Helioslough - Proposed Freight Interchange, North Orbital Road, St Albans

Appellant's Grounds of Appeal

General

St Albans District Council refused the same 2006 application on 14 grounds. All of these 14 reasons for refusal were comprehensively considered at the 2007 public inquiry and none were withdrawn. Full evidence was called in relation to those reasons for refusal. The Secretary of State dismissed the Council's concerns in all but one respect, and that was in regard to the Alternative Sites Assessment.

In para 58 of the Secretary of State's decision letter she states:- "*The Secretary of State considers that the need for SRFI's to serve London and the South East is a material consideration of very considerable weight and, had the appellant demonstrated that there were no other alternative sites for the proposal this would almost certainly have led her to conclude that this consideration, together with the other benefits she referred to above were capable of outweighing the harm to the Green Belt and the other harm which she has identified in this case*".

Where the Secretary of State has already considered an issue and there have been no material changes of circumstances since, the position of the Appellant will be that there is no basis for the Inquiry to reconsider those matters. St Albans District Council is seeking to reargue matters on which the Secretary of State has already reached a view. That approach is inappropriate in principle, will artificially and unreasonably prolong the inquiry and will result in significant additional work and cost. The Appellant will therefore respond to the relevant reasons for refusal in short form appending where appropriate reports and proofs provided to the last inquiry, and will invite the Inspector to rule at a pre-inquiry meeting that he will not rehear evidence on matters where a conclusion has already been reached and where there is no material change of circumstances since.

Reason for Refusal 1

> *The site is within the Metropolitan Green Belt as defined in the St Albans District Local Plan Review 1994 wherein permission will only be given for the erection of new buildings or the use of existing buildings or land for agricuiture, other essential purposes appropriate to the rural area or small scale facilities for participatory sport or recreation. The proposed development is unacceptable in terms of Policy 1 of the St Albans District Local Plan Review 1994 and is inappropriate development in terms of PPG2 Green Belts. The harm to the Green Beit by reason of inappropriateness and any other harm is not clearly outweighed by other considerations and accordingly no very special circumstances exist to justify the proposal.*

Ground of Appeal 1

It is accepted that the application is inappropriate development in the Green Belt. The Secretary of State in her decision letter 1.10.08, states in paras 58 and 59 that the need for SRFI's to serve London and the South East is a material

consideration of very considerable weight and she would have almost certainly concluded that this together with the other benefits would have outweighed the harm to the Green Belt, had the appellant demonstrated that there were no alternative sites. The Secretary of State also identified limited conflicts with the development plan in relation to landscape visual impact and highways, but she considered that these would be insufficient on their own to justify refusing permission. The new application includes a new Alternative Sites Assessment which demonstrates that there are no alternative sites.

The only issue to be addressed in regard to reason for refusal 1 is therefore the new Alternative Sites Assessment. This is addressed in later grounds of appeal.

Reason for Refusal 2

> *The overall size, height, bulk, massing and scale of the proposed development would be highly damaging to, and seriously diminish, the open character and visual amenity of this significant part of the Green Belt which provides amongst other things an important gap between Park Street and London Colney, contrary to Policy 1 of the St Albans District Local Plan Review 1994.*

Ground of Appeal 2

The visual impact of the proposal on the openness of the Green Belt has already been considered by the Secretary of State, as referred to in Ground of Appeal 1, above. The Secretary of State also concluded that the proposal will not lead to the merging of Park Street and London Colney as stated by the Secretary of State in her decision letter (para 21). There has been no material change to the proposal considered at the last public inquiry.

There is therefore no basis for the inquiry to reconsider the matters in referred to in reason for refusal 2.

Reason for Refusal 3

> *The proposal conflicts with the provision of PPS1 in that it fails to demonstrate that the development can be carried out consistently with the principles of sustainable development.*

Ground of Appeal 3

We are seeking clarification as what this reason for refusal is referring to. It is almost identical to the reason for refusal 3 in 2007. We are therefore assuming that the matters it refers to are the same as last time.

The issue of sustainability in PPS1 was addressed by the Inspector and the Secretary of State at the last Inquiry. The Secretary of State concluded that minimal weight should be afforded to the doubts expressed about the benefits in terms of CO_2 savings (para 49).

The Secretary of State agreed (para 39) with the Inspector's considerations of how workers would travel to the site and, having regard to the provisions of the draft travel plan, she stated that it would not be reasonable to refuse planning

permission for the development on account of sustainability concerns relating to the workforce's likely pattern of travel to work.

There is therefore no basis for the inquiry to reconsider the matters referred to in reason for refusal 3.

Reason for Refusal 4

Policy T10 of the East of England Plan states that the provision should be made for at least one Strategic Rail Freight Interchange unless more suitable locations are identified within London or the South East. The 'Consideration of Alternative Sites' study is inadequate and, as a result the need for the proposed SRFI as set out in Policy T10 of the East of England Plan has not been shown.

Ground of Appeal 4

The RSS makes no locational decisions regarding SRFI's and there are no locations proposed in the East of England for an SRFI to serve the Greater South East. The Alternative Sites study has shown the application site to be an appropriate location to meet the identified need. Neither the South East Plan and/or the London Plan identify the 3-4 sites for SRFI (or indeed any sites). In short no more suitable locations are identified in any plan, anywhere in the Region. It cannot be said therefore that there is any TR10 objection to this development.

Reason for Refusal 5

The proposed development is premature in advance of the National Policy Statement covering SRFI's due to be published in 2010, the completion of a trans-regional assessment of the location of SRFI's in the Greater South East and until demand has been shown to exist through the implementation and occupation of the available SRFI capacity at Howbury Park. The proposal is therefore contrary to the advice in PPS1.

Ground of Appeal 5

It is not accepted that the application is premature. Prematurity was addressed at the last inquiry and the Secretary of State (para 40) agreed with the Inspector that refusing the application on prematurity grounds would inevitably lead to substantial delay in providing further SRFI's to serve London and the South East contrary to the Government's declared aim of increasing the proportion of freight moved by rail. In addition the Inspector said that there was no reasonable prospect of a region wide study being undertaken and its findings accepted as binding within a reasonable timeframe (paras 16.109-114). This situation has not changed.

The Government has not, through introducing NPS, placed a moratorium on major infrastructure decisions until the NPS is provided.

The suggestion that one has to wait and see whether there is left over demand after Howbury is misconceived. Howbury is not designed to, and will not, meet the need which this proposal is designed to meet. The identified need is in any

event for 3-4. This is precisely the recipe for delay which will mean that sustainable transport proposals are not delivered in good time.

Reason for Refusal 6

> *The applicant has failed to demonstrate that there are adequate paths in the wider national rail network to support the number of freight trains that the facility is intended to serve, and that the Midland Mainline timetable can accommodate the level of services anticipated. The viability of the rail connection has not been demonstrated and there is no evidence that gauge improvements to W9 and W10 standard can be delivered between Radlett and points on the rail network with gauge to these standards. No demand has been shown for rail freight or an SRFI in the north west sector of London. The proposal is therefore contrary to the requirement that priority should be given to the objectives of the Regional Transport Strategy regarding the sustainable movement of freight set out in Policies T1 and T10 of the East of England Plan and the advice in PPS1 regarding sustainable development.*

Ground of Appeal 6

Both the Inspector and Secretary of State concluded (para 33) that there was no reason to refuse the application on grounds of the rail network and the availability of rail paths and further that freight trains to and from the SRFI would not prejudice the ability of the MML to carry passengers and accommodate growth in passenger numbers.

The Secretary of State clearly concludes that there is a need for SRFI's to serve London and the South East and that this is a material consideration of very considerable weight. The Secretary of State also concluded that the North West quadrant of the M25 is the correct area of search for alternative sites (para 42).

There is therefore no basis for the inquiry to re-consider the matters referred to in reason for refusal 6.

Reason for Refusal 7

> *The proposal for the central development site (Area 1) fails to adequately secure and enhance the quality and appearance of the landscape in this area. The proposal is therefore contrary to Policy 143 of the St Albans District Local Plan Review 1994 and PPG Green Belts.*

Ground of Appeal 7

The Secretary of State addressed the issue of landscape impact, and as stated in ground of appeal 2 above, the only issue for the inquiry now is the Alternative Sites Assessment in regard to the green belt balance.

There is no basis for the inquiry to re-consider the matters referred to in reason for refusal 7.

Reason for Refusal 8

The proposals would lead to high noise levels that will be experienced by residents on the eastern side of Park Street / Frogmore and more particularly Radlett and Elstree. The resultant adverse impact and harm caused would be contrary to PPG24 (Planning and Noise).

Ground of Appeal 8

We are seeking information from St Albans District Council as to what this reason for refusal is referring to. It is almost identical to the reason for refusal 10 in 2007. The Inspector and the Secretary of State dismissed the Council's concerns in regard to that reason for refusal.

The Secretary of State agreed with the Inspector's conclusions that the appellant's proposed condition 22 would be reasonable and that noise from the development would not bring the proposal into conflict with the development plan (para 30).

There is no basis for the inquiry to re-consider the matters referred to in reason for refusal 8.

Reason for Refusal 9

The proposals would lead to harmful air quality conditions experienced by residents in Park Street / Frogmore and more particularly within Radlett and Elstree. These would be contrary to PPG23 (Planning and Pollution Control).

Ground of Appeal 9

We are seeking clarification from St Albans Council as to what this reason for refusal is referring to since the last inquiry considered air quality concerns in regard to the same areas as referred to in the above reason for refusal. The Secretary of State agreed with the Inspector that air quality concerns should not constrain the development (para 31).

There is no basis for the inquiry to re-consider the matters referred to in reason for refusal 9.

Reason for Refusal 10

The proposal for the Country Park, landscape and ecological improvements intended to mitigate the losses associated with the development are unacceptable in scale, outcome and detail while the process and funding of a long term management regime is not determined. The proposal conflicts with Policy 106 of the St Albans District Local Plan Review 1994.

Ground of Appeal 10

We are and have been seeking to agree Conditions and our Draft 106 Obligation with St Albans District Council. This is essentially a "*holding*" reason for refusal,

the applicant has demonstrated that the funding and long term management of the Country Park will deliver the improvements intended. The Secretary of State concluded that the proposals for the Country Park would be beneficial to the Countryside and would add to the biodiversity interests present on the site.

Reason for Refusal 11

> *The applicant has failed as part of the proposed development to take mitigating measures to off-set the harm of the development to ecology and the local footpath network. The proposal would conflict with Policies 97, 106 and 110 of the St Albans District Local Plan Review 1994.*

Ground of Appeal 11

We are seeking clarification from St Albans District Council as to what this reason for refusal is referring to. It is almost identical to reason for refusal 15 in 2007 (save for reference to archaeology having been removed from the wording, however the archaeology policy is still referred to).

In regard to footpaths the Secretary of State agrees (para 37) with the Inspector that the harm to existing footpaths and bridleways is outweighed by the proposals for improvements. In regard to ecology the Secretary of State agreed with the Inspector that, having regard to the fact that Natural England raised no objection, that any harm resulting from the proposed development to ecological interests would not be significant (para 29). Natural England have again raised no objection to the current application.

There is no reason for the inquiry to re-consider the matters referred to in reason for refusal 11.

Reason for Refusal 12

> *Insufficient information has been submitted by the applicant to enable the Highways Agency to determine if there have been any material changes in circumstances in relation to the impact of the proposed development on the strategic highway network.*

Ground of Appeal 12

This is purely a holding objection pending further information being submitted to the Highways Agency. This is being provided by the applicants.

Reason for Refusal 13

> *No adequate Section 106 Obligation has been offered by the Applicant.*

Ground of Appeal 13

A draft Section 106 Obligation has already been sent to the Council and despite numerous requests to meet and discuss it, these requests have not been take up by the Council.

This draft obligation is the same as submitted to the Inspector and Secretary of State who concluded that it was relevant and necessary to the proposed development and met the policy tests in Circular 05/2005.

Reason for Refusal 14

> *Insufficient information has been submitted by the applicant to enable the Local Highway Authority, to determine if there have been any material changes in circumstance in relation to the impact of the proposed development on the local highway network including the A414, A405, A5183 and linkages to the national motorway network.*

Ground of Appeal 14

This is purely a holding objection pending further information being submitted to the County Highway Authority. This is being provided by the applicants.