶ OBJ/003/30, App C.

¹⁵⁷ Mr Wildgoose XX JPS, Transcript Day 6, 29 November 2011, p 81, lines 1-13.

¹⁵⁸ Mr Wildgoose XX JPS, Transcript Day 6, 29 November 2011, p 81, lines 14-20.

¹⁵⁹ SD2/2/3, App 2.

¹⁶⁰ Mr Wildgoose XX JPS, Transcript Day 7, 30 November 2011, p 79, lines 13-17.

¹⁶¹ Mr Wildgoose XX JPS, Transcript Day 7, 30 November 2011, p 40, lines 16-19

¹⁶² Mr Wildgoose XX JPS, Transcript Day 7, 30 November 2011, p 41, lines 13-17.

Jones)¹⁶³.

- 7.20 There was a fundamental difference between HA and PAF with respect to the issue of the speed with which vehicles would be likely to exit the Roundabout. PAF's case was to the effect that the exit required to be designed in accordance with a standard, notwithstanding that no standard applies. The HA submit that this is the wrong approach. There is a reason why no standard has been produced with respect to PMAs, and it is simply unhelpful to seek to apply a standard to something with respect to which it has no application.
- 7.21 The correct approach is to rely upon the inherent design parameters which determine the geometry of the Roundabout,¹⁶⁴ as a factor controlling speed.¹⁶⁵ As a result of this, together with the map-type advance sign which the HA proposes should be erected, and good visibility, drivers will exit the Roundabout at appropriate and safe speeds, providing them with adequate time to make a decision as to which route to follow.
- 7.22 The design for the facility is not complicated, and it presents a "relatively simple exercise in manoeuvrability"¹⁶⁶. In the first place, the HA's proposed lorry park is approximately twice the size of the existing facility. This in itself will be an aid to the manoeuvrability of the vehicles within it. It provides for a lorry waiting area, which would serve the same purpose. These are both facets of the HA's proposal which any reasonable lorry park owner might be expected to welcome.
- 7.23 PAF's contention that the manoeuvres that will require to be made in the proposed lorry park are difficult and complicated is greatly to overstate the case. They would be less, not more, complicated than the manoeuvres which are currently required to be undertaken in the existing park in order to park the lorries in the various bays and/or enter and exit the secure site.
- 7.24 As regards the gradient of the field access [6.37], HA would propose a small additional plot of land, via modification to the SCPO (CPO Site Plan 1, Ref 1/1B) and the SSRO (Site Plan 1B Ref 12), to enable the gradient to be shallower¹⁶⁷ and to re-provide appropriate agricultural access. HA are prepared to concede that Sproakes Lane should be stopped-up at the point where it is said to join Mr Lawrence's PMA; this provision may be dealt with

¹⁶³ Mr Jones XX LB, Transcript Day 15, 27 February 2012, pp38-39, lines 23-24 & 1-6.

¹⁶⁴ Mr Wildgoose XX JPS, Transcript Day 7, 30 November 2011, p 65, lines 21-22; and see p 102-103, lines 23-24 and 1-23; and pp 106-107, lines 12-24 and 1-3.

¹⁶⁵ Mr Wildgoose XX JPS, Transcript Day 7, 30 November 2011, p 60, lines 17-24.

¹⁶⁶ Mr Wildgoose XX JPS, Transcript Day 7, 30 November 2011, p 49, lines 4-7.

¹⁶⁷ Mr Nwanodi (TSol) in open session, Transcript Day 18, 20 July 2012, p9, lines 16-24, p10, lines 1-8 & p12, lines 18-24 & p13, lines 6-7.

by way of a minor modification included in the SSRO¹⁶⁸ (Site Plan 1A, Ref 15S). The suggested potential for grounding [6.47] is not accepted. This is a matter that may be dealt with in the detailed design.

- 7.25 These criticisms focus attention on PAF's motivation for pursuing their objection to the HA's proposal, and the forensic nature of their concerns. The evidence presented upon their behalf requires to be viewed in this context. The HA and its witnesses, by contrast, have no "axe to grind". In arriving at the design for the proposed lorry park and access, promoting the draft Orders, and giving evidence in support of the proposed scheme, they are doing no more than performing their public and professional duties with a view to satisfying the requirements of section 125 of the 1980 Act.
- 7.26 Lastly in this regard, the HA continues to rely upon the VISSIM animations, as well as the "Brisbane" video¹⁶⁹, as demonstrative of the fact that its proposed design will work. The VISSIM animations show that vehicles will be able to enter and exit the lorry park without difficulty, and without causing any particular problems for traffic on the Roundabout itself.
- 7.27 The "Brisbane" video shows that congestion does occur on the Roundabout in the presence of an extra large vehicle (accompanied by an escort). This, however, is not a problem. It already occurs, both on Farndon Roundabout and, no doubt, on roundabouts up and down the country. Abnormal loads, by definition, require special measures. Drivers can and will adapt their behaviour to adjust to them. These are all matters of common sense; and, in the HA's respectful submission, when common sense is applied to an assessment of its design proposal, it can rapidly be concluded that it is entirely adequate.
- 7.28 Questions such as those concerning kerbs and petrol interceptors involved non-issues. It was agreed that if it could be demonstrated that such things required to be provided in order to implement a like-for-like replacement for the existing access and/or one which was fit for purpose, then they would be provided¹⁷⁰.
- 7.29 The question of buildability has been addressed and construction options considered; these would entail appropriate temporary measures¹⁷¹.
- 7.30 As regards drainage and flooding, the HA,¹⁷² the Environment Agency¹⁷³

¹⁶⁸ Mr Nwanodi (TSol) in open session, Transcript Day 18, 20 July 2012,, p12, lines 4-15 & Mr Pugh-Smith, p22, lines 13-17 (Inspector's Note; This would formalise a position that is in existence on the ground.)

¹⁶⁹ OBJ/003/66

¹⁷⁰ Mr Bethel XX JPS, Transcript, pp19-20, lines 16-25 and 1-9.

¹⁷¹ HA/45

¹⁷² Mr Wildgoose XX JPS, Transcript Day 6, 29 November 2011, p 61, lines 21-24 and p 62, lines 3-5

(EA) and the Internal Drainage Board (IDB) are all agreed that the effect of the development comprised by the HA's proposals in the area of the flood plain in which they are located will be insignificant¹⁷⁴.

- 7.31 So far as drainage is concerned, HA is confident that the drainage scheme which it has designed will work, and will work within the boundaries of the CPO. There is no suggestion to the contrary from either the EA or the IDB. However in order to address Objectors' concerns regarding the creation of the swale, ditch cleaning and field access construction, two small additional plots of land would be added to the CPO¹⁷⁵ (CPO Site Plan 1 Ref 1/1J & 1/1I). In these circumstances it may be concluded that neither the issue of drainage nor that of flooding provides any reason for the draft Orders not to be made.
- 7.32 In the HA's further submission, PAF's professed concerns with respect to the issues of drainage and flooding provide clear examples of ones which are artificial and forensic. This is clear from the fact that they did not even take the requisite steps to ensure that the EA was consulted when they applied for planning permission for the lorry park in 2007, much less obtain a consultation from them before they actually had the lorry park built.

Rebuttal of Mr Patrick Mercer MP

- 7.33 Mr Mercer stated expressly that he was "*delighted*" with the improvements made to the A46 Trunk Road,¹⁷⁶ including, presumably, Farndon Roundabout. The fact that the MP for the constituency was prepared to give the HA's work a ringing endorsement should be regarded as confirming its professionalism and obvious competence to undertake such works, together with associated works such as the replacement of PMAs and accommodation works.
- 7.34 Mr Mercer also confirmed the point which the HA has repeatedly made, to the effect that PAF's real aim and underlying agenda is to "*future-proof*" their site and provide for the expansion of their business. Thus, as he said in his "Witness Statement", "*... Naturally, as their business increases so does the requirement for these services and the facilities which support them*"¹⁷⁷. In other words, they require bigger and better facilities as their business expands. As Mr Mercer agreed,¹⁷⁸ this statement reflects that to

(the reference here to "Highways Agency" should instead be "Environment Agency").

¹⁷³ Mr Wildgoose XX JPS, Transcript Day 6, 29 November 2011, p 67, lines 16-23.

¹⁷⁴ Mr Wildgoose XX JPS, Transcript Day 6, 29 November 2011, p 62, lines 15-16.

¹⁷⁵ Mr Nwanodi (TSol) in open session, Transcript Day 18, 20 July 2012, p10, lines 12-22.

¹⁷⁶ Mr Mercer MP, X-in-C JPS, Transcript Day 4, 11 November 2011, p 163, lines 12-16.

¹⁷⁷ OBJ/03/5/1.

¹⁷⁸ Mr Mercer MP, XX LB, Transcript Day 4, 11 November 2011, pp 175-176, lines 19-25 and 1-9.

be found in the original version of the Design & Access Statement which PAF submitted in support of their application for planning permission for their proposal: *"With the support of the Local Planning Authority we aim to allow this company to expand within its site and allow for a certain amount of future-proofing ..."*.

- 7.35 In the HA's submission, there can be no doubt but that this remains PAF's aim and underlies their motivation for opposing the HA's proposal and promoting their own alternative proposal instead, which does not sit within the statutory framework. Sensibly, Mr Mercer agreed that the suggestion that the HA should expend public monies for the betterment of PAF's site was something to *"jib at"*¹⁷⁹.
- 7.36 Likewise, Mr Mercer agreed with the suggestion that the HA's objections to accepting the WSP Option C proposal were legitimate, given that it did not fully allow for all of PAF's operations in any event;¹⁸⁰ and he agreed that his representation of what has been said to him by the HA and TSol representatives at the meeting that took place on 15 August 2011 was, or at least could have been, based on confusion on his part¹⁸¹.

Rebuttal of Mr A Morris

- 7.37 Mr Morris did not give any technical evidence. He did provide some information, however, which shed light on the nature and substance of PAF's case. He confirmed, for instance, that at the time when he had the 2007 lorry park constructed, he did not instruct engineering or any other kind of consultants either to design it or to test its design. Rather, it was designed by PAF in-house¹⁸².
- 7.38 Mr Morris went on to say *"Obviously it wasn't drawn on the back of a cigarette packet"*¹⁸³. However, it was readily apparent from his evidence that it was designed in a way which might be described as "casual" and without any input from statutory consultees such as the Environment Agency or the HA. It is plain that PAF did not assess the merits of its own proposal, in terms of its capacity to meet their operational needs, and safety, with anything like the rigour with which it has tested the HA's proposal for the purposes of this Inquiry. It is considerations such as these which lead the HA, yet again, to underline the forensic nature of their concerns.

¹⁷⁹ Mr Mercer MP, XX LB, Transcript Day 4, 11 November 2011, p 177, lines 11-23.

¹⁸⁰ Mr Mercer MP, XX LB, Transcript Day 4, 11 November 2011, pp 178-179, lines 17-25 and 1-3.

¹⁸¹ Mr Mercer MP, XX LB, Transcript Day 4, 11 November 2011, p 179, lines 4-20.

¹⁸² A Morris XX LB, Transcript Day 13, 25 January 2012, pp 19-20, lines 22-24 and 1-5.

¹⁸³ A Morris XX LB, Transcript Day 13, 25 January 2012, p 20, line 9.

- 7.39 Revealing as well was Mr Morris' evidence concerning the role of Catesby in his dealings with it¹⁸⁴. It was perfectly plain from this evidence that PAF and the HA were well on the way to sorting out the differences between them until Catesby intervened¹⁸⁵. It was Catesby who instructed WSP to formulate a design, not specifically to cater for PAF's needs, or with a view to the requirements of section 125 of the 1980 Act, but instead to safeguard their own interests¹⁸⁶. These matters completely give the lie to PAF's repeated contention that the HA's refusal to proceed with Option C arose out of a failure on its part to understand the requirements of its business. The fact is, Option C was not a product generated by those requirements, but to a wholly different agenda. This being so, there is no reason to reach any conclusion other than that the HA has a very good understanding of the requirements of PAF's business.
- 7.40 Mr Morris also confirmed that PAF do in fact book vehicles in to their facility. According to him, they have a daily, weekly and monthly plan for the reception of such vehicles¹⁸⁷. Of course, it is correct that that timetable is capable of being interrupted. However, planning ahead plainly provides them with the opportunity to make arrangements to receive the types and numbers of vehicles that are likely to arrive on any given day. Indeed, given the restrictions on the operation of the current lorry park, it must be essential for PAF to operate in this way. That being so, however, it would plainly be possible for them to continue such arrangements if and when the HA's proposed lorry park were to be built, so as to make any necessary adjustments for the reception of vehicles in the same way.
- 7.41 Mr Morris confirmed that PAF do employ banksmen to deal with vehicles carrying extra long or extra wide loads, both to supervise reversing manoeuvres, and the making of 180 degree turns¹⁸⁸. Again, it would be expected that the same arrangements could continue, thereby alleviating any health and safety concerns arising in connection with the HA's proposals.
- 7.42 Likewise, he confirmed that, in accordance with guidance issued by the Health & Safety Executive,¹⁸⁹ information concerning the layout of PAF's site and the route into the site is set out on their website for the benefit of visiting drivers¹⁹⁰. In addition, they operate a system in which when they

¹⁸⁴ A Morris XX LB, Transcript Day 13, 25 January 2012, pp 60.

¹⁸⁵ A Morris XX LB, Transcript Day 13, 25 January 2012, p 70, lines 18-21.

¹⁸⁶ A Morris XX LB, Transcript Day 13, 25 January 2012, p 74, lines 16-22, p 76, lines 18-24, p 79, lines 9-12.

¹⁸⁷ A Morris XX LB, Transcript Day 13, 25 January 2012, p 154, lines 8-12.

¹⁸⁸ A Morris XX LB, Transcript 25 January 2012, p 156, lines 5-23.

¹⁸⁹ OBJ/003/65/2.

¹⁹⁰ A Morris XX LB, Transcript 25 January 2012, pp 160-161, lines 23-24 and 1-5.

take a booking they "*advise people and give them information*"; while upon arrival drivers go into reception and "*are given a sheet*"¹⁹¹.

- 7.43 All of these steps are ones which one would expect a well-functioning logistics operation to have in place, and would expect to continue to be in place with respect to the HA's proposed scheme. The fact that they are already in place amounts to a complete answer to the concerns expressed by PAF's witnesses as to drivers not knowing which route to follow after exiting the Roundabout, parking diagonally across the lorry park, and so on.
- 7.44 Mr Morris confirmed in cross-examination that he was in fact concerned to "future-proof" his business. He did not deny that point when put to him,¹⁹² and he then went on to say "*Yes, I mean, we've got, you know, we have to obviously build for the future*", albeit that he added that what they were doing was "*minimal*"¹⁹³. In the HA's submission, the latter contention is not credible, given the self-evident scale of Mr Morris' ambitions for his company, as reflected in his previous proposals for Evolution Park and his own present proposals for the ILC. As Mr Morris also said in his evidence-in-chief, the ILC, together with its lorry park, is pivotal to PAF's operation. It is plain that their aim is to expand, and to do so on a grand scale; and this has driven their opposition to the HA's proposals and their attempt to promote their own.

Rebuttal of Mr M R Walmsley

- 7.45 The response to Mr Walmsley's concerns regarding the safety of access to his land through the lorry park is similar to that set out above in paragraphs 4.32-4.41.
- 7.46 The so-called "Walmsley loop"¹⁹⁴ was put forward on the basis that it was a possible alternative, and one which might satisfy Mr Walmsley, such that he might choose to promote it. He has not done so. The design of this "loop" is acceptable. However it is not necessary, given that the original design is entirely adequate.
- 7.47 The HA therefore leaves it to the decision-maker to form his own conclusions with respect to it.

Rebuttal of Mrs D Paver

- 7.48 No technical evidence has been presented by this objector to support the

¹⁹¹ A Morris XX LB, Transcript 25 January 2012, p 161, lines 16-20.

¹⁹² A Morris XX LB, Transcript 25 January 2012, p 173, lines 20-24, and p 174, lines 1-15.

¹⁹³ A Morris XX LB, Transcript 25 January 2012, p 175, lines 1-3.

¹⁹⁴ HA/018 & HA/020 e-mail and drawing regarding the "Walmsley Loop".

contention that vehicles visiting the PAF site would give rise to glare in her property, which is separated from the PAF land by a substantial timber fence¹⁹⁵. The rooms facing the PAF site, including a bedroom, are situated on the ground floor, behind the fence.

- 7.49 Private vehicles may turn round within Mrs Paver's property¹⁹⁶, obviating the need to reverse on to Farndon Road. This re-provision of Mrs Paver's access had been omitted unintentionally from the SSRO plan and would be added as a minor modification¹⁹⁷ (SSRO Site Plan 1B, Ref 11).
- 7.50 The objector's property currently sits adjacent to the existing access to PAF. The HA-proposed access would be significantly further away from No 153 Farndon Road than the existing access. The occupiers of No 153 would experience a reduction in pass-by noise of some 8dB(A) for each vehicle movement¹⁹⁸.
- 7.51 HGV parking bays 6 and 8 would be moved further from the dwelling. The number of bays in closest proximity would decrease from 4 to 3¹⁹⁹.
- 7.52 The proposed yellow hatched area, which would be provided for manoeuvring and marshalling of the large OOG HGVs, would be located in a similar area to current bays 6 to 8. However its use would not be required for the majority of vehicles visiting the site²⁰⁰.

¹⁹⁵ Inspector's Note: During my site inspections I was able to visit Mrs Paver's property (No 153 Farndon Road) and I noted that the window facing the lorry park (a bedroom window) was at ground floor level, behind a timber fence which was approximately 1.5 metres high. A first floor office window faced on to Farndon Road.

¹⁹⁶ HA/019, Drawings illustrating vehicle turning and manoeuvring area at front of No.153 Farndon Rd

¹⁹⁷ Mr Nwanodi (TSol) in open session, Transcript Day 18, 20 July 2012, p12 lines 23-24, p13 lines 1-4

¹⁹⁸ HA/034, Technical memorandum – noise – PAF access

¹⁹⁹ HA/034

²⁰⁰ I Wildgoose XX by Mr Scriven (obo Mrs Paver), Transcript 8 November 2011, pp 65-66

8 CONCLUSIONS

8.1 Bearing in mind the submissions and representations I have reported, I have reached the following conclusions, reference being given in square brackets [] to earlier paragraphs where appropriate.

8.2 In reaching conclusions on the matters I must have regard to the statutory tests with respect to various orders and which I set out below²⁰¹:

- In respect of **The A46 Trunk Road (Newark to Widmerpool Improvement and Slip Roads) Margidunum Roundabout (Detrunking) Order 20--**, such changes to the trunk road network should, bearing in mind the requirements of local and national planning, including the requirements of agriculture, be expedient for the purpose of extending, improving or reorganising the national system of routes for through traffic in England and Wales.
- In respect of **The A46 Trunk Road (Newark to Widmerpool Improvement and Slip Roads) Supplementary (Side Roads) Order Number 1 20--**, there should be, where private means of access are to be stopped up, *either* no reasonable requirement for access to the premises *or* another reasonably convenient access available or provided.
- In respect of **The A46 Trunk Road (Newark to Widmerpool Improvement and Slip Roads) Supplementary Compulsory Purchase Order Number 1 20--**, there should be:-
 - A compelling case for acquisition in the public interest, and
 - Evidence that this justifies interfering with the human rights of those with an interest in the land, and
 - Evidence that the acquiring authority has a clear idea of how the land is to be used, and
 - Evidence that the acquiring authority can show that all necessary resources to carry out its plans are likely to be available in a reasonable time scale, and
 - Evidence that the scheme is unlikely to be blocked by any impediment to implementation.

Legal Submissions

The various submissions reported above in Section 3 are clearly matters of law. I am not a lawyer, however I set out below my views on the issues raised therein to assist the decision-maker.

²⁰¹ Prior to the Inquiry I set out these tests for the parties in Annex A to the Inquiry Procedural Note, INQ-1, [1.3].

Alleged Covert Surveillance

- 8.3 From my examination of all the material I conclude that the data collected do not satisfy the definition of 'personal data' as set out in the Data Protection Act 1998 [3.1, 3.10]. I have seen no evidence that the data collected comprised of anything other than the number, type and direction of travel of traffic using the PAF site and access. It seems clear that personal identification would in any case not be easy from the images exhibited by 'Lorry Counting Camera 1' [3.12-3.13]. To my mind this lends weight to the HA's argument that the data do not meet the requirements set out in *Durant v Financial Services Authority* [3.10]. No evidence has been adduced to show that the data 'related to' a living individual [3.5, 3.14].
- 8.4 However PAF argue that identification of individuals would be possible [3.5]. I am persuaded that even if such identification had been collected and could be construed as 'personal data' then the subsequent processing was lawful and fair as set out in conditions in Schedule 2 to the DPA, in which data for 'research purposes', including statistical purposes, is exempt from data protection principles [3.11]. None of the data protection principles has been contravened in my view.
- 8.5 Flowing from my conclusion that the data collected are not 'personal data' it seems clear that the Information Commissioner's CCTV *Code of Practice* is not applicable [3.1, 3.12]. The HA erected two CCTV cameras to record vehicle and pedestrian movements, including numbers, manoeuvres and conflicts [3.12].
- 8.6 PAF submit that the HA's CCTV cameras amounted to 'covert surveillance' [3.1, 3.2]. In my view even camera CCTV1, the small dome camera, could not be construed reasonably to be calculated to ensure that persons who would be subject to surveillance would be unaware of its presence. To my mind a 'covert' installation would imply that it was hidden from view²⁰²; it was not. Furthermore camera CCTV2 was more readily visible and even less 'covert'. All this is demonstrated by the photographic evidence [3.13].
- 8.7 In view of the above I conclude that the HA did not breach RIPA.
- 8.8 Given my conclusions that the operations did not breach RIPA and that the use of the data did not breach the DPA, that there was no 'covert surveillance', then I accept the HA's point that its conduct in installing or operating the cameras or in collecting, holding or using the data did not contravene the ECHR Article 8 [3.8, 3.14].
- 8.9 I have concluded that there has been no breach of DPA, that the data collection did not breach RIPA and that it did not amount to 'covert surveillance'. Consequently I conclude that the traffic count information

²⁰² *Covert. adj. - secret or disguised* (The Concise Oxford Dictionary)

collected in the exercise involving cameras CCTV1 & 2 is admissible as evidence in this Inquiry [3.7, 3.9, 3.15].

The Question of the PAF Alternative

- 8.10 The parties agree that the '*no reasonable requirement for access to the premises*' element of the statutory test is not an option [3.17]. All the properties served by the existing PMA, which is to be stopped-up, require continued access.
- 8.11 In my view there is some force in the HA's argument that the consideration of '*another*' means of access must relate back to the *other* access; that is the existing means of access. This is underpinned by the Calico Quays judgement [3.18-3.19] '*...one can have regard to what existed before...*'. Furthermore I do not consider that the second sentence of paragraph 45(ii) of this judgement, put forward by PAF, undermines this view. It highlights the point that '*...it is reasonable to expect the new access to provide a similar facility ...*' [3.38].
- 8.12 To my mind this supports the HA's submission that the s.125(3)(b) test does not require that the substitute PMA should be an improvement upon the existing PMA [3.18, 3.40]. For the same reasons the PAF argument that its alternative can also serve as a comparator [3.40] does not flow from the Calico Quays case.
- 8.13 The statutory test is clear; it seeks '*another reasonably convenient*' access to serve the premises. The wording of the test, by the use of the word '*another*', implies that the existing means of access is '*reasonably convenient*' [3.18] and thus may form a basis upon which to assess a proposed replacement PMA.
- 8.14 I turn then to the question of '*the premises*'. The HA's proposal would serve the existing premises which, given the wording of the s.125(3)(b) test, seems to be the requirement of any replacement PMA. It would provide a replacement PMA to the PAF site and to other landowners served by the existing PMA [3.20].
- 8.15 The proposed PMA submitted by PAF forms part of an application for outline planning permission [1.13] for further development of the ILC [see Inspector's Note prior to 3.16]. Whilst this would include the existing '*premises*' [3.45(4)], it would extend to further proposed development. However by the close of the Inquiry there was no formal grant of planning permission for such further development [6.61]. However I note that PAF confirm that '*the premises*' must include those for which there is a lawful use [3.42].
- 8.16 I note PAF's submission that the proposed development comprises divisible elements and that the scheme could be constructed in a phased manner [3.45(5)]. However I am not persuaded that this would be in accord with the spirit of the test; the PAF proposal would be a new PMA to serve not

only the existing premises but also extended facilities, which are not yet lawfully permitted.

- 8.17 Whilst I accept that the PAF proposal would provide a substitute for the existing route [3.48], it would provide so much more than that which is legitimately required by the statute. This consideration also leads me to the view that it could not be considered as a '*modification*' to the HA's published scheme for this PMA [3.27].
- 8.18 For all these reasons, and having regard to all other matters raised in this connection by PAF, I conclude that the PAF proposal does not constitute an alternative proposal for the purpose of the procedures and orders currently under consideration.

EIA Considerations

- 8.19 PAF draw attention to the issues of re-screening where an extension to a project that is an EIA development is proposed and secondly, reasons and need for seeking a negative screening opinion. Following the cases of *Baker* and *Mellor* the Government issued replacements for the 1998 EIA Regulations in August 2011, which seek to ensure that an EIA should consider the cumulative effects of changes or extensions to a project [3.61-3.63].
- 8.20 However the Regulations applicable to the A46 Scheme are the Highways (Assessment of Environmental Effects) Regulations 1990 (*The Highways Regulations*) and these were not amended in a comparable manner to the 1998 EIA Regulations [3.64][3.74].
- 8.21 I am satisfied that it was not necessary for the HA to produce a screening opinion. It carried out an assessment of the impacts of the SSRO scheme which enabled it to reach a view that the changes proposed would not have significant adverse effects [3.81-3.84]. PAF have not faulted this assessment [3.84].
- 8.22 I note that the Highways Act 1980 contains no express provision allowing a person to request the Secretary of State to issue a screening direction [3.108].
- 8.23 Whilst I note that PAF argue that '*the effect of Baker*' is that the project must have fallen within Annex II [3.97], the objector recognises the gap in the provisions of the Highways Act 1980, post *Baker* [3.100].
- 8.24 I conclude that as the legislative framework stands the promoter did not act unlawfully in not seeking a screening opinion.
- 8.25 I turn now to consider the HA's PMA scheme. In these conclusions I address the matters raised by the objectors in so far as they go to the statutory tests and bearing in mind the conclusions I have already formed

above [8.2-8.24].

8.26 I turn now to my conclusions on other matters raised by the objectors.

The Needs of the Business

8.27 There is no doubt in my mind that the PAF Group provides an excellent skilled service to its customers in packing and shipping large and high-value goods. It is clearly a successful growing business [6.9-6.10].

8.28 The growth of that business is being addressed partly through application for outline planning permission to NSDC for proposals which include a realigned access [3.27, 3.45(5)]. A process which was running parallel to the Inquiry and which, at the Inquiry's conclusion, was unresolved [6.21].

8.29 In my view the economic needs of the business cannot be confused with, or addressed by, the task with which the decision-maker is taxed; that is the question of whether or not the proposed PMA would provide "*another reasonably convenient*" access to the ILC premises and given that the reason for the Order is the stopping-up of the existing PMA because of Trunk Road works [7.2-7.3].

8.30 The objection of PAF stresses that the HA's proposal would not be "*reasonably convenient*" [6.13] and I deal with the various strands of this argument elsewhere. However in my view the needs of the business to expand should not be addressed through the statutory process of PMA replacement which is set in train, through public funding, by public highway improvements [7.2]. It should be addressed through the planning process.

Mr Patrick Mercer MP

8.31 Mr Mercer's contribution was helpful in setting the background to the economic success of PAF and its importance as a local business and employer [6.62-6.63]. It highlighted the need to resolve this issue quickly as underlined by Mr Mercer's attempts to mediate between the parties [6.64]. I set out my conclusion below regarding the pressing need to stop-up the existing PMA [8.33].

8.32 However there should be no solution which sits outside the statutory framework or which provides betterment for PAF's site at public expense. Mr Mercer did not object to these conclusions [7.35].

The Published HA PMA Scheme

8.33 There is a clear need to stop-up the existing PMA, no party suggested anything to the contrary. I conclude that this is an urgent and compelling requirement, particularly since the opening of the A46 Improvement Scheme, and is in the clear public interest [4.28], given the safety issues that may arise at the junction of this existing PMA with Farndon Road and

the potential consequent impact on users of the public highway in that area [4.26-4.27].

- 8.34 Furthermore there is no dispute that the stopping-up of the existing PMA at its junction with Farndon Road would necessitate the provision of an alternative means of access to those properties served by this PMA [3.17][4.5-4.6, 4.8, 4.10-4.11][8.10].
- 8.35 It is the route and layout of the HA's proposed PMA that is at issue, and particularly its perceived potential impact on the business operations of PAF and on other affected property owners served by the existing PMA [4.11, 4.14-4.15][6.2].

Standards

- 8.36 I am satisfied that it is not necessary or appropriate to employ published standards that are related to the design of the public highway for the design of PMAs. They are not applicable [7.7, 7.20]. This case relates to a PMA not a public highway. I heard nothing to challenge convincingly the ability of the HA's experienced qualified engineers to design a PMA which would take account of its proposed use [6.15-6.17][7.17].

Impediments

- 8.37 PAF initially identified five potential impediments to the provision of HA's proposed PMA; (1) safety concerns; (2) EIA considerations; (3) flood risk issues; (4) pollution control measures; (5) construction achievability [6.22].
- 8.38 I have addressed EIA considerations above [8.19-8.24].
- 8.39 As regards flood risk I note that the objector, PAF, accepts that this issue has been addressed such that it appears capable of being surmounted [6.23]. This is underlined by the submissions that the EA and the IDB have accepted that the effect of the development comprised by the HA's proposal in this area of the flood plain would be insignificant [7.30-7.31]. However there would be limited space and I conclude that it would be necessary and appropriate to acquire two additional elements of land (CPO Site Plan 1; 1/1J & 1/1I) to provide within the CPO additional working space to assist with the creation of the swale and drainage ditch cleaning [6.23 & footnote 96]. I am satisfied that acceptance of these modifications to the CPO would not prejudice any party.
- 8.40 The pollution control issues are addressed by HA's acceptance, in principle, of the need to provide petrol interceptors [6.23][7.28].
- 8.41 I am content that a scheme for construction of the PMA and the associated replacement lorry park may be devised, with appropriate temporary measures [6.54-6.55][7.29].

8.42 I turn now to consider safety issues raised by the objectors.

Safety Audit

8.43 PAF question the adequacy and independence of the road safety audit process. However, no convincing evidence was submitted to support the contention that the auditors were not independent and I therefore dismiss this assertion [6.29-6.34][7.18]. The audit highlighted a similar concern that PAF put forward, which I note may be addressed by appropriate measures which would not affect these Orders [4.42][7.18].

Access Alignment & Location

8.44 It seems to me that the safety concerns arising out of access alignment and location issues raised by PAF [6.35-6.38] are critically related to and linked with available visibility, approach speed and level of use of the PMA; in other words to the time and ability which drivers would have to make appropriate decisions; matters that were all aired in some detail in the Inquiry.

8.45 I note that the roundabout has been designed to appropriate DMRB standards and the required visibility of 70 metres is available [4.33]. Furthermore this design to standard includes the radius of exit into the PMA as it leaves the roundabout [7.20-7.21]. I conclude that these design elements would combine to ensure that vehicles leave the roundabout at appropriate speeds [7.21-7.22]. I give less weight to PAF's insistence that vehicle speeds leaving the roundabout into the PMA would be high as this submission is informed by speed measurements carried out over what I consider to be an inappropriate sector of the roundabout [6.35, & Inspector's Note footnote 113].

8.46 Vehicles approaching and on the proposed PMA would have good visibility of the access ramp and lorry park because of the elevated position of the roundabout and PMA entrance compared with the adjacent land [7.16]. Critically I judge that drivers would get a thoroughly adequate view of the access from the roundabout and vice versa. This intervisibility would address concerns regarding potential vehicle conflicts on the ramp, including those at the minor junction to the farm [6.36-6.38], in my view drivers would be able to see approaching vehicles [7.16] and wait in the lorry park or in the access road. As regards suggested difficulties for agricultural vehicles [6.37], I consider that the relaxation in slope of the access and the consequent requisite acquisition of additional land proposed by HA during the Inquiry (CPO Site Plan 1 Ref 1/1B) would address this concern [7.24], although I note that representations on this point were not made by the farmer. From all that I have seen I am satisfied that the acquisition of this element of land would not prejudice any other party.

8.47 Traffic flows into the ILC are quoted in the range 75-200 (300) vehs/day [4.25][6.11] although PAF offer no evidence to support the highest value in the range (300 vehs/day) [see footnote 78]. Furthermore PAF could offer no independent data on classified vehicle movements into and out of their

site [4.44, 7.14]. HA also set out the typical AM and PM peak hour flows (20 & 12 vehs/hour respectively) [4.25]. I neither heard nor saw any compelling evidence to support the concerns of PAF regarding numbers of abnormal loads all potentially arriving (or leaving) at the same time [6.36]. Such arrival patterns could not be accommodated with the existing arrangements [4.18, 4.36].

- 8.48 In my view the data reported above represent relatively low traffic flows which would be unlikely to lead to congestion or queueing on the access ramps, their approach or the approach to the Farndon roundabout [4.34].
- 8.49 PAF suggest that the presence of a pedestrian and cycle route crossing the access road would complicate matters but do not support this argument with data [6.35]. This situation is no different to other similar crossings of side roads; however this access would be lightly trafficked [4.25]. I attach little weight to this issue.
- 8.50 PAF dismiss the notion that the proposed access layout could be adequately signed [6.35]. However it seems to me that it would be possible to design, and reasonable to erect, relevant signing, which would indicate the junction layout and spacing, and which could sit in readily visible and appropriate locations as indicated by HA [4.32, 7.21].
- 8.51 I conclude that, given the adequate visibility characteristics, the likely low traffic flows and speeds and the potential signing, highlighted above, then the matter of access alignment and location would not be an unacceptably harmful consideration and it should not weigh significantly against the adoption of the HA's proposed PMA scheme as an impediment.

Access Issues (ii) Lorry Park

- 8.52 PAF suggest that a number of vehicles would all enter the same area without guidance, routeing or clear priorities [6.39]. However in my view the HA proposal would be no worse than the current situation in this respect [4.37, 4.47]. I heard no evidence that the current traffic flows would increase significantly. Furthermore I have neither seen nor heard objective reasons in evidence as to why business planning and load and lorry park management should change significantly from the current arrangements [7.40-7.43] and why therefore there should be any significantly increased operational costs [6.13].
- 8.53 Drivers approaching the lorry park from the elevated access would have an early view of the lorry parking bays and would be able to assess the most appropriate bay in which to park [7.16]. The guidance, routeing and priorities could be established exactly as they currently are, but with improved unimpeded access for approaching drivers [4.19] with much clearer and earlier views of the parking area [7.16].
- 8.54 In a similar vein the issue of HGV movements within the lorry park [6.39] would be similar to what pertains at present. However the proposed lorry park would be much larger than the existing facility [4.38].

- 8.55 I share the view expounded by HA, and partially conceded by PAF's Highway Safety witness, that it would not be unusual or unduly complex for HGV drivers to use and park in lorry parks with 90° bays as is proposed here [6.41][7.12-7.13, 7.22-7.23]. Again, a matter assisted by the visibility and traffic flow characteristics alluded to earlier and all these facts lead me to the view that the future situation should be less, not more, complicated than the existing situation [7.23].
- 8.56 Other vehicles (e.g. cars) entering and crossing the lorry park would be required to give priority to HGV movements at entry [4.39], not an unusual, or in my view onerous or unsafe situation, given the adequate visibility proposed.
- 8.57 I attach little weight to PAF's argument regarding complications if all 9 lorry parking bays were simultaneously occupied by 30 metre vehicles [6.42]. Firstly this situation could not arise with PAF's current arrangements which provide 9 bays which can only accommodate HGVs up to 18 metres long [4.18]. Secondly, I received no data from PAF which indicated the likely risk of this situation arising [4.43-4.44]. Thirdly, HA provided information that such a situation would be unlikely to arise, based on Nottinghamshire Police data on abnormal load movements in their area [4.45].
- 8.58 Given all the above I consider that the proposed lorry park and PMA would be a reasonably convenient replacement for the existing.

Access Issues (iii) Abnormal Loads

- 8.59 PAF focus upon the potential conflict between two abnormal loads attempting to pass each other at the site entrance or the access ramp [6.43-6.44, 6.46].
- 8.60 There are a number of considerations to take into account on this issue. The provision of the proposed PMA and lorry park would not physically affect PAF's day to day ability to manage load handling and movements because a dedicated lorry park would still be provided adjacent to the ILC, in a similar location to the existing facility [7.43].
- 8.61 Furthermore the proposed lorry park would provide advantages over the existing arrangement [4.39].
- 8.62 The proposal would provide a lorry park which would be more than twice as big as the current arrangements [4.38] with appropriate space for manoeuvring of abnormal loads and would also include a dedicated waiting area [4.37, 4.39].
- 8.63 Moreover the proposal would overcome the current situation whereby abnormal loads may have to wait in the carriageway of Farndon Road whilst the entrance becomes clear [6.45].
- 8.64 Given all these considerations together with the improved visibility aspects

highlighted above [8.46] I conclude that the proposal would provide a reasonable replacement for the existing facilities with respect to the provisions for abnormal loads.

- 8.65 I am satisfied that the issue of grounding [6.47] may be addressed as a matter of detailed design within the parameters of the published orders [7.5, 7.24].
- 8.66 PAF's concerns regarding abnormal loads potentially overhanging the roundabout splitter island [6.44] highlight the fact that these vehicles do not readily fit within existing normal highway constraints and limitations, hence the term '*abnormal vehicle*'. This situation arises with abnormal loads elsewhere on the highway network [7.26-7.27]. Consequently in my view it should not constitute a weighty argument against the proposed PMA.

Lack of Health & Safety Assessment

- 8.67 I have set out above my conclusions on the detailed objections to the HA's PMA and lorry park. It would, in my view, provide a facility that was at least equal to, and would provide some advantages over, the existing facility [8.51, 8.58, 8.61-8.64].
- 8.68 I did not see any Health & Safety Assessment that PAF carried out for the existing PMA and lorry park [7.37] but given all the above considerations I fail to see why the HA's proposal would fail such an assessment or why it should have negative insurance implications [6.25-6.28].
- 8.69 In view of these considerations I attach little weight to the absence of any Health & Safety Assessment.

Mr M R Walmsley

- 8.70 Whilst Mr Walmsley's land is currently used by PAF it could revert to a use promoted by him [6.65-6.67]. The projected traffic flow into this land of some 20 vehicles/day [6.66] is not high and does not alter my conclusions on the access and lorry park set out above [8.51, 8.58].
- 8.71 HA tendered a potential modification to its scheme ("the Walmsley loop") which Mr Walmsley chose not to promote [7.46]. HA did not pursue this scheme. Furthermore PAF expressed a number of concerns with this suggested modification [6.56-6.58]. In view of this and all the above considerations I conclude that this alternative should not be pursued.

Mrs D Paver

- 8.72 I saw no conclusive objective evidence that glare from vehicle headlights would cause demonstrable harm to the occupants of No 153 Farndon Road. The ground floor bedroom window facing the PAF site is largely masked by a timber fence [6.49, 6.68][7.48]. Furthermore I saw no evidence that the

ILC is used extensively during hours of darkness.

- 8.73 I note that vehicles may turn within Mrs Paver's property and I accept that a minor modification would be required to address a drafting oversight on the SSRO Plan [6.69][7.49]. I am further satisfied that this modification would not disadvantage anyone. I also note the technically uncontested evidence which rebuts the objector's concerns regarding noise and disturbance [6.50, 6.70][7.50-7.52]. In view of the above I attach little weight to this objection.

Other Matters

- 8.74 I conclude that it would be appropriate and necessary to include a modification to the SSRO (SRO 15S) to formalise the stopping-up of Sproakes Lane [5.2][7.24]. This modification would not prejudice any party.
- 8.75 I heard no representation or objections with respect to the draft Margidunum Roundabout (Detrunking) Order [1.2][4.7] and I conclude that this Order may be made.
- 8.76 PAF suggested that the area of the proposed lorry park should be included in the SRO and this is indicated on Site Plan 1B (labelled 'HA No.3'). I do not accept that this should be the case, it will not form part of an improved highway, it would be accommodation works. The correct plan to refer to is therefore Site Plan 1B labelled 'HA No.2', which excludes this area from proposed improved highways delineation.

Overall Conclusions

- 8.77 I conclude that the proposed PMA put forward by PAF may not be considered as a modification to the HA's published scheme and does not constitute an alternative for the purposes of the procedures and orders under consideration.
- 8.78 I conclude that the "Walmsley Loop" proposal should not be pursued.
- 8.79 I am satisfied that the collection of traffic data by HA did not constitute covert surveillance and that this data may be admitted in evidence. Furthermore this process did not contravene the ECHR Article 8.
- 8.80 As regards EIA, I conclude that HA did not act unlawfully in not seeking a screening opinion.
- 8.81 I am satisfied that there is a clear and compelling need in the public interest to stop-up the existing PMA and to provide another reasonably convenient access; in view of all the above I conclude that the HA's proposal meets this need and accords with this test.

- 8.82 I conclude that the objectors' suggested impediments to and arguments against the HA's proposed PMA should carry little weight, subject to the adoption of modifications to the SSRO and SCPO highlighted above and which I have concluded are necessary.

The Orders

Conclusions with regard to the Detrunking Order

- 8.83 I am satisfied that the proposed changes to the trunk road network would, bearing in mind the requirements of local and national planning, including the requirements of agriculture, be expedient for the purpose of improving the national system of routes for through traffic in England²⁰³.

Conclusions with regard to the Supplementary Side Roads Order

- 8.84 I am satisfied that the proposals for the stopping up of private means of access in this Order are necessary on highway safety grounds.
- 8.85 With regard to the private means of access, the replacement means of access still required would be a reasonably convenient access and would become available before the stopping up takes place²⁰⁴.
- 8.86 I can see no reason why the Supplementary Side Roads Order should not be made, subject to the modifications set out in Document HA/104 (modified). These modifications would not prejudice any party.

Conclusions with regard to the Supplementary Compulsory Purchase Order

- 8.87 I have closely studied the schedule and plans accompanying the Compulsory Purchase Order, as modified, and can find no evidence of any proposal to purchase land or rights other than those necessary to implement the scheme, and furthermore there have been no assertions to the contrary other than those that I have considered and reported above.
- 8.88 I am therefore satisfied that the Order addresses no more land than is necessary, and that the authority has a clear idea of how it intends to use the land. Budgetary provision has been included within the A46 Scheme budget, and if the Orders are made work would start without delay, for which reason I am also satisfied that no land is proposed to be acquired ahead of time.
- 8.89 From all the evidence before me I am satisfied that the scheme is unlikely

²⁰³ Highways Act 1980, Section 10(2)

²⁰⁴ Highways Act 1980, Section 125(3)

to be blocked by any impediment to implementation.

- 8.90 In my view there is a compelling case for the scheme to be implemented in order to overcome safety issues at the junction of the existing PMA with Farndon Road and to provide reasonable and safe access to affected land and property owners. Therefore, having regard to ODPM Circular 06/2004, I am persuaded that there is a compelling case for the land's compulsory purchase in the public interest which justifies interfering with the human rights of those with an interest in the land. Loss of any interest could be met by compensation.

9 RECOMMENDATIONS

I recommend that:

- 9.1 The A46 Trunk Road (Newark to Widmerpool Improvement and Slip Roads) Margidunum Roundabout (Detrunking) Order 20.. be made.
- 9.2 The A46 Trunk Road (Newark to Widmerpool Improvement and Slip Roads) Supplementary (Side Roads) Order Number 1 20.. be modified as set out in inquiry document HA/104 (modified) and that the order so modified be made.
- 9.3 The A46 Trunk Road (Newark to Widmerpool Improvement and Slip Roads) Supplementary Compulsory Purchase Order Number 1 20.. be modified as set out in inquiry document HA/104 (modified) and that the order so modified be made.

R M Barker

INSPECTOR

APPENDICES

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B DOCUMENTS

HIGHWAYS AGENCY – SUPPLEMENTARY DOCUMENTS (SD/...)

2011 draft Supplementary Orders

SD001	The A46 Trunk Road (Newark to Widmerpool Improvement and Slip Roads) Supplementary Compulsory Purchase Order Number 1(MP No.) 20
SD002	The A46 Trunk Road (Newark to Widmerpool Improvement and Slip Roads) (Supplementary Side Roads) Number 1 Order 20
SD003	The A46 Trunk Road (Newark to Widmerpool Improvement and Slip Roads) Margidunum Roundabout (Detrunking) Order 20

2009 Orders and Environmental Statement

SD004	The A46 Trunk Road (Newark to Widmerpool Improvement and Slip Roads) Compulsory Purchase Order (MP No. 72) 2009
SD005	The A46 Trunk Road (Newark to Widmerpool Improvement and Slip Roads) Order 2009
SD006	The A52 Trunk Road (A46 Newark to Widmerpool Improvement and Slip Roads) Order 2009
SD007	The A46 Trunk Road (Newark to Widmerpool Improvement and Slip Roads) (Detrunking) Order 2009
SD008	The A52 Trunk Road (A46 Newark to Widmerpool Improvement and Slip Roads) (Detrunking) Order 2009
SD009	The A46 Trunk Road (Newark to Widmerpool Improvement and Slip Roads) (Side Roads) Order 2009
SD010	Inspector's Report of the 2007 Public Inquiry to the Secretary of State for Communities and Local Government and the Secretary of State for Transport
SD011	Secretaries of State Decision Letter to the 2007 Public Inquiry- 18 December 2008
SD012	Non Technical Summary - January 2007
SD013	Environmental Statement- January 2007-Volume 1
SD014	Environmental Statement- January 2007-Volume 2
SD015	Environmental Statement- January 2007-Volume 3
SD016	Environmental Statement Addendum – March 2007
SD017	Environmental Statement Addendum – March 2007 – Figures
SD018	Environmental Statement Addendum No 2, September 2009- Changes since 2007
SD019	Statement of Case August 2011
SD020	Ancient Monuments and Archaeological Areas Act 1979

SD021	Acquisition of Land Act 1981
SD022	Countryside Act 1968
SD023	Countryside and Rights of Way Act 2000
SD024	Control of Pollution Act 1974
SD025	Compulsory Purchase Act 1965
SD026	Environmental Protection Act 1990
SD027	Environment Act 1995
SD028	Highways Act 1980
SD029	Land Compensation Act 1973
SD030	Planning and Compensation Act 1991
SD031	Planning (Listed Buildings and Conservation Areas) Act 1990
SD032	Planning & Compulsory Purchase Act 2004
SD033	Road Traffic Regulation Act 1984
SD034	Town and Country Planning Act 1990
SD035	Highways (Inquiries Procedure) Rules 1994 (S.I 3263)
SD036	Compulsory Purchase by Ministers (Inquiries Procedure) Rules 1994 (SI 3264)
SD037	Secretary of State Traffic Orders (Procedure) England & Wales 1990 (SI 1656)
SD038	Highways (Assessment of Environmental Effects) 1988 (SI 1241)
SD039	Highways (Assessment of Environmental Effects) 1994 (SI 1002)
SD040	Highways (Assessment of Environmental Effects) 1999 (SI 369)
SD041	Noise Insulation Regulations 1975 (SI 1763)
SD042	Noise Insulation (Amendment Regulation) 1988 (SI 2000)
SD043	Groundwater Regulations 1998 (SI 2746)
SD044	The Conservation (Natural Habitats) Regulations 1994 (SI 2716)
SD045	The Conservation (Natural Habitats) 1994 Amended England Regs 2000 (SI 192)
SD046	Air Quality Standards Regulations 1989 (SI 317)
SD047	Land Drainage Act 1991
SD048	Land Drainage Act 1994
SD049	Noise and Statutory Nuisance Act 1993
SD050	Protection of Badgers Act 1992

SD051	Water Resources Act 1991
SD052	Water Act 2003
SD053	Wildlife & Countryside Act 1981
SD054	Wild Mammals Protection Act 1996
SD055	Surface Waters (River Ecosystem Regs) 1994 (SI 1057)
SD056	Water Supply (Water Quality) Regulations 2000 (SI 3184)
SD057	Air Quality Regulations England 2000 (SI 928)
SD058	Air Quality Limit Values Regulations 2003 (S.I 2121)
SD059	Air Quality Limit Values (Amendment Regulations) England 2004 (SI 2888)
SD060	Hedgerow Regulations 1997 (SI 1160)
SD061	A New Deal for Trunk Roads in England – July 1998
SD062	A New Deal for Transport: Better For Everyone 1998
SD063	Transport 2010 - The 10 Year Plan
SD064	The Future of Transport: A Network for 2030
SD065	A New Deal for Trunk Roads in England: Guidance on the New Approach to Appraisal
SD066	A New Deal for Trunk Roads in England: Understanding the New Approach to Appraisal
SD067	Delivering Better Transport: Progress Report- (DfT 2002)
SD068	A Better Quality of Life-Strategy for Sustainable Development for the UK (DETR 1999)
SD069	Our Countryside the Future: A Fair Deal for Rural England (DETR 2000)
SD070	Biodiversity Impact: A Good Practice Guide for Road Schemes (July 2000)
SD071	Landscape Character Assessment- Guidance for England & Scotland (2002)
SD072	Air Quality Strategy for England, Scotland, Wales & Northern Ireland (DETR 2000)
SD073	Air Quality Strategy for England, Scotland, Wales & Northern Ireland (Addendum)
SD074	Planning Policy Statement 1: Delivering Sustainable Development
SD075	Planning Policy Guidance 2: Green Belts
SD076	Planning Policy Statement 3: Housing
SD077	Planning Policy Guidance 4: Industrial & Commercial Development & Small Firms
SD078	Planning Policy Statement 6: Planning for Town Centres
SD079	Planning Policy Statement 7: Sustainable Development in Rural Areas
SD080	Planning Policy Statement 9: Biodiversity & Geological Conservation

SD081	Planning Policy Statement 11: Regional Spatial Strategies
SD082	Planning Policy Statement 12: Local Development Frameworks
SD083	Planning Policy Guidance 13: Transport: (March 2001)
SD084	Planning Policy Guidance 14: Development on Unstable Land
SD085	Planning Policy Guidance 15: Planning and the Historic Environment
SD086	Planning Policy Guidance 16: Archaeology and Planning
SD087	Planning Policy Guidance 17: Sports and Recreation
SD088	Planning Policy Guidance 21: Tourism
SD089	Planning Policy Guidance 24: Planning and Noise (July 1994)
SD090	Planning Policy Guidance 25: Development and Flood Risk
SD091	Guidance on the Methodology for Multi Modal Studies- Volume 1, March 2000
SD092	Guidance on the Methodology for Multi Modal Studies- Volume 2, March 2000
SD093	Biodiversity: The UK Action Plan 1994
SD094	Biodiversity: The UK Steering Group Report, Volume 2 Action Plan 1995
SD095	Trunk Roads and the Generation of Traffic (The Standing Advisory Committee on Trunk Road Assessment 1994)
SD096	Transport and the Economy (The Standing Advisory Committee on Trunk Road Assessment 1999)
SD097	Design Manual for Roads and Bridges: www.dft.gov.uk/ha/standards/dmrb/index.htm
SD098	75/440 EEC Council Directive of 16 June 1975 concerning the quality required of surface water intended for the abstraction of drinking water in the Member States
SD099	76/160 EEC Council Directive of 8 December 1975 concerning the quality of Bathing water
SD100	78/659 EEC Council Directive of 18 July 1978 on the quality of fresh waters needing protection or improvement in order to support fish life
SD101	79/409 EEC: Council Directive on the Conservation of Wild Birds
SD102	80/68 EEC Council Directive of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances
SD103	85/337 EEC Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment
SD104	91/441 EEC Council Directive of 26 June 1991 amending Directive 70/220/EEC on the approximation of the laws of the Member States relating to measures to be taken against air pollution by emissions from motor vehicles
SD105	91/692 EEC Council Directive of 23 December 1991 standardizing and rationalizing reports on the implementation of certain Directives relating to the environment
SD106	92/43 EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora

SD107	97/11 EC Council Directive of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment
SD108	2000/60 EC Directive of 23 October 2000 establishing a framework for community action in the field of water policy
SD109	EU Directive 2002/49/EC Relating to the Assessment and Management of Environmental Noise from Transport and Industry
SD110	Ramsar Convention on Wetlands (1971)
SD111	Bern Convention on the Conservation of European Wildlife and Natural Habitats (1979)
SD112	Bonn Convention on the Conservation of Migratory Species of Wild Animals (1979)
SD113	Convention on Biological Diversity (1992)
SD114	D105795/6/038 Farndon Footpath/Cycleway Options Report
SD115	D105795/6/039 Flood Compensation Report
SD116	3A10/204/5373 Flood Modelling at the Confluence of the Rivers Trent and Devon - KBR (Jun 04)
SD117	3A10/204/9060 Flood Modelling at the Confluence of the Rivers Trent and Devon - Phase 2: Mitigating Measures - Addendum on Revised Modelling - KBR (Nov 05)
SD118	D105795/6/004 Drainage Report
SD119	D105795/6/027 Farndon Junction Options Report
SD120	D105795/6/030 Departures from Standards Report
SD121	D105795/6/032 Stage 3 Scheme Assessment Report
SD122	D105795/6/034 Order Publication Report (CD)
SD123	D105795/7/29/AIP/1 AIP Farndon Roundabout Underpass (CD)
SD124	Control of Pollution (Amendment) Act 1989
SD125	NMU Audit report (CD)

Secondary Legislation

SD126	The Water Environment (Water Framework Directive) (England & Wales) Regulations 2003
SD127	Pollution Prevention Control (England and Wales) Regulations 2000 as amended
SD128	The Town and Country Planning (General Development Procedure) Order 1995

Planning Policy

SD129	Newark and Sherwood District Council Local Plan 1999. (Available at http://persona.uk.com/orga46newark/deposit_documents.htm (no. DD89))
SD130	Nottinghamshire County Council - Nottinghamshire Structure Plan February 2006 (This document is available on request)

Standards and Guidance

SD131	Not used
SD132	ODPM Circular 06/04 Compulsory Purchase Orders (Original No. DD152)
SD133	Highways Agency Biodiversity Action Plan (2003)
SD134	Towards a balance with nature: Highways Agency Environmental Strategic Plan (1999)
SD135	IEEM (2006) Guidelines for Ecological Impact Assessment in the United Kingdom
SD136	Policy & Practice for the Protection of Groundwater, Environment Agency 1998 (Available at http://persona.uk.com/A46newarkreopened/supp-core-docs.htm (No. SDD 45))
SD137	Not used
SD138	Flood Estimation Handbook. (Available at http://persona.uk.com/orga46newark/deposit_documents.htm (no. DD182))
SD139	BRE Digest 365 Soakaway Design Highway Runoff (This document is available on request)
SD140	Water and the Environment 7/89 (This document is available on request)
SD141	Environmental Statement Scoping Report
SD142	Environmental Addendum to Stage 2 Report
SD143	Outline Construction Environmental Management Plan
SD144	PA Freight Statement of Case
SD145	PA Freight Alternative Submission
SD146	Post-Public Inquiry Economic Appraisal Report, Issue 1, dated April 2009 [note: this was SDD6 at the 2010 PI]
SD147	The Road Vehicles (Construction and Use) Regulations 1986

HA - Proofs of Evidence

SD2/1/1	Geoff Bethel - Proof of Evidence
SD2/1/2	Geoff Bethel - Summary of Proof
SD2/2/1	Ian Wildgoose - Proof of Evidence - Engineering Summary
SD2/2/2	Ian Wildgoose - Proof of Evidence - Engineering
SD2/2/3	Ian Wildgoose - Proof of Evidence - Engineering Appendices
SD2/3/1	David Elliot - Proof of Evidence - Traffic Summary
SD2/3/2	David Elliot - Proof of Evidence - Traffic

SD2/3/3	David Elliot - Proof of Evidence - Traffic Appendices
SD2/4/1	Alasdair MacDonald - Proof of Evidence – Logistics
SD2/4/2	Alasdair MacDonald - Proof of Evidence - Logistics Summary
SD2/4/3	Alasdair MacDonald - Proof of Evidence - Logistics Appendices
HA/001	HIGHWAYS AGENCY – Other Documents Submitted Traffic Figures regarding PA Freights premises, dated 26.10.11 from TSol
HA/002	TSol Letter to Laytons dated 20 October – Response to letter dated 19 October from Laytons
HA/003	TSol Letter to Programme Officer dated 18 October – Regarding HA Proofs to PA Freight
HA/004	TSol Letter to Laytons dated 18 th October – Response to letter dated 17 October from Laytons
HA/005	<i>Not Used (Duplicate of HA/003)</i>
HA/006	Letter to Mr Walmsely dated 8 August – Response to Letters
HA/007	Mr Geoff Bethel Rebuttal to PA Freight & Associated Companies
HA/008	Mr Geoff Bethel Rebuttal to Mrs Paver
HA/009	Mr Geoff Bethel Rebuttal to Mr M Walmsley
HA/010	TSol Response to PA Freight & Associated Companies, via email dated 04 November <i>Cross refer to OBJ/003/27 and HA017 – Plan 521A is also at HA031</i>
HA/011	Mr Ian Wildgoose Engineering Rebuttal
HA/012	Mr David Elliot – Traffic Rebuttal
HA/013	Compliance Folder
HA/014	HA Opening Submissions
HA/015	Mr Alasdair MacDonald – Logistics Rebuttal
HA/016	Mr Ian Wildgoose – Engineering Rebuttal Appendices
HA/017	Phase 2 RSA II – Response to PA Freight 28.10.11
HA/018	HA response to PA Freight – Plan showing Layout Option 2
HA/019	HA response to Mrs Paver – Plan showing Proposed Design Plan
HA/020	HA email response from Mr Wildgoose to Mr Walmsley with HA/018 attached
HA/021	The Highways Manual, referred to by Mr Bethel – Replaced by HA/061
HA/022	Letter to Laytons, dated 19 November 2011

HA/023	Note to Inspector from Geoff Bethel
HA/024	Memo on Noise/Headlights & Overhead Cables dated 17 November 2011
HA/025	Letter to Rushcliffe BC regarding TR111, dated July 2005 with drawings attached
HA/026	Jacobs Report , dated August 2010 with drawings attached
HA/027	Note from Lee Buckley, Safe Road Design Team to Geoff Bethel, dated 8 March 2011
HA/028	Record of Environmental Assessment: Impact Assessment of Supplementary Orders at Farndon Roundabout, dated November 2011
HA/029	CRD – AutoCAD Files regarding Overhead power cables
HA/030	Plan of Layout Option 2 – A4 Drawing
HA/031	Plan – 521A
HA/032	Note From the HA RE: Matter of Mr Wildgoose in “Purdah”, dated 5 December
HA/033	Letter to Laytons dated 2 December 2011, Re:CCTV
HA/034	Amendment to the Memo on Noise/Headlights & Overhead Cables issued 29 November 2011
HA/035	TSol response to Laytons letter of the 23 Nov 2011, dated 14 December
HA/036	TSol response to Laytons, dated 14 December, with Interim Submission attached
HA/037	TSol response to outstanding matters from the Inquiry, dated 14 December
HA/038	Design Guidance, dated 7 December 2011
HA/039	Water & Flood Risk Technical Memo on Flood Volume Displacement Impact, dated 13 December 2011
HA/040	Technical Memo from Simon Dowse with drawings, dated 13 December 2011
HA/041	Highway Design Technical Memo from Ian Wildgoose, dated December 2011
HA/042	Acoustics and Vibration Memo from A Maneylaws, dated 8 December 2011
HA/043	5x Hutchinson Engineering Drawings, 2075397,1816401,2364959 and 2077245
HA/044	Swept Path Comparison, dated 14 December 2011
HA/045	Reconfiguration of Access & Lorry Path, dated 25 November 2011
HA/046	Public Inquiry Document Review
HA/047	Letter to Laytons dated 22 December, in response to OBJ/003/50, Procedural Note
HA/048	Letter to Laytons dated 22 December, in response to OBJ/003/48, Covert Surveillance
HA/049	Letter to Laytons dated 22 December, in response to OBJ/003/49, Lines of Communication
HA/050	Letter to Laytons dated 22 December, in response to OBJ/003/47, Right of Way Extension Time
HA/051	Letter to Laytons dated 23 December, regarding Right of Way Extension Time

HA/052	Letter 1 to Laytons dated 13 January, Re Mr Lawrence allegations
HA/053	Letter 2 to Laytons dated 13 January, Re Planning Application
HA/054	Letter 3 to Laytons dated 13 January, Re Deferred Planning Application
HA/055	Letter 4 to Laytons dated 13 January, Re CCTV Footage
HA/056	Letter 5 to Laytons dated 13 January, Re Mr Andrew Morris & Incorrect Appendices in Proof
HA/057	Letter 6 to Laytons dated 13 January, Re Further Evidence submitted to Inquiry
HA/058	Letter to Programme Officer dated 13 January, Re 8 emails & additional evidence submitted by Laytons to the Inquiry
HA/059	HA response to PAF note dated January 2012, regarding HGV Headlights from HGV Accessing PAF Site
HA/060	Notes from EA Meetings held on 25/11/11 & 06/01/12
HA/061	Highways Act Orders Sept 2007 – This replaces HA/021
HA/062	Letter to Newark & Sherwood DC, dated 18 Jan 2012, with attachments
HA/063	Overhead Power Line Drawings – Issued 18 Jan 2012
HA/064	Note from David Elliott to Inspector, dated 18 January 2012, HA Response to Technical Note D “Additional Traffic Analysis”
HA/065	Letter to Laytons dated 6 January 2012 Re: TR110
HA/066	Letter to Laytons dated 6 January 2012 Re: Planning Application & Ongoing PI
HA/067	Drainage Layout Plan dated 19 January 2012
HA/068	Technical Road Safety Audit
HA/069	Technical Note – Flood Compensation Areas – Hawton Lane
HA/070	Response to Roundabout Geometry (OBJ-003-62/8)
HA/071	Response to comments relating to Noise issues from HGV at PAF Site
HA/072	URS responses to Drainage Design Comments (OBJ-003-62/7)
HA/073	Letter from TSol to Laytons, dated 24 January 2012 (Letter 1)
HA/074	Letter from TSol to Laytons, dated 24 January 2012 (Letter 2)
HA/075	Letter from TSol to Laytons, dated 24 January 2012 – Re: Insurance Cover
HA/076	Letter from TSol to Newark & Sherwood DC, dated 24 January 2012
HA/077	Daily Traffic Analysis
HA/078	Note from Simon Dowse, dated 24 January 2012, Re: Lighting
HA/079	HA DPA & RIPA Opinion – CCTV

HA/080	Balfour Beatty Meeting Actions
HA/081	Letter to Patrick Mercer MP from DfT with email from Edward Barker on behalf of Mr Mercer MP
HA/082	Request for Information – Brownhills & Winthorpe Roundabouts, dated 30 September 2011
HA/083	Aerial View of Roundabout
HA/084	WSP Meeting Notes 28 January 2010
HA/085	Note to Inspector dated 22 February 2012, Re: Preliminary Costings
HA/086	Letter to Laytons, dated 25 February 2012, Re: Extension of time
HA/087	Letter to Laytons, dated 25 February 2012, Re: Temporary Access Costs
HA/088	Letter to Laytons, dated 25 February 2012, Re: CCTV matters
HA/089	Letter to Laytons, dated 25 February 2012, Re: TR110 and other matters
HA/090	Letter to Laytons, dated 25 February 2012, Re: Antipathy & Land Grab Trespass issues
HA/091	Letter to Laytons, dated 25 February 2012, Re: Mr Lawrence's access and bias
HA/092	Letter to Laytons, dated 29 February 2012, Re: Issue 20 and Sproakes Lane
HA/093	Letter 1 to Laytons, dated 7 March 2012, Re: Extension of Time
HA/094	Letter 2 to Laytons, dated 7 March 2012, Re: Balfour Beatty Contact details
HA/095	Letter 3 to Laytons, dated 7 March 2012, Re: CCTV & Data Protection
HA/096	Letter 4 to Laytons, dated 7 March 2012, Re: Planning Permission & Related issues
HA/097	Letter 5 to Laytons, dated 7 March 2012, Re: Mr Scriven
HA/098	Letter 6 to Laytons, dated 7 March 2012, Re: Lawrence Issues
HA/099	Letter to Laytons, dated 14 March 2012, Re: Issue 20 and Sproakes Lane matters
HA/100	Letter to Laytons, dated 14 March 2012, Re: Re: Notice of Intention to designate a protected street response
HA/101	Letter to Laytons, dated 4 May 2012, Re: Holding letter
HA/102	Letter to Laytons, dated 7 May 2012, Re: Various Matters
HA/103	Letter to Laytons, dated 29 June 2012, Re: Various Matters & Email
HA/104	Modifications to Plans
HA/105	Closing Submissions – 20 July 2012
PROOFS OF EVIDENCE AND OTHER DOCUMENTS SUBMITTED BY THE OBJECTORS	
OBJ/001/1	Mr Richard Scriven – On behalf of Mrs D Paver – Proof of Evidence
OBJ/002/1	Walmsley Autos Limited – Alternative Plan
OBJ/002/2	Letter to HA dated 16 June

OBJ/002/3	Letter to HA dated 14 July
OBJ/002/4	Letter to HA dated 19 Sept
OBJ/002/5	Statement given by Mr Walmsley at Inquiry
OBJ/003/1/1	Mr Malcolm Jones – Proof of Evidence – On behalf of PA Freight & Messrs AT & PT Morris
OBJ/003/1/2	Mr Malcolm Jones – Summary Proof – On behalf of PA Freight & Messrs AT & PT Morris
OBJ/003/2/1	Mr Edward Watts – Proof of Evidence – On behalf of PA Freight & Messrs AT & PT Morris
OBJ/003/3/1	Mr Paul Young - Proof of Evidence – On behalf of PA Freight & Messrs AT & PT Morris
OBJ/003/4/1	Mr Frank Taylor - Proof of Evidence – On behalf of PA Freight & Messrs AT & PT Morris
OBJ/003/5/1	Mr Patrick Mercer MP – Proof of Evidence - On behalf of PA Freight & Messrs AT & PT Morris
OBJ/003/6/1	Mr Andrew Morris – Proof of Evidence – On behalf of PA Freight & Messrs AT & PT Morris
OBJ/003/6/2	Mr Andrew Morris – Summary Proof - On behalf of PA Freight & Messrs AT & PT Morris
OBJ/003/6/3	Mr Andrew Morris – Appendices – On behalf of PA Freight & Messrs AT & PT Morris
OBJ/003/7/1	Mr Jonathan Cage – Proof of Evidence – On behalf of PA Freight & Messrs AT & PT Morris
OBJ/003/7/2	Mr Jonathan Cage – Appendices – On behalf of PA Freight & Messrs AT & PT Morris
OBJ/003/7/3	Mr Jonathan Cage – Summary Proof - On behalf of PA Freight & Messrs AT & PT Morris
OBJ/003/7/4	Mr Jonathan Cage – Supplementary Evidence on PAF Alternative (Submitted 12 July 2012)
OBJ/003/8	Letter from Laytons Solicitors – dated 11 October 2011 - On behalf of PA Freight & Messrs AT & PT Morris
OBJ/003/9	Letter from Laytons Solicitors – dated 17 October 2011 - On behalf of PA Freight & Messrs AT & PT Morris
OBJ/003/10	Email from Laytons Solicitors to TSol, regarding Proofs – dated 14 October 2011 – On behalf of PA Freight & Messrs AT & PT Morris
OBJ/003/11	Letter from Laytons to TSol – dated 19 October 2011 – On behalf of PA Freight & Messrs AT & PT Morris – Regarding Service of Proofs
OBJ/003/12	Letter from Laytons to TSol – dated 7 October 2011 - On behalf of PA Freight & Messrs AT & PT Morris – Regarding Witness availability
OBJ/003/13	Letter from Laytons to TSol – dated 7 October 2011 - On behalf of PA Freight & Messrs AT & PT Morris – Regarding Inquiry Timetable
OBJ/003/14	Letter from Laytons to TSol – dated 21 October 2011 - On behalf of PA Freight & Messrs AT & PT Morris – Regarding Inquiry Timetable & Video Footage, non response
OBJ/003/15	Letter from Laytons to Programme Officer – dated 25 October 2011 - On behalf of PA Freight & Messrs AT & PT Morris – Regarding Inquiry Timetable & Video Footage

OBJ/003/16	Email from Laytons to Programme Officer – dated 26 October 2011 - On behalf of PA Freight & Messrs AT & PT Morris – Regarding Inquiry Timetable
OBJ/003/17	Letter from Laytons to Programme Officer – dated 28 October 2011 - On behalf of PA Freight & Messrs AT & PT Morris – Regarding Questions of Clarification
OBJ/003/18	Letter from Laytons to TSol – dated 28 October 2011 - On behalf of PA Freight & Messrs AT & PT Morris – Regarding additional data
OBJ/003/19	Email from Laytons to TSol – dated 1 November 2011 - On behalf of PA Freight & Messrs AT & PT Morris – regarding no response to letter of 28 October
OBJ/003/20	Email from Laytons to TSol – dated 4 November 2011 – On behalf of PA Freight & Messrs AT & PT Morris – regarding outstanding points for clarification
OBJ/003/21	PA Freights response to Mr Lawrence
OBJ/003/22	Laytons letter to TSol, dated 9 November 2011 regarding un answered questions
OBJ/003/23	Email to Mr Morris dated 10 November regarding Planning Permission and Employee Numbers on the PA Freight Site
OBJ/003/24	Memorandum of Understanding between the Environment Agency and the Highways Agency
OBJ/003/25	Mr John Pugh-Smith – Opening Statement on behalf of PA Freight & Associated
OBJ/003/26	Mr Cage's Rebuttal to Mr Geoff Bethel of the Highways Agency
OBJ/003/27	Letter to Laytons from TSol dated 4 November (HA/010)
OBJ/003/28	Email dated 6 November from Laytons to TSol
OBJ/003/29	PA Freight & Associated Companies – Statement of Case
OBJ/003/30	Mr Cage's Rebuttal to Mr Ian Wildgoose of the Highways Agency
OBJ/003/31	Email from Mr Cage regarding the site visit for the Inspector, as per Appendix N
OBJ/003/32	Mr Cage's Rebuttal to Mr Elliott of the Highways Agency
OBJ/003/33	Mr Cage's Rebuttal to Mr MacDonald of the Highways Agency
OBJ/003/34	Letter from Laytons to TSol, dated 18 November 2011, regarding van blocking access to site
OBJ/003/35	Letter from Laytons to TSol, dated 23 November 2011, regarding CCTV Footage
OBJ/003/36	Mr Andrew Morris, Rebuttal to Mr Alasdair MacDonald with 4 enclosures
OBJ/003/37	Mr Malcolm Jones, Rebuttal to Mr Ian Wildgoose
OBJ/003/38	Email to TSol, dated 28 November, with 3 letters attached
OBJ/003/39	Logistical Issues from PAF about moving from ILC
OBJ/003/40	Road Safety Audit dated November 2003
OBJ/003/41	HSE Workplace Transport Safety on Overview – INDG1999(Rev1)Revised 11/05
OBJ/003/42	Geoff Bethel Note to the Inspector (HA/023)

OBJ/003/43	Letter from Lee Buckley to Geoff Bethel (HA/027)
OBJ/003/44	Flood Risk Assessment REV A
OBJ/003/45	Letter to TSol, Re: Transcript Cases
OBJ/003/46	Letter to TSol, dated 7 Dec 2011
OBJ/003/47	Letter to TSol, dated 21 December, Rights of Way Agreements for Neighbours
OBJ/003/48	Letter to TSol, dated 21 December, Covert Surveillance
OBJ/003/49	Letter to TSol, dated 21 December, Lines of Communication
OBJ/003/50	Letter to TSol, dated 21 December, Procedural Note
OBJ/003/51	Letter to Mendip Media, dated 21 December, Transcription Service upon Resumption of Inquiry
OBJ/003/52	Letter to TSol, dated 23 December, Rights of Way for Neighbours
OBJ/003/53	Letter to TSol, dated 29 December
OBJ/003/54	Letter to TSol, dated 6 January, Witness Box
OBJ/003/55	Letter to TSol, dated 8 January, PAF Alternative Access
OBJ/003/56	Letter to Programme Officer, dated 12 January , Re Programme Matters
OBJ/003/57	Letter to Mendip Media, dated 11 January, Re Transcripts Matters
OBJ/003/58	Letter 1 to TSol, dated 12 January, Re PAF Planning Application
OBJ/003/59	Letter 2 to TSol, dated 12 January, Re Alternative Scheme & Cross Examination of Witnesses
OBJ/003/60	Letter 3 to TSol, dated 12 January, Re Covert Surveillance
OBJ/003/60/1	Appendix 1 – Opinion of Gordon Nardell
OBJ/003/60/2	Appendix 2 – Case Notes of Paton v Poole Borough Council
OBJ/003/60/3	Appendix 3 – Pictures of Covert Camera
OBJ/003/61	Letter 4 to TSol, dated 12 January, Re Cost Report
OBJ/003/61/1	Cost Report
OBJ/003/62	Letter 5 to TSol, dated 12 January, Responses to TSol matters
OBJ/003/62/1	Response to Items 1 & 2 Raised at Inquiry
OBJ/003/62/2	Response to Item 3 Raised at Inquiry
OBJ/003/62/3	Response to Item 4 Raised at Inquiry
OBJ/003/62/4	Response to Item 5 Raised at Inquiry
OBJ/003/62/5	Response to Item 6 Raised at Inquiry
OBJ/003/62/6	Response to Item 7 Raised at Inquiry

OBJ/003/62/7	Response to Item 8 Raised at Inquiry
OBJ/003/62/8	Response to Item 11 Raised at Inquiry
OBJ/003/62/9	Response to Item 12 Raised at Inquiry
OBJ/003/62/10	Response to Item 13 Raised at Inquiry
OBJ/003/62/11	Additional Traffic Analysis
OBJ/003/63	Letter 6 to TSol, dated 12 January, Re EIA Screening
OBJ/003/63/1	EIA Issues
OBJ/003/64	Letter 7 to TSol, dated 12 January, Re PAF Alternative
OBJ/003/64/1	PAF Alternative
OBJ/003/64/2	Case Notes Carpenter v Calico Quays
OBJ/003/65	Letter to TSol, dated 13 January, Re Health & Safety Matters
OBJ/003/65/1	Appendix 1 - Reversing Report
OBJ/003/65/2	Appendix 2 – Workplace Transport Safety- Employers Guide
OBJ/003/65/3	Appendix 3 – HSE – Inspection Pack
OBJ/003/65/4	Appendix 4 – HS Review – Reversing
OBJ/003/65/5	Appendix 5 – Industry Guide for Designers
OBJ/003/65/6	Appendix 6 – Construction Regulations 2007
OBJ/003/65/7	Appendix 7 – Safety at Work Regs 1999
OBJ/003/65/8	Appendix 8 – HSE Regs 1992 – The Workplace
OBJ/003/65/9	Appendix 9 – PAF – Traffic Management Report Rev 1
OBJ/003/66	The Brisbane Load – DVD
OBJ/003/67	Letter 1 to TSol, dated 19 January 2012, Re 2 nd Letter dated 13 January (HA/53)
OBJ/003/68	Letter 2 to TSol, dated 19 January 2012, Re Settlement
OBJ/003/69	Letter to Newark & Sherwood DC, dated 19 th January 2012
OBJ/003/70	Email dated 14 December 2011
OBJ/003/71	Copy of Notice Decision
OBJ/003/72	Google Earth Map
OBJ/003/73	Extract of Document – Page from PAF Report to Committee
OBJ/003/74	Response to Flood Compensation Areas (HA/069)
OBJ/003/75	Letter to TSol dated 24 January, Re TR110

OBJ/003/76	Letter to TSol dated 24 January, Re TSol letter 2 dated 6 January 2012
OBJ/003/77	Detailed Drainage Note prepared by Create
OBJ/003/78	Extract of 2007 Inspectors Report (SD010)
OBJ/003/79	DfT Motorway Services
OBJ/003/80	Planning Application Form & Plan of site
OBJ/003/81	Extract from Planning Committee Mtg dated 15 March 2011
OBJ/003/82	Catesby Estates Limited – Notice Decision
OBJ/003/83	Note from Planning Committee Mtg – Dated 15 March 2011 – Agenda Item 4
OBJ/003/84	Page 1 – Option Agreement dated 28.09.07
OBJ/003/85	Page 1 – Report to Newark & Sherwood District Council from Planning Inspectorate
OBJ/003/86	Catesby Main Scheme November 2011 Report
OBJ/003/87	Pages from Newark Core Strategy
OBJ/003/88	Insurance letter from Brett & Randall (with copy of HA/075 attached)
OBJ/003/89	Rebuttal by Mr Cage to Mr Lawrence – Tech Note F
OBJ/003/90	Tech Note G – Circulatory Speeds on Farndon Roundabout
OBJ/003/91	Tech Note E – Lawrence Access
OBJ/003/92	PA Freight – Lighting Analysis
OBJ/003/93	Letter to Inspector, dated 21 February 2012, Re: SUP/002/10
OBJ/003/94	Rebuttal by Mr Andrew Morris to Mr Lawrence
OBJ/003/94/1	HSE – Avoidance of danger from overhead electric power lines
OBJ/003/95	Rebuttal by Mr Frank Taylor to Mr Lawrence
OBJ/003/96	Letter to TSol dated 22 February 2012
OBJ/003/97	Letter to TSol dated 24 February 2012
OBJ/003/98	Letter to Geoff Bethel dated 24 February 2012, Re: Entrance to ILC, Farndon
OBJ/003/99	Letter to Sue Davis dated 8 March 2012, Re: Notice of Intention to designate a protected street
OBJ/003/100	Letter to TSol dated 2 March 2012, Re: Response to documents HA/86, HA/87, HA/88, HA/89, HA/90 & HA/91
OBJ/003/101	Letter to TSol dated 8 March 2012, Re: Issue 20 and Sproakes Lane
OBJ/003/102	Letter to TSol dated 15 March, Re: Response to various letters from TSol dated 7 th March
OBJ/003/103	Letter to TSol dated 12 April 2012, Re: TR110 Conditions

OBJ/003/104	Letter to TSol dated 30 April 2012, Re: Temporary Works
OBJ/003/105	Letter to TSol dated 30 April 2012, Re: Parking & Equipment on stub
OBJ/003/106	Letter to TSol dated 14 May 2012, Re: TR110, PAF Alternative & Other matters
OBJ/003/107	Letter to TSol dated 21 May 2012, Re: Temporary Works
OBJ/003/108	Letter to TSol dated 30 th May 2012, Re: Temporary Works
OBJ/003/109	Letter to TSol dated 11 June 2012, Re: Various Matters
OBJ/003/110	Letter to TSol dated 5 July 2012, Interim Submission – Powers of the SoS
OBJ/003/111	Letter to TSol dated 16 July 2012, Various Points
OBJ/003/112	Closing Submissions 20 July 2012
	OTHER DOCUMENTS SUBMITTED BY THE OBJECTORS
OBJ/004/1	Letter from JH Walter LLP withdrawing Mr Lawrence objection, dated 24 October
OBJ/004/2	Letter from TSol to Mr Lawrence, dated 20 th October 2011
	DOCUMENTS SUBMITTED BY SUPPORTERS AT INQUIRY
SUP/002/1	Statement from Mr Lawrence
SUP/002/2	Email dated 10 November, stating Mr Lawrence in talks with PA Freight
SUP/002/3	Statement from Mr Lawrence dated 19 January 2012
SUP/002/4	Statement from Mr Catney dated 19 January 2012
SUP/002/5	Planning Application Documents
SUP/002/6	Case Law Henry Boot Homes Ltd v Bassetlaw DC
SUP/002/7	Objection to PAF Planning Application dated 16 December 2011
SUP/002/8	Letter from Mr Catney to TSol regarding Mr Lawrence land ownership issues
SUP/002/9	Letter from Mr Lawrence to the Inspector Re: Low Loader Access with email & photos
SUP/002/10	Letter from Mr Catney, dated 9 February regarding Outline Planning Application – PAF Site
	INQUIRY DOCUMENTS
INQ – 1	Inspector's Procedural Note dated 4 October 2011
INQ - 2	Letter to TSol from Inspector dated 25 November 2011
INQ – 3	Letter to Inspector from Newark & Sherwood District Council
INQ - 4	Letter to Laytons, dated 17 October 2011
INQ – 5	Not Allocated
INQ – 6	Letter to Inspector from Newark & Sherwood District Council, dated 21 February 2012
INQ – 7	Daily Transcripts – (Available on the Persona website)

C **GLOSSARY**

CCTV	Closed Circuit TV
CDMR	Construction (Design and Management) Regulations 2007
CPO	Compulsory Purchase Order
DfT	Department for Transport
DMRB	Design Manual for Roads and Bridges
DPA	Data Protection Act 1998
EA	Environment Agency
ECHR	European Convention on Human Rights
EIA	Environmental Impact Assessment
EIAR	the Town and Country Planning (Environmental Impact Assessment)(England & Wales) Regulations 2011
ES	Environmental Statement
HA	Highways Agency
HGV	Heavy Goods Vehicle
IDB	Internal Drainage Board
ILC	International Logistics Centre
IS	Interim Statement
JPS	John Pugh Smith (for PAF)
LB	Lisa Busch (for HA)
LGV	Light Goods Vehicle
NSDC	Newark & Sherwood District Council (the local planning authority)
OOG	Out-of-gauge HGV (abnormal load)
PAF	PA Freight
PMA	Private Means of Access
PO	Programme Officer
RIPA	Regulation of Investigatory Powers Act 2000
RSA	Road Safety Audit

SCPO	Supplementary Compulsory Purchase Order
SSRO	Supplementary Side Roads Order