

ST ALBANS CITY AND DISTRICT LOCAL PLAN STAGE 1 EXAMINATION HEARINGS

AGENDA – DAY 1

MATTER 2 - The Duty to Co-operate

[Additional Questions]

1A. Why is the permitted Strategic Rail Freight Interchange (SRFI) at Radlett not identified as a strategic matter?

- 1 This is because, at the stage of the plan-making process when the SRFI site was allocated for the Park Street Garden Village ("PSGV"), the Council reached the view that the SRFI was not a strategic matter for the purposes of the plan. At that stage, the SRFI did not comprise a proposal within the plan that "has or would have a significant impact on at least two planning areas" (under s. 33A(4) of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act"), attached as Appendix 1) since the consequence of the plan strategy was that the PSGV would replace the SRFI; additionally, as the plan was not proposing the SRFI (in fact, the obverse), the preparation of the development plan did not, at least as far as the SRFI was concerned, "relate" to a strategic matter (under s. 33A(3) of the 2004 Act).
- 2 The conclusion as to whether, at that stage, the SRFI was not a strategic matter, was one of judgment for the Council. The decisions in *Trustees of the Barker Mill Estates v Secretary of State for Communities and Local Government and Test Valley BC* [2016] EWHC 3028 and *Zurich Assurance Ltd v Winchester CC* [2014] EWHC 758 (Admin) [108-114] have made clear that issues surrounding the engagement of the duty are matters of judgment for the local planning authority
- 3 In *Barker Mill Estates*, Holgate J stated that:

56. Issues such as what would amount to sustainable development, what would have a significant impact on two or more planning areas, what should be done to "maximise effectiveness" with regard to the preparation of a development plan, what measures of constructive engagement should take place and the nature and extent of any co-operation are all matters of judgment for the LPA. The requirement in s.33A(6) to consider joint approaches to strategic planning matters is also a matter of judgment for the LPA. Each of these issues is highly sensitive to the facts and circumstances of the case. The nature of these functions is such that a substantial margin of appreciation or discretion should be allowed by the court to the LPA.

57. The PCPA 2004 makes the examining Inspector responsible for making the initial determination as to whether the LPA has complied with its duty to co-operate. Unless he is so satisfied and recommends the adoption of the local plan the LPA has no power to adopt the plan. In the present case these requirements were satisfied and so TVBC was entitled to adopt the RTVLP unless the Inspector's conclusion under s.20(7B)(b) was vitiated by a public law error. However, it is significant that under that provision the Inspector was only required to decide whether it was "reasonable to conclude" in all the circumstances that the LPA complied with any

duty under s.33A relating to the preparation of the plan. *Once again, this language confirms that compliance with s.33A involves matters of judgment for the LPA for which a margin of appreciation is to be given.*[emphasis added]

- 4 The Council had taken a different view of the SRFI prior to the allocation of the PGSV broad allocation, under the former Strategic Local Plan and at the Regulation 18 consultation stage of the Local Plan. The existing permission for the SRFI was explicitly identified in the draft SLP 2016 (CD0014) and the LP Reg 18 consultation in January-February 2018 (CD005) “Existing Evidence Base Diagram...Government Permitted Radlett Strategic Rail Freight Interchange”. At those points in time, the Council did engage with ‘prescribed bodies’ constructively. The evidence base shows, for example, the permitted SRFI is given full acknowledgement in the SADC Economic Development and Employment Land Technical Report (EMP003) where it has its own section 6.4 “Strategic Rail Freight Interchange (SRFI)”; and in the South West Herts Economic Study 2016 (EMP002) where it has its own section 6.31-6.38 entitled “Treatment of Radlett Strategic Rail Freight Interchange”. This work had involved engagement with the five SWH LPAs and HCC in particular.
- 5 Engagement with all 10 Hertfordshire LPAs and HCC resulted in transport work fully acknowledging the permitted SRFI as set out in the county-wide COMET transport model run in 2016 (and further SADC work based upon this run) as identified in the 2016 IDP (INFR008e IDP 2016 Appendices part 5 appendix 13a) This document sets out, for example, at 4.4 “Major Developments in St Albans District. The 5 most major developments in St Albans District...Radlett Rail Freight planning application” and “Table 4 shows the change in inbound and outbound trips to and from the Radlett Rail Freight model zone...”
- 6 But the recognition of the SRFI as a strategic matter at those stages was because the PSGV was not being promoted on the SRFI site – the SRFI was a development recognised under the SLP.
- 7 By the time of the Regulation 19 Publication stage, the Local Plan explicitly identified the SRFI site for the PSGV. In the Council’s view, the SRFI then ceased to be a strategic site promoted under the plan and it was no longer required to engage in duty to co-operate discussions.

12A. If the SRFI is considered to be a strategic matter, what are the particular issues relating to it?

- 8 The Council does not consider the SRFI to be a strategic matter. The PSGV however, as one of the Broad Locations, is.
- 9 As to the issues relating to the SRFI, the Council has acknowledged that the SRFI cannot be delivered as a consequence of the PSGV Broad Location (ED25C and PPC Reports June 2018 and March 2019).
- 10 The delivery of the PSGV Broad Location– and the consequent non-delivery of the SRFI – has formed part of discussions with relevant DtC bodies on an ongoing basis.

As set out in the Council's response to Matter 2 Question 2, strategic transport matters, particular issues include:

- *Transport infrastructure to facilitate Abbey line improvements and Park and Rail hub – in particular associated with PSGV Broad Location, including at SWH GTP (at ref 77 of IDP) diagrams as at M2Q12 Appendix 1.*
- *Transport infrastructure associated with the A414 Corridor Strategy (at ref 78 of IDP) - numerous initiatives on the A414 and parallel routes - it relates to growth all across the A414 from Hemel Hempstead to Harlow – and is also most strongly related to the Broad Locations at PSGV, East and North Hemel Hempstead (HGC) and West of London Colney.*

13A. Who has the Council engaged with regarding the matter of the SRFI (and the implications of the proposed Park Street Garden Village housing allocation on the provision of this)?

- 11 When the SRFI site was not affected by the PSGV proposal the Council engaged actively in relation to the SRFI.
- 12 It is to be noted that the submitted draft SLP (CD014) included policy SLP 14 and supporting text as reproduced below:

Strategic Rail Freight Interchange

6.80 The SLP and its Development Strategy for the Broad Locations identified above has been prepared taking account of the possibility of a major development for a Strategic Rail Freight Interchange (SRFI) in the Green Belt at the former Radlett Airfield site. This development is not proposed in the SLP and has been opposed by the Council. However, it was permitted by the Secretary of State in July 2014 on the basis of national need. If the Interchange is built, the degree of land use change and impacts in the area will be significant.

Policy SLP 14 - Strategic Rail Freight Interchange (SRFI)

Following any possible completion of development of the proposed SRFI, the Council will consider undertaking a partial review of the SLP (and DLP) to investigate appropriate long-term Green Belt boundaries in the area and to set out policies for any other development and land management opportunities and mitigations that may arise.

- 13 The Council has had active and ongoing engagement primarily as part of DtC discussions with adjoining LPAs and with HCC Services and as a landowner. This has included active joint work on technical evidence (most particularly Transport and Employment evidence base documents as set out above and below) and also engagement with all DtC bodies as part of formal SLP consultations and then the formal draft LP Reg 18 and Reg 19 processes.

- 14 This engagement was constructive and active and appropriate to the circumstances of the SRFI, i.e. that it benefitted from a live planning permission and so was capable of being implemented irrespective of the plan process.
- 15 Following the identification of the site for the PSGV, the DtC discussions with other authorities focussed on issues relating to that scheme.

13B. When did this engagement begin, has it been active and ongoing and what form has it taken?

- 16 As has been dealt with above, the engagement was active at the stages of the plan process prior to the identification of the PSGV.

13C. What evidence of this engagement, prior to the submission of the Plan, can be provided?

- 17 Evidence with regard to engagement about the permitted SRFI at an earlier time is set out above and in the Duty to Cooperate Statement of Compliance (CD0028). Since the PSGV Broad Location emerged, the evidence base shows, for example engagement with the SWH LPAS and HCC in taking forward the South West Herts Economic Study 2019 (EMP Sept 2019 SWH Economic Study Update). This sets out explicitly that the situation has moved on with regard to the permitted SRFI and now its effective replacement by Park Street Garden Village, including at 8.8:

It should be noted that the table does not include the permission for the Strategic Rail Freight Interchange at Radlett. If this development was included the industrial space with permission would increase dramatically by 331,665 sq m (mostly very large warehousing). There is still significant uncertainty about whether this development will go ahead. Although it has received planning permission, the land is owned mainly by Herts County Council which has submitted the land to SADC for a garden village with a minimum capacity of 2,300 dwellings (Park Street Garden Village) following the call for sites in its revised Local Plan. For the purpose of this study we assume that the development will not go ahead and is therefore excluded from the supply.

- 18 Since the PSGV Broad Location emerged, the evidence base shows engagement with all 10 Hertfordshire LPAs and HCC regarding Transport work as set out in the county-wide COMET transport model run in 2019 (and further SADC work based upon this run). This sets out explicitly that the situation has moved on with regard to the permitted SRFI and now its effective replacement by Park Street Garden Village, including in the IDP 2018-19 (INFR 002n 2018-2019 Infrastructure Delivery Plan Appendices - Part 12 Appendix 43) "Hertfordshire COMET: 2036 Local Plan Run 4 St Albans District Council Output Analysis" at 5.1:

5.1.1 To understand the impacts of the new site allocations, a series of select link analyses (SLAs) have been undertaken to provide supplementary evidence in terms

of overall impact of traffic flow 'to' and 'from' each of the key developments in SADC. The SLAs have been extracted from the LP4 AM and PM peaks for the new site allocations listed below:

...

□ *Park Street Garden Village*

19 and 5.7:

5.7 Park Street Garden Village

5.7.1 Trips to and from the Park Street Garden Village interact with many routes south of the A414 and central St Albans. The A414 is used to travel to/from Hemel Hempstead and Hatfield and locations further north using the A1(M) and M1. Traffic uses local roads south of the A414 to reach the M1 to the west of junction 22 of the M25 to the east. The development also exhibits strong linkages with the M25 and strategic road network compared to other developments in SADC. There are also linkages to areas north of St Albans which should be encouraged by sustainable modes.

5.7.2 The Park Street Garden Village development will have interactions with the St Albans Green Ring on the western side of St Albans and the A414 Highway Improvements south of St Albans. Linkages to the stations in St Albans should be maximised, although it is acknowledged Park Street station is located close to the development.

14A. Has the Council engaged constructively on the SRFI? What has been the outcome of co-operation and how has this addressed the issue?

20 This is addressed in our answers as set out above.

Appendix 1

Section 33A

33A Duty to co-operate in relation to planning of sustainable development

(1) Each person who is—

- (a) a local planning authority,
- (b) a county council in England that is not a local planning authority, or
- (c) a body, or other person, that is prescribed or of a prescribed description,

must co-operate with every other person who is within paragraph (a), (b) or (c) or subsection (9) in maximising the effectiveness with which activities within subsection (3) are undertaken.

(2) In particular, the duty imposed on a person by subsection (1) requires the person—

- (a) to engage constructively, actively and on an ongoing basis in any process by means of which activities within subsection (3) are undertaken, and
- (b) to have regard to activities of a person within subsection (9) so far as they are relevant to activities within subsection (3).

(3) The activities within this subsection are—

- (a) the preparation of development plan documents,
- (b) the preparation of other local development documents,
- (c) the preparation of marine plans under the [Marine and Coastal Access Act 2009](#) for the English inshore region, the English offshore region or any part of either of those regions,
- (d) activities that can reasonably be considered to prepare the way for activities within any of paragraphs (a) to (c) that are, or could be, contemplated, and
- (e) activities that support activities within any of paragraphs (a) to (c),
so far as relating to a strategic matter.

(4) For the purposes of subsection (3), each of the following is a “strategic matter”—

- (a) sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas, and
- (b) sustainable development or use of land in a two-tier area if the development or use—
 - (i) is a county matter, or
 - (ii) has or would have a significant impact on a county matter.

(5) In subsection (4)—

“*county matter*” has the meaning given by [paragraph 1 of Schedule 1](#) to the principal Act (ignoring [sub-paragraph 1\(1\)\(i\)](#)),

“*planning area*” means—

(a) the area of—

(i) a district council (including a metropolitan district council),

(ii) a London borough council, or

(iii) a county council in England for an area for which there is no district council, but only so far as that area is neither in a National Park nor in the Broads,

(b) a National Park,

(c) the Broads,

(d) the English inshore region, or

(e) the English offshore region, and

“*two-tier area*” means an area—

(a) for which there is a county council and a district council, but

(b) which is not in a National Park.

(6) The engagement required of a person by subsection (2)(a) includes, in particular—

(a) considering whether to consult on and prepare, and enter into and publish, agreements on joint approaches to the undertaking of activities within subsection (3), and

(b) if the person is a local planning authority, considering whether to agree under [section 28](#) to prepare joint local development documents.

(7) A person subject to the duty under subsection (1) must have regard to any guidance given by the Secretary of State about how the duty is to be complied with.

(8) A person, or description of persons, may be prescribed for the purposes of subsection (1)(c) only if the person, or persons of that description, exercise functions for the purposes of an enactment.

(9) A person is within this subsection if the person is a body, or other person, that is prescribed or of a prescribed description.

(10) In this section—

“*the English inshore region*” and “*the English offshore region*” have the same meaning as in the Marine and [Coastal Access Act 2009](#), and

“*land*” includes the waters within those regions and the bed and subsoil of those waters.