

**PUBLIC INQUIRY INTO APPEAL BY HELIOSLOUGH LIMITED INTO A
PROPOSED STRATEGIC RAIL FREIGHT INTERCHANGE ON LAND IN
AND AROUND FORMER AERODROME, NORTH ORBITAL ROAD, UPPER
COLNE VALLEY, HERTFORDSHIRE**

CLOSING SUBMISSIONS ON BEHALF OF STRiFE

Introduction

1. A few weeks ago I concluded my opening remarks¹ on behalf of STRiFE by stating that to permit Radlett now would raise a spectre which all should fear – a massive warehouse development in the Green Belt, permitted on the false prospectus that it can meet a need for the interchange of freight between rail and road, only for it to operate as a predominantly road to road depot, something for which no very special circumstances could be prayed in aid. These weeks on, and after all of the evidence has been tried and tested, that spectre looms larger than ever before.
2. Under the spotlight of scrutiny, the appeal proposal has been exposed for the “Trojan Horse” development local residents always feared: a Strategic Rail Freight Interchange for which not only can no guarantee be given that a single train will ever be permitted access, but one which – on the balance of probabilities² – could never be so used.
3. It is in order to prevent that outcome, and the wholesale undermining of Green Belt policy which it would entail, that STRiFE asks you now, this time finally, to halt this spurious rail-related proposal in its tracks.

¹ STRiFE 9/02

² The requisite standard of proof: see Tilley XX

The Proper Approach

4. The approach to take to this repeat application is now agreed, all of it set out in my opening³ and all of it conceded by Mr Tilley in answer to questions from both myself and Mr Reed. It is, however, not an approach which is merely within your discretion, as seemed to be the inference of an intervention by Mr Kingston QC when I was cross examining Mr Tilley; it is an approach that is compelled by law.
5. You will recall from my opening that STRiFE not only acknowledges but positively asserts that the Secretary of State's decision letter⁴ following the previous Inquiry (and the Inspector's Report⁵ with which the Secretary of State largely agreed) are plainly material considerations in the determination of this appeal: as both Mr Kingston QC⁶ and I stated, they are "the starting point" for consideration of the appeal proposals. However, they are just the starting point; not the end point. As Mr Tilley agreed, you retain full discretion to make recommendations on all of the issues to which this Inquiry gives rise, and on the balance of the evidence which is now before you.
6. Moreover, you are not just *free* to agree or disagree with the views previously expressed; you are *obliged* in law to consider whether there is a good planning reason to agree or disagree with those prior views, and to do so upon the basis of the best and most up to date information available. That is decided law⁷, as more fully described in Appendix A to this closing, to which extracts from the relevant authorities have been attached.

³ STRiFE 9/02 §§10-12

⁴ 9/CD/8.1

⁵ 9/CD/8.2

⁶ 9/HS/1.1 §15

⁷ See: *Price Brothers Limited v. Department of the Environment* [1979] 38 P&CR 579 at 591; *North Wiltshire District Council v Secretary of State for the Environment* (1992) 65 P&CR 137 at 145; and *R. (Kings Cross Railway Lands Group) v. LB Camden* [2007] EWHC 1515 (Admin) at paras.18/19, 20 and 22.

7. As set out in the Appendix, where you are inclined to disagree with the view of the previous Inspector and/or Secretary of State, the requisite “good planning reason” can properly be sourced, of course, in an intervening material change of planning circumstances. But it can also be sourced elsewhere – in an argument put previously, but more compellingly put today; in evidence adduced before you which was not adduced before the last Inspector; or simply in a different view of the planning merits as a matter of judgment⁸. These propositions were all, rightly, accepted by Mr Tilley in cross examination.
8. So it is that, just as Mr Kingston QC will seek to persuade you, on new arguments and new evidence, that the Secretary of State can now decide differently the issue as to whether an alternative site is able to meet such need as survives for SRFIs to serve the region of London and the South East, so we are entitled to seek to persuade you, on new arguments and new evidence: that such need no longer exists; that this proposed development could not meet that need even if it does still exist; that even if this proposed development might meet such need, other sites can meet it better and from both within and without the “North West Sector”.
9. In short, and as I stated in opening, the last decision letter is not a mantra that can simply be chanted as an answer to any of the planning arguments before you. However, and despite his agreement to the above approach in cross examination, Mr Tilley chanted that mantra continuously⁹, and was joined in that chorus by the written words of Mr Sharps¹⁰, all under the careful orchestration of Mr Kingston QC and Mr Forsdick. Time beyond number we

⁸ See: *Price Brothers Limited v. Department of the Environment* [1979] 38 P&CR 579 at 591; and *R. (Kings Cross Railway Lands Group) v. LB Camden* [2007] EWHC 1515 (Admin) at paras.18/19.

⁹ In cross examination by me he accepted that he had limited his planning exercise to only material changes in circumstances.

¹⁰ Regrettably, Mr Sharps was not available for cross examination. However, his approach is clear from paragraph 2.38 of his Rebuttal Proof (9/HS 6.3) in which he stated “These were all matters grappled with at the last inquiry. I have been advised that it is not appropriate to go over that ground when clear conclusions have been reached by the Inspector and adopted by the Secretary of State”. In cross examination by Mr Reed, Mr Tilley in no way distanced himself or the Appellant from that approach, merely indicating that he could not say whether Mr Sharps was relying on something said by Mr Tilley or by someone else in the Appellant’s team.

either heard orally, or read in evidence, the recital – *“there have been no material changes in circumstances since the last Inquiry, thus...”*

10. If that would be an erroneous approach for you to take, it is also an erroneous approach for the Appellant to have taken, and a dangerous one too - for not only is it an entreaty which, if followed, would lead you into challengeable legal error, it is an approach which has acted as a self-denying evidential ordinance for the Appellant itself.
11. If you have to decide, as you do have to decide, issues such need, rail pathing, and the area of search for alternatives, the Appellant has chosen not to furnish you with an evidential case to address those issues beyond the hollow cry that you should simply bow to a predecessor’s judgment reached on different evidence. And if you have to decide, as you do have to decide, the capability of the Appellant’s noise condition to protect against sleep disturbance, and the extent of the impact of the proposed development on already congested roads, the Appellant has not even called a witness to answer questions under cross-examination. The weight to be attributed to their Written Statements is thereby diminished.

The Proposed Development

12. The Appellant’s cavalier approach to the consideration of their appeal proposal is only properly contextualised, however, when one appreciates the true extent of that which they are actually promoting. Mr Tilley commented in his evidence, without either complaint or demur, that I had “graphically illustrated” the scale of the proposed development in my opening submissions by noting that the largest shed of the 5 proposed would be bigger than Terminal 5 at Heathrow, and the 4 other sheds not very much smaller. Even that is not the limit of their proposal, however. Alongside those buildings, and the inappropriate Green Belt uses to which they would be put, would come all of the associated road and rail infrastructure works and movements, and the bunding necessary to shield local residents from just some of the impacts thereby occasioned.

13. The proposal entails even more, then, than the loss of a huge tract of Green Belt land to inappropriate development, but all manner of attendant and additional externalities and harms, including those generated by both on and off-site activities.
14. There would be noise and sleep disturbance caused by on-site operations and plant¹¹. There would be yet more noise and disturbance caused by road and rail movements, the former unconstrained throughout day or night (so as to add to the congestion chaos on local roads in the peak hours; the latter, on all of the available evidence, likely confined to the most noise-sensitive night hours)¹².
15. There would be disruption and inconvenience to users of both rail and road: trains which are either delayed by freight movements (if any) or by the engineering works necessary to increase the loading gauge on the surrounding network in order potentially to accommodate them¹³; drivers caught up in gridlocked roads, especially the A414 – already all but at capacity but nonetheless the sole proposed link between the site and the motorway network because the Highways Agency will not allow direct access to the M25¹⁴.
16. And those externalities would include, of course, the impaired enjoyment of the Green Belt by local residents and visitors, ramblers and horse riders, not the least through the unavoidable damage done to the local landscape by 330,000 sq. m of built floorspace, 20 m high, and surrounded by earth bunds. The impact on the openness of that part of the Green Belt which currently separate St Albans from Radlett and London Colney from Park Street and Frogmore¹⁵ would be massive.

¹¹ The noise evidence will be reviewed below under Q4.

¹² Tilley XX

¹³ Mr Clancy in chief

¹⁴ Mr Hirst in chief

¹⁵ Mr Wallace in chief

The Green Belt

17. And yet that protective Green Belt designation, a designation which lies at the very heart of the proper consideration of this huge inappropriate development, is designed to prevent such harms from being occasioned. It is a protection intended not as a temporary bulwark against inappropriate development but – save in the most exceptional circumstances – a *permanent* prohibition; a protection which *must*, not may, be maintained as far as can be seen ahead¹⁶.
18. The planning imperatives which flow inexorably from that protective designation are well known to this Inquiry. They nonetheless bear repeating in closing, so fundamental are they to the decision at issue.
19. Where inappropriate development is proposed within the Green Belt, not only do the general policies aimed at controlling development in the countryside apply with full force, but an additional presumption is raised against that development so that it can never be permitted except in very special circumstances¹⁷. The foundation of that presumption lies in the acknowledgement by Government that inappropriate development is, by definition, so harmful to the Green Belt that it attracts substantial weight¹⁸.
20. As was correctly conceded by Mr Tilley under cross-examination, if that is the case with respect to any inappropriate development within the Green Belt, so much more must it be the case when the inappropriate development is on the scale here proposed. In Mr Tilley's words, the level of impact is commensurate with the scale of development; and this is an inappropriate Green Belt development on a truly gargantuan scale. It is, to the best of Mr Tilley's knowledge, the largest inappropriate Green Belt development ever proposed for the Metropolitan Green Belt in London and the Southeast; indeed he could only think of one larger proposal which has ever come forward in the entirety of the country. And this proposal is in a peculiarly sensitive location;

¹⁶ PPG2 para 2.1

¹⁷ PPG2 para.3.2

¹⁸ *Ibid.*

it lies in an open gap which currently separates four settlements, and in the vicinity also of historic St Albans and its cathedral.

21. That being the case, this appeal proposal occasions planning harms which are similarly gargantuan. Given all of this, Mr Wallace's lay-words¹⁹ describe the reality aptly – *very, very* special circumstances would need to be demonstrated for permission to be given.
22. It is not even contested but that that this proposal offends against three of the first four purposes for which the Green Belt was established²⁰: Mr Tilley conceded that the development would amount to a sprawl of a built up area into open Green Belt land; that it would result in the encroachment of huge warehouses into the countryside; and that views of the Cathedral from the Thameslink line would be compromised, we say severely²¹.
23. STRiFE, however, invite you to find that the appeal proposals also offend against a fourth Green Belt objective²²: that they would harm both the functioning and the integrity of the gap in which the SRFI would be located – a gap which the Green Belt is designed to protect every bit as much as a Strategic Gap designation itself.
24. In support of that proposition, STRiFE remind you of the rationale which lies behind the legal submissions already made: the importance of consistency in decision-making process, so that a good planning reason is required to depart from previous decisions in respect of similar applications.
25. Given this, the Farnborough decision letter of your Secretary of State exhibited at Mr Hargreaves' Appendix 26 assumes genuine importance so far as the issue of separation and coalescence is concerned.

¹⁹ In answer to your questioning, Sir, on 1 December 2009

²⁰ *i.e.* those at PPG2, para.1.5.

²¹ Mr Wallace's oral evidence and sections 4(3)-(5) of his Proof of Evidence (STRiFE 9/01)

²² PPG2 para.1.5

26. The context for the Farnborough decision letter is to be found in the Inspector's Report to the Secretary of State, the relevant extract of which STRiFE submitted to this Inquiry²³. The factual similarities to the instant appeal are obvious. In that case, also, the developers were seeking a significant logistics park development in a protected gap between settlements: a previously developed site within the Gap was proposed to be extended by about 2.2 hectares of additional built development.
27. Whilst the policy protection was there afforded by a bespoke Strategic Gap Policy rather than Green Belt, the Inspector noted at paragraph 435 of her Report that:
- “The primary purpose of a Strategic Gap is to prevent the coalescence of settlements and to protect their separate identity. In fact it has a very similar purpose in this respect to a Green Belt.”
28. The Inspector continued at paragraph 436 of her Report, and Mr Tilley agreed under cross-examination, that coalescence is a process that can occur gradually, and from development within the Gap as well as from expansion development at settlement edges.
29. The Inspector further went on to state at paragraph 439 of her Report as follows:
- “It is not just the distances between the edges of the proposed development and the settlement boundary that are important. Indeed, as the Appellants demonstrate at its nearest points these would actually increase. Rather, it is the outward expansion of the developed site as a whole that is critical. Taking this into account, I consider that a net increase in built development of over 2 hectares around the edges of the site would result in a small but nevertheless significant diminution of the Strategic Gap. Physically it would reduce the amount of land available to form the separation function. Visually it would introduce built form onto that land thus reducing the openness in this part of the Gap. This would significantly reduce the effectiveness of the Gap in terms of its function as a tool for spatial separation, in my judgment.”
30. Your Secretary of State agreed with that judgment at paragraph 17 of his Decision Letter.

²³ STRiFE 9/01(a)

31. The implications are clear. If an expansion of built development on previously developed land within a Strategic Gap of just 2.2 hectares significantly reduces the effectiveness of that Gap in terms of its function as a tool of spatial separation, even though the distance between the development and surrounding settlements increases, then the new-build development of 330,000 sq.m. of B8 floorspace, in buildings 20 metres high, must have a correspondingly larger impact upon the functioning and integrity of the Green Belt planning tool which also provides for the spatial separation of affected settlements.
32. So it was that Mr Wallace, on behalf of STRiFE, expressed his bewilderment that this was not fully appreciated by the Inspector who last considered this proposed development at Radlett.
33. As we have already submitted, you are free to exercise your own planning judgment on the issue, and we invite you to agree with Mr Wallace, and to adopt the reasoning of the Inspector at Farnborough and not, with the greatest of respect, the view of Mr Phillipson. It is, quite simply, inconceivable that development of the scale here proposed, located as it is within a gap dividing St Albans to the north, London Colney to the east, Radlett to the south and Park Street and Frogmore to the west, does anything other than very significantly reduce the functioning and integrity of the gap which the Green Belt designation is designed to secure. Indeed, we would respectfully submit that the gap would be all but destroyed, both in real terms and as a matter of perception.
34. Rarely can there have been any proposed development which causes such significant Green Belt harm, with four of the purposes of the Green Belt offended against, and by the largest inappropriate development proposed, to the best of our knowledge, in this part of the country. And to all of that harm must be added the other harms attendant on this proposal²⁴: noise so loud as to

²⁴ PPG 2, para 3.2

make complaints likely in a number of residential properties²⁵, with the probability of sleep disturbance increased; and increased congestion on roads where road congestion is already acute²⁶. It is only if the totality of that harm is not just outweighed, but *clearly* outweighed, by very special circumstances that the Appellant will have demonstrated that this hugely damaging and inappropriate proposal might nonetheless be allowed to proceed²⁷.

35. In STRiFE's submission that is a burden which the Appellant has manifestly failed to discharge to the requisite evidential standard.

Very Special Circumstances

36. The only very special circumstance which the Appellant prays in aid at this Inquiry is the same one which the Appellant prayed unsuccessfully in aid at the last: the support within the Strategic Rail Freight Interchange Policy (March 2004)²⁸ for three or four new SRFIs to serve London and the South East²⁹. The Appellant's argument failed on the last occasion and in STRiFE's submission it should even more emphatically fail again in the light not just of intervening changes of circumstance, but new information.

The Secretary of State's Decision Letter

37. In order to appreciate quite how far short of making the requisite case the Appellant falls, it is vitally important to understand and interpret the last decision letter³⁰ properly and, in particular, the pivotal passage at paragraph 58:

“The Secretary of State considers that the need for SRFIs to serve London and the South East is a material consideration of very

²⁵ In relation to noise, see the careful critique of the previous Inspector's conclusions on noise by J&S Consulting Ltd (STRiFE 9/03). STRiFE also fully endorse the conclusions of Mr Stephenson for the Council on noise issues.

²⁶ See in particular the evidence of the local Residents Associations (STRiFE 9/05 – 9/09) whose concerns, based as they are on longstanding and detailed knowledge of the local area, should be given substantial weight.

²⁷ PPG 2, para.3.2.

²⁸ 9/CD/5.1

²⁹ At paras 6.9-10

³⁰ 9/CD/8.1

considerable weight and, had the appellant demonstrated that there were no other alternative sites for the proposal, this would almost certainly have led her to conclude that this consideration, together with the other benefits she has referred to above were capable of outweighing the harm to the Green Belt and the other harm which she has identified in this case.”

38. In particular, so far as the first clause of the above passage is concerned, if there is still a need for SRFIs to serve London and the South East, noting that it is the *whole* of London and the South East which needs to be served and not any particular sector within that area, then that plainly is a material consideration to which very considerable weight should be given. However, and as Mr Tilley readily agreed, that assumption begs two preliminary questions, both of which I shall address later in my closing:

(1) Is there still a need to be met for SRFIs to serve London and the South East?

(2) If there is still a need, will the Radlett site properly operate as an SRFI to meet that need?

39. Moreover, the remaining part of the above passage from paragraph 58 of the Secretary of State’s decision letter plainly begs three further preliminary questions, all of which were also agreed by Mr Tilley when he was cross examined:

(3) If there is a remaining need for SRFIs to serve London and the South East, has the Appellant this time demonstrated that there are no other sites capable of meeting that need better (and we would add “especially in terms of their ability to function as an SRFI”)?

(4) If there are alternative sites which could meet that need better, could they do so without occasioning the same extent of harm as occasioned at Radlett?

(5) *If there are no such sites available, is the extent of the remaining need such that the harm to the Green Belt, and the other identified harms, is clearly outweighed?*

40. However, the five questions which are agreed to arise from paragraph 58 of the last decision letter beg an even more fundamental issue - as to whether now is the time and this the place at which they should even be determined.

41. In particular, and as Mr Tilley again readily conceded, those questions raise strategic planning issues of national importance concerning a development which statute defines to be a nationally significant infrastructure project³¹. It was precisely to address issues of this nature, and on a national and strategic basis guided by National Policy Statements³², that the Government enacted the Planning Act 2008 and established the Infrastructure Planning Commission³³. This recently established regime is a material planning change in circumstance of the utmost importance, and raises a sixth question for your consideration:

(6) *Will any decision to permit an SRFI at Radlett at this time be premature, potentially undermining the very processes which national government has established for the consideration of infrastructure developments of national and strategic importance?*

42. It is to the above six questions which I will shortly turn in these closing remarks, as I did in my opening. However, before we address those questions it is important to make three preliminary submissions arising from the quoted passage from paragraph 58 of the decision letter.

43. Firstly, it is to be noted that the Secretary of State was careful to say in paragraph 58 only that if there were no such sites, this would be “capable” of outweighing such harm. The Secretary of State’s use of the word “capable” in that regard was entirely deliberate, and it is notably different from the

³¹ See: Section 14(1) of the Planning Act 2008.

³² See: Section 5 of the Planning Act 2008.

³³ See: Section 1 of the Planning Act 2008.

Inspector's own wording at paragraph 16.202 of his Report where he said that, had he been convinced that the Appellant's evidence had demonstrated that there were no other alternative sites, he "would" have taken the view that harm was outweighed by need.

44. The Secretary of State quite deliberately did not go that far, and for good reason. In particular, the balancing exercise of harm against need simply could not be undertaken on the necessary comparative basis, site against site, precisely because the Appellant's alternative sites assessment was so inadequate. Accordingly, if and when you come to undertake that comparative balancing exercise in your deliberations, it will therefore be against the backcloth that the Secretary of State has never done so.
45. Secondly, it is vitally important to understand the nature of the comparative balancing exercise, site against site, which is required to be undertaken by the Alternative Sites Assessment: it is the exercise inherent to the last Inspector's description of the relevant, and fundamental, issue at paragraph 16.121 of his previous Report, which – in turn – must be read in the context of the Appellant's submissions on the relevant matter as reported at paragraph 6.109.
46. In particular, and on the assumption that there remains a need for SRFI development to serve London and the South East, the alternative sites exercise requires considering whether that need could be met either in: (1) a non-Green Belt location; or (2) on a Green Belt site which "would, taking all matters into consideration, perform materially better than the appeal site."
47. It is beyond any sensible argument, however, that what (ii) above contemplates is not just (or even principally) the question as to whether an alternative SRFI site in the Green Belt causes *less Green Belt harm* than Radlett (by necessity, all alternative sites will be of a comparable size and identically inappropriate development in the Green Belt); rather, it plainly contemplates the question as to whether one or more of the alternative Green Belt sites performs materially better *as an SRFI* so as to be a preferred site to meet the asserted need.

48. One would have thought that that was an obvious and common-sense point. It can be tested very simply. If there are two Green Belt sites capable of meeting the asserted need to serve London and the South East, but one has significantly greater gauge problems over the other, and would also prejudice the delivery of the largest Government investment into passenger lines to the capital when the other would not, the less problematic site should clearly be preferred because it would “perform materially better” as an SRFI so to meet the need asserted to justify the exception to Green Belt policy.
49. Moreover, that was precisely the case put by the Appellant on the last occasion. Mr Kingston QC’s submissions in this regard are faithfully reported by the Inspector at paragraph 6.109 of his Report:
- “The issue therefore is whether the need that the appeal proposal seeks to meet could be met ... on another Green Belt site which, having regard to all of the relevant issues (including ... the ability to meet SRFI criteria ..., would perform materially better than the appeal site.”*
50. That is why, when the Appellant undertook its previous Alternative Sites Assessment, it relied heavily upon the input of Mr Gallop, the rail expert. It is also why, when the Inspector came to consider the relevant issue, he made frequent reference to the comparative benefits, or disbenefits, of the suggested alternative sites in railway terms. He did so, for example, at paragraphs 16.130, 16.132 and 16.136 of his Report.
51. Thirdly, however, and bizarrely, the Appellant’s second Alternative Sites Assessment, tendered with a view to remedying the evident defects of the first effort, entirely ignores, indeed deliberately eschews, any comparative analysis of site against site in terms of rail accessibility. As Mr Tilley conceded to both Mr Reed and myself under cross-examination, all of the alternative sites were identically rated, irrespective of any facility to perform better in rail terms one against the other.
52. That approach is plainly wrong. Indeed, it is so wrong that the entire Alternative Sites Assessment undertaken by the Appellant for this second

Inquiry is misconceived. It is falsely founded and, in consequence, entirely incapable of providing the solid evidential foundation required to discharge the burden imposed upon them. For this reason alone, you cannot recommend to the Secretary of State in terms any different to your predecessor's recommendation at paragraph 16.138 of his Report:

“... Helioslough's Alternative Sites Assessment was materially flawed ... To my mind ..., the results are wholly unconvincing and little reliance should be placed on the report as it stands.”

53. As I shall shortly come onto however, when addressing the six questions to which this appeal gives rise, the above error is just the first of three reasons for placing little reliance upon the Alternative Sites Assessment which Helioslough put before you. Each of them taken individually, let alone accumulatively, totally undermines the Appellant's case.

The Six Questions

54. It is in the context of all of the above that I turn to the six questions I identified above.

(1) Is there still a need to be met for SRFIs to serve London and the South East?

55. As matters stand in advance of publication of the National Policy Statement on SRFIs, high level national policy support remains for three to four SRFIs to serve London and the South East. Appendix G to the 2004 Policy Document³⁴ indicates that, up to 2015, this could be met by 400,000 sq. m of rail-related warehouses. Whilst that may not, indeed is not, a ceiling on that which is permissible, it is nonetheless the only stated, and quantified, assessment by Government as to need. That is beyond dispute, and we would specifically invite you to so find as a question of fact.

56. Since the last Inquiry in respect of Radlett however, Howbury Park has been permitted. In addition, the London Gateway development is also approved.

³⁴ 9/CD/5.1

Together, they amount to well in excess of 1,000,000 sq. m of rail-related warehouses - more than 2½ times that which is needed by 2015 to serve London and the South East.

57. If you determine, then, that: (1) the above developments could, on the balance of probabilities, operate as an SRFI; (2) that there is no obvious impediment to them being delivered; and (3) that, if delivered as SRFI, they would serve London and the South East, then the entire need case will, quite simply, have been transformed.

Operable as an SRFI

58. So far as the first issue is concerned, there is no doubt at all that Howbury Park is permitted as an SRFI and would operate as such.
59. Neither, on the balance of the evidence now before you, can any reasonable question mark now be raised in these regards against London Gateway. The last Inspector accepted that the site could operate as an SRFI at paragraph 16.142(iii) of his Report. Moreover, whilst he went on to state his understanding that the proposal was essentially for port-related activities, that was on information which he conceded to be limited as to whether its owners proposed to let it be used more widely. We now know, though, through the evidence of Mr Wilson³⁵ at paragraph 6.11 and Appendix A³⁶, that there will be no restrictions on occupiers of that development being port users. Accordingly, you can only find, on the balance of probabilities and in the light of new information, that the site will operate as an SRFI. (Indeed, its proximity to both a port and the M25 mean it also fulfils the requirements for an SRFI in the East of England, as sought in the East of England Regional Freight Strategy).

Deliverable as an SRFI

60. Further, and so far as the second issue is concerned, no evidence has been adduced to the effect that either Howbury Park or London Gateway might not

³⁵ 9/LPA/2.2

³⁶ 9/LPA/2.3

be delivered. They must therefore, on the balance of the evidence, be assumed to be readily available to operate as SRFIs.

Serving London and the South East as an SRFI

61. Finally, and so far as the third issue is concerned, I will not repeat all of the evidence of Mr Wilson on behalf of the Local Planning Authority, nor preempt the submissions that Mr Reed will make. However, I do say that: (1) Mr Wilson's evidence was compelling; and (2) the Appellant's evidence was negligible.
62. Whereas Mr Wilson's evidence to the effect that Howbury Park and London Gateway would both serve the whole region as SRFIs was supported by detailed analysis of the market, of the logistics sector and of operators, the Appellant did no more than chant its mantra, reciting and relying upon the Inspector's previous "pragmatic" view³⁷, which was one to which he came without the benefit of Mr Wilson's evidence. That is simply not good enough to deal with the many substantive points that Mr Wilson made, especially when, as the Inspector previously concluded, there was no policy support³⁸ whatsoever that could be prayed in aid of the Appellant's sectoral, sub-regional approach. Indeed, paragraph 4.4 of the 2004 SRFI Policy Document³⁹ expressly acknowledges that SRFIs "operate such as to serve regional areas".
63. Consistent with this, and as Mr Wilson demonstrated, the distribution areas for SRFIs, and occupiers of larger warehouses within SRFIs, is on a regional basis, not a sub-regional basis. So it is that occupiers at Howbury Park would serve the whole of the London and South East region, including the North West Sector, just as would occupiers of any potential SRFI within the North West Sector itself.
64. The impact of this reality, demonstrated by the evidence and consistent with the 2004 Policy document, is clear. The Appellant's need case has, indeed, been transformed since the last Inquiry by both: (1) the recent permission for

³⁷ IR16.126

³⁸ IR16.124

³⁹ 9/CD/5.1

Howbury Park; and (2) our new appreciation of the way in which both Howbury Park and London Gateway will operate as SRFI's, each serving London and the South East. Capacity is already on stream to meet such need as may arise within the region for many years hence.

65. Moreover, the Appellant's error as to the market and the region which would be served by the above SRFI developments not only impacts hugely upon its need case, it is a second fundamental flaw undermining the fresh Alternative Site Assessment. The Appellant has limited its area of search to the North West Sector when to do so is unjustified by any proper analysis of the regional basis upon which SRFIs as a whole, and occupiers of very large warehouses within them, operate. That means, as we shall see when we come to address the fourth question to which this Inquiry gives rise, that the Appellant has looked for potential alternative sites in too small an area, thereby missing out on such obvious alternatives as Howbury Park, London Gateway and several other sites besides.

(2) If there is still a need, will the Radlett site properly operate as an SRFI to meet that need?

66. Whilst neither STRiFE nor FCC decries the ambition to put more freight on the rail network, and on the Midland Main Line as part of that endeavour, they do assert that the location at Radlett as a site for an SRFI poses very profound difficulties indeed. Their position in this regard is entirely consistent with the letters appended to Mr Hirst's Proof of Evidence. In opening, I concentrated on just 4 problems. I do so again in closing, albeit that I take them in a different order.

Inappropriate location to serve demand

67. Firstly, and as Mr Wilson also comprehensively demonstrated, Radlett is inappropriately located to serve any of the anticipated demand for freight by rail. We endorse entirely the expert evidence that he gave. Quite simply, Radlett is insufficiently far from the ports to make it an economically attractive site to non-bulk carriers. It is served, as we know, by a gauge

insufficient to accommodate Channel Tunnel rail freight, hence the reliance upon sub-optimal low chassis wagons. And it is poorly positioned for rail freight movements to and from populous urban centres in the North West of the country⁴⁰, having tortured access only to the West Coast Main Line.

Lack of any connection to the North

68. Secondly, the 2004 Policy document⁴¹ upon which the Appellant rests its entire needs case, establishes as a necessary criterion for an SRFI rail connections in both directions. Radlett does not offer this. There is no connection proposed by this appeal to the north. Any trains seeking access from or egress to the north will have to be routed via London.
69. Moreover, it is wholly wrong for the Appellant to seek to bury this issue by reference to schematic suggestions of a future northerly connection for which no application has been made, no feasibility or viability assessment undertaken, no indication given as to potential land take, and no assessment offered as to the impact of the possibility on the noise environment for Napsbury residents.

Lack of paths due to Thameslink Programme

70. Even more critically, however, the evidence now demonstrates that no trains could ever enter or leave the Radlett site other than at night. Before coming on to the evidence before you as to pathing, however, it is important to preface my remarks by two preliminary submissions.
71. Firstly, and as conceded by Mr Gallop under questioning from Mr Reed, it was not until Mr Wilson's analysis for the purpose of this Inquiry that anyone had ever assessed the accessibility of the Radlett site by freight against the Thameslink Programme timetable. That exercise was not undertaken at the last Inquiry and all of the evidence on the issue is completely new evidence never before considered.

⁴⁰ expressly referred to at page 84 of the Network Route Utilisation Strategy document at Appendix A to Mr Wilson's rebuttal of Mr Gallop's Proof of Evidence (9/LPA/2.20)

⁴¹ 9/CD/5.1

72. Secondly, no party other than Mr Wilson has ever undertaken an assessment of the accessibility of the Radlett site by freight in accordance with the *latest and most up-to-date Thameslink Programme timetable*. The only other body to have attempted a comparable exercise to Mr Wilson's was Interfleet, who were not called to give evidence or susceptible to cross-examination, and who (as I shall explain below) worked only to a prior timetable, since superseded.
73. The context within which Mr Wilson undertook his assessment is, as you have heard, that the MML south of Bedford is already one of the most intensively used passenger lines on the whole network, and host to the above Thameslink Programme, the greatest single investment currently being undertaken by the Government for passenger lines in the country. That Programme is of national significance and it is absolutely vital, as agreed by all parties, that it is not prejudiced. That, indeed, is why Network Rail aver that they will not allow any freight movements in or out of the proposed SRFI at Radlett which would interrupt or inconvenience those projected passenger services; and, also, as Mr Gallop correctly conceded in cross-examination by Mr Reed, why, in a head-to-head battle between an SRFI at Radlett and the Thameslink Programme itself, the latter would prevail.
74. However, on the expert evidence now before you, the consequence of Network Rail's stated position will be that freight train access and egress to and from the proposed site can only be at night time. Mr Wilson's evidence in this regard is compelling. Using the industry-standard Railsys model, the same model that Network Rail would use to assess pathing and performance issues and working to the most up-to-date Thameslink Programme timetable, Mr Wilson could not identify a single path to access and SRFI at Radlett between the peaks.
75. Moreover, it is no answer to Mr Wilson's evidence that: (1) that trains could be timetabled to pass signals on amber; or (2) that access could be gained by crossing the intervening lines (using a diamond box junction) rather than the weaving movement described by Mr Wilson's modelling; or (3) that there are aspirational plans to electrify and gauge clear the Midland Main Line; or (4) the proposed Thameslink Programme is indicative only; or (5) that the service

specification put forward by Mr Clancy⁴² shows that, in the off peak, 2 trains per hour on the Luton service stop short at Brent Cross.

76. So far as the first point is concerned, it is simply not right to adopt non-standard industry scheduling practices and assume timetabling that is programmed upon the basis of passing signals on amber rather than green⁴³.
77. So far as the second point is concerned, diamond box junctions are unlikely ever to be approved – they are expensive and maintenance costly⁴⁴.
78. So far as the third point is concerned, unlike the Thameslink Programme (which is to be treated as committed) the proposed electrification and gauge clearance of the MML is aspirational only – for example, Appendix K to Mr Gallop’s evidence clearly indicates that the electrification of the MML is still subject to further cost-benefit review.
79. So far as the fourth point is concerned, it is plain that the Thameslink Programme is to be treated as a commitment⁴⁵, and not just a commitment but the largest Governmental rail passenger commitment that exists. Three points follow.
80. First to treat the Thameslink Programme as merely indicative is to undermine its obvious strategic importance massively. Second, if the Thameslink Programme is to be treated as a commitment, as Network Rail avers it must, that means for all present purposes – not just rail planning purposes, but for Town and Country Planning purposes also. Third, the nature of the Thameslink Programme which is to be so treated as a commitment is that scheme as incorporated into the RUS baseline and contained in the Draft East Midlands RUS itself⁴⁶.

⁴² STRiFE 9/10/01

⁴³ Wilson and Clancy in chief

⁴⁴ Evidence of Clancy in chief

⁴⁵ East Midlands RUS Draft Sept 2009 (9/CD/5.5)

⁴⁶ 9/CD/5.5 page 4

81. The above affords, moreover, the entire answer to the fifth point. In particular, whereas the specification to which Mr Clancy spoke in chief gives 8 trains per hour passing the site on the slow lines and not the 10 which Mr Wilson assumes, Mr Wilson was – quite rightly – working from the *later* draft East Midlands RUS service specification which supersedes Mr Clancy’s. That RUS specification is the latest and most up-to-date available. It is that specification that is to be treated as a commitment in accordance with the requirement of the Draft RUS. And that specification does envisage all 4 trains per hour of the Luton service running through, meaning a total of 10 trains per hour running on the slow lines past the site.
82. At that level of usage, as Mr Gallop confirmed when cross-examined by Mr Reed, the Interfleet suggested time-tabling was simply “unworkable”. The site could not be accessed other than at night (between the hours of 10pm and 6am). That means it could not operate as an SRFI⁴⁷. And that means both that Network Rail would not, in the end, support the proposal⁴⁸ and that the Appellant’s very special circumstances come to nothing.
83. The self-serving, foreshortened, incomplete and misleading note of Mr Clancy’s evidence produced on behalf of the Appellant in re-examination of Mr Gallop changes this analysis not one iota, rooted as it is in the legal requirement for you to decide upon the best and most up-to-date information available⁴⁹, and the requirements of the Draft RUS described above.
84. You will have your own note of what Mr Clancy actually said in evidence, as indeed do we. At the close of examination in chief, just after the luncheon adjournment on 2 December 2009, I put to him the footnote 3(b)⁵⁰ point in terms. Our record of the exchange is as follows:

PS Take up the train service specification document that was handed in. Matter arising from the footnotes. Service group 3b. Offpeak Brent Cross to East Croydon. Read across. Indicates those trains off peak wouldn’t pass Radlett?

⁴⁷ Mr Gallop XX by Mr Reed

⁴⁸ Mr Gallop XX by Mr Reed

⁴⁹ *Price Brothers Limited v. Department of the Environment* [1979] 38 P&CR 579 at 591

⁵⁰ STRiFE 9/10/01

- HC Yes. That's consistent with 12 offpeak on MML but only 10 passing site.
- PS Has that followed in draft RUS?
- HC Draft RUS indicates desire to 12 off peak but makes reference to delivering 2. Might be requirement to terminate at Brent Cross. Consistent but indicates desire for 12 off peak.
- PS If desire came to fruition and did run 12 off peak, does that make easier or more difficult to access offpeak?
- HC All relates to NR analysis. Subject to that, more trains off peak → more difficult.

85. Moreover, at the very close of Mr Clancy's cross-examination, Mr Forsdick put it to him in terms that the basis of Mr Wilson's pathing analysis was wrong. The exchange, as we noted it, was as follows:

- DF Basis of the assumption of the Wilson pathing note is wrong on your case
- HC Based on 10 instead of 8
- DF Wrong?
- HC Not necessarily.
- DF Contrary to your best estimate in July?
- HC Contrary to our assumption **at that time**⁵¹

86. You, however, are bound not to make your recommendation upon the July information, but upon the subsequent scheme as set out in the Draft RUS which is to be treated as a commitment. That is in no way to denigrate the evidence of Mr Clancy. His evidence was that trains could not be pathed into and out of Radlett on either the earlier July timetable or the subsequent timetable incorporated in the draft RUS (with the latter being even more difficult for obvious reasons). The Interfleet evidence⁵², insofar as it has any relevance, only addresses Mr Clancy's evidence as to the former timetable and not the latter.

Network Rail's position

87. Moreover, the Appellant's reliance upon Network Rail's support for their proposed development has now been shown both to be manifestly overstated, and also to be no answer whatsoever to the Wilson analysis.

⁵¹ Emphasis supplied
⁵² 9/HS/2.8

88. Firstly, as I stated in opening⁵³, and as has been confirmed by all of the evidence you have heard, this proposal is at a pre-feasibility stage only – GRIP Stage 2. As such, the claimed support of Network Rail is virtually meaningless for the purposes of this Inquiry; their position is evidence of nothing more than their contractual duty to share information *before any of the requisite assessment as to feasibility has even been undertaken*. You cannot, in those circumstances, gain any comfort from Network Rail in respect of the fundamental issues as to whether, on the balance of probabilities, paths would be available: they have, as already explained, never undertaken any detailed assessment of the site’s accessibility by freight compatible with the Thameslink Programme. That is why, in terms, they offer no guarantee that any paths will be available⁵⁴.
89. Secondly, and importantly, such support as they have expressed for the Radlett proposal has only ever been stated to be “support in principle”⁵⁵. They have never stated their full, still less their unconditional, support as suggested by Mr Tilley in paragraph 9.9 of his Proof of Evidence.
90. Thirdly, neither has Network Rail ever expressed any preference for Radlett over any of the potential alternative sites. Their position in that regard is expressly stated at paragraph 2.1 of their letter to the last Inquiry dated 7 December 2007⁵⁶.

Conclusion on Pathing

91. The consequence of the above 4 points, sourced in the expert evidence of Mr Wilson which the previous Inspector did not have the benefit of considering, is clear. The Appellant has failed to discharge the evidential burden upon it to prove, on the balance of probabilities, that a single train could enter or leave its proposed SRFI other than under the cover of the night.

⁵³ STRiFE 9/02 para.25

⁵⁴ Paragraph 2.3 of the Agreed Statement of Facts

⁵⁵ 9/CB/1.8 Letter from Network Rail to last inquiry dated 7 December 2007 para.2.1

⁵⁶ *Ibid*

92. That means that the Appellant cannot demonstrate, to the requisite evidential standard, that the proposed site would even operate as an SRFI; and that means that they cannot make out their case for very special circumstances.

93. Of itself, this is sufficient reason to dismiss this appeal, before we even come to the crux of the Appellant's case – whereby, through its second Alternative Sites Assessment, it seeks to address the reason why the last Inquiry resulted in a refusal of permission for an identical development to that proposed today.

(3) Has the Appellant demonstrated that there are no other sites capable of meeting the need for SRFIs to serve London and the South East?

94. Since this question lies at the heart of the Appellant's appeal, albeit that its appeal must fail for the reasons given above, I will be forgiven for dealing with it fully, addressing the relevant issues to which it gives rise in the following order: (1) the correct lesson to learn from the Appellant's flawed Alternative Sites Assessment at the last Inquiry; (2) the fundamental errors undermining the second Alternative Sites Assessment; (3) the failure of the Radlett site to fulfil the criteria of an SRFI as guided by the 2004 Policy Document; and (4) the capacity of other sites to perform materially better than Radlett in rail terms.

The correct lesson from the last ASA's rejection

95. It is a matter of record that the Appellant's argument that there were no alternative sites which would perform better as an SRFI failed upon the last occasion it was raised. It is helpful, however, to understand precisely why that argument failed, why the Inspector concluded that their earlier Alternative Sites Assessment was so materially flawed as to be "wholly unconvincing"⁵⁷.

96. When so concluding the Inspector referred in terms to the criticisms raised against that earlier Alternative Sites Assessment by STRiFE. Moreover, Mr Tilley volunteered in evidence that it was STRiFE's attack against the earlier

⁵⁷ IR§16.138

Alternative Sites Assessment (together with the attack made by Mr Reed on behalf of the Local Planning Authority) which demolished the Appellant's case and led to the earlier Inquiry holding against the proposed development.

97. Perusal of the relevant paragraphs of the Inspector's Report in which the STRiFE criticisms are set out is revealing. Paragraphs 8.117 – 8.125 describe the litany of errors which were made by the Appellant on the last occasion in its assessment of the alternatives. When those errors were corrected, Radlett did not even come top of the Appellant's *own* assessment of alternatives. A non-Green Belt site fared better.
98. It is in the light of that past fiasco that Mr Tilley presided over a completely different methodology for the assessment of alternative sites for the purposes of this Inquiry. Unlike the earlier methodology, the new methodology contains no numeric ranking of any site by reference to any of the assessment criteria. All of the judgments inherent to the exercise are reduced to prose alone.
99. Whilst we can all readily sympathise with Mr Tilley's reluctance to put his head on the same block as Mr Tucker on the last occasion, that reticence should be seen for what it is: an exercise in cowardice rather than expertise.
100. Mr Tilley had, like Mr Gallop, been entirely willing to utilise the numeric methodology on the last occasion until their errors were exposed by cross-examination. His reluctance to use a numeric methodology on this occasion is designed to avoid any exposure to a similar cross-examination at this Inquiry.
101. And yet there is nothing wrong with the numeric methodology if it is properly undertaken and provided that the numbers are justifiable. Indeed, there is very much to commend it. Yes, it does incorporate subjective judgments, but through reducing those judgments to numbers, it allows the Alternative Sites Assessment, and the judgments inherent to it, to be subject to not just scrutiny but interrogation. Those numbers are the benchmarks by which comparison between sites, and forensic investigation of those comparisons, can be undertaken.

102. Indeed, had the Appellant not adopted its numeric approach on the last occasion, it may very well have got away with a wholly unprofessional Alternative Sites Assessment, the litany of errors lost in prose and never exposed.

The fundamental errors undermining the second ASA

103. The failure to use any numerical benchmarking to allow for interrogation of the Alternative Sites Assessment, or forensic scrutiny of the comparative merits of the alternatives it purports to consider, is the third critical flaw in the Appellant's new Alternative Sites Assessment, alongside their wholly mistaken assumption of rail neutrality between the alternatives and their unjustified restriction of the search area to the North West Sector. Taken together, this triumvirate of errors renders the entire second exercise as unfit for purpose as the first.
104. In particular, in order for it to provide a secure basis upon which to compare the merits of any of the suggested alternative sites as potential SRFIs, the second Alternative Sites Assessment would have had to entail: (1) a search area wide enough to identify all of the alternatives capable of serving London and the South East; (2) numeric evaluation of all of the relevant selection criteria; and (3) appropriate weighting in respect of the critical matter – the capability of the site to operate as a rail-related depot, a Strategic **RAIL** Freight Interchange. The Appellant's Alternative Sites Assessment fails on all three fronts.

The failure of the Radlett site to fulfil the criteria of an SRFI as guided by the 2004 Policy Document

105. Let us turn then to the criteria against which an SRFI should be judged.
106. Paragraph 7.10 of the 2004 SRFI Policy Document states in terms that the characteristics identified in that document “must be recognised in ... assessment criteria” of SRFIs. Those characteristics are detailed and

considered by Mr Hirst in his Proof of Evidence⁵⁸. I deal in closing with the following criteria in particular: the need for high quality road access; the particular locational requirements for rail connections; the need for an economic local employment base; the need to be away from residential development; and the need to be able to expand. It is notable that Radlett signally fails to match up to any of them.

(a) High quality road access

107. Whilst the 2004 Policy requires a Strategic Rail Freight Interchange to be located where there are high quality links to motorways and the trunk road network, and whilst the appeal site is adjacent to the M25 to the south, direct access to the M25 has been denied by the Highways Agency on safety grounds. The consequence is that the projected 3,200 daily HGV movements will all have to be routed via the A414 in order to access the motorway network.
108. And yet the A414 is already heavily congested and almost at capacity. Moreover, there is overwhelming evidence that those local roads are at gridlock whenever incidents occur on the M1 and M25. Irrespective of the issue as to whether there is an independently sustainable highways reason for refusal of the proposal, the inexorable conclusion is that the appeal site does not enjoy the high quality roads links which the national Policy document demands.
109. Moreover, if the Inspector correctly noted at the last Inquiry that traffic conditions were already poor, especially at peak periods (when HGV's generated by the proposed development would be travelling)⁵⁹, that situation will get progressively worse in the future. The M1 has been widened and will attract yet more traffic. Butterfly World has been opened and will entice up a million visitors a year. Plans have been produced for hotel and conference centre just 400 metres from Butterfly World. And the M25 widening has already started.

⁵⁸ STRiFE 9/04

⁵⁹ IR16.187

110. Furthermore, and as Mr Hirst identified for you, no answer has ever been given by either the Appellant or a previous Inspector as to what contingency there is when gridlock is occasioned by incidents on adjacent motorways. Quite simply, in STRiFE's view there is no such contingency that could properly address the problem.
111. In addition, on the balance of the evidence now before you, the highways problems attendant on this proposal may be worse than STRiFE and local residents feared, and worse than the Highways Authority contemplated. There are two interrelated reasons for this.
112. Firstly, it has only recently been appreciated that the sheds proposed for Radlett may be 66% higher than most of those built at DIRFT⁶⁰, upon which the Appellant relied in predicting the HGV movements generated by their proposal. Their trip-generation assessment was, however, based on floorspace only and took no account of height. It ignored, therefore, the potential, and obvious, implications of the increased shed capacity which might result. That is deeply disturbing, given that Mr Gallop conceded in cross examination that the Appellant has no idea who will occupy those sheds or for what purpose; and when he also conceded that many occupiers – for example those trading in heavier goods – will generate more HGV movements per cubic metre storage space than others.
113. The evidence before you therefore opens up the obvious possibility, nowhere reflected in the highways evidence, of occupation of sheds at Radlett by

⁶⁰ STRiFE were emailed late yesterday afternoon by the Appellant indicating that in closing it intended to contend that at least one building at DIRFT was of comparable height to those proposed at Radlett. There was no indication as to why this had not been produced earlier, despite the height issue having been raised by STRiFE in opening (para.29). It would appear that the information on which the Appellant is relying may be references to DIRFT II, which was not permitted at the time of the Appellant's transport assessment. It is clear from the indicative masterplan in the Prologis brochure to DIRFT II (Appendix B to these submissions) that the majority of buildings are 12.5m high (clear internal height) and only one is 18m high. And it is clear from paragraph 3.6 of the Daventry District Council Main Development Constraints document (also at Appendix B) that building heights in DIRFT II will be limited to the height created by the skyline of those built in DIRFT I. Since it is common ground that SRFI sites require to be flat, the clear implication is that DIRFT I buildings are only 12.5m high, consistent with the third parties' position at this Inquiry. Due to time constraints since receipt of the Appellant's email, it has not been possible to research this issue further. If it would assist, STRiFE is entirely content to submit further submissions on this point after the close of this Inquiry.

similar users to those at DIRFT, and in similar proportions per square metre, thereby generating up to 66% more HGV movements than predicted. Indeed, the traffic analysis upon which the Appellant relies is contingent upon a radically different occupation to that which is taking place at DIRFT, notwithstanding that: (1) they have purported to rely on DIRFT as the evidential basis for their calculations; and (2) they have adduced no evidence for suggesting a radically different user profile.

114. Secondly, the only end users specifically referred to by the Appellant have been major retailers, whose occupation of the sheds can reasonably be anticipated to generate far quicker throughput, and far more HGVs, than other occupiers.
115. At the very least, then, the traffic assessment is not a worst case scenario. It clearly permits the very real possibility that more HGV movements will be generated than predicted, with attendant potential implications both for congestion and for noise.

(b) Rail connections

116. Likewise the 2004 Policy document goes on to make it clear that Strategic Rail Freight Interchanges have quite particular locational requirements in terms of rail connections. They must enable mainline access in either direction; and be accessed by rail links with both high capacity and a good loading gauge. However, as we have already highlighted, there is no provision for trains to have direct access to the Radlett site in both directions, so that rail traffic will have to enter and leave the site to and from the London direction only. Moreover, as we have already seen, the appeal proposal does not propose any northerly connection to address that gaping hole.
117. If that was not enough, and as again we have already highlighted, on the balance of the expert evidence available, not only is there no guarantee that rail paths could enter and egress the site other than at night, there is no likelihood that they would be able to. The implementation of the Thameslink

Programme is, quite simply, incompatible (on all available evidence) with this appeal proposal.

118. Furthermore, and so far as loading gauge is concerned, you will have noted that upon the most detailed assessment of the issue – the Laser Rail analysis (as agreed by Mr Gallop in cross-examination) - the Midland Main Line is restricted to W7 only, thereby limiting the type and size of containers that could currently be carried on standard freight wagons. This is in stark contrast to the position at Colnbrook (W8) and still more so to London Gateway (W10). Moreover, whilst the Appellant claims a commitment to increase the loading gauge to W10 south of Radlett, we cannot help but note that: (1) they continue to highlight the use of less efficient low chassis wagons; (2) no gauge clearance works have ever been costed; and (3) there would be very considerable disruption caused to economically vital commuter routes by the considerable construction works necessary to increase the loading gauge of the MML to W10⁶¹.

(c) Local workforce

119. It is expressly stated in the 2004 Policy document that access to a reliable and skilled workforce, employable at economical cost, is of high importance to the location of an SRFI⁶². And yet, as Mr Tilley openly conceded, St Albans has low unemployment, unlike Slough. St Albans is one of the most prosperous areas in the country. Quite simply there is not a large, available workforce local to the site. The net result, as concluded by the last Inspector, would inevitably be mass in-commuting⁶³, mostly by car, all of which is contrary to Government Policy set out in PPG13.
120. The irony is almost painful. The Government is promoting Strategic Rail Freight Interchanges in order to advance the cause of sustainability; and the Appellant promotes a proposed Strategic Rail Freight Interchange in a wholly unsustainable location.

⁶¹ STRiFE 9/10 and oral evidence on 2 Dec 2009

⁶² Para.4.27

⁶³ IR16.190-16.191

(d) Away from residential development

121. The 2004 Policy document states in terms that SRFI are not considered suitable adjacent to residential uses, since homes are necessarily sensitive to the impact of noise and movements. And yet the majority of Frogmore and Park Street residents live between 500-800 metres from the proposed intermodal, with 183 new Park Street dwellings built since the last Inquiry, now occupied, and all within 600 metres of that intermodal. A further 500 Napsbury dwellings are within 500 metres of that intermodal. Many hundreds of homes will therefore be affected, and so much so that in several locations there are likely to be both complaints about noise and increased risk of sleep disturbance – a matter I shall come on to in a little greater detail shortly.

(e) Ability to expand

122. Finally, whilst the 2004 Policy document identifies the potential for expansion as a valuable characteristic of an SRFI site⁶⁴, the Radlett site has no such potential. This, again, is to be contrasted starkly with Colnbrook, where the smaller proposal shortly to come before the Council (itself amounting to 200,000 sq. m of SRFI floorspace) does allow for expansion to the west, as Mr Tilley agreed.

The Alternatives

123. If the Radlett site fails so poorly as a potential site for an SRFI (indeed it could not operate as an SRFI on the best available evidence), the same is manifestly not true for many of the alternatives. I deal first with the permitted sites; then with the other alternatives beyond the unduly restricted North West sector of Helisloough's search; and then the alternatives even within that limited sector.

The permitted sites - Howbury Park and London Gateway

124. Two of those alternatives are already permitted – Howbury Park⁶⁵ and London Gateway, the latter already gauge-cleared to W10. As we have seen, both can properly operate as SRFI and both would serve the relevant region of London

⁶⁴ Para.7.8

⁶⁵ See 9/CD/6.1 and 6.2

and the South East. They more than meet any need to serve that region for decades to come.

The other sites outwith the North West sector - Barking and Dagenham, Kent International Gateway and Redhill Aerodrome

125. Alongside Howbury Park and London Gateway there are several other sites, outwith the over-restricted North West Sector within which the Appellant was looking, which similarly could serve London and the South East.
126. Barking and Dagenham is favoured by Transport for London as a freight terminal to serve the capital and is possessed of excellent rail links, without gauge restrictions, between the terminal and the Channel Tunnel Rail Link. Moreover, it is previously developed industrial land, and in a despoiled, industrialised landscape. It is an obvious contender.
127. Likewise, and for the reasons given by Mr Wilson (which we endorse) both Kent International Gateway and Redhill Aerodrome also would be readily developable as SRFIs, and if so developed capable of meeting the need (such as it is) in London and the South East.
128. Through its flawed methodology however, whereby the Appellant has Nelsonian blindness to any alternative site which lies beyond their North West Sector, even if it could serve London and the South East, all of the above sites have simply been ignored. It is incumbent upon you, based upon the evidence you have heard, to correct that error.

The Alternative North West Sector sites – Sundon, Littlewick Green and Colnbrook

129. However, even within the North West Sector, the Appellant's limited area of search, there are further alternatives available to meet the need: Sundon, Littlewick Green and – of course – Colnbrook. In the interest of brevity, I shall concentrate in closing only upon the latter.

130. Colnbrook is shortly to come before Slough Borough Council again as an application site for an SRFI. That site is, as Mr Tilley openly concedes, degraded land. It is in close proximity to a sewage treatment plant, a waste incinerator facility, an industrial estate and Heathrow Airport. It is served by the A4, and within 1½ miles of the M4 (and a further mile or so from the M4.M25 junction). In addition, it is adjacent to an operational rail link which provides access to the Great Western Main Line, gauge-cleared to W8, and offers head-on access to Southampton via Feltham without any need for turnaround⁶⁶. As above, it is not constrained and is able to expand. It is in an area of low employment and with good links to public transport. It is, and quite obviously, an alternative to Radlett. Moreover, it is an alternative which, unlike Radlett, is unencumbered by the Thameslink Programme, and remote from any building of comparable importance to St Albans cathedral.
131. Neither is there any case for arguing that there is a compelling Local Plan policy objection which can be raised against Colnbrook, differentiating it from Radlett. So far as the Strategic Gap is concerned, and for all of the reasons covered by reference to Farnborough, the designation within such a gap does not offer any additional policy protection against inappropriate development over and above Green Belt designation. In the Green Belt very special circumstances have to be demonstrated sufficient to justify permission being granted; and where they are so demonstrated, especially by reference to the asserted need for an SRFI, the exception to Strategic Gap policy will also be made out.
132. That there is no policy embargo upon SRFI development at Colnbrook is made absolutely clear upon close examination of the Slough Borough Council's Core Strategy⁶⁷. The only sensible reading of that Strategy is that the Council appreciate the potential of the site for an SRFI development; understand the tests against which such a proposal will be determined; and are of the view that they should be applied in the context of a planning application rather than the proposal being ruled out through the LDF process.

⁶⁶ Gallop XX

⁶⁷ See: Hargreaves Proof of Evidence at §7.16 and §5.72 of his Appendix 25.

133. The only rational conclusions open to you upon the evidence available are that there are alternative sites which could meet such need if any as exists for SRFIs to serve London and the South East; that many of those sites would perform materially better as SRFIs than the Radlett site (which appears not to be able even to operate as an SRFI other than at night); and that the Appellant's Alternative Sites Assessment is so error-strewn, so misconceived, that it provides no sound basis for concluding otherwise.

(4) Could the alternative sites meet that need without occasioning the same extent of harm as at Radlett?

134. The harms which would be occasioned should the appeal proposal be permitted have already been described - the loss of a huge tract of Green Belt land to inappropriate development, with four of the purposes of Green Belt designation offended against; harm to visual amenity and local landscapes; noise and sleep disturbance, caused by both on and off-site activities; disruption and inconvenience to users of rail, with trains delayed by freight movements or engineering works; and increased congestion, with drivers caught up in gridlocked roads, especially the A414, whenever an incident occurs on the nearby motorways.

135. So far as roads are concerned, I need not repeat the points previously made, nor emphasise again the evidence you have heard from those local residents who know the local road network best and speak with one voice – albeit from the perspectives of their own blighted communities. Suffice it to say that the roads are already congested and this development would make them more so; there remains no credible contingency plan should an incident occur on the motorways, with access and egress to the site being along a single road only; and that all of these effects may have been very considerably under-estimated by the Highways Authority given what we now know about the height of the sheds in comparison to DIRFT and about the potential of this development to attract large retail occupiers.

136. So far as noise is concerned, STRiFE endorses the conclusions of Mr Stephenson for the Council on cognate issues and also invites your attention to the careful critique of the previous Inspector's conclusions on noise by J&S Consulting Ltd⁶⁸. I do not seek to pre-empt unduly Mr Reed's more detailed submissions on Mr Stephenson's evidence, but I do seek to underline the following points.
137. First, it is clear that Mr Sharps cannot justify his assertion that his own modelling over-predicts by 5dB, a truly astonishing claim in any event given that this is his *own* noise prediction and, if inaccurate to that extent, would be a several-fold over-estimation of the total noise energy. In particular, none of the factors Mr Sharps relied upon accounts for the over-prediction he claims - for all of the reasons given by Mr Stephenson (who, unlike Mr Sharps, was available for cross examination).
138. Second, the evidence clearly demonstrates that, properly assessed in accordance with BS4142 (agreed to be the correct methodology by the last Inspector despite Mr Sharps' evidence to the contrary), and even upon the current inputs as to usage, the noise from the depot will give rise to a likelihood of complaints.
139. Third, and again on current inputs, the evidence also demonstrates that, properly assessed, the noise from the depot and associated activities will, at several locations, cause sleep to be disturbed, especially in the summer months when bedroom windows will more likely be left open.
140. Fourth, however, the current inputs manifestly do not represent a worst case scenario so far as noise is concerned, and for two reasons. So far as trains are concerned, since none (or very few) could access the site by day, all (or most) would do so at night, with all of the consequential operational noises generated in the most noise-sensitive hours. And so far as HGVs are concerned, and by reason of both the height of the sheds and the potential

⁶⁸ STRiFE 9/03

occupation by retailers, there may be many more HGV movements than currently predicted.

141. Fifth, the evidence also demonstrates that the condition proposed by Helioslough, accepted on the last occasion, is incapable of being complied with in any event, and that – even if it could be complied with – would not prevent sleep from being disturbed. As you heard, that condition seeks only to control average noise levels at night, when it is not an average that wakes you up or prevents you from going back to sleep. As Mr Stephenson demonstrated, the condition suggested during the last Inquiry could be complied with and still mask numerous sleep-disturbing incidents every night.

142. Set against the above, it is quite clear that some at least of the alternative sites would not only meet the SRFI need better than it is at Radlett, they would do so without inflicting the savage planning harm which an SRFI at Radlett would occasion. By way of just one very short example, it is inconceivable that an SRFI at Barking would cause planning harm of a comparable magnitude to that caused at Radlett, a sensitive Green Belt location close to an historic town and very many residential dwellings, and accessed on roads which are already so heavily congested and inevitably will become more so.

(5) If there are no sites available, is the extent of the remaining need for an SRFI to serve London and the South East such that the harm to the Green Belt and other identified harms, is clearly outweighed?

143. The weighing of the planning balance of harm against need was never undertaken by the Secretary of State on the last occasion, so we know not the Secretary of State's view on the evidence before her. Since then, however, the extent of any remaining need has considerably diminished, if not been eradicated, through subsequent planning permissions. Even if a residual need for an SRFI development to serve London and the South East has survived, the question arises as to whether it is so large as to justify 330,000 sq. m of warehouse development, all of it 20 metres high, in this particular Green Belt location.

144. As I submitted earlier, and irrespective of the fact that Appendix G to the 2004 SRFI Policy document imposes no ceiling on SRFI development, it is equally a fact that, in consequence of that Appendix, just 400,000 sq. m of SRFI development is stated to be required to serve the need of London and the South East up to 2015. If three or four SRFIs are anticipated to meet that need, each would be approximately 100,000 sq. m in extent.
145. Radlett, however, is an application for in excess of three times that floorspace and, *by itself*, would comprise in excess of 75% of the floorspace for which the 2004 Policy sought provision, even ignoring the permissions already granted. Radlett would also have sheds which appear to be 66% higher than those developed at DIRFT or proposed at Hollingbourne, with an equivalently greater volume of storage capacity, potentially generating proportionately additional HGV movements.
146. So far as height alone is concerned, this presents an intractable dilemma: how can that additional height conceivably be justified in Green Belt terms, even by reference to a need for SRFIs in the light of other SRFIs operating with just 12.5m sheds when 20m sheds are here proposed?
147. Accordingly, and whether by reference to floorspace or height, and even if any demand for an additional SRFI does survive, incapable of being met elsewhere, it is quite apparent that the Radlett proposal amounts to a massive overdevelopment, unjustified by need and beyond the contemplation of the 2004 Policy. As such, it will cause additional, and unjustifiable, harm in terms of its impact on the openness of the Green Belt, on landscape, on the roads, and on residential amenity.

(6) Would the grant of planning permission for an SRFI at Radlett be premature?

148. In STRiFE's submission, moreover, it would be plainly premature to grant planning permission now for Radlett⁶⁹. In particular, the context within which all of the above 5 questions fall to be answered is about to be transformed by the publication of the National Policy Statement in respect of SRFIs, out for consultation very shortly and anticipated to be designated sometime next year.
149. The statute specifically contemplates that such Statement may set out all of the following: (1) the amount, type and size of SRFI development which is appropriate, either nationally or for a specified area; (2) the criteria to be applied in deciding whether a location is suitable or potentially suitable; (3) the relative weight to be given to the specified criteria; and (4) the locations which are suitable or potentially suitable, or indeed unsuitable, for SRFI development.
150. The Statement will, in all of these regards, be underpinned by a national and strategic assessment by the Government of need and market, of economic viability, of impact on other nationally important infrastructure (such as intensively used passenger rail lines) and other site-specific planning and topographical considerations.
151. It would, in STRiFE's respectful submission, be wholly wrong to pre-empt that Statement, and the assessments which will underpin it, by granting consent now for so substantial an SRFI. To do so might, quite obviously, cut across completely the detailed, and binding, policy pronouncements which the Government is about to make, potentially derailing their strategic planning assessments as to how much SRFI floorspace should be provided, and where that floorspace is best located.

⁶⁹ See section 14 of the Proof of Evidence of Douglas Hirst (STRiFE 9/04) and the evidence of Mr Hargreaves, which STRiFE endorses.

152. This can easily be demonstrated. We know, and Mr Tilley agreed when asked by Mr Reed, that the requirement for SRFIs to serve London and the South East is both finite and limited⁷⁰. Imagine, then, that the Statement promotes Colnbrook as a preferred location to Radlett, or acknowledges that Howbury Park, London Gateway and, therefore, Barking can serve the entire region and that the latter is also a preferred location. The end result will be that the Statement will have identified all of the preferred locations and not one of them will be Radlett. And yet if Radlett is already permitted, one or other of Colnbrook or Barking would not – in all likelihood – come forward, which is exactly the opposite of that which the new system is designed to achieve.
153. However, the proposal is also premature in other ways. As we have seen, the level of assessment on all pertinent railway matters is currently wholly inadequate. On pathing, there is no certainty at all that a single off-peak train could enter or exit the site other than at night. So far as even Network Rail is concerned, the project is at a *pre-feasibility* stage only. Moreover, and as already emphasised, the proposed northerly connection is not actually proposed at all – it is nothing more than a schematic possibility for which passive accommodation only is suggested.
154. In all of these regards the proposal is brought before you before it is ready for determination: it pre-empts the NPS; it cannot be demonstrated even to operate as an SRFI; its feasibility is wholly unproven, indeed untested; and the development embraced by the appeal application is obviously incomplete.

Conditions

155. Moreover, taken together, all of the above demonstrate that to permit Radlett now would raise the spectre with which I opened my closing submissions – a massive warehouse development in the Green Belt, permitted on the false prospectus that it can meet a need for the interchange of freight between rail and road, only for it to operate as a predominantly road to road depot,

⁷⁰ IR16.195

something for which no very special circumstances at all could be prayed in aid.

156. It was precisely to prevent this Trojan Horse that the Local Planning Authority propose their conditions, which STRiFE endorse, tying the development to achievement of rail infrastructure improvements. However, even these are not enough, as experience at Alconbury so aptly demonstrates.
157. Imagine that those works are all completed but that, as at Alconbury (and as predicted by Mr Wilson), the pathing issues cannot be overcome. In that event, Network Rail would prevent freight trains from crossing the lines in protection of the Thameslink Programme. And yet Helioslough could, and undoubtedly would, then use their site as a road-only depot.
158. That is why STRiFE proposed their addendum to condition 9. It ties the amount of HGV movements to the number of train movements, all within the existing projections of the Environmental Assessment. It does not prevent the development from going ahead exactly as promoted, it facilitates it. There is nothing whatsoever in that condition for Helioslough to fear, provided that the confidence they invite you to repose in their rail case is well-placed. If Helioslough object to that condition, it can only be because they have no confidence in their rail case. And if they do not have confidence in their own case, sufficient to sign up to so innocuous a condition – one designed only to ensure that something promoted as an SRFI, permissible only if it is an SRFI, actually functions as an SRFI – then neither should you or your Secretary of State.

Conclusion

159. The application has been exposed for the Trojan Horse it is. Accordingly, and for all of the reasons that I have given, and in fidelity to Green Belt policy, and in accordance with the legal authorities, and upon the compelling evidence now before you, I respectfully ask, on behalf of STRiFE and the beleaguered communities which STRiFE represents that this appeal be dismissed and the

Trojan Horse expelled in terms that prevent it ever from returning. The local community demands no less and so too does the balance of the evidence you have heard. This is no location for an SRFI and this valued part of Green Belt land should ever be protected from the huge road-based depot that this development would inevitably become.

Paul Stinchcombe and Ned Helme
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17 December 2009

APPENDIX A

Note on the law concerning the proper approach to this appeal

1. The proposition that a previous decision is capable of being a material consideration is indisputable and for good reason. As Mann LJ held in *North Wiltshire District Council v Secretary of State for the Environment*⁷¹ at 145:

“One important reason why previous decisions are capable of being material is that like cases should be decided in a like manner so that there is consistency in the appellate process. Consistency is self-evidently important to both developers and development control authorities. But it is also important for the purpose of securing public confidence in the operation of the development control system.”

2. However, a previous decision (even, as in the *North Wiltshire* case but not the present appeal, a materially indistinguishable previous decision) is no more than a material consideration. It is not a straightjacket for the following decision maker, as Mann LJ went on to recognise:

“I do not suggest and it would be wrong to do so, that like cases *must* be decided alike. An inspector must always exercise his own judgment. He is therefore free upon consideration to disagree with the judgment of another but before doing so he ought to have regard to the importance of consistency and to give his reasons for departure from the previous decision”.

3. Moreover, you are not just *free* to agree or disagree with the views previously expressed, you are *obliged* in law to consider whether there is a good planning reason to agree or disagree with those prior views, and to do so upon the basis of the best and most up to date information available. You must always exercise your own judgment. That is decided law.⁷²
4. The areas for possible agreement or disagreement cannot be exhaustively defined, but have been stated to include interpretations of policies, aesthetic judgments and assessment of need.⁷³

⁷¹ (1992) 65 P&CR 137

⁷² See: *North Wiltshire District Council v Secretary of State for the Environment* (1992) 65 P&CR 137 at 145; *Price Brothers Limited v. Department of the Environment* [1979] 38 P&CR 579 at 591; and *R. (Kings Cross Railway Lands Group) v. LB Camden* [2007] EWHC 1515 (Admin) at paras.18-22.

⁷³ *North Wiltshire* at 145

5. Moreover, guidance as to what might constitute a good planning reason for disagreeing with a previous decision is found in *R. (Kings Cross Railway Lands Group) v. LB Camden*⁷⁴ at [19]-[22]. At [20] Sullivan J said:

“Mr Hobson submits, correctly, that while a material change of circumstances since an earlier decision is capable of being a good reason for a change of mind, it is not the only ground on which a local planning authority may change its mind. A change of mind may be justified even though there has been no change of circumstances whatsoever if the subsequent decision taken considers that a different weight should be given to one or more of the relevant factors, thus causing the balance to be struck against rather than in favour of granting permission.”

6. It is, accordingly, not restricted to cases where a material change of circumstances has occurred.

7. The point at [20] is then reiterated at [22], in which Sullivan J said that:

“Neither the Defendant nor the interested party dissented from the proposition that, as a matter of law, there did not need to have been a material change of circumstances in order to justify a different decision in November 2006. A change in circumstances was one of the more obvious reasons which might justify a change of mind by a local planning authority, but it was not the only possible reason.”

8. Sullivan J went on to give an apt example as to where a decision maker could come to a different decision, as a matter of its own judgment and in the absence of any material change of circumstances, at [21] and by reference to the Green Belt:

“An example canvassed during the course of submissions was that of a local planning authority which resolved to grant planning permission for an inappropriate development in the green belt, subject to a s 106 agreement, on the basis that the very special circumstances prayed in aid by the Applicant outweighed the harm to the green belt and other harm. On revisiting the matter when the s 106 agreement was finalised, the local planning authority could properly reverse its earlier decision if, on reflection, it considered the harm was not outweighed by the special circumstances...”

9. The principles from these authorities may be drawn together into the following propositions: the requisite “good planning reason” for disagreement with a

⁷⁴ [2007] EWHC 1515 (Admin)

previous decision can properly be sourced in: (1) an intervening material change of planning circumstances; (2) an argument put before, but more compellingly put on the second occasion; (3) evidence adduced before you which was not adduced before the last Inspector; or (4) a different view of the planning merits as a matter of judgment.⁷⁵ Those propositions were all, rightly, accepted by Mr Tilley in cross examination.

⁷⁵ See, in particular, *North Wiltshire District Council v Secretary of State for the Environment* (1992) 65 P&CR 137 at 145; and *R. (Kings Cross Railway Lands Group) v. LB Camden* [2007] EWHC 1515 (Admin) at paras.18-22.

APPENDIX B

*Prologis DIRFT II Daventry Brochure⁷⁶ and Daventry District Council Main
Development Constraints document⁷⁷*

⁷⁶ Available online at <http://www.prologisrfdirft.co.uk/>

⁷⁷ Available online at www.daventrydc.gov.uk/EasySiteWeb/GatewayLink.aspx?allId=10396