

## **RADLETT STRATEGIC RAIL FREIGHT INTERCHANGE**

### **HELIOSLOUGH REPLY ON COSTS APPLICATION**

1. At the last inquiry there were 14 reasons for refusal. HS did not apply for costs in relation to any of reasons for refusal. At that stage, it was not unreasonable for the Council to pursue those issues.
2. Since then of course there has been a full inquiry and a fully reasoned IR and DL. The result is that paragraph B29 fourth bullet is directly engaged.
3. In that context:
  - (1) there is no "respectable" basis for the Council's case on any of its reasons for refusal unless it could point to a MCC. It cannot do so. For reasons covered in detail in the costs application and the closing speech for HS, a "respectable" case is not created by finding another witness or desperately scratching around to find a new issue no matter how misconceived;
  - (2) in respect of alternative sites, of course the Council could reject the ASA but only if it had respectable grounds for so doing after having properly understood it and the evidence on which it was based and after having engaged with CgMS on it. None of this was done here.
4. In order to justify its refusal the Council would have to have very good planning reasons for departing from the conclusions of the SoS. Simply disagreeing with the SoS is not a "very good planning reason" here given the history and the fact that the SoS (who is the appellate decision maker) has already assessed and reached conclusions on those issues.
5. Because of the failure of the report to committee to grapple with the findings of the SoS (not gainsaid in the Council's Costs Response) the Council never asked itself whether there were any very good planning reasons for disagreeing with the SoS in respect of any of the reasons for refusal.
6. At this inquiry, the Council has not been able to point to any "very good planning reasons" for reaching a different conclusion to the SoS on any of the reasons for refusal.
7. The Council has (and continues to) simply asked itself the wrong question: whether there is a very good planning reasons for reaching a different view from the SoS. That basic point is not grappled with by the Council's Costs Response. It is unanswerable.
8. In respect of the alternative site assessment has not raised a "respectable" case but has instead adopted an unreasonable approach as explained in the Costs Application.
9. A full award of costs is justified; alternatively a costs award of the whole inquiry less the costs of a limited appeal limited to the respective merits of Radlett and Colnbrook.
10. In respect of the individual reasons for refusal, we highlight just a few points:

(1) the Council contends that if the issue is a matter of judgement it can simply disagree with the SoS - that is in straight contravention of B29(4): see Costs Response on RFR 1;

(2) the Council's noise arguments here are not new - as explained in our closing;

(3) the timetabling issue has not changed in any material respect;

(4) in respect of air quality, no new information was provided between the reasons for refusal being issued and it being withdrawn;

(5) the only issue the SoS had on the S.106 was the enforceability of condition 30. That concern does not allow a revisiting or questioning or rewrite of the remainder.

Martin Kingston Q.C.

David Forsdick

18th December 2009