

ST ALBANS CITY AND DISTRICT LOCAL PLAN**STAGE 1 EXAMINATION HEARINGS****DAY 1: MATTER 2 – DUTY TO CO-OPERATE****HELIOSLOUGH****RESPONSES ON BEHALF OF HELIOSLOUGH TO INSPECTORS' FURTHER QUESTIONS
RELATING TO THE SRFI**

References to paras of Helioslough's Core Note are given as [CN/para no] and to pages of the accompanying bundle as [CNB/page no]

Q1A: Why is the permitted SRFI not identified as a strategic matter?

1. Context: There is a compelling national need for a network of SRFIs and the extremely long running and contentious debate [CN/14-19] as to where an SRFI should go to serve London and the south east in the north west quadrant is over – all avenues to find suitable alternative locations have been exhausted. There is a compelling need for a nationally significant SRFI to be provided here [CN/21].
2. In summary:
 - a. the s.33A(4) definition¹ of what is a “strategic matter” includes “infrastructure that is strategic”. In June 2018 (confirmed in March 2019)², the Council candidly and accurately described the SRFI here as “obviously” being “*strategic infrastructure*” which was “objectively to be regarded as of national significance” [CNB/160; CNB/177];
 - b. further SADC purports to “fully acknowledge” the conclusions of the 2014 DL. It (and the policy framework) shows that the SRFI is “sustainable development”, is needed and there is no better site for it and that it “would have” *at least* a sub-regional impact;
 - c. “in general”, SADC accepts that it should seek to “facilitate the SRFI” [CNB/167];
 - d. Strategic infrastructure does not cease to be such on the whim of a local authority determined to avoid hosting it;
 - e. SADC must therefore co-operate with the relevant people in maximising the effectiveness with which the preparation of the local plan is undertaken in relation to the SRFI.

¹ “...a “strategic matter” includes “(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”

² Both dates *after* the SRFI was dropped from the emerging Local Plan and the PSGV allocation introduced (May 2018) – CD022.

3. As to s.33A(4):
 - a. SRFI are strategic infrastructure;
 - b. the policy support for SRFI is in large part predicated on their contribution to national sustainability goals [NPS para 2.1 – 2.11; 2.40 – 2.41; 2.44; 2.47, 2.53 (CNB/20)].
 - c. the SRFI here was justified because of the strategic benefits it would bring to the wide area it would serve as part of a national network: 2014 DL para 31; 33; 34-39; 44; 45. That area over which it would have significant effects being far wider than just two planning areas.
4. None of this appears to be put into dispute in ED31.
5. Following extensive investigations and inquiries over many years, no better site for an SRFI in the whole of the north west quadrant to serve London and the South East has been identified [2014 DL para 31; 34-39; 53 (CNB/40); Colnbrook CN/17]. Permission was granted here because the need justified very special circumstances. The long debate since at least 2006 as to where an SRFI should go must be taken as settled.
6. S.33A(4) does not define strategic matters by reference to what the LPA wants to provide (as ED31 assumes). A matter cannot cease to be a strategic matter at the whim of a local authority – especially where it is strategic infrastructure with exacting locational requirements and there is no alternative site for it. The NPPF and NPS are entirely clear on this – see e.g. NPPF104 and CN/21 – once an objective need is identified (NPPF11a) for provision in the authority's area, all else follows - either it meets the need or it co-operates with others as to how the need is to be met. Adoption of SADC's approach in ED31 would emasculate the s.33A duty because an authority could simply ignore the strategic matter and the need for the strategic infrastructure and thus avoid any co-operation on it.

The Detail

7. The first part of the s.33A(4) definition poses two questions which have to be addressed in deciding whether a matter is a strategic matter – is it sustainable development? Does it have a significant impact on at least two planning areas? If so it is a strategic matter as a matter of law. Those questions have been conclusively answered here by the 2014 Decision. Is it sustainable development? Yes. Does it have a significant impact on at least two planning areas? Yes. It was approved precisely because of its wide ranging importance to the whole of (at least) the north-west sector. There is: (1) no legal basis to depart from those conclusions - CN/para 20; (2) no attempt by SADC to do so; and (3) full acknowledgement of the conclusions in the

2014 Decision - CN/160, 164, 168). Judgments have thus been reached on the first two central questions raised by s.33A (see *Barker Mill* para 56).

8. The second part of the s.33A(4) definition “in particular”, regarding infrastructure, asks whether it is sustainable development for infrastructure which is strategic and would have a significant impact on at least two planning areas. Both boxes are plainly ticked here – see para 2a above.
9. The SRFI is thus a strategic matter as a matter of law. It is respectfully submitted that the Inspectors cannot reasonably conclude (s.20) that the LPA has complied with the duty because the LPA has wrongly sought to disapply the duty on a flawed premise – namely that it can unilaterally write out/ignore the compelling need for a nationally significant infrastructure here.
10. As to “relating to”, the obligation is to co-operate to maximise the effectiveness with which strategic matters are addressed in local plan preparation. In deciding whether strategic infrastructure is to be dropped (cp 2014/2016 versions of the LP - CN/405), then the onus is on SADC to consider, through the s.33A duty, how the compelling national need is to be otherwise met. That is part of the purpose of the duty to co-operate – to ensure that the issue is not ducked.
11. The above submissions are strongly supported by NPPF20 – 23 and NPPF104 which set out the strategic issues for which provision should be made and the NPPG on plan making: paras 14; 16; 17 and in particular 22:

“Strategic policy-making authorities should explore all available options for addressing strategic matters within their own planning areas, unless they can demonstrate to do so would contradict policies set out in the [NPPF]. If they are unable to do so, they should make every effort to secure the necessary co-operation on strategic cross-boundary matters before they submit their plans for examination...[and to end]”³.

12. ED31 1A contains multiple mis-directions:
 - a. it assumes (para 7) that because an LPA decides not to provide something it ceases to be a strategic matter. That is the opposite of how s.33A works – in deciding whether or not to provide necessary strategic infrastructure it has to co-operate to ensure the issue is dealt with effectively;

³ This para is under the SOCG section - but the SoCG is one means to demonstrate compliance with the DtC – para 29.

- b. it appears to treat the issues as to whether this is sustainable development or affecting at least two areas which needs to be provided here – as wholly at large when those issues have been addressed and answered; and
- c. it provides no basis (never mind no rational basis) for answering those s.33A(4) questions other than as set out in paragraph 7 and 8 above.

13. The question as to whether it is a “strategic matter” necessarily is a prior question to how the DtC applies to it. Here the SRFI is a strategic matter, and the DtC is thus triggered.

Q12A: If the SRFI is considered to be a strategic matter, what are the particular issues relating to it?

14. The particular issues are:

- a. the highly specific locational and size requirements for SRFIs [CN para 11];
- b. the need for a national network including to serve London and the south east [CN/para 9 – 10];
- c. the significant difficulties with finding suitable sites for SRFIs in the south east;
- d. the fact that an SRFI will have wide implications for multiple planning areas re: highways, strategic HGV movements; changing freight travel patterns etc...;
- e. the fact that it serves a regional need and brings wide benefits to the region; and
- f. the consequences of non-provision of an SRFI in the region/sub-region for the region/sub-region and for achieving national policy.

15. It is, of course, accepted (*Barker Mills* para 56) that what should be done to maximise effectiveness under the DtC; what measure of constructive engagement should take place, and the nature and extent of any co-operation are all matters for the judgment of the LPA. However, the LPA cannot simply avoid the duty by redefining a matter as non-strategic.

16. In considering whether or not to provide the SRFI here, a wide-ranging exercise is necessarily required with the MoL; other authorities in the NW Quadrant (s.33A(1)) and Network Rail and the industry when deciding whether or not to make provision for the SRFI in the Plan and thus “maximise” its effectiveness. The range of bodies to co-operate with will be impacted by the nature of the strategic matter – see NPPG para 017.

Q13A: Who has the Council engaged with regarding the matter of the SRFI (and the implications of PSGV on provision of it?)

17. No-one: not any other local authorities, Slough Borough Council (Colnbrook), the MoL, DfT, Network Rail, (the freight industry); HCC as highway authority.

18. SADC does not claim to have engaged with anyone in making the decision to cease to treat the SRFI as a strategic matter and to allocate the land for PSGV: ED31 para 15/16.

19. In any event, it is incorrect to claim that, prior to that, it engaged on the SRFI – it has done everything it can at every stage to defeat the SRFI including after permission for it was given. Unilaterally changing its status from a strategic matter to a non-strategic matter is just the latest example.

Q13B: When did the engagement begin, has it been active and ongoing and what form has it taken?

20. When SADC was considering preventing the delivery of the SRFI by allocating the land for PSGV, the full force of the DtC was necessarily triggered. It necessarily had to engage constructively, actively and on an on-going basis in considering that issue and so that it could properly “maximise” the effectiveness of the Plan including in the light of the need for this strategic infrastructure.

21. There was none. As ED31 confirms, any historic engagement stopped (rather than started) at the point when the prospect of allocating for PSGV was raised. Since then there has not been any engagement.

Q13C: What evidence of this engagement prior to the submission of the Plan can be provided?

22. None. ED31 para 17 – 18 confirm that the engagement has been on the PSGV not the SRFI.

The Result

23. The result is that SADC chose to drop the SRFI and to allocate land to defeat it without taking any steps under the DtC to help it decide how this strategic matter should/could otherwise be addressed. It has done exactly that which the DtC is designed to avoid – passing the buck elsewhere without any idea as to where or how the need will be met.