

**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**

OPENING SUBMISSIONS ON BEHALF OF STRiFE

Introduction

1. For the second time in a little over 2 years, now with my learned junior Ned Helme, I appear on behalf of STRiFE, a local community group which has been set up to oppose the Appellant's proposal to develop a Strategic Rail Freight Interchange (SRFI) on the site of the former Radlett Aerodrome; to oppose the destruction of 172 hectares of highly valued Green Belt which it entails; and to oppose the development there of five huge warehouses comprising 330,000 sq.m. of B8 floorspace in buildings 20 metres high, all of it wholly inappropriate Green Belt development.
2. To put the scale of the development proposed into context, the largest shed of the five proposed would be bigger than Terminal 5 at Heathrow, and the sheds would be 20 metres high, some 8 metres higher than those developed at DIRFT and proposed at Hollingbourne, Kent International Gateway. The proposal only has to be stated in these bald terms for the strength and depth of local objection to be appreciated.

Green Belt

3. For more than half a century¹ the protection given to the Green Belt has been the strongest known to the Town and Country Planning system of our nation². Where

¹ Since 1955, PPG2, para.1.1.

² For the national and local policy framework in relation to the Green Belt, see section 3 of the Proof of Evidence of Adrian Wallace (STRiFE 9/01)

inappropriate development is proposed within the Green Belt, not only do the general policies aimed at controlling built development in the countryside apply with full force, but there is an additional presumption against that development being permitted except in very special circumstances³.

4. If inappropriate development in the Green Belt is by definition so harmful that it is to be given substantial weight⁴, so much more is that the case where 170 hectares of Green Belt would be destroyed. And if the fundamental aim of Green Belt policy is to keep land permanently open⁵, and the most important attribute of Green Belt land is its openness⁶, then the harm to be attributed to the development of 330,000 sq.m. of built floorspace, 20 metres high, with all of its associated infrastructure, and all of it enclosed by noise bunds, must be huge⁷.
5. Moreover, this particular parcel of open Green Belt land is not just large in size, it is sensitive in location, one of the last significant areas of open Green Belt countryside which serves to separate St Albans to the north, London Colney to the east, Radlett to the south and Park Street/Frogmore to the west.
6. This proposal therefore offends against the first four purposes for which the Green Belt was established⁸. It would be a gigantic sprawl of a built up area into open Green Belt land. It would seriously erode the separation of neighbouring towns⁹. It would result in the encroachment of huge warehouses into the countryside. And it would also be located close to St. Albans, one of the most important

³ PPG2, para 3.2.

⁴ PPG2, para 3.2.

⁵ PPG2, para.1.4.

⁶ PPG2, para.1.4.

⁷ In relation to the Green Belt harm, see in particular section 4 of Mr Wallace's Proof of Evidence (STRiFE 9/01)

⁸ PPG2, para.1.5.

⁹ Although the Inspector (IR16.10) and Secretary of State (DL21) found on the previous appeal that the proposal would not lead to a physical merging of neighbourhoods, STRiFE invite you to find that there would be a perception of merger with London Colney/Napsbury to the east, Colney Street to the South and Frogmore and Park Street to the west for the reasons given by Mr Wallace at section 4(1) of his Proof of Evidence (STRiFE 9/01) and also for the reasons given in the evidence of Mr Hargreaves (Proof of Evidence (9/LPA1.2) paragraph 5.38-5.40 and 11.6) and Mr Billingsley (Proof of Evidence (9/LPA5.3) paragraph 4.20) for the Council.

historic towns in England, with views of the Cathedral from the Thameslink line severely compromised¹⁰. Rarely, if at all, can there have been any proposed development which causes such significant Green Belt harm.

7. And to all of that harm must be added the other harms attendant on this proposal¹¹ including noise so loud as to make complaints likely in a number of residential properties¹² with the probability of sleep disturbance increased; and increased congestion on roads where road congestion is already acute¹³.
8. It is only if the totality of that harm is *clearly* outweighed, that the Appellant will have demonstrated that very special circumstances do exist of such significance that this hugely damaging and inappropriate proposal might nonetheless be allowed to proceed¹⁴.

Very Special Circumstances

9. 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) for three or four new SRFIs to serve London and the South East¹⁵. The Appellant's argument failed on the last occasion and in STRiFE's submission it should even more emphatically fail again in the light of intervening changes of circumstance and new information which has come to hand. It is to be lamented that whilst the context has changed in material regards, the Appellant's argument has remained the same.

¹⁰ See in particular section 4(3)-(5) of Mr Wallace's Proof of Evidence (STRiFE 9/01)

¹¹ PPG 2, para 3.2

¹² 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.

¹³ 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.

¹⁴ PPG 2, para.3.2.

¹⁵ At paras 6.9-10

The Proper Approach

10. STRiFE acknowledge, indeed STRiFE assert, that the Secretary of State's decision letter following the previous Inquiry (and the Inspector's Report with which the Secretary of State largely agreed) is plainly of signal importance. It is the starting point for consideration of the appeal proposals. However, it is the starting point only, not the end point.

11. You retain full discretion to make recommendations on all of the issues to which this Inquiry gives rise. 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.¹⁶ Where you are inclined to disagree, the requisite "good planning reason" can properly be sourced in an intervening material change of planning circumstances; 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 judgment¹⁷.

12. The last decision letter is not, therefore, a mantra that can simply be chanted as an answer to the planning case before you.

The Secretary of State's Decision Letter

13. It is also vitally important to understand and interpret that decision letter properly, and in particular to unpick the pivotal passage at paragraph 58, breaking that passage down in order to uncover the questions to which this repeat application gives rise.

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

¹⁶ 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.

¹⁷ 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.

14. If there is 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, that assumption begs two preliminary questions, within which many others are subsumed:

(1) Is there *still* a need to be met in the light of planning permissions which have been granted for SRFIs to serve London and the South East since the close of the last Inquiry?

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

“... 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.”

15. The Secretary of State was careful, therefore, to say only that if there were no such sites, this would be “*capable*” of outweighing such harm. The balancing exercise of harm against need was never actually undertaken by her; the Appellant failed to demonstrate an absence of alternative sites and so the question did not fall to be considered.

16. Moreover, the above passage begs three further preliminary questions, again within which other questions are subsumed:

- (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 comparably, or perhaps even better?
 - (4) If there are alternative sites which could meet that need comparably or 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?
17. The above five questions beg, however, an even more fundamental issue as to whether now is the time and this the place at which they should be determined. They raise, after all, strategic planning issues of national importance concerning a nationally significant infrastructure project¹⁸. It was precisely to address issues of this nature, and on a national and strategic basis guided by National Planning Policy Statements¹⁹, that the Government enacted the Planning Act 2008 and established the Infrastructure Planning Commission. 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?
18. It is to those six questions which I therefore turn in these brief opening remarks in order to set the scene for the case STRiFE will make at this Inquiry.

¹⁸ See: Section 14(L) of the Planning Act 2008.

¹⁹ See: Section 5 of the Planning Act 2008.

(1) Is there still a need to be met in the light of planning permissions which have been granted for SRFIs to serve London and the South East since the close of the last Inquiry?

19. As matters stand in advance of publication of the National Planning 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 Document indicates that, up to 2015, this could be met by 400,000 sq.m. of rail-related warehouses.

20. Since the last Inquiry in respect of Radlett however, both Howbury Park and the London Gateway developments have been approved, amounting 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. Capacity is therefore already on stream to meet such need as may arise for many years hence. The grant of those planning permissions must amount to a very considerable change in planning circumstances since the Secretary of State's previous decision letter. The entire need case has, quite simply, been transformed.

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

21. Whilst no-one decries the ambition to put more freight on the rail network, and on the Midland Main Line as part of that endeavour, the location at Radlett as a site for an SRFI poses very profound difficulties indeed. These difficulties are set out in detail in the Proof of Evidence of Douglas Hirst (STRiFE 9/04). As he demonstrates, the Radlett site fails to comply with SRFI requirements in numerous respects²⁰. Because of time constraints in opening, I will not rehearse all of these arguments, but will concentrate on four key rail issues.

²⁰ Namely: links to the motorway and and trunk road network (section 3 of Douglas Hirst's Proof of Evidence); rail connections (section 4); rail link capacity and loading gauge (section 5); access to the

22. Firstly, the Midland Main Line south of Bedford is already one of the most intensively used passenger lines on the whole network, and it is to be used more intensively still, hosting the Thameslink Programme, the greatest single investment currently being undertaken for passenger lines in the country. When last this matter was considered, STRiFE raised deep concerns as to whether, compatible with that Programme, paths could be obtained into and out of the Radlett site sufficient to allow it to operate as an SRFI, rather than as a road-road interchange only. Those concerns have now been amplified by the expert evidence before you²¹. Put shortly, access and egress to and from the site requires manoeuvring on intensively used passenger lines; and it seems that, save in the dark of night, there will, quite simply, be no slots available. If it is a night time only facility, that begs huge questions both as to the disturbance that would be caused and as to viability, the latter only exacerbated by the suggested reliance on sub-optimal low chassis wagons.
23. Secondly, Radlett is inappropriately located to serve any of the anticipated demand for freight by rail. It is insufficiently far from the ports to make it economically attractive to non-bulk carriers; it is served by a gauge insufficient to accommodate Channel Tunnel rail freight, with no current plans to enhance that gauge to sufficient widths; and it is infelicitously positioned for rail freight movements to and from the populous urban centres of the North West, having only tortured access to the West Coast Main Line.
24. Thirdly, there is no proposed connection to the north. Contrary to the express requirement in the 2004 policy, connection in both directions is not currently proposed (other than through the completely inadequate suggestion of “passive”

national rail network (section 6); rail viability (section 7); access to workforce (section 8); location (sections 9 and 10); alternative site assessment (section 11-12); local planning policy (section 13); and prematurity (section 14).

²¹ STRiFE would draw your attention in particular to the evidence of First Capital Connect (STRiFE 9/10). Its objection to the proposal is important, given its intimate knowledge of the Midland Main Line and other rail infrastructure and of the Thameslink and Thameslink Programme.

engineering accommodation, with no indication whatsoever as to how that might be achieved, whether it is technically or financially feasible, with what additional land take, or with what additional planning harm).

25. Fourthly, whereas the Appellant purports to aver strong Network Rail support for their proposed development, on the evidence now available they manifestly overstate their case. This proposal is at so early a stage, GRIP stage 2 (pre-feasibility) only, that the support claimed is virtually meaningless, little more than a contractual duty to share information before any of the requisite assessments as to viability have been undertaken.

(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?

26. The Appellant has failed to demonstrate an absence of alternative sites to serve London and the South East. Quite apart from Howbury Park and the London Gateway²², both already permitted, there are others already in the planning process and yet others which may very well come forward. Let me give you just two examples of several:

- (1) Colnbrook²³ – which is shortly to come before Slough Borough Council again. It is a site on degraded land in proximity to a sewage treatment plant, a waste incinerator facility, an industrial estate and Heathrow Airport. It is served by the A4, within 1½ miles of the M4 and a further mile or so from the M4/M25 junction, and adjacent to an operational rail link which provides access to the Great Western Main Line. It is an obvious contender.
- (2) Barking and Dagenham²⁴ – which is favoured by Transport for London as a freight terminal to serve the capital, possessed of excellent rail links and without gauge restrictions between the terminal and the Channel Tunnel Rail Link.

²² See section 12.7 of Douglas Hirst's Proof of Evidence (STRiFE 9/04)

²³ See section 12.9 of Douglas Hirst's Proof of Evidence (STRiFE 9/04)

²⁴ See section 12.6 of Douglas Hirst's Proof of Evidence (STRiFE 9/04)

All 4 of the above sites, and potentially others too, developed as SRFIs, would serve both London and the South East, and more than meet the current policy requirements.

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

27. Some or all of the above alternative sites would not only meet the SRFI need better than at Radlett, they would do so without inflicting the savage planning harm which an SRFI at Radlett would occasion. By way of short example, it is inconceivable that an SRFI at Colnbrook could cause planning harm of a comparable magnitude to that caused at Radlett, a sensitive Green Belt location close to an historic town, 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?

28. 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.

29. Just 400,000 sq.m. of SRFI development is required to serve the needs 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. 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 are 66% higher than those developed at DIRFT or proposed at Hollingbourne, with an equivalently greater volume of storage capacity, generating proportionately additional HGV movements.

30. Even if any demand for an additional SRFI does survive, incapable of being met elsewhere, it is therefore 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?

31. In STRIFE's submission, moreover, it would be plainly premature to grant planning permission now for Radlett²⁵. 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 Planning Policy Statement in respect of SRFIs, out for consultation very shortly and anticipated to be designated sometime next year.
32. That statement will set out the amount, type and size of SRFI development which is appropriate, either nationally or for a specified area; the criteria to be applied in deciding whether a location is suitable or potentially suitable; and the relative weight to be given to the specified criteria. It will in terms identify the locations which are suitable or potentially suitable, or indeed unsuitable, for SRFI development. 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

²⁵ See section 14 of the Proof of Evidence of Douglas Hirst (STRiFE 9/04). See also section 8 of Mr Hargreaves Proof of Evidence for the Council (9/LPA1.2), which STRiFE endorses.

intensively used passenger rail lines) and other site-specific planning and topographic considerations.

33. It would 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 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.
34. The proposal is also premature in another sense. The level of assessment on all pertinent railway matters is currently inadequate. There is no certainty at all of either feasibility or viability. A northerly connection is but a schematic pipe dream.
35. Taken together, these factors demonstrate that to permit Radlett now would raise a spectre which all of us should fear – a massive warehouse development in the Green Belt, permitted on a 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 at all could be prayed in aid. Indeed, something which would fly in the face of every tier of planning policy.

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