



Chris Howsham
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SW1E 5DU

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY HELIOSLOUGH LIMITED APP/B1930/A/09/2109433
LAND IN AND AROUND FORMER AERODROME, NORTH ORBITAL ROAD, UPPER
COLNE VALLEY, HERTFORDSHIRE
APPLICATION REF 5/09/07/08**

I refer to your letter of 29 November 2011.

Thank you for providing the District Council with the opportunity of responding to the further representations made by a number of parties to the appeal and certain additional matters arising since the Secretary of State's letter of 19 October 2011.

a) Written Ministerial Statement – Strategic Rail Freight Interchange (“the Ministerial Statement”).

b) Strategic Rail Freight Interchange Policy Guidance (“the Policy Guidance”).

1. The Council's comments below deal with the content of both the Ministerial Statement and the Policy Guidance.
2. The Council considers that only limited weight should be accorded to the Policy Guidance for the reasons set out in the following paragraphs.
3. First, the document is stated to be 'interim' pending the National Networks National Policy Statement.



4. Second, the document is incomplete and unclear. It fails to refer to a number of factors that are plainly relevant to a consideration of SRFIs; for example, while the Policy Guidance deals with the aim of maximising the economic, social and environmental benefits of transferring freight movements from road to rail (at paragraph 2.3.1), it does not recognise the need to minimise environmental impact or to protect and enhance the natural, built and historic environment. In fact, nowhere in the policy is there a reference even to the need to take into account the environmental impacts of such proposals nor any apparent qualification of Government support for proposals irrespective of their location.
5. Third, the Policy Guidance is internally inconsistent and incomplete. The document says in section 4 that SRFI capacity needs to be provided at a range of locations particularly but not exclusively serving London and the South East (see the last paragraph). However, at paragraph 3.3.4, the document only says an expanded network of SRFIs is likely to be needed. Additionally, the version provided to the Council states at the bottom of the box after paragraph 3.1 that the IPC should start from the basis that the need for SRFIs has been established. That sentence was initially changed in a version contained on the DfT website on 29 November 2011 to the IPC starting its assessment on the basis that there is a need to significantly to increase to [sic] number of SRFI". In the most recent version of the document contained on the DfT website, the sentence was entirely removed. It would appear that the Council is being asked to comment on a version of the policy guidance which is not the final adopted version. In any event, the final version does appear to indicate that need is not to be treated as settled.
6. Fourth, the document has not been consulted on. The lack of reference in the document to the environmental effects of SRFIs would have been commented upon by consultees. The approach to the adoption of the Policy Guidance without any consultation contrasts starkly with and circumvents the approach usually taken by the Department of Communities and Local Government on its policy documentation; that is particularly notable in the present case in the light of the lengthy consultation process which has preceded the National Policy Statements (including that which the Policy Guidance is interim to). Given the significance of decisions to be made under this "interim guidance", it is surprising that there has been no consultation.
7. Fifth, the definition of SRFI in the Policy Guidance is misguided and appears to have been mistakenly drafted. The document appears to define SRFIs as interchanges which are over 60has in size (see paragraph 6.1). If that is the correct reading of the document, it fails to acknowledge that a proposal can operate as an SRFI when it is smaller than 60 has. A good example of this is the Colnbrook proposal which has a site area of 58.5 ha but in respect of which there has been an acceptance by all parties to this appeal (including the Appellant and the determining authority for the Colnbrook site, Slough Borough Council) that the Colnbrook proposal would function as an SRFI. Again, such matters could have been taken into account had the document had been consulted upon. Rather, the document seems to have been poorly drafted, referring to the type of scheme which is to be determined by the IPC (schemes over 60has), as a general definition for all SRFI.

8. Sixth, much of what the Policy Guidance sets out is included in the Strategic Rail Authority policy which was until recently provided by the DfT on their website as 'advice and guidance'. The Policy Guidance does not indicate that there is any greater need for SRFI than had formerly been considered to be the case nor any change to the approach to be taken to the potential location of SRFI's. On that basis, the submissions made at Part 2, paragraph 75 et sec of the Council's closing are unaffected.

c) Logistics Growth Review Document

9. The status of this document is unclear. The first paragraph on page 1 of the document states that the 'the information or guidance in this document' is provided on an 'as is' basis without any endorsement.
10. Paragraph 7 says that 5 out of 6 applications for SRFIs have been rejected through the planning process "which demonstrates a clear need for Government intervention to support investment in SRFIs". The two issues are not related. The failure of the SRFI proposals is doubtless due to the fact that they did not satisfy the relevant planning policies or the environmental safeguards incorporated into the planning system. It is notable that each of those recent applications was determined ultimately by the Secretary of State. Consequently, the fact that such proposals have not come forward cannot be a reason for justifying a proposal which would otherwise be rejected.
11. The Review says at paragraph 20 that the Government has asked Network Rail to support the development of a network of SRFIs and possibly help fund SRFI's. Network Rail can only do that in the context of their duty to plan the enhancement of the railway without showing any preference to any particular operator or market. Accordingly, this statement in the Review cannot be given any significant weight.

d) Further Representations

(i) Department for Transport ("DfT") letter 11 November 2011 and attached Network Rail ("NR") letter 1 November 2011

12. The DfT letter does not accurately refer to the conclusions reached by NR. The Council does not agree with the DfT that the NR letter says that 'there is sufficient rail capacity on the MML to serve an SRFI at Radlett'. That summary is very different to NR's statement that "it is likely both Radlett and Colnbrook can be rail served though neither would enjoy unlimited rail capacity".
13. On that issue, the Council does not disagree that there will be spare freight paths passing Radlett but the NR letter does not address at all the primary point made by the Council at the inquiry (see Part 2, paragraph 28 et sec of the submissions), namely, that there will be no access into or out of the site between 0600-2200 as a result of the use of the line for the Thameslink passenger services. The Secretary of State will know that the allocation of paths is decided by the Office of Rail Regulator and the burden of proof will be on the Appellant to demonstrate that the new rights/paths can be

accommodated without affecting the proposals in the London and South East Rail Utilisation Strategy, in particular the future Thameslink service. The appellant has not shown that sufficient paths will be available for a new junction serving an SRFI at Radlett combined with future Thameslink services.

14. As the Council argued at the 2009 inquiry, it is only through a reduction of the Thameslink passenger service that freight trains entering and leaving an SRFI at Radlett could be satisfactorily accommodated. A reduction in the passenger service will undermine the £5.5bn of investment made by the DfT to relieve passenger congestion on this very important cross-London route and is patently unrealistic.
15. The phrase 'current rail loading gauge is not an insurmountable issue' in the DfT's letter implies there is no current problem. This is very different from NR's conclusion that 'Gauge clearance is a particular issue for primary distribution traffic to Radlett but this need not be insurmountable'.
16. While NR take the view that there are operational issues with both Colnbrook and Radlett, the crucial difference between gauge clearance on the Midland Main Line (MML) and the Great Western Main Line (GWML) is that gauge clearance on the GWML is proposed in the Great Western Rail Utilisation Strategy as part of the committed electrification scheme. There are no such proposals for the MML. Nor can it be assumed that the development will proceed beyond the 175,000 sq.m. gauge clearance threshold contained in proposed condition 13.1. It has not been shown that the development will be able to support the very considerable cost in excess of £25 million that this would entail.
17. The general point being made by Steer Davies Gleave ("SDG") was essentially that the GWML had advantages over the MML in promoting growth as a rail freight corridor. That is clear from the documentation referred to by SDG and does not appear to be contradicted by NR.
18. It is also important to note that NR refer to the Crossrail and Thameslink projects and say that 'strenuous efforts are being applied to maintain freight capability within these projects'. This implies that it may not be possible to achieve the current level of freight capacity within those schemes. For the reasons already set out in the SDG report the Council believes that access to Colnbrook will be easier to achieve than access to Radlett. This recognises the points that have been made at paragraph 16 above. The tone and the various statements in the latest letter from NR imply that NR is more concerned about connections into the site than they were at the time of the 2009 Inquiry.
19. Finally, NR contends that Radlett and Colnbrook serve different markets and appears to suggest that the two sites are capable of operating together. That assertion should be rejected. First, the SRA guidance indicates that 3-4 SRFI to serve London and the South East are required, an approach which has not, as has been indicated above, been undermined by the Policy Guidance. That provides no scope for the contention that Colnbrook and Radlett may exist together, for the reasons which have been given in the Council's closing submissions (in particular at paragraph 75 et seq). Second, the Appellant's

alternatives analysis has proceeded on the basis that the critical question for determining whether very special circumstances are made out is whether any better site exists in the North West sector. Third, the Secretary of State has properly proceeded on the basis of comparing the merits of the two schemes.

(ii) CgMs on behalf of Helioslough

20. The Council does not respond to all of the points raised by CgMs but only those that have not yet been dealt with.
21. Para 4 of the CgMs response refers to Hertfordshire County Council's position; quite clearly, CgMs cannot rely upon the position of the County Council to overcome the Appellant's contravention of the relevant Circular.
22. CgMs seek to deal with the fact that the approach in the recent rail documentation is to place greater emphasis on the West Coast Main Line (WCML) and the GWML by indicating that Radlett provides for a package of rail improvements which will achieve an upgrade through private finance.
23. The Appellant's signed section 106 agreement includes a total of £3,350,000 towards rail improvements none of which are related to gauge enhancement between Radlett and London. As has been indicated above, the effect of proposed condition 13.1 is that should the developer only build 175,000 square metres of floorspace it would not need to carry out the gauge enhancement works. This would limit the use of the terminal to domestic services using smaller containers. The Council's evidence to the Inquiry was that the gauge clearance works between Radlett and London would cost in excess of £25 million¹.
24. For the reasons given above, the important point is that the strategic network documentation plainly favours Colnbrook as a location by emphasising the significance of the WCML and GWML and the prospect of their being upgraded.
25. DB Schenker's representations (at paragraph 27) should be afforded limited weight. As the Council indicated in respect of the earlier representations of that company which were relied upon by the Appellant during the 2009 inquiry (see paragraph 79-80 of Part 2 of the submissions), no information has been provided at all of the extent of any financial or contractual commitment which DB Schenker has in the scheme.
26. Paragraphs 31-35 reiterate points previously made. Again, whilst paths for rail freight may be available passing the site, the clear position is – and it is still clearer through the comments made in the London and South East Route Utilisation Strategy – that sufficient paths will not be available between 0600 – 2200 into and out of the site.
27. It is stated at paragraph 4 of the Appendix that Colnbrook has no advantage over Radlett in respect of the WCML. That is wrong; Colnbrook is able to connect to the WCML without reversal; moreover, as SDG were correct to indicate, Colnbrook has considerable gauge clearance benefits. The Great

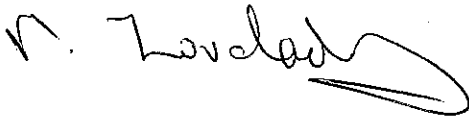
¹ See Benjamin Wilson's proof of evidence (LPA2.2), paragraph 11.95, pg. 75,

Western Mainline Route Utilisation Strategy indicates the gauge clearance that will be undertaken on the GWML. The criticisms which have been made of the SDG report are wholly unjustified. The SDG report correctly set out the general benefits attributable to the Colnbrook scheme in comparison to Radlett as disclosed by the recent rail documentation.

Right to raise further matters.

28. The Council has not objected to the Appellant having the right to the final comment on the parties' representations subject to no new issues being introduced. The Council suggests, however, that it would be proper for all parties to have the same right to comment on the policy documents referred to in your most recent letter and to the National Policy Statement if it is published before the appeal is determined.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Lovelady', with a large, sweeping flourish at the end.

M Lovelady LL.B. (Solicitor)
Head of Legal, Democratic and Regulatory Services