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Outline planning application (approval of means of access, siting and landscaping only) for the development of a Strategic Rail Freight Interchange comprising intermodal area, distribution buildings (Class B8 use) and other related floorspace (Class B1/B2 use) up to 331,665 sq.m. with a maximum height of 20 metres together with associated road, rail and other infrastructure works including parking for up to 1602 cars and 617 lorries with earth mounding, tree planting and a new Park Street/Frogmore relief road. Includes additional landscape and other works on further sites to provide public access to open land and community forest. The overall proposals involve some 419 hectares.

Appeal by Helioslough Ltd

In relation to land at

North Orbital Road, St Albans

REBUTTAL PROOF OF EVIDENCE **J B HARGREAVES DIP TP MRTPI**

on behalf of
St Albans City & District Council

Appellant Ref. 4093
Planning Inspectorate Ref. APP/B1930/A/09/2109433/NWF
Local Planning Authority Ref. 5/09/0708
Woods Hardwick Planning Ltd Ref. JBH/KJB/2763
November 2009

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1.0 Introduction

- 1.1 This Rebuttal Proof relates, in the main, to the evidence contained in Mr Tilley's Proof of Evidence regarding Planning and Alternative Sites. I also address one matter arising from Mr Kelly's statement. I deal with the points in the same way that I approached my main Proof of Evidence.

2.0 Scope of Evidence

- 2.1 Mr Tilley says at para 2.22 that it is far from clear what the Council's evidence is on its remaining 13 reasons for refusal. The Council made plain in its Statement of Case what its case would be and following consideration by the Planning Referrals Committee on 14 October 2009, the Appellants were advised of the matters which would not be pursued and the approach to the other reasons for refusal was also set out in the Committee Report. There have been a number of meetings with the Appellants to address Common Ground and Agreed Facts in relation to a number of topic areas which have further clarified matters, but it is not incumbent on the Council to provide its evidence in advance of exchanging proofs.
- 2.2 CgMs letter of 19 October referred to by Mr Tilley at para 2.19 is appended (WH36) together with the reply from SADC dated 22 October.
- 2.3 Lovells' letter of 20 October referred to by Mr Tilley at para 2.20 is appended (WH37) together with SADC's reply of 9 November 2009.

3.0 Approach to Determination

3.1 In this section of my main proof I set out the development plan and other policy considerations.

3.2 In para 5.3 of his evidence Mr Tilley reports that development here was considered as part of the Hertfordshire Structure Plan Review, but rejected by the Panel in favour of a more limited scale of development focussed on Napsbury Hospital to the east of the line. That is correct but it is important to note that the County Council's views of this scheme, which were generally supported by St Albans District Council, as reported by the Panel (WH38) were that:

- i. This is an unsuitable location for development; it is particularly sensitive in Green Belt terms, with the threat of coalescence.
- ii. Mineral workings should not be regarded as brownfield land; this is an area of search under the Minerals local plan, and there is no certainty that minerals could be extracted in time to allow development before 2011.
- iii. It is a congested location, and most movement would be by road. Even with a small development, local highway improvements and traffic calming would be required and, with a larger development, congestion problems would become a major concern and significant junction improvements on the A414/A405 would be necessary. There are no Highway Agency proposals to improve the network around Napsbury.
- iv. The principle of providing a station was supported, and an additional 200 dwellings would probably be about the right level of enabling development, although it would not be a simple matter of building platforms (St Albans District Council thought less than 150 dwellings could be enough). Buses would require a wide range of priority provision on the road network.
- v. A major development would prevent implementation of the Watling Chase Community Forest Plan in this area (a view supported by Watling Chase Community Forest).

3.3 The Green Belt point shows that the Council have been consistent in its approach for many years, and the Panel agreed in their conclusions that:

“The settlements in this part of the County are close together, the Green Belt is important in preventing them from merging into one another, and the positive role of the Green Belt will be enhanced by proposals in the Community Forest Plan.”

“Major development in this area would be in conflict with sustainability principles, given the unlikelihood of creating a balance of housing and employment on the site, the current congestion to the south west of the County, and the critical function served by the Green Belt here.”

- 3.4 Mr Tilley reports the Secretary of State's view of the relevance of the publication of a number of planning policy documents since the previous appeal in para 6.4.

He says the Secretary of State confirmed that none of these raised new issues that would affect her decision.

What the Secretary of State actually said was

‘The Secretary of State has carefully considered the changes to policies T1, T2, T5, T6, ENG1 and to policy T10 (which is specifically concerned with the movement of freight and which refers directly to strategic rail freight interchanges). However, in view of her decision in this letter to refuse planning permission for the reasons set out below, she is satisfied that it is not necessary for her to refer back to parties about these changes.’

- 3.5 I make the point at para 6.26 of my evidence that there is a significant change in the supporting text to Policy T10 of the East of England Plan which previously referred to a northern quadrant, but now says ‘in the region’. The Appellants have not addressed the issue of ‘in the region’ in their amended application or their Alternative Sites Assessment (which only deals with part of the region), notwithstanding that this change has been known for some time.
- 3.6 I note Mr Tilley's reference to the Southern St Albans Local Transport Plan not being materially different to previous policy. That may be so but in order to assist the Inspector as to what that policy now is, I append relevant extracts in relation to freight issues (WH39).

4.0 Legislative Changes

4.1 There is no dispute about the legislative changes which have occurred since the previous appeal.

5.0 Green Belt

- 5.1 In relation to the coalescence point in reason for Refusal 2, Mr Tilley rightly records the Inspector's conclusion on the point at 8.12. Mr Kelly at para 3.7 refers to the Inspector's report at para 6.12 in relation to what I accepted in cross examination on this matter. My point is that whilst all that I said was right, there remains the perception which people living in the vicinity, who know the area well, will have, that the gap between the two settlements has been closed.
- 5.2 The proposed bunds will be understood by people locally to be hiding the SRFI and to be part of the overall scheme. They will see these features as the closest parts of the SRFI to their settlement and they will be plainly visible from them.
- 5.3 In dealing with the Green Belt reason for refusal Mr Tilley quotes from the Committee Report to make the point that an SRFI in the East of England region to meet policy is likely to be in the Green Belt.
- 5.4 That is incorrect because London Gateway meets the SRA policy requirements for an SRFI and it is not in the Green Belt.
- 5.5 Since the Committee Report was produced the SDG Alternative Sites Study has shown that there are 10 sites which score higher than Radlett and of these 4 (London Gateway, Barking & Dagenham, Swanscombe Marshes and KIG) are not in Green Belt and Howbury Park has planning permission. So it would be possible to meet the need for 3 or 4 SRFI to serve London and the South East not only without using a Green Belt site, but also having a choice of non Green Belt sites.

6.0 Strategic Rail Freight Interchange Policy

- 6.1 It is said by Mr Tilley at para 1.3 that Railtrack identified Radlett as a SRFI prior to Helioslough's involvement. My understanding is that Radlett has never been identified as a potential site for a SRFI except as a consequence of being promoted for such use. My view is supported by the previous Inspector's conclusion as para 16.120 where he said that specific policy support for Radlett seemed to be lacking.
- 6.2 Mr Tilley makes the same point again at para 5.4 and points to the site having been identified by a number of rail bodies. Again my point is that the site is reported in several documents as a potential site for a SRFI because it had been promoted as such, not because any independent body had identified it for such use and certainly no policy support for the site followed from what was simply a reporting of the position in those documents.
- 6.3 There was no reference by Mr Tucker to pre 2002 support by Railtrack in his evidence to the previous Inquiry. He refers only to Sustainable Distribution Strategy (March 1999) and PPG13 (March 2001) and SRA Strategic Agenda (March 2001) in his review of policy pre 2004.
- 6.4 In para 5.1.1 of Technical Report 6 of the previous Needs Case Mr Tucker said '*a site at Radlett has been identified by the rail industry*' which was understood to mean what it said ie. the industry not the authorities, because if there was authority support for the site, the Appellants would surely have said so.
- 6.5 Mr Gallop made no claim for Radlett being identified by Railtrack prior to 2004. He said the TfL London Freight Study 2003 quoted a list provided by the SRA for major potential interchanges including Colnbrook, Howbury Park, Cricklewood and Radlett.
- 6.6 Mr Tilley in his previous evidence said at para 5.4 '*The potential of Area 1 to accommodate an SRFI has been identified by a number of rail bodies since the St Albans District Local Plan review was adopted in 1994*'. Again I think that was only on the basis of having been promoted as such.
- 6.7 There is reference in para 6.10 of Mr Tilley's Proof to the letter from the Secretary of State (*sic*) for Transport dated 15.10.09. That letter from the Under Secretary of State should be read in conjunction with the author's letter of 19 June 2009 to Anne Main MP (Strife 9/04/Appendix 1.6)

in which he says the DfT does not discuss or support specific developments or geographical locations for SRFI's. He refers in both letters to the emerging National Networks National Policy Statement due later this year which will supersede the SRA policy.

- 6.8 No new support for the appeal proposal can be found in these letters, but what is notable is the acknowledgement that further SRFI's are needed (which is debatable in the context of the progress made towards meeting the SRA requirement) and the re stating of the role of National Policy Statements. That echoes the response by the Head of Planning at the Department for Transport dated 23 July 2008 (Appendix WH20 to my main proof) in reply to the letter from SEERA and SEEDA dated 5 December 2007 (Appendix WH19 to my main proof).

7.0 Progress Towards Meeting the Need – Alternative Sites

7.1 Any rebuttal in respect of the Appellant's Alternative Sites Assessment will be dealt with by Mr Wilson.

7.2 The Council disagree with Mr Tilley's conclusions about potential alternative sites set out in para 7.2, on the basis of its own objective assessment that there are indeed other better sites than Radlett to serve London and the South East, which is the policy requirement.

7.3 Mr Tilley at para 6.11 relies on the Inspector's conclusion in para 16.125 in support of a sectoral approach to the identification of sites notwithstanding the lack of policy support for that approach.

7.4 In the first application, Needs Case Technical Report 6 paras 2.1.2 and 2.1.3 dealt with alternative sites. It said:

2.1.2 These factors have been given consideration when identifying sites which, in addition to the former Aerodrome site, could also have the potential to provide the location of a Strategic Rail Freight Terminal serving the North West Sector.

2.1.3 Therefore, the study area adopted for the detailed assessment of alternative sites is the North West sector of the M25 running from the M4 motorway as far as Reading in the west to the A1(M) to the north as far as Stevenage. This reflects the market area which the Rail Freight Terminal will serve. Technical Report 3: 'The North West Sector of M25' discusses in detail the requirement for such a facility within this locality.

7.5 The entirety of the consideration of the market area in Technical Report 3 said:

3.2 NW Sector Market Area

3.2.1 Due to the overall geography of London, in particular, the road network a site to the North West of London will inevitably serve a different market to a site to the East. The geography of London and its road and rail network defines the main logistics corridors as those serving the key radials to the east (M11, A12, A127, A13, A2 and A20) and the key radials to the north or west A1(M), M1, A41, M40/A40, M4, M3/A316). The main rail

lines and the primary road network are shown in Figure 2. Freight movement across London within the M25 between these two sectors is limited by the transport infrastructure. In the North West Sector, the principal distribution warehousing within the London area is basically centred around the North Circular Road, Between Hendon and Chiswick.

3.2.2 In their Strategic Rail Freight Interchange Policy the SRA state that ‘with sufficient Strategic Rail Freight Interchange (RFI) capacity, London and the South East could contribute about 17% of rail freight growth in the general rail freight market. This required capacity would be met by three or four new strategic RFI in the region, supplemented by smaller locations within the M25 ring’.

3.2.3 They also state that ‘The qualitative criteria to deliver the required capacity in London and the South East mean that suitable sites are likely to be located where the key rail and road radials intersect with the M25.

3.2.4 A new interchange facility just to the north of the M25 would make an important contribution to the growth of rail freight in London and the South East and fit with the strategy of providing three or four new strategic RFI’s in the region.

3.2.5 The provision of an intermodal interchange facility in this area would also be consistent with the guidance set out in the emerging East of England Plan (Regional Spatial Strategy) and the Regional Transport Strategy for the South East.

7.6 From this it can be seen that there was no evidence of market research on which the sectoral approach was based.

7.7 The Inspector reached his conclusions in the absence of any evidence about the ability of an SRFI in one area to serve another apart from Mr Thorne saying it would not be sensible to serve the north west sector from London Gateway.

7.8 Whilst Mr Wilson says it would be possible to serve the west of London from London Gateway in terms of how operators work, the point is academic with the potential for SIFE to serve the western part of London and the south east.

- 7.9 The letter from EERA to the Secretary of State dated 5 October 2009 (Appendix WH11 to my main proof) makes the point that the identification of a north west quadrant is unhelpful and an over simplistic way of attributing need.
- 7.10 It also sets out the Regional Assembly's geographical preference for logistics development in the Thames Gateway (RSS Policy ETG5) where of course the London Gateway development is under construction.
- 7.11 Mr Tilley, at para 7.20 addresses the issue of availability. In terms of the SDG Alternative Sites Study I have already noted that 10 sites score better than Radlett and of these 4 are not in the Green Belt and a further site at Howbury Park is in the Green Belt but has planning permission.

Of the 10 sites better than Radlett 6 are controlled by logistics operators or developers.

- London Gateway is under constructions by DWP.
 - Barking & Dagenham is being brought forward by Transport for London and London Thames Gateway Development Corporation and private developers (AXA) have also expressed interest.
 - The applicants at KIG are DMI/AXA.
 - Redhill has been promoted by Helioslough.
 - SIFE is promoted by Goodmans
 - Howbury Park is controlled by Prologis.
- 7.12 So there is not only a choice of potential non Green Belt sites but also proven developer/operator interest. At para 8.2 Mr Tilley refers to the February 2007 Committee Report which said there was likely to be a need to locate a SRFI somewhere in the Green Belt. Plainly, the position now is different.

8.0 Prematurity

- 8.1 In terms of the prematurity case referred to by Mr Tilley at para 8.29, it should be noted that the promoters of the Colnbrook site strongly object to the assertion that Radlett would perform better than SIFE.
- 8.2 If the developers of that site are correct that their site offers a 'new and unrivalled opportunity', then the policy requirement could be argued to have been met either in terms of the floorspace required as suggested by Mr Wilson or because Howbury Park and London Gateway would meet the need for 2 SRFIs to serve London and the South East and it would therefore be premature to permit further SRFIs in advance of the National Policy Statement because the remaining requirement is so limited and there is the potential to greatly over provide if the outstanding appeals and other proposals were permitted.
- 8.3 This is not the same position as was the case at the previous appeal, when there were no permissions for SRFIs in which context there was no alternative but to rely on a criteria based policy for their consideration.
- 8.4 There is a further matter which needs to be taken account of in the overall prematurity issue. That is the emergence of the Council's Core Strategy DPD. This has not been mentioned previously as part of the Council's reasons for refusal, but should nevertheless be considered.
- 8.5 The most up to date version of the Council's Local Development Scheme notes that the Core Strategy was published for consultation in July 2009 and that the Council intend to reach Pre Submission consultation before February 2010 if possible. Submission to the Secretary of State is anticipated before July 2010.
- 8.6 It might therefore be submitted to government before the outcome of the Inquiry is known. A decision to grant planning permission in this case would have an impact on how the Council address issues, particularly the amount and distribution of employment land.
- 8.7 For these reasons I think the conclusion reached by Mr Tilley at para 5.27 of his evidence that he does not accept that the application is premature, is inappropriate.

9.0 Sustainability

9.1 I acknowledge Mr Tilley's position that the two further documents to which the Council refer regarding sustainability, do give further encouragement to cutting CO₂ emissions. Mr Tilley takes this to support his position because of his confidence that the use of the site by rail traffic will deliver the savings predicted. For my part, if that optimism proves to be misplaced, the sustainability benefits will not be delivered, and the proposal will then be contrary to the Government's policy.

10.0 Third Party Objections

- 10.1 In para 9.9 Mr Tilley seeks to reject objections to the effect that there will be little economic benefit to the area, by relying on Roger Tym & Partners Study dated March 2009 Hertfordshire London Arc Jobs Growth and Employment Land.
- 10.2 Again, to assist the Inspector, I append extracts from this study so that its findings can be considered in context (WH40).
- 10.3 At para 7.20 the report cautions that “all forecasts are of course uncertain”, and that this applies especially to employment forecasts.
- 10.4 The preferred scenario for St Albans would see employment rise by a very small amount (1%) compared with growth in the London Arc as a whole of 12%.
- 10.5 Within that growth there is also forecast restructuring with a reduction in warehousing employment of around 1077 jobs and increases in office jobs while in the London Arc as a whole warehousing jobs are anticipated to decline by 1480 jobs.
- 10.6 Mr Tilley accepts that the workforce is likely to be drawn from a wide area and this study helps to identify the potential extent of that area. Even if the entire projected decline in warehousing jobs in the London Arc (1480) were re-provided as part of the employment generated by the appeal scheme, at least the same number again remain to be found from beyond the London Arc districts, and any benefit to the local economy has to be considered in this context, and the context set out in para 8.35 of the Report that no industrial or warehousing growth is recommended in the district. There is therefore no need for the proposal.

11.0 Proposed Planning Obligation and Conditions

- 11.1 This matter is the subject of continuing discussions between the Council and the Appellant as Mr Tilley points out in 10.2.
- 11.2 The Council set out its concerns with the Draft Unilateral Undertaking and the extent of agreement on conditions in an email of 6 October (WH41).
- 11.3 The Appellants provided further revised versions of both documents with their email of 3 November (WH42). There remain significant matters to be addressed. Firstly, in relation to contamination, although the Council have indicated the acceptability of the EA's approach – providing that the remediation measures in their Condition 2 (3) meet the risks to each receptor identified in the risk assessment, the Appellants have yet to agree.
- 11.4 In relation to the conditions there continues to be a lack of notification procedures for example the completion of Area 6 in Condition 29.5 and conditions providing for action 'as soon as reasonably practicable' remain and are unenforceable.
- 11.5 In relation to the Unilateral Undertaking it has still not been explained how this is enforceable in the circumstances where the County Council fail to serve the relevant notices. The undertaking purports to be a unilateral undertaking but it relies on the County Council being required to serve notices.
- Furthermore it is not clear how the County Council can deliver the railway facilities and there is imprecision regarding terminology such as produce funds 'over time'.
- 11.6 The Council anticipate that further discussions will be had in relation to these matters, the outcome of which will be reported during the Inquiry.

12.0 Conclusions and Overall Balance

- 12.1 Mr Tilley questions at para 8.45 why reason for Refusal 10 has not been withdrawn. In my view nothing turns on this point. The Planning Referrals Committee were not re-determining the application but reassessing which parts of its case would be proceeded with. In resolving not to pursue the issue of delivery, the Council still wanted to make the point about the material changes in circumstances regarding landscape and ecology because they have to be taken into account in assessing the appropriateness of the mitigation measures – as opposed to whether the measures are deliverable, which is why the Council's letter of 15 October 2009 said 'the extent of the benefits set out by the previous Inspector will be referred to'. The same point in terms of ecology is covered by Reason 11.