Appendix 1 – SRFI Masterplan



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COUNTRY PARK LEGEND

- Viewpoint
- Car Park
- Archaeological Feature
- Picnic Facilities

LEGEND

- Development Site Boundary
- LAL Retained Land
- Existing Vegetation
- Proposed Vegetation
- Proposed Hedge/Shrub & Scrub Planting
- Proposed Street Trees
- Existing Vegetation Removed
- Existing Water bodies and tributaries
- Proposed Water bodies
- Proposed earthmounding for the planting of new vegetation
- Proposed building

Proposed

NORTH

Rev	Date	By	Notes

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Project
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Appendix 2 – Legislation: S.19; S33A PCPA 2004

Planning and Compulsory Purchase Act 2004 c. 5
s. 19 Preparation of local development documents

Partially In Force With Amendments Pending

Version 6 of 6
18 January 2018 - Present

Subjects
Planning

Keywords
Local development documents; Local development schemes; Spatial development strategies; Wales Spatial Plan

19 Preparation of local development documents

(1) [Development plan documents] [1] must be prepared in accordance with the local development scheme.

[

(1A) Development plan documents must (taken as a whole) include policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change.

] [2] [

(1B) Each local planning authority must identify the strategic priorities for the development and use of land in the authority's area.

(1C) Policies to address those priorities must be set out in the local planning authority's development plan documents (taken as a whole).

(1D) Subsection (1C) does not apply in the case of a London borough council or a Mayoral development corporation if and to the extent that the council or corporation are satisfied that policies to address those priorities are set out in the spatial development strategy.

(1E) If a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009 has the function of preparing the spatial development strategy for the authority's area, subsection (1D) also applies in relation to—

(a) a local planning authority whose area is within, or the same as, the area of the combined authority, and

(b) the spatial development strategy published by the combined authority.

] [3]

(2) In preparing a [development plan document or any other] [4] local development document the local planning authority must have regard to–

(a) national policies and advice contained in guidance issued by the Secretary of State;

(b) [the regional strategy] [5] for the region in which the area of the authority is situated, if the area is outside Greater London;

(c) the spatial development strategy if the authority are a London borough or if any part of the authority's area adjoins Greater London;

(d) [the regional strategy][5] for any region which adjoins the area of the authority;

(e) the Wales Spatial Plan if any part of the authority's area adjoins Wales;

[...][6]

(h) any other local development document which has been adopted by the authority;

(i) the resources likely to be available for implementing the proposals in the document;

(j) such other matters as the Secretary of State prescribes.

(3) In preparing the [local development documents (other than their statement of community involvement)][7] the authority must also comply with their statement of community involvement.

(4) But subsection (3) does not apply at any time before the authority have adopted their statement of community involvement.

(5) The local planning authority must also–

(a) carry out an appraisal of the sustainability of the proposals in each [development plan document][8] ;

(b) prepare a report of the findings of the appraisal.

(6) The Secretary of State may by regulations make provision–

(a) as to any further documents which must be prepared by the authority in connection with the preparation of a local development document;

(b) as to the form and content of such documents.

[...][6]

Notes

1 Words substituted by Planning Act 2008 c. 29 Pt 9 c.2 s.180(5)(a) (April 6, 2009 in relation to England and Wales)
2 Added by Planning Act 2008 c. 29 Pt 9 c.2 s.182 (April 6, 2009 in relation to England and Wales)
3 Added by Neighbourhood Planning Act 2017 c. 20 Pt 1 s.8(1) (January 18, 2018)
4 Words inserted by Planning Act 2008 c. 29 Pt 9 c.2 s.180(5)(b) (April 6, 2009 in relation to England and Wales)
5 Words substituted by Local Democracy, Economic Development and Construction Act 2009 c. 20 Sch.5 para.14 (April 1, 2010)
6 Repealed by Deregulation Act 2015 c. 20 s.100(2)(b) (May 26, 2015)
7 Words substituted by Planning Act 2008 c. 29 Pt 9 c.2 s.180(5)(c) (April 6, 2009 in relation to England and Wales)
8 Word substituted by Planning Act 2008 c. 29 Pt 9 c.2 s.180(5)(d) (April 6, 2009 in relation to England and Wales)

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Planning and Compulsory Purchase Act 2004 c. 5
s. 33A Duty to co-operate in relation to planning of sustainable development

Law In Force

Version 1 of 1
15 November 2011 - Present

Subjects
Planning

Keywords
Duty to co-operate; Local planning authorities; Sustainable development

[

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.

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(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—

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"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.

]1

Notes

1 Added by Localism Act 2011 c. 20 Pt 6 c.1 s.110(1) (November 15, 2011)

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Appendix 3 – Policy

a. NPS

Department for Transport

National Policy Statement for National Networks

Presented to Parliament pursuant to Section 9(8) and Section 5(4) of the Planning Act 2008

December 2014

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1. Introduction

Purpose and scope

1.1 The National Networks National Policy Statement (NN NPS), hereafter referred to as 'NPS', sets out the need for, and Government's policies to deliver, development of nationally significant infrastructure projects (NSIPs) on the national road and rail networks in England. It provides planning guidance for promoters of nationally significant infrastructure projects on the road and rail networks, and the basis for the examination by the Examining Authority and decisions by the Secretary of State. The thresholds for nationally significant road, rail and strategic rail freight infrastructure projects are defined in the Planning Act 2008 ("the Planning Act") as amended (for highway and railway projects) by The Highway and Railway (Nationally Significant Infrastructure Project) Order 2013 ("the Threshold Order").[1] For the purposes of this NPS these developments are referred to as national road, rail and strategic rail freight interchange developments.

1.2 The Secretary of State will use this NPS as the primary basis for making decisions on development consent applications for national networks nationally significant infrastructure projects in England.[2] Other NPSs may also be relevant to decisions on national networks nationally significant infrastructure projects.[3] Under section 104 of the Planning Act the Secretary of State must decide an application for a national networks nationally significant infrastructure project in accordance with this NPS unless he/she is satisfied that to do so would:

- lead to the UK being in breach of its international obligations;
- be unlawful;
- lead to the Secretary of State being in breach of any duty imposed by or under any legislation;
- result in adverse impacts of the development outweighing its benefits;
- be contrary to legislation about how the decisions are to be taken.[4]

[1] See sections 22, 25, 26 and 35 of the Planning Act and The Highway and Railway (Nationally Significant Infrastructure Project) Order 2013 No.1883 Article 4

[2] In Scotland, Wales and Northern Ireland, the authorisation of all national networks projects are devolved. to the Scottish Government, Welsh Government and Northern Ireland Assembly. Whilst the Government recognises the importance of rail infrastructure development in Wales as well as England, and the UK Government's responsibility in this area, it is outside of the scope of this document to set out planning proposals for Wales, which are devolved to the Welsh Government.

[3] Including the Ports National Policy Statement and other statements produced from time to time.

[4] Planning Act 2008 Section 104 – Decisions in cases where national policy statement has effect.

1.3 Where a development does not meet the current requirements for a nationally significant infrastructure project set out in the Planning Act (as amended by the Threshold Order), but is considered to be nationally significant, there is a power in the Planning Act for the Secretary of State, on application, to direct that a development should be treated as a nationally significant infrastructure project.[5] In these circumstances any application for development consent would need to be considered in accordance with this NPS. The relevant development plan is also likely to be an important and relevant matter especially in respect of establishing the need for the development.[6]

1.4 In England, this NPS may also be a material consideration in decision making on applications that fall under the Town and Country Planning Act 1990 or any successor legislation. Whether, and to what extent, this NPS is a material consideration, will be judged on a case by case basis.

1.5 The great majority of nationally significant infrastructure projects on the road network are likely to be developments on the Strategic Road Network.[7] Development on other roads will be nationally significant infrastructure projects only if a direction under Section 35 of the Planning Act has been made designating the development as nationally significant.[8] In this NPS the 'national road network' refers to the Strategic Road Network and other roads that are designated as nationally significant under Section 35 of the Planning Act.

1.6 The policy set out in this NPS on strategic rail freight interchanges confirms the policy set out in the policy guidance published in 2011. Designation of this NPS means that the 2011 guidance is cancelled.

1.7 This NPS does not cover High Speed Two. The High Speed Two Hybrid Bill will seek the necessary legal powers to enable the construction and operation of Phase One of High Speed Two (HS2), including the powers to acquire the necessary land and undertake the works required. It is planned to use a Hybrid Bill process for Phase Two of HS2. This NPS sets out the Government's policy for development of the road and rail networks and strategic rail freight interchanges, taking into account the capacity and connectivity that will be delivered through HS2.[9]

1.8 It should be noted that where the NPS refers to other documents, these other documents may be updated or amended over the time span of the NPS, so successor documents should be referred to.

[5] Planning Act 2008 Section 35 – Directions in relation to projects of national significance
[6] Planning Act 2008 Section 104 (2) (d)
[7] The Strategic Road Network covers trunk roads and motorways in England where the Secretary of State is the traffic authority. Under the Planning Act thresholds (as amended by the Threshold Order), development of local roads will only be NSIPs if an order under Section 35 of the Planning Act has been made designating the development as a NSIP.
[8] See Planning Act thresholds (as amended by the Threshold Order)
[9] See also DfT, *The Strategic Case for HS2* (October 2013)

Sustainability considerations

1.9 The NPS has been subject to an Appraisal of Sustainability. The Appraisal of Sustainability incorporates a Strategic Environmental Assessment (pursuant to Directive 2001/42/EC as transposed by SI 2004/1633).[10] The Appraisal of Sustainability thoroughly considers reasonable alternatives to the policy set out in this national policy statement. It was undertaken alongside the development of this NPS.

1.10 The Appraisal of Sustainability found no significant adverse effects of the policy set out in this NPS. It acknowledged that the nature of the effects will depend upon the exact locations of development and the sensitivity of the receiving environment.

1.11 The Government has chosen the policy set out in this NPS as it strikes the best balance between the Government's economic, environment and social objectives.

1.12 The Appraisal of Sustainability has been published alongside this NPS.

Habitats considerations

1.13 The NPS has also been assessed under the Habitats and Wild Birds Directive and Regulations.[11]

1.14 This NPS is setting the high level policy rather than specifying locations for enhanced or new infrastructure, so the Habitats Regulation Assessment (HRA) has been undertaken at a strategic level. The Government carried out an initial screening exercise and concluded that it could not rule out the potential for adverse effects on the integrity of European sites. In line with the requirements set out in Article 6(4) of the Habitats Directive, the Government considered that the alternatives to this NPS addressed as part of the appraisal of sustainability were also appropriate for consideration as part of the HRA and concluded that there were no other strategic alternatives that would better respect the integrity of European sites and deliver the objectives of this NPS.

1.15 Given the high level nature of the HRA, while there is no reason to assume there would be impacts on European (SP1) sites, it has not been possible to eliminate the potential for impacts on these sites from the policy in the NPS. The Government has therefore set out in the assessment a case for Imperative Reasons of Overriding Public Interest (IROPI), which details the rationale for why the NPS should proceed. If a proposed infrastructure project did impact on a European (SP1) scheme, then IROPI at the project level would be the crucial consideration. The Habitats Regulation Assessment has been published alongside this NPS.

[10] European Parliament and Council Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment.
[11] The European Council Directive (92/43/EEC) on the Conservation of Natural Habitats and of Wild Flora and Fauna (the Habitats Directive) and Directive 2009/147/EC (Codified version of Directive 79/409/EEC) on the conservation of wild birds.

Individual projects

1.16 Appropriate levels of assessment under the Environmental Impact Assessment Directive and Habitats Directive will be carried out on individual proposals.

Consistency of NPS with the National Planning Policy Framework

1.17 The overall strategic aims of the National Planning Policy Framework (NPPF) and the NPS are consistent, however, the two have differing but equally important roles to play.

1.18 The NPPF provides a framework upon which local authorities can construct local plans to bring forward developments, and the NPPF would be a material consideration in planning decisions for such developments under the Town and Country Planning Act 1990. An important function of the NPPF is to embed the principles of sustainable development within local plans prepared under it. The NPPF is also likely to be an important and relevant consideration in decisions on nationally significant infrastructure projects, but only to the extent relevant to that project.

1.19 However, the NPPF makes clear that it is not intended to contain specific policies for NSIPs where quite particular considerations can apply. The National Networks NPS will assume that function and provide transport policy which will guide individual development brought under it.

1.20 In addition, the NPS provides guidance and imposes requirements on matters such as good scheme design, as well as the treatment of environmental impacts. So, both documents seek to achieve sustainable development and recognise that different approaches and measures will be necessary to achieve this.

1.21 Sitting alongside the NPS are the investment programmes for the road and rail networks – the Rail Investment Strategy (HLOS) and the Road Investment Strategy (RIS). These, together with the business plans prepared by the relevant delivery bodies, provide detailed articulation of the Government's funding strategy for the road and rail networks and investment priorities over forthcoming periods. The diagram at Annex D sets out the investment and planning process.

2. The need for development of the national networks and Government's policy

Summary of need

Government's vision and strategic objectives for the national networks

The Government will deliver national networks that meet the country's long-term needs; supporting a prosperous and competitive economy and improving overall quality of life, as part of a wider transport system. This means:

- Networks with the capacity and connectivity and resilience to support national and local economic activity and facilitate growth and create jobs.
- Networks which support and improve journey quality, reliability and safety.
- Networks which support the delivery of environmental goals and the move to a low carbon economy.
- Networks which join up our communities and link effectively to each other.

2.1 The national road and rail networks that connect our cities, regions and international gateways play a significant part in supporting economic growth, as well as existing economic activity and productivity and in facilitating passenger, business and leisure journeys across the country. Well-connected and high-performing networks with sufficient capacity are vital to meet the country's long-term needs and support a prosperous economy[12].

2.2 There is a critical need to improve the national networks to address road congestion and crowding on the railways to provide safe, expeditious and resilient networks that better support social and economic activity; and to provide a transport network that is capable of stimulating and supporting economic growth. Improvements may also be required to address the

[12] The Eddington Transport Study: The Case for Action 2006

impact of the national networks on quality of life and environmental factors.

2.3 On the road network, it is estimated that around 16% of all travel time in 2010 was spent delayed in traffic[13]. On the rail network, overall crowding on London and South East rail services across the morning and afternoon peaks on a typical weekday in autumn 2013 was 3.1%, with the worst performing operator's services experiencing 9.2% of passengers in excess of capacity.[14]

2.4 The pressure on our networks is expected to increase even further as the long term drivers for demand to travel – GDP and population – are forecast to increase substantially over coming years[15]. Under central forecasts, road traffic is forecast to increase by 30% and rail journeys by 40%, rail freight has the potential to nearly double by 2030.[16]

2.5 Whilst advances in mobile technology are important and will influence travel demand, it is difficult to predict by how much. We expect technology, both from better information and data, and in vehicles (e.g. autonomous cars) to have a significant effect on how the network performs. However, we do not expect this to remove the need for development of the networks. In recent years advances in mobile IT, teleconferencing, email, the internet and social media have occurred alongside growth in travel demand on the national networks.

2.6 There is also a need for development on the national networks to support national and local economic growth and regeneration, particularly in the most disadvantaged areas. Improved and new transport links can facilitate economic growth by bringing businesses closer to their workers, their markets and each other. This can help rebalance the economy.

2.7 In some cases there may be a need for development to improve resilience on the networks to adapt to climate change and extreme weather events rather than just tackling a congestion problem.

2.8 There is also a need to improve the integration between the transport modes, including the linkages to ports and airports. Improved integration can reduce end-to-end journey times and provide users of the networks with a wider range of transport choices.

2.9 Broader environment, safety and accessibility goals will also generate requirements for development. In particular, development will be needed to address safety problems, enhance the environment or enhance accessibility for non-motorised users. In their current state, without

[13] Based on forecast figures from the National Transport Model for all England roads.
[14] Rail passenger numbers and crowding on weekdays in major cities in England and Wales 2013
[15] On current projections real GDP is expected to increase by 50% over the period 2014/15 to 2030/31 (inclusive) (Office of Budget Responsibility, 2014, Fiscal Sustainability Report). Under the central projection from the Office of National Statistics, the UK population is expected to grow by 10 million people from 2012 to 2037 (Office of National Statistics).
[16] Road traffic forecast figures from the National Transport Model, Autumn 2014. Rail passenger forecasts from the Network Modelling Framework, October 2014 Rail freight forecasts from Network Rail.

development, the national networks will act as a constraint to sustainable economic growth, quality of life and wider environmental objectives.

2.10 The Government has therefore concluded that at a strategic level there is a compelling need for development of the national networks – both as individual networks and as an integrated system. The Examining Authority and the Secretary of State should therefore start their assessment of applications for infrastructure covered by this NPS on that basis.

2.11 The following sections set out more detail on some of the specific drivers of the need for development across the modes, in particular congestion on the road network and pressures on the rail network.

The need for development of the national road network

Importance of the national road network

2.12 Roads are the most heavily used mode of transport in England and a crucial part of the transport network. By volume roads account for 90% of passenger miles and two thirds of freight.[17] Every year road users travel more than 431 billion miles by road in Great Britain.[18]

2.13 The Strategic Road Network[19] provides critical links between cities, joins up communities, connects our major ports, airports and rail terminals. It provides a vital role in people's journeys, and drives prosperity by supporting new and existing development, encouraging trade and attracting investment. A well-functioning Strategic Road Network is critical in enabling safe and reliable journeys and the movement of goods in support of the national and regional economies.

2.14 The Strategic Road Network, although only making up 2% of roads in England, carries a third of all road traffic and two thirds of freight traffic.[20] Some 85% of the public use the network as drivers or passengers in any 12-month period.[21] Even those that never drive on the Strategic Road Network are reliant on it to deliver many of the goods that they need.

[17] *Transport Statistics Great Britain* Table TSGB0101 and TSGB0101
[18] *Transport Statistics Great Britain* Table TSGB0101
[19] The Strategic Road Network comprises of motorways and major trunk roads managed by the Highways Agency (or equivalent new company)
[20] *Transport Statistics Great Britain*: Tables TRA4104 and TRA4105
[21] National Road User Satisfaction Survey

2.38 As demand pressures rise, this incremental approach will no longer be sufficient to maintain the desired levels of service in the longer term.[41] Substantial investment in infrastructure capacity – particularly on inter-urban routes between our key cities, London & South East routes and major city commuter routes – will be needed. The maintenance of a competitive and sustainable economy against a background of continued economic globalisation will mean that there is a need to support measures that deliver step change improvements in capacity and connectivity between key centres, by speeding up journey times and encouraging further modal shift to rail. The Government will therefore consider new or re-opened alignments to improve capacity, speed, connectivity and reliability. Rail is a safer, greener and faster mode of transport for large passenger volumes and for long distances, including inter-city journeys.

2.39 Where major new inter-urban alignments are required, high speed rail alignments are expected to offer the most effective way to provide a step change in inter-city capacity and connectivity, as well as helping to deliver long term sustainable economic growth. High speed rail would offer the opportunity for a shift to rail from air and road, by delivering improved connectivity between major conurbations and economic centres through improved journey times and reliability that upgrades to the conventional rail network could not match. Transferring many inter-city services to a high speed railway would also release capacity on the conventional network, increasing opportunities for additional commuter, regional and freight services. Given these potential benefits, where major new rail alignments are required, high speed rail will be considered.

Environment

2.40 Modal shift from road and aviation to rail can help reduce transport's carbon emissions, as well as providing wider transport and economic benefits. For these reasons, the Government seeks to accommodate an increase in rail travel and rail freight where it is practical and affordable by providing for extra capacity.

2.41 The Government's strategy is to provide for increasing use of efficient and sustainable electric trains for both passenger and freight services. The environmental performance of the railway will be improved by continuing to roll out a programme of rail electrification.

[41] 2025 and beyond

The need for development of strategic rail freight interchanges

Importance of strategic rail freight interchanges[42]

2.42 The logistics industry, which directly employs over two million people across more than 190,000 companies generating over £90 billion annually, underpins the efficient operation of most sectors of the wider national economy.[43] Over recent years, rail freight has started to play an increasingly significant role in logistics and has become an important driver of economic growth.

2.43 For many freight movements rail is unable to undertake a full end-to-end journey for the goods concerned. Rail freight interchanges (RFI) enable freight to be transferred between transport modes, thus allowing rail to be used to best effect to undertake the long-haul primary trunk journey, with other modes (usually road) providing the secondary (final delivery) leg of the journey.

2.44 The aim of a strategic rail freight interchange (SRFI) is to optimise the use of rail in the freight journey by maximising rail trunk haul and minimising some elements of the secondary distribution leg by road, through co-location of other distribution and freight activities. SRFIs are a key element in reducing the cost to users of moving freight by rail and are important in facilitating the transfer of freight from road to rail, thereby reducing trip mileage of freight movements on both the national and local road networks.

2.45 The logistics industry provides warehousing and distribution networks for UK manufacturers, importers and retailers - currently this is predominantly a road based industry. However, the users and buyers of warehousing and distribution services are increasingly looking to integrate rail freight into their transport operations with rail freight options sometimes specified in procurement contracts. This requires the logistics industry to develop new facilities that need to be located alongside the major rail routes, close to major trunk roads as well as near to the conurbations that consume the goods. In addition, the nature of that commercial development is such that some degree of flexibility is needed when schemes are being developed, in order to allow the development to respond to market requirements as they arise.

Drivers of need for strategic rail freight interchanges

2.46 The full range of drivers of the need for development of the national networks are set out in the Summary of Need in paragraphs 2.1 to 2.11.

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[42] A strategic rail freight interchange (SRFI) is a large multi-purpose rail freight interchange and distribution centre linked into both the rail and trunk road system. It has rail-served warehousing and container handling facilities and may also include manufacturing and processing activities. Further details at http://www.legislation.gov.uk/ukpga/2008/29/section/26

[43] Great Britain figures – Skills for Logistics

This section provides more detail on the drivers of the need for development of SRFIs

The changing needs of the logistics sector

2.47 A network of SRFIs is a key element in aiding the transfer of freight from road to rail, supporting sustainable distribution and rail freight growth and meeting the changing needs of the logistics industry, especially the ports and retail sector. SRFIs also play an important role in reducing trip mileage of freight movements on the national and local road networks. The siting of many existing rail freight interchanges in traditional urban locations means that there is no opportunity to expand, that they lack warehousing and they are not conveniently located for the modern logistics and supply chain industry.

Rail freight growth

2.48 The development of additional capacity at Felixstowe North Terminal and the construction of London Gateway will lead to a significant increase in logistics operations. This will increase the need for SRFI development to reduce the dependence on road haulage to serve the major markets.

2.49 The industry, working with Network Rail, has produced unconstrained rail freight forecasts to 2023 and 2033. The results are summarised in the table below. These forecasts, and the method used to produce them, are considered robust and the Government has accepted them for planning purposes. These forecasts will change over time as our understanding improves and circumstances change, but the table below demonstrates the scale of pressure.

2.50 While the forecasts in themselves, do not provide sufficient granularity to allow site-specific need cases to be demonstrated, they confirm the need for an expanded network of large SRFIs across the regions to accommodate the long-term growth in rail freight. They also indicate that new rail freight interchanges, especially in areas poorly served by such facilities at present, are likely to attract substantial business, generally new to rail.

Table 3: Rail freight forecasts to 2023 and 2033: tonne km (Great Britain)

	Billion tonne km			
	2011	2023	2033	Compound annual growth 2011 to 2033
Solid fuels	7	4	3	-3%
Construction materials	4	4	4	1%
Metals and ore	3	3	3	0%
Ports: Intermodal	5	11	16	5%
Domestic: Intermodal	1	7	13	12%
Other	4	4	4	0%
Total	23	33	44	3%

Source: Network Rail, *Freight Market Study*, published 31 October 2013

Environmental

2.51 The environmental advantages of rail freight have already been noted at paragraph 2.40 and 2.41 Nevertheless, for developments such as SRFIs, it is likely that there will be local impacts in terms of land use and increased road and rail movements, and it is important for the environmental impacts at these locations to be minimised.

UK economy, national and local benefits – jobs and growth

2.52 SRFIs can provide considerable benefits for the local economy. For example, because many of the on-site functions of major distribution operations are relatively labour-intensive this can create many new job opportunities and contribute to the enhancement of people's skills and use of technology, with wider longer term benefits to the economy. The availability of a suitable workforce will therefore be an important consideration.

Government's policy for addressing need for SRFIs

2.53 The Government's vision for transport is for a low carbon sustainable transport system that is an engine for economic growth, but is also safer and improves the quality of life in our communities. The Government therefore believes it is important to facilitate the development of the intermodal rail freight industry. The transfer of freight from road to rail has an important part to play in a low carbon economy and in helping to address climate change.

2.54 To facilitate this modal transfer, a network of SRFIs is needed across the regions, to serve regional, sub-regional and cross-regional markets. In all cases it is essential that these have good connectivity with both the road and rail networks, in particular the strategic rail freight network (see maps at Annex C). The enhanced connectivity provided by a network of SRFIs should, in turn, provide improved trading links with our European neighbours and improved international connectivity and enhanced port growth.

2.55 There are a range of options to address need as, set out in Table 4, but these are neither viable nor desirable.

Table 4: Options to address need	
Reliance on the existing rail freight interchanges to manage demand	Perpetuating the status quo, by design or default, is simply not a viable option. Road congestion would continue to increase and the deep-sea ports would face increasing difficulties in ensuring

	the efficient inland movement of the forecast growth in the volume of sea freight trade, causing port congestion and unacceptable costs and delays for shippers. This would constitute a constraint on economic growth, private sector investment and job creation.
Reliance on road-based logistics	Even with significant future improvements and enhancements to the Strategic Road Network, the forecast growth in freight demand would lead to increasing congestion both on the road network and at our ports, together with a continued increase in transport carbon emissions. Modal shift to rail therefore needs to be encouraged. This will require sustained investment in the capability of the national rail network and the terminals and interchange facilities which serve it.
Reliance on a larger number of smaller rail freight interchange terminals	The increasing performance and efficiency required of our logistics system would not allow reliance on an expanded network of smaller terminals. While there is a place for local terminals, these cannot provide the scale economies, operating efficiencies and benefits of the related business facilities and linkages offered by SRFIs.

2.56 The Government has concluded that there is a compelling need for an expanded network of SRFIs. It is important that SRFIs are located near the business markets they will serve – major urban centres, or groups of centres – and are linked to key supply chain routes. Given the locational requirements and the need for effective connections for both rail and road, the number of locations suitable for SRFIs will be limited, which will restrict the scope for developers to identify viable alternative sites.

2.57 Existing operational SRFIs and other intermodal RFIs are situated predominantly in the Midlands and the North. Conversely, in London and the South East, away from the deep-sea ports, most intermodal RFI and rail-connected warehousing is on a small scale and/or poorly located in relation to the main urban areas.

2.58 This means that SRFI capacity needs to be provided at a wide range of locations, to provide the flexibility needed to match the changing demands of the market, possibly with traffic moving from existing RFI to new larger facilities. There is a particular challenge in expanding rail freight interchanges serving London and the South East.

3. Wider Government policy on the national networks

Overview

3.1 The need for development of the national networks, and the Government's policy for addressing that need, must be seen in the context of the Government's wider policies on economic performance, environment, safety, technology, sustainable transport and accessibility, as well as journey reliability and the experience of road/rail users. This section sets out the Government's wider policies, both as they relate to projects for the national networks that are nationally significant infrastructure projects and more generally.

Environment and social impacts

3.2 The Government recognises that for development of the national road and rail networks to be sustainable these should be designed to minimise social and environmental impacts and improve quality of life.

3.3 In delivering new schemes, the Government expects applicants to avoid and mitigate environmental and social impacts in line with the principles set out in the NPPF and the Government's planning guidance. Applicants should also provide evidence that they have considered reasonable opportunities to deliver environmental and social benefits as part of schemes. The Government's detailed policy on environmental mitigations for developments is set out in Chapter 5 of this document.

3.4 The Appraisal of Sustainability accompanying this NPS recognises that some developments will have some adverse local impacts on noise, emissions, landscape/visual amenity, biodiversity, cultural heritage and water resources. The significance of these effects and the effectiveness of mitigation is uncertain at the strategic and non-locationally specific level of this NPS. Therefore, whilst applicants should deliver developments in accordance with Government policy and in an environmentally sensitive way, including considering opportunities to deliver environmental benefits, some adverse local effects of development may remain.

3.5 Outside the nationally significant infrastructure project regime, Government policy is to bring forward targeted works to address existing environmental problems on the Strategic Road Network and improve the

performance of the network. This includes reconnecting habitats and ecosystems, enhancing the settings of historic and cultural heritage features, respecting and enhancing landscape character, improving water quality and reducing flood risk, avoiding significant adverse impacts from noise and vibration and addressing areas of poor air quality.

Emissions

3.6 Transport will play an important part in meeting the Government's legally binding carbon targets and other environmental targets. As part of this there is a need to shift to greener technologies and fuels, and to promote lower carbon transport choices. Over the next decade, the biggest reduction in emissions from domestic transport is likely to come from efficiency improvements in conventional vehicles, specifically cars and vans, driven primarily by EU targets for new vehicle CO_2 performance. Electrification of the railway will also support reductions in carbon.

3.7 As technology develops, ultra-low emission vehicles (ULEVs), including pure electric vehicles, plug-in hybrids and fuel cell electric vehicles, will play an increasing role in the way we travel. These vehicles are now starting to come onto the market in significant numbers, and in the coming decade we will move towards the mass market roll-out of ULEVs. The Government is committed to supporting the switch to the latest ultra-low emission vehicles.

3.8 The impact of road development on aggregate levels of emissions is likely to be very small. Impacts of road development need to be seen against significant projected reductions in carbon emissions and improvements in air quality as a result of current and future policies to meet the Government's legally binding carbon budgets and the European Union's air quality limit values. For example:

- Carbon – the annual CO_2 impacts from delivering a programme of investment on the Strategic Road Network of the scale envisaged in *Investing in Britain's Future* amount to well below 0.1% of average annual carbon emissions allowed in the fourth carbon budget.[44] This would be outweighed by additional support for ULEVs also identified as overall policy.

- Air quality – aggregate air quality impacts from delivering a programme of investment on the Strategic Road Network of the scale envisaged in *Investing in Britain's Future* are small. Total PM10 and NO_X might be expected to increase slightly, but this needs to be seen in the context of projected reductions in emissions over time. PM10 and NO_X are expected to decrease over the next decade or so as a result of tighter vehicle emission standards, then flatten, with further

[44] This is based on a roads programme of the scale envisaged in Investing in Britain's Future, over a 10 to 15 year period.

Annex C: Maps of strategic rail freight network

The Strategic Freight Network



Appendix 3 – Policy

b. NPPF

Ministry of Housing,
Communities &
Local Government

National Planning Policy Framework

The presumption in favour of sustainable development

11. Plans and decisions should apply a presumption in favour of sustainable development.

For **plan-making** this means that:

a) plans should positively seek opportunities to meet the development needs of their area, and be sufficiently flexible to adapt to rapid change;

b) strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas[5], unless:

   i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan area[6]; or

   ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

For **decision-taking** this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date[7], granting permission unless:

   i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed[6]; or

   ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

[5] As established through statements of common ground (see paragraph 27).
[6] The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 176) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 63); and areas at risk of flooding or coastal change.
[7] This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. Transitional arrangements for the Housing Delivery Test are set out in Annex 1.

3. Plan-making

15. The planning system should be genuinely plan-led. Succinct and up-to-date plans should provide a positive vision for the future of each area; a framework for addressing housing needs and other economic, social and environmental priorities; and a platform for local people to shape their surroundings.

16. Plans should:

a) be prepared with the objective of contributing to the achievement of sustainable development[10];

b) be prepared positively, in a way that is aspirational but deliverable;

c) be shaped by early, proportionate and effective engagement between plan-makers and communities, local organisations, businesses, infrastructure providers and operators and statutory consultees;

d) contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals;

e) be accessible through the use of digital tools to assist public involvement and policy presentation; and

f) serve a clear purpose, avoiding unnecessary duplication of policies that apply to a particular area (including policies in this Framework, where relevant).

The plan-making framework

17. The development plan must include strategic policies to address each local planning authority's priorities for the development and use of land in its area[11]. These strategic policies can be produced in different ways, depending on the issues and opportunities facing each area. They can be contained in:

a) joint or individual local plans, produced by authorities working together or independently (and which may also contain non-strategic policies); and/or

b) a spatial development strategy produced by an elected Mayor or combined authority, where plan-making powers have been conferred.

18. Policies to address non-strategic matters should be included in local plans that contain both strategic and non-strategic policies, and/or in local or neighbourhood plans that contain just non-strategic policies.

19. The development plan for an area comprises the combination of strategic and non-strategic policies which are in force at a particular time.

[10] This is a legal requirement of local planning authorities exercising their plan-making functions (section 39(2) of the Planning and Compulsory Purchase Act 2004).
[11] Section 19(1B-1E) of the Planning and Compulsory Purchase Act 2004.

Strategic policies

20. Strategic policies should set out an overall strategy for the pattern, scale and quality of development, and make sufficient provision[12] for:

    a) housing (including affordable housing), employment, retail, leisure and other commercial development;

    b) infrastructure for transport, telecommunications, security, waste management, water supply, wastewater, flood risk and coastal change management, and the provision of minerals and energy (including heat);

    c) community facilities (such as health, education and cultural infrastructure); and

    d) conservation and enhancement of the natural, built and historic environment, including landscapes and green infrastructure, and planning measures to address climate change mitigation and adaptation.

21. Plans should make explicit which policies are strategic policies[13]. These should be limited to those necessary to address the strategic priorities of the area (and any relevant cross-boundary issues), to provide a clear starting point for any non-strategic policies that are needed. Strategic policies should not extend to detailed matters that are more appropriately dealt with through neighbourhood plans or other non-strategic policies.

22. Strategic policies should look ahead over a minimum 15 year period from adoption[14], to anticipate and respond to long-term requirements and opportunities, such as those arising from major improvements in infrastructure.

23. Broad locations for development should be indicated on a key diagram, and land-use designations and allocations identified on a policies map. Strategic policies should provide a clear strategy for bringing sufficient land forward, and at a sufficient rate, to address objectively assessed needs over the plan period, in line with the presumption in favour of sustainable development. This should include planning for and allocating sufficient sites to deliver the strategic priorities of the area (except insofar as these needs can be demonstrated to be met more appropriately through other mechanisms, such as brownfield registers or non-strategic policies)[15].

[12] In line with the presumption in favour of sustainable development.
[13] Where a single local plan is prepared the non-strategic policies should be clearly distinguished from the strategic policies.
[14] Except in relation to town centre development, as set out in chapter 7.
[15] For spatial development strategies, allocations, land use designations and a policies map are needed only where the power to make allocations has been conferred.

Maintaining effective cooperation

24. Local planning authorities and county councils (in two-tier areas) are under a duty to cooperate with each other, and with other prescribed bodies, on strategic matters that cross administrative boundaries.

25. Strategic policy-making authorities should collaborate to identify the relevant strategic matters which they need to address in their plans. They should also engage with their local communities and relevant bodies including Local Enterprise Partnerships, Local Nature Partnerships, the Marine Management Organisation, county councils, infrastructure providers, elected Mayors and combined authorities (in cases where Mayors or combined authorities do not have plan-making powers).

26. Effective and on-going joint working between strategic policy-making authorities and relevant bodies is integral to the production of a positively prepared and justified strategy. In particular, joint working should help to determine where additional infrastructure is necessary, and whether development needs that cannot be met wholly within a particular plan area could be met elsewhere.

27. In order to demonstrate effective and on-going joint working, strategic policy-making authorities should prepare and maintain one or more statements of common ground, documenting the cross-boundary matters being addressed and progress in cooperating to address these. These should be produced using the approach set out in national planning guidance, and be made publicly available throughout the plan-making process to provide transparency.

Non-strategic policies

28. Non-strategic policies should be used by local planning authorities and communities to set out more detailed policies for specific areas, neighbourhoods or types of development. This can include allocating sites, the provision of infrastructure and community facilities at a local level, establishing design principles, conserving and enhancing the natural and historic environment and setting out other development management policies.

29. Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan. Neighbourhood plans should not promote less development than set out in the strategic policies for the area, or undermine those strategic policies[16].

30. Once a neighbourhood plan has been brought into force, the policies it contains take precedence over existing non-strategic policies in a local plan covering the neighbourhood area, where they are in conflict; unless they are superseded by strategic or non-strategic policies that are adopted subsequently.

[16] Neighbourhood plans must be in general conformity with the strategic policies contained in any development plan that covers their area.

Preparing and reviewing plans

31. The preparation and review of all policies should be underpinned by relevant and up-to-date evidence. This should be adequate and proportionate, focused tightly on supporting and justifying the policies concerned, and take into account relevant market signals.

32. Local plans and spatial development strategies should be informed throughout their preparation by a sustainability appraisal that meets the relevant legal requirements[17]. This should demonstrate how the plan has addressed relevant economic, social and environmental objectives (including opportunities for net gains). Significant adverse impacts on these objectives should be avoided and, wherever possible, alternative options which reduce or eliminate such impacts should be pursued. Where significant adverse impacts are unavoidable, suitable mitigation measures should be proposed (or, where this is not possible, compensatory measures should be considered).

33. Policies in local plans and spatial development strategies should be reviewed to assess whether they need updating at least once every five years, and should then be updated as necessary[18]. Reviews should be completed no later than five years from the adoption date of a plan, and should take into account changing circumstances affecting the area, or any relevant changes in national policy. Relevant strategic policies will need updating at least once every five years if their applicable local housing need figure has changed significantly; and they are likely to require earlier review if local housing need is expected to change significantly in the near future.

Development contributions

34. Plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure). Such policies should not undermine the deliverability of the plan.

Examining plans

35. Local plans and spatial development strategies are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. Plans are ‘sound’ if they are:

[17] The reference to relevant legal requirements refers to Strategic Environmental Assessment. Neighbourhood plans may require Strategic Environmental Assessment, but only where there are potentially significant environmental effects.
[18] Reviews at least every five years are a legal requirement for all local plans (Regulation 10A of the Town and Country Planning (Local Planning) (England) Regulations 2012).

a) **Positively prepared** – providing a strategy which, as a minimum, seeks to meet the area's objectively assessed needs[19]; and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;

b) **Justified** – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;

c) **Effective** – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and

d) **Consistent with national policy** – enabling the delivery of sustainable development in accordance with the policies in this Framework.

36. These tests of soundness will be applied to non-strategic policies[20] in a proportionate way, taking into account the extent to which they are consistent with relevant strategic policies for the area.

37. Neighbourhood plans must meet certain 'basic conditions' and other legal requirements[21] before they can come into force. These are tested through an independent examination before the neighbourhood plan may proceed to referendum.

[19] Where this relates to housing, such needs should be assessed using a clear and justified method, as set out in paragraph 60 of this Framework.
[20] Where these are contained in a local plan.
[21] As set out in paragraph 8 of Schedule 4B to the Town and Country Planning Act 1990 (as amended).

9. Promoting sustainable transport

102. Transport issues should be considered from the earliest stages of plan-making and development proposals, so that:

a) the potential impacts of development on transport networks can be addressed;

b) opportunities from existing or proposed transport infrastructure, and changing transport technology and usage, are realised – for example in relation to the scale, location or density of development that can be accommodated;

c) opportunities to promote walking, cycling and public transport use are identified and pursued;

d) the environmental impacts of traffic and transport infrastructure can be identified, assessed and taken into account – including appropriate opportunities for avoiding and mitigating any adverse effects, and for net environmental gains; and

e) patterns of movement, streets, parking and other transport considerations are integral to the design of schemes, and contribute to making high quality places.

103. The planning system should actively manage patterns of growth in support of these objectives. Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions, and improve air quality and public health. However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making.

104. Planning policies should:

a) support an appropriate mix of uses across an area, and within larger scale sites, to minimise the number and length of journeys needed for employment, shopping, leisure, education and other activities;

b) be prepared with the active involvement of local highways authorities, other transport infrastructure providers and operators and neighbouring councils, so that strategies and investments for supporting sustainable transport and development patterns are aligned;

c) identify and protect, where there is robust evidence, sites and routes which could be critical in developing infrastructure to widen transport choice and realise opportunities for large scale development;

d) provide for high quality walking and cycling networks and supporting facilities such as cycle parking (drawing on Local Cycling and Walking Infrastructure Plans);

e) provide for any large scale transport facilities that need to be located in the area[42], and the infrastructure and wider development required to support their operation, expansion and contribution to the wider economy. In doing so they should take into account whether such development is likely to be a nationally significant infrastructure project and any relevant national policy statements; and

f) recognise the importance of maintaining a national network of general aviation airfields, and their need to adapt and change over time – taking into account their economic value in serving business, leisure, training and emergency service needs, and the Government's General Aviation Strategy[43].

105. If setting local parking standards for residential and non-residential development, policies should take into account:

a) the accessibility of the development;

b) the type, mix and use of development;

c) the availability of and opportunities for public transport;

d) local car ownership levels; and

e) the need to ensure an adequate provision of spaces for charging plug-in and other ultra-low emission vehicles.

106. Maximum parking standards for residential and non-residential development should only be set where there is a clear and compelling justification that they are necessary for managing the local road network, or for optimising the density of development in city and town centres and other locations that are well served by public transport (in accordance with chapter 11 of this Framework). In town centres, local authorities should seek to improve the quality of parking so that it is convenient, safe and secure, alongside measures to promote accessibility for pedestrians and cyclists.

107. Planning policies and decisions should recognise the importance of providing adequate overnight lorry parking facilities, taking into account any local shortages, to reduce the risk of parking in locations that lack proper facilities or could cause a nuisance. Proposals for new or expanded distribution centres should make provision for sufficient lorry parking to cater for their anticipated use.

Considering development proposals

108. In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:

[42] Policies for large scale facilities should, where necessary, be developed through collaboration between strategic policy-making authorities and other relevant bodies. Examples of such facilities include ports, airports, interchanges for rail freight, public transport projects and roadside services. The primary function of roadside services should be to support the safety and welfare of the road user (and most such proposals are unlikely to be nationally significant infrastructure projects).
[43] Department for Transport (2015) *General Aviation Strategy.*

Annex 2: Glossary

Affordable housing: housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers); and which complies with one or more of the following definitions:

a) **Affordable housing for rent:** meets all of the following conditions: (a) the rent is set in accordance with the Government's rent policy for Social Rent or Affordable Rent, or is at least 20% below local market rents (including service charges where applicable); (b) the landlord is a registered provider, except where it is included as part of a Build to Rent scheme (in which case the landlord need not be a registered provider); and (c) it includes provisions to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision. For Build to Rent schemes affordable housing for rent is expected to be the normal form of affordable housing provision (and, in this context, is known as Affordable Private Rent).

b) **Starter homes:** is as specified in Sections 2 and 3 of the Housing and Planning Act 2016 and any secondary legislation made under these sections. The definition of a starter home should reflect the meaning set out in statute and any such secondary legislation at the time of plan-preparation or decision-making. Where secondary legislation has the effect of limiting a household's eligibility to purchase a starter home to those with a particular maximum level of household income, those restrictions should be used.

c) **Discounted market sales housing:** is that sold at a discount of at least 20% below local market value. Eligibility is determined with regard to local incomes and local house prices. Provisions should be in place to ensure housing remains at a discount for future eligible households.

d) **Other affordable routes to home ownership:** is housing provided for sale that provides a route to ownership for those who could not achieve home ownership through the market. It includes shared ownership, relevant equity loans, other low cost homes for sale (at a price equivalent to at least 20% below local market value) and rent to buy (which includes a period of intermediate rent). Where public grant funding is provided, there should be provisions for the homes to remain at an affordable price for future eligible households, or for any receipts to be recycled for alternative affordable housing provision, or refunded to Government or the relevant authority specified in the funding agreement.

Air quality management areas: Areas designated by local authorities because they are not likely to achieve national air quality objectives by the relevant deadlines.

Ancient or veteran tree: A tree which, because of its age, size and condition, is of exceptional biodiversity, cultural or heritage value. All ancient trees are veteran trees. Not all veteran trees are old enough to be ancient, but are old relative to other trees of the same species. Very few trees of any species reach the ancient life-stage.

Ancient woodland: An area that has been wooded continuously since at least 1600 AD. It includes ancient semi-natural woodland and plantations on ancient woodland sites (PAWS).

Spatial development strategy: A plan containing strategic policies prepared by a Mayor or a combined authority. It includes the London Plan (prepared under provisions in the Greater London Authority Act 1999) and plans prepared by combined authorities that have been given equivalent plan-making functions by an order made under the Local Democracy, Economic Development and Construction Act 2009 (as amended).

Stepping stones: Pockets of habitat that, while not necessarily connected, facilitate the movement of species across otherwise inhospitable landscapes.

Strategic environmental assessment: A procedure (set out in the Environmental Assessment of Plans and Programmes Regulations 2004) which requires the formal environmental assessment of certain plans and programmes which are likely to have significant effects on the environment.

Strategic policies: Policies and site allocations which address strategic priorities in line with the requirements of Section 19 (1B-E) of the Planning and Compulsory Purchase Act 2004.

Strategic policy-making authorities: Those authorities responsible for producing strategic policies (local planning authorities, and elected Mayors or combined authorities, where this power has been conferred). This definition applies whether the authority is in the process of producing strategic policies or not.

Supplementary planning documents: Documents which add further detail to the policies in the development plan. They can be used to provide further guidance for development on specific sites, or on particular issues, such as design. Supplementary planning documents are capable of being a material consideration in planning decisions but are not part of the development plan.

Sustainable transport modes: Any efficient, safe and accessible means of transport with overall low impact on the environment, including walking and cycling, low and ultra low emission vehicles, car sharing and public transport.

Town centre: Area defined on the local authority's policies map, including the primary shopping area and areas predominantly occupied by main town centre uses within or adjacent to the primary shopping area. References to town centres or centres apply to city centres, town centres, district centres and local centres but exclude small parades of shops of purely neighbourhood significance. Unless they are identified as centres in the development plan, existing out-of-centre developments, comprising or including main town centre uses, do not constitute town centres.

Transport assessment: A comprehensive and systematic process that sets out transport issues relating to a proposed development. It identifies measures required to improve accessibility and safety for all modes of travel, particularly for alternatives to the car such as walking, cycling and public transport, and measures that will be needed deal with the anticipated transport impacts of the development.

Transport statement: A simplified version of a transport assessment where it is agreed the transport issues arising from development proposals are limited and a full transport assessment is not required.

Appendix 4 - Key Relevant Inspectors Reports and Decision Letters extracts

a. Radlett 2014 Decision

Department for Communities and Local Government

Our Ref: APP/B1930/A/09/2109433
Your Ref: 5/09/0708

14 July 2014

Erica Mortimer
CgMS Ltd
Morley House
26 Holborn Viaduct
London
ED1A 2AT

Dear Madam

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY HELIOSLOUGH LTD
LAND IN AND AROUND FORMER AERODROME, NORTH ORBITAL ROAD, UPPER COLNE VALLEY, HERTFORDSHIRE
APPLICATION: REF 5/09/0708

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, A Mead BSc (Hons) MRTPI MIQ, who held a public local inquiry between 24 November and 18 December 2009 into your client's appeal against a decision by St Albans City & District Council (the Council) to refuse outline planning permission for the construction of a Strategic Rail Freight Interchange (SRFI) comprising an intermodal terminal and rail and road served distribution units (331,665m^2 in Use Class B8 including ancillary B1/B2 floorspace) within Area 1, with associated road, rail and other infrastructure facilities and works within Areas 1 and 2, (including earth mounds and a Park Street/Frogmore relief road) in a landscaped setting, and further landscaping and other works within Areas 3 to 8 inclusive to provide publicly accessible open land and community forest, at land in and around Former Aerodrome, North Orbital Road, Upper Colne Valley, Hertfordshire in accordance with application Ref 5/09/0708 dated 9 April 2009.

2. On 29 July 2009, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990. This was because the appeal concerns a proposal for development of major importance having more than local significance and because it is for significant development within the Green Belt.

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3. The Secretary of State issued his decision in respect of the above appeal in his letter dated 7 July 2010. That decision letter was the subject of an application to the High Court and was subsequently quashed by order of the Court dated 4 July 2011. The appeal therefore falls to be redetermined by the Secretary of State.

Inspector's recommendation and summary of the decision

4. The Inspector recommended that the appeal be allowed and planning permission granted. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated. He has decided to allow the appeal and grant planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to the IR.

Matters arising since 7 July 2010

5. Following the quashing of his decision letter of 7 July 2010, the Secretary of State issued a letter, dated 15 September 2011, under Rule 19 of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, to all interested parties, setting out a written statement of the matters with respect to which further representations were invited for the purposes of his re-determination of the appeal. These matters were:

a. The views expressed by the Secretary of State in paragraph 33 of the quashed decision letter with regard to the Inspector's proposed Condition 33 - alternatives 1- 3, and the weight to be given to the planning obligation in the form submitted by the appellant and made by unilateral undertaking dated 16 January 2008.

b. Whether or not Hertfordshire County Council is prepared to join as a party to the undertaking in the light of the Secretary of State's comments made in paragraphs 32 and 33 of the quashed decision letter; or if the parties to the undertaking wish him to consider any other amendments to the undertaking which might overcome his concerns about its enforceability.

c. Any new matters or change in circumstances which the parties consider to be material to the Secretary of State's further consideration of this appeal.

6. On 19 October 2011, the Secretary of State circulated the responses he had received to his letter of 15 September 2011. On 29 November 2011 he circulated the responses he had received to his letter of 19 October 2011, and invited comments on the Department for Transport's updated policy guidance note on Strategic Rail Freight Interchanges, the Department for Transport's review document on logistics growth, and a joint Written Ministerial Statement on Strategic Rail Freight Interchanges issued by the Secretary of State for Transport and the Secretary of State for Communities and Local Government.

7. On 1 February 2012, the Secretary of State circulated the responses he had received to his letter of 29 November 2011 and stated that he was of the view that he was in a position to re-determine the appeal on the basis of all the evidence and representations before him.

8. Following the publication of the National Planning Policy Framework ("the Framework"), which replaced the national planning policy documents set out in its Annex 3, the Secretary of State wrote to parties on 29 March 2012 inviting comments on the relevance of the Framework to this appeal. On 18 April he circulated the responses he had received to his letter of 29 March. The Secretary of State has given careful

consideration to all of the representations received and he considers that, for the most part, the issues raised in relation to the Framework cover those already rehearsed at the inquiry. In considering these further representations the Secretary of State wishes to make clear that he has not revisited issues which are carried forward in the Framework, and which have therefore already been addressed in the IR, unless the approach in the Framework leads him to give different weight. Notwithstanding the replacement of the majority of former national planning policy documents by the Framework, the Secretary of State considers that the main issues identified by the Inspector remain essentially the same.

9. On 19 September 2012, the Secretary of State wrote to parties inviting comments on re-opening the inquiry into the Radlett appeal and conjoining it with the planned inquiry into the proposed SRFI at Colnbrook, Slough (Appeal Reference: APP/J0350/A/12/2171967). On 12 October 2012 the Secretary of State wrote to parties and circulated copies of the responses he had received to his letter of 19 September 2012. On 14 December 2012 the Secretary of State wrote to parties stating that he had concluded that it was unnecessary for him to re-open the inquiry into the Radlett appeal and conjoin it with the planned inquiry into the Colnbrook appeal and that he was satisfied that he could determine the Radlett proposal on the basis of the evidence before him.

10. The Secretary of State wrote to you on 20 December 2012 indicating that he was minded to allow the appeal subject to the provision of a suitable planning obligation which binds all of those with an interest in the appeal site. You submitted a new planning obligation (dated 19 December 2013) on 20 December 2013 and, on 19 February 2014, the Secretary of State wrote to parties inviting comments on that obligation. On 14 March 2014, the Secretary of State circulated the responses he had received and invited comments on (i) those responses, (ii) the Planning Practice Guidance (the Guidance) published on 6 March 2014 and the cancellation of previous planning practice guidance documents, and (iii) any material changes of circumstances that have occurred since 20 December 2012. On 1 April 2014, the Secretary of State circulated the responses he had received and invited final comments on those representations.

11. Responses received following the letters referred to above and the other representations received following the close of the inquiry are listed at Annex A below. The Secretary of State has given all these representations very careful consideration in his determination of this appeal. He is satisfied that those representations which have not been circulated to interested parties do not raise any matters that would affect his decision or require him to refer back to parties on their contents for further representations prior to reaching his decision. Copies of the representations referred to are not attached to this letter. However, copies will be made available to interested parties on written request to either of the addresses at the foot of the first page of this letter.

Procedural Matters

12. In reaching his decision, the Secretary of State has taken into account the Environmental Statement (ES) which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 and the Inspector's comments at IR13.7. The Secretary of State is content that the Environmental Statement complies with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

13. At the Inquiry, an application for award of costs was made by your client against St Albans City & District Council. This application was decided by the Secretary of State in his costs decision letter of 7 July 2010.

Policy considerations

14. In determining the appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

15. In this case, the relevant parts of the development plan comprise the saved policies of the City and District of St Albans Local Plan Review (LP), adopted 1994. The Secretary of State considers that the development plan policies most relevant to this case are those referred to by the Inspector at IR13.27. He is satisfied that these policies are generally consistent with the Framework.

16. Other material considerations which the Secretary of State has taken into account include: the Framework; the Guidance; the Community Infrastructure Levy (CIL) Regulations; The London Plan 2011 (as amended October 2013) including Policies 6.14 and 6.15 and the draft further alterations to the London Plan (January 2014).

17. The Secretary of State has also had regard to the Strategic Rail Authority's (SRA) *Strategic Rail Freight Interchange Policy* (published in 2004) as a material consideration. He has taken account of the Inspector's comments on the document (IR13.30 – 32) and he agrees with the Inspector that, although the SRA has ceased and some of its former responsibilities have transferred to Network Rail, the document is still a source of advice and guidance (IR13.30). The Secretary of State has also taken account of the Department for Transport's Strategic Rail Freight Interchange Policy Guidance and its Logistics Growth Review Document (both published on 29 November 2011), and the joint Written Ministerial Statement on Strategic Rail Freight Interchanges issued by the Secretary of State for Transport and the Secretary of State for Communities and Local Government on 29 November 2011.

18. He has also had regard to Slough's Core Strategy 2006-2026 (2008), the saved policies of the Slough Local Plan (2004) and the Revised Pre-submission Version of the Development Strategy for Central Bedfordshire (DSCB) (June 2013).

19. The East of England Plan (EEP) formed part of the development plan when the Inspector wrote his report. The Order revoking the Plan had been laid but had not come into force when the Secretary of State issued his letter of 20 December 2012. However the EEP was revoked on 3 January 2013 and the Secretary of State has not had regard to it in his determination of this case.

20. The South East Plan (SEP), which was a material consideration when the Inspector wrote his report and which remained in place and attracted limited weight when the Secretary of State issued his letter of 20 December 2012, was partially revoked on 25 March 2013. The Secretary of State has not had regard to it in his determination of this case.

21. The Secretary of State has taken account of the fact that the Inspector attributes little weight to the emerging St Albans City and District Core Strategy Development Plan Document which was published in 2009 (IR13.28). The Secretary of State notes that,

since the IR was written, the Council has taken a number of steps in the development of new development plan documents. However, at this stage the Council's emerging development plan is not sufficiently advanced to carry material weight.

Legal Submissions

22. In addition to the material considerations referred to above, the Secretary of State has taken account of Inspector Phillipson's report dated 4 June 2008 and the associated decision letter dated 1 October 2008. The Secretary of State has considered the Inspector's comments on the submissions made by your client, the Council and STRIFE about how the current case should be approached in view of the Secretary of State's 2008 decision on the appeal site (IR13.8 – 13.18). For the reasons given by the Inspector in those paragraphs, he agrees with the Inspector's conclusion at IR13.19 that, if there is a very good planning reason, he is able to differ from the conclusions or decision of his predecessor.

Main issues

23. The Secretary of State considers that the main issues in this case are those set out by the Inspector at IR13.20 and whether the proposal complies with the development plan and with national policy.

Green Belt

24. Having had regard to the Inspector's comments at IR13.35, the Secretary of State concludes that the appeal proposal would be inappropriate development in the Green Belt and that it is harmful as such. As the proposal amounts to inappropriate development he considers that, in the absence of very special circumstances, it would conflict with national policies and with LP policy 1 which concern the protection of the Green Belt. The Secretary of State agrees with the Inspector's further analysis at IR13.35 and concludes that the proposal would have a substantial impact on the openness of the Green Belt, that it would result in significant encroachment into the countryside, that it would contribute to urban sprawl and that it would cause some harm to the setting of St Albans. For the reasons given by the Inspector at IR13.36 – 13.39, the Secretary of State is satisfied that the proposal would not lead to the merging of neighbouring towns (IR13.38). He also agrees with the Inspector's analysis and conclusion that the aim to encourage the recycling of derelict and other urban land would not be frustrated by the proposal (IR13.40).

Other Harm

25. The Secretary of State agrees with the Inspector's reasoning and conclusions with respect to the proposal's landscape and visual impact, as set out at IR13.41 – 13.44. Like the Inspector, he considers that the effect of the proposal on the landscape and visual impact would be moderately adverse and would be contrary to Policy 104 of the LP (IR13.44).

26. In 2008, the former Secretary of State found that the harm to ecological matters would not be significant (IR13.45). However, for the reasons given by the Inspector (IR13.45 – 13.46), the Secretary of State shares his view that the proposal would conflict with Policy 106 of the LP (IR13.45) and, despite there being no more bird species recorded than there were at the time of the previous Inquiry and despite the lack of objection from Natural England, more weight should be attached to the harm to ecological interests (IR13.46).

27. Having taken account of the section 3.2.4 of the November 2011 Strategic Rail Freight Interchange Policy Guidance, which states that the availability of an available and economic workforce will be an important consideration and the Inspector's comments at IR13.47 – 13.48, the Secretary of State agrees with the Inspector and he too concludes that it would not be reasonable to refuse planning permission for the development on account of sustainability concerns relating to the likely pattern of travel to work by the workforce (IR13.48).

28. The Secretary of State has given careful consideration to the Inspector's assessment of the impact of the proposal on highways, as set out at IR13.49 – 13.58, and agrees with his reasoning and conclusions on this matter. Whilst he has taken account of the comments on highways matters put forward by interested parties following the close of the inquiry, including the matters raised by Anne Main MP in her letters of 5 March (and her attached letter dated 27 January 2014) and 14 April 2014 and the concern expressed in the letter dated 27 March 2014 from the Radlett Society & Green Belt Association, he does not consider that highway concerns amount to a reason for refusal in this case.

29. The Secretary of State agrees with the Inspector's analysis, as set out at IR13.59 – 13.71, with regard to the impact of noise generated by the proposed development. He has given careful consideration to the point about noise made by STRIFE in its letter of 15 April 2014 and the statement from Network Rail in its letter of 26 March 2014 that the connections to and from the Radlett terminal should be designed to be capable of 45mph operation. He observes that the question of when and how the junction will be used by trains entering and exiting the SRFI is a matter for negotiation with Network Rail and he does not consider that STRIFE's representation undermines his conclusions in relation to noise. Like the Inspector (IR13.71), he is satisfied that, with the inclusion of the three conditions on noise, the noise generated by the activity of the site during the night would not be unacceptable and would not bring the proposal into conflict with the development plan.

30. The Secretary of State agrees with the Inspector's reasoning and conclusions with respect to air quality and lighting issues (IR13.72 – 13.73), the impact of the proposal on Park Street and Frogmore and the Napsbury Conservation Area (IR13.74) and the impact on existing footpaths and bridleways (IR13.75).

Other considerations

31. The Secretary of State has had regard to the Inspector's comment at IR13.34 that, as the Council accepted in evidence, the need for SRFIs is stated and restated in a number of documents. The Secretary of State observes that the Written Ministerial Statement of 29 November 2011 makes clear that there remains a need for a network of SRFIs to support growth and create employment and that it has proved extremely problematical, especially in the South East, to create appropriately located SRFIs. The SRFI Policy Guidance published on 29 November 2011 states that only one SRFI had been granted planning consent in the whole of the South East region and advises that SRFI capacity needs to be provided at a wide range of locations, particularly but not exclusively serving London and the South East. The Secretary of State has had regard to the comment made by STRIFE (letter of 4 March 2014) that the proposed SRFI at Howbury Park has not been delivered. However, he tends to the view that this only serves to reinforce the point made in the 2011 Written Ministerial Statement on Strategic Rail Freight Interchanges that, in the South East in particular, it is proving extremely problematical to develop SRFIs.

Whether the development would operate as an SRFI

32. The Secretary of State has carefully considered the Inspector's analysis and conclusions as to whether the development would operate as an SRFI including his statement (IR13.79) that Network Rail does not consider that there are any major technical obstacles to achieving a connection such as is proposed at the site (IR13.76 – 13.83). He has also taken account of the further comments on this matter submitted following the close of the inquiry, including the letters from STRIFE dated 4 March and 15 April 2014 which raise the matter of junction speed. The Secretary of State has also given careful consideration to your representation dated 28 March 2014 and the letters of 1 November 2011 and 26 March 2014 from Network Rail, and those dated 11 November 2011 and 31 March 2014 from the Department for Transport. He observes that the letter dated 31 March 2014 states that Network Rail, as both the owner and operator of the rail infrastructure and the author of a very recent Freight Market Study that seeks to identify the market demand and infrastructure needs for rail freight over the coming thirty years, may be regarded as authoritative on these matters. Having taken account of the comments made, the Secretary of State sees little reason to doubt Network Rail's view that there is no good reason why a junction at Radlett capable of 45 mile per hour operation cannot be achieved.

33. Overall, the Secretary of State sees no good reason to disagree with the Inspector's analysis or with his conclusions that the timetabling and bidding process should ensure that sufficient paths to enable access to be gained would be made available to serve the SRFI during the interpeak hours and overnight (IR13.80) and that he can be satisfied of the ability of the SRFI to be accessed from all the key destinations (IR13.82). He further agrees that there is no reason to doubt that the Midland Main Line will develop as a key part of the rail freight network and that the aim of Network Rail and rail regulators will be to enable freight to be carried efficiently, albeit without compromising its passenger carrying ability (IR13.83).

Alternatives

34. For the reasons given at IR13.84 – 13.88, the Secretary of State agrees with the Inspector that the broad approach of the appellant in focusing on the north west sector in the assessment of alternatives is reasonable (IR13.88). He agrees with the Inspector, for the reasons given at IR13.89 – 13.91, that the general approach by the appellant to the assessment of alternatives and producing the 'long list' has been robust and realistically pragmatic (IR13.91). The Secretary of State sees no reason to disagree with the Inspector's comments on the appellant's assessment of the long list sites (IR13.92 – 13.94).

35. The Secretary of State notes that, at the inquiry, the cases put forward by the Council and by STRIFE included argument in relation to London Gateway (LG) and that, in his conclusions the Inspector refers to LG at IR13.85 and IR13.88. A number of the representations submitted to the Secretary of State since his letter of 20 December 2012 have also referred to LG. In particular Anne Main MP (7 January 2014) and STRIFE (4 March and 15 April 2014) both state that the opening of the LG container port amounts to a material change in respect of this proposal. Barton Willmore in its letter of 27 March 2014, Network Rail in its letter of 26 March 2014 and you, in your representation of 28 March 2014, disagree with that view. The Secretary of State has given careful consideration to the views submitted alongside the Inspector's analysis and conclusions and he concludes that there is no good reason to consider that the opening of LG undermines the Alternative Sites Assessment or the Inspector's views on LG at IR13.85.

36. The Secretary of State has given very careful consideration to the Inspector's comments about the appellant's short listed sites (IR13.95 – 13.103). He sees no reason to disagree with the Inspector's remarks about the sites at Littlewick Green or Harlington (IR13.95 – 13.98).

37. With regard to the Upper Sundon site, the Secretary of State has taken account of the Inspector's remark that that there was no suggestion by any party that Upper Sundon scored better than the appeal site and that the Inspector saw no reason to disagree with that (IR13.95). The Secretary of State observes that the 2014 version of the emerging DSCB includes policy 64 which allocates 5 hectares of land at Sundon for an intermodal rail facility and states that the Green Belt boundary follows the extent of the rail freight interchange. As the submission version of the DSCB has yet to be published, the Secretary of State considers that this limits the weight to be attributed to the document.

38. A number of representations (including those from Anne Main MP dated 27 January and 14 April 2014 and those from STRIFE dated 4 March and 15 April 2014) have pointed to the Upper Sundon site as offering a preferable alternative to Radlett. The Secretary of State observes that Network Rail, in its letter dated 26 March 2014, states that it has worked with the developers of both the Sundon and the Radlett schemes, that Sundon is a significantly smaller site than Radlett and that it does not consider that the two proposals fulfil the same purpose or act as alternatives to each other. The Secretary of State sees no reason to disagree with the view of the Department for Transport in its letter of 31 March 2014 that Network Rail, as both the owner and operator of the rail infrastructure and author of the Freight Market Study, may be regarded as authoritative on these matters and he gives the views of Network Rail full weight. In conclusion on this matter, the Secretary of State does not consider that the Sundon site can be regarded as a preferable alternative to the proposal before him.

39. The Secretary of State has had regard to the Inspector's assessment of the site identified at Colnbrook (IR13.99 – 13.103) and the fact that appeal reference: APP/J0350/A/12/2171967 was made on 5 March 2012. As indicated by the Inspector (IR13.100), the Strategic Gap designation has been brought forward in Slough's adopted Core Strategy. The Secretary of State observes that the Core Strategy states that development will only be permitted in the Strategic Gap if it is essential to be in that location. He has also had regard to the High Court judgment referred to at paragraph 3 above, in which the judge held (at paragraph 79) that the Slough Core Strategy sets an additional policy restraint beyond that which follows from the site's location in the Green Belt. In common with the Inspector (IR13.100), the Secretary of State attributes substantial weight to the Strategic Gap designation. In conclusion on this matter, the Secretary of State sees no reason to disagree with the Inspector's analysis and conclusions in respect of Colnbrook (IR13.100 – 13.103).

Other benefits

40. Having had regard to the Inspector's analysis at IR13.104, the Secretary of State shares his view that the Park Street and Frogmore bypass is a local benefit which carries a little weight. He also agrees with the Inspector's reasoning and conclusions with regard to the proposals for Areas 3 to 8 (IR13.105).

The Planning Balance including Prematurity

41. The Secretary of State agrees with the Inspector's comments at IR13.106. He has concluded (at paragraph 24 above) that the proposal would constitute inappropriate development and that further harm would arise from a substantial loss of openness,

significant encroachment into the countryside and that the development would contribute to urban sprawl. He considers that the harm arising thereby would be substantial and that, in addition, some further harm would be caused to the setting of the historic city of St Albans (IR13.106). In line with paragraph 88 of the Framework, the Secretary of State has attached substantial weight to the harm that the appeal scheme would cause to the Green Belt.

42. As set out at paragraph 25 above, the Secretary of State has concluded that the effect of the proposal on the landscape and visual impact would be moderately adverse and that it would be contrary to Policy 104 of the LP. In addition, he has found that conflict would arise in respect of LP Policy 106 and that the harm to ecological interests should be given more weight than in 2008 (paragraph 26 above).

43. In common with the Inspector (IR13.109), the Secretary of State concludes overall that harm would arise from the Green Belt considerations and also due to the impact on landscape and ecology.

44. Turning to the benefits offered by the appeal scheme, like the Inspector (IR13.110), the Secretary of State weighs in the scheme's favour the country park, the improvements to footpaths and bridleways, the provision of a bypass to Park Street and Frogmore, the predicted reduction of CO_2 emissions, and the employment benefits. The Secretary of State has had regard to the Inspector's comments at IR13.111 and, also bearing in mind his remarks at paragraph 31 above, he shares the Inspector's view that the need for SRFIs to serve London and the South East is a material consideration of very considerable weight.

45. The Secretary of State agrees with the Inspector's analysis at IR13.112 – 13.115. He agrees with the Inspector that the assessment of alternative locations for an SRFI conducted by the appellant has been sufficiently methodical and robust to indicate that there are no other sites in the north west area of search which would be likely to come forward in the foreseeable future which would cause less harm to the Green Belt (IR13.114).

46. For the reasons given by the Inspector at IR13.116 – 13.117, the Secretary of State agrees with the Inspector that there is no reason to conclude that determination of the proposal would be premature (IR13.117).

Conditions & Obligations

47. Having had regard to the proposed conditions set out at annex A of the Inspector's Report the Inspector's comments on conditions (IR12.1 – 12.19) and the parties' further representations on conditions, the Secretary of State is satisfied that proposed conditions 1-32 are reasonable and necessary, and meet the tests set out at paragraph 206 the Framework.

48. In his letter of 20 December 2013, the Secretary of State invited you to provide him with a planning obligation under section 106 of the Town and Country Planning Act 1990 which binds all those with an interest in the appeal site. On 20 December 2013 Hogan Lovells LLP submitted a Unilateral Undertaking dated 19 December 2013 and, as set out above, the Secretary of State gave parties the opportunity to comment on that document. The Secretary of State has given very careful consideration to the comments made including the concerns raised by the Council and the comments submitted on behalf of the appellant in respect of those concerns.

49. The Secretary of State takes the view that the 2013 obligation includes the same or substantially similar covenants as those within the 2009 obligation (evidence document 9/HS/INQ/11.0). Notwithstanding the provisions in the 2013 obligation that Hertfordshire County Council shall give reasonable assistance to the Council in respect of its fourth, sixth and seventh covenants, the Council has advised that it lacks expertise or power in respect of some measures in the obligation. The Secretary of State, however, sees little reason to anticipate that Hertfordshire County Council would not provide such reasonable assistance as might be required by the Council to ensure that the relevant covenants would meet their aims and indeed it would be against Hertfordshire County Council's own interests and responsibilities as highways authority not to provide that reasonable assistance. In any event, the Secretary of State takes the view that it is more likely that a developer would need to have control over all of the areas of the land which are required for the development including the land currently owned by Hertfordshire County Council in order to deliver the appeal scheme to which this decision letter relates. The Secretary of State has considered whether this is a case where there are no prospects at all of the development starting within the time limit imposed by the permission and he is satisfied that this is not such a case.

50. With regard to the points made by parties as to whether the costs set out in the 2013 obligation are adequate, as previously indicated, the Secretary of State considers them to be so.

51. In conclusion on this matter the Secretary of State considers that, as sought by his letter of 20 December 2012, the Unilateral Undertaking dated 2013 is a duly certified, signed and dated planning obligation which complies with the relevant statutory provisions of sections 106 and 106A of the Town and Country Planning Act 1990 and the CIL regulations 2010 as amended. He considers that the 2013 obligation binds that part of the land which was not bound by the 2009 obligation and that the entire site is now bound to necessary and sufficient planning obligations.

Conclusion

52. In conclusion, the Secretary of State has found that the appeal proposal would be inappropriate development in the Green Belt and that, in addition, it would cause further harm through loss of openness and significant encroachment into the countryside. In addition the scheme would contribute to urban sprawl and it would cause some harm to the setting of St Albans. The Secretary of State has attributed substantial weight to the harm that would be caused to the Green Belt. In addition he has found that harms would also arise from the scheme's adverse effects on landscape and on ecology and that the scheme conflicts with LP policies 104 and 106 in those respects.

53. The Secretary of State considers that the factors weighing in favour of the appeal include the need for SRFIs to serve London and the South East, to which he has attributed very considerable weight, and the lack of more appropriate alternative locations for an SRFI in the north west sector which would cause less harm to the Green Belt. He has also taken account of the local benefits of the proposals for a country park, improvements to footpaths and bridleways and the Park Street and Frogmore bypass. The Secretary of State considers that these considerations, taken together, clearly outweigh the harm to the Green Belt and the other harms he has identified including the harm in relation to landscape and ecology and amount to very special circumstances. Despite the Secretary of State's conclusion that the scheme gives rise to conflict with LP policies 104 and 106, in the light of his finding that very special circumstances exist in

this case he is satisfied that, overall the scheme is in overall accordance with the development plan.

Formal Decision

54. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants outline planning permission for the construction of a Strategic Rail Freight Interchange comprising an intermodal terminal and rail and road served distribution units (331,665m^2 in Use Class B8 including ancillary B1/B2 floorspace) within Area 1, with associated road, rail and other infrastructure facilities and works within Areas 1 and 2, (including earth mounds and a Park Street/Frogmore relief road) in a landscaped setting, and further landscaping and other works within Areas 3 to 8 inclusive to provide publicly accessible open land and community forest, at land in and around Former Aerodrome, North Orbital Road, Upper Colne Valley, Hertfordshire in accordance with application Ref 5/09/0708 dated 9 April 2009, subject to the conditions set out at Annex B.

55. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

56. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

57. This letter serves as the Secretary of State's statement under regulation 21(2) of the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999.

Right to challenge the decision

58. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

59. A copy of this letter has been sent to St Albans City and District Council and to STRIFE. Notification letters have been sent to all other parties who asked to be informed of the decision.

Christine Symes
Authorised by the Secretary of State to sign in that behalf

Appendix 4 – Key Relevant Inspectors Reports and Decision Letters extracts

b. Radlett 2010 Inspector's Conclusions

Report to the Secretary of State for Communities and Local Government

by A Mead BSc (Hons) MRTPI MIQ

an Inspector appointed by the Secretary of State for Communities and Local Government

The Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ GTN 1371 8000

Date: 19 March 2010

Land in and around former aerodrome, North Orbital Road, Upper Colne Valley, St Albans

St Albans District Council

Town and Country Planning Act 1990

Section 78 Appeal by Helioslough Ltd

Proposed Strategic Rail Freight Interchange

Inquiry held between 24 November – 18 December 2009

Site in and around Former Aerodrome, North Orbital Road, Upper Colne Valley, St Albans, Hertfordshire

File Ref: APP/B1930/A/09/2109433

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13. Conclusions

[The numbers in square brackets refer to the source paragraphs in the report]

Introduction

13.1 The proposal is to build a Strategic Rail Freight Interchange (SRFI) with a rail link to the adjoining Midland Main Line (MML) and with road access onto the A414 dual carriageway, which then leads to the M10, the A405 and the M25. The appeal site lies within the Metropolitan Green Belt about 3.5km from the centre of St Albans and in a gap between the built up areas of London Colney, Colney Street and Park Street/Frogmore.

13.2 The entire scheme comprises eight separate parcels of land (Areas 1 to 8), with the main body of the SRFI and connecting roadways being on Area 1 (146ha), which is mostly restored mineral workings, following its former use as Radlett Aerodrome. Area 2 (26ha) would accommodate the rail link to the MML. Areas 3 to 8 would generally remain in agricultural and woodland use with improved public access and some areas given over to more formal recreational uses. The description of the proposal includes these areas of land as a country park. The scheme would also include a bypass along the western edge of the site which would link the A5183 to the A414 around the build up areas of Park Street and Frogmore. [2.2 – 2.18, 4.1 – 4.19]

13.3 The application is in outline with details of siting, means of access and landscaping to be considered as part of the application to the extent that these matters are defined and described in the Development Specification. The development on Area 1 would include 331,665m^2 of buildings most which would be warehousing up to 20m in height, together with ancillary vehicle maintenance units and a recycling centre. [1.8, 4.2]

The Previous Appeal

13.4 In October 2008, following a public inquiry, the Secretary of State dismissed an appeal against a refused application for an identical proposal on the same site. The overall conclusions of the Secretary of State were that the proposal did not comply with the development plan as it was inappropriate development in the Green Belt, and that it would also cause substantial further harm to the Green Belt. She also identified limited harm from conflicts with the development plan in relation to landscape and visual impact and highways, but considered these would be insufficient on their own to justify refusing planning permission. [3.5 – 3.30]

13.5 The Secretary of State was not satisfied that the appellant had demonstrated that no other sites would come forward to meet the need for further SRFIs to serve London and the South East, and she was unable to conclude that the harm to the Green Belt would be outweighed by the need to develop an SRFI at Radlett and that this was therefore a consideration amounting to very special circumstances. Having balanced the benefits of the proposal against the harm to the Green Belt, she also concluded the benefits of the proposal taken either individually or cumulatively would not clearly outweigh the harm to the Green Belt and did not constitute very special circumstances.

13.6 The Secretary of State therefore concluded that there were no material considerations of sufficient weight which required her to determine the application other than in accordance with the development plan. She then dismissed the appeal.

Environmental Statement

13.7 An Environmental Statement (ES) was submitted in accordance with the 1999 Regulations, as amended. In my opinion, the ES meets the requirements of the 1999 Regulations, and I have taken its contents into account in arriving at the recommendation in this report, together with all the other environmental information considered at the inquiry and submitted in connection with the appeal.

Legal Submissions[592]

13.8 All three legally represented parties at the inquiry, the appellants, the Council and STRIFE made references in opening and closing submissions about how the current case should be approached in view of the previous decision on the appeal site by the Secretary of State. [7.4 – 7.14; 8.2 – 8.15; 9.3 – 9.9]

13.9 The stance of the Council and STRIFE was that there is no duty to decide a case in the same way as the previous decision and that, whilst previous relevant decisions should be taken into account and dealt with adequately, an Inspector (or Secretary of State) has to exercise his/her own judgement and is free to disagree with the earlier decision. This has been set out in the Planning Encyclopaedia (P70.38) where references are made to judgements in the cases of *North Wiltshire District Council v. Secretary of State for the Environment [1992] J.P.L. 955; Rockhold v. Secretary of State for the Environment [1986] J.P.L. 130; Barnet London Borough Council v. Secretary of* State *for the Environment [1992] J.P.L. 540 and R. v. Secretary of State for the Environment, ex p. Gosport Borough Council [1992] J.P.L. 476*. [8.5, 9.6]

13.10 As a result of reviewing the judgements, the Council submitted that (a) the decision-maker on a fresh application is considering the application as a new application; (b) the decision maker should reach a conclusion taking into account all relevant matters, including any previous decision of relevance; (c) the need to establish a "good reason" for a change of mind from an earlier decision applies where the later decision, if decided in a particular way, would be inconsistent with the previous decision; (d) what will amount to a "good reason" is not a closed list; and (e) a good reason may be a change of circumstances, but need not be that; (f) the decision maker decides that the balance should be struck in a different way and (g) a new argument or a new piece of evidence or the compelling nature of the way the evidence is presented may also amount to a good reason. [8.7]

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[592] At the inquiry, I was formally requested by Mrs Anne Main MP to issue a witness summons against an employee of Network Rail in order to compel that person to attend the inquiry to be cross examined. Notwithstanding the submissions by the appellant that a witness summonsed in that way would be there to give evidence rather than answer questions, after I indicated that the person initiating the summons would be responsible for meeting the expenses incurred by the witness, and taking into account the willingness of Network Rail to supply written answers to questions which had been put collectively by the main parties earlier in the inquiry and were awaited the following day, I declined the request. The matter was not pursued further and after receipt of the answers from Network Rail, no more questions were put to that body.

13.11 The appellants stated that the previous decision letter should be the starting point for this appeal and that clear guidance is thus given as to what is required to be addressed in order to secure permission. The reasons given for refusing permission should *"enable disappointed developers to assess their prospects of obtaining some alternative development permission"*: per Lord Brown in *South Bucks DC v. Porter (No.2)* [2004] 1 WLR 1953 at [36] or, by analogy and in the context of this case, should enable disappointed developers to know what they need to do to overcome the problems identified with their proposals. The Secretary of State here has told the appellant company what it needs to do in order to secure a planning permission. The appellant stated that it would be plainly unfair, inconsistent and unreasonable for the Secretary of State to subsequently move the goalposts. [7.4, 9.4]

13.12 This basic proposition applies both to consistency in treatment of different people and to consistency in treatment of the same person at different times: see *R (oao Kings Cross Railway Lands Group) v. Camden LBC [2007] EWHC 1515 (Admin):* "*… However, given the desirability of in principle (to put it no higher) of consistency in decision making by local planning authorities, Mr Hobson rightly accepted that in practice the Committee in November 2006 would have to have a "good planning reason" for changing its mind. That is simply a reflection of the practical realities. If a local planning authority which has decided only eight months previously, following extensive consultations and very detailed consideration, that planning permission should be granted is unable to give a good and, I would say, a very good planning reason for changing its mind, it will probably face an appeal, at which it will be unsuccessful, following which it may well be ordered to pay costs on the basis that its change of mind (for no good planning reason) was unreasonable".* PPS1 paras 7 and 8 also emphasise the need for consistency. (Inspector's emphasis) [7.6, 8.6]

13.13 The appellants accepted that the Secretary of State was legally entitled to come to a different conclusion to that previously reached, but unless there were any material changes in circumstances (MCCs) there could be no rational reason for him to do so and would be inconsistent with paragraph B29 of Circular 3/2009. However, in my opinion, the *Kings Cross Railway Lands Group* judgement above supports the submission of the Council that a good reason may be sufficient for the decision maker to come to a decision which is inconsistent with one made earlier. Indeed, I would suggest that the phrase within the *Kings Cross Railway Lands Group* judgement indicating *"a very good planning reason"* describes the appropriate test for a change of mind. Therefore, in my opinion, it follows that, in relation to the current appeal, the point can be applied to either the Secretary of State, Inspector or Council and that an MCC need not be the sole reason for a conclusion or decision to differ from one made previously. [7.10]

13.14 This opinion is reinforced by a quote from the case of *North Wiltshire District Council v. Secretary of State for the Environment [1992] J.P.L. 955*: *"To state that like cases should be decided alike presupposed that the earlier case was alike and was not distinguishable in some relevant respect. If it was distinguishable then it usually would lack materiality by reference to consistency although it might be material in some other way. Where it was indistinguishable then ordinarily it had to be a material consideration. A practical test for the Inspector was to ask himself whether, if he (the Inspector) decided this case in a particular way was he necessarily agreeing or disagreeing with some critical aspect of the decision in the*

previous case? The areas for possible agreement or disagreement could not be defined but they would include interpretation of policies, aesthetic judgments and assessment of need. Where there was disagreement then the Inspector had to weigh the previous decision and give his reasons for departure from it. These could on occasion be short, for example in the case of disagreement on aesthetics. On other occasions they might have to be elaborate" (Mann LJ). Therefore, the Inspector was not precluded from disagreeing with some critical aspect of a case indistinguishable from a decision in a previous case, only that reasons had to be given.

13.15 However, the Council also submitted "…simply … a change of view…" was a sufficiently good reason for a decision maker to come to a different decision. I consider that this is far too simplistic. A mere change of view or opinion which then resulted in a different decision, would have to be supported by an adequate chain of logic, otherwise it would be too easy for that decision to appear unsound. Accordingly, whereas I agree that an MCC could result in a different conclusion or decision, such a change could also be prompted by another "very good planning reason". [8.7]

13.16 Therefore, following the findings in the *Kings Cross Railway Lands Group* case, whereas for reasons of consistency I accept that identical cases should be decided alike, I consider that neither I nor the Secretary of State are bound to follow either the conclusions of the previous Inspector or the decision provided that there are very good planning reasons, which are clearly explained, why such disagreement has occurred.

13.17 I note that the Council deliberately stepped back from arguing against certain conclusions by the previous Inspector and Secretary of State because of the "threat" of costs which had been made if it had pursued various issues without identifying a change in circumstances. The Council did not agree with the contention that costs would apply in such circumstances, but felt incumbent to limit the costs exposure as a result of the points made at the PIM.

13.18 However, at the inquiry, neither the Council, nor any other party, was prevented from calling any evidence to support its case, which was consistent with what I advised at the PIM, notwithstanding the comments I made about the risk of unreasonableness in relation to paragraph B29 of Circular 3/2009. It seems to me that, if the Council elected not to present evidence on an issue and that decision was based on a consideration of an award of costs being made against it, there is a tacit admission of possible unreasonableness and a recognition that a very good planning reason for challenging a particular previous conclusion of the Secretary of State might not exist. [7.12]

13.19 Therefore, in my opinion, the Secretary of State may consider that, if there is a very good planning reason, he is able to differ from the conclusions or decision of his predecessor.

Main Considerations

13.20 Accordingly, after hearing the evidence at the inquiry, reading the written representations and inspecting the site and surroundings, including the alternative sites shortlisted by the appellant, I believe that the main considerations in the case,

having regard to the aims of the adopted planning policies for the area and the previous decision of the Secretary State are:

(a) the extent to which the proposal would result in harm to the openness of the Green Belt and the purposes of including land within the Green Belt;

(b) the extent to which the proposal would cause other harm;

(c) whether other considerations clearly outweigh the totality of any harm identified;

(d) and, if they do, whether the circumstances of the case are very special and justify granting permission.

The Development Plan

13.21 **The East of England Plan** (RSS) published in 2008 includes Policies T1 and T10 to which references have been made in the reasons for refusal of the planning application. Policy T1 describes regional transport strategy objectives and also the outcomes which should arise if those objectives are successfully achieved. An objective of the policy is to manage travel behaviour and the demand for transport to reduce the rate of traffic growth and greenhouse gas emissions. This could lead to an increased proportion of freight movement by rail and safe, efficient and sustainable movements between homes, workplaces etc. [5.2]

13.22 Policy T10 provides that priority should be given to the efficient and sustainable movement of freight, maximising the proportion of freight carried by e.g. rail including that: *"provision should be made for at least one strategic rail freight interchange at locations with good access to strategic rail routes and the strategic highway network, unless more suitable locations are identified within London or the South East for all three to four interchanges required to serve the Greater South East".* [5.3]

13.23 Para 7.25 of the Plan states that *"Currently, the movement of freight in the region is largely by road. To increase movements by rail... there is a need for interchange locations. The 2004 Strategic Rail Authority Strategic Rail Freight Interchange Policy identified a need for three to four strategic rail freight interchanges for the Greater South East and the 2006 Eastern Regional Planning Assessment for the Railway envisaged development of strategic sites around the M25. Given that the region includes a third of the M25 ring and that all the main rail lines from London to the North and Scotland cross the M25 within the East of England it is likely that at least one of the required strategic interchanges will need to be in the region."*

13.24 **The South East Plan** was published in 2009. The appeal site is not within the South East for the purposes of the Plan and so is not part of the development plan for the area. However, Policy T13 deals with Intermodal Interchanges and seeks the provision within the region of up to three intermodal interchange facilities well related to rail and road corridors capable of accommodating the anticipated level of freight movements, the proposed markets and London. [5.7]

13.25 Potential sites should meet a number of criteria such as being of sufficient size, have rail connectivity, the potential for adequate road access and be situated away from incompatible land uses. The Plan states that suitable sites are likely to be located where the key rail and road radials intersect with the M25.

13.26 There are no saved policies in the **Hertfordshire County Council Structure Plan Review 1991 – 2011** which are relevant to the current proposals. [5.4]

13.27 **The St Albans District Plan Review 1994** includes Policies 1, 97, 104, 106 and 143. Policy 1 deals with the Metropolitan Green Belt and describes the circumstances in which planning permission might be granted for certain types of development, none of which include an SRFI. Policy 97 seeks to safeguard footpaths, bridleways and cycleways. Policy 104 aims to preserve and enhance the quality of the landscape throughout the District. Policy 106 provides for taking account of ecological factors when considering planning applications. Policy 143 provides for visual and ecological improvements in the Upper Colne Valley and encourages measures to promote the enjoyment of the countryside. [5.5]

13.28 No policies in the **Minerals Local Plan** or the **Waste Local Plan** are referred to in the reasons for refusal. An Issues and Options Consultation paper for the **St Albans City & District Core Strategy Development Plan Document** was published in July 2009 and so the Core Strategy is at such an early stage in its preparation that I accord little weight to it. [5.6, 5.7]

Other Policies [5.7]

13.29 The London Plan Consolidated with Alterations since 2004 published in 2008 encourages the provision of SRFIs (Policy 3C.20). A New Plan for London (2009) has been published for consultation and supports the provision of SRFIs setting out features which the facilities must deliver and recognising that they can often only be located in the Green Belt.

13.30 The Strategic Rail Authority (SRA) published a Strategic Rail Freight Interchange Policy in March 1994. Although the SRA has ceased and the responsibilities for Route Utilisation Strategies (RUSs) and identifying impacts on the rail network has now transferred to Network Rail, the document is still a source of advice and guidance.

13.31 The aim of the policy is to facilitate the development of a network of commercially viable rail freight interchanges with the right facilities and in appropriate locations to support the required growth of freight on rail. Key factors in considering site allocations at the recommended scale of regional planning include suitable road and rail access, ability for 24/7 working, adequate level site area and potential for expansion, proximity to workforce, proximity to existing and potential customers, fit with the primary freight flows in the area, the ability to contribute to the national network by filling gaps and to fit with strategies promulgated by the then SRA including Freight Strategy, RUSs and Regional Planning Assessments.

13.32 The SRA policy suggests that London and the South East, as then constituted, could meet the required capacity by the provision of 3 or 4 new SRFIs in the region, supplemented by smaller locations within the M25 ring. The qualitative criteria to

deliver the capacity mean that suitable sites are likely to be located where the key road and rail radials intersect with the M25.

13.33 In 2009 the DfT published The Longer Term Vision for the Strategic Rail Network. This seeks the delivery of items including longer and heavier trains, efficient operating characteristics, a 24/7 capability, W12 loading gauge on all strategic container routes, increased freight capacity, and the development of SRFIs and terminals.

13.34 As the Council accepted in evidence, the need for SRFIs is stated and restated in a number of documents.

Green Belt

13.35 When dismissing the previous appeal for an SRFI at the site in 2008, the Secretary of State concluded that it would be inappropriate development in the Green Belt and would conflict with national and local policy. The Secretary of State agreed with the previous Inspector that, whilst the impact on the landscape of the proposal would be mitigated to some degree by the mounding and planting proposed, the proposal would have a substantial impact on the openness of the Green Belt and harm on this account could not be mitigated. The Secretary of State also concluded that the proposal would result in significant encroachment into the countryside, would contribute to urban sprawl and would cause some harm to the setting of St Albans. The appellant, the Council and STRIFE did not dissent from those conclusions which were also reflected in the representations from many members of the public. I have no reason to disagree. [7.26 – 7.36; 8.16 – 8.23; 9.15 – 9.34, 10.7, 10.10, 10.11, 10.17, 10.30]

13.36 However, the Secretary of State also concluded that the proposal would not lead to St Albans merging with Radlett, or Park Street and Frogmore merging with either Napsbury or London Colney. In taking a contrary view, the Council argued that there was no requirement for a proposal to be similar to the development to which it would be near in order to create the impression that urban forms were merging. Neither was there a requirement that the proposal should have to actually enclose the open space between two separated settlements in order to have merged. [7.28 – 7.30; 8.18 – 8.22; 9.23 – 9.31, 10.26]

13.37 In considering the issue of the merging of neighbouring towns, the previous Inspector commented that, given the areas of open land which would remain between Radlett and St Albans with the development in place, there was little merit in the contention that they would have merged. Similarly, he stated that the built up area of the SRFI would be located to the west of the Midland Main Line (MML) with open fields between the MML and Napsbury/London Colney.

13.38 The new railway line to give access to the SRFI would be built on land between the MML and Napsbury. However, an open gap would continue to exist and, although I accept that the gaps between the various settlements would be significantly eroded by the SRFI, they would not merge as a consequence of the development. New development may have been built at Frogmore, Colney Street and Napsbury Park since the previous inquiry, but they were commitments known about and assessed at that time and I do not take the view that the proposal would lead to the merging of neighbouring towns.

13.39 STRIFE submitted an appeal decision at Farnborough in which it was explained by the Inspector and endorsed by the Secretary of State that the effectiveness of a Strategic Gap could be reduced even though the distances between development and surrounding settlements increased. I not disagree with that proposition, but I do not accept that, in this appeal, the proposed development would lead to merging. The physical gaps would still remain, although I acknowledge that the SRFI would be a visually dominant feature.

13.40 The fifth purpose of including land in the Green Belt is to assist in urban regeneration by encouraging the recycling of derelict and other urban land. I do not accept that there were any strong contenders within the assessment of alternative locations for the SRFI which were at sites where derelict land or other urban land could be recycled, especially due to the need for good transport links to the motorway and rail networks and the size of site to accommodate the development which is proposed. Therefore, in this case, the aim to encourage the recycling of derelict and other urban land would not be frustrated by the proposal.

Other Harm

Landscape and Visual Impact

13.41 The Council submitted that its assessment of the landscape and visual impact of the proposal was similar to that of the previous Inspector as agreed by the Secretary of State. The landscape value of Areas 1 and 2 is high and the landscape impact of the proposals on Area 1 and at Year 15 would be "significant adverse". The landscape impact in Areas 1 and 2 would not be offset by the proposals for Areas 3 – 8. Overall, balancing all the Areas together, the Secretary of State agreed with the conclusions of the Inspector that the impact would be moderately adverse. [8.24 – 8.33; 9.126]

13.42 Whereas the Council largely agreed with the Secretary of State's assessment from the previous inquiry, it suggested that there would be additional significant impacts caused by the embankments and cuttings for the rail route. Furthermore, the scale of impact of the scheme when viewed from viewpoints on Shenley Ridge would be moderate adverse. I agree that the visibility of the warehouses when seen from wider viewpoints, including Shenley Ridge would place the impact on the landscape at moderate adverse, but this does not increase the severity of the impact as was concluded previously by the Secretary of State. Similarly, I agree that the embankments and cuttings for the new rail link would have a moderate adverse impact visually and on the landscape. Nevertheless, this would not be inconsistent with the overall conclusions of the Secretary of State on the first appeal.

13.43 In addition, although the widening of the M25 has commenced to the south of the site, I would expect that new lighting would be designed to best practice standards, with full directional cut-off lights and would not add significantly to any prominence and visual harm which would be caused by the SRFI. In any event, the Council was not seeking to rely on significant changes of circumstances to support the landscape and visual impacts of the case.

13.44 The previous Inspector and Secretary of State noted that the upper parts of the warehouses would be open to view from some higher vantage points. Advice in

PPS7 and PPS1 and emphasised in Policy ENV2 of the East of England Plan and the St Albans Local Plan Review aims to safeguard the countryside. However the guidance and the policies were in place at the time of the previous decision. The effect of the proposal on the landscape and the visual impact would be moderately adverse and would be contrary to Policy 104 of the Local Plan. Therefore I do not dissent from the previous conclusions of the Secretary of State. Neither, it appears from submissions, does the Council, albeit it claims that the effects would be unacceptable. In my opinion, the acceptability or otherwise cannot be judged until the final balance of harm and other considerations are evaluated. [7.59 – 7.60]

Ecology

13.45 In the previous decision, the Secretary of State concluded that the harm to ecological matters resulting from the proposed development would not be significant. Since then, the Council has indicated that the lapwing has been included on the UK Biodiversity Action Plan List and that the site is now defined as a County Wildlife Site (CWS) in part for its bird interest. Although the soundness of the definition is somewhat undermined by the paucity of data, the designation has been made and which attracts consideration under Policy 106 of the Local Plan. Policy 106 indicates that planning applications will be refused for proposals which adversely affect sites of wildlife importance. Therefore, the proposal is in conflict due to the harm to the CWS. [7.83 – 7.86; 8.70 – 8.81, 10.27]

13.46 Accordingly, to that extent, despite there being no more bird species recorded than there were at the time of the previous inquiry and despite the lack of objection from Natural England, I agree with the Council that more weight should be attached to the harm to ecological interests. The designation of the area of acid grassland within the appeal site as a CWS reinforces that view, although there is no reason to doubt that translocation would be successful if were to be carefully planned and executed and the harm mitigated.

Sustainability

13.47 The Council's sustainability objection to the proposal is based on the degree to which it would offend against sustainability policy given that, in the Council's opinion, it would not function as an SRFI. I shall deal with that issue below. So far as travel to work is concerned, "proximity to workforce" is one of the key factors listed by the former Strategic Rail Authority to be taken into account when selecting sites for an SRFI. [8.67 – 8.69]

13.48 In the previous decision, the Secretary of State concluded that the appeal site would perform poorly against this criterion. The Secretary of State considered the fact that only a small proportion of workers would live locally would be a disadvantage in terms of relative sustainability of the travel to work pattern of the workforce and that the site is not well placed to encourage workers to travel to it by means other than the private car. Taking the draft Travel Plan into account, the Secretary of State did not consider that it would be reasonable to refuse planning permission for the development on account of sustainability concerns relating to the likely pattern of travel to work by the workforce. I consider that there has been no sound evidence advanced which would contradict that earlier conclusion. [7.87; 9.113 – 9.114]

Highways

13.49 At the previous inquiry, the Highways Agency (HA) withdrew its objections. The concerns of the Hertfordshire CC (HCC) as highway authority were largely rejected. The Secretary of State attached limited weight to concerns about highways. In the current appeal, there were originally two reasons for refusal concerning highways, but neither were pursued at the inquiry by the local highways authority or the Highways Agency. [7.38, 7.39, 7.41, 7.42]

13.50 The approach in the Transport Assessment (TA), including trip assessment, was approved by the HA. Appropriate works would be carried out to Junctions 21A and 22 of the M25. The appellant claims that implementation of the The Freight Monitoring and Management Plan (FMMP) would result in there being no material impact on the strategic highway network. The Agreed Statement between the appellant and the HA is consistent with that conclusion. There was no objection from the highway authority at the inquiry. [7.40]

13.51 STRIFE contended that the appeal site does not enjoy the high quality road links which national policy demands. The projected 3,200 daily HGV movements would have to be all routed via the A414 to gain access to the motorway network, but the A414 is already heavily congested and the local roads become "gridlocked" whenever there is an incident on the M25 or M1. [7.43, 9.101, 10.21, 10.43]

13.52 The appellant accepts that the traffic on the A414 would increase in order to gain access to the motorways via the A405 and the A1081 and states that those roads are suitable for the HGV flows being dual carriageway, without direct access from houses, and currently carry heavy flows. The improvements to the Park Street and London Colney roundabouts would ensure that traffic congestion should be no worse, and might even improve. Following the previous inquiry, the Secretary of State concluded that the fears that the development would increase traffic congestion were generally not supported by the evidence. There has been no change to the evidence of any significance which would lead me to a different conclusion. [7.45, 10.32, 10.34]

13.53 Concerns were expressed about the risk of "gridlock" and related rat running to avoid the consequent congestion. The previous Inspector concluded that he had no reason to expect that HGV drivers would risk the fines and other penalties that should be imposed if they flout weight restrictions. A "gridlock" might well occur from time to time, but anecdotal evidence suggests they are rare and this bears out my experience of using the M25 and its supporting road network. [7.47 – 7.48; 9.102 – 9.104, 10.29]

13.54 As the appellant indicates, HGV drivers would be unlikely to leave the SRFI to join a traffic queue which is not moving. Arriving vehicles would most likely be in the queue and would just have to wait. The previous Inspector commented that traffic conditions in the area are often poor, but then concluded that, with the road improvements that would be secured by condition, congestion on the network would be no worse with the development than without. The Secretary of State agreed with the conclusions and I have no reason to disagree.

13.55 STRIFE raised the issue of trip generation and claimed that the warehouses may be 66% higher than those built at DIRFT upon which the appellant relied in

predicting the HGV movements generated by the proposal. This is because the estimate was based on floorspace and no account was taken of height and, consequently, shed capacity. The appellant has indicated that the Traffic Assessment is the same as was presented at the last inquiry. The trip generation has been robustly tested by the HA and the local highway authority. The HA has confirmed its acceptance of the trip generation and the highway authority has not attempted a reassessment. [7.50 – 7.56; 9.106- 9.107, 9.109, 10.8, 10.9, 10.28, 10.55 – 10.57]

13.56 The appellant stated that the trip generation was based on surveys at comparable locations and there is no evidence of a correlation with volume. Variables could also include actual internal racking heights and spacing, occupier, nature of operation, level of automation, density of stacking, stock turnover, the relative volume and weight of goods, the efficiency and type of the vehicles used. [7.52]

13.57 In my opinion, whether or not the DIRFT buildings are 12.5m, 18m or 20m high, the evidence submitted suggests that trip generation is more complex than a simple volumetric ratio. Whereas, if all other factors were equal, a propensity for a larger volume to result in more traffic would be a reasonable assumption, the reality appears to be far more complicated. I place greater reliance on the judgment of the HA and the local highway authority, given that neither body having chosen to challenge the trip generation forecasts. In any event, as the appellant indicates, the FMMP would restrict the HGVs in peak hours. There is no substantive evidence to support the assertion that the only occupiers of the warehouses would be major retailers or those trading in heavier goods which might lead to a higher number of HGV trips than average. [7.53]

13.58 Any impact of traffic on residential amenity because of noise or air quality should be mitigated by the provision of the Park Street bypass which would be used by traffic travelling to and from the appeal site rather than along Park Street itself. Neither the District Council nor the County Council expressed adverse comments about the effect of the Butterfly Farm development and the proposed new hotel on overall traffic flows when combined with that relating to the SRFI. Accordingly, in the face of the lack of objection from the highway authority and Highways Agency and the lack of concern expressed by the County Council about the design of the Park Street roundabout at this inquiry compared to the one previously, I do not consider that there would be any significant harm in relation to highways issues or that there would be any conflict with the development plan. [10.15, 10.19, 10.22, 10.23, 10.47, 10.48, 10.49]

Noise
[7.63 – 7.81, 8.34 – 8.58. 9.128 – 9.133, 10.41, 10.52]

13.59 Following the previous inquiry, the Secretary of State agreed with the conclusions of the Inspector on noise and noted that the expert witnesses who appeared at that inquiry agreed that increases in traffic noise which would affect those living next to the railway line or those living near main roads would not be significant. The Secretary of State considered that the condition proposed which included the limitation of night time noise to 50dB $L_{Aeq,}$ 8hr between 2300 and 0700 the following day to be reasonable and agreed with the Inspector that the noise generated by activity on the site during the night would not be unacceptable, albeit

that it would be readily perceptible to residents living in the quieter areas about the site.

13.60 In summary, the appellant submitted that there have been no material changes in circumstances on noise since the last inquiry and there is no need to revisit the conclusions of the Secretary of State. There was no error in the Inspector's approach at the last inquiry and the condition which was deemed acceptable by the Secretary of State, which is suggested at the inquiry, is unchanged.

13.61 The conclusions which the Council contend in this case should not be accepted are that the proposed condition to control noise would be achievable and that it would have the effect of adequately protecting residents, even if achievable. The Council was especially concerned with intermittent noise and L_{Amax} events. Using BS4142 as guidance, the Council estimated that noise from the development would lead to levels of exceedance of background noise by up to 20dB which would mean that complaints would be likely.

13.62 There is no new survey data at this inquiry. The appellants in supplying a written statement and in making submissions and the Council and STRIFE in the evidence of their witnesses and in submissions relied on the information gathered for the previous inquiry.

13.63 The degree of exeedance of the background noise level claimed by the Council was not directly challenged in cross examination at this inquiry and there was no evidence submitted which could be tested in order to counter the claim. However, I note that 5 dB of the excess is made up of the character correction for the tonal variations which would be caused by the irregularity of the noise and bangs and clatters. This correction was also applied by the previous Inspector, but with two reservations.

13.64 The first was that the noise from the site would be made up by contributions from many individual sources which would, to some degree, combine to create a more continuous tone, less distinguishable from traffic noise. The second reservation was that the noise sources would generally be several hundred metres from the residential properties of concern with intervening earth mounds which would have the effect of muffling individual sounds. The Inspector commented that this would result in the noise impact from the development being over-estimated.

13.65 I also note from the Environmental Statement that the property identified by the Council as receiving 20dB in excess of background would not remain in residential use with the proposed scheme. Moreover, my interpretation of the noise contours presented in Appendix 7.A8vi of the ES (2011 with scheme, night) does not show that noise levels for Rosemary Drive would exceed 60 dBA. The boundary is close, but the houses are not on the noisier side of the boundary judging from the map base. In any event, I consider that the map representation and modelling would have a degree of tolerance and the difference on the map between the noise levels in this location "with the scheme" compared to "without the scheme" are so small that the implication is that the noise levels would remain very similar, mostly because of the dominance of the nearby MML.

13.66 The Council indicated in evidence that even if the +5 dB penalty was not applied to the BS4142 rating, the difference would still range from +5 to +10 resulting in an assessment from "marginal" to "complaints likely", but the +10 dB shown is for the property described as not in residential use with the proposed scheme. Therefore, bearing in mind the reservations which I share with the previous Inspector about the use of applicability of the 5 dB tonal penalty, the probable noise levels would not necessarily be as extreme as portrayed by the Council and less than those which would make complaints likely on an 8 hour averaging basis.

13.67 The Council claimed that short duration events with higher noise levels as expressed as L_{Amax} should be used to assess the development as presented in the 2009 WHO Night Noise Guidance. Although the Council suggested that the WHO Guidance is a material change in circumstances, the appellants submitted it was available as a draft to be used at the previous inquiry and, in any event, the new guidance adopted an average yearly approach which has overtaken the emphasis on L_{Amax}.

13.68 It was accepted by the previous Inspector, following the Statement of Common Ground for the earlier inquiry, that rail noise would be unlikely to constitute a significant impact. In addition, there is no substantive evidence to suggest that flange squeal would be an issue for the rail radii which are proposed. Construction noise could be controlled under the Control of Pollution Act as agreed at the previous inquiry. [10.33]

13.69 The appellant suggested two conditions which could be imposed which are consistent with those discussed and agreed at the last inquiry. One deals with the submission of a scheme, the other would set a noise level of 50dB $L_{Aeq, 8hr}$ between 2300 and 0700. The Secretary of State agreed with the Inspector at the previous inquiry that these proposed conditions would be reasonable.

13.70 The Council has submitted that this condition would provide insufficient protection for residents due to the lack of control on loud noises which would exceed the 50dB threshold, but be of short duration. A limited number of such noises could be enabled by the proposed condition where the time for consideration is for 8 hours with the averaging process. The Council suggested a further condition based on L_{Amax} and, although the appellants resisted such a condition at the inquiry, I consider that it is essential in order to protect the living conditions of nearby residents.

13.71 Therefore, subject to the inclusion of the three conditions on noise which are recommended should the appeal be allowed, I am satisfied that the noise generated by the activity on the site during the night would not be unacceptable, albeit it would be noticeable to residents living in the quieter areas around the site. On that basis, the noise from the development would not bring the proposal into conflict with the development plan.

Additional Matters

13.72 The reason for refusal based on air quality was not pursued at the inquiry and I agree with the appellant that the living conditions along Park Street should improve because of the proposed bypass, rather than deteriorate.

13.73 The Secretary of State previously concluded that lighting on the site would not result in unacceptable sky glow or materially detract from the character or amenity of nearby residents living in Napsbury Park. I have not read or heard any convincing evidence which would constitute a very good planning reason for me to differ from that conclusion. Therefore, I do not consider that air quality or lighting issues would bring the proposal into conflict with the development plan.

13.74 Similarly, as the Secretary of State previously concluded, I consider that the impact of the proposed development on Park Street and Frogmore would be beneficial due to the construction of the Park Street bypass and the consequent traffic reduction through Park Street and Frogmore. The character and appearance of the Napsbury Conservation Area would still be preserved because of its distance from the scheme.

13.75 So far as footpaths and bridleways are concerned, the need for one bridleway and one footpath to be diverted to accommodate development on Areas 1 and 2 have to be balanced against the proposals by the appellant for new routes, footpaths and bridleways and also footpath improvements outside the site. The Secretary of State considered that, overall, the harm to the existing footpaths and bridleways would be outweighed by the appellant's proposals for improvements. I have no good planning reason to differ from that conclusion.

Other considerations

Whether the development would operate as an SRFI?
[6.1, 7.100 – 7.138; 8.84 – 8.148; 9.52 – 9.116, 10.1 – 10.6, 10.10, 10.14, 10.16, 10.24 – 10.25, 10.45, 10.53, 10.54, 11.1 – 11.6]

13.76 The Council submitted that there would be no rail movements in or out of the site between 0600 and 2200; it would receive no channel tunnel traffic until the gauge has been enhanced to W9; it is in a poor location to compete with rail from the primary deep sea ports; it has poor accessibility to the primary rail route for competing with the road based domestic market, the west coast mainline (WCML); it requires a rail subsidy and gauge enhancement to assist with its competitiveness which would be insufficient in the circumstances; and any doubt should be resolved against the proposal since the need to 2015 is currently capable of being met by other developments.

13.77 The appellant claimed that there are adequate paths on the MML and that no party contends to the contrary and I agree that generally this is the case. Indeed Network Rail stated that between 0900 and 1600 two freight paths per hour in each direction are provisionally allocated to existing freight customers, and not all are currently used. Further capacity is available at night. The rail dispute between the main parties primarily centred on access to and egress from the site. I note that, at the previous inquiry, the Inspector concluded that sufficient freight train paths were then currently available to serve the SRFI facility, but that the detail of whether the paths enabled access to the site was not tested.

13.78 The Council emphasised that the 2015 Thameslink service would prevent trains from crossing into the site between 0600 and 2200, but that claim is based on the details of timetabling implementation yet to be confirmed. There was conflicting evidence about the number of First Capital Connect (FCC) trains which would run on

the MML past the site, whether 8, 10 or 12. Indeed it appears as though the number of FCC trains to run past the site has increased from 6 as stated in July 2009 to 10 as claimed at the inquiry. Although assumptions were made by the Council at the inquiry about matters including dwell times at stations, the headways, the signalling arrangements and possible junction layouts, it is quite apparent that variables such as the degree of investment in junctions and the performance of new rolling stock for Thameslink in reducing dwell time would influence the timetabling outcomes.

13.79 The timetabling process would enable negotiations to be conducted between those who would wish to run services, both passenger and freight, and the regulatory authorities until the timetable becomes firm. Network Rail does not consider that there are any major technical obstacles to achieving a connection such as is proposed at the site. They can offer no guarantee that the currently available paths will be available in the future because they are open to all licensed freight operators. All paths required for the SRFI would need to be bid for and are subject to the industry wide timetable planning process.

13.80 Network Rail function as guardians of the UK rail network and as concluded by the Secretary of State in the previous decision, I attach weight to assurances given by them and to their commitment to adopt best working practices to regulate freight train access onto busy main lines. Network Rail has stated that the SRFI would enable both the growth of rail freight and mode shift from road to rail which it considers entirely consistent with Government and Network Rail objectives and that it does not consider there to have been any material changes in the capabilities of the rail network since 2007. Therefore, on that basis, I consider that the timetabling and bidding process should ensure that sufficient paths to enable access to be gained would be made available to serve the SRFI during the interpeak hours and overnight.

13.81 Turning to gauging, in order for the development to act as an SRFI, it must be capable of being accessed by wagons carrying containers from around the UK, from the deep sea ports and from the Channel Tunnel. Subject to the appeal being allowed, the conditions would provide for gauge enhancement works. There is no reason to suppose that, pending gauge enhancements, the services would be uneconomic and require subsidy. However, these are commercial considerations rather than those relating to land use. The Council also stated that the proposal was not at an advanced stage in Network Rail's Guide to Railway Investments Projects (GRIP) system which manages investment schemes, but that is an internal NR evaluation method and not part of the planning process.

13.82 The appellant also states in evidence that the enhancement works would provide for a W10 gauge link to the Haven and north Thames side ports and the West Coast Main Line, a W9 gauge link to the Channel Tunnel via Acton and Kew, and a W8 gauge link to Southampton and Thamesport. Should W10 gauge enhancement be delivered in due course along the Great Western Main Line, this would create a W10 gauge link from Radlett to Southampton via Acton and Reading. Network Rail does not consider there to be any major technical obstacles to achieving enhancement works to W10 gauge into London. Moreover, as the appellant indicates, the works to deliver Thameslink would also create an opportunity for those engineering works to be carried out. Therefore, I do not doubt the ability of the SRFI to be accessed from all the key destinations.

13.83 The MML has been identified as part of the Strategic Freight Network of trunk freight routes with its attendant eventual upgrading to continental standards. Therefore, I have no doubt that the MML will develop as a key part of the rail freight network and that the aim of Network Rail and rail regulators will be to enable freight to be carried efficiently, albeit without compromising its passenger carrying ability.

Alternatives
[7.168 – 7.257; 8.149 – 8.253; 9.117 – 9.134, 10.31, 10.50, 10.51, 11.7 – 11.14, 11.15 – 11.22]

The North West Sector

13.84 In the consideration of the Alternative Sites Assessment following the previous inquiry, the Secretary of State concluded, in the circumstances of that case, that it was sensible and pragmatic to restrict the search for alternative sites for an SRFI at Radlett to broadly the north west sector studied by the appellant. The Council sought to dismiss the concept of there being a north west sector for SRFI purposes, commenting that the analysis which led the previous Inspector to conclude on the appropriateness of the north west sector which was endorsed by the Secretary of State, was based on lorry mileage benefits that would derive from locating an SRFI in one part of London as opposed to another.

13.85 I also note that the previous Inspector concluded that there was no policy support in the SRAs SRFI Policy or elsewhere for limiting the search in this way. However, I share his doubts that an SRFI at London Gateway could efficiently serve development to the west of London. This view is emphasised in the SRFI Policy statement of March 2004 by the SRA that the location of interchange facilities in relation to ultimate journey origin or destination is critical in making the rail option attractive to business customers. Furthermore, London Gateway was proposed on the basis of being a ship to shore facility. I am not aware of any evidence to suggest there is road and rail capacity sufficient for it to act as an SRFI in addition to a port complex, despite the reported comments from the developers that the site could be available for such a function.

13.86 The SRA policy further states that the required capacity for rail freight growth in the London and the South East would be met by 3 or 4 new SRFIs in the region, supplemented by smaller locations within the M25 ring. In addition, the policy states that qualitative criteria to deliver the capacity mean that suitable sites are likely to be located where the key rail and road radials intersect with the M25. Therefore, I consider that the policy statements indicate that SRFIs serving London and the South East would not normally be located closer to London than the M25 and that the optimum locations are on the intersections of the M25 with key rail and road routes into and out of London.

13.87 As indicated in the East of England Plan, given that the region includes a third of the M25 ring and that all the main rail lines from London to the North and Scotland cross the M25 within the East of England it is likely that at least one of the required strategic interchanges will need to be in the region. The main rail lines referred to are the East Coast Main Line (ECML), the Midlands Main Line (MML) and the West Coast Main Line (WCML), all of which are in the north west sector as described by the appellant and which gives further credence to the concept of there being a north west sector for the purposes of the assessment of alternatives.

13.88 The Council advanced an argument based on a market approach which suggested that the north west sector is not a primary distribution area of those likely to be occupying an SRFI. Nevertheless, as also indicated in the Council's evidence, much locational decision making remains fairly intuitive and I consider that, like the Inspector at the previous inquiry, restricting the assessment of alternative sites for an SRFI at Radlett to the north west sector is sensible and pragmatic, especially in view of the SRFI which has been permitted at Howbury Park in the London Borough of Bexley even if London Gateway were to operate as an SRFI. It does not seem credible to envisage a small cluster of SRFIs to serve London and the South East all in the same general location. The Council accepted that the degree of spread of accessibility is a material consideration and I consider that the broad approach of the appellant in focusing on the north west sector in the assessment of alternatives is reasonable.

Selection Criteria

13.89 The appellant was criticised for excluding sites which were regarded as unavailable due to being allocated for housing or being existing employment land. However, I consider that the suggestion that an SRFI could be sited on land allocated for housing is unrealistic. Not only would the residential allocation have to relocated elsewhere within a region where housing land is scarce, even if property values were sufficiently compatible to enable this displacement, but the SRFI could find itself embedded within a "nest" of surrounding houses which would not be consistent with the need to reduce harm to adjoining properties. Therefore, I support the approach of the appellant in discarding areas which have been allocated for housing purposes. Similarly, I consider the notion of including employment land as a potential SRFI site is unrealistic. Such land would have issues of availability and land assemblage and the need to seek alternative premises for those uses which would be displaced by the SRFI.

13.90 Parameters used to identify a "long list" of sites were: a 40ha minimum site area; being located within 5km of rail infrastructure and being located within 5km of a motorway junction or Class A road. A criticism of the assessment by the Council was the exclusion of possible sites beyond 5km from a railway line. However, I agree with the appellant that a realistic judgement has to be made about distance, taking into account the terrain through which any rail connection would have to be made and so I do not support the points made by the Council.

13.91 The Council has repeatedly suggested that the assessment is flawed due to the appellant seeking to add further information during the inquiry. Nevertheless, I consider that the appellant was merely responding to comments made and i``t would have been even more open to criticism had it failed to respond. In my opinion, the general approach by the appellant to the assessment of alternatives and producing the "long list" has been robust and realistically pragmatic.

13.92 The appellant used topography, rail connection, road access and availability to assess the long list sites. Sites within an AONB or an SSSI were excluded. The Council claimed that sites very close to others (duplicated sites) were inappropriately discarded, but I do not agree. I consider that it would have been unnecessary to examine all possible sites within a general area where that particular location was

subject to a dominant constraint which applied to the selected site. Furthermore, I agree that it was sound to use the AONB and SSSI status of land as hard constraints.

13.93 The availability criterion was questioned by the Council, but given the unlikelihood of employment land in areas such as Slough being released or strategic housing allocations such as in Wokingham becoming superfluous, I consider that the appellant is being realistic. Similarly, I have no issue with the way in which the appellant has applied the criteria of rail connection, where there was no substantive dispute about which sites were excluded, and road access. Denham Aerodrome was an exception, but was rejected for a combination of reasons of road and rail connectivity and availability.

13.94 The Council commented that there was no consideration of landscaping or other harm during the long list stage in respect of any of the sites but, as stated by the previous Inspector, it is often very easy for those who are critical of a proposal to expose flaws in any study of alternative sites carried out by a promoter of a scheme, given the vast amount of data that needs to be collected and analysed. The appellant has used a methodology which is transparent and has undertaken sensitivity tests to illustrate that considering areas greater than 5km distance from a railway line makes no difference to the result and that there are no suitable sites in the area around to the M3 motorway.

The Short List

13.95 The appellant's short listed sites comprised the appeal site and four others: Upper Sundon, Littlewick Green, Harlington and Colnbrook. There was no suggestion by any party at the inquiry that **Upper Sundon** scored better than the appeal site and I have no reason to disagree. Although the assessment by the Council found that **Littlewick Green** and Colnbrook performed better than the appeal site, I consider that the former site, west of Maidenhead is relatively poorly located to serve London. The appellant claimed that an SRFI here would have a significant adverse effect on the landscape, have an adverse impact on the setting of the conservation area to the north, cause possible harm to local residents due to noise and could have adverse effects on archaeological interests, as well as being located within the Green Belt. I agree and I do not consider that it performs overall markedly better than Radlett.

13.96 **Harlington**, north of Luton, located close to the M1 motorway and adjacent to the Midland Main Line (MML), was the subject of a planning application for an SRFI in 2008, albeit the application was subsequently withdrawn. The Council did not claim that Harlington outperformed Radlett in its assessment of alternatives. The appellant claimed that Radlett would perform better than Harlington due to the latter being significantly further from London, the difficulty of making a rail connection and the unlikelihood of providing any additional planning benefits.

13.97 The rail connection at Harlington would enable links to be made in both a northerly and southerly direction, unlike Radlett, at which it is currently proposed to link only to the south. The connections would be made to the fast tracks, albeit with significant engineering works, but I do not consider that the disadvantages would be so great that the comparison with Radlett would significantly suffer. Like Radlett, the site is within the Green Belt. However, in my opinion, Harlington would be very

prominent when seen from the AONB to the south and would have a greater visual impact on the open countryside than Radlett.

13.98 Some of the comparators between the sites would perform similarly, such as air quality, noise and archaeology. I am also not convinced that the lack of planning benefits, such as the provision of a country park of the type proposed at Radlett, weighs significantly against the Harlington site. However, I consider that the location of Harlington is inferior to Radlett as an SRFI to serve London and the South East. The greater distance along the M1, away from the M25 would reduce the versatility offered by the Harlington location compared to Radlett which virtually adjoins the M25/M1 intersection and offers significantly greater accessiblity. I realise that the appellant measured the lorry kilometre savings from the Hanger Lane Gyratory on the North Circular Road. Nevertheless, in my view, Radlett would perform more effectively as an SRFI than Harlington and that reason together with the greater adverse effect on the landscape is why I conclude that it is not a preferred alternative location, were a single SRFI required within the north west sector.

13.99 The site identified by the appellant at **Colnbrook** is also referred to as SIFE (Slough Intermodal Freight Interchange), where it is the subject of interest by developers who are promoting a scheme for an SRFI through the development plan process. The site lies between the M4 and A4 east of Slough, close to the M25 and just to the west of Heathrow. The appellant accepts that the site would be well located to serve the London market. Indeed, the site is readily accessible to the M25, M40, M4, M3 and A3, which means that it could serve a wide area including central London, the M25 West, M25 North West and M25 South West.

13.100 The appellant stated that the site would perform materially worse than Radlett in providing an SRFI due to its location in a designated Strategic Gap in the Green Belt between Slough and London, and that it would be unlikely to provide any significant planning benefits. The Strategic Gap designation is the subject of a saved policy in the Slough Local Plan and has been brought forward in the adopted Core Strategy, although I note that it is not used or applied consistently by other local planning authorities which adjoin the SIFE site, nor by St Albans District Council. Moreover, the South East Plan suggests that authorities operating gap policies will need to review them carefully to ensure that there is a continuing justification in view of the need to avoid duplication of other protection policies such as Green Belt. Nevertheless, the Strategic Gap designation is a policy to which substantial weight should be applied. In 2002, when the then Secretary of State dismissed an appeal for a freight exchange on the site (the “LIFE” proposal), he commented that seen from the elevated viewpoints east of the M25, the function of the open land to the west in helping to demarcate and separate London from Slough was clear to the Inspector.

13.101 The site is also within the Colne Valley Regional Park where regional and local policies seek to promote countryside recreation, and landscape and biodiversity enhancement. Whereas this is another policy consideration which weighs against Colnbrook in the comparison exercise with Radlett, a proposal for an SRFI could offer opportunities for improvements to the footpath and bridleway network, biodiversity and landscape in the same way that the appeal scheme is promoting a country park.

13.102 The developers of Colnbrook state that the branch line is cleared to W8 and is capable of accommodating the full range of intermodal units on standard height

platform wagons. They further state that by the time SIFE would open, all rail routes serving the site would be cleared to at least W9, probably W10, and at least one freight path per off peak hour per direction would be available to serve the site. The appellant contends that Colnbrook would not perform in a materially better way as an SRFI than the appeal site, but that is difficult to ascertain in view of the absence of evidence from the Colnbrook developer which could be tested in the inquiry. However, I have no reason to disagree with the data showing that the appeal site is closer than Colnbrook to Felixstowe and the Channel Tunnel in rail miles, although more distant from Southampton. There are conflicting views on the availability of paths in each direction on the GWML which is incapable of resolution in the absence of the opportunity to test the developer's evidence at the inquiry.

13.103 There are other comparative factors which both the appellant and developer raise in written submissions including noise, air quality, archaeology, sustainability, proximity to workforce and biodiversity, but the differences appear to be of less significance than Green Belt considerations and may well be capable of resolution should a scheme at Colnbrook be progressed to the same extent as the current proposal at Radlett. Nevertheless, due to the site being located in a Strategic Gap within the Green Belt, I agree with the appellant that it cannot be rationally concluded that Colnbrook would meet the needs for an SRFI in a less harmful way than the appeal site.

Other benefits
[7.22 – 7.24; 8.354 – 8.261, 10.18, 10.35 – 10.40]

13.104 The scheme would bring about certain local benefits, of which two were highlighted by the Secretary of State in the decision on the previous appeal. On the proposed Park Street and Frogmore bypass, the Secretary of State agreed with the previous Inspector that traffic travelling through Park Street and Frogmore on the A5183 would be reduced. She also agreed that the effect on the conservation area would be positive and that it would bring about some improvement of living conditions of residents fronting or close to the A5183. She afforded this benefit a little weight and, following the evidence heard at this inquiry, I have no good reason to disagree with her views.

13.105 With regard to the provision of the country park, the Secretary of State agreed with the previous Inspector that the proposals for Areas 3 to 8 would not deliver a "country park" in the sense that the term is generally understood, but accepted that there would be benefits to the countryside. These would include significant areas of new woodland, which would accord with the aims of the Watling Chase Community Forest Plan. New footpaths and bridleways would also be created which would facilitate circular walks and rides in the area. On ecology, the Secretary of State previously saw no reason why the proposals should not be beneficial overall and add to the existing biodiversity interest present at the site. However, with the recent definition of the CWS I now find that the proposals would be contrary to the development plan where ecology is concerned. The Secretary of State concluded that the proposals for Areas 3 to 8 would accord with the development plan and with the objectives of the Watling Chase Community Forest Plan. There has been no convincing evidence submitted to this inquiry to cause me to come to a different conclusion.

The Planning Balance including Prematurity

Green Belt

13.106 The Secretary of State previously concluded that the proposal would constitute inappropriate development in the Green Belt and she attached substantial weight to that harm. She also identified that it would further harm the Green Belt because it would cause a substantial loss of openness, significant encroachment into the countryside and would contribute to urban sprawl and she considered that the harm would be substantial. The evidence I heard at this inquiry reaffirmed those conclusions. The Secretary of State also previously concluded that limited weight should be attached to the harm to the setting of the historic city of St Albans and there is no sound reason why I should depart from those views.

Other Harm

13.107 The Secretary of State previously concluded that significant adverse landscape impacts would occur on the main SRFI site (Area 1) but that the new rail line through Area 2 would only have a marginally adverse impact. Furthermore, whereas the impact of the proposal on Areas 3 to 8 would be beneficial, the degree of improvement would not offset the harm to the landscape overall. The Secretary of State concluded that the overall impact on the entire site would be moderately adverse and, based on the evidence I have heard at this inquiry, I agree with that conclusion.

13.108 I consider that there has been no convincing evidence to justify departing from the previous conclusions of the Secretary of State concerning sustainability, air quality, lighting, conservation areas, or impact on footpaths and bridleways where either no demonstrable harm was identified or there was an overall beneficial effect. However, on ecology, I conclude that the proposal would now be in conflict with Policy 106 of the Local Plan.

13.109 In view of the lack of objection from the highway authority and the Highways Agency and the lack of concern expressed by the County Council about the design of the Park Street roundabout at this inquiry compared to the one previously, I do not consider that any significant harm would be caused by highways issues or that there would be any conflict with the development plan. Similarly, subject to the inclusion of the conditions on noise which are recommended should the appeal be allowed, I am satisfied that the noise generated by the activity on the site during the night would not bring the proposal into conflict with the development plan. Therefore, overall, I consider that harm would arise from the Green Belt considerations and also due to the impact on landscape and ecology.

Benefits

13.110 So far as benefits are concerned, those more locally site specific include the proposal by the appellant for a country park, the improvements to footpaths and bridleways and the provision of the bypass to Park Street and Frogmore. The Secretary of State previously attached “some weight” to the predicted reduction on CO_2 emissions identified in the Environmental Statement. I have no reason to disagree with that conclusion. Some weight was also afforded by the Secretary of State to the numbers of people who would work at the SRFI, albeit not necessarily living close to the site.

13.111 On a general basis, there is no dispute about the need for an SRFI. It is stated and restated in a number of documents and encouraged in PPG13 (paragraph 45). Government policies have consistently supported shifting freight from road to rail. SRA Policy (2004) suggests that 3 or 4 new SRFIs could serve London and the South East located where key road and rail radials intersect the M25. The indication in the SRA Policy that 400,000m^2 of rail connected warehousing floorspace would be needed in the South East by 2015 does not constitute a target or a ceiling. In the previous decision in 2008, the Secretary of State concluded that the need for SRFIs to serve London and the South East was a material consideration of very considerable weight. No new SRFIs have been developed since the earlier decision. Therefore, the weight has not diminished.

Alternatives

13.112 The Secretary of State also concluded that, given the site's Green Belt location, whether or not the need which the proposal seeks to meet could be met in a non-Green Belt location, or in a less harmful Green Belt location, was a material consideration in that case. I consider that is still the same position for this appeal and I also endorse the concept of assessing a possible alternative location for an SRFI in the broad sector north west of London, as previously accepted by the Secretary of State.

13.113 The Secretary of State previously indicated that had the appellant demonstrated that there were no other alternative sites for the proposal, it would almost certainly have led her to conclude that this consideration, together with the other benefits referred to, would have been capable of outweighing the harm to the Green Belt and the other harm identified. However, she considered that the appellant's Alternative Sites Assessment was materially flawed and its results to be wholly unconvincing.

13.114 In this particular case, I am satisfied that the assessment of alternative locations for an SRFI conducted by the appellant has been sufficiently methodical and robust to indicate that there are no other sites in the north west area of search which would be likely to come forward in the foreseeable future which would cause less harm to the Green Belt. The sites which I consider are the most comparable are those at Harlington and Colnbrook, both of which have schemes which are being progressed by intending developers.

13.115 At Harlington, although the harm to the Green Belt might be broadly similar to that at Radlett, I consider that the visual impact of an SRFI would be greater, and its location north of Luton, albeit easily accessible to the M1, makes it less attractive to serve London and the South East. I consider that the location of Colnbrook within the Green Belt in a Strategic Gap between Slough and London weighs heavily against preferring it to the appeal site as an alternative location for an SRFI. Nevertheless, should a scheme be developed to the same extent as the appeal proposal, it is possible that, under the challenge of evidence tested under cross examination at an inquiry, the differences between the two locations, other than the Green Belt issue would be marginal.

Prematurity
[7.88 – 7.98; 8.59 – 8.66; 9.140 – 9.146]

13.116 The Secretary of State had considered whether the previous proposal was premature in the absence of a region-wide study to establish the most suitable locations for SRFIs to serve London and the South East. She had concluded that a refusal of planning permission of the scheme on prematurity grounds would lead to a substantial delay in providing further SRFIs to serve London and the South East, contrary to the Government's declared aim of increasing the proportion of freight moved by rail. There are no signs of any substantive progress in the initiation of inter or intra regional studies on the need for and locations of SRFIs to serve London and the South East.

13.117 The Council has indicated that a National Policy Statement (NPS) including the consideration of SRFIs is due for production shortly. However, although a draft publication is imminent, there is no suggestion that the NPS will be site specific and there is no Government advice that proposals which might be influenced by the content of an NPS should be deemed premature pending its publication and subsequent designation. Consequently, I have no reason to conclude that determination of the proposal would be premature.

Overall Conclusion

13.118 Accordingly, I conclude that the proposal would constitute inappropriate development in the Green Belt which, in itself, would cause significant harm to which substantial weight should be attached. Harm would also be caused to the Green Belt because of a loss of openness, significant encroachment into the countryside and the contribution to urban sprawl. There would be an adverse effect on the setting of St Albans, although the Secretary of State concluded previously that only limited weight should be attached to this. Harm would also arise from the adverse effects on landscape and ecology. Therefore, the proposal would conflict with Policies 1, 104 and 106 of the adopted Local Plan Review.

13.119 However, other considerations including, particularly the need for SRFIs to serve London and the South East and the lack of more appropriate alternative locations for an SRFI in the north west sector which would cause less harm to the Green Belt, together with the local benefits of the proposals for a country park, improvements to footpath and bridleways in the immediate area and the provision of the Park Street and Frogmore bypass, lead me to conclude that very special circumstances exist in this case which outweigh the conflict with the development plan and therefore the appeal should be allowed subject to conditions discussed in Section 12 and attached as Annex A.

13.120 Should the Secretary of State disagree with my conclusions and recommendation, he may wish to consider the circumstances of the provision of SRFIs to the north and west of London where schemes at Harlington and Colnbrook are currently being developed. At the date of completion of the report, the proposals have not been progressed to the application stage.

Conditions

13.121 The appellant has asked the Secretary of State to note that in respect of both the conditions and the undertaking, save where necessary to reflect any change as a consequence of the Area 1 issue, or as a consequence of discussion with the HA

and Environment Agency, the conditions and undertaking remain in substantially the form they were in at the time of the previous decision. Accordingly, they represent a comprehensive and acceptable package which the Secretary of State has already decided would deliver an SRFI together with the benefits identified in the evidence.

14 Recommendation

14.1 I recommend that the appeal be allowed and planning permission be granted subject to the conditions recommended in Annex A.

A Mead

Inspector

Appendix 4 – Key Relevant Inspectors Reports and Decision Letters extracts

c. Colnbrook 2016 Decision

Department for Communities and Local Government

Simon Flisher
Barton Willmore
The Observatory
Southfleet Road
Swanscombe
Kent DA10 0DF

Our Ref: APP/J0350/A/12/2171967
Your Ref: 16347/A3

12 July 2016

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY GOODMAN LOGISTICS DEVELOPMENT (UK) LTD
LAND NORTH OF A4 (COLNBROOK BYPASS), COLNBROOK, SLOUGH SL3 0FE
APPLICATION: REF P/14961/000

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Diane Lewis BA (Hons), MCD, MA, LLM, MRTPI, who opened a public local inquiry on 8 September 2015 into your client's appeal against a decision by Slough Borough Council (the Council) to refuse outline planning permission for the construction of a rail/road freight interchange comprising an intermodal terminal and Class B8 distribution units on land north of A4 (Colnbrook Bypass), Colnbrook, Slough in accordance with application Ref P/14961/000 dated 27 September 2010.

2. On 14 March 2012, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990. This was because the appeal concerns a proposal for development of major importance having more than local significance and because it is for significant development within the Green Belt.

Inspector's recommendation and summary of the decision

4. The Inspector recommended that the appeal be dismissed and planning permission refused.

5. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with her recommendation. He has decided to dismiss the appeal and refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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Procedural Matters

6. In reaching this position, the Secretary of State has taken into account the Environmental Statement (ES) which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and the environmental information submitted before the inquiry opened. Overall, the Secretary of State is satisfied that the ES complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

7. The Secretary of State has noted the content of your letter and enclosures of 27 January 2016 about the Department for Transport's planning decision of 12 January 2016 relating to the Strategic Rail Freight Interchange (SRFI) known as the East Midlands Gateway. However, the Secretary of State does not consider that the information provided raises any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced.

Policy and statutory considerations

8. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

9. In this case, the relevant parts of the development plan comprises the Slough Core Strategy 2006-2026 (CS), adopted December 2008, the Slough Site Allocations Development Plan Document (SSA), adopted November 2010 and the saved policies of the Local Plan for Slough (LPfS) adopted March 2004. The Secretary of State considers that the development plan policies most relevant to this case are those referred to by the Inspector at IR5.2 - 5.12. He is satisfied that these policies are generally consistent with the Framework.

10. Other material considerations which the Secretary of State has taken into account include: the Framework; the Guidance; the Community Infrastructure Levy (CIL) Regulations; and The London Plan 2011 (consolidated with alterations since 2011), adopted in March 2015, including Policies 6.14 and 6.15.

11. The Secretary of State has also taken account of the Department for Transport's Strategic Rail Freight Interchange Policy Guidance and its Logistics Growth Review Document (both published in November 2011); the joint Written Ministerial Statement on Strategic Rail Freight Interchanges issued by the Secretary of State for Transport and the Secretary of State for Communities and Local Government on 29 November 2011; and the National Policy Statement for National Networks (published in January 2015).

Main issues

12. The Secretary of State agrees with the Inspector that the main issues in this case are those set out by the Inspector at IR12.2 and whether the proposal complies with the development plan and with national policy.

Green Belt

13. The Secretary of State agrees with the Inspector's comments at IR12.8, and like the Inspector, concludes that the appeal proposal would be inappropriate development in the Green Belt and that it is harmful as such. As the proposal amounts to inappropriate

development he considers that, in the absence of very special circumstances, it would conflict with national policies and with the CS. Like the Inspector, the Secretary of State considers that the NPS does not change the policy test for SRFI applications in the Green Belt or the substantial weight to be attached to the harm to the Green Belt (IR12.8). For the reasons given by the Inspector at IR12.9 – 12.11, the Secretary of State agrees with the Inspector's conclusion (IR12.12) that the proposed development would result in a severe loss of openness.

14. The Secretary of State agrees with the Inspector that the introduction of major development on the site, even if enclosed within well-defined boundaries, would not assist in checking sprawl and hence would conflict with a purpose of the Green Belt (IR12.13). For the reasons given by the Inspector at IR12.14, the Secretary of State agrees that the proposal would not be compatible with the purpose of preventing neighbouring towns merging into one another. The Secretary of State accepts the Inspector's conclusion that the proposed development would encroach into the countryside. He agrees too that this conflict is not overcome by the proposed creation of new habitats and other aspects of mitigation in existing countryside areas (12.15). The Secretary of State agrees with the Inspector's overall conclusion that these conflicts should be afforded substantial weight (IR12.18). The Inspector acknowledges that the proposed SRFI development's location in the Green Belt may well be an optimum solution in relation to existing patterns of distribution activity, but like the Inspector, the Secretary of State concludes that this does not reduce the actual harm that would occur (IR12.19).

Strategic Gap

15. For the reasons given by the Inspector at IR12.20 – 12.27, the Secretary of State agrees with her conclusion that the development would be a dominant group of large scale buildings and infrastructure that would generate a large volume of traffic and activity. The Secretary of State concurs with the Inspector's view that even with a high quality landscape scheme, its presence would cause irreparable harm to the Strategic Gap. He agrees too that the scheme conflicts with Policy CG9 of the LPfS which states that development which threatens the role of open land within the strategic Green Belt gap should not be permitted (IR12.28).

Colne Valley Park

16. The Secretary of State has carefully considered the Inspector's reasoning at IR 12.29 – 12.37. Like the Inspector, the Secretary of State agrees that the Landscape and Green Infrastructure Strategy (LGIS) would be likely to deliver a high quality landscape scheme and improvements to the public rights of way network. Physical movement through the Park in this area probably would be improved and proposals comply with Policy T7 of the LPfS. Taking a wider perspective, he agrees that the objectives for the Park would be supported by a proportionate financial contribution towards the improvement of access by pedestrians, cyclists and equestrians, habitat enhancement and other initiatives. Furthermore, habitat improvement, creation and management would conserve the nature conservation resources of the Park in compliance with criterion (d) of Policy CG1.

17. On the negative side there would be localised harm to the landscape and amenity of Colne Valley Park, principally through the adverse change in the character and use of the site. The loss of the intangible countryside feel and associated amenity could not be adequately replaced. The development would detract from users' enjoyment of the rights

of way (LPfS Policy CG2) and there is uncertainty over delivery and timescale of potential off-site enhancements. Overall the scheme would not be consistent with the purpose of the Colne Valley Park. As a result of the harm to the scenic and amenity value the proposal is not supported by Policy CG1 of the LPfS. This conclusion adds moderate weight against the proposal.

Landscape character and visual effect

18. For the reasons given by the Inspector at IR12.41 – 12.47, the Secretary of State accepts the Inspector's conclusion that although the SRFI would be a large scale commercial operation, in the broad landscape context, the impact would be negligible. However, at local level the harm would be more significant and he agrees that overall, the harm to landscape character has a small amount of weight. The Secretary of State accepts the Inspector's conclusion that the effects on visual amenity would be most acutely experienced by those living in the area as they travel to and from home or when viewing the landscape in leisure time. The Secretary of State gives the visual harm modest weight. He agrees with the Inspector that there is a degree of conflict with Core Policy 9 (IR12.48).

Highways and Traffic

19. The Secretary of State has carefully considered the Inspector's analysis of highways and traffic issues and for the reasons given at IR12.49 – 12.56, he agrees with the Inspector that improvements can be undertaken within the transport network that would effectively limit the significant impacts of the development. He agrees too that safe and suitable access to the site is able to be achieved for all people. The necessary transportation infrastructure would be delivered, as required by Core Policy 9 (IR12.57).

Air quality

20. For the reasons given by the inspector at IR 12.58 – 12.63, the Secretary of State accepts his conclusion that the proposed development with appropriate mitigation would comply with Core Policy 8. He agrees too that the slight adverse effect on air quality has limited weight (IR12.64).

Biodiversity

21. The Secretary of State has carefully considered the Inspector's reasoning at IR 12.65 – 12.75 and accepts his conclusion that the proposal offers opportunities to conserve and enhance biodiversity, primarily through the LGIS. With reference to the principles in paragraph 118 of the Framework and the LGIS as a whole, the Secretary of State agrees that the effect on biodiversity is acceptable on the basis that the proposed mitigation is secured (IR12. 76).

Flood risk and water resources

22. The Secretary of State accepts the Inspector's conclusion at IR12.82 that the Flood Risk Assessment demonstrates that the development, incorporating the proposed mitigation measures, would not increase flood risk.

Local communities and cumulative impact

23. The Secretary of State notes that the cumulative impact of the proposed development with other schemes in the area was assessed using the best available information for the purposes of the 2015 ES Addendum. In addition, the potential highways impact of the proposed relocation of the Heathrow Express Depot to Langley was considered. The Appellant and SBC agree that WRATH and the relocation of the Depot to Langley are unlikely to have a significant effect during construction and operation (IR12.84). However the Inspector notes that there is a degree of uncertainty, and a safeguard has been introduced into the section 106 agreement. There is an acknowledgment that base traffic flows on the A4 at Brands Hill may increase over and above the predicted growth due to the implementation of other schemes. If junctions are shown to be operating at or over capacity through additional traffic surveys and modelling work, provision is made for mitigation measures to be included in the CEMP. The Secretary of State agrees that this planning obligation is a necessary and reasonable response (IR 12.85).

Other considerations

Need

24. The Secretary of State has carefully considered the Inspector's reasoning about need at IR12.88 - 12.103 and accepts the Inspector's conclusion that the current policy need for a regional network has not been overcome by the SRFI at Radlett and SIFE is able to be regarded as a complementary facility as part of a wider network (IR12.104).

25. With regard to the Inspector's analysis of other developments and sites at IR 12.105 – 12.106, the Secretary of State agrees that the NPS makes clear that perpetuating the status quo, which means relying on existing operational rail freight interchanges, is not a viable option.

26. The Secretary of State agrees with the Inspector that there is a reasonable probability that Radlett will be operational in 2018 and there is the prospect of Howbury Park being progressed to implementation. In addition, rail connected warehousing is under development in Barking. On the downside, the geographical spread is uneven. There is a noticeable gap in provision on the west side of London, with Radlett being complementary to rather than an alternative to SIFE. SIFE would contribute to the development of a network of SRFI in London and the South East and a wider national network in accordance with the policy objective of the NPS (IR12.107).

Transport links and location requirements

27. The Secretary of State has considered carefully the Inspector's analysis at IR 12.108 – 12.136 and agrees with his conclusion that SIFE would have the transport links and location attributes to fulfil the NPS requirements to a very good standard.

Transfer from road to rail

28. The Secretary of State notes that Slough Borough Council, as well as others including Colnbrook with Poyle Parish Council and RPRA, are concerned that the warehousing units provided as part of the development would be occupied by companies primarily interested in road to road transport of goods. He has carefully considered the Inspector's analysis of this matter at IR 12.138 – 12.147. For the reasons given by the

Inspector, the Secretary of State agrees that the risk of not attaining a high level of rail use would be low (IR 12.148).

Carbon emissions

29. For the reasons given by the Inspector at R 12.149 – 12.150, the Secretary of State agrees that the reduction in carbon emissions as a result of SIFE facilitating the movement of freight by rail is a positive factor and affords it moderate weight.

Economy and jobs

30. The Secretary of State agrees with the Inspector that the beneficial economic aspects of the development would be felt in the area both during construction and operation (IR12.151) and would thereby promote national policy objectives to secure economic growth (IR12.152). He gives this matter moderate weight.

Alternative sites

31. For the reasons given by the Inspector at IR 12.153 – 12.156, the Secretary of State agrees that there is no identified alternative site to SIFE, in the sense of being capable of fulfilling the same purpose, serving the same markets and being geographically comparable in order to achieve the desired spread of SRFIs round Greater London. Like the Inspector (IR12.156) the Secretary of State gives this matter considerable weight in favour of the proposal.

Use of Green Belt land and LGIS

32. The Secretary of State notes that the NPS, whilst acknowledging promoters may find the only viable sites are on Green Belt land, draws attention to the special protection given to Green Belt land. Like the Inspector, he attaches no weight to 'the development being essential on Green Belt land' (IR 12.157) being a matter that he has considered in relation to need and alternative sites in the above paragraphs numbered 24-26 and 31.

33. Turning to the LGIS which aims to mitigate harm caused by the development to landscape character, amenity, public rights of way, biodiversity and to ensure a high standard of design as required by national and development plan policy, the Secretary of State accepts the Inspector's view that as a consequence of these aims, no positive weight is warranted (IR 12.158).

Other matters

34. For the reasons given by the Inspector at IR12.159 – 12.160, the Secretary of State agrees that given the current position and uncertainty over whether or not a new north runway at Heathrow will be progressed, no weight should be given to this matter in the Green Belt balancing exercise (IR12.161).

35. The Secretary of State agrees with the Inspector (IR 12.162) that there may be a problem with site assembly, but the ability to deliver SIFE is a neutral matter that counts neither for nor against the development.

Planning conditions

36. The Secretary of State has given consideration to the Inspector's analysis at IR (IR12.163 – 12.178), the recommended conditions set out at appendix 1 of the Inspector's Report and the reasons for them, and to national policy in paragraph 206 of

the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal.

Planning obligations

37. Having had regard to the inspector's analysis at IR12.179 – 12.186, paragraphs 203 – 205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given at IR12.180 that all the planning obligations are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. The obligations comply with the statutory tests in Regulation 122 and with the policy tests in paragraph 204 of the Framework. However, the Secretary of State does not consider that the obligations overcome his reasons for deciding that the appeal should be dismissed.

Planning balance and overall conclusion

38. The Secretary of State has given very careful consideration to the Inspector's concluding remarks at IR12.187 – 12.206.

39. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. For the reasons set out in this letter, the Secretary of State concludes that the proposal is inappropriate development and by definition harmful to the Green Belt. He found that the development is contrary to Core Policy 1 of the CS and national policy in the Framework. The Secretary of State finds that the totality of the harm to the Green Belt has very substantial weight. In addition, he finds that the damage to the Strategic Gap would be irreparable, which adds significant weight against the proposal. In addition he has found that there is localised harm to Colne Valley Park to which he adds moderate weight against the proposal. He gives limited weight to the slight adverse impact on air quality, and a small degree of weight to the harmful social effect and erosion of quality of life of local communities. He affords, subject to conditions, no weight to potential harms to biodiversity, water quality or through flood risk. The Secretary of State has then gone on to consider whether there are any material considerations justifying determining the case other than in accordance with the development plan.

40. The Secretary of State accepts that the most important benefit of the proposal is the potential contribution to building up a network of SRFIs in the London and South East region, reducing the unmet need and delivering national policy objectives. In addition, there is the prospect of SIFE being complementary to Radlett and other smaller SRFI developments and improving the geographical spread of these facilities round Greater London. In this context, the Secretary of State accepts that the contribution it would make to meeting unmet need is considerable.

41. He accepts too that SIFE would comply with the transport and location requirements for SRFIs to an overall very good standard. He acknowledges that sites suitable for SRFIs are scarce and the difficulty in finding sites in the London and South East region. On account of this factor, and the standard of compliance achieved, he affords meeting the site selection criteria significant weight. No less harmful alternative site has been

identified in the West London market area, a factor which he affords considerable weight. Attracting less but nevertheless moderate weight are the economic benefits, the reduction in carbon emissions and improvements.

42. In common with the Inspector in her conclusion, the Secretary of State has been persuaded by the irreparable harm that would be caused to this very sensitive part of the Green Belt in the Colnbrook area, leading to the high level of weight he attaches to this consideration. Overall, the Secretary of State concludes that the benefits of the scheme do not clearly overcome the harm. Consequently very special circumstances do not exist to justify the development. Furthermore, he finds that planning conditions would not be able to overcome the fundamental harms caused to the Green Belt, Strategic Gap and Colne Valley Park and the open environment enjoyed by the local community. In addition, he has concluded that the proposal does not have the support of the NPS because very special circumstances have not been demonstrated.

Formal Decision

43. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses to grant outline planning permission for the construction of a rail/road freight interchange comprising an intermodal terminal and Class B8 distribution units on land north of A4 (Colnbrook Bypass), Colnbrook, Slough in accordance with application Ref P/14961/000 dated 27 September 2010.

Right to challenge the decision

44. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

45. A copy of this letter has been sent to St Albans City and District Council. A letter of notification has also been sent to all other parties who asked to be informed of the decision.

Phil Barber

Phil Barber
Authorised by the Secretary of State to sign in that behalf

Appendix 4 – Key Relevant Inspectors Reports and Decision Letters extracts

d. Colnbrook 2016 Inspector's Conclusions

The Planning Inspectorate

Report to the Secretary of State for Communities and Local Government

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 26 January 2016

TOWN AND COUNTRY PLANNING ACT 1990

SLOUGH BOROUGH COUNCIL

APPEAL BY

GOODMAN LOGISTICS DEVELOPMENT (UK) LTD

SLOUGH INTERNATIONAL FREIGHT EXCHANGE (SIFE)

12. INSPECTOR'S CONCLUSIONS

References to earlier paragraphs of this report are in square brackets [].

Introduction

12.1 My conclusions take full account of the ES and all other environmental information, including the comments and representations made by statutory consultees and members of the public. The interactive effects on the environment have been considered as well as potential cumulative effects.

Main considerations

12.2 These are:

1) The effects of the proposed development on:

   a) The openness of the Green Belt and the purposes of including land within the Green Belt;

   b) The Strategic Gap between the eastern edge of Slough and Greater London;

   c) The role and resources of Colne Valley Park;

   d) Landscape character;

   e) The visual amenity of the site and the surrounding area;

   f) Air quality in the Brands Hill AQMA;

   g) The safety and capacity of the highway network for all users;

   h) Other environmental matters, including flood risk and biodiversity;

   i) The environment of local communities and cumulative impact.

2) The potential contribution of the proposed development towards:

   a) A network of SRFIs across the region, including consideration of site selection criteria and the availability of alternative sites;

   b) The transfer of freight from road to rail, a low carbon economy and addressing climate change;

   c) Employment and economic growth;

   d) The enhancement of landscape and green infrastructure;

   e) Groundwater quality.

3) The use and adequacy of planning conditions and planning obligations to mitigate identified harm and to ensure the provision of essential elements of the development, necessary associated infrastructure and off-site works.

4) Whether the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other

Local communities and cumulative impact

12.83 The Framework explains that pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment as well as in people's quality of life. The representations of the Parish Councils, residents' associations, community groups and individuals indicate that one of the main concerns is the amount of development being proposed in the area and if SIFE is approved the additional strain it would place on the fabric and environment of the locality, their health and the overall quality of people's lives.

12.84 The cumulative impact of the proposed development with other schemes in the area was assessed using the best available information for the purposes of the 2015 ES Addendum. In addition, the potential highways impact of the proposed relocation of the Heathrow Express Depot to Langley was considered. It is common ground between the Appellant and SBC that WRATH and the relocation of the Depot to Langley are unlikely to have a significant effect during construction and operation. There is no evidence to support a different conclusion. The probability is that the traffic forecasts for the SIFE development are robust enough to allow for the impact of the M4 Smart Motorway project. [4.6, 6.40-6.41, 7.46-7.48, 10.16]

12.85 There is a degree of uncertainty, however and a safeguard has been introduced into the section 106 agreement. There is an acknowledgment that base traffic flows on the A4 at Brands Hill may increase over and above the predicted growth due to the implementation of other schemes. If junctions are shown to be operating at or over capacity through additional traffic surveys and modelling work, provision is made for mitigation measures to be included in the CEMP. This planning obligation is a necessary and reasonable response. [6.42, 10.52, 11.31]

12.86 In relation to air quality, mitigation measures during construction through a CEMP and mitigation during operation by phasing and control of HGV emissions would minimise or eliminate any potential significant impacts. Therefore SIFE would not contribute significantly to cumulative effects. [6.45]

12.87 The Heathrow 3rd runway option was not included in the cumulative effects assessment for good reason, not least because the land take would include the SIFE site. [4.7, 7.49]

Other considerations

Need

Policy

12.88 The NPS is the key national policy document that confirms the importance of SRFIs. The need for development of SRFIs is derived from the Government's vision for a low carbon sustainable transport system that is an engine for economic growth but is also safer and improves the quality of life in communities. [7.1]

12.89 The NPS states in an unequivocal way that there is a compelling need for an expanded network of SRFIs. This confirmed need is the basis for assessing applications for SRFIs covered by the NPS. The requirement is for SRFI capacity

to be provided at a wide range of locations in view of the existing uneven geographical spread, the deficiencies of many intermodal rail freight interchanges and the need for flexibility. The need to expand the network of SRFIs applies throughout the country. The expansion of rail freight interchanges serving London and the South East is acknowledged to be a particular challenge. My reading of the policy is that the challenge refers to increasing the number of SRFIs through new developments and is not confined to expansion of existing rail freight interchanges, many of which are said to be poorly located in relation to the main urban areas. The NPS looks toward improving significantly on the existing provision and does not convey a weakening of policy support for SRFIs. [6.6, 7.1, 7.60, 7.63, 8.33, 9.6]

12.90 The Framework, too, identifies rail freight interchanges as an element of viable infrastructure necessary to support sustainable development. There is an expectation that local authorities will work together with transport providers to develop strategies for provision of this infrastructure. At the strategic level, the London Plan confirms a need for a network of SRFIs in and around London but to date there is no detailed co-ordinated strategy for such provision. [5.18, 7.61]

12.91 National policy support for increasing the amount of freight transported by rail is not new and the benefits have been promoted for the last 15 years or more. A policy need for 3 or 4 SFRIs to serve London and the South East was initially established through the work of the SRA and subsequently was an important consideration in determining proposals for SRFI development. The SRA policy was superseded following the designation of the NPS in 2015. The Secretary of State's reference to this level of provision in the Radlett decision in 2014 does not necessarily confirm it continues to have relevance now. The policy position has moved on as a result of the formal designation of the NPS. [6.6, 7.62, 7.63, 8.30]

12.92 The NPS consistently uses the word 'network' and, in its role as a national policy document, gives no indication of the number of SRFI anticipated within the network as a whole or in a region. Consequently there is no quantified target or limit identified to meet the need for SRFIs in London and the South East. The emphasis in the NPS is on proposals meeting the criteria on location in order that SRFIs are near to the business markets served, linked to key supply chains and with effective connections to both rail and road. The policy need is to provide SRFI capacity in a wide range of places, a reason being the forecast growth in rail freight. However, there is an acceptance that the number of locations suitable for SRFIs is likely to be limited, particularly in relation to serving London and the South East. The attention is on quality of provision, not necessarily maximising the number schemes. The rail freight forecasts alone do not provide sufficient fine grain detail to allow site specific need cases to be demonstrated. [7.60, 7.63, 7.64, 8.35]

Policy applied to SIFE

12.93 Within this policy context, the proposed SRFI at Colnbrook would be located in a region identified as being deficient in SRFI capacity. The development would deliver one facility towards building up a network in accordance with national policy. The relative importance of this provision is informed by the potential availability of SRFI capacity at national and regional level to meet the compelling need described by the NPS.

12.94 At national level, the forecast increase in rail freight traffic and market share is interrelated with the development of a network of new rail served warehouses. SIFE is one of a group of relatively small proposed sites (even with the future expansion indicated) identified for forecasting purposes. Therefore proportionally its contribution to the forecast total amount of rail connected warehousing is limited. Lack of success in gaining planning permission, if found to be unacceptable on site specific grounds, would be unlikely to undermine or negate the forecast increase in rail traffic. However, SIFE is the only site identified in the regional cluster and to that extent its significance to establishing a wide network is increased. [7.65, 8.37]

12.95 On a regional level currently there is no operational SRFI within the London and South East region to contribute towards meeting the need for these facilities. There is a link missing in the supply chain that reduces the opportunity to use rail to serve the South East and London area direct from the NDCs and the ports. Distance is not regarded by Network Rail as a fundamental constraint. The NPS has identified this gap in the network and encourages extra SRFI capacity. The London Plan, Policy 6.15, also gives qualified support. [5.18, 7.59, 8.38]

12.96 The history of the SIFE appeal has been closely linked to a proposed SRFI at Radlett. The position has now been reached where there is a good prospect of progress on the Radlett SRFI proposal to enable the development to be available for occupation in 2018. A central aspect of SBC's case is that the development of Radlett overcomes the need to provide a SRFI at Colnbrook. More specifically, SBC argue that Radlett will satisfy the requirement for a single SRFI to serve the north west sector. In other words Radlett is the alternative to Colnbrook. In order to conclude whether this analysis is correct or the Appellant's reasoning is to be preferred, the Secretary of State's decisions on the Radlett scheme are a useful starting point. [4.8, 7.66-7.69, 8.30-8.36, 8.70, 9.7]

12.97 In the 2008 decision the Secretary of State concluded that the Alternative Sites Assessment by Helioslough (the appellant) was materially flawed and the results were wholly unconvincing. This failing was described as critical. The decision clearly stated that had the appellant demonstrated that there were no alternative sites for the proposal this almost certainly would have led to the balance weighing in favour of the development[232]. A new Alternative Sites Assessment was carried out. In the overall conclusions set out in the 2010 decision, the Secretary of State was not satisfied that the appraisal of alternative sites had clearly demonstrated there would be no other suitable locations in the north west sector that would meet the need for an SRFI in the foreseeable future in a significantly less harmful way than the appeal site[233]. In the redetermination decision of July 2014 the Secretary of State came to a different conclusion. One of the factors weighing in favour of the appeal was 'the lack of more appropriate alternative locations for an SRFI in the north west sector which would cause less harm to the Green Belt'.[234]

[232] GLD/3/C Appendix 24 paragraph 58
[233] CD6.6 paragraph 34
[234] CD6.7 paragraph 53

12.98 Throughout the decision making process, the consideration of the availability and planning merits of other potential sites for a SFRI was under the heading of 'alternatives'. This approach was in response to the Green Belt location of the Radlett site and the policy requirement to demonstrate very special circumstances. In the 2010 and 2014 decisions attention was given to the comparative merits of the Radlett and Colnbrook sites, notwithstanding the evidence referred to Colnbrook as a complementary facility. The strong message conveyed in the decisions is that the availability of a suitable alternative site in the north west sector was a key factor in the Green Belt balancing exercise. [7.67, 8.31]

12.99 On a plain reading of the 2014 decision, against the background of the previous decisions, the approval of Radlett met the need for a SRFI in the north west sector. Hence a reasonable conclusion is that an additional SRFI at Colnbrook would be hard to justify, especially when more harm would be caused to the Green Belt and where the Strategic Gap is an additional policy restraint. There was no necessity for the Secretary of State to explicitly conclude that there was a need for only one SRFI in the north west sector in light of the purpose of the alternative sites study. [7.67, 8.32]

12.100 Since July 2014 there have been two significant changes. Most importantly the NPS was designated in January 2015 and the policy guidance published in 2011 was cancelled. The 2014 decision specifically refers to the 2011 policy being taken into account but not the consultation draft NPS. This would be expected because a draft document has little weight in order not to prejudice the consultation process. In the NPS the drivers of need, the fundamental policy objectives for and the characteristics of SRFIs are no different to those set out in the 2011 interim policy it replaced. Perpetuating the status quo remains an unacceptable option. Both documents identified a requirement for SRFI capacity to be provided at a wide range of locations and the poor existing provision to serve London and the South East. Consequently the NPS did not introduce a sea change in national policy. However, there is a different emphasis on expanding a network of SRFIs – the Government's conclusion expressed in the NPS is that there is a compelling need for an expanded network of SRFIs, whereas the 2011 interim policy concluded 'an expanded network of SRFIs is likely to be needed'.[235] [8.33]

12.101 The second change is the cancellation of the SRA guidance of 2004, which identified a policy need for 3 or 4 SRFIs in London and the South East. The question is whether this source of advice and guidance should be taken into account now. The cancellation of a policy document means that the policies should no longer be applied and relied on. On the basis of the *South Northamptonshire* judgement the evidence base may remain relevant – that is a matter of judgement. In respect of the SRA document the need for 3 to 4 SRFIs in the South East region was derived from research undertaken some 10 to 14 years ago[236]. The NPS was informed by more recent forecasts and new developments have taken place and been permitted (such as London Gateway and DIRFT III). I do not consider the evidence base for the SRA guidance to be

[235] CD3.2 paragraph 3.3.4
[236] GLD/3/C Appendix 18 paragraphs 6.8 to 6.10

up to date and reliable. Therefore the policy need for 3 to 4 SRFIs has no weight. [7.63, 8.35, 8.36]

12.102 In the context of the significant policy changes that have occurred, there is scope for following a different line of reasoning on need to that in the July 2014 Radlett decision.

12.103 Based on the Freight Market Study, SIFE is the only scheme identified for the GWML eastern area intermodal regional cluster. The view of Network Rail is that SIFE and Radlett are complementary not least because they will attract wholly independent primary distribution traffic into their sites. The sites are positioned on different trunk rail routes, leading to each site having distinct advantages in serving different destinations in the secondary distribution markets. Helioslough agrees that there is scope for more than one SRFI to be developed within the north west sector to serve London and the South East. There was no up to date evidence to contradict or question these opinions. SBC relied on the SRA policy need that I consider no longer applies. [7.68, 7.102, 8.30, 8.35]

12.104 I conclude that the development of Radlett, a significantly larger scheme than SIFE, undoubtedly would improve the position on SRFI provision in the South East Region. However, the current policy need for a regional network has not been overcome by Radlett and SIFE is able to be regarded as a complementary facility as part of a wider network. [4.8]

12.105 Turning to other developments, London Gateway is primarily a port development and the greater proportion of the logistics park functions as a NDC. The NPS states its development will lead to a significant increase in logistics operations. There is also the capacity to develop a subsidiary SRFI role, particularly because of the proximity of the London market. The likelihood is that the 'the break even' distance identified in the KIG report has limited relevance to SIFE because of such matters as the variables involved, the circumstances of the situation being considered and the potential progress in developing rail service provision. In respect of the latter point, Mr Ives referred to the establishment of shuttle services between Colnbrook and the deep sea ports in the future. Therefore in the context of the NPS, London Gateway would not negate a need for SIFE as a means of increasing flexibility and the future opportunities for rail freight and the expansion of the network of SRFIs in the South East. [4.11, 7.66, 8.40-8.42]

12.106 As to other sites, Renwick Road, Barking is operational on a small scale, and is expected to be operating at capacity within 5 years. There is the prospect of significant further expansion there in the period to 2043. There is interest in progressing development at Howbury Park. However, the NPS is encouraging a better geographical spread to provide flexibility. These two sites are to the east and south east of London and less well located to efficiently serve the potential business markets and supply chains associated with SIFE. [4.9, 4.12, 6.10, 8.39, 8.43]

Conclusion

12.107 The NPS makes clear that perpetuating the status quo, which means relying on existing operational rail freight interchanges, is not a viable option. There are grounds for optimism that the position will change in relation to

London and the South East region. London Gateway is capable of fulfilling a SRFI role, there is a reasonable probability that Radlett will be operational in 2018 and there is the prospect of Howbury Park being progressed to implementation. Rail connected warehousing is under development in Barking. On the downside the geographical spread is uneven. There is a noticeable gap in provision on the west side of London, with Radlett being complementary to rather than an alternative to SIFE. SIFE would contribute to the development of a network of SRFI in London and the South East and a wider national network in accordance with the policy objective of the NPS. [7.66, 8.45]

Transport links and location requirements

12.108 The NPS requirements for a SRFI site focus on attributes of the location in relation to the rail and road networks, business markets and supply chains, availability of a workforce and sensitivity of the environment. The capability of a site to accommodate the necessary level of rail infrastructure and efficient configuration also is important. From the outset a rail freight interchange should be developed in a form that can accommodate both rail and non-rail activities to enable businesses to support their commercial activities by rail.

Road and rail networks

12.109 The site has good access to the road network, with direct access onto the A4 Colnbrook Bypass and within a short distance of junctions onto the M4 and M25 within the motorway network. The Transport Assessment has demonstrated that the road network in the vicinity of the site has the capacity to absorb the traffic generated once the proposed highway improvements are carried out. [2.1, 6.17, 7.34, 7.35, 7.70]

12.110 The Colnbrook Branch Line, suitably upgraded, would provide a direct connection to the GWML. The GWML is a core trunk route in the strategic rail freight network and links to major rail routes with suitable gauge capability (on main line and connecting routes) that serve key cargo origins in England and Scotland. [3.10, 6.17, 6.23, 7.71]

12.111 The connection between SIFE and the GWML would not be ideal because all trains would have to approach the site westbound along the GWML, entering the Colnbrook Branch Line at West Drayton junction. Consequently not all freight train operations to the site would be direct, in so far as trains from Southampton via Reading, the west of England and south Wales would have to pass West Drayton on the GWML and reverse, and then proceed back to West Drayton junction and the Colnbrook Branch Line. With the SFN functioning as a network, some freight operations from the Midlands and the North may be similarly affected. [6.20, 8.58]

12.112 In general terms indirect connections may be expected to affect capacity and add time and costs to a rail freight service, reducing its competitive position. However, offering direct train routes in all directions is not a policy requirement – the NPS states ‘adequate links to rail networks are essential’. The provision of a configuration that will allow main line access for trains from either direction is the ‘ideal’. Rail freight forecasts suggest that a significant level of rail borne cargo is unlikely to originate from these markets to the south and west. My conclusion is that, whilst not a major disadvantage, these indirect train routes potentially would reduce flexibility and efficiency over the lifetime of

12.145 Evidence of experience of rail use at SRFIs elsewhere is derived from the West Midlands. A steady growth in rail freight is seen particularly in the number of wagons and tonnes lifted, whereas the performance is unconvincing based on the number of trains for the size of development. However, the evidence was shown to have limitations for comparative purposes and so has limited value as an indicator of rail use at SIFE. [7.93, 8.54]

12.146 Therefore actual achievement of a high level of rail use and modal shift would rely on general factors such as the competitiveness of rail, the quality and increasing flexibility of the rail freight services, environmental awareness and corporate responsibility. The growth in the use of rail for freight transport in recent years and the forecast of this growth continuing, commitment to infrastructure improvements by Network Rail and national policy support are all positive factors to be taken into account. [7.74, 7.82]

12.147 Specific to SIFE, the indicators of a high level of rail use being established in practice are the commitment of the developer, the confidence of the intermodal operator and more especially the advantages of the location to the West London market area and the good standard of development proposed. The development and associated measures are directed at encouraging the use of rail for transporting freight, rather than punitive measures for not using the rail infrastructure. This approach is compatible with the NPS policy where the emphasis is on facilitation. Two main caveats are relevant - development of a high level of use is expected to be gradual and inbound rail freight is likely to be a dominant component in the contribution to modal shift. [7.87, 7.91, 7.93, 8.47]

12.148 SBC has argued that a reliance on market forces is insufficient to achieve a high level of rail use for the warehousing and that the development plan requirement of a guarantee is essential. However, no reasonable mechanism has been put forward by SBC to deliver a guarantee of use of the rail service provided. Experience from proposed SFRIs elsewhere does not provide a model to follow. Measures anticipated by TfL have not been secured. There would be a risk that a high level of rail use would not come about. If such a risk is considered to be unacceptable then the scheme could not be supported. All the indicators are that the risk of not attaining a high level of rail use would be low. [8.55, 10.66, 11.35]

Carbon emissions

12.149 In promoting sustainable development the Framework encourages solutions which support reductions in greenhouse gas emissions. A rail freight interchange is regarded as such a solution in promoting sustainable transport. Similarly the NPS states that the transfer of freight from road to rail has an important part to play in a low carbon economy and in addressing climate change. Clearly there is a policy justification and expectation that a SRFI will bring carbon savings. [7.107]

12.150 The Appellant's analysis gives some indication of the reduction in carbon emissions as a result of SIFE facilitating the movement of freight by rail. When the comparison is made against the road only scheme, the saving is significant. In a wider context, the significance is very much less. The reduction is a positive factor that has some weight. [7.106, 7.115, 8.62, 8.63]

Economy and jobs

12.151 The beneficial economic effects of the development would be felt in the area both during construction and operation. The on-site employment opportunities across a range of skills would be supplemented by the activity generated through the injection of income into the wider economy. A planning obligation prioritises the use of local labour through a local employment scheme. Provided that there is a growing market, additional jobs would be created and negative impacts on existing warehousing firms, through transfer of labour, would be minimised. Efficiencies would be gained by improved transport linkages, more especially by rail, within the supply chain and to market areas. This benefit would distinguish the SIFE scheme, when compared to relying on growth at warehouse facilities elsewhere in the region. [7.108-7.112, 8.64, 8.65]

12.152 The SIFE scheme would promote national policy objectives to secure economic growth, as expressed in the Framework and the NPS. The development would provide significant benefits for the local economy commensurate to its scale. In my view this factor has some weight. [7.115, 8.65]

Alternative sites

12.153 The issue of alternative sites has been partially considered under the heading of need, where I concluded that Radlett is a not an alternative to SIFE but is a complementary SRFI facility as part of a wider network. No other possible alternative sites were taken into account in reaching that conclusion.

12.154 An assessment of alternative sites was undertaken in 2010 and has been updated on two occasions, most recently in May 2015. The basic methodology was generally consistent with the methodologies used for the Radlett and DIRFT III alternative site assessments, which were found to be robust by the Secretary of State. SBC has disputed the core market area centred on West London but the independent research supports such a definition. In any event adjacent sensitivity areas were also taken into account. There are no reasons to dispute the methodology. [5.19, 8.30]

12.155 Of the four short listed sites identified by the assessment, Radlett now has planning permission and in the current policy context does not represent an 'alternative'. The site at Upper Sundon, near Luton, has been identified as suitable for an intermodal rail freight exchange associated with the Luton/Dunstable area. It is not of sufficient size to accommodate a SRFI and hence is not an alternative to SIFE. The two sites in the Toddington and Harlington area, located in the far north of the area of search, subsequently have been confirmed to have serious connectivity constraints. There is no suggestion in this appeal that this option represents an alternative to SIFE. No other area of land has come forward or been identified. Recent market reviews have confirmed a lack of supply of large strategic sites for distribution in the West of London market area, even without a requirement for a rail connection. A similar view is expressed in the statement of common ground. [6.8, 6.11, 7.101]

12.156 Therefore there is no identified alternative site to SIFE, in the sense of being capable of fulfilling the same purpose, serving the same markets and being geographically comparable in order to achieve the desired spread of SRFIs

round Greater London. This is a matter of considerable weight in favour of the proposal.

Use of Green Belt land and LGIS

12.157 As shown by the Alternative Sites Assessments finding a suitable site for a SRFI to serve London and the South East is very difficult. The focus of the area of search on the Metropolitan Green Belt responds to the NPS requirement for new facilities alongside the major rail routes, close to major trunk roads as well as near to the conurbations that consume the goods. However, the Framework makes no exception for SRFIs to be located in the Green Belt. The NPS, whilst acknowledging promoters may find the only viable sites are on Green Belt land, draws attention to the special protection given to Green Belt land. I attach no weight to 'the development being essential on Green Belt land', being a matter that is adequately covered through the other considerations of need and alternative sites. [7.3, 7.5, 7.103, 7.115]

12.158 The LGIS is to mitigate harm caused by the development to landscape character, amenity, public rights of way, biodiversity and to ensure a high standard of design as required by national and development plan policy. Consequently no positive weight is warranted. [7.104, 7.105, 8.68]

Other matters

12.159 Heathrow 3rd runway. The deliberation on airport expansion in the South East and more specifically the final report and conclusion of the Airports Commission was not a reason to delay hearing the SIFE appeal at the Inquiry in September 2015. A Government conclusion on the location for expansion is due in the summer of 2016. [1.4]

12.160 The appeal site has not been safeguarded for airport expansion and its planning status in the development plan is Green Belt land. The Heathrow 3rd runway option is not contained in any emerging policy document. There is no emerging local plan and, applying Planning Practice Guidance, the proposal is not considered premature. SBC did not pursue its argument that the Heathrow 3rd runway option was a reason for withholding planning permission. In the event the appeal is successful, the focus of SBC's evidence was on delaying development until the there is greater certainty over the location of airport expansion. [7.97, 7.98, 8.66, 10.35, 10.64, 11.33]

12.161 Given the current position and the uncertainty over whether or not a new north west runway at Heathrow will be progressed I will give no weight to the matter in the Green Belt balancing exercise.

12.162 Land ownership. As a matter of fact the Appellant does not own all the land necessary to carry out the development. Land outside its ownership is essential to the scheme. In the Radlett 2014 decision land ownership was considered in the context of the unilateral undertaking. The Secretary of State considered whether there were no prospects at all of the development starting within the time limit imposed by the permission and was satisfied that was not the case. In this case SBC has made no decision on making its land available for the SIFE development. The position is not straight forward because of SBC's support for the Heathrow 3rd runway option. There may be a problem with site assembly but I would not go so far as to say there would be no prospects at all

use of sanctions or penalties is not promoted as a way of securing a high level of rail use. That being so, the obligation would not be necessary to make the development acceptable in planning terms. The statutory and policy tests would not be met. The fact that a similar penalty has not been imposed on SRFI developments elsewhere supports this conclusion. [7.87, 8.56, 11.34, 11.35]

Green Belt Balance, Strategic Gap and Conclusions

Very special circumstances

12.187 The principal policy applying to the proposed development is the national planning policy on the Green Belt. The CS takes the lead from national policy in requiring very special circumstances to justify the development. Paragraph 88 of the Framework states that 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. [5.2, 5.3, 5.7, 6.1, 7.1, 8.1]

12.188 The meaning of 'any other harm' referred to in paragraph 88 was the subject of the *Redhill Aerodrome* judgement[239]. The Court of Appeal concluded that 'any other harm' is not confined to harm to the Green Belt but also includes any other harm that is relevant for planning purposes. Therefore I will take account of the harm to the Strategic Gap as well as the conflict with the purposes of the Green Belt. However, there is some similarity in policy aims, which will affect the weight given to these factors to avoid 'double counting'.

12.189 The proposal is inappropriate development and by definition harmful to the Green Belt. In addition, substantial harm would arise from the severe loss of openness. Given the location of the site, its role in the wider pattern of development and the characteristics of this part of the Green Belt there is conflict with three purposes of the Green Belt. The proposal would contribute to urban sprawl, be incompatible with the purpose of preventing neighbouring towns merging into one another and lead to a major encroachment into the countryside. The fundamental aim of Green Belt policy to prevent urban sprawl by keeping land permanently open would be undermined. The totality of the harm to the Green Belt has very substantial weight. The designated Strategic Gap highlights the critical importance of the Green Belt in this part of Slough and that some parts of the Green Belt are more valuable than others. The damage to the Strategic Gap would be irreparable, which adds significant weight against the proposal.

12.190 Colne Valley Park is a regional asset and a recreational resource for the local community. The countryside and amenity of the Park would be eroded. Taking account of the LGIS and the potential off-site enhancements, the harm to the Park has moderate weight. The harm to landscape character has a small amount of weight, with slightly more weight to the harmful local visual impact.

12.191 The traffic implications, the increase in HGVs and effect on air quality were of particular concern to the local community. The package of proposed highway improvements, travel and freight management plans would address all

[239] *The Secretary of State for Communities and Local Government & Others v Redhill Aerodrome Ltd* [2014] EWCA Civ 1386

the transport related issues. Bearing in mind the location of the site close to AQMAs the slight adverse effect on air quality has a small amount of weight. The harm to residential amenity would be limited by the separation distance between the site and homes and additional safeguards would be applied through planning conditions. Nevertheless the local community would experience disruption and inconvenience through the construction period and, when operational, ongoing vigilance would be necessary to ensure effective management and monitoring of undertakings and plans. In an area that experiences continued development pressures, the harmful social effect and erosion of quality of life merits a small degree of weight.

12.192 The potential harms to biodiversity and water quality and the probable increase in flood risk are able to be overcome by elements of scheme design and the use of planning conditions. No significant harm has been identified from the cumulative effects of developments proposed in the area. Accordingly, in terms of weight, these considerations are neutral.

12.193 In sum, the weight against the development is very strong and compelling.

12.194 In terms of the 'other considerations', the most important is the potential contribution to building up a network of SRFIs in the London and South East region, reducing the unmet need and delivering national policy objectives. There is the prospect of SIFE being complementary to Radlett and other smaller SRFI developments and improving the geographical spread of these facilities round Greater London. In this context, the contribution to meeting unmet need is considerable.

12.195 SIFE would comply with the transport and location requirements for SRFIs to an overall very good standard. The site requirements are about making sure a SRFI functions and delivers on objectives and to that extent compliance does not attract a lot of weight. However, sites suitable for SRFIs are scarce and there is an acknowledged particular challenge in finding sites in the London and South East region. On account of this factor, and the standard of compliance achieved, meeting the site selection criteria has significant weight.

12.196 No less harmful alternative site has been identified in the West London market area, a factor which has considerable weight.

12.197 The remaining considerations attract less weight. The economic benefits, the reduction in carbon emissions and improvements to water quality each have some weight. The LGIS and the use of Green Belt land have no weight.

12.198 I conclude that the potential harm to the Green Belt by reason of inappropriateness and the other harms identified are not clearly outweighed by the other considerations. Consequentially very special circumstances do not exist to justify the development. The development is contrary to Core Policy 1 of the CS and national policy in the Framework. The proposal does not have the support of the NPS because the Appellant has not demonstrated very special circumstances.

Strategic Gap

12.199 Core Policy 2 imposes an additional policy restraint – development will only be permitted in the Strategic Gap and the open areas of the Colne Valley Park if it is essential to be in that location. Clearly account must be taken of the compelling need for an expanded network of SRFIs expressed in the NPS and the absence of an identified alternative site to SIFE to locate a SRFI on the west side of London. The importance of the role of a network in achieving the forecast growth in rail freight has been demonstrated. Nevertheless I am not convinced that the SIFE scheme is essential within the Strategic Gap, when account is taken of the complementary SRFIs that have been identified and which probably will be developed to serve the region. SIFE is not in the category of a nationally significant infrastructure project. There are limits on the benefits achievable in terms of carbon emissions and the amount of freight transported by rail. For these reasons the additional policy test is not met and the development is contrary to Core Policy 2.

Conclusion: the development plan

12.200 In terms of the 'non-policy' criteria, a regional need for the development has been demonstrated, there are no unacceptable environmental impacts in relation to air quality, noise, flood risk, landscape character and biodiversity and the facility may be accommodated on the road and rail network. A high level of rail use is not guaranteed but is probable. Importantly, however, there are not the very special circumstances sufficient to overcome Green Belt and other strategic planning objections. The spatial strategy is at the heart of the development plan for Slough and therefore the balance is against the development.

Conclusion: the Framework and sustainable development

12.201 To achieve sustainable development economic, social and environmental gains should be sought jointly and simultaneously through the planning system. The economic gains would be derived from the contribution to meeting the changing needs of the logistics sector, development of the rail freight industry and the economic and employment benefits for Slough and the surrounding area. Whilst providing land to support growth, the development would be contrary to the spatial strategy for Slough.

12.202 The social benefits also would be related to the provision of a range of jobs, the introduction of an employment scheme and enabling the development to be easily accessible to all by improvements to public transport, pedestrian and cycling facilities. Nevertheless the Parish Councils, the community and resident groups were not supportive of the development. The unwelcome changes to their local environment would include the generation of additional traffic per se, the loss of open space on their doorstep and the introduction of a large distribution development, however well designed, into the setting of their villages. The urbanisation of the Colne Valley Park and loss of amenity for its users would not be fully offset by the LGIS and off-site improvements.

12.203 The significant environmental gains locally would consist of improvement to water quality and the prospect of increased biodiversity. The facilitation of modal shift from road to rail in freight transport and the development's 'very good' rating under the BREEAM standard would assist in

adapting to climate change and the move to a low carbon economy. The loss of a highly protected area of the Green Belt and the irreparable harm to the Green Belt east of Slough has to count as a major environmental loss.

12.204 The balance of the potential economic, social and environmental consequences leads me to conclude that the proposal is not a sustainable form of development. Therefore to allow the development would be contrary to national policy in the Framework.

Conclusion

12.205 The Inspector in the LIFE appeal stated that the central matter in dispute is "where to strike the balance between conflicting policies relating to green belt and to sustainable transport".[240] Since 2001 the Green Belt to the east of Slough has been put under greater development pressure and its protection is a fundamental objective of the spatial strategy expressed in the development plan. The Framework has confirmed the great importance of Green Belts and encourages the provision of viable infrastructure to promote sustainable transport. National policy on SRFIs has evolved, culminating in the designation of the NPS and the stated compelling need to develop a network of SRFIs across the country. The central issue has not changed.

12.206 I have been persuaded by the irreparable harm that would be caused to this very sensitive part of the Green Belt in the Colnbrook area, leading to the high level of weight I have attached to this consideration. The benefits of the scheme do not clearly overcome the harm. Planning conditions would not be able to overcome the fundamental harms caused to the Green Belt, Strategic Gap and Colne Valley Park and the open environment enjoyed by the local community. However, weight is a matter for the decision maker. In the event the Appellant's case is found to be compelling, there is much to commend in the outline proposals and there is the basis for a very well designed scheme. Outstanding details and appropriate mitigation would be able to be secured by planning conditions (Appendix 1) and planning obligations.

13. RECOMMENDATIONS

13.1 I recommend that the appeal be dismissed.

13.2 In the event the Secretary of State should disagree with this recommendation, then I further recommend that any planning permission granted should be subject to the planning conditions set out in Appendix 1 to this report.

Diane Lewis

Inspector

[240] CD6.1 paragraph 13.19

Appendix 4 – Key Relevant Inspectors Reports and Decision Letters extracts

e. Slade Green SRFI Decision 2019

Ministry of Housing, Communities & Local Government

Our ref: APP/D5120/W/17/3184205 &
APP/T2215/W/17/3184206.
Your ref: NLP-DMS.FID299507

Sarah Fabes
Lichfields,
14 Regent's Wharf,
All Saints Street,
London, N1 9RL

7th May 2019

Dear Madam

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEALS MADE BY ROXHILL DEVELOPMENTS LIMITED
LAND ADJACENT TO THE SOUTHEASTERN TRAIN DEPOT, MOAT LANE, SLADE GREEN, ERITH
APPLICATION REF: 15/02673/OUTEA and DA/15/01743/OUT

1. I am directed by the Secretary of State to say that consideration has been given to the report of Mr I Jenkins BSc CEng MICE MCIWEM who held a public local inquiry between 19 June and 27 September 2018 into your client's appeals against the decisions of London Borough of Bexley, as directed by the Mayor of London, and Dartford Borough Council to refuse your client's application for planning permission for a cross-boundary outline application for the demolition of existing buildings and redevelopment to provide a strategic rail freight interchange comprising a rail freight intermodal facility, warehousing, new access arrangements from Moat Lane, associated HGV, car, cycle parking, landscaping, drainage, and associated works (within London Borough of Bexley). Creation of a new access road from the existing A206/A2026 roundabout, incorporating a bridge over the River Cray, landscaping and associated works (within Dartford Borough Council) in accordance with application ref: 15/02673/OUTEA and DA/15/01743/OUT dated 20 November 2015.

2. On 7 November 2017 these appeals were recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeals be dismissed, and planning permission be refused.

4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with his recommendation. He has decided to dismiss the appeals and refuse planning permission. A copy of the Inspector's report (IR) is

enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and the supplementary environmental information submitted before the inquiry opened. Having taken account of the Inspector's comments at IR1.2.2, the Secretary of State is satisfied that the Environmental Statement and other additional information provided complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Policy and statutory considerations

6. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

7. In this case the development plan consists of the adopted development plans for the area which comprises The London Plan, March 2016; the Bexley Core Strategy Development Plan Document, February 2012; and, saved policies of the Bexley Unitary Development Plan, 2004 for LBB. The Dartford Core Strategy, September 2011; and, the Dartford Development Policies Plan (DDPP), July 2017 for Dartford Borough Council. Other plans that affect the site are The Mayor's Transport Strategy 2018 and The Kent County Council Local Transport Plan 4: Delivering Growth without Gridlock 2016-2031. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR6.1.3 to 6.2.9. Other local planning guidance considered include the Mayor's Transport Strategy, 2018 and the Kent County Council Local Transport Plan 4: Delivering Growth without Gridlock 2016-2031 as set out at IR 6.5

8. Other material considerations which the Secretary of State has taken into account include the National Policy Statement for National Networks and the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'). The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the revised Framework.

Emerging plan

9. The emerging plan comprises the London Plan – The Spatial Development Strategy for Greater London outlined in the Inspectors Report at IR6.4. The Secretary of State considers that the emerging policies of most relevance to this case include LPe Policy G2, T7, and SD1.

10. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in

the Framework. While Examination in Public hearings have taken place since the inquiry closed, due to the early stage of the emerging plan only limited weight is attributed to the policies as outlined in the Inspectors Report at IR6.4.4.

Main issues

Location of site and Green Belt

11. The Secretary of State agrees with the Inspector for the reasons given in IR15.2.3 to 15.2.5 that the appeals proposal would cause substantial harm to the Green Belt (IR 15.2.6). He therefore considers that this carries substantial weight against the scheme. In accordance with paragraph 143 of the Framework, inappropriate development should not be approved except in very special circumstances.

Character and Appearance

12. For the reasons given at IR 15.3.1 to 15.3.6 the Secretary of State agrees with the Inspector that both the landscape impact and the visual impact of the appeals scheme would be substantial and adverse. Overall, he considers that it would cause significant harm to the character and appearance of the local area and he therefore attributes significant weight to this harm.

Rail issues

13. The Secretary of State acknowledges that given the locational need for effective connections for both rail and road, the number of locations suitable for Strategic Rail Freight Interchanges will be limited. He agrees with the Inspector at IR 15.4.3 that for the proposed rail link to be considered 'adequate', it would be necessary for it to be capable of accommodating 4 trains/day as a minimum. For the reasons given in IR 15.4.6 to 15.4.20, he agrees with the Inspector (15.4.20) that the likelihood of passenger service numbers having to be reduced in order to accommodate the appeals site freight traffic appears significant. The Secretary of State agrees with the Inspector's conclusion that there is significant uncertainty (15.4.21) as to whether the timetable could be flexed/amended to accommodate four trains per day to/from the appeals site either now or in the future. He agrees with the Inspector that overall this would conflict with the aims of a number of development plan policies that seek to minimize any adverse impact on the wider transport network and safeguard or improve public transport services, and that this should carry significant weight.

Highways Issues

14. For the reasons given in IR15.5.4 to 15.5.28, the Secretary of State agrees with the Inspectors findings (IR15.5.29) that, by 2031, the residual cumulative impact of the development during 'normal' (non-incident) highway conditions on the local highway network would be likely to be severe. He further agrees with the Inspector for the reasons given at IR 15.5.30 to 15.5.36 that, during incidents, the proposal would be likely to have a material, albeit limited, adverse impact, adding to severe conditions. He also agrees with the Inspector for the reasons given at IR 15.5.38 to 15.5.42 that the proposed mitigation measures do not alter this finding. The Secretary of State considers that the proposal would cause considerable harm to the convenience of highway users in Dartford. He notes that the proposal would be in conflict with the DDPP. The Secretary of State attributes significant weight to this matter.

Amenity and living conditions

15. For the reasons given in IR15.6.2 to 15.6.7, the Secretary of State agrees with the Inspector (IR15.6.8) that on balance, the appeals proposal would be unlikely to have an unacceptable material impact on living conditions in the local area, with particular reference to air quality. For the reasons given in IR15.6.9 to 15.6.11, the Secretary of State also agrees with the Inspector (IR15.6.12) that subject to mitigation secured the proposal is unlikely to cause noise and vibration that would have an unacceptable impact on living conditions. The Secretary of State therefore considers that these matters do not weigh against the scheme.

Other matters

16. For the reasons given at IR15.7.1 The Secretary of State agrees with the Inspector that the effect on Howbury Moat and a Grade II listed tithe barn would be negligible, and that their significance would not be materially harmed by the scheme, therefore the Secretary of State considers that there are no policy conflicts in this respect, or in respect of Howbury Grange. He further agrees with the Inspector for the reasons given in IR15.7.2 to 15.7.5 that there are no unacceptable impacts of the scheme in terms of the effect on living conditions of neighbouring residents, navigation and facilities along the River Cray, and flood risk.

Need for SRFIs in London and the South East

17. The Secretary of State agrees with Inspector that there is an identified need for a Strategic Rail Freight Interchange to serve London and the South East (IR15.8.7). However, given the uncertain findings in relation to both road and rail connectivity at IR15.8.10 to 15.8.15, he agrees with the Inspector's conclusion that the appeals scheme would not be well qualified to meet the identified need (IR15.8.16 and IR15.8.17).

Availability of alternative sites

18. The Secretary of State agrees with the Inspector that in the 2007 decision it was identified that there was no alternative development site, a finding which attracted considerable weight in favour of that scheme (IR4.2). However, since 2007 the London Gateway, a brownfield site not located in the Green Belt, has been developed. For the reasons given in IR15.8.18 to 15.8.24, the Secretary of State agrees with the Inspector's conclusions that the London Gateway site has the potential to provide an alternative development option for the provision of a SRFI to serve the same part of London and the South East as the appeals proposal (IR15.8.26).

Economic and Social impacts

19. The Secretary of State notes that the largest part of the appeal site lies within the Bexley Riverside Opportunity Area, and that the establishment of a SRFI at the appeals site would be consistent with that particular strategic policy direction. He agrees with the Inspector that it could provide significant benefits to the local economy creating a large amount of new employment (IR15.8.28). However, the Secretary of State notes that the Inspector found that the proposal would also be likely to have a material adverse effect on traffic congestion in the area which may have adverse impacts on the local economy (IR15.8.29). The Secretary of State also agrees with the Inspector that, given that broadly similar benefits could be obtained from the alternative, non-Green Belt site

(IR15.8.31), overall limited weight could be given to the socio-economic benefits of the scheme.

Effect on biodiversity

20. The Secretary of State notes that there are no statutory designated sites of nature conservation interest within or adjacent to the appeals site. Furthermore, he notes that the habitats that would be lost to development are of little ecological value, comprising improved and semi-improved grassland, and that an aim of the proposed landscaping along the eastern side of the site would be to enhance its ecology value, likely resulting in a net biodiversity gain overall (IR15.8.46). The Secretary of State agrees with the Inspector and attributes moderate weight to this gain.

Planning conditions

21. The Secretary of State has given consideration to the Inspector's analysis at IR15.8.47 to 15.8.62, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

Planning obligations

22. Having had regard to the Inspector's analysis at IR 15.8.63 to 15.8.66, the planning obligation dated September 2018, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR18.8.65 that the obligation complies with Regulation 122 and 123 of the CIL Regulations and the tests at paragraph 56 of the Framework. However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing this appeal and refusing planning permission.

23. The Secretary of State has considered whether it is necessary for him to refer back to parties in respect of regulation 123 prior to determining this appeal. However, the Secretary of State does not consider that the planning obligation overcomes his reasons for deciding that the appeal should be dismissed, as set out in this decision letter. Accordingly, he does not consider it necessary for him to do so.

Planning balance and overall conclusion

24. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with LP Policy 7.16, BCS Policies CS01 and CS17 as well as DCS Policies CS 1, CS 13 and DDPP Policy DP22 and LPe Policy G2 of the development plan and is not in accordance with the development plans overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

25. In this case the Secretary of State considers that the harm to the Green Belt from inappropriate development carries substantial weight against the scheme and the effect on the character and appearance of the local area carries significant weight along with

the adequacy of the proposed rail link and the effect on existing/future passenger rail services. Significant weight is also given to the effect on the convenience of highway users.

26. The Secretary of State considers that the provision of social economic benefits of the scheme has overall limited weight and the resulting net biodiversity gain has moderate weight.

27. The Secretary of State considers that the benefits of the scheme do not outweigh the harm to the Green Belt by reason of inappropriateness and any other harm, and so very special circumstances do not exist. He considers that the adverse impacts of the proposal significantly and demonstrably outweigh the benefits. Overall, he considers that there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

28. The Secretary of State therefore concludes that the appeal is dismissed, and planning permission is refused.

Formal decision

29. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeals and refuses planning permission for a cross-boundary outline application for the demolition of existing buildings and redevelopment to provide a strategic rail freight interchange comprising a rail freight intermodal facility, warehousing, new access arrangements from Moat Lane, associated HGV, car, cycle parking, landscaping, drainage, and associated works (within London Borough of Bexley), and for the creation of a new access road from the existing A206/A2026 roundabout, incorporating a bridge over the River Cray, landscaping and associated works (within Dartford Borough Council)

Right to challenge the decision

30. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

31. A copy of this letter has been sent to London Borough of Bexley, Dartford Borough Council and the Mayor of London, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Andrew Lynch

Andrew Lynch
Authorised by the Secretary of State to sign in that behalf

Appendix 5 – Case Law

a. R (Evans) v AG

*1787 Regina (Evans) v Attorney General (Campaign for Freedom of Information intervening)



Court
Supreme Court

Judgment Date
26 March 2015

Report Citation
[2015] UKSC 21
[2015] A.C. 1787



Supreme Court

Lord Neuberger of Abbotsbury PSC , Baroness Hale of Richmond DPSC , Lord Mance , Lord Kerr of Tonaghmore , Lord Wilson , Lord Reed , Lord Hughes JJSC

2014 Nov 24, 25; 2015 March 26

Freedom of information—Exempt information—Accountable person's certificate—Upper Tribunal ordering partial disclosure of correspondence between Prince of Wales and government departments—Attorney General issuing certificate effectively overriding requirement for disclosure—Whether "reasonable grounds" justifying issue of certificate—Whether certification concerning environmental information compatible with European Union law and treaty obligations on access to environmental information— Freedom of Information Act 2000 (c 36), s 53(2) — Environmental Information Regulations 2004 (SI 2004/3391), reg 18 — Parliament and Council Directive 2003/4/EC, art 6 — Charter of Fundamental Rights of the European Union, art 47 — Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998), art 9

Various government departments, and on appeal the Information Commissioner, refused the claimant journalist's request for disclosure of communications passing between the Prince of Wales and the departments. The Upper Tribunal allowed the claimant's appeal in relation to certain correspondence, which included some environmental information. The departments did not seek permission to appeal against that decision. Thereafter the Attorney General, as the appropriate accountable person, issued a certificate under section 53(2) of the Freedom of Information Act 2000 [1] that he had on reasonable grounds formed the opinion that there had been no failure to comply with the relevant provisions of the 2000 Act or of the Environmental Information Regulations 2004 [2] , thereby effectively overriding the decision of the Upper Tribunal. The claimant sought judicial review of the decision to issue a certificate claiming that the exercise of the power was not justified and was, accordingly, unlawful. The further issue arose at the hearing whether section 53 of the 2000 Act, as purportedly applied to environmental information requests by regulation 18 of the 2004 Regulations, was incompatible with European Union law on access to environmental information, in particular, article 6 of Parliament and Council Directive 2003/4/EC [3] , article 9 of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998) and article 47 of the Charter of Fundamental Rights of the European Union . The Divisional Court of the Queen's Bench Division dismissed the claim, holding that (i) although reasonable grounds had to exist before the power was exercised section 53 enabled the accountable person to prefer his own view to that of a tribunal without having to demonstrate that the latter's conclusion had been irrational, and the Attorney General had made a proper and rational *1788

evaluative judgment on the weight to be accorded to various competing public interest factors which had been reasonable; and (ii) the exercise of the section 53(2) power over environmental information was not incompatible with the requirement of access to a court of law or other independent body established by law in article 6 of the Directive and article 9 of the Aarhus Convention , the manner of any review by a court was a matter for domestic law, and the judicial review procedure was sufficiently flexible to permit close scrutiny of the reasonableness and appropriateness of the issue of the certificate. The Court of Appeal allowed the claimant's appeal and set aside the Attorney General's certificate.

On the Attorney General's appeal—

Held , (1), dismissing the appeal (Lord Wilson and Lord Hughes JJSC dissenting), that the Attorney General had not been entitled to issue a certificate under section 53 of the Freedom of Information Act 2000 in the way he had done; and that, accordingly, the certificate was invalid and unlawful (post, paras 86, 114, 145, 150, 151).

Dicta of Simon Brown LJ in R v Warwickshire County Council, Ex p Powergen plc (1997) 96 LGR 617 , 626, CA and of Sir John Chadwick in *R (Bradley) v Secretary of State for Work and Pensions (Attorney General intervening) [2009] QB 114* , para 91, CA considered.

(2) Lord Wilson JSC dissenting, that since Parliament and Council Directive 2003/4/EC (as given effect in domestic law by the Environmental Information Regulations 2004) by article 6(2)(3) required an applicant whose request for disclosure of environmental information had been refused by the public authority holding it to have access to a review before a court or other independent and impartial body established by law, the decisions of which would become final and binding on the authority concerned, it would be impermissible for the executive to have a further opportunity to prevent disclosure by way of a right, under regulation 18(6) of the 2004 Regulations read with section 53 of the 2000 Act, to override a judicial decision provided for in article 6(2) ; and that, accordingly, regulation 18(6) was incompatible with article 6 of the Directive and the certificate would therefore be ineffective in respect of the environmental information in any event (post, paras 100–105, 111, 113, 147–149, 150, 153, 167).

Per Baroness Hale of Richmond DPSC, Lord Mance, Lord Wilson and Lord Hughes JJSC. Section 53 can and should be read as having an effect wide enough that the Attorney General can, under the express language of section 53(2) , assert that he has reasonable grounds for considering that disclosure is not due under the 2000 Act. Disagreement as to the weight to be attached to competing public interests found by the tribunal is a matter contemplated by the statute and which a certificate could properly address by properly explained and solid reasons (post, paras 124, 129, 130, 142, 145, 153, 155, 171, 172, 174–179).

Per Lord Neuberger of Abbotsbury PSC, Lord Kerr of Tonaghmore and Lord Reed JSC. It is a basic principle that a decision of a court is binding as between the parties and cannot be ignored or set aside by anyone, including the executive. It is also fundamental to the rule of law that decisions of the executive are reviewable by the court at the suit of an interested party. If section 53 were to entitle a member of the executive to overrule a decision of the judiciary simply because, on consideration of the same facts and arguments, he does not like it, that meaning would have to be crystal clear from the wording of the Act. Section 53 falls short of being crystal clear. The section can fairly be given a narrow range of potential application, such as where there is a material change of circumstances since the judicial decision. On the language of section 53 the words "reasonable grounds" are dependent on their context. Given the detailed investigative processes by which a judicial decision is reached, the accountable person's grounds are not "reasonable" if they simply involve disagreeing with the conclusions of a court or judicial tribunal on the same material as was before it (post, paras 52, 58–59, 86, 88, 89, 90, 91, 115).

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Per Baroness Hale of Richmond DPSC and Lord Mance JSC. "Reasonable grounds" in section 53(2) imposes a higher hurdle than mere rationality. Disagreement with findings of fact or rulings of law in a fully reasoned decision will require the clearest possible justification. The Attorney General's certificate does not engage with or give any real answer to the closely reasoned decision of the Upper Tribunal but proceeds on the basis of findings which differ radically from those made by the tribunal without any adequate explanation, and thus does not satisfy the test for its issue because the disagreement with the tribunal's detailed findings and conclusions reflected in the certificate has not been justified on reasonable grounds (post, paras 129, 130, 142, 145).

Decision of the Court of Appeal [2014] EWCA Civ 254; [2014] QB 855; [2014] 2 WLR 1334; [2014] 3 All ER 682 affirmed.

The following cases are referred to in the judgments:

AXA General Insurance Ltd v HM Advocate [2011] UKSC 46; [2012] 1 AC 868; [2011] 3 WLR 871 , SC(Sc)
Al Rawi v Security Service (JUSTICE intervening) [2011] UKSC 34; [2012] 1 AC 531; [2011] 3 WLR 388; [2012] 1 All ER 1 , SC(E)
Anisminic Ltd v Foreign Compensation Commission [1969] 2 AC 147; [1969] 2 WLR 163; [1969] 1 All ER 208 , HL(E)
Associated Provincial Pictures Houses Ltd v Wednesbury Corpn [1948] 1 KB 223; [1947] 2 All ER 680 , CA
Department for the Environment, Food and Rural Affairs v Information Comr [2011] EWCA Civ 1606; [2012] PTSR 1299 , CA
Impact v Minister for Agriculture and Food (Case C-268/06) EU:C:2008:223; [2009] All ER (EC) 306; [2008] ECR I-2483 , ECJ
M v Home Office [1994] 1 AC 377; [1993] 3 WLR 433; [1993] 3 All ER 537 , HL(E)
Prohibitions del Roy (1607) 12 Co Rep 64
R v Cheltenham Comrs (1841) 1 QB 467
R v Secretary of State for the Home Department, Ex p Danaei [1998] INLR 124 , CA
R v Secretary of State for the Home Department, Ex p Pierson [1998] AC 539; [1997] 3 WLR 492; [1997] 3 All ER 577 , HL(E)
R v Secretary of State for the Home Department, Ex p Simms [2000] 2 AC 115; [1999] 3 WLR 328; [1999] 3 All ER 400 , HL(E)
R v Warwickshire County Council, Ex p Powergen plc (1997) 96 LGR 617 , CA
R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions [2001] UKHL 23; [2003] 2 AC 295; [2001] 2 WLR 1389; [2001] 2 All ER 929 , HL(E)
R (Bradley) v Secretary of State for Work and Pensions (Attorney General intervening) [2008] EWCA Civ 36; [2009] QB 114; [2008] 3 WLR 1059; [2008] 3 All ER 1116 , CA
R (Jackson) v Attorney General [2005] UKHL 56; [2006] 1 AC 262; [2005] 3 WLR 733; [2005] 4 All ER 1253 , HL(E)
Racal Communications Ltd, In re [1981] AC 374; [1980] 3 WLR 181; [1980] 2 All ER 634 , HL(E)
T-Mobile (UK) Ltd v Office of Communications [2008] EWCA Civ 1373; [2009] 1 WLR 1565; [2009] Bus LR 794 , CA

The following additional cases were cited in argument:

A v Secretary of State for the Home Department [2004] UKHL 56; [2005] 2 AC 68; [2005] 2 WLR 87; [2005] 3 All ER 169 , HL(E)
All Party Parliamentary Group on Extraordinary Rendition v Information Comr [2011] UKUT 153 (AAC); [2011] 2 Info LR 75 , UT
Attorney General v Guardian Newspapers Ltd (No 2) [1990] 1 AC 109; [1988] 3 WLR 776; [1988] 3 All ER 545 , HL(E)
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Bank Mellat v HM Treasury (No 2) [2013] UKSC 38; [2013] UKSC 39; [2014] AC 700; [2013] 3 WLR 179; [2013] 4 All ER 495; [2013] 4 All ER 533 , SC(E)
Bowen-West v Secretary of State for Communities and Local Government [2012] EWCA Civ 321; [2012] Env LR 448 , CA
Browning v Information Comr [2013] UKUT 236 (AAC); [2013] 2 Info LR 1, UT; [2014] EWCA Civ 1050; [2014] 1 WLR 3848 , CA
Brumarescu v Romania (2001) 33 EHRR 887 , GC

Validity under the FOIA 2000: the constitutional aspect

51. When one considers the implications of section 53(2) in the context of a situation where a court, or indeed any judicial tribunal, has determined that information should be released, it is at once apparent that this argument has considerable force. A statutory provision which entitles a member of the executive (whether a Government Minister or the Attorney General) to overrule a decision of the judiciary merely because he does not agree with it would not merely be unique in the laws of the United Kingdom. It would cut across two constitutional principles which are also fundamental components of the rule of law.

52. First, subject to being overruled by a higher court or (given Parliamentary supremacy) a statute, it is a basic principle that a decision of a court is binding as between the parties, and cannot be ignored or set aside by anyone, including (indeed it may fairly be said, least of all) the executive. Secondly, it is also fundamental to the rule of law that decisions and actions of the executive are, subject to necessary well established exceptions (such as declarations of war), and jealously scrutinised statutory exceptions, reviewable by the court at the suit of an interested citizen. Section 53 , as interpreted by the Attorney General's argument in this case, flouts the first principle and stands the second principle on its head. It involves saying that a final decision of a court can be set aside by a member of the executive (normally the minister in charge of the very department against whom the decision has been given) because he does not agree with it. And the fact that the member of the executive can put forward cogent and/or strongly held reasons for disagreeing with the court is, in this context, nothing to the point: many court decisions are on points of controversy where opinions (even individual judicial opinions) may reasonably differ, but that does not affect the applicability of these principles.

53. In *M v Home Office [1994] 1 AC 377* , 395, Lord Templeman in characteristically colourful language criticised "the proposition that the executive obey the law as a matter of grace and not as a matter of necessity [as] a proposition which would reverse the result of the Civil War". The proposition that a member of the executive can actually overrule a decision of the judiciary because he does not agree with that decision is equally remarkable, even if one allows for the fact that the executive's overruling can be judicially reviewed. Indeed, the notion of judicial review in such circumstances is a little quaint, as it can be said with some force that the rule ***1819** of law would require a judge, almost as a matter of course, to quash the executive decision.

54. The constitutional importance of the principle that a decision of the executive should be reviewable by the judiciary lay behind the majority judgments in the famous case, *Anisminic Ltd v Foreign Compensation Commission [1969] 2 AC 147* , where the House of Lords held that a statutory provision, which provided that any "determination by the commission" in question "shall not be called in question in any court of law", did not prevent the court from deciding whether a purported decision of the commission was a nullity, on the ground that the commission had misconstrued a provision defining their jurisdiction. Lord Reid said at p 170D that if it had been intended "to prevent any inquiry [in all circumstances] I would have expected to find something much more specific than the bald statement that a determination shall not be called in question in any court of law". And see per Lord Diplock in *In re Racal Communications Ltd [1981] AC 374* , 383, where he held that there is a presumption that Parliament did not intend an administrative body to be the final arbiter on questions of law.

55. This is scarcely a recent development. In *R v Cheltenham Comrs (1841) 1 QB 467* , a statute provided that any decision of the Quarter Sessions as to the levying of certain rates was to be "final, binding, and conclusive to all intents and purposes whatsoever", and that no order made in that connection "shall … be removed or removable by certiorari, or any other writ or process whatsoever, …; any law or statute to the contrary thereof in anywise notwithstanding". Despite this, Lord Denman CJ robustly stated at p 474 that

> "the clause which takes away the certiorari does not preclude our exercising a superintendence over the proceedings, so far as to see that what is done shall be in pursuance of the statute. The statute cannot affect our right and duty to see justice executed: and, here, I am clearly of opinion that justice has not been executed."

56. The importance of the right of citizens to seek judicial review of actions and decisions of the executive, and its consequences in terms of statutory interpretation, was concisely explained by Baroness Hale of Richmond in *R (Jackson) v Attorney General [2006] 1 AC 262* , para 159. She said that "the courts will, of course, decline to hold that Parliament has interfered with fundamental rights unless it has made its intentions crystal clear". The same point had been made, albeit in more general terms, by Lord Hoffmann in *R v Secretary of State for the Home Department, Ex p Simms [2000] 2 AC 115* , 131, where he said:

> "the principle of legality means that Parliament must squarely confront what it is doing and accept the political cost. Fundamental rights cannot be overridden by general or ambiguous words. This is because there is too great a risk that the full implications of their unqualified meaning may have passed unnoticed in the democratic process. In the absence of express language or necessary implication to the contrary, the courts therefore presume that even the most general words were intended to be subject to the basic rights of the individual. In this way the courts of the United Kingdom, though acknowledging the sovereignty of Parliament, ***1820*** apply principles of constitutionality little different from those which exist in countries where the power of the legislature is expressly limited by a constitutional document."

57. At least equally in point is the proposition set out by Lord Reed JSC in *AXA General Insurance Ltd v HM Advocate [2012] 1 AC 868* , para 152, that:

> "The principle of legality means not only that Parliament cannot itself override fundamental rights or the rule of law by general or ambiguous words, but also that it cannot confer on another body, by general or ambiguous words, the power to do so."

In support of this proposition, Lord Reed JSC cited two passages from the decision of the House of Lords in *R v Secretary of State for the Home Department, Ex p Pierson [1998] AC 539* . At p 575, Lord Browne-Wilkinson said that:

> "A power conferred by Parliament in general terms is not to be taken to authorise the doing of acts by the donee of the power which adversely affect the legal rights of the citizen or the basic principles on which the law of the United Kingdom is based unless the statute conferring the power makes it clear that such was the intention of Parliament."

To much the same effect, Lord Steyn said, at p 591, that "Unless there is the clearest provision to the contrary, Parliament must be presumed not to legislate contrary to the rule of law".

58. Accordingly, if section 53 is to have the remarkable effect argued for by Mr Eadie QC for the Attorney General, it must be "crystal clear" from the wording of the FOIA 2000 , and cannot be justified merely by "general or ambiguous words". In my view, section 53 falls far short of being "crystal clear" in saying that a member of the executive can override the decision of a court because he disagrees with it. The only reference to a court or tribunal in the section is in subsection (4)(b) which provides that the time for issuing a certificate is to be effectively extended where an appeal is brought under section 57 . It is accepted in these proceedings that that provision, coupled with the way that the tribunal's powers are expressed in sections 57 and 58 , has the effect of extending the power to issue a section 53 certificate to a decision notice issued or confirmed by a tribunal or confirmed by an appellate court or tribunal. But that is a very long way away indeed from making it "crystal clear" that that

power can be implemented so as to enable a member of the executive effectively to reverse, or overrule, a decision of a court or a judicial tribunal, simply because he does not agree with it.

59. All this militates very strongly in favour of the view that where, as here, a court has conducted a full open hearing into the question of whether, in the light of certain facts and competing arguments, the public interest favours disclosure of certain information and has concluded for reasons given in a judgment that it does, section 53 cannot be invoked effectively to overrule that judgment merely because a member of the executive, considering the same facts and arguments, takes a different view.
**1821*

Validity under the FOIA 2000: previous authority

60. There are three previous decisions of the Court of Appeal which bear on the question whether Parliament can have intended a member of the executive to be able freely to consider, or reconsider, for himself the very issues, on the same facts, which had been determined by another person or a tribunal. I agree with Lord Wilson JSC that (quite apart from the fact that they are not binding on us) none of these decisions, or the reasoning which they contain, would be directly determinative of the instant appeal. However, they cast some light on the appropriate approach to be adopted in a case where two separate bodies are called on by statute to determine the same issue.

61. In R v Warwickshire County Council, Ex p Powergen plc (1997) 96 LGR 617 , it was held that a county council, as highway authority, was precluded from refusing to agree to access works to a proposed development on the ground that the access was unsafe, because that was a ground which a planning inspector, after a full inquirey, held that the district council (adopting the view of the county council) had not made out as a reason for refusing planning permission for the development. Simon Brown LJ stated, at p 626, that "because of its independence and because of the process by which it is arrived at", the inspector's conclusion had become "the only properly tenable view on the issue of road safety".

62. In *R v Secretary of State for the Home Department, Ex p Danaei [1998] INLR 124* , an immigration adjudicator, after a hearing, had rejected the applicant's asylum appeal, but accepted that he had left Iran because he had had an adulterous relationship; it was held that the applicant's subsequent application for special leave to remain could not be rejected by the Home Secretary on the ground that he did not accept that the applicant had had such a relationship. Simon Brown LJ suggested that, unless "the adjudicator's … conclusion was … demonstrably flawed" or "fresh material has since become available", the Home Secretary had to accept the adjudicator's finding.

63. In *R (Bradley) v Secretary of State for Work and Pensions (Attorney General intervening) [2009] QB 114* , the Secretary of State was held to have wrongly rejected findings of maladministration made by the ombudsman. The ombudsman's investigation had been carried out in private, as required by the relevant legislation, and she had adopted a full, albeit not adversarial, written procedure. Sir John Chadwick said, at para 51, that the Secretary of State was not bound to follow the ombudsman's view, but that "his decision to reject the ombudsman's findings in favour of his own view" must not be "irrational having regard to the legislative intention which underlies the [relevant] Act". At para 91, Sir John said that it was "not enough that the Secretary of State has reached his own view on rational grounds", and that "he must have a reason (other than simply a preference for his own view) for rejecting a finding which the ombudsman has made after an investigation under [statutory] powers". It seems to me that this involved setting a somewhat lower threshold for departing from the earlier decision than Powergen or Danaei .

64. In Bradley , as in this case, the two decisions were provided for in the same statute as part of an overall procedure, whereas in Powergen the two decisions arose under different statutory codes—relating, respectively, to planning law and highways law. Danaei was something of a hybrid, as the **1822* two decisions were made under different statutes (the Asylum and Immigration Appeals Act 1993 and the Immigration Act 1971), but they were both part of the overall statutory asylum and immigration code, although not part of the same overall procedure. As in Bradley , it seems to me to follow from the fact that the two decisions in this case are provided for in the same statute and as part of a single procedure, that the second decision-maker, the accountable person, cannot always be obliged to follow the view of the first decision-maker, the Commissioner (or, on an appeal, the tribunal or the courts): otherwise there would be no point in providing for a second decision. However, that does not ultimately assist on the issue between the parties, namely the circumstances in which the accountable person is allowed to refuse to follow the earlier decision.

65. As to that aspect, Mr Evans's case here is, at least in principle, significantly stronger than that of the successful applicant in the three Court of Appeal cases. The first decision (the equivalent of the Upper Tribunal's decision in this case) was reached after a hearing in Powergen and in Danaei and after a full investigation in Bradley . However, in none of those three cases was there a hearing before a judicial body, as in the present case. Even the inspector in Powergen and the adjudicator in Danaei

were not judicial entities (as an immigration adjudicator was not at that time a member of the judiciary). Additionally, unlike the applicant in Powergen and in Danaei , Mr Evans had no opportunity to make submissions to the second decision-maker. I am unimpressed by the point that the accountable person under section 53 is in a stronger position than the Secretary of State in Bradley , because he has express statutory power to disagree with a certificate: it was inherent in the statutory provisions, indeed it was essential to the reasoning of the Court of Appeal, in Bradley that the Secretary of State could disagree with the decision of the ombudsman.

Validity under the FOIA 2000: provisional view

66. Such comparisons with other cases can, however, only be of limited assistance: what is of more importance is to seek to identify the relevant principles. In Bradley , para 70, Sir John Chadwick did just that and suggested that there were five applicable propositions. At least for present purposes, I would reformulate and encapsulate those propositions in the following two sentences. In order to decide the extent to which a decision-maker is bound by a conclusion reached by an adjudicative tribunal in a related context, regard must be had to the circumstances in which, and the statutory scheme within which, (i) the adjudicative tribunal reached its conclusion, and (ii) the decision-maker is carrying out his function. In particular, the court will have regard to the nature of the conclusion, the status of the tribunal and the decision-maker, the procedure by which the tribunal and decision-maker each reach their respective conclusions (eg, at the extremes, (i) adversarial, in public, with oral argument and testimony and cross-examination, or (ii) investigatory, in private and purely on the documents, with no submissions), and the role of the tribunal and the decision-maker within the statutory scheme.

67. Although Sir John expressed his propositions so as to apply to "findings of fact", it seems to me that they must apply just as much to opinions or balancing exercises. The issue is much the same on an appeal or review, namely whether the tribunal was entitled to find a particular fact **1823* or to make a particular assessment. Anyway, it is clear from Powergen that an assessment as to whether an access onto a highway would be safe fell within the scope of his propositions. Indeed, the ombudsman's decision in Bradley itself seems to me to have involved issues as to which she had to make assessments or judgments, such as whether the department concerned should have done more and whether some failures amounted to maladministration: see at para 27 of Sir John Chadwick's judgment.

68. In these circumstances, it appears to me that there is a very strong case for saying that the accountable person cannot justify issuing a section 53 certificate simply on the ground that, having considered the issue with the benefit of the same facts and arguments as the Upper Tribunal, he has reached a different conclusion from that of the Upper Tribunal on a section 57 appeal. I would summarise my reasons as follows.

69. First, and most importantly, the two fundamental principles identified in para 52 above. Secondly, (i) the fact that the earlier conclusion was reached by a tribunal (a) whose decision could be appealed by the departments, (b) which had particular relevant expertise and experience, (c) which conducted a full hearing with witnesses who could be cross-examined, (d) which sat in public, and had full adversarial argument, and (e) whose members produced a closely reasoned decision, coupled with (ii) the fact that the later conclusion was reached by an individual who, while personally and ex officio deserving of the highest respect, (a) consulted people who had been involved on at least one side of the correspondence whose disclosure was sought, (b) received no argument on behalf of the person seeking disclosure, (c) received no fresh facts or evidence, and (d) simply took a different view from the tribunal.

70. However, before one can fairly conclude that a section 53 certificate cannot be issued to override a decision of a court simply because the accountable person disagrees with the conclusion reached by the court on a section 57 appeal, it is necessary to address two questions. First and most obviously, if this constraint applies to the issue of a section 53 certificate after a determination by the Upper Tribunal, in what circumstances could such a certificate be issued once the Upper Tribunal (or an appellate court) has issued or approved a decision notice? Secondly, does the same constraint apply when there has been no appeal from the Commissioner, and, if so, how does the power to issue a certificate under section 53 interrelate with the right of appeal under section 57 ?

Validity under the FOIA 2000: implications of provisional view

71. If section 53 does not entitle an accountable person to issue a certificate simply on the ground that he disagrees with the determination of a court to uphold, or issue, a decision notice, then, given that it is agreed that section 53 can be invoked once a court has reached such a determination, the question arises: on what grounds can it be issued in such circumstances? The

112. I agree with Lord Dyson MR that it is not possible to infer this view from any specific words, phrases, or conclusions in the Certificate. However, it is clear from the Certificate, in my view at any rate, that the Attorney General was firmly of the view that none of the letters from the Prince of Wales to ministers should be disclosed. Apart from the overall tenor of the Attorney General's reasoning, two specific points strike me as significant. First, he clearly took the view that disclosure against the will of the Prince of any letter was objectionable. Secondly, he was wholly unimpressed with the argument that disclosure of the advocacy letters should be ordered because the contents of some of the letters had been made public.

The 2003 Directive: conclusions as to its effect

113. Accordingly, if (contrary to my conclusion expressed in paras 86–89 above), the Certificate had been valid so far as the FOIA 2000 was concerned, I would have concluded that the effect of the 2003 Directive was to invalidate the Certificate in relation to the environmental information, but not in relation to the non-environmental information, in the advocacy correspondence.

Conclusions

114. For these reasons, which, with the minor exception of paras 109–112 above, largely accord with those in the judgment of Lord Dyson MR in the Court of Appeal, I would dismiss this appeal.

115. It is, I think, worth mentioning that the same fundamental composite principle lies behind the reason for dismissing this appeal on each of the two grounds which are raised. That principle is that a decision of a judicial body should be final and binding and should not be capable of being overturned by a member of the executive. On the second ground, which involves EU law, the position is relatively straightforward, at least as I see it: **1834* the relevant legislative instrument, the 2003 Directive, expressly gives effect to that fundamental principle through the closing words of article 6(2) and the opening sentence of article 6(3) . On the first ground, which involves domestic law, the position is more nuanced: the relevant legislative instrument, the FOIA 2000 , through section 53 , expressly enables the executive to overrule a judicial decision, but only "on reasonable grounds", and the common law ensures that those grounds are limited so as not to undermine the fundamental principle, or at least to minimise any encroachment onto it.

LORD MANCE JSC (with whom BARONESS HALE OF RICHMOND DPSC agreed)

Introduction

116. This is an application for judicial review of a certificate issued by the Attorney General under section 53 of the Freedom of Information Act 2000 ("FOIA") to prevent disclosure of written communications passing between the Prince of Wales and various Government Departments during the period 1 September 2004 to 1 April 2005. Disclosure of these communications has been requested by Mr Rob Evans, a journalist with The Guardian.

117. The Departments' refusal of disclosure was upheld by the Information Commissioner. Mr Evans's appeal was transferred to the Upper Tribunal, where the Information Commissioner was the respondent and the various Departments were interested parties. The Information Commissioner now no longer resists disclosure, so I can in what follows simply refer to the Departments as the party resisting. The Upper Tribunal (Walker J, Upper Tribunal Judge John Angel and Ms Suzanne Cosgrave) heard extensive evidence and on 18 September 2012 allowed Mr Evans's appeal by a decision with reasons extending to 251 paragraphs, with open annexes extending to a further 297 paragraphs.

118. The Attorney General on 16 October 2012 issued his certificate stating that as an accountable person under section 53(8) of FOIA :

> "I have on reasonable grounds formed the opinion that, in respect of the requests concerned, there was no failure to comply with section 1(1)(b) of the Act or regulation 5(1) of the Environmental Information Regulations 2004 ."

Where such a certificate is issued, any decision notice ceases under section 53(2) to have any effect. Mr Evans challenges the legitimacy of that certificate.

119. The Divisional Court (Lord Judge CJ, Davis LJ and Globe J) dismissed the challenge. The Court of Appeal (Lord Dyson MR and Richards and Pitchford LJJ) allowed Mr Evans's appeal. The Attorney General now appeals against that decision by permission of the Court of Appeal.

120. The background circumstances and law have been set out in the judgment of Lord Neuberger of Abbotsbury PSC, which I have had the benefit of being able to read before preparing this judgment, and I need not repeat them. I have also had the benefit of reading Lord Wilson and Lord Hughes JJSC's judgments.
**1835*

121. Section 1(1)(b) of FOIA gives a person making a request to a public authority a general right to have communicated information held by that authority, subject to exemptions introduced by section 2 . Regulation 5(1) of the Environmental Information Regulations 2004 contains a specific right in respect of environmental information, intended to implement the requirements of Parliament and Council Directive 2003/4/EC on public access to environmental information. The provisions of FOIA apply to this specific right with some modifications, by virtue of regulation 18 . Both rights are expressly made subject to section 53 , set out by Lord Neuberger PSC in para 17. In the case of environmental information, this is by virtue of regulation 18(6) . Under section 53(2) a certificate may be served (as this one was) not later than 20 working days following either a decision notice or enforcement notice given by the Information Commissioner or the determination or withdrawal of an appeal.

The issues

122. The following issues arise: (i) whether the Attorney General's statement that he had "on reasonable grounds" formed the opinion that there was no failure to comply with section 1(1)(b) or regulation 5(1) was one which he was entitled to make, having regard in particular to the decision and reasoning of the Upper Tribunal, and (ii) whether, in any event, regulation 18(6) complies with article 6 of Parliament and Council Directive 2003/4/EC ; if it does not, then it is common ground that regulation 18(6) is invalid, and in that case a subsidiary issue arises: (iii) whether the certificate can stand even in relation to the non-environmental information which it covers.

The first issue— the test for issue of a certificate

123. On the first issue, there is a significant difference of principle between Lord Neuberger PSC and Lord Wilson JSC. Lord Neuberger PSC highlights the incongruity of a minister or officer of the executive, however distinguished, overriding a judicial decision. The incongruity is if anything more marked in the case of a court of record like the Upper Tribunal. This leads him to confine the operation of section 53 to marginal circumstances which could only rarely arise. But Lord Neuberger PSC also notes that further incongruity could arise if a certificate were more readily capable of being issued at the earlier stage of a non-judicial decision by the Information Commissioner. Unless the operation of section 53 were in this case also confined, the scope for issuing a certificate would vary according to whether the Information Commissioner's decision notice was for or against disclosure. None the less, Lord Neuberger PSC considers, provisionally, that the scope is not as confined in this case as after a tribunal decision, but that the existence of a right of appeal, on both law and fact, against an Information Commissioner's decision, would serve as some form of constraint.

124. Lord Neuberger PSC himself recognises, and Lord Wilson JSC elaborates, some of the problems which this construction faces. I can myself subscribe generally to the views expressed by Lord Wilson JSC in paras 171, 172 and 174–179 of his judgment. I consider that section 53 must have been intended by Parliament to have, and can and should be read as having, a
**1836* wider potential effect than that which Lord Neuberger PSC has attributed to it.

125. Lord Wilson JSC expresses this effect as being to enable the Attorney General to arrive at a different evaluation of the public interests. He takes the view that the fact that the statutory override is expressly conferred by FOIA distinguishes this scheme from those under consideration in the three authorities. I note, however, that, under the ombudsman scheme considered in *R (Bradley) v Secretary of State for Work and Pensions [2009] QB 114* the Court of Appeal held that the ombudsman's

findings of maladministration were not as a matter of law binding on the minister. Nevertheless, the Court of Appeal was, in Sir John Chadwick's words, at para 91:

> "not persuaded that the Secretary of State was entitled to reject the ombudsman's finding merely because he preferred another view which could not be characterised as irrational … it is not enough that the Secretary of State has reached his own view on rational grounds … he must have a reason (other than simply a preference for his own view) for rejecting a finding which the ombudsman has made after an investigation under the powers conferred by the Act."

126. To that extent therefore, the decision indicates that there can be constraints on executive departure from the considered findings of even a non-judicial body established to investigate and make recommendations. But, as Lord Neuberger PSC observes, the reasoning in Bradley appears to set a somewhat lower threshold for departing from the earlier decision than the Court of Appeal thought appropriate in the different circumstances under consideration in R v Warwickshire County Council, Ex p Powergen plc (1997) 96 LGR 617 and *R v Secretary of State for the Home Department, Ex p Danaei [1998] INLR 124* .

127. In Bradley , the differences between acting rationally or irrationally, simply preferring one's own view and having a reason for rejecting a finding were not further examined in the judgments, and the Court of Appeal in its actual decision appears to have contented itself with examining whether the Secretary of State did or did not act rationally: see paras 95–96 and 125.

128. Ultimately, the test applicable in relation to the first issue must be context-specific, in the sense that it must depend on the particular legislation under consideration, here the FOIA and the Regulations, and on the basis on which the Attorney General was departing from the decision notice or appeal decision. Mr James Eadie QC submits that the Attorney General could, instead of appealing, even take a different view from the Information Commissioner or Tribunal on a question of law, but accepts that, in that event, the correctness of his view of the law could be tested by judicial review. As to findings or evaluations of fact, he accepted at one point that something more than mere rationality was required under section 53 if the Attorney General was to depart from a finding or evaluation of facts. He went on to explain that the court must apply an objective standard, by asking whether the certificate expressed a view that was a reasonable view for the Attorney General to hold. A different view about or evaluation of the public interest was, in his submission, exactly what section 53 was intended to permit. Ultimately, therefore, it appears that Mr Eadie was contending **1837* for a test close, if not exactly equivalent, to rationality on the part of the Attorney General.

129. On any view, the Attorney General must under the express language of section 53(2) be able to assert that he has reasonable grounds for considering that disclosure was not due under the provisions of FOIA . That is, I consider, a higher hurdle than mere rationality would be. Under section 53(6) he must also express his reasons for this opinion, unless, under section 53(7) this would involve disclosure of exempt information. On judicial review, the reasonable grounds on which the Attorney General relies must be capable of scrutiny. (The only doubt, discussed by Lord Wilson JSC in para 181, is whether the court can consider in a closed material procedure any of the material of which disclosure is sought, in the same way that the Upper Tribunal was able to. That doubt does not require resolution on this appeal.)

130. When the court scrutinises the grounds relied on for a certificate, it must do so necessarily against the background of the relevant circumstances and in the light of the decision at which the certificate is aimed. Disagreement with findings about such circumstances or with rulings of law made by the tribunal in a fully reasoned decision is one thing. It would, in my view, require the clearest possible justification, which might I accept only be possible to show in the sort of unusual situation in which Lord Neuberger PSC contemplates that a certificate may validly be given. This is particularly so, when the Upper Tribunal heard evidence, called and cross-examined in public, as well as submissions on both sides. In contrast, the Attorney General, with all due respect to his public role, did not. He consulted in private, took into account the views of Cabinet, former ministers and the Information Commissioner and formed his own view without inter partes representations. But disagreement about the relative weight to be attributed to competing interests found by the tribunal is a different matter, and I would agree with Lord Wilson JSC that the weighing of such interests is a matter which the statute contemplates and which a certificate could properly address, by properly explained and solid reasons.

Appendix 5 – Case Law

b. R (Stonegate) v Horsham

*138 R. (on the application of Stonegate Homes Ltd) v Horsham DC

No Substantial Judicial Treatment

Court
Queen's Bench Division (Administrative Court)

Judgment Date
13 October 2016

Report Citation
[2016] EWHC 2512 (Admin)
[2017] Env. L.R. 8

Queen's Bench Division (Administrative Court)

Patterson J

6 May 2016

Built-up areas; EU law; Neighbourhood development plans; Reasons; Regional spatial strategies; Residential development; Strategic environmental assessments;

H1 *Judicial review—Town and Country Planning—strategic environmental assessment—Neighbourhood Plan—whether obligations under Directive 2001/42 complied with—whether duty under reg.19 of the Neighbourhood Planning (General) Regulations 2012 discharged—whether reasonable alternatives lawfully identified and assessed—whether adequate reasons given for findings that EU obligations met*

H2. The claimants (S) were developers who had appealed refusal by the defendant (H) of their application for planning permission for housing development. S made a claim under s.61N of the Town and Country Planning Act 1990 to challenge H's decision to make the Henfield Neighbourhood Plan (HNP). The claim was on three grounds: (1) H had failed to assess lawfully reasonable alternatives to the spatial strategy as established by the HNP; (2) H had failed to consider any alternatives to the Built-Up Area Boundary (BUAB) as established in the HNP and had failed to act rationally in the selection of the BUAB; and (3) H and/or the examining inspector had failed to give any or adequate reasons as to why the HNP met EU obligations under the Strategic Environmental Assessment (SEA) Directive . The Directive made provisions regarding the evaluation of likely environmental effects of plans and reasonable alternatives, including the provision of reasons for selecting the alternatives considered and the means of assessing those. S had not challenged the independent examiner's report of the HNP. Following approval by a referendum, H had been under a duty to make the plan, unless it considered that this would breach, or otherwise be incompatible with any EU obligation. Accordingly, unless S could establish that H could not lawfully consider that the plan was incompatible with any EU obligation, the claim would fail. S submitted that alternative "Option C" in the HNP had been rejected on the grounds of unsustainable pressure on the local road system, and that this had been inconsistent with the findings of an inspector in considering an appeal relating to development in the area.

H3. **Held** , in allowing the claim:

H4. (1) There was no evidence to support the view expressed for the rejection of Option C in the HNP. The requirement under the Directive, that alternatives were to be assessed in a comparable manner and on an accurate basis had simply not *139 been met. The independent examiner's conclusion on compliance of the HNP with EU obligations had been wrong.

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The obligation under the Directive was to ensure that the consideration of reasonable alternatives was based upon an accurate picture of what reasonable alternatives were. That had not been done in the present case. Not only had the conclusion been wrong but, in the circumstances, it had been irrational, given the absence of an evidence base. That report had then tainted H's decision. H had been under an independent duty to set out its decision under reg.19 of the Neighbourhood Planning (General) Regulations 2012 as to why it made the plan. It had clearly been unable to make a lawful decision given that the plan breached and was incompatible with EU obligations. It followed that the assessment of reasonable alternatives within the SEA process had been flawed and that making of the HNP incompatible with EU obligations. H's decision to make the plan had thus been irrational.

H5. (2) There did not appear to have been any assessment of the environmental impact of the BUAB. There was no explanation as to why the proposed delineation was preferred to any alternatives. The issue had been raised by S in representations on the draft HNP but, apparently, had been ignored by the independent examiner, H and others in the plan making process. It followed that this approach was also in breach of EU obligations.

H6. (3) As those flaws in the plan-making system meant that the HNP was in breach of the Directive, the reasons given were bound to be, and were, inadequate.

H7 Cases referred to:

Ashdown Forest Economic Development LLP v Secretary of State for Communities and Local Government [2015] EWCA Civ 681; [2016] P.T.S.R. 78; [2016] Env. L.R. 2
Fox Strategic Land & Property Ltd v Secretary of State for the Communities and Local Government [2012] EWCA Civ 1198; [2013] 1 P. & C.R. 6
North Wiltshire DC v Secretary of State for the Environment (1993) 65 P. & C.R. 137; [1992] 3 P.L.R. 113; [1992] J.P.L. 955; CA (Civ Div)
R. (on the application of Batchelor Enterprises Ltd) v North Dorset DC [2003] EWHC 3006 (Admin) ; [2004] J.P.L. 1222
R. (on the application of Bradley) v Secretary of State for Work and Pensions [2008] EWCA Civ 36; [2009] Q.B. 114; [2008] 3 W.L.R. 1059
R. (on the application of Enfield LBC) v Mayor of London [2008] EWCA Civ 202; [2008] Env. L.R. 33; [2008] B.L.G.R. 615
R. (on the application of Evans) v Attorney General [2015] UKSC 21; [2015] A.C. 1787; [2015] 2 W.L.R. 813; [2015] Env. L.R. 34
R. v Warwickshire CC Ex p. Powergen Plc (1998) 75 P. & C.R. 89; [1997] 3 P.L.R. 62; [1998] J.P.L. 131

H8 Legislation referred to:

Town and Country Planning Act 1990 ss.61E , 61N
Directive 2001/42 on the assessment of the effects of certain plans and programmes on the environment (SEA) arts 1 – 3 , 5 , 8 & 9
Planning and Compulsory Purchase Act 2004 ss.38 , 38A , 38B & 38C and Sch.4B
Localism Act 2011
Neighbourhood Planning (General) Regulation 2012 (S.I. 2012/637) reg.19 ***140**

H9 Representation

Mr M. Lowe QC and Mr R. Williams , instructed by Russell-Cooke, appeared on behalf of the claimants.
Mr D. Lintott , instructed by Sharpe Pritchard, appeared on behalf of the defendant.

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Judgment

Patterson J:

Introduction

1. This is a claim under s.61N of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) which seeks to challenge the decision of the defendant on 27 April 2016 to make the Henfield Neighbourhood Plan (HNP). That decision was made following a referendum held on 12 April 2016 when the HNP was passed with a vote of 94.3 per cent of the voters.

2. The claimants are developers who have been promoting a site known as Sandgate Nursery, on the western side of Henfield, as a site for the development of 72 dwellings. A planning application was refused by the defendant on 25 November 2014. That refusal was appealed by the claimants. The decision remains with the Secretary of State for determination.

3. The claim is brought on three grounds:

i) That the defendant had failed to lawfully assess reasonable alternatives to the spatial strategy as established by the HNP and, in particular, the alternative of permitting development on the western edge of Henfield;
ii) That the defendant had failed to consider any alternatives to the Built-Up Area Boundary (BUAB) as established in the HNP and had failed to act rationally in the selection of the BUAB;
iii) That the defendant and/or the examining inspector failed to give any or adequate reasons as to why the HNP met EU obligations.

4. The defendant submits:

i) That the challenge is limited in scope by s.38A(4) and s.38A(6) of the 2004 Act to a consideration of whether the making of the neighbourhood development order would breach or would otherwise be incompatible with any EU obligation or any of the Convention rights;
ii) Even if the scope of challenge is not so limited the option of developing land to the west of Henfield and that of including the "Barratt site" within the BUAB of Henfield had been adequately dealt with by the examiner and the defendant in a proportionate way and the reasons that had been advanced were adequate.

5. An acknowledgement of service and summary grounds of resistance were filed by the interested party, Henfield Parish Council, on 3 June 2016, which submit:

i) That it lawfully assessed development sites put forward during the call for sites including those on the western edge of Henfield;
ii) It did consider alternatives to the BUAB and it acted rationally in the selection of the BUAB. ***141**

Apart from submission of those grounds the Parish Council has played no active role in the proceedings before me.

6. On 27 June 2016 Gilbart J ordered a "rolled-up hearing".

Legal framework

Development plans

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7. The development plan has a particular significance in the operation of the planning system in England. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (the 2004 Act) provides:

> "(6) If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

Neighbourhood development plans

8. Amendments to the 2004 Act were made by the Localism Act 2011 . Those amendments provide for a process whereby parish councils or bodies designated as neighbourhood forums can initiate the making of a neighbourhood development plan. The provisions provide for an independent examination of a neighbourhood development plan. The examiner may recommend that the plan, with or without modification, is submitted to a referendum. If more than half of those voting at a referendum vote in favour of the plan, the local planning authority must make the neighbourhood development plan.

9. The material provisions of s.38A of the 2004 Act provide:

> "(1) Any qualifying body is entitled to initiate a process for the purpose of requiring a local planning authority in England to make a neighbourhood development plan.
>
> (2) A 'neighbourhood development plan' is a plan which sets out policies (however expressed) in relation to the development and use of land in the whole or any part of a particular neighbourhood area specified in the plan.
>
> (3) Schedule 4B to the principal Act , which makes provision about the process for the making of neighbourhood development orders, including—
>
> (a) provision for independent examination of orders proposed by qualifying bodies, and
>
> (b) provision for the holding of referendums on orders proposed by those bodies,
>
> is to apply in relation to neighbourhood development plans (subject to the modifications set out in s.38C(5) of this Act).
>
> (4) A local planning authority to whom a proposal for the making of a neighbourhood development plan has been made—
>
> (a) must make a neighbourhood development plan to which the proposal relates if in each applicable referendum under that Schedule (as so applied) more than half of those voting have voted in favour of the plan, and ***142**
>
> (b) if paragraph (a) applies, must make the plan as soon as reasonably practicable after the referendum is held."

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boundaries and was dismissed as it resulted in too few new homes being allocated. Alternative option B confined allocations to all the edges of the village and allowed for greater development at Small Dole. That was dismissed due to the scale of negative impact on environmental measures. Alternative option C favoured sites on the western boundary of the village that consolidated the recent consent at West End Lane. That, too, scored badly overall as any further significant development in that area, which lies furthest from the village centre, would place unsustainable pressure on the local road system and infrastructure: see para.7.11.

44. The wording in the final SEA on option C is identical to that contained in the Sustainability Appraisal in December 2014, that published in March 2015 and that published in August 2015.

45. In a note produced of a planning workshop on 7 July 2014 into the HNP on housing and development it was noted that the recent planning appeals/consents in Henfield had had an impact on local public opinion and, significantly:

> "Sites in Henfield closer to the village services on its eastern edge would have less of an impact in terms of traffic movements generated by new residents (but marginal in terms of commuting, shopping, leisure trips)."

Submissions

46. To a great extent the claimants' grounds of challenge overlap. For ease I have retained their original numbering but as will become apparent much of the reasoning applies to all and the rest of this judgment should be read with that in mind.

Ground 1(a): Assessment of alternatives to the spatial strategy within the Hnp

47. The claimants contend that there were three basic errors, namely:

i) That there was an unlawful departure from/failure to grapple with previous findings on a materially similar issue;
ii) That there was a lack of any evidential foundation for the conclusions that were drawn;
iii) There was a premature fixing of the spatial strategy.

48. The claimants rely upon the principle that where an issue has previously been the subject of a finding of fact or judgment by an expert independent tribunal in a related context the decision-maker must take into account and give appropriate respect to the conclusions of that tribunal. The weight to be given to the conclusions of the other tribunal and the ease with which the decision-maker can depart from previous conclusions of the tribunal depends upon the context. However, in all ***151** cases it is incumbent on the decision-maker to grapple with the conclusions of the tribunal and, if departing from them, to give reasons for so doing.

49. In support of that proposition the claimants rely upon the well known cases of *R. v Warwickshire County Council Ex p. Powergen Plc (1998) 75 P. & C.R. 89* , *R. (Bradley) v Work and Pensions Secretary [2008] EWCA Civ 36* , *R. (Mayor of London) v Enfield London Borough Council [2008] EWCA Civ 202* and R. (Bachelor Enterprises Limited) v North Dorset District Council [2003] EWHC 3006 (Admin) and *R. (Evans) v Attorney General [2015] UKSC 21* .

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50. From those cases the claimants make the following five submissions:

i) Both the local planning authority and the parish council were dealing, in the HNP, with the same proposition made by the parish council in the Barratt appeal. The only distinction was of size of development.
ii) The proposition was the same as that which was put to the inspector on the sustainability of the Barratt site and rejected by him after he had heard evidence.
iii) The Barratt appeal inspector had heard evidence over several days.
iv) Neither the defendant nor the parish council began to grapple with the significance of the Barratt decision or to consider whether that appeal decision constituted a change of circumstances that might have warranted a different decision on spatial strategy in the HNP.
v) The decision made in the HNP was of an absolute nature, namely, that development on the west would "lead to unsustainable pressure on the local road network".

51. The second strand of cases on which the claimants rely are those which highlight the principle of consistency in decision-making. The claimants rely on *North Wiltshire District Council v Secretary of State for the Environment (1992) 65 P. & C.R. 137* and *R. (Fox Strategic Land & Property Limited) v Secretary of State for Communities and Local Government [2012] EWCA Civ 1198* . The claimants submit that although the decisions relate to individual planning applications there is no logical reason why the principle of consistency should not apply equally to the context of plan-making.

52. The defendant contends that a plan-making exercise is different to what was being considered in the cases of *Powergen* , *Evans* , Bachelor and *North Wiltshire* . The plan-making authority and independent inspector were looking at comparative sustainability. What was before them was an evaluative judgment as to where development should go within the neighbourhood. A court can only intervene if the decisions made were irrational.

53. The timing of the challenge is important to the overall context. The independent examiner's report has not been challenged by the claimants at any stage. The February 2016 decision on the part of the defendant accepted the recommendation and modifications of the examiner that the HNP met the basic conditions in para.8(2) of Sch.4B of the 1990 Act which included a determination as to the compatibility with EU obligations. After the referendum on 12 April 2016 with 94.3 per cent of the votes cast agreeing that the HNP be used in the determination of planning applications the defendant was under a duty to make the plan subject only to s.38A(6) which provides that local planning authorities are not subject to the duty if they consider that the making of the plan would breach or otherwise be incompatible with any EU obligation. Unless the claimants can establish that the ***152** defendant could not lawfully consider that the plan was incompatible with any EU obligation the claim must fail.

Discussion and conclusions

54. Alternative option C which related to sites on the western boundary of Henfield was dismissed in the SA/SEA report and in the HNP because "any further significant development in that area which lies furthest from the village centre would place unsustainable pressure on the local road system." There was, therefore, a live issue as to whether development on the western side would place unsustainable pressure on the local road system. As a matter of fact the western area lay further from the village centre but that was not the rationale for rejecting the area in the SA/SEA or in the HNP.

55. The Barratt application on land north of West End Lane was made on 29 April 2014. The appeal into the refusal of planning permission by the defendant was heard over four days at the end of March and the beginning of April 2014. A decision letter was issued on 2 June 2014. One of the reasons for refusal was a highways reason. That was withdrawn by the council at appeal as a result of an agreement between Barratt and the Highways Authority on highway works and contributions. The issue of transportation though remained live at the appeal as the parish council and other interested parties

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maintained their objections. As a result, one of the main issues in the appeal recorded by the appeal inspector was what effect the development would have on the safety and free-flow of traffic in Henfield and on sustainable travel objectives. The inspector allowed the appeal.

56. In dealing with transportation objections he concluded that most Henfield facilities were within reasonable and level walking distance of the appeal site and the roads were also suitable for cycling. Improvements to the footways would make walking easier and safer and a more attractive option. He noted that much attention at the appeal before him focused on the junction of Church Street and High Street. The appeal development would generate additional movements so that there was some potential for additional congestion at peak hours but the transport assessment did not support the high traffic estimates claimed by some objectors which were typically based on car ownership and parking provision rather than car use. Not all cars would be used every day or at the same time of day. Moreover, should excessive queuing occur then alternative routes were available which had wider and higher capacity junctions with the main road. Some drivers were likely to divert to those routes if congestion increased. Those features would themselves serve to keep traffic speeds to safe levels. He rejected the suggestion that the diversion routes were not suitable to carry extra traffic. Accordingly, there was before him a lack of evidence to demonstrate that the Church Street junction would become unsafe or that the congestion or other effects of extra traffic would be severe in terms of the NPPF. He clearly dismissed the arguments of the parish council and individual objectors on highways and sustainability grounds. Neither the district council nor the county highway authority objected to the development on highway grounds (paras 55 and 56 of the decision letter). He concluded that the Barratt development would be a sustainable development and the presumption in favour of such development should be applied.

57. The Sandgate Nursery site was the subject of an application for planning permission in March 2014 for 72 dwellings. Officers recommended approval. ***153** Members rejected that recommendation and refused planning permission on 25 November 2015 including highways grounds. As set out that refusal has been the subject of an appeal.

58. During the course of the appeal a highways statement of common ground was agreed between the appellants and West Sussex County Council, the relevant highways authority. That included agreement that the Sandgate Nursery site was accessible by foot to many of Henfield's facilities and services located about 1.2 kilometres east of the site within a maximum "acceptable" walking distance for pedestrians without mobility impairment of 2 kilometres. The parties agreed that the proposal should not be refused on traffic or transport grounds with the consequence that the highways reason for refusal was withdrawn.

59. The claimants contend that the primary basis for rejecting alternative Option C in the HNP was unsustainable pressure on the local road system which was clearly inconsistent with the inspector's decision in the Barratt appeal. No reference in the plan making process was made to the Barratt appeal decision letter nor to the position of the highways authority in that appeal or in the Sandgate appeals where the highway authority withdrew the highways reason for refusal. The outcome of the Barratt appeal was clearly known both to the parish council and to the defendant. It had been brought to the attention of the independent examiner who was obliged to deal with it.

60. In her first report dated 10 July 2015 the independent examiner in dealing with matters under the hearing ' European Convention on Human Rights and European Union Obligations' expressed "satisfaction that the neighbourhood plan did not breach nor is it in anyway incompatible with the ECHR ". She continued "I am satisfied that a fair and transparent process has been undertaken in the seeking of and the selection of development sites within the neighbourhood plan area. There is a clear rationale to the allocations where presumption is in favour of development within the allocated settlement boundaries close to facilities both to the benefit of future occupants and to continue sustaining those facilities." She continued that it had been determined that an SA/SEA would be required as policies may have significant environmental effects, in particular site allocations. She said:

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> "The SA/SEA demonstrates its policies will have no significant social, economic or environmental effects. I am satisfied that the proposals have been significantly assessed and raise no negative impact in either summary (as per Table 3: Summary Assessment of Objectives) nor in the detail of the assessment."

61. In her second report dated 25 February 2016 under the heading "Subsequent changes to policy context since an examination July 2015" the examining inspector said:

> "There had been no subsequent alterations to the European Convention on Human Rights under European Union obligations to impact upon this NDP ... I am satisfied that the neighbourhood plan does not breach nor is in anyway incompatible with the ECHR. ... the SA/SEA demonstrates the revised NDPs policies will have no significant social, economic or environmental effect ... I am therefore satisfied that the neighbourhood plan is compatible with EU obligations and, as modified, will meet the basic conditions in this respect."

62. Section 5 of her report dealt with representations received. In that she said: ***154**

> "Concern is raised about failing to assess housing needs for local and wider community and providing a sufficient allocation of land for housing and unfair exclusion of land on the western side of the village, no objective assessment to support the evidence of 137 unit allocation is correct in terms of numbers, need to provide an opportunity to revisit the other candidate sites to make up the shortfalls. Most of these points were raised on the previous plan. ... the rationale for not supporting development on the western boundary is clearly stated in NDP para 4.19. The rationale for supporting or otherwise is clearly stated in the site allocation paper and there is no reason to reopen these issues with no conflicts arising with meeting the basic conditions."

63. The issue then is whether the inspector was under an obligation to grapple with the implications of the finding of the Barratt appeal inspector on the parish council's assessment of reasonable alternatives and the subsequent development of highways issues in the Sandgate Nursery appeal. Her failure to do so is contended to be in breach of the legal principles established in the *Powergen* and *North Wiltshire* line of cases.

64. I have no hesitation in rejecting the application of the *North Wiltshire* line of cases to the circumstances before the independent examiner and the defendant, namely, that the decision made in the HNP needed to be consistent with the decision on the individual planning decision on the Barratt appeal. *North Wiltshire* was dealing with an entirely different context to a

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plan-making exercise in which comparative judgments have to be made within the plan boundary. That exercise is distinct from determining, on an individual basis, whether a planning application is acceptable on a particular site. An individual case is entirely distinguishable from reaching a decision on the spatial dispersal of prospective development in a broader geographical area. That is the case also in *Fox Strategic Land & Property* which, again, was dealing with two planning appeals after the refusal of planning permission. There, the issue was whether the decisions of the Secretary of State were inconsistent with the established spatial vision for the area. In the current context the issue was the establishment of the spatial vision for the HNP and how it is to be realised through objectives in the NDP. It is, in my judgment, a materially different exercise. That does not mean, however, that the Barratt decision may not be a material consideration for the plan making process but there was no obligation on the part of the plan making authority to follow it.

65. Again, none of the *Powergen* line of cases are dealing with plan-making decisions and the comparative exercise which is part of that process. In *Evans* Lord Neuberger reviewed the cases of *Powergen* and *Bradley* amongst others and continued at [66] and [67]:

> 66. Such comparisons with other cases can, however, only be of limited assistance: what is of more importance is to seek to identify the relevant principles. In *Bradley* at [70], Sir John Chadwick did just that and suggested that there were five applicable propositions. At least for present purposes, I would reformulate and encapsulate those propositions in the following two sentences. In order to decide the extent to which a decision-maker is bound by a conclusion reached by an adjudicative tribunal in a related context, regard must be had to the circumstances in which, and the statutory scheme within which, (i) the adjudicative tribunal reached its conclusion, and (ii) the decision-maker is carrying out his function. In particular, the court will have ***155** regard to the nature of the conclusion, the status of the tribunal and the decision-maker, the procedure by which the tribunal and decision-maker each reach their respective conclusions (eg, at the extremes, (i) adversarial, in public, with oral argument and testimony and cross-examination, or (ii) investigatory, in private and purely on the documents, with no submissions), and the role of the tribunal and the decision-maker within the statutory scheme.
>
> 67. Although Sir John expressed his propositions so as to apply to "findings of fact", it seems to me that they must apply just as much to opinions or balancing exercises. The issue is much the same on an appeal or review, namely whether the tribunal was entitled to find a particular fact or to make a particular assessment. Anyway, it is clear from *Powergen* that an assessment as to whether an access onto a highway would be safe fell within the scope of his propositions. Indeed, the ombudsman's decision in *Bradley* itself seems to me to have involved issues as to which she had to make assessments or judgements, such as whether the department concerned should have done more and whether some failures amounted to maladministration – see at para 27 of Sir John's judgment."

66. That makes it clear that a decision-maker can have regard to a balancing exercise carried out by another in a related context but the extent to which he is bound by it requires a consideration of the circumstances and the statutory scheme within which the decision-maker is reaching its conclusion and carrying out its function. Given the different nature of the exercises which an inspector on an appeal under s.78 is concerned and those with which an independent examiner or a plan-making authority is concerned it would be difficult to conclude that the latter were bound by the decision of an inspector on an individual site such as that at West End Lane. But that is not to say that the Barratt decision and the current state of knowledge on the highways network should have been disregarded in the plan making system. The Barratt decision letter was issued on 2 June 2014. The parish council were clearly aware of it, as Mr Osgood, who has filed a witness statement in the current proceedings, attended the Barratt inquiry as a local resident and as a member of the Henfield Parish Council, as also did a Mr P Hill. They were aware also of the comments at the planning workshop on the 7 July 2014.

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67. The basis for the claim in the HNP that sites on the western boundary consolidating the recent consent at West End Lane would place unsustainable pressure on the local road system is thus, in my judgment, entirely obscure. Mr Osgood, in his witness statement of 29 July 2016, refers to the planning workshop on 7 July whose purpose was to determine the preferred spatial plan for the parish and, specifically, the approach to be taken to distributing new houses to be allocated by the plan. He says, in paragraph 8 of his witness statement:

> "It was open to the parish council and the examiner to determine where development should go and to rule out development to the west on the basis that the community felt 'it would place unsustainable pressure on the local road system and infrastructure' based upon the following:
>
> > '1. The western side of the village is further from the High Street as a matter of facts;
> >
> > 2. Although some facilities are to the west of the High Street, these are all on the eastern side of the village bar one; ***156**
> >
> > 3. Those travelling from the west would therefore be less likely to travel on foot and more likely to come by car; and
> >
> > 4. Travel by car from the western side of the village is more likely to cause pressure because of pinch points in the road system.'
>
> This was discussed at length at the planning workshop in 7 July 2014 and at the site visits thereafter and the essence of this reasoning appeared in many residents' representations.

68. His following paragraph refers to the statement of common ground submitted at the West End Lane inquiry where agreement was reached that, in highways terms, the roads and junctions local to the site were adequate in terms of safety and capacity to cope with site traffic during the construction period but he goes on to say that local residents were still of the opinion that the increase in traffic would have an adverse effect on highways safety. That was revealed in various consultation responses.

69. The difficulty with the basis upon which Mr Osgood says that the decision was reached that sites on the west would place unsustainable pressure on the local road system and infrastructure is that, firstly, the record of the planning workshop of 7 July says nothing of the sort. Its full terms are set out above. Sites to the east are said to have less of an impact in terms of traffic movement but the difference between east and west was marginal in terms of commuting, shopping and leisure trips. That does not amount to an evidence base for concluding unsustainable pressure on the local road system and infrastructure. Secondly, the other points that Mr Osgood makes in paragraph 8 of his witness statement, as set out above, and that he attributes to other consultation responses do not provide a basis for the conclusion in the HNP either. They are unsupported by any technical or expert evidence which, in so far as it exists, goes the other way. Mr Osgood's views are based on opinion and an opinion that had been rejected in the Barratt appeal. As the claimants submit, the reason given for the rejection of sites on the western boundary was because they would place unsustainable pressure on the local road system. That conclusion and the evidence base for it, was therefore, fundamental to the choice of strategy for the HNP.

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70. The question then is whether such evidence as there was, based upon local opinion and, as Mr Osgood says, "what the community felt", was sufficient to meet the standard required under the SEA Directive ? As *Ashdown Forest Economic Development Llp v Secretary of State for Communities and Local Government & Others [2015] EWCA Civ 681* confirmed, "... the identification of reasonable alternatives is a matter of evaluative assessment for the local planning authority, subject to review by the court on normal public law principles [42]."

71. Article 5(2) of Directive 2001/42/EC says:

> "2. The environmental report prepared pursuant to paragraph 1 shall include the information that may reasonably be required taking into account current knowledge and methods of assessment, the contents and level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment."

72. Guidance on the implementation of the Directive by the EU advises that: ***157**

> "The essential thing is that likely significant effects of the plan or programme when the alternatives are identified, described and evaluated in a comparable way. ...it is essential that the authority ... responsible for the plan as well as the authorities and public consulted are presented with an accurate picture of what reasonable alternatives there are and why they are not considered the best option."

73. Here, anyone reading the HNP would be of the view that significant development on the western side of Henfield would lead to unsustainable pressure on the local road system. Beyond assertion by local residents who had made the same point at the West End Lane appeal when it had been rejected, there was no evidence to support the view expressed for the rejection of Option C in the HNP. Although the Office of the Deputy Prime Minister's Practical Guide to Strategic Environmental Assessment Directive advises that predictions do not have to be expressed in quantitative terms as quantification is not always practicable and qualitative predictions can be equally valid and appropriate it goes on to say in para.5.B.11:

> "However, qualitative does not mean 'guessed'. Predictions need to be supported by evidence, such as references to any research, discussions or consultation which helped those carrying out the SEA to reach their conclusions."

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74. The problem here is that the absolute nature of the rejection of Option C is unsupported by anything other than guesswork. At the very least, having received the Barratt decision letter the plan-making authority, the parish council could have contacted the highways authority to obtain their views on the capacity of the broader local highways network in the western part of Henfield. There is no evidence that that was done. There is no evidence that anything was done when the highways objections to residential development on the Sandgate Nursery site was withdrawn either. Until it is, the outcome of significant development on the western side of Henfield on the local road network is unknown. What is known is that the permitted site and the appealed site together do not provide any insuperable highways objections. Without further highways evidence though, the reason for rejecting Option C as set out in para.4.19 of the HNP is flawed, based as it is upon an inadequate, if that, evidence base. The requirement, under the Directive, that the alternatives are to be assessed in a comparable manner and on an accurate basis was simply not met.

75. The Sandgate Nursery appeal in which the highways reason for refusal was withdrawn would not have been available to the independent examiner in 2015 but it would have been known to the defendant when it received the second report from the independent examiner in February 2016. That combination of factors, namely, the West End Lane appeal decision letter and the highways stance at Sandgate Nursery mean that questions ought to or should have been raised on the part of the defendant on the adequacy of the SEA process for the determination of the spatial strategy in the HNP.

76. Further, the position on Sandgate Nursery was made known to the independent examiner in 2016 through further representations made by the claimants as part of the revised plan process. Given that, and her knowledge of the outcome of the Barratt appeal, her conclusion on compliance of the HNP with EU obligations was wrong. It was insufficient on her part to say that the matter had been raised before ***158*** and refer back to para.4.19 of the HNP. That paragraph, in so far as it deals with the rejection of Option C, I have found was based on what appears to be an erroneous conclusion and certainly had not been reached based upon an accurate appraisal of Alternative C. The obligation under the SEA Directive is to ensure that the consideration of reasonable alternatives is based upon an accurate picture of what reasonable alternatives are. That was not done here. Not only was the conclusion wrong but, in the circumstances, it was irrational, given the absence of an evidence base. Her flawed report then tainted the decision on the part of the defendant.

77. But the defendant knew the position and had the relevant information. It is under an independent duty to set out its decision under reg.19 of the Neighbourhood Planning (General) Regulations 2012 as to why it made the plan. It was clearly unable to make a lawful decision given, as I have found, that the plan breached and was incompatible with EU obligations.

78. It follows that, in my judgment, the assessment of reasonable alternatives within the SEA process was flawed and that the making of the HNP was incompatible with EU obligations. The decision on the part of the defendant to make the plan was thus irrational.

79. This ground succeeds.

Ground 1(b): Lack of any evidential foundation for conclusions

80. I have largely dealt with this under Ground 1(a). I deal with it more shortly as I do also Ground 1(c).

81. It is of note that in the representations made on behalf of the claimants on 16 November 2015 on the HNP it was said in terms that there was no objective assessment to support the contention in the draft neighbourhood plan that locations on the western edge of the village were unsustainable in highways terms. In that representation, not only is there reference to

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Appendix 5 – Case Law

c. Mayor of London v Enfield

*694 The Mayor of London v Enfield LBC

No Substantial Judicial Treatment

Court
Court of Appeal (Civil Division)

Judgment Date
18 March 2008

Report Citation
[200] EWCA Civ 202
[2008] Env. L.R. 33

Court of Appeal (Civil Division)

(May , Latham & Moore-Bick, L.JJ.):

March 18, 2008

Directions; Elected mayors; Irrationality; Recycling; Waste management; Waste policy;

H1 *Waste management—judicial review—waste policy—Municipal Waste Management Strategy for London—closure of existing re-use and recycling site—capacity at alternative site—direction by Mayor of London that compensatory provision be made through replacement site—Secretary of State accepting adequate compensatory provision provided—whether maintaining Direction unlawful or irrational—whether able to stand in light of Secretary of State's decision*

H2. The respondent local authority (E) operated two waste re-use and recycling sites as waste disposal authority and subsequently sold one site for development as housing. The remaining site had licensed capacity which could accommodate that previously required at the closed site, with potential for further increase if required. Policy 4A of the relevant London Plan enjoined London boroughs to ensure that land was available to implement the appellant's (M) Waste Management Strategy and M's strategies declared a consistent policy to safeguard or protect all existing waste management sites "unless appropriate compensatory provision is made". M was unaware of the sale, and issued a draft direction designed to delay the closing of the site until a new compensatory provision was found and made operational. E considered this unnecessary on the basis that, combined with increased door-to-door collections, the spare capacity amounted to appropriate compensatory provision as set out in the Municipal Waste Management Strategy for London. M persisted and issued a Direction under s.356(1) of the Greater London Authority Act 1999 which required E to make appropriate compensatory provision by providing a new site within the Borough. Meanwhile, a planning inquiry considered the housing development application, with the main consideration M's objection that the site should retain its planning limitation as use for waste management. M argued that this would be consistent with the aims of the London Plan, which was consistent with and summarised the relevant parts of the Municipal Waste Management Strategy, as well as advice set out in PPS10. The Inspector rejected M's case and recommended the grant of permission for housing. He considered that the remaining capacity, kerbside collections, and other improved waste management services constituted "appropriate compensatory provision" and rejected M's interpretation of that ***695** expression which would require the provision of another site, whatever the current need, to be part of a waste management land bank. The Secretary of State granted permission for housing and agreed with the Inspector's approach on the question of "appropriate compensatory provision". M did not appeal that decision but E sought judicial review of his Direction on the grounds that it was unlawful, irrational and in excess of his powers. The Administrative Court allowed the application, finding that, whilst M's decision had been rationally sustainable at the time it had been given, the Inspector's determination that "appropriate compensatory provision" had been afforded by various policies adopted by and facilities operated by E, once made, had been the only tenable view of the issue. The basis for the M's direction had thereby been undermined and to sustain it in the light of that would be irrational, applying R. v Warwickshire CC Ex p. Powergen Plc .

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H3. Mthen appealed to the Court of Appeal on the grounds that the Powergen case had no application as it concerned two public authorities in disagreement on an identical issue. M had his own statutory waste management powers upon which the decision to give the direction depended and those were discrete from the Secretary of State's planning powers, so that he had not been bound by the Secretary of State's view, just as the Secretary of State had not been bound by M's.

H4. **Held,** in dismissing the appeal:

H5. 1. M had not appealed the Inspector's decision, which included the finding that there had been "appropriate compensatory provision" and rejected M's interpretation of that expression. Applying Bradley v Secretary of State for Work and Pensions , it had been open to M, acting rationally, to reject the Inspector's finding, adopted by the Secretary of State. The court's focus was on the decision not to withdraw the Direction, which had been in substance to reject the finding of an adjudicative tribunal; the Inspector. That decision was open to challenge on *Wednesbury* grounds and on the ground that it had been irrational.

H6. 2. The planning decision had been made by the Secretary of State upon the recommendations of the Inspector, not by E, and had been made after a public hearing at which M had been able to advance the very same reasons upon which the Direction had been given. Those reasons had been rejected and that planning decision could not be questioned in any legal proceedings by M as he had not appealed. Although in theory M might have reached a different conclusion for waste management strategy purposes, the relevant terms of the Municipal Waste Management Strategy and the London Plan were materially the same and were required by statute to be mutually consistent. The Secretary of State's decision had been reached after due process in a properly constituted statutory adjudication which addressed the very same question and concluded that M had been wrong. No tenable reasons, unconsidered by the Inspector, had been given by M to justify a different conclusion. Although M's original decision to give the Direction could be seen as tenable at the time it had been made, to persist in it became untenable once its underlying justification had been subjected to independent adjudicative scrutiny in the statutory planning process.

**696*

H7 Legislation referred to:

Highways Act 1980 s.278 .
Town and Country Planning Act 1990 ss.70(2), 77, 284 and 288 .
Greater London Authority Act 1999 ss.41 and 356 .
Planning and Compulsory Purchase Act 2004 s.38(2) .

H8 Cases referred to:

R. (on the application of Bradley) v Secretary of State for Work and Pensions [2008] EWCA Civ 36; The Times, February 25, 2008
R. v Secretary of State for the Home Department Ex p. Danaei [1998] Imm. A.R. 84
R. v Warwickshire CC Ex p. Powergen Plc (1998) 75 P. & C.R. 89; [1997] 3 P.L.R. 62; [1998] J.P.L. 131

H9 Representation

Mr G. Stephenson , instructed by Greater London Authority, appeared on behalf of the appellant.
Mr M. Lowe Q.C. and Mr R. Clarke , instructed by the Borough Solicitor, appeared on behalf of the respondent.

JUDGMENT

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MAY L.J.:

Introduction:

1. What happens when two competent public authorities each reach, act upon and persist in maintaining inconsistent decisions on the same matter? There can be no all-embracing abstract answer to that question, since it might arise in a variety of circumstances. But, as Sir Paul Kennedy wrote, when he gave the Mayor of London permission to appeal against Mitting J.'s order in this case in the Administrative Court of July 11, 2007, the maintenance of two apparently inconsistent decisions cannot be acceptable.

2. Mitting J.'s judgment is at [2007] EWHC 1795 (Admin). It may be referred to for a more detailed account of the facts and issues than I shall need to give in this judgment.

Facts

3. The proper management of waste is a contemporary imperative.

4. Until October 2005, Enfield LBC had, and operated, two Reuse and Recycling Centres, at Carterhatch Lane and Barrowell Green. Barrowell Green was the larger site, having a licensed capacity well able to accommodate alone, with a substantial margin, the volume of waste in fact delivered to the two sites.

5. In February 2005, Enfield sold their Carterhatch Lane site to Fairview Estates, who applied for and were granted planning permission to build houses there. Meanwhile, on March 16, 2005, the Mayor, who did not then know about the sale of the Carterhatch Lane site to Fairview Estates, issued the first of two ***697** draft directions designed to delay the closing of this site until Enfield had found a compensating new site and made it operational. Enfield regarded this as quite unnecessary, because Barrowell Green alone was entirely sufficient and because they were making other arrangements which would reduce the delivery of waste to sites such as these. However, the Mayor persisted and, on March 7, 2006, issued a direction under s.356 of the Greater London Authority Act 1999 directing Enfield to make "appropriate compensatory provision" for the closure of the Carterhatch Lane site by providing a new site within the London Borough of Enfield.

6. Meanwhile there was a planning inquiry to determine Fairview Estates' application for planning permission for the Carterhatch Lane site. A planning inspector held a public inquiry, whose main subject of contention was the Mayor's objection that the site should retain its planning limitation as use for waste management. The Mayor's thinking, no doubt, was that, if Fairview Estates, now the owners of the site, were prevented from using it for housing, the site would have to revert to its permitted use for waste management.

7. The contest before the planning inspector raised under the London Plan and for planning purposes the very same question which the Mayor had addressed when he issued his direction under his Municipal Waste Management Strategy for waste management purposes. This is not surprising, because the Mayor has a duty under s.41 of the 1999 Act to have strategies which are consistent with each other; because the London Plan and the Municipal Waste Management Strategy are two such strategies; because the Policy 4A of the relevant London Plan enjoins London boroughs to ensure that land is available to implement the Mayor's Waste Management Strategy; and because each of these strategies declares a consistent policy to safeguard or protect all existing waste management sites "unless appropriate compensatory provision is made".

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8. The Mayor had and took full opportunity to deploy before the planning inspector his case that planning permission should be refused. This was the same case as had supported his direction of March 7, 2006. The inspector decided to recommend that planning permission for housing should be granted, and, in so recommending, rejected the Mayor's case and gave full reasons for doing so.

9. The heart of the inspector's decision, dated April 21, 2006, was that the Barrowell Green site had sufficient capacity to absorb the waste which would have gone to Carterhatch Lane; and that Enfield's improved waste management services, including "bring sites", kerbside collections and home composting, would reduce the need for visits by the public to a site to dispose of waste for recycling. This constituted "appropriate compensatory provision". The inspector rejected the Mayor's interpretation of this expression as requiring the provision of another site, whatever the current need, to be part of a waste management land bank.

10. On July 5, 2006, the Secretary of State granted planning permission for residential development adopting and confirming the conclusions of the inspector's report. She noted that the main parties disagreed about what "appropriate compensatory provision" might entail. She agreed with the inspector that, although the provision of a replacement site might be appropriate in certain ***698** cases, the evidence of capacity at Barrowell Green and Enfield's progress in waste management were all material considerations in assessing appropriate compensation, and these demonstrated that appropriate compensatory provisions had been made. Closing the Carterhatch Lane site was a clear loss for local residents, which was most unfortunate, but a decision had to be made as to the future of the site. The proposed development accorded with relevant housing policies and would deliver affordable housing in an area of housing need. The Secretary of State's overall conclusion was that the planning application accorded with the development plan and national policies on housing *and waste management* . I would add that closing the Carterhatch Lane site without providing another site also accorded in this case with the Mayor's Municipal Waste Management Strategy upon the inspector's interpretation and application of the critical requirement in it of "appropriate compensatory provision".

11. The Mayor did not seek to challenge the Secretary of State's decision by appeal. Mr Stephenson, who appeared for the Mayor before us and Mitting J., accepted that the Mayor had the opportunity to do so under s.288 of the Town and Country Planning Act 1990 .

The Judicial Review proceedings

12. The Mayor's direction to Enfield was given on March 7, 2006. The inspector's report was dated April 21, 2006, following a public hearing between March 14 and 16, 2006. On May 23, 2006 Enfield started these judicial review proceedings, in which they challenged the Mayor's direction of March 7, 2006 on the grounds that it was unlawful, irrational and in excess of his powers. The grounds for their challenge included those which succeeded before the inspector and which the Secretary of State subsequently upheld.

13. On July 24, 2006, following the Secretary of State's decision of the planning application, Enfield wrote to the Mayor saying that, in the light of the conclusions of the inspector and the Secretary of State, the decision to serve the direction could not stand. The Mayor was invited to withdraw the direction to save further costs of the judicial review application. Following a chasing letter from Enfield of October 6, 2006, the Mayor declined to do so by letter dated October 16, 2006.

14. This brief letter made two points only. First, it was said that the Secretary of State had reached a decision on the balance of the planning merits without taking account of the Municipal Waste Management Strategy. The Secretary of State had concentrated on the waste management strategy in the development plan which did not include the Municipal Waste Management Strategy. This in substance was incorrect because, although of course the Secretary of State made the

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planning decision with reference to planning policies and merits, the development plan did at Policy 4A expressly direct boroughs to ensure that land is available to implement the Municipal Waste Management Strategy. The spatial policy for waste management in the development plan was expressly in support of the Mayor's Municipal Waste Management Strategy in terms which relevantly were the same as the corresponding terms of that strategy. The inspector and the Secretary of State had both made decisions which concentrated on "appropriate *699 compensatory provision", which was the very basis of the Mayor's direction. Further, the inspector and the Secretary of State were obliged by s.70(2) of the Town and Country Planning Act 1990 to have regard to the provisions of the development plan. By s.38(2) of the Planning and Compulsory Purchase Act 2004 , the relevant development plan for Greater London was the spatial development strategy with which the Mayor's Municipal Waste Management Strategy was required to be consistent. By s.38(6) of the 2004 Act, the planning determination had to be made in accordance with the development plan unless material considerations indicated otherwise. There were no relevant such material considerations. So the inspector and the Secretary of State would have to decide the critical issue in favour of the Mayor, if in their judgment the Mayor's view of the application of his Waste Management Strategy were correct.

15. The second reason given in the letter of October 16, 2006 was that the Mayor's direction did not become perverse simply because the Secretary of State reached the planning decision that she did. This, so far as it goes, may be correct. But, for reasons which I shall explain, it would in my view be necessary for the Mayor to advance additional persuasive reasons, which were not advanced before the inspector, to be able legitimately to maintain the direction in the face of the planning decision of the inspector and the Secretary of State.

16. On July 31, 2007, Enfield applied to amend their grounds for judicial review to include a challenge based on the Mayor's refusal in his letter of October 16, 2006 to reconsider his decision to give the direction in the light of the Secretary of State's decision on the planning application. It was said to be both irrational and an abuse of power for the Mayor to persist in the direction. Mitting J. gave permission to make this amendment at the hearing of the judicial review application. The Mayor did not seek to appeal this decision, nor did he ask for an adjournment to be able to deal with it by adducing further evidence or for other reasons.

17. There were thus before Mitting J. two challenges, the first to the giving of the direction of 7th March 2006, and the second to the refusal to withdraw it in the letter of October 16, 2006. Mitting J. upheld the legitimate rationality of the original direction. But he acceded to Enfield's second ground of challenge and ordered the Mayor's direction of March 7, 2006 to be withdrawn. He concluded, at [27] of his judgment, that the basis for the Mayor's direction had now been undermined by the decision and reasoning of an inspector and Secretary of State on the planning application. To sustain the direction would now be irrational.

The procedural ground of appeal

18. The Mayor's second ground of appeal to this court is that the judge's decision was or should have been limited to the challenge to the Mayor's original direction and that Mitting J. had no jurisdiction to consider whether the Mayor was wrong to refuse to withdraw what started off as a legitimate direction. Mr Stephenson persisted, notwithstanding the plain terms of the permitted amendment, in a submission *700 that the refusal to withdraw was not before the court. It plainly was. He himself had accepted in discussion with the judge that the refusal to withdraw could be challenged in the proceedings (p.28B of the transcript for July 11, 2007). Mr Stephenson persisted in a submission that the judge had not decided this second ground of challenge, when he plainly had so decided—see [27] of the judgment and the terms of the resulting order. Mr Stephenson persisted in a submission that the judge cannot properly have decided the second issue without specific reference to the letter of October16, 2006 and its contents. Yet its contents were, as Mr Stephenson himself accepted, exiguous and the judge in substance dealt with the only substantial point which the letter raised, that is that the inspector had not considered waste management strategy. I would summarily reject the second ground of appeal, and I am rather surprised that it was raised and persisted in. If this stemmed from regret that further material was not before the court, no attempt has been made to get it before the court.

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The judge's decision

19. The judge decided that the Mayor's direction of March 7, 2006 was rationally sustainable at the time it was given. The primary decision maker was the Mayor, whose officers had considered in detail the kernel of Enfield's proposals. They advised the Mayor, for reasons which the judge had briefly summarised at [8] of his judgment, that Enfield's proposals did not meet the requirements of the strategy. It was necessary in their view to give the direction about the provision of an additional site. The decision to do this was at the time one which the Mayor was entitled to take, there being room for disagreement about what steps should be taken to replace the facilities provided by the closed site. The judgment was not unreasonable at the time it was made, and was one for the Mayor to take, not the court.

20. However, the inspector's decision and the Secretary of State's acceptance of it put things in a different light. The judge concluded, with reference to *R. v Warwickshire CC Ex p. Powergen plc [1997] 3 P.L.R. 62; [1998] 75 P. & C.R. 89* , that the only properly tenable view after the publication of the planning decision was that which the planning decision espoused. The basis of the Mayor's direction had been undermined. To sustain it would now be irrational.

Grounds of appeal

21. The Mayor's grounds of appeal against this decision are that Powergen is distinguishable and its ratio had no present application; that the Mayor has his own statutory waste management powers upon which the decision to give the direction depended and these are discrete from the Secretary of State's planning powers; and that the Mayor is not bound by the Secretary of State's view. As to Powergen , the scheme of the relevant legislation was materially different. In Powergen , the two disagreeing authorities were addressing an identical issue and it was held to be contrary to public policy for a public authority involved in the issue to veto or frustrate an outcome disliked. In this case, the Secretary of State was concerned with planning issues, but the Mayor with waste ***701*** management issues. The Secretary of State was concerned with safeguarding on planning grounds a particular site which had been closed and sold to a developer. The Mayor was concerned with providing another waste management site irrespective of the outcome of the planning inquiry. The Mayor's waste management strategy is much more broadly based upon a need to maintain or increase available waste management sites to encourage recycling and reuse. The Secretary of State was not bound by the Mayor's antecedent decision. So why should the Mayor be bound by the Secretary of State's later decision?

Discussion and decision

22. In Powergen , the Secretary of State, by his inspector, allowed an appeal and granted planning permission for a supermarket on condition that Powergen did not use the site until highway works were completed. The condition required Powergen to enter into an agreement with Warwickshire CC as highway authority under s.278 of the Highways Act 1980 . The county council refused to enter into the s.278 agreement on the ground that the highway works were not in the public interest, this being the same objection that had been advanced before and rejected by the planning inspector, and against which the county council had not appealed. This court upheld a decision at first instance that, following a successful appeal by the developer, the highway authority had no option but to co-operate in implementing the planning permission by entering into the s.278 agreement. It was perverse to do otherwise. It was not reasonable for the highway authority, whose road safety objections had been fully heard and rejected on the planning appeal, to maintain their original view quite inconsistently with the inspector's independent factual judgment. The highway authority would have to raise a fresh objection, sufficiently different from their earlier one, to have a realistic prospect of saying that their view might have prevailed and should now prevail. Simon Brown LJ, giving the only substantive judgment noted the apparent strength of the highway authority's argument that s.278 of the 1980 Act required the authority itself to be satisfied that the proposed road works would benefit the public, and that there was no statutory provision enabling the Secretary of State to direct the authority to be satisfied or otherwise require it to enter into an agreement with the developer. But he agreed that Forbes J., the first instance judge, came to the right answer. This had included that the highway authority's remaining discretion was somewhat limited; and that the proper exercise of that discretion would not embrace a further and separate reconsideration of the benefit to the public of

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the highway works solely by reference to the same reasons as those which had already been considered and determined in the planning process.

23. Since Mitting J.'s decision in the present case, this court has decided *Bradley v Secretary of State for Work and Pensions [2008] EWCA Civ 36* . The Parliamentary Ombudsman had found, in favour of workers who had lost all or part of their final salary pensions when their occupational pension schemes were wound up, that there had been maladministration. The Secretary of State rejected all but one of the ombudsman's findings. This court held, with reference to the Parliamentary Commissioner Act 1967 , ***702** that the Secretary of State, acting rationally, was entitled to reject a finding of maladministration and prefer his own view. However, it was necessary that his own view was itself not irrational. It was not enough for the Secretary of State simply to assert that he had a choice. He must have a reason for rejecting a finding which the ombudsman had made after an investigation under the powers conferred by the 1967 Act. In the light of Powergen and R. v Secretary of State for the Home Department Ex p. Danaei (1998) IM MAR 84 , the Secretary of State was not entitled to reject the ombudsman's finding merely because he preferred another view which could not be characterised as irrational.

24. In Bradley , Sir John Chadwick gave the leading judgment with which Blackburne J. and Wall L.J. both agreed. Sir John Chadwick referred to Powergen and Danaei , and quoted Simon Brown L.J.'s categoric conclusion in Powergen that it was not there reasonable for the highway authority to maintain its own original view. Sir John Chadwick then said at [65] of his judgment:

> "Lord Justice Simon Brown emphasised (ibid, 624d–625b) that he had reached that conclusion not by reference to any general question regarding the proper legal relationship between planning authorities and highway authorities upon road safety issues but in the light of three basic considerations: (i) that the site access and associated highway works, together with the road safety problems which they raised, had been (a) central to the particular planning application, and (b) considered in full detail rather than left to be dealt with as reserved matters; (ii) that the planning permission had been granted following appeal to the Secretary of State and not merely by the local planning authority itself; and (iii) that there were no new facts or changed circumstances following the inspector's determination of the appeal — the highway authority's continued refusal was based upon the identical considerations that their witness had relied upon in seeking to sustain the planning objection before the Inspector."

He concluded (*ibid* , 626a):

> "... the Inspector's conclusion that that issue, because of its independence and because of the process by which it is arrived at, necessarily becomes the only properly tenable view on the issue of road safety and thus is determinative of the public benefit."

25. Sir John Chadwick said at [66] that the basis upon which this court dismissed the appeal in the Powergen case was that —given the circumstances in which, and the statutory framework within which, the inspector's conclusion on the issue of road safety had been reached—it was irrational for the county council to continue to adhere to its own view on that issue. The inspector's view had become "the only properly tenable view" on the issue of road safety.

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26. Having considered Danaei , Sir John Chadwick then said at [70] and [71]:

> "For my part, I think that the following principles can be derived from the judgments in Powergen and Danaei : (i) the decision maker whose decision is under challenge (in the former case, the local highway authority; in the latter, the Secretary of State) is entitled to exercise his own discretion as ***703*** to whether he should regard himself as bound by a finding of fact made by an adjudicative tribunal (in the former case, the planning inspector; in the latter, the special adjudicator) in a related context; (ii) a decision to reject a finding of fact made by an adjudicative tribunal in a related context can be challenged on *Wednesbury* grounds; (iii) in particular, the challenge can be advanced on the basis that the decision to reject the finding of fact was irrational; (iv) in determining whether the decision to reject the finding of fact was irrational the court will have regard to the circumstances in which, and the statutory scheme within which, the finding of fact was made by the adjudicative tribunal; (v) in particular, the court will have regard to the nature of the fact found (e.g. that the immigrant was an adulterer), the basis on which the finding was made (e.g. an oral testimony tested by cross-examination, or purely on the documents), the form of the proceedings before the tribunal (e.g. adversarial and in public, or investigative with no opportunity for cross-examination), and the role of the tribunal within the statutory scheme.
>
> Properly understood, as it seems to me, the two cases provide no support for the proposition that, as a matter of law, it is not open to a body which has been the subject of a finding of maladministration by the Parliamentary Ombudsman to reject that finding; rather the cases are authority for the proposition that it is open to such a body, acting rationally, to reject a finding of maladministration. The cases provide helpful illustrations of circumstances where, in other contexts, it was not rational for the decision maker to reject findings of fact made by adjudicative tribunals on the basis of a contrary (albeit rational) view which the decision maker preferred. ... It is not, I think, a general rule that facts found in the course of a statutory investigation can only be impugned on *Wednesbury* grounds: although, plainly, if the investigator can be shown to have acted irrationally, that will be a powerful reason for rejecting his findings. The true rule, as it seems to me, is that the party seeking to reject the findings must himself avoid irrationality: the focus of the court must be on his decision to reject, rather than on the decision of the fact finder."

27. It is notable that this passage refers to a finding of fact. In the present case, the inspector's finding that there was "appropriate compensatory provision" was in part a finding of fact. But it also embraced a rejection, on the facts and circumstances of this case, of the Mayor's contention that "appropriate compensatory provision" had for him a meaning which requires that land used for recycling should be retained or replaced as such, even though, without retention or replacement, the capacity of the other Enfield site was amply large enough for present or anticipated future needs. As I have said, the Mayor could have appealed the inspector's decision as adopted by the Secretary of State, but did not do so.

28. The Mayor, through Mr Stephenson, does not seek to challenge the validity of the planning decision in this court, and could not properly do so in the face of s.284 of the 1990 Act. This provides that the validity of a decision on an application for planning permission referred to the Secretary of State under s.77 (as ***704*** this application was) shall not be questioned in any legal proceedings whatsoever except as provided by Pt XII of the 1990 Act. That could have included an appeal under s.288 , but there was no such appeal.

29. Applying Sir John Chadwick's analysis of Powergen and Danaei , it was open to the Mayor, acting rationally, to reject the inspector's finding adopted by the Secretary of State. The court's focus in this case must be on the decision not to withdraw

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the direction of March 7, 2006. This decision was in substance to reject the finding of an adjudicative tribunal, the planning inspector. It is open to challenge on *Wednesbury* grounds and on the ground that it is irrational. The court has regard to the statutory scheme of the planning inquiry, which included that the decision was made by the Secretary of State upon the recommendations of the inspector, not by the local planning authority. The court notes that the inspector's decision was made after a public hearing at which oral evidence was given and tested; and notes in particular that the Mayor had the opportunity to advance, and did in fact advance in full, the very same reasons upon which the direction was given, and that these reasons were rejected. As I have said, the Mayor did not appeal this decision and cannot therefore question it in any legal proceedings whatsoever. It is not, I think, necessary for the court to dissect the planning decision into its factual part and its legal construction part. Although in theory the Mayor might have reached a different conclusion for waste management strategy purposes, the relevant terms of the Municipal Waste Management Strategy and the London Plan were materially the same and were required by statute to be mutually consistent. Further, as I have indicated, although the Mayor might have had additional reasons of substance, not advanced in the planning appeal, for reaching a different conclusion, the letter of October 16, 2006 did not in fact advance any such tenable additional reasons. The answer to Mr Stephenson's rhetorical question: why should the Mayor be bound by the Secretary of State's later decision? is in short that the Secretary of State's decision, which the Mayor did not appeal, was reached after due process in a properly constituted statutory adjudication which addressed the very same question and concluded that the Mayor was wrong; and there is no additional reason unconsidered by the inspector to justify a different conclusion. Although, as the judge held, the Mayor's original decision to give the direction could be seen as tenable at the time it was made, to persist in it become untenable once its underlying justification had been subjected to independent adjudicative scrutiny in the statutory planning process. For these reasons, the Mayor's decision not to withdraw the direction must be regarded as irrational.

30. I would dismiss the appeal.

LATHAM L.J.:

31. I agree.

MOORE-BICK L.J.:

32. I also agree.

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Appendix 5 – Case Law

d. R (Warwickshire) v Powergen

event, but I am satisfied that with the active co-operation of the council the process could have been undertaken more efficiently and have been brought to a conclusion prior to the commencement of the inquiry, with at least some consequent saving in time and expenditure.

In my judgment it cannot be said that the Inspector was *Wednesbury* unreasonable in reaching the conclusion he did albeit it appears to the parties before me that the costs involved are very small, relating as I have said, to a few letters.

As to the second ground of challenge I do not accept the argument that the costs order to pay "the unnecessary additional costs incurred in concluding the section 106 obligation" (paragraph 17) provides the taxing master with insufficient material upon which to decide what costs he should allow. His attention can be drawn to section 106 and to circular 16/91. He will be able to have available the costs decision letter and, if it helps him, the planning decision letter. He will have to make a judgment as taxing masters invariably have to do in situations much more complex than the present. I would merely add that no evidence has been presented to me from, for example, a costs draughtsman to suggest that the Inspector's order presents the taxing master with an impossible task.

The challenge to the second part of the costs order is therefore also rejected. Had I concluded in favour of Wakefield on this aspect of the case I would in the exercise of my discretion, for reasons which I hope are apparent from what I have said already, have refused any relief.

This application for judicial review of the costs order is therefore dismissed. The applicant will pay the respondent's costs.

Application dismissed with costs.

Solicitors—Sharpe Pritchard, London; Treasury Solicitor.

Reporter—Megan Thomas.

(1998) 75 P. & C.R., Part No. 1 © Sweet & Maxwell

R. v. WARWICKSHIRE COUNTY COUNCIL EX PARTE POWERGEN PLC

COURT OF APPEAL (Simon Brown, Otton and Mummery L.JJ.): July 31, 1997

Town and country planning—Refusal of outline planning permission for development as detrimental to interests of highway safety—Inspector upheld appeal subject to proposed highway works being carried out—Highway authority then refused to enter into agreement under section 278 Highways Act 1980 to carry out necessary works—Whether refusal lawful

In 1994, the respondent, P, applied for outline planning permission for a supermarket. The proposed access and necessary highway works were fully detailed and were not reserved matters. Warwick District Council refused permission. One of the reasons given was that, having consulted the appellant county council as the local highway authority with regard to the proposed highway works, as required by article 18 of the Town and Country Planning (General Development) Order 1988, the proposal was considered to be detrimental to the interests of highway safety. On appeal under section 78 of the Town and Country Planning Act 1990, the Inspector concluded that the proposals for access to the site were adequate. He allowed the appeal and granted outline permission subject, *inter alia*, to the proposed highway works being carried out. P then sought to enter into an agreement under section 278 of the Highways Act 1980 with the appellant council whereby the council, as highway authority, would carry out the necessary works. The appellant refused to enter into an agreement for the same reasons as the district council had originally refused planning permission. An application for judicial review of the highway authority's refusal to enter into a section 278 agreement was upheld by Forbes J. on the basis that section 278 must be interpreted in the context of the planning process. To allow a highway authority to reconsider the benefit to the public of the highway works when such works had already been considered and determined in the planning process would largely frustrate the scheme of the legislation of which section 278 was a part. On appeal to the Court of Appeal:

Held, dismissing the appeal, that, following a successful appeal by the developer the relevant highway authority has no option but to co-operate in implementing the planning permission by entering into a section 278 agreement. Apart from the argument based on the role of section 278 within the scheme of the legislation, it was unreasonable in the *Wednesbury* sense for a highway authority, whose road safety objections have been fully heard and rejected on appeal, then, quite inconsistently with the Inspector's independent factual judgment on the issue, nevertheless to maintain its original view.

Cases referred to:

(1) *Padfield v. Minister of Agriculture, Fisheries and Food* [1968] A.C. 997; [1968] 2 W.L.R. 924; [1968] 1 All E.R. 694; 112 S.J. 171, HL.

(2) *R. v. Secretary of State for the Home Department ex parte Onibiyo* [1996] 2 W.L.R. 490; [1996] 2 All E.R. 901; [1996] Imm.A.R. 370, CA.

Legislation construed:

Section 278 Highways Act 1980, the material parts of which are set out in the judgment of Simon Brown L.J.

Appeal by Warwickshire County Council as highway authority from a decision of Forbes J. given in the Divisional Court of Queen's Bench on January 9, 1997 by which he allowed an application for judicial review by

(1998) 75 P. & C.R., Part No. 1 © Sweet & Maxwell

Powergen Plc and held that the Council's refusal to enter into an agreement under section 278 of the Highways Act 1980, after a successful appeal against a refusal of planning permission was unlawful. The facts are stated in the judgment of Simon Brown L.J.

Michael Supperstone, Q.C. for the appellant.
William Hicks, Q.C. for the respondent.

SIMON BROWN L.J. Highway authorities are the bodies primarily charged with the responsibility of ensuring that our roads are reasonably safe: safely designed, safely regulated and safely maintained. Ample powers are given to them for this purpose, both under the Highways Act 1980 and the Road Traffic Regulations Act 1984.

Section 278 of the Highways Act 1980, one of a group of sections in part XIII under the heading "Financial Provisions", allows highway authorities to enter into agreements with developers for the execution of highway works at the developer's expense. In its present form (substituted by section 23 of the New Roads and Street Works Act 1991 for the section originally enacted) it states, so far as material:

> Agreements as to execution of works.
> 278 (1) A highway authority may, if they are satisfied it will be of benefit to the public, enter into an agreement with any person—
> (a) for the execution by the authority of any works which the authority are or may be authorised to execute, or
> (b) for the execution by the authority of such works incorporating particular modifications, additions or features, or at a particular time or in a particular manner,
> on terms that that person pays the whole or such part of the cost of the works as may be specified in or determined in accordance with the agreement.

There can be no doubt that ordinarily speaking a highway authority will not be "satisfied it would be of benefit to the public" to enter into a section 278 agreement unless it is satisfied, *inter alia* about the road safety implications of the proposed scheme. And until it is thus satisfied, it has no discretion to enter into an agreement. What, however, is the position when the highway authority has objected to the grant of planning permission for a particular development on road safety grounds and then, on appeal to the Secretary of State, that objection has been fully heard and resolved in the developer's favour with the grant of a conditional planning permission? Is the highway authority then still entitled (perhaps even bound, assuming it remains of its original view) to maintain its objection and to refuse to enter into a section 278 agreement, even though such refusal will prevent the developer from satisfying the condition and implementing his permission?

That is the crucial issue now before us. It is formulated by Mr Supperstone, Q.C. for the appellant highway authority thus: What is the proper legal relationship between the role of a planning authority in determining whether or not to grant planning permission, and, if so, subject to what conditions if any, and the role of a highway authority in determining whether or not to enter into a section 278 agreement? It is, he submits, a question of fundamental importance to all planning authorities and highway authorities throughout the country.

With that brief introduction let me turn now to the facts of the case which I shall set out altogether more shortly than did the judge below.

In June and September 1994 Powergen applied to Warwick District Council (the District Council) for outline planning permission for the development of Powergen's site at the former Avon Power Station in Emscote Road, Warwick. The proposed development was for a supermarket, associated car parking for 500 cars, petrol filling station and suitable means of access to the site from Emscote Road. The proposed access and highway works were fully detailed and illustrated on drawings which accompanied the applications; they were not reserved matters. In summary they comprised the following main elements:

(i) widening the highway and a bridge across the Grand Union Canal to provide a site access junction;
(ii) installing a full traffic signal control junction;
(iii) providing a right hand turning lane and pedestrian crossings.

As part of its consideration of the planning applications the District Council, in compliance with article 18 of the Town and Country Planning (General Development) Order 1988, was required to consult with the appellant county council as the local highway authority with regard to the proposed highway works. Having done so, on November 1, 1994, the District Council refused the September 1994 application. (It failed to determine the June 1994 application within the prescribed time limit. Nothing, however, turns on this: it was a duplicate application and its non-determination gave rise to an identical right of appeal. It is accordingly convenient to treat there as having been but a single application.) The first of the four reasons given for refusing planning permission was this:

> The District Planning Authority, in consultation with the County Highway Authority, considers that the proposed traffic signal junction would provide insufficient forward visibility over the Canal bridge and therefore stopping sight distance requirements are not met through the proposed junction. The proposal would therefore be detrimental to the interests of highway safety on this busy section of the A445.

Powergen duly appealed under section 78 of the Town and County Planning Act 1990 whereupon the Secretary of State appointed an Inspector to hold a local inquiry and to determine the appeal on his behalf.

In describing the development proposal in his decision letter of January 11, 1995 the Inspector noted that:

> Although the appeals relate to applications for outline planning permission the details of the proposed access to the site are not a reserved matter and I have accordingly taken account of them.

As to whether planning permission should be granted he said:

> I consider the outcome of the appeals . . . turns on whether the proposals for access to the site are satisfactory.

Amongst the witnesses called by the District Council at the three day public inquiry was Mr Winch, one of the appellant's senior highway contract engineers. He gave detailed evidence about the road safety issue and fully explained the county council's reasons for concluding that the proposed access and highway works were unsatisfactory in road safety terms. Opposing expert evidence was given on behalf of Powergen. Having

reviewed all this evidence and the rival submissions at some length in his decision letter the Inspector then reached the following main conclusions:

> The question is then whether the proposed signal-control junction offers in this case an adequate degree of traffic safety. (paragraph 27)
>
> In all the circumstances I am not persuaded that the proposed signal-control junction would present such a threat to road safety as to justify dismissing the appeals. (paragraph 28)
>
> In sum, I accept on the traffic issue that adequate provision would be made for vehicular and pedestrian movement in relation to the benefits to be derived from the reclamation of the site. (paragraph 29)

The Inspector accordingly allowed the appeals and granted outline planning permission subject to a number of conditions of which one only is presently relevant.

> 8. The development hereby permitted shall not come into use before the bridge across the Grand Union Canal shall have been widened sufficiently to enable access to the site to be provided with a traffic signal installation in accordance with [a particular drawing] the adjustment of carriageway levels on the bridge approaches and the provision of pedestrian guard railings.

To satisfy condition eight Powergen obviously need the appellants to carry out the specified highway works which, for practical purposes, requires also that they now enter into a section 278 agreement. By letter dated February 3, 1995 such an agreement was sought. It was refused. On June 15, 1995 the relevant committee of the county council resolved that it "still" considered the proposed access arrangements to be unsafe. (The county council has accepted throughout that its refusal is based on the self-same objections as underlay the District Council's original refusal of planning permission and which Powergen then succeeded in overcoming on the planning appeal.) Powergen then sought to resolve the matter by negotiation and in the event put forward two further schemes. On August 24, 1995, however, these in turn were rejected.

Hence this judicial review application, a challenge to the highways authority's refusal to enter into a section 278 agreement with Powergen such as will enable them to implement the planning permission granted on appeal. That challenge succeeded before Forbes J. on January 9, 1997. The highway authority now appeal to this court.

The essence of Forbes J.'s judgment is, I think, to be found in this passage:

> It is common ground that the new section 278 was intended to fit into and play its part in the overall legislative system for the controlled development of land through the planning process and I accept that section 278 must be interpreted accordingly. In my opinion, where the benefit to the public of the proposed highway works, in respect of which an agreement with the Highway Authority is sought under section 278 of the 1980 Act, has been fully considered and determined in the planning process, because the highway works in question form a detailed and related aspect of the application for development of land in respect of which planning consent has been properly obtained through that planning process, then the Highway Authority's discretion whether to enter into the section 278 agreement will necessarily be somewhat limited. In such a case, the matters remaining to be considered by the Highway Authority in the proper exercise of its discretion under section 278, are likely to be relatively minor in nature. I agree with Mr Hicks that the proper exercise of that discretion by the Highway Authority will not embrace a further and separate reconsideration of the benefit to the public of the highway works in question by reference to the same reasons as those which had already been considered and determined in the planning process. If such a reconsideration by the Highway Authority were to be a proper exercise of its discretion under section 278, then that would largely frustrate the scheme of the legislation of which section 278 is conceded to be part. This would be particularly so where, as in the present case, there has been no challenge to the validity of the relevant planning decision pursuant to section 288 of the Town and Country Planning Act 1990, notwithstanding the Highway Authority's right to bring such a challenge under that section.

This last sentence refers to the fact that even though the highway authority here were not separately represented as an objector on Powergen's appeal, they were clearly a "person aggrieved" and thus entitled, were the decision unreasonable or otherwise erroneous in point of law, to challenge it by way of statutory application under section 288. Without such a challenge, section 284 provides that the decision on the section 78 appeal "shall not be questioned in any legal proceedings whatsoever".

It is the appellant's case, however, that they neither need nor seek to question this grant of planning permission. It is, they contend, one thing to grant such a permission, quite another to suggest that it operates as an implied direction to the county council then to enter into a section 278 agreement to enable it to be implemented. The planning permission, submits Mr Supperstone, implies only that no valid planning grounds exist for refusing permission. The question thereafter arising for the highway authority is, he maintains, a different one. They must still ask: is this development to be regarded as a benefit to the public? That involves the county council exercising what throughout his argument Mr Supperstone repeatedly called "an independent discretion" whether or not to enter into the proposed section 278 agreement.

The strength of Mr Supperstone's argument appears to lie in this: that on its face section 278 requires the highway authority itself to be satisfied that the proposed roadworks would be of benefit to the public, there being no provision under the legislation for the Secretary of State or anyone else to direct that it be thus satisfied or otherwise to require it to exercise its discretion to enter into an agreement with the developer. Its weakness, however, is that it would leave the highway authority able to override the planning process withstanding (a) that road safety considerations are clearly material to the determination of planning applications—see for example paragraphs 2.11 and 6.1 of PPG 13, and, indeed, article 18 of the General Development Order; and (b) that whereas there is ample scope on a section 78 appeal for the Secretary of State to hear and determine a factual dispute between the developer and the highway authority on road safety issues, no such possibility arises if the highway authority refuses to enter into a section 278 agreement.

It was essentially because Forbes J. found it unacceptable that the housing authority should be able to defeat the planning process in this way that, in the passage already cited from his judgment, he held that where, as here, a conditional planning permission is granted on appeal, "the highway

authority's discretion whether to enter into the section 278 agreement will necessarily be somewhat limited". He then turned at the end of his judgment to consider Powergen's challenge in *Wednesbury* terms:

> In this case there had been a dispute as to the balance of the public interest with regard to the proposed development. The adequacy of the access arrangements and the related highway works was one factor in that balance. In the course of the planning process, the County Council as Highway Authority argued that, because of the lack of forward visibility, the balance of public interest was against the proposed development for road safety reasons. The dispute was fully argued at the planning appeal and determined by the Secretary of State by his duly appointed Inspector. The Inspector's conclusions were clear and were not challenged pursuant to Section 288 of the 1990 Act, within the prescribed time limits or at all. Having regard to the terms of Section 284 of the 1990 Act, I accept Mr Hicks' submission that the Inspector's conclusions should be treated as both reasonable and final. The present proceedings are not the place to reconsider the merits of the foregoing dispute. Since the development proposals as a whole were found to be in the public interest, so too were the detailed highway works which formed a necessary and related part of those proposals. In those circumstances, I accept Mr Hicks' submission that no reasonable Highway Authority would, on the sole basis of the arguments as to road safety which had been fully considered and determined in the planning process, refuse to enter into any necessary Section 278 Agreement on the grounds that to do so was not a benefit to the public, thereby preventing the development from proceeding. I have therefore come to the conclusion that the decision of the County Council in this case to refuse to enter into the Section 278 agreement in question is both perverse and unreasonable in the Wednesbury sense. As Mr Hicks succinctly put it, it cannot be reasonable for the Highway Authority to allow a decision of the Secretary of State to be implemented only if it agrees with that decision.

There was some debate before us whether that conclusion of *Wednesbury* irrationality was free-standing of the judge's earlier view based on the scheme of the planning legislation as a whole. To my mind it was not: in truth there is here but one issue: who, as between the Secretary of State (or Inspector) on appeal and the highway authority, is to have the last word in deciding a road safety issue of this nature?

I have reached the clear conclusion that the judge below came to the right answer: that following a successful appeal by the developer the relevant highway authority has no option but to co-operate in implementing the planning permission by entering into a section 278 agreement. Although both the judgment below and the arguments before us focused principally upon the scheme of the legislation and whether the highway authority's approach to its section 278 discretion thwarted the policy and objects of the two Acts here in question see, for example, *Padfield v. Minister of Agriculture, Fisheries and Food*[1]—I for my part prefer the broader *Wednesbury* analysis of the case. Indeed, so far from this appeal raising, as Mr Supperstone submitted, "a short point of statutory construction", I see it

[1] [1968] A.C. 997

rather as raising this simple question: is it reasonable for a highway authority, whose road safety objections have been fully heard and rejected on appeal, then, quite inconsistently with the Inspector's independent factual judgment on the issue, nevertheless to maintain its own original view? To my mind there can be but one answer to that question: a categoric "no". That answer, I should make plain, I arrive at less by reference to any general question regarding the proper legal relationship between planning authorities and highway authorities upon road safety issues than in the light of these basic considerations:

(1) The site access and associated highway works here, together with the road safety problems which they raised, were (a) central (indeed critical) to this particular planning application, and (b) considered in full detail rather than left to be dealt with as reserved matters.

(2) This planning permission was granted following appeal to the Secretary of State and not merely by the local planning authority itself. In the perhaps unlikely event that a local planning authority, having consulted with the highway authority under the provisions of article 18 of the GDO, nevertheless in the face of road safety objections grants a conditional planning permission of the kind granted by the Inspector here, it seems to me less than self-evident that the highway authority would thereby become obliged to co-operate in its implementation by entering into a section 278 agreement. True, Article 12 of the 1977 GDO, by which a local highway authority could give directions restricting the grant of planning permission by a local planning authority in this kind of cases, was repealed by the 1988 GDO, but it does not follow that the local planning authority thereafter in turn became able to dictate the highway authority's course.

(3) There were no new facts or changed circumstances whatsoever following the Inspector's determination of this appeal. The highway authority's continued refusal was based upon the identical considerations that their witness had relied upon in seeking to sustain the planning objection before the Inspector. Quite what change of circumstances would entitle a highway authority in this sort of case to withhold its co-operation after an appeal it is, of course, impossible to lay down in advance. Some help, however, may be found in Sir Thomas Bingham M.R.'s approach in *Onibiyo v. Secretary of State for the Home Department*[2] to the very different question of what constitutes a fresh asylum claim:

> The acid test must always be whether, comparing the new claim with that earlier rejected, and excluding material on which the claimant could reasonably have been expected to rely in the earlier claim, the new claim is sufficiently different from the earlier claim to admit of a realistic prospect that a favourable view could be taken of the new claim despite the unfavourable conclusion reached on the earlier claim.

Adapting that to the present planning context, the highway authority would have to raise a fresh objection sufficiently different from their earlier one to admit of a realistic prospect that, had they advanced it before the Secretary of State on the planning appeal, it might, unlike the earlier one, have prevailed. Whether or not that was indeed the situation would in the first instance be a question for the highway authority itself (just as initially it is for the Secretary of State to decide whether a fresh asylum claim has been

[2] [1996] Imm.A.R. 370

made); such decisions are, of course, in appropriate cases susceptible to challenge by way of judicial review. Whilst, of course, no such difficulty arises in the present case, it perhaps highlights this, that if Mr Supperstone is right in his main argument, then it would be perfectly open to a highway authority to ignore the planning appeal process entirely, to withhold its witnesses and co-operation when the road safety implications of the development scheme are being debated before the Inspector, and then simply to exercise what effectively amounts to a veto by ultimately declining to enter into a section 278 agreement. This cannot be right. Rather the highway authority should play its full part in the planning process and, in the event that a conditional planning permission is granted, co-operate just like the local planning authority itself in the fulfilment of any relevant conditions.

For these reasons I would reject Mr Supperstones central argument that, even following the grant of planning permission on appeal, the highway authority retain "an independent discretion" to refuse to enter into the requisite section 278 agreement—by which I think he must mean that they remain reasonably entitled to adhere to and act upon their original view that the public would not benefit from this development because of the highway dangers it would create. I believe on the contrary that the Inspector's conclusion on that issue, because of its independence and because of the process by which it is arrived at, necessarily becomes the only properly tenable view on the issue of road safety and thus is determinative of the public benefit. This is not, I should perhaps note, to overlook paragraph 35 of the decision letter, a standard rubric stating that:

> This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than s.57 of the Town and Country Planning Act 1990.

Section 57, of course, is the basic provision requiring that development has planning permission. Accepting, as I do, that the highway authority's "approval or consent" is still required before condition eight can be satisfied, my judgment comes simply to this: such approval or consent cannot in the present circumstances properly be withheld. Paragraph 35 is in substance directed to quite other consents, under various Licensing Acts, Building Regulations and the like.

I would accordingly dismiss this appeal.

OTTON L.J. I agree.

MUMMERY L.J. I also agree.

Appeal dismissed with costs. Leave to appeal to the House of Lords refused.

Solicitors—County Solicitor, Warwickshire County Council; Wragge & Co., Birmingham.

Reporter—David Stott.

RICHARDSON v. SECRETARY OF STATE FOR THE ENVIRONMENT AND MILTON KEYNES BOROUGH COUNCIL

QUEEN'S BENCH DIVISION (H.H. Judge Rich, Q.C. sitting as a Deputy High Court Judge): March 13, 1997

Town and country planning—Existing farmhouse too close to motorway when widening scheme implemented—Planning permission refused for substitute farm dwelling in a different location on same farm—Structure Plan allowing for replacement of dwellings—Meaning of replacement—Context Replacement meaning replacement on same site

The applicants lived in a farmhouse by the M1 motorway. The motorway was to be widened and the applicants wished to build an alternative house from which they could continue their farming operation. The Highways Agency had agreed to buy the existing dwelling but had earmarked it for business use rather than demolition. The location chosen by the applicants for the new dwelling was a considerable distance from the existing house and was in open countryside. Buckinghamshire County Structure Plan policy OC1 contained a presumption against development in the open countryside but "limited extension, replacement or alteration of existing dwellings" was allowed. At appeal, the applicants argued that they were replacing their existing dwelling with the new dwelling. The Inspector rejected that submission on the basis that the generally accepted meaning of the term "replace", as applied in planning circles, was to restore to a previous place or position. Consequently, he considered that, as the applicants could not guarantee that the existing dwelling would be demolished and, as the new dwelling was at a distance from the existing dwelling, it was not a replacement of the existing dwelling. The applicants appealed to the High Court.

Held, dismissing the application, that within the context of the Structure Plan policy the word "replacement" meant replacement on the same site.

Application by Mr and Mrs Richardson under section 288 of the Town and Country Planning Act 1990 to challenge a decision of the first respondent whereby he dismissed an appeal against the refusal of Milton Keynes Borough Council to grant planning permission for a dwelling house on land at Eagle Farm, Buckinghamshire. The facts are stated in the judgment of H.H. Judge Rich, Q.C.

Cases referred to:
No cases were referred to.

Jonathan Clay for the applicants.
Jonathan Karas for the first respondent.
The second respondent did not appear.

H.H. JUDGE RICH, Q.C. Mr and Mrs Richardson live on a farm known as Eagle Farm which Mrs Richardson's father first occupied some 40 years ago. The farm is the residue only of that which he farmed because the farm as he farmed it, has been severed and reduced by road works. The road works include the construction of the M1 close to the farmhouse which he occupied and they now occupy. The M1 is proposed to be widened. It is accepted that the conditions in that dwelling house are unbearable by reason of noise from the motorway and will become more so. They wish therefore to build

Appendix 6 – Re-evaluations – SRFI v Housing

a. June 2018 draft

Draft Park Street Broad Location - re-evaluation following the gathering of evidence on the relative merits of housing and the SRFI as well as alternative strategies which would deliver the identified housing elsewhere

Key Context

There is a large body of contextual material related to this issue. This includes:

1 - NPPF

The NPPF is relevant in a variety of ways. Key relevant paragraphs include:

Paragraph 182

A local planning authority should submit a plan for examination which it considers is "sound" – namely that it is:

● *Positively prepared – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;*

● *Justified – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;*

● *Effective – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and*

● *Consistent with national policy – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework*.

Paragraph 162

Local planning authorities should work with other authorities and providers to:

- *take account of the need for strategic infrastructure including nationally significant infrastructure within their areas.*

Paragraph 31

Local authorities should work with neighbouring authorities and transport providers to develop strategies for the provision of viable infrastructure necessary to support sustainable development, including large scale facilities such as rail freight interchanges, roadside facilities for motorists or transport investment necessary to support strategies for the growth of ports, airports or other major generators of travel demand in their areas.

2 - Existing planning permission for SFRI

In summary, outline planning permission was granted by the Secretary of State for a Strategic Rail Freight Interchange (SRFI) on 14 July 2014 (LPA reference 5/2009/0708). This outline planning permission agreed the principle of the rail freight development in this location, together with the means of access, siting of the development and landscaping scheme. The decision is available at http://www.stalbans.gov.uk/Images/SP_Railfreight_DCLG_Letter_CGMS_14July2014_tcm15-43374.pdf).

Details of the main SRFI application, and subsequent applications, can be found at http://www.stalbans.gov.uk/planning/rail_freight_interchange.aspx.

St Albans District Council (SADC) refused planning permission for a SFRI on 21 July 2009. Helioslough Ltd. appealed against this decision and a Public Inquiry was held in November and December 2009 (Inspector's decision - http://www.stalbans.gov.uk/Images/Appeal%20Decision%202010%20Mead_tcm15-64085.pdf). This culminated in a decision by the Secretary of State, dated 7 July 2010, to dismiss the appeal.

Helioslough challenged the Secretary of State's July 2010 decision in the High Court. On 1 July 2011, a High Court Judge quashed the decision on the basis of one of four grounds of challenge put forward by Helioslough. SADC was a second defendant in the case. The Judge found that the Secretary of State did not properly explain his reasons for disagreeing with the Planning Inspector's recommendation that the proposed development be allowed.

The High Court referred the matter back to the Secretary of State to re-determine.

The Secretary of State invited all parties to the planning appeal, including the Council, to make further written representations. The Council made its further representations on 14 October 2011.

In a letter dated 29 March 2012, the Secretary of State informed all parties to the appeal that he had decided to delay his decision. He invited further written representations on the relevance of the recently published National Planning Policy Framework. The Council provided its representations on 16 April 2012.

The Secretary of State wrote to the Council in a letter dated 19 September 2012 to seek views on a proposal to re-open the Radlett inquiry. He proposed to join it with a planned inquiry into a proposed strategic rail freight terminal at Colnbrook near Slough. Interested parties were asked to give their views by 3 October 2012.

In a letter dated 14 December 2012, the Department for Communities and Local Government said that he had decided not to re-open the inquiry.

In a letter of 20 December 2012 the Secretary of State said that he was "minded to approve" planning permission for the proposed interchange, subject to various conditions.

In its letters of 18 January 2013, the Council requested that the Secretary of State reconsider his decision not to re-open the Radlett inquiry and conjoin it with the Colnbrook inquiry. The Council also gave notice of its intention to challenge the decision not to reopen and conjoin the inquiry through judicial review in the High Court if the Secretary of State did not meet the Council's request.

The Council applied for Judicial Review of the Secretary of State's decision. Permission to proceed was refused by the High Court in an order issued 14 June 2013.

The Council lodged a claim to in the High Court challenging the Secretary of State's decision to grant planning permission, however, this was rejected 13 March 2015. The Council applied to the Court of Appeal for permission to appeal the dismissal, however this was refused 29 June 2015.

Three Reserved Matters applications have subsequently been approved, subject to conditions by SADC. A number of conditions remain outstanding. See section 7 below.

The Planning Inspector and Secretary of State's decisions should be read as a whole. The decisions however included the following aspects.

The Inspector stated in paragraphs 13.110 and 13.111 that:

"*So far as benefits are concerned, those more locally site specific include … a country park, the improvements to footpaths and bridleways and the provision of the bypass to Park Street and Frogmore. The Secretary of State previously attached "some weight" to the predicted reduction on CO2 emissions identified in the Environmental Statement. I have no reason to disagree with that conclusion. Some weight was also afforded by the Secretary of State to the numbers of people who would work at the SRFI, albeit not necessarily living close to the site.*

On a general basis, there is no dispute about the need for an SRFI. It is stated and restated in a number of documents and encouraged in PPG13 (paragraph 45). Government policies have consistently supported shifting freight from road to rail. SRA Policy (2004) suggests that 3 or 4 new SRFIs could serve London and the South East located where key road and rail radials intersect the M25. The indication in the SRA Policy that 400,000m2 of rail connected warehousing floorspace would be needed in the South East by 2015 does not constitute a target or a ceiling. In the previous decision in 2008, the Secretary of State concluded that the need for SRFIs to serve London and the South East was a material consideration of very considerable weight. No new SRFIs have been developed since the earlier decision. Therefore, the weight has not diminished."

The Inspector concluded in paragraphs 13.118 and 13.119:

"Accordingly, I conclude that the proposal would constitute inappropriate development in the Green Belt which, in itself, would cause significant harm to which substantial weight should be attached. Harm would also be caused to the Green Belt because of a loss of openness, significant encroachment into the countryside and

the contribution to urban sprawl. There would be an adverse effect on the setting of St Albans, although the Secretary of State concluded previously that only limited weight should be attached to this. Harm would also arise from the adverse effects on landscape and ecology. Therefore, the proposal would conflict with Policies 1, 104 and 106 of the adopted Local Plan Review.

13.119 However, other considerations including, particularly the need for SRFIs to serve London and the South East and the lack of more appropriate alternative locations for an SRFI in the north west sector which would cause less harm to the Green Belt, together with the local benefits of the proposals for a country park, improvements to footpath and bridleways in the immediate area and the provision of the Park Street and Frogmore bypass, lead me to conclude that very special circumstances exist in this case which outweigh the conflict with the development plan and therefore the appeal should be allowed subject to conditions..."

The Secretary of State concluded that (Decision Letter extracts):

"The Secretary of State has had regard to the Inspector's comment at IR13.34 that, as the Council accepted in evidence, the need for SRFIs is stated and restated in a number of documents. The Secretary of State observes that the Written Ministerial Statement of 29 November 2011 makes clear that there remains a need for a network of SRFIs to support growth and create employment and that it has proved extremely problematical, especially in the South East, to create appropriately located SRFIs. The SRFI Policy Guidance published on 29 November 2011 states that only one SRFI had been granted planning consent in the whole of the South East region and advises that SRFI capacity needs to be provided at a wide range of locations, particularly but not exclusively serving London and the South East. The Secretary of State has had regard to the comment made by STRIFE (letter of 4 March 2014) that the proposed SRFI at Howbury Park has not been delivered. However, he tends to the view that this only serves to reinforce the point made in the 2011 Written Ministerial Statement on Strategic Rail Freight Interchanges that, in the South East in particular, it is proving extremely problematical to develop SRFIs."

"the factors weighing in favour of the appeal include the need for SRFIs to serve London and the South East…the lack of more appropriate alternative locations for an SRFI in the north west sector which would cause less harm to the Green Belt…the local benefits of the proposals for a country park, improvements to footpaths and bridleways and the Park Street and Frogmore bypass".

"*that these considerations, taken together, clearly outweigh the harm to the Green Belt and the other harms he has identified including the harm in relation to landscape and ecology and amount to very special circumstances*."

3 - The National Networks National Policy Statement (NPS) 2014

The NPS is relevant in a variety of ways. Key relevant paragraphs include:

Purpose and scope

1.1 The National Networks National Policy Statement (NN NPS), hereafter referred to as 'NPS', sets out the need for, and Government's policies to deliver, development of nationally significant infrastructure projects (NSIPs) on the national road and rail networks in England. It provides planning guidance for promoters of nationally significant infrastructure projects on the road and rail networks, and the basis for the examination by the Examining Authority and decisions by the Secretary of State. The thresholds for nationally significant road, rail and strategic rail freight infrastructure projects are defined in the Planning Act 2008 ("the Planning Act") as amended (for highway and railway projects) by The Highway and Railway (Nationally Significant Infrastructure Project) Order 2013 ("the Threshold Order"). For the purposes of this NPS these developments are referred to as national road, rail and strategic rail freight interchange developments.

1.3 Where a development does not meet the current requirements for a nationally significant infrastructure project set out in the Planning Act (as amended by the Threshold Order), but is considered to be nationally significant, there is a power in the Planning Act for the Secretary of State, on application, to direct that a development should be treated as a nationally significant infrastructure project. In these circumstances any application for development consent would need to be considered in accordance with this NPS. The relevant development plan is also likely to be an important and relevant matter especially in respect of establishing the need for the development.

1.4 In England, this NPS may also be a material consideration in decision making on applications that fall under the Town and Country Planning Act 1990 or any successor legislation. Whether, and to what extent, this NPS is a material consideration, will be judged on a case by case basis.

1.6 The policy set out in this NPS on strategic rail freight interchanges confirms the policy set out in the policy guidance published in 2011. Designation of this NPS means that the 2011 guidance is cancelled.

Consistency of NPS with the National Planning Policy Framework

1.17 The overall strategic aims of the National Planning Policy Framework (NPPF) and the NPS are consistent, however, the two have differing but equally important roles to play.

1.18 The NPPF provides a framework upon which local authorities can construct local plans to bring forward developments, and the NPPF would be a material consideration in planning decisions for such developments under the Town and Country Planning Act 1990. An important function of the NPPF is to embed the principles of sustainable development within local plans prepared under it. The NPPF is also likely to be an important and relevant consideration in decisions on nationally significant infrastructure projects, but only to the extent relevant to that project.

1.19 However, the NPPF makes clear that it is not intended to contain specific policies for NSIPs where quite particular considerations can apply. The National

Networks NPS will assume that function and provide transport policy which will guide individual development brought under it.

Summary of need

2.2 There is a critical need to improve the national networks to address road congestion and crowding on the railways to provide safe, expeditious and resilient networks that better support social and economic activity; and to provide a transport network that is capable of stimulating and supporting economic growth. Improvements may also be required to address the impact of the national networks on quality of life and environmental factors.

2.6 There is also a need for development on the national networks to support national and local economic growth and regeneration, particularly in the most disadvantaged areas. Improved and new transport links can facilitate economic growth by bringing businesses closer to their workers, their markets and each other. This can help rebalance the economy.

2.10 The Government has therefore concluded that at a strategic level there is a compelling need for development of the national networks – both as individual networks and as an integrated system. The Examining Authority and the Secretary of State should therefore start their assessment of applications for infrastructure covered by this NPS on that basis.

The need for development of strategic rail freight interchanges / Importance of strategic rail freight interchanges / Rail freight growth

2.50 While the forecasts in themselves, do not provide sufficient granularity to allow site-specific need cases to be demonstrated, they confirm the need for an expanded network of large SRFIs across the regions to accommodate the long-term growth in rail freight. They also indicate that new rail freight interchanges, especially in areas poorly served by such facilities at present, are likely to attract substantial business, generally new to rail.

Environmental

2.51 The environmental advantages of rail freight have already been noted at paragraph 2.40 and 2.41 Nevertheless, for developments such as SRFIs, it is likely that there will be local impacts in terms of land use and increased road and rail movements, and it is important for the environmental impacts at these locations to be minimised.

UK economy, national and local benefits – jobs and growth

2.52 SRFIs can provide considerable benefits for the local economy. For example, because many of the on-site functions of major distribution operations are relatively labour-intensive this can create many new job opportunities and contribute to the enhancement of people's skills and use of technology, with wider longer term benefits to the economy. The availability of a suitable workforce will therefore be an important consideration.

2.54 To facilitate this modal transfer, a network of SRFIs is needed across the regions, to serve regional, sub-regional and cross-regional markets. In all cases it is essential that these have good connectivity with both the road and rail networks, in particular the strategic rail freight network (see maps at Annex C). The enhanced connectivity provided by a network of SRFIs should, in turn, provide improved trading links with our European neighbours and improved international connectivity and enhanced port growth.

2.56 The Government has concluded that there is a compelling need for an expanded network of SRFIs. It is important that SRFIs are located near the business markets they will serve – major urban centres, or groups of centres – and are linked to key supply chain routes. Given the locational requirements and the need for effective connections for both rail and road, the number of locations suitable for SRFIs will be limited, which will restrict the scope for developers to identify viable alternative sites.

2.57 Existing operational SRFIs and other intermodal RFIs are situated predominantly in the Midlands and the North. Conversely, in London and the South East, away from the deep-sea ports, most intermodal RFI and rail-connected warehousing is on a small scale and/or poorly located in relation to the main urban areas.

2.58 This means that SRFI capacity needs to be provided at a wide range of locations, to provide the flexibility needed to match the changing demands of the market, possibly with traffic moving from existing RFI to new larger facilities. There is a particular challenge in expanding rail freight interchanges serving London and the South East.

4 - Nationally Significant Infrastructure Project (NSIP) regime; national infrastructure status of the SRFI

The SRFI appears to fall within the definition of a “rail freight interchange” as defined by the Planning Act 2008, section 26 (the area of the SRFI is at least 60 hectares in size, will be part of the national railway network and be capable of handling 4 trains a day for multiple consignees). As a result, the SRFI would have been, if at the consenting stage, an NSIP.

The final NPS was not published at the time of the SoS decision on the SRFI, but the Secretary of State’s comments on the need for the SRFI to serve London and the South East mean that the SRFI is “nationally significant” for the purposes of paragraph 162 of the NPPF.

While there is an argument that the comments in the NPPF on “nationally significant infrastructure” are only meant to address projects which have gone through the consenting process or which meet the definition of an NSI project, that is an unduly restrictive approach. It is correct to treat the SRFI permission as equivalent to an NSI project both because it meets the definition of an NSI under the Planning Act and because of the Secretary of State’s observations when permitting the scheme (see paras. 31 and 44 of the decision letter). In any event, under para. 162, the NPPF

requires consideration of “the need for strategic infrastructure” (which the SRFI obviously is) whether or not it is NSI.

This means that the “positively prepared” part of the definition of soundness at NPPF paragraph 182 is engaged in respect of the SRFI.

Delivery of infrastructure which satisfies the definition of NSI, or is objectively to be regarded as nationally significant (which this is because of the Secretary of State’s conclusions on the project), is consequently relevant to the Local Plan process. As a generality (and subject to other imperatives, which are dealt with below), in order to be positively prepared the Local Plan strategy should seek to facilitate the SRFI. Having been identified as a project which meets a national objective, the NPPF indicates that this development should, in general terms, be facilitated.

5 - May 2018 PPC Local Plan Reports

Extracts from May 2018 PPC Local Plan Reports:

The reports are available in full at:

http://stalbans.moderngov.co.uk/ieListDocuments.aspx?CId=459&MId=8516&Ver=4)

Former Radlett Aerodrome Ref. PS-607 Strategic Site Evaluation Form

Green Belt Review evaluation (RAG)

An independent Green Belt Review was carried out in 2013. The site falls in parcel GB30. The Review concludes

“The overall contribution of GB30 towards Green Belt purposes is:

- *To check the unrestricted sprawl of large built-up areas – limited or no*
- *To prevent neighbouring towns from merging – partial*
- *To assist in safeguarding the countryside from encroachment - significant*
- *To preserve the setting and special character of historic towns – significant*
- *To maintain existing settlement pattern – significant*

The parcel does not fully separate neighbouring 1st tier settlements however it contributes (with GB26, 27, 28 & 29) to the strategic gap between St Albans and Watford (Abbots Langley) to the south of the study area. This gap is 4.8km and contains the settlements of Chiswell Green, How Wood, Bricket Wood, Park Street / Frogmore and Radlett Road. Therefore any reduction in the gap would have a limited impact on the overall separation of 1st tier settlements in physical or visual terms but would have a greater impact on the separation of 2nd tier settlements and local levels of visual openness.

The parcel displays some typical rural and countryside characteristics but also accommodates significant recreational land uses including Sopwell parkland and Verulam golf course in the north. Beyond this arable fields are bound by hedgerows with pasture frequently close to the watercourses. The parcel is also contains the

well restored mineral workings (Radlett Airfield). The main urban influences are the M25 and A414 which dissect the site. Both are well concealed in the landscape, but highly audibly intrusive. Land to the north of Sopwell acts as a green wedge into St Albans. There is limited built development and settlement boundaries are generally strong meaning the urban fringe is well connected to the wider countryside. However there is ribbon development along the Radlett Road south of Park Street / Frogmore to Colney Street industrial park. The countryside landscape is generally open in character with limited tree and hedgerow cover. The parcel contains Sopwell Conservation area. Most significantly it also provides open and historic setting to the Cathedral and Abbey Church of St Alban providing views to and from the countryside.

The parcel provides the primary local gap between St Albans and Park Street/Frogmore (2nd). The narrow gap is 0.4km and contains the A414 which is well integrated into the landscape. Landscape features and planting enhance the perception of the gap and lessen the urban influence arising from the proximity of settlements and the road. Any reduction would be likely to compromise the separation of settlements in physical and visual terms, and overall visual openness. The gap from Park Street / Frogmore (2nd) to Radlett Road (3rd) Colney Street industrial area is very limited due to ribbon development along the Radlett Road."

Assessment has been undertaken on the basis of a limited development area south of the A414, informed by the parcel assessment above. The wider parcel performs a range of Green Belt functions and there would be some impacts. A partial development of the parcel only below the A414 could however be undertaken in a way that reduces such impacts. Exact boundaries will be set out through the Local Plan/masterplanning process.

The parcel contributes, together with GB26, 27, 28 and 29, to the strategic gap between St Albans and Watford, however the gap would remain at 4.8km and the development of the site would have a limited impact on the overall separation of these settlements.

The whole submitted site has strong physical boundaries by way of the A414 dual carriageway to the north, the Midland Mainline to the east, the M25 to the south and the existing built up area of Park Street to the west. These boundaries considerably assist in containing the Green Belt impact of any development within the site.

AMBER

<u>Existing significant permission</u>

Outline planning permission was granted by the Secretary of State for a Strategic Rail Freight Interchange (SRFI) on 14/07/2014 (LPA reference 5/2009/0708). Three Reserved Matters applications have been submitted to the LPA and are awaiting determination.

Exact boundaries will be set out through the Local Plan/masterplanning process. The footprint of any built development would likely be located in a broadly similar position to the built development proposed as part of the SRFI. The impact of 2,500 homes

would likely have a broadly similar impact as the permitted 331,665 sq.m. of warehousing.

It is recognised that the Secretary of State has determined that "the factors weighing in favour of the appeal include the need for SRFIs to serve London and the South East…the lack of more appropriate alternative locations for an SRFI in the north west sector which would cause less harm to the Green Belt…the local benefits of the proposals for a country park, improvements to footpaths and bridleways and the Park Street and Frogmore bypass". The Secretary of State considered "that these considerations, taken together, clearly outweigh the harm to the Green Belt and the other harms he has identified including the harm in relation to landscape and ecology and amount to very special circumstances." The site is however a strategic scale site that has (very largely) been put forward as part of a Call for Sites. For the reasons above there is no change to the rating of the site.

AMBER

NB: The site assessed includes additional land not submitted as part of the HCC Former Radlett Airfield submission.

<u>May 2018 PPC – Indicative new draft Local Plan for Publication (Regulation 19 stage) consultation</u>

3.2 Following legal advice, further work is required on the evidence base which will necessitate re-evaluation of the approach and strategy for housing development. The draft plan attached to this report should be considered as a working draft and will be subject to change / modification.

4.16 The committee will note that the working draft Local Plan at Appendix 1 contains 11 Broad Locations. These consist of all 8 of the Green rated sites from the draft Strategic Site Selection process (report on this Agenda). Officers have come to the initial draft conclusion that the advantages of 2 of the included sites (Hemel Hempstead North and South East Hemel Hempstead), as identified, are greater than that of the excluded site. In relation to the Park Street Garden Village Broad Location, this is a conditional allocation. After legal advice, this allocation will be the subject of a fresh re-evaluation following the gathering of evidence on the relative merits and importance of delivering the site either for housing or the Strategic Rail Freight Interchange, for which it was found that there was a national need. This re-evaluation will include looking at alternative strategies which would deliver the identified housing elsewhere including options such as identifying a Housing Target for Neighbourhood Plan areas.

<u>May 2018 PPC – Local Plan – Draft Strategic Site Selection Evaluation Outcomes</u>

4.13 As agreed at the March meeting of PPC, developers of the sites scoring an overall evaluation of Green or Amber will be invited to present their schemes. These presentations will be considered by an Evaluation Validation panel. This will comprise the Chair of PPC and up to 3 Councillors selected from PPC. This is due to take place on 23 May and 24 May 2018.

6 – SEGRO / Hogan Lovells letters (4 letters)

Hogan Lovells have written to SADC on behalf of SEGRO. Letters dated 21, 24, 30 May (2 letters) are attached to June 2018 PPC agenda. An earlier letter from SEGRO (dated 8 March 2018) was included in the May 2018 PPC agenda.

Extracts below explain the SFRI promoter's (SEGRO) view that the Radlett Airfield site should not be considered as a potential Local Plan housing site:

NEED FOR SRFI

We have reviewed the Radlett Aerodrome assessment and reached the conclusion that it is fundamentally flawed as a planning appraisal because it gives no weight to the decision or reasoning of the Secretary of State to grant permission for the development of an SRFI to serve London and the South East. Although the permission is mentioned in the assessment, this is under the section dealing with impacts on the purposes of the Green Belt, which appears to seek to compare the Secretary of State's assessment of the impact of the SRFI on the Green Belt with your assessment of the impact of 2,300 houses. However, as highlighted in our client's earlier letter, the Secretary of State's decision to grant planning permission was made due to the national importance of making provision for SRFI's and absence of alternative sites to meet the important identified need for SRFI's in the South East of the country and in particular the NW sector (an area covering a large part of London and the south east). As you are aware with the recent approval of Reserved Matters on the site the SRFI is being actively pursued.

In these circumstances where the Secretary of State has determined that there is a national need to release the site from the Green Belt to develop an SRFI, any consideration of the "suitability" of the site for housing development (section 2 of the evaluation) must consider and evaluate fully all of the implications of allocating the site for housing and the incompatibility with the Secretary of State's decision if such an allocation is pursued. The evaluation which has been carried out by the Council contains no such analysis. The evaluation treats housing and SRFI's as effectively comparable land uses whereas one (the SRFI) has demanding site location criteria which make it not "footloose" and the other (housing) is in relative terms easier to accommodate in a variety of locations. This is a fundamental issue which is effectively ignored in the planning appraisal.

We note that the Committee report at paragraph 3.4 sets out various factors which may be relevant to the allocation of housing sites. One of the factors is "unique contribution to other infrastructure provision or community benefits". In that context it is clear that the evaluation of the site should have included a comparative assessment of the ways in which a housing allocation would contribute to infrastructure provision or community benefits as against how the approved SRFI would achieve such contributions. The Secretary of State has very clearly addressed the contributions which the SRFI would make in the decision letter granting permission for that scheme.

DELIVERABILITY

A further issue which the site evaluation fails to address in any meaningful way is the question of the ownership of the site and thus the deliverability of the site for housing. Whilst there is a statement "the site assessed includes additional land not submitted as part of the HCC Former Radlett Airfield submission" there is no explicit acknowledgement that a significant part of the site is neither owned nor controlled by HCC. This raises a fundamental question over HCC's ability to secure control of the entire site and thus over the deliverability of a housing development, which are vital issues when the Council determines the appropriateness of the site for a housing allocation.

SOUNDNESS TESTS FOR THE LOCAL PLAN

Our client's earlier letter drew to your attention the obvious difficulties of the Local Plan passing the soundness tests if a housing allocation were pursued at the former Radlett Aerodrome. The appendix to your committee report demonstrates that any such claim to soundness would have to rely on ignoring the Secretary of State's decision and reasoning about the need to develop an SRFI on the site. In such circumstances, we consider that there is no realistic possibility of the Local Plan being found sound in the face of the manifest availability of a variety of alternative sites on which to accommodate housing. We reiterate our client's request that you should not pursue the allocation of the site for housing any further.

If the Council continues with a Local Plan process which involves this site as a proposed housing allocation our client will be forced to consider all potential remedies including a possible legal challenge to that process and its outcome.

The Council acknowledges this analysis. It has been taken into account in this re-evaluation.

7- Reserved Matters and Discharge of Conditions applications

Helioslough are actively progressing the SRFI development.

Three Reserved Matters applications were approved by SADC's Planning Referrals Committee, subject to conditions, 14 May 2018. The three applications are:

- 5/2016/3006 - Development, i.e. buildings, intermodal, car parks, internal roads.
- 5/2017/1938 - Infrastructure, i.e. the bypass, northern gateway, southern access and rail chord.
- 5/2017/1995 - Landscaping, i.e. details approved as specified in Condition 15.

The committee agenda and minutes of the meeting can be viewed at:
http://stalbans.moderngov.co.uk/ieListMeetings.aspx?CId=169&Year=0

All conditions relating to both the outline permission and the reserved matters permission need to be discharged. Further details can be found here.

8 - Hertfordshire County Council's position – as publically available

Hertfordshire County Council, the landowner for the majority of the SRFI site, submitted the site to SADC's 2017 and 2018 'Call for sites'.

The 2017 submission (viewable at http://stalbans-consult.limehouse.co.uk/file/4700082) stated:

"*This site has outline planning permission for a Strategic Rail Freight Interchange (SFRI). If the site is not required for this use the County Council could make this site available to meet the growth needs of the District, particularly housing. It is considered that the site is large enough to accommodate a Garden Village, which could include housing and employment along with the infrastructure to support the community, including schools.*"

The 2018 submission (viewable at http://stalbans-consult.limehouse.co.uk/file/4915834 and http://stalbans-consult.limehouse.co.uk/file/4915835) includes the Cabinet's recommendation of 19 February 2018 which summarises HCC's current position:

"*Cabinet agreed that:-*

i) the County Council supports the promotion of the eight sites referred to in the report through the Local Plan process to assist St Albans City and District Council in achieving its housing and employment land requirements; and

ii) the inclusion of the Former Radlett Airfield in this process is authorised to enable the site to be considered by St Albans City and District Council for inclusion in the Local Plan for housing rather than a strategic rail freight interchange."

HCC have discussed the future of the site, and the complex issues entailed, at various meetings. These include:

- Cabinet 19 February 2018 Item 11- 'St Albans City and District Council Local Plan Call for Sites Consultation (Jan/Feb 2018)' (Cabinet report can be viewed here and Landowner Representations Document can be viewed here).

- Cabinet 11 July 2016 Item 4 – 'Former Radlett Airfield – To receive 'expressions of interest' and to consider the next steps regarding the submissions' (relevant documents can be viewed here).

- Cabinet 14 December 2015 Item 12 - 'To consider the resolutions of County Council on November 2015 regarding the Former Radlett Aerodrome' (relevant documents can be viewed here).

- County Council 10 November 2015 Item 4a –Petition relating to the Former Radlett Aerodrome (relevant documents can be viewed here).

- Cabinet and Policy, Resources and Transformation Cabinet Panel 9 December 2013 Item 3 – North Orbital Road Upper Colne Valley – Helioslough Ltd: To consider letters from the Department for Communities and Local Government; and the consider the future of the land at the Former Radlett Aerodrome (relevant documents can be viewed here).

- Cabinet 21 October 2013 Item 5 - North Orbital Road Upper Colne Valley – Helioslough Ltd: Process progress report (Cabinet report can be viewed here, minutes can be viewed here).

- Resources and Performance Cabinet Panel 4 July 2016 Item 5 – 'Former Radlett Aerodrome site' (relevant documents can be viewed here).

N.B. Committee records only available online from May 2013

The public position of Hertfordshire County Council's Leaders throughout the process is illustrated through the following quotes:

David Williams, the current Leader of Hertfordshire County Council, said in a press release dated 19 February 2018 (viewable here):

"*We've always said that we'd prefer the Radlett airfield site to remain as Green Belt and that we'd rather not sell it, but we recognise that we need to build 90,000 new homes in the county over the next 15 years and some 13,700 of those will need to be in the St Albans district.*

That's why it makes sense for us to offer up this land, which we own, as a possible site for a Garden Village with 2,000 new homes and the infrastructure to support them. We know that developers are interested in this idea and we feel it could be an alternative to using the land for a Strategic Rail Freight Interchange.

Along with the other land we're putting forward, this will make a significant contribution towards providing the new homes that our county will need to support a growing population and an increase in local jobs."

In July 2016, the then Leader of the County Council, Robert Gordon, was reported (article available here) to have said:

"*Our prime duty is to the residents of Hertfordshire, and we remain opposed to the proposed development of a SFRI on the county council's land at the former Radlett airfield.*

We would prefer not to see a change in the current green belt status of this land and would also prefer not to sell it. However, it is possible that circumstances might arise where we have no lawful alternative but to sell."

The Re-evaluation

Purpose of this re-evaluation

As has been dealt with above, in general terms the NPPF requires that the local plan should seek to facilitate the SRFI.

However, the NPPF also requires the Local Plan to seek to provide land for the objectively assessed development needs of other forms of development in a local authority's area, including housing. Consequently there are often tensions in plan-making between seeking to meet varying needs, the limited environmental resources to accommodate those various requirements and competing priorities. This is made clear by the wording in paragraph 182 of the NPPF, first bullet, when it is stated that the authority should "seek" to meet the relevant needs "where it is reasonable to do so and consistent with achieving sustainable development". There is, as is indicated in a number of policy documents and assessments, a need to provide housing in within the Council's area and to protect the Green Belt.

In this instance, therefore the Council must weigh up the loss of the benefits associated with the SRFI (including national need for SRFIs as indicated in national policy, the provision of a country park and other less significant matters) against the benefits of delivering housing (and other less significant matters) on the site.

In order to justify the loss of the SRFI opportunity, however, it is also necessary to consider whether it is appropriate (taking into account other considerations, like Green Belt considerations) to find another location for the housing development in order to allow the SRFI to be provided. Full account must be taken of the effect of not providing a nationally significant infrastructure proposal like the SRFI, should a housing strategy that prevents such development be selected.

The Council is required, therefore, to consider whether the effect of delivering housing on an alternative site or sites, along with the benefit of delivering the SRFI comprises a preferable and more appropriate strategy to a proposal that delivers housing on the SFRI site and prevents delivery of the SFRI.

<u>Benefits of SRFI</u>

Extracts from Planning Inspector's decision:

13.110 *So far as benefits are concerned, those more locally site specific include … a country park, the improvements to footpaths and bridleways and the provision of the bypass to Park Street and Frogmore. The Secretary of State previously attached "some weight" to the predicted reduction on CO2 emissions identified in the Environmental Statement. I have no reason to disagree with that conclusion. Some weight was also afforded by the Secretary of State to the numbers of people who would work at the SRFI, albeit not necessarily living close to the site.*

13.111 On a general basis, there is no dispute about the need for an SRFI. It is stated and restated in a number of documents and encouraged in PPG13 (paragraph 45). Government policies have consistently supported shifting freight from road to rail. SRA Policy (2004) suggests that 3 or 4 new SRFIs could serve London and the South East located where key road and rail radials intersect the M25. The indication in the SRA Policy that 400,000m2 of rail connected warehousing

floorspace would be needed in the South East by 2015 does not constitute a target or a ceiling. In the previous decision in 2008, the Secretary of State concluded that the need for SRFIs to serve London and the South East was a material consideration of very considerable weight. No new SRFIs have been developed since the earlier decision. Therefore, the weight has not diminished."

13.118 Accordingly, I conclude that the proposal would constitute inappropriate development in the Green Belt which, in itself, would cause significant harm to which substantial weight should be attached. Harm would also be caused to the Green Belt because of a loss of openness, significant encroachment into the countryside and the contribution to urban sprawl. There would be an adverse effect on the setting of St Albans, although the Secretary of State concluded previously that only limited weight should be attached to this. Harm would also arise from the adverse effects on landscape and ecology. Therefore, the proposal would conflict with Policies 1, 104 and 106 of the adopted Local Plan Review.

13.119 However, other considerations including, particularly the need for SRFIs to serve London and the South East and the lack of more appropriate alternative locations for an SRFI in the north west sector which would cause less harm to the Green Belt, together with the local benefits of the proposals for a country park, improvements to footpath and bridleways in the immediate area and the provision of the Park Street and Frogmore bypass, lead me to conclude that very special circumstances exist in this case which outweigh the conflict with the development plan and therefore the appeal should be allowed subject to conditions..."

Extracts from Secretary of State's decision:

53. The Secretary of State considers that the factors weighing in favour of the appeal include the need for SRFIs to serve London and the South East…the lack of more appropriate alternative locations for an SRFI in the north west sector which would cause less harm to the Green Belt…the local benefits of the proposals for a country park, improvements to footpaths and bridleways and the Park Street and Frogmore bypass. The Secretary of State considers that these considerations, taken together, clearly outweigh the harm to the Green Belt and the other harms he has identified including the harm in relation to landscape and ecology and amount to very special circumstances."

The Council fully acknowledges these potential benefits.

<u>Benefits of Housing</u>

National policy has long recognised the benefits of provision of new housing development. However, new housing development is now recognised by Government as a particular pressing national need.

Extracts from the Housing White Paper 'Fixing our broken housing market':

I want to fix this broken market so that housing is more affordable and people have the security they need to plan for the future. The starting point is to build more

homes…We need to build many more houses, of the type people want to live in, in the places they want to live.
(Prime Minister foreword)

This country doesn't have enough homes…That has to change. We need radical, lasting reform that will get more homes built right now and for many years to come.
(Secretary of State foreword)

The housing market in this country is broken, and the cause is very simple: for too long, we haven't built enough homes. Since the 1970s, there have been on average 160,000 new homes each year in England. The consensus is that we need from 225,000 to 275,000 or more homes per year to keep up with population growth and start to tackle years of under-supply.

Extract from NPPF revision consultation March 2018:

60 To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay. (Para 61introduces the proposed standard method for asessing need)

Extract from Prime Minister's speech on making housing fairer: 5 March 2018:

…But we cannot fulfil that dream, we cannot bring about the kind of society I want to see, unless we tackle one of the biggest barriers to social mobility we face today: the national housing crisis.

The causes and manifestations vary from place to place but the impact is all too clear: in much of the country, housing is so unaffordable that millions of people who would reasonably expect to buy their own home are unable to do so. Others are struggling even to find somewhere to rent.

The root cause of the crisis is simple. For decades this country has failed to build enough of the right homes in the right places…

<u>Deliverability / developability of the site for housing</u>

The deliverability of the site has been questioned by Helioslough / SEGRO. The SFRI proposal and the planning process it went through itself demonstrates that the site can in principle be developed, including with suitable road access. The only questioning of this appears to be on the basis of the separate ownership of a relatively small proportion of the land required, including for some of the proposed SRFI accesses. There is no reason to suppose this land cannot be made available through normal negotiation / land transactions / statutory processes in the timeframes indicated in the draft Local Plan. The NPPF sets the test very clearly at paragraph 47 footnote 12 as:

To be considered developable, sites should be in a suitable location for housing development and there should be a reasonable prospect that the site is available and could be viably developed at the point envisaged.

The draft Local Plan sets that point in time as first housing completions in approximately 2026-2027.

Alternative housing development strategy options and effects of different strategies tested against the current proposed strategy

Currently, other strategy options are:–

1) North East Redbourn – Amber rated

This site/alternative strategy option would not deliver the equivalent quantum of housing development required within the Plan period. Thus a simple substitution of this site for the former Radlett Airfield option could not satisfy the NPPF requirement to meet objectively assessed development needs. As an alternative site, it would also not generate as many other significant benefits as those identified in association with the Park Street Garden Village. Details are in the reports considered by PPC in May 2018 and at this meeting.

2) Using Red rated sites

This site/alternative strategy option would result in a significantly greater damaging impact on the Green Belt. It would therefore be directly contrary to the NPPF requirement to protect Green Belt wherever possible. The Council needs to show that, where a release is proposed, site specific exceptional circumstances can be demonstrated. Overall this requires that impacts on Green Belt purposes are minimised. It is not reasonable or practical to investigate every possible permutation of theoretical community / other 'benefits' from every permutation of one or more of over 50 alternative 'Red' rated sites. However, it is highly likely that – given the unique locational situation in terms of sustainable transport improvements (Abbey Line in particular) – alternative 'Red' sites would also not generate as many other significant benefits as those identified in association with the Park Street Garden Village. Details are in the reports considered by PPC in May 2018 and at this meeting.

3) Different delivery trajectories

The trajectories for current Broad Locations in the draft Local Plan have been informed by industry knowledge and discussions with an extensive variety of informed and interested parties. They set out a reasonable approach to timescales. The NPPF requirement is for a realistic approach to delivery within the Plan period. The only way that differing the trajectory could provide sufficient land for the homes required within the Plan period would be to adopt what are considered to be unrealistic delivery timetables for North Hemel and East Hemel South. The likely outcome would be failure to meet the NPPF 'standard method' number of 913 homes per annum.

Details are in the reports considered by PPC in May 2018 and at this meeting.

4) Other LPAs delivering development

As set out in the main report at this meeting.

Duty to Cooperate discussions with adjoining and nearby authorities show no reasonable prospect of the District's housing need being met elsewhere at this point in time. Work with adjoining and nearby authorities is ongoing. Statutory and NPPF mechanisms do not allow reliance on development beyond District / Plan boundaries.

5) Neighbourhood Plans

There have been seven Neighbourhood Plan area designations in the District. The Harpenden and Harpenden Rural Neighbourhood Plan is currently at Regulation 16 'publicising a Plan Proposal' stage. Discussions with Neighbourhood Plan bodies show no reasonable prospect of significant additional elements of the District's housing need being met through Neighbourhood Plans at this point in time. Work with Neighbourhood Plan bodies is ongoing. The Council also currently has no power to ensure additional housing development would be delivered through Neighbourhood Plans, as they are voluntary in nature. The statutory provisions for neighbourhood plans and NPPF policies do not envisage reliance on future, uncertain, delivery of housing by this method. Additionally, any neighbourhood plan processes would encounter the same Green Belt purposes impacts as the Local Plan and may well fail to demonstrate exceptional circumstances for release of Green Belt.

6) Development of a number of smaller sites currently in the Green Belt

This option is a variant on 2) and fails against the same NPPF requirements. Identification of sufficient smaller sites would unacceptably spread the adverse impacts of development on Green Belt purposes. It would also prevent the Plan maximising the infrastructure and community benefits that will arise only from larger scale urban extensions. The Local Plan Development Strategy clearly sets out to achieve a range of socio – economic benefits and this arises particularly from larger sites that are likely to provide a range of services and facilities that will benefit the whole community, not just new residents.

<u>The options overall</u>

In all the options set out above it would be possible for the Council to prepare a Local Plan that had no impact on the SRFI site as a result of inclusion of a housing site, or sites, with similar capacity to the former Radlett Airfield (SFRI site).

However it is clear that such an alternative housing strategies 1-3 and 5 / 6 would significantly increase overall Green Belt loss and would do so on sites where there are greater site specific adverse impacts on Green Belt purposes. Only option 4 with its potential to divert housing development beyond the Green Belt might possibly avoid this outcome.

Overall, these alternative housing development strategy options need to be considered in three ways:

First; are there better alternative housing strategies with currently identified sites that would completely avoid any need to consider use of the Radlett Airfield SFRI site?

There are no such strategies because the Council's comprehensive Green Belt Review and call for sites / site selection process has only identified a very limited number of Amber rated sites. There is insufficient capacity in these sites to entirely replace the option of using the former Radlett Airfield site. The NPPF requires exceptional circumstances for release of Green Belt and the circumstances must be site specific.

Second; following from the above, are there alternative strategies based on a combination of currently identified sites and other newly identified sites (i.e. sites more damaging to Green Belt purposes, or diversion of development outside the District to areas beyond the Green Belt)?

Such a strategy cannot be put in place because there is no mechanism available to the Council to bring forward non Green Belt Sites outside the District and to use site more damaging to Green Belt would not satisfy the NPPF requirement for site specific exceptional circumstances to justify release.

Third; is a site combination (achieved on the basis of either of the first and second points above) that allows both the SFRI to go ahead and the Plan to achieve its housing requirement / target, more appropriate, on balance, than an option that prevents the SFRI proceeding?

This is the consideration underlying the conclusions of this re-evaluation.

<u>Other alternative locations for an SRFI</u>

The Inspector concluded (*13.119)*:

However, other considerations including, particularly the need for SRFIs to serve London and the South East and the lack of more appropriate alternative locations for an SRFI in the north west sector…….

The Secretary of State concluded:

"The Secretary of State has had regard to the Inspector's comment at IR13.34 that, as the Council accepted in evidence, the need for SRFIs is stated and restated in a number of documents. The Secretary of State observes that the Written Ministerial Statement of 29 November 2011 makes clear that there remains a need for a network of SRFIs to support growth and create employment and that it has proved extremely problematical, especially in the South East, to create appropriately located SRFIs. The SRFI Policy Guidance published on 29 November 2011 states that only one SRFI had been granted planning consent in the whole of the South East region and advises that SRFI capacity needs to be provided at a wide range of locations,

particularly but not exclusively serving London and the South East. The Secretary of State has had regard to the comment made by STRIFE (letter of 4 March 2014) that the proposed SRFI at Howbury Park has not been delivered. However, he tends to the view that this only serves to reinforce the point made in the 2011 Written Ministerial Statement on Strategic Rail Freight Interchanges that, in the South East in particular, it is proving extremely problematical to develop SRFIs."

The Council fully acknowledges these issues and potential benefits of an identified site.

Key issue – At a point in time

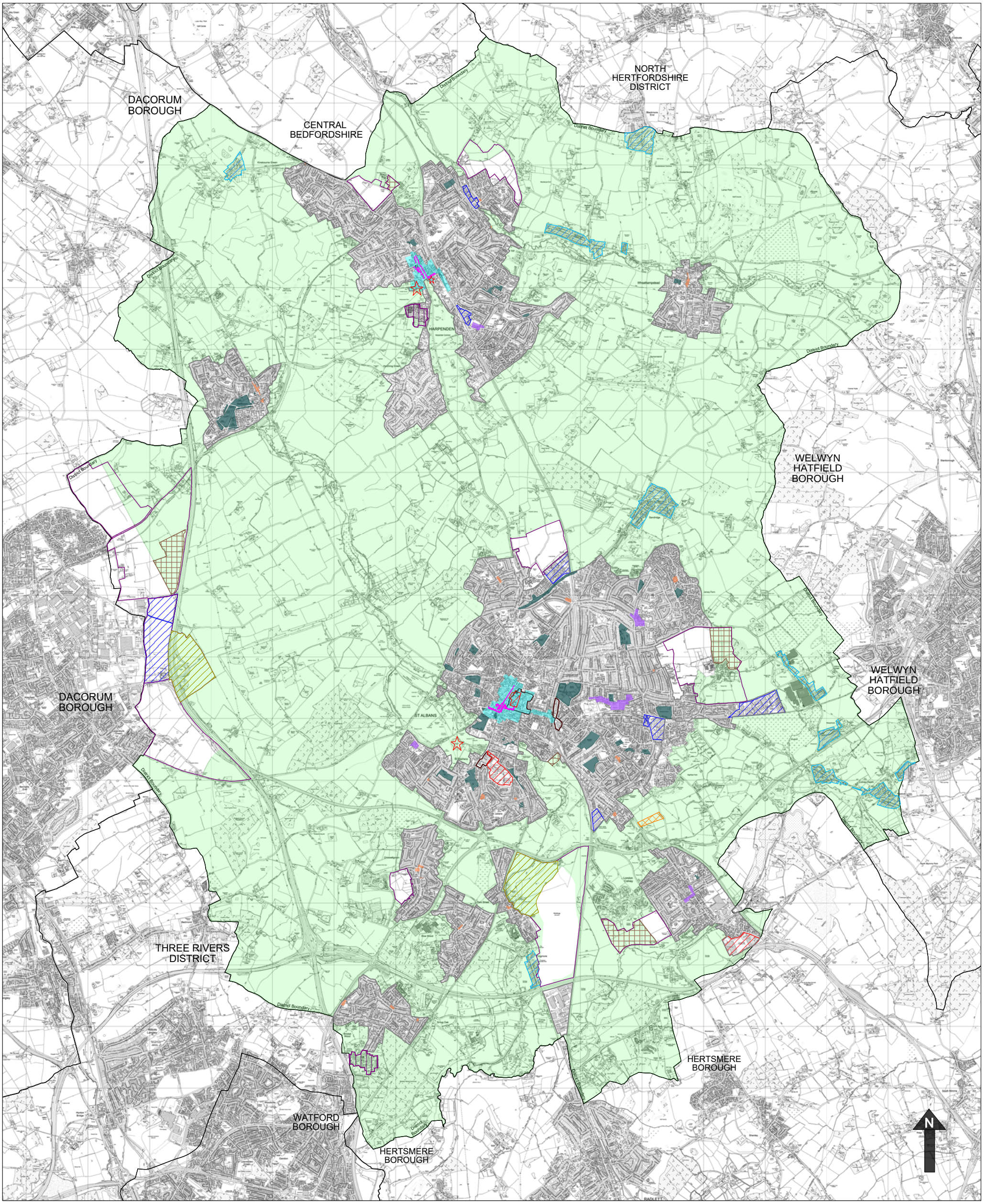
This re-evaluation is appropriate for this point in time. It will be revisited as time and the situation progresses. Assessment and judgments for these issues are time-sensitive and there is significant potential for revision. This is in particular given the high likelihood that the new NPPF Update will be published in June/July 2018.

The Local Plan Regulation 19 formal consultation stage itself is yet to come. This stage and consideration of representations made at this stage will be an important matter for the Council in deciding on progress towards submission.

Parties including SEGRO/Heliosslough, the Government, the Railfreight industry, HCC etc. will be fully able to respond to that consultation and we welcome their formal feedback at that stage.

Conclusion

Overall, at this time, the current view of officers is that the draft Broad Location for Park Street Garden Village is the most appropriate response to the evidence available. This will be kept under ongoing review, in particular in the light of responses to the Regulation 19 Local Plan formal consultation.



Local Plan Policies Map (Version 6)

St Albans City & District Council

Key

- S3 Metropolitan Green Belt
- S6 Broad Locations for Development (wider boundaries including retained Green Belt)
- L5 Small Scale Development in Green Belt Settlements
- L8 Primarily Residential Areas
- L9 Primarily Business Use Areas
- L10 Strategic Office Locations
- L10 Special Employment Locations in the Green Belt
- L12 Centres for Retail, Services and Leisure (in each case)
- L12 (Town Centres)
- L12 (District Centres)
- L12 (Local Centres)
- L12 (Key Shopping Areas)
- L16 Mixed Use Opportunity Areas
- L18 Transport Strategy (improvements in Green Belt)
- L21 Education (in Green Belt)
- L22 Community Leisure and Sports Facilities (London Road Cemetery Extension)
- L22 Community Leisure and Sports Facilities (Leisure Facilities Enhancement Opportunity)
- L26 Local Green Space

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Appendix 6 – Re-evaluations – SRFI v Housing

b. April 2019

Draft Park Street Broad Location – Review of the re-evaluation following the gathering of evidence on the relative merits of housing and the SRFI as well as alternative strategies which would deliver the identified housing elsewhere (March 2019)

As set out in the main report and addressed at PPC in June 2018, the committee will note that the draft Local Plan contains 11 Broad Locations. In relation to the Park Street Garden Village Broad Location, after legal advice, this allocation was the subject of a re-evaluation following the gathering of evidence on the relative merits and importance of delivering the site either for housing or the Strategic Rail Freight Interchange, for which it was found that there was a national need. This re-evaluation included looking at alternative strategies which would deliver the identified housing elsewhere including options such as identifying a Housing Target for Neighbourhood Plan areas. This re-evaluation set out:

Key issue – At a point in time

This re-evaluation is appropriate for this point in time. It will be revisited as time and the situation progresses. Assessment and judgments for these issues are time-sensitive and there is significant potential for revision. This is in particular given the high likelihood that the new NPPF Update will be published in June/July 2018.

The Regulation 19 formal consultation stage itself is yet to come. This stage and consideration of representations made at this stage will be an important matter for the Council in deciding on progress towards submission.

Parties including SEGRO, the Government, the Railfreight industry, HCC etc. will be fully able to respond to that consultation and we welcome their formal feedback at that stage.

…

Conclusion

Overall, at this time, the current view of officers is that the draft Broad Location for Park Street Garden Village is the most appropriate response to the evidence available. This will be kept under ongoing review, in particular in the light of responses to the Regulation 19 Local Plan formal consultation.

The re-evaluation considered at June 2018 PPC (and Cabinet and Council thereafter) has been further reviewed in the light of more recent considerations (March 2019). These considerations have included: correspondence reported to Cabinet and Council in June and July 2018, the LP regulation 19 Publication consultation responses (reported elsewhere on the Agenda), further Sustainability Appraisal work (see Appendix 2) and the NPPF 2018 and 2019 revisions. Of particular note is the updated text in the NPPF (2018 and 2019) relating to interchanges for rail freight. Paragraph 104 sets out:

Planning policies should:

…

e) provide for any large scale transport facilities that need to be located in the area[42], and the infrastructure and wider development required to support their operation, expansion and contribution to the wider economy. In doing so they should take into account whether such development is likely to be a nationally significant infrastructure project and any relevant national policy statements;

[42] Policies for large scale facilities should, where necessary, be developed through collaboration between strategic policy-making authorities and other relevant bodies. Examples of such facilities include ports, airports, interchanges for rail freight, public transport projects and roadside services.

There have also been a number of other related matters where circumstances have moved on – for example the 'making' of the Harpenden Neighbourhood Plan in February 2019 and the fact that there have been a further number of conditions discharged in relation to the permitted Strategic Rail Freight Interchange (SRFI).

Regulation 19 Representations by RPS on behalf of Helioslough Ltd

These are set out in 4 sections and with two Appendices. They can be concisely addressed as follows.

1 – Strategic Rail Freight Interchange

The benefits of an SRFI were fully acknowledged in the Re-evaluation. The challenge of finding alternative sites was also fully acknowledged in the Re-evaluation. The information referred to at Appendix A is acknowledged.

2 – Park Street Garden Village

The challenge to the approach taken in the SA/SEA with regard to the Park Street Garden Village is misconceived. The Site Selection and Local Plan processes fully acknowledged the consequences of not providing the SRFI. The SA/SEA looked at the likely effects of development for housing, with the 'alternatives' of Park Street Garden Village vs Strategic Rail Freight Interchange having been taken into account at a different step – the evaluative stage. For example, the Strategic Site Selection Evaluation Outcomes report sets out explicitly:

Existing significant permission

Outline planning permission was granted by the Secretary of State for a Strategic Rail Freight Interchange (SRFI) on 14/07/2014 (LPA reference 5/2009/0708). Three Reserved Matters applications have been submitted to the LPA and are awaiting determination.

…

It is recognised that the Secretary of State has determined that "the factors weighing in favour of the appeal include the need for SRFIs to serve London and the South East…the lack of more appropriate alternative locations for an SRFI in the north west sector which would cause less harm to the Green Belt…the local benefits of the proposals for a country park, improvements to footpaths and bridleways and the Park Street and Frogmore bypass".

The re-evaluation explicitly related to "the relative merits of housing and the SRFI".

Nonetheless, in order to provide PPC, Cabinet and interested parties with a comparative assessment in the SA/SEA format for understanding, this assessment has now been carried out. This assessment is included in the updated draft SA/SEA (see Appendix 2).

3 - Site Evaluation Process

The challenge to the approach taken in the Strategic Site Selection process with regard to the Park Street Garden Village is misconceived. It misunderstands the process that was undertaken (and is made explicit) in the Strategic Site Selection work. Most particularly it mistakes the assessment of 'parcels' and that of 'sites'. It is entirely logical that, in some instances, as the assessment sets out, some of 'most significant' parcels contain some Green or Amber rated sites; and conversely that some of the 'least important' parcels do not contain Green or Amber rated sites.

4 – Housing Need

The 'Standard Methodology' has more recently been confirmed by the Government, based on the 2014 household projections.

Appendix A – see comment under section (1) above

Appendix B – noted

Conclusion

This further review does not alter the overall view of officers that the draft Broad Location for Park Street Garden Village is the most appropriate response to the evidence available.

Appendix 7 – HCC Position

a. HCC Advice 7/12/13

JOINT OPINION

HERTFORDSHIRE COUNTY COUNCIL

PROPOSED RADLETT RAILFREIGHT INTERCHANGE

HELIOSLOUGH LIMITED

1. We have been asked to confirm in writing our advice to the County Council on the consequences of a decision, on 9 December 2013, to resolve to that it should neither enter into a section 106 agreement nor dispose of its land (notwithstanding the prospect that it would negotiate terms securing best advantage in accordance with its fiduciary duty). That is to say, the recommendations to enter into a section 106 agreement and to negotiate the disposal of the County Council's land are both rejected.

2. Leading counsel has advised that he does not consider that there exists a rational, and therefore lawful, basis upon which the County Council may decline to enter into a section 106 agreement[1]. The Secretary of State has, in particular, rejected the option of granting planning permission subject to a Grampian condition requiring that a planning obligation be concluded before the commencement of development. He did so after the merits of that approach had been canvassed at the public inquiry and on rational grounds[2]. It is not, therefore, open to HCC to decline to enter into a section 106 agreement because it considers that this matter might be resolved by the imposition of a

[1] Previous Opinion paragraphs 2 – 4.
[2] The developer was refused permission to apply for judicial review for a declaration that there was no rational basis for the Secretary of State's approach by order dated 1 July 2013.

Grampian condition. The Joint Opinion and Presentation on behalf of STRIFE have been provided to us during the course of last week. Our view remains, however and respectfully, that a decision not to enter into a section 106 agreement would be unlawful (and amenable to judicial review).

3. It may be worth emphasising, however, that entry into a section 106 agreement need not signal support for the development by HCC. It may simply reflect the legal realities on the facts: it has no rational alternative but to enter into a section 106 agreement in light of the Secretary of State's decision that he is 'minded to grant' planning permission and the principle in the *Powergen* case.

4. The decisions whether to enter into a section 106 agreement and whether to dispose of land are legally and conceptually distinct. The County Council is bound, in particular, to consider the purposes for which it holds the land concerned and its continuing fiduciary duty in the context of its decision whether to negotiate the disposal of its land. It remains our view[3], notwithstanding the Joint Opinion and Presentation referred to above, that there has not been shown to be any rational reason why HCC should resolve and determine at this point in time that it will not negotiate to dispose of its land.

5. That said, HCC may lawfully defer a decision on disposal. HCC may consider that it should await the grant of planning permission and the outcome of any challenge to it before making a decision to dispose. It may consider that negotiating to secure best advantage when the right to develop has crystallised (assuming no rational basis for not negotiating to have arisen in the meantime) would be consistent with its fiduciary duty.

[3] This was explained at the leading counsel's previous Opinion paragraphs 5 – 8.

We do not, however, consider that there has been shown to be any lawful basis now to defer both a decision to enter into a section 106 agreement and to negotiate to dispose.

6. We have reviewed this further advice in light of the representations received, by letter dated 6 December 2013, from St Albans City & District Council ('SADC'). SADC raises three points for consideration by HCC:

(1) We are not advised by officers of HCC of any change of circumstances since the Secretary of State's decision that he is 'minded to grant' that would, in our opinion, rationally justify a decision not to enter into either a section 106 agreement or not to agree to disposed subject to best advantage being achieved. SADC does not suggest any;

(2) We have given consideration to the lawfulness of the 'minded to grant' decision, and it is not apparent to us that there are grounds to challenge its lawfulness. SADC does not, again, suggest any. The lawfulness of the grant of planning permission itself will, in any event, fall to be considered in light of the terms of a decision letter to that effect. HCC should, furthermore, proceed upon the basis that its planning obligations pursuant to a section 106 agreement would themselves be conditional upon the lawful grant of planning permission; and

(3) Members are not, as we understand, being requested to authorise entry into planning obligations more onerous than those proposed in the appeal.

We conclude that SADC's representation does not cause us to alter the advice set out elsewhere in this Opinion.

7. We anticipate with a high degree of confidence that the developer would challenge successfully a decision to both not enter into a section 106 agreement and not negotiate to dispose and that the Court would order the County Council to re-consider its decisions. It would also order the County Council to pay the costs of those proceedings (albeit it is most unlikely that members would incur personal liability for losses and costs arising from a decision not to decide at all or a decision to do nothing). The County Council would be placed back into its current position with an adverse judgment of the court and substantial liability for costs.

Rhodri Price Lewis QC

Simon Pickles

Landmark Chambers

London EC4A 2HG

7 xii 2013

Appendix 7 – HCC Position

b. HCC Minutes 9/12/13

To: All Members of the County Council
All Chief Officers

From Legal, Member & Statutory Services

Ask for Elaine Shell
Ext. 25565
Minicom 26611
My Ref. ES/CAB
Your Ref.

CABINET
9 DECEMBER 2013

MINUTES

ATTENDANCE

MEMBERS OF THE CABINET

D A Ashley, F Button, T L F Douris, R I N Gordon (Chairman), C M Hayward, T C Heritage, R M Roberts, R A C Thake, C B Wyatt-Lowe

Other Members Present

D Andrews, J Billing, C Clapper, E M Gordon, A Lee, L F Reefe, A S B Walkington

Upon consideration of the agenda for the Cabinet meeting on 9 December 2013 as circulated, copy annexed, executive decisions were reached and are recorded below:

Note: No conflicts of interest were declared by any member of the Cabinet in relation to the matters on which decisions were made at this meeting.

1. MINUTES

The minutes of the Cabinet meeting held on 25 November 2013 were confirmed as a correct record.

2. QUESTIONS FROM MEMBERS OF THE COUNCIL TO EXECUTIVE MEMBERS

None.

3. NORTH ORBITAL ROAD UPPER COLNE VALLEY – HELIOSLOUGH LTD: TO CONSIDER LETTERS FROM THE DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT; AND TO CONSIDER THE FUTURE OF THE LAND AT THE FORMER RADLETT AIRFIELD
(Forward Plan ref: A054/13)

Prior to consideration of this item of business, the Leader of the Council as Chairman of Cabinet, advised Cabinet that this was a special meeting of the

Cabinet to consider whether the County Council should enter a s106 Agreement in relation to land at the former Radlett Airfield and also whether the County Council should agree in principle to dispose of its land to enable the development of a Strategic Rail Freight Interchange to take place if the Secretary of State does grant planning permission for that scheme. The Policy, Resources and Transformation Cabinet Panel had considered these matters earlier and the Panel's recommendations were before Cabinet. It was the function of Cabinet to make decisions on these matters. Cabinet were not bound by the recommendations of the Panel. All Members of Cabinet were either on the Panel or were present at the Panel meeting. Further presentations would not, therefore, be made to Cabinet. Cabinet could have regard to the discussion at Panel but did need to consider the matter themselves at the meeting. Members needed to consider the matter at this meeting with an open mind taking into account all relevant matters and leaving out irrelevant considerations. It was for Cabinet now to make a decision on the report, taking into account the matters raised in the report before Cabinet and the discussions at Cabinet.

The Chief Legal Officer then made the following statement:-

> *"In coming to any decision Members must take into account that the Secretary of State has formed his view that it is in the public interest for the rail freight scheme to proceed despite its environmental impact and despite the traffic generation, and he has indicated that he is minded to grant planning permission subject to the County Council's land being bound by the planning obligations. It is not now for the County Council to revisit those issues. Members must come to decisions taking into account all relevant matters and leaving out irrelevant considerations.*
>
> *Members of Cabinet who were also on Cabinet Panel earlier today or who may have considered the SRFI planning application elsewhere must keep an open mind and, when at this meeting, must consider all of the information before Cabinet and all other relevant factors in reaching their decision."*

Decision

Cabinet AGREED UNANIMOUSLY the following:-

The County Council:-

1. disagrees with the Secretary of State in his conclusion (summarised in paragraph 44 of his letter of 20 December 2012) that the factors weighing in favour of permitting the Strategic Rail Freight Interchange development outweigh the harms it will cause;

2. nonetheless, acknowledges that the Council is obliged to accept that the conclusion of the Secretary of State is binding on it and must act consistently with that conclusion, even though it disagrees with it;

3. therefore, the Council agrees to enter into a s106 planning obligation in respect of its land at the former Radlett Airfield site in connection with the proposed Strategic Rail Freight Interchange scheme (but, in doing so, does not imply its support for the development) and authorises the Deputy Chief Executive, in consultation with the Executive Member for Resources & Transformation and the Chief Legal Officer, to finalise the terms of the s106 Agreement;

4. recognises that the Secretary of State's letter of 20 December 2012 indicates only that he was then 'minded' to approve the application and urges him to review his conclusion, reconsidering all the evidence available and taking account of:

   (a) any change in circumstances since that date including the impact of London Gateway on the potential container business for this site;
   (b) all representations received by him since that date which might influence his conclusions on the balance of benefit and harm;
   (c) the relative merits of alternative sites including any new sites which may have emerged; and
   (d) the views of the Council that the S106 obligations are inadequate;

5. defers any decision on the possible disposal of its land pending an absolute decision by the Secretary of State and the final outcome of any legal challenge to such decision; and

6. recognises that, should a lawful planning consent be granted, the Council will make any decision on the disposal of its land at the appropriate time having regard, in particular, to the purposes for which it holds the land, any alternative uses then available and its fiduciary duty. Notwithstanding if, in such circumstances, the Council is under a legal duty to dispose of its land, this duty might not require the Council to dispose of the land for use as a Strategic Rail Freight Interchange if a rational alternative was then available.

Reasons for the decision

Arising from legal agreements entered into in 1985 the County Council now owns the site of the former Radlett Aerodrome. That ownership is subject of covenants that restrict use of the land to uses compatible with the site's location within the Green Belt. In 2003, Helioslough entered into commercial agreements with other land owners in the area with the intent of promoting a development scheme for a rail/road freight and distribution facility. Helioslough subsequently made two planning applications; both refused by St Albans City & District Council as the local planning authority. Both applications were then subject of planning appeals and Public Inquiries. The first application was dismissed by the then Secretary of State. The second was also dismissed by the current Secretary of State, but that decision was quashed by the High Court. Consequently, the Secretary of State had to re-take his decision. On 20 December 2012, the Secretary of State issued a letter stating that he was 'minded to approve' the grant of planning permission for the scheme and invited Helioslough to provide a planning obligation binding on all those with an interest in the site by 28 February 2013. The County Council is the

only landowner with an interest in the site that has not entered into a planning obligation; the others having done so in 2009. Cabinet gave initial consideration to the content of that letter at its meetings in February and March 2013; at these meetings Members commissioned work to enable them to consider this matter in more detail. The matter was further considered by Cabinet in October 2013, resulting in the time allowed for submission of a suitable planning obligation covering the land owned by the County Council being extended to 20 December 2013.

At this meeting Cabinet was asked to consider two key issues; (1) whether to enter into a S106 planning obligation in respect of its land at the former Radlett Airfield and in connection with the application for a strategic rail freight interchange (SRFI) development and (2) whether to agree, in principle, to the disposal of the Council's land at the former Radlett Airfield to enable the development of an SRFI to take place if the Secretary of State does decide to grant planning permission for that scheme and, if so, a potential basis for its disposal.

In reaching its decisions, Cabinet's considerations included:-

1. The petition opposing the sale or lease of the County Council's land for the development of a SRFI and containing 10,000 signatures, presented to the County Council in March 2013

2. The petition opposing the sale or lease of the County Council's land for the development of a SRFI presented to the Policy, Resources & Transformation Cabinet Panel on 9 December 2013

3. The oral presentations provided to the Policy, Resources & Transformation Cabinet Panel, both against and in support of, the proposals set out in the officer report

4. The matters referred to in the officer report and the advice received from Leading Counsel (attached as Appendix 10 to the report and also that dated 7 December 2013 circulated prior to the meeting)

5. The recommendation of the Policy, Resources & Transformation Cabinet Panel.

In coming to its decision to enter into the s106 Cabinet expressed its disagreement with the Secretary of State's conclusion in his letter of 20 December 2012 but took account of the advice of Leading Counsel for the County Council that he did not consider that there existed a rational and, therefore, lawful, basis upon which the County Council may decline to enter into the section 106 Agreement. The County Council needed to consider the purposes for which it held the land and the Secretary of State's minded to grant letter. The Secretary of State's view was that it was in the public interest for the proposed development to proceed despite the effect on the green belt and the County Council could not go behind those conclusions even if it did not agree with them.

Cabinet also recognised that the Secretary of State's letter of 20 December 2012 was only a 'minded to grant letter' and urged him to review his conclusion, reconsidering all the available evidence and taking account of the matters mentioned above.

Cabinet decided to defer the decision on disposal of the land so as to wait until such time as a planning permission had been granted by the Secretary of State and the outcome of any legal challenge to such planning permission. It would also allow time for other potential options for the land to be developed and considered, together with any planning permission which may be granted for the SRFI, in the context of the County Council's legal obligations and fiduciary duty.

Any alternative Options considered and rejected

Cabinet considered not entering into a s106 planning obligation in respect of its land at the former Radlett Airfield; however, legal advice obtained from Leading Counsel instructed by the County Council was that he did not consider that there existed a rational and, therefore, lawful, basis upon which the County Council may decline to enter into the s106 Agreement.

Cabinet also considered a proposal to agree, in principle, to the disposal of the land to enable the development of an SRFI to take place. Leading Counsel advised that the County Council could lawfully defer a decision on disposal and Members decided to do so pending grant of planning permission and the challenge to any such permission.

KATHRYN PETTITT
CHIEF LEGAL OFFICER

Appendix 7 – HCC Position

c. HCC report on sale 14/12/15

HERTFORDSHIRE COUNTY COUNCIL

CABINET
MONDAY, 14 DECEMBER 2014 AT 2.00 PM

Agenda Item No.

12

TO CONSIDER THE RESOLUTIONS OF COUNTY COUNCIL ON NOVEMBER 2015 REGARDING THE FORMER RADLETT AERODROME SITE

Report of the Assistant Director Property – Resources & Performance

Author: Dick Bowler, Estate Manager (Tel 01992 556223)

Executive Member: Chris Hayward, Resources & Performance

Local Member: Aislinn Lee, St Stephens Division

1. Purpose of report and Summary

1.1 To advise Cabinet of the resolutions made by the County Council at its meeting on 10 November 2015 following consideration of a petition relating to the former Radlett Aerodrome Site.

1.2 To set out for Cabinet the background and to propose actions that could be taken in pursuance of resolution (e).

"notwithstanding its preference not to see a change in the current green belt status of this land or to dispose of it, calls upon the Leader of the Council to use the resources of the Council proactively to seek alternative uses for the site which would secure such value thereby potentially giving Cabinet more than one option to consider should the Council become legally obliged to dispose of the land."

2. Recommendations

2.1 That Cabinet agrees:-

1. That all parties that are interested in development of the Council's land at the Former Radlett Airfield site (the 'Council's Land') following written request:

   (a) be allowed access to the Council's Land on such terms as the Assistant Director Property, Resources & Performance, in consultation with the Executive Member for Resources & Performance considers appropriate; and

(b) be provided with such of the County Council's information about the Council's Land as the Assistant Director Property, Resources & Performance, acting reasonably considers appropriate in order that they may all pursue their investigations of potential alternative uses of the Council's Land.

2. That the Assistant Director Property, Resources & Performance, in consultation with the Executive Member for Resources & Performance prepares a brochure in respect of the Council's Land at and makes it widely available to all potentially interested parties, including housing developers, who may wish to propose alternative use and development of the Council's Land.

3. That the Assistant Director Property, Resources & Performance, in consultation with the Executive Member for Resources & Performance be authorised to undertake such further actions as she considers appropriate in order to comply with the resolutions of the Council on 10 November 2015 relating to Item 4A.

4. That the Chief Executive and Director of Environment inform the City & District of St Albans Council of the foregoing decisions.

3. Background

3.1 The County Council owns the freehold of land at the former Radlett Aerodrome Site, as is shown on the plan at Appendix 1 (the 'Council's Land').

3.2 The last report to Cabinet relating to the Council's Land was on 9 December 2013. The papers can be seen at this link:

https://cmis.hertsdirect.org/hertfordshire/Calendarofcouncilmeetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/452/Committee/8/SelectedTab/Documents/Default.aspx

3.3 Subsequently on 14 July 2014, the Secretary of State for Communities and Local Government granted planning permission for the development of a Strategic Rail Freight Interchange and the decision letter and permission with conditions can be seen at this link:

https://www.gov.uk/government/publications/recovered-appeal-former-aerodrome-north-orbital-road-upper-colne-valley-hertfordshire-ref-2109433-14-july-2014

3.4 At its meeting on 10 November 2015 the County Council received a Petition entitled "Don't sell Green Belt to Helioslough". Officers prepared a report setting out the background to the petition and that can be seen at agenda item 04A at this link:

https://cmis.hertsdirect.org/hertfordshire/Calendarofcouncilmeetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/347/Committee/4/SelectedTab/Documents/Default.aspx

3.5 A useful summary of the events to that date is set out at section 4 of that report.

3.6 The minutes of that meeting of County Council can be seen at this link:

https://cmis.hertsdirect.org/hertfordshire/Calendarofcouncilmeetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/347/Committee/4/SelectedTab/Documents/Default.aspx

3. Resolutions of County Council

3.1 The County Council resolved, unanimously, as follows:

"Hertfordshire County Council

(a) recognises that its prime duty is to the residents of the county;

(b) acknowledges that circumstances could arise under which it would have no lawful alternative but to dispose of its land at the former Radlett Aerodrome site;

(c) reiterates its opposition to the proposed development of a Strategic Rail Freight Interchange at the site;

(d) regrets that, should circumstances arise under which the Council would have no lawful alternative but to dispose of its land, it currently seems unlikely that there will be an alternative use which would secure at least equivalent value; and

(e) notwithstanding its preference not to see a change in the current green belt status of this land or to dispose of it, calls upon the Leader of the Council to use the resources of the Council proactively to seek alternative uses for the site which would secure such value thereby potentially giving Cabinet more than one option to consider should the Council become legally obliged to dispose of the land."

4 Information

4.1 As stated in the report to the County Council, at paragraph 4.6, other parties are exploring proposals for alternative use and development of the Council's Land (other than for a Strategic Rail Freight Interchange (SRFI)).

4.2 The uses proposed, of which officers are aware, include residential development, district general hospital, football stadium development and Photo Voltaic ground mounted solar energy system.

4.3 From the plan at Appendix 1 it can be seen that the Council's Land has 2 potential points of access to the public highway network. The access used for the sand and gravel extraction at the site is that to the north, connecting directly onto the westbound carriageway of the A414 to the west of the bridge over the Midland Mainline Railway. Traffic moves at relatively high speeds at this section of the A414 and it may be expected that this access could be suitable only for low frequency uses of the former Airfield and potentially for none on highway grounds.

4.4 There is frontage to a section of the highway at Radlett Road, Park Street, and this would be utilised for a new highway junction if the planning permission for the SRFI scheme were implemented. Potentially this point of access could provide an opportunity to enable alternative use and development of the site or a part thereof.

5. Proposed Actions

5.1 As alternative use and development of the site is likely to require planning permission it is appropriate to advise the City & District of St Albans Council (SADC) of the resolutions of the County Council, and of the decisions of Cabinet, so that SADC is able, as Local Planning Authority, and for its other responsibilities, to provide any advice and assistance to interested parties as it considers appropriate. SADC have already been informed of the resolutions of the County Council of 10 November 2015.

5.2 To ensure that all opportunities can be fully explored it is also proposed that the Council allow all parties that are interested be permitted access to the Council's Land and to the Council's information in order that they may undertake their investigations. Such access and information whilst being provided on the basis of a 'level playing field' to all interested parties would be made available on terms and on a basis that the Assistant Director Property, Resources & Performance (in consultation with the Executive Member for Resources & Performance), considers appropriate so as to comply with the resolutions of Council but protect the Council's commercial and other interests.

5.3 Owing to the Council's Land currently lying within the metropolitan green belt, there may, potentially, be many parties who would be interested in seeking alternative use and development of the land but who have not undertaken even a preliminary investigation of its potential.

5.4 To ensure that such parties do give consideration to the Council's Land it is proposed that officers are instructed to prepare and to circulate widely a brochure that sets out details about the Council's Land, the resolutions of the County Council and Cabinet, and other relevant information. Communication of the Brochure would be via appropriate advertisement of the potential availability of the site for alternative uses and by mailshot to potentially interested agents and developers.

6. Financial Implications

6.1 None arising from this report. The actions outlined in this report will be met from within existing available resources.

7. Conclusions

7.1 In order to support the Council resolution as stated in Section 3 of this paper it is appropriate to take the actions outlined in this document and to deploy existing resources to do so.

Background papers

As per the hyperlinks in the report

Appendix 7 – HCC Position

d. HCC Advice June 2016

FURTHER ADVICE

HERTFORDSHIRE COUNY COUNCIL

STRATEGIC RAIL FREIGHT INTERCHANGE

RADLETT

Introduction:

1. I last advised in writing in this matter in an Opinion dated the 4th November 2013 followed by a Joint Opinion from me and Simon Pickles of Counsel dated the 7th December 2013 in which we considered a joint Opinion from Paul Stinchcombe QC and Ned Helme of Counsel dated the 4th December 2013. I need not repeat the contents of our Opinions.
2. I have now been asked to advise on the purposes for which the County Council holds the relevant land and, if it holds that land for Green Belt purposes, on what effect that may have on the Council's consideration of the purposes for which it holds the land and its fiduciary duty should it receive an offer to buy the land from (i) the "owners of the planning permission" for the strategic rail freight interchange and (ii) from any other prospective purchaser without the benefit of planning permission for development of the land possibly at a higher price.
3. The background briefly is as follows. By a letter dated the 14th July 2014 the Secretary of State for Communities and Local Government granted planning permission for a strategic rail freight interchange ("SRFI") on land in and around the former Radlett Aerodrome, North Orbital Road, Upper Colne Valley, Hertfordshire. The Secretary of State allowed the appeal by Helioslough Limited ("Helioslough")

under section 78 of the Town and County Planning Act 1990 ("TCPA 1990") against the refusal of planning permission by St Albans City and District Council

4. The proposal covers eight parcels of land referred to as Areas 1 to 8 and amounting in total to 419 ha. The whole of the site falls within the Metropolitan Green Belt and the City and District Council's administrative area. The SRFI and connecting roadways are proposed to be located in Area 1, owned by the County Council, which has an area of 146 ha. It is bounded by the A414 dual carriageway to the north, the Midland Main Line on an embankment to the east and the M25 to the south. The settlements of Park Street and Frogmore lie to the west. Area 2, occupying 26 ha, lies immediately to the east of the Midland Main Line. A new railway line would be provided through Area 2 to link the railway sidings in Area 1 to the existing main railway line. Areas 3 to 8 would generally remain in agricultural/woodland use with improved public access, and some more formal recreational uses, so as to form a country park. Additional landscaping would be provided in Areas 3 to 8.

5. At the time of the decision dated 14 July 2014, as now, national policy on development in the Green Belt was set out in the National Planning Policy Framework ("NPPF"). The policy came into force on 27 March 2012. Paragraph 87 states:

> *"As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances."*
>
> Helioslough's proposal falls within the definition of inappropriate development contained in paragraph 89. Paragraph 88 provides:
>
> *"When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt.*

'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations."

6. I have already advised that the County Council was obliged to enter into planning obligations under section 106 of the Town and Country Planning Act 1990 to facilitate the development because of the principle established in *R v Warwick County Council ex p Powergen plc* [1998] 75 P&CR 89 that where a formal decision has been made on a particular subject matter or issue affecting private rights by a competent authority, that decision should be regarded as binding on other authorities directly involved, unless and until circumstances changed in such a way as to undermine the basis of the original decision: see Carnwath J as he then was in *R v Cardiff City Council ex p Sears* [1998] 3 PLR 55. The Secretary of State's decision to grant planning permission had determined that it was in the public interest for this Rail Freight Interchange to be developed on this site in the Green Belt and so the County Council could not exercise its statutory function of entering into planning obligations in such a way as to go behind that determination.
7. The County Council did enter into those planning obligations and it is to be noted that neither the St Albans City and District Council nor any of the other bodies opposed to the development sought to challenge the lawfulness of that action.
8. No offer to purchase the land has been received. The County Council has sought expressions of interest in alternative uses for the site which may be for inappropriate development in Green Belt terms, such as housing. The land remains within the Green Belt and the draft St Albans Local Plan proposes that it remain so. That will be tested at public examination later in the year.

The purposes for which the land was purchased:

9. My instructing solicitor has examined all the relevant records and documents leading to the County Council's purchase of the land for £1 in 1985. I have been provided with copies. There is no express reference to any legal power under which the land was purchased but it is clear from the reports that the purchase was with a view to protecting the land from development as Green Belt land: see e.g. the report to the Committee on the 11th June 1984 at paragraph 2.3. There is indeed a covenant in the Land Registry transfer document dated the 20th October 2006 whereby the County Council agrees that the land shall not be built upon or used other than for appropriate Green Belt uses until 2021. However I understand that the only beneficiaries of that covenant are actively involved in the proposed Rail Freight Interchange. That needs to be checked, of course.
10. There is no reference in the documents to the land being acquired under any legislation relating to open spaces or Green Belt such as the Green Belt (London and Home Counties) Act 1938.
11. In my opinion, in the absence of any indications to the contrary in the documents, this land must have been acquired under the general power in section 120 of the Local Government Act 1972 for the benefit, improvement or development of the area. On the other hand it is clear that it was in everyone's contemplation that the land would remain Green Belt for the foreseeable future in order to protect it from inappropriate development but that does not affect the position as to the legal power under which the land was acquired. In any event, that position changed when the Secretary of State decided that this area of land should be developed for a Rail Freight Interchange

despite it being in the Green Belt. That decision meant that the *Powergen* principle came into play.

12. That principle has recently been considered and confirmed by the Supreme Court in the litigation over Prince Charles' communications with ministers. In his judgment with which Lord Kerr and Lord Reed agreed, Lord Neuberger, the President, referred to an earlier case addressing the *Powergen* principle and said this:

> "66 Such comparisons with other cases can, however, only be of limited assistance: what is of more importance is to seek to identify the relevant principles. In *Bradley* at para 70, Sir John Chadwick did just that and suggested that there were five applicable propositions. At least for present purposes, I would reformulate and encapsulate those propositions in the following two sentences. In order to decide the extent to which a decision-maker is bound by a conclusion reached by an adjudicative tribunal in a related context, regard must be had to the circumstances in which, and the statutory scheme within which, (i) the adjudicative tribunal reached its conclusion, and (ii) the decision-maker is carrying out his function. In particular, the court will have regard to the nature of the conclusion, the status of the tribunal and the decision-maker, the procedure by which the tribunal and decision-maker each reach their respective conclusions (eg, at the extremes, (i) adversarial, in public, with oral argument and testimony and cross-examination, or (ii) investigatory, in private and purely on the documents, with no submissions), and the role of the tribunal and the decision-maker within the statutory scheme.
>
> 67 Although Sir John expressed his propositions so as to apply to "findings of fact", it seems to me that they must apply just as much to opinions or balancing exercises. The issue is much the same on an appeal or review, namely whether the tribunal was entitled to find a particular fact or to make a particular assessment. Anyway, it is clear from *Powergen* that an assessment as to whether an access onto a highway would be safe fell within the scope of his propositions. Indeed, the ombudsman's decision in Bradley itself seems to me to have involved issues as to which she had to make assessments or judgements, such as whether the department concerned should have done more and whether some failures amounted to maladministration – see at para 27 of Sir John's judgment. "(Emphasis added)

13. In my opinion given that the Secretary of State's decision here was after full public inquiries with cross-examination, legal representation and argument a court would find that the County Council is bound by the Secretary of State's conclusion that a Rail Freight Interchange should be developed on this site in the Green Belt unless

there have been changes in circumstances. Even if the land had been acquired expressly for Green Belt or open space purposes that principle would apply.

14. Of course it is now nearly 2 years since the decision letter was issued and longer than that since an Inspector considered the merits of the proposal. In that time much may have changed in terms of the need for a rail freight interchange (particularly as there have been developments in rail transport with Crossrail and HS2) and the position in terms of the availability of alternatives may be different. The County Council may legitimately look at such matters in its decision making.

15. The role of the courts in supervising councils' decisions to sell or not to sell land under section 123 of the Local Government Act 1972 was considered again in the High Court last year in *Galaxy Land Ltd v Durham County Council* [2015] EWHC 16 (Admin). Cranston J considered the earlier cases referred to by Mr Stinchcombe QC in his joint Opinion and observed as follows:

> "44. Ordinarily a decision of a Council to sell land is a private law matter, not amenable to judicial review. However, judicial review is possible where there is a public law element to the decision making process: *R v Bolsover District Council ex parte Pepper* [2000] 3 LGLR 20. An attempt to give effect to planning policy or objectives is sufficient to inject a public law element into a decision. In *R (oao Molinaro) v RB Kensington and Chelsea* [2001] EWHC (Admin) 896 , Elias J held that the fact that a local authority is exercising a statutory function ought to be sufficient to justify the decision itself being subject in principle to judicial review if it is alleged that the power is being abused[1]: [65]-[64]." (Emphasis added)

[1] "abuse of power" is not to be construed narrowly as only covering fraud, bad faith or corruption, but broadly so as to include all the conventional public law grounds of judicial review: see Encyclopedia of Local Government Law at 2.283

16. Here a decision to sell or not to sell the land would be in the context of planning and the protection or otherwise of the Green Belt. A challenge would potentially be on public law grounds that the County Council acted irrationally or failed to take into account material considerations. It would have to take into account its fiduciary duty albeit as Elias J, as he then was, rightly said in *Molinario* "the imposition of a fiduciary duty does not however mean that financial considerations must outweigh all others. It is a matter of balancing competing interests. But the doctrine of fiduciary duties can sometimes be used to enable a court to consider the weight afforded to the relevant factors, and to ensure that the fiduciary obligation is given proper significance": [40].
17. Of course there has been no offer to buy and so the County Council does not yet need to consider whether to sell its land. Its decision will have to be taken at that time and then be rational and take into account all material considerations as they stand as at that time and including its fiduciary duty to its taxpayers.

Other potential purchasers:

18. The position is however very different with other potential purchasers. The *Powergen* principle only applies here because the Secretary of State has decided that very special circumstances by way of regional if not national need for a rail freight interchange and the absence of suitable alternatives justify the grant of planning permission for that specific development. There is no other "binding" decision on the County Council in respect of any other potential development on this land. It remains in the Green Belt and any built development is inappropriate and can only be justified by very special circumstances and it is for the local planning authority or the

Secretary of State on appeal to determine whether very special circumstances exist in respect of any specific development.

Conclusions:

19. These are obviously very serious decisions for the County Council. At the moment there is no offer from the developers of the rail freight interchange to buy the land. The County Council is entitled to consider any changes in circumstances that may have occurred or may occur before they have to take the decision whether to sell.
20. In the meantime if I may be of any further assistance my instructing solicitor should not hesitate to contact me through chambers.

Rhodri Price Lewis QC

Landmark Chambers

London EC4A 2 HG

10 vi 2016

Appendix 7 – HCC Position

e. Expressions of Interest and consideration – June 2016

01992 556223
www.hertsdirect.org

FORMER RADLETT AIRFIELD

DEVELOPER EXPRESSIONS OF INTEREST ARE INVITED FOR:

About 119 ha of restored gravel extraction land between the M25 and A414 and with frontage to A5183 Radlett Road, Frogmore, Park Street, St Albans, Herts



FORMER RADLETT AIRFIELD



- Freehold land located in Green Belt
- Subject to covenants restricting use to green belt compatible uses
- Planning permission has been granted for a Strategic Rail Freight Interchange ('SRFI')
- Expressions of interest are invited from Developers who wish to promote an alternative form of development which would secure for the County Council a value at least equivalent to that of an SRFI
- Possible uses might be residential, solar park, hospital, all subject to planning

Location

The site is located south of St Albans and east of Park Street, with access off the A414 and potential access off the A5183, subject to planning.

Description

119 ha of restored gravel extraction land, formerly the airfield and runway to the former Radlett Aerodrome. A plan showing the restoration scheme is available here: http://www.hertsdirect.org/docs/pdf/r/radlettrestorationplan.pdf

Town Planning

Mineral extraction and restoration development has been completed under Permission reference 5/0830–83. The current use is for grazing.

Local Plan

The City & District of St Albans has published for consultation its draft Strategic Local Plan and that can be seen at: http://tinyurl.com/hkbghpb

The consultation period is between 8 January and 19 February 2016.

Background Information

County Council ownership and SRFI scheme matters 2013:http://tinyurl.com/zzqtznh

This contains extensive background to the history of site, to the County Council's ownership and to the County Council's stance in respect of the SRFI scheme.

County Council land policy 2015:

http://tinyurl.com/hek3uwy

and:
http://tinyurl.com/juu9f86

This sets out the County Council's current position in respect of its land and the instruction to seek developer interest in the site.

Instructions to interested developers:

Formally submit your suggestion for a relationship with the County Council and a development scheme for this site, providing strong evidence to support its deliverability in planning and market demands terms and as real option for the County Council. This needs to include an indicative scheme, a planning appraisal and a market appraisal.

Viewing and Further Information

Dick Bowler - Estate Manager, Property, Resources & Performance.

Tel: 01992 556223 e-mail: Dick.Bowler@hertfordshire.gov.uk

HERTFORDSHIRE COUNTY COUNCIL

Agenda Item No.

5

ADDENDUM

RESOURCES & PERFORMANCE CABINET PANEL
MONDAY, 4 JULY 2016 AT 10.00AM

FORMER RADLETT AIRFIELD SITE

Report of the Director of Resources

Author: Dick Bowler, Estate Manager (Tel 01992 556223)

Executive Member: Chris Hayward, Resources & Performance

Local Member: Aislinn Lee, St Stephens Division

1. Purpose of report

1.1 To inform the Cabinet Panel of a further expression of interest, received subsequent to the agenda papers being issued.

2. Summary and Background

2.1 This paper is an addendum to the main report which can be found at item 5 of the agenda papers for the Resources and Performance Cabinet Panel meeting on 4 July 2016; which can be viewed here:-
Cabinet Panel agenda papers 4 July 2016

2.2 A late expression of interest from a second developer, Harrow Estates, a sister company of Redrow Homes, was received by the County Council on 30 June 2016. Redrow were sent information through the Council's marketing and latterly passed it through to Harrow.

2.3 As the Council asked for expressions of interest, rather than any formal bid, this letter can be considered by Members at the Panel meeting.

2.4 The expression of interest received from Harrow Estates is attached as Appendix 1 to this Addendum.

3. Recommendation

3.1 Cabinet Panel is asked to recommend that Cabinet agrees to:-

a) note the expressions of interest from Taylor Wimpey North Thames and that of Harrow Estates;

b Note the advice of Counsel regarding the statutory powers under which the County Council holds the land;

c) Note that Taylor Wimpey North Thames intend to engage with the City & District of St Albans Council regarding submission of an

expression of interest under the Department of Communities and Local Government's Locally Led Garden Villages programme; and

d) The Chief Executive and Director of Environment inform the City & District of St Albans Council of this report and these decisions.

3.2 The Cabinet Panel's recommendation/s to Cabinet will be reported orally at the Cabinet meeting on 11 July 2016 and circulated to Members in the Order of Business.

Appendix 1

HARROW ESTATES plc

Bridgemere House, Chester Road,
Preston Brook, Cheshire WA7 3BD

Tel: 01928 797900
Fax: 01928 797800

info@harrowestates.co.uk
www.harrowestates.co.uk

Ref: Radlett/LC/290616

30 June 2016

Private and Confidential

Subject to Contract

Mr Dick Bowler
Hertfordshire County Council
County Hall
Pegs Lane
Hertford
SG13 8DQ

Dear Dick

Land at the former Radlett Aerodrome

Further to our recent telephone conversation regarding the Council's decision to seek alternative development proposals for the former Radlett aerodrome, I am pleased to confirm Harrow Estates' Expression of Interest in the site from a residential-led mixed use perspective.

I appreciate that, at the time of writing this letter, the deadline for formally registering our interest with the Council has now passed. However, considering that we only learned about the land being prepared for disposal roughly two weeks ago, we sincerely hope that you are still in a position to report our significant interest back to the Cabinet on Monday 11th July, albeit without the necessary documentation and background evidence to support an indicative scheme.

Nevertheless, we already have a proven track record in masterplanning and subsequently delivering sites of a comparable size and technical complexity to the former Radlett aerodrome. This has been most recently demonstrated by our leading role in coordinating the delivery of the new Garden Village at the former Woodford aerodrome site in Cheshire along with our sister company Redrow Homes.

As such, we firmly believe that we have all the necessary expertise to work proactively with the Council in implementing a scheme that satisfies both local and national planning policy objectives. Accordingly, please read below a brief outline of the nature of our interest in the site:

1. **Property** – the freehold interest in the circa 119 ha of land which comprises the former Radlett aerodrome for which Expressions of Interest are being sought by Hertfordshire County Council.

2. **Company** – Harrow Estates plc (Registered Number 6825371 England) of Bridgemere House, Chester Road, Preston Brook, Cheshire, England WA7 3BD; Tel 01928 797900; Fax 01928 797800.

3. **Funding** – Harrow Estates are a wholly owned subsidiary of the Redrow Group of companies who feature among the FTSE 250 with a current market capitalisation in excess of £1.6 billion, revenue in excess of £1 billion and a modest gearing in the order of 18%.

4. **Proposal** – Harrow Estates' undoubted preference would be to purchase the freehold for the site on a wholly unconditional basis in exchange for a cash sum with overages attached in order to share in any future uplift in land values.

   Alternatively, Harrow Estates are prepared to enter into a joint venture agreement with the Council, acting as a co-investor and fronting all of the associated development costs. Both parties would subsequently share the proceeds from land receipts on a predefined percentage split basis.

I trust that I have provided sufficient information for you to feedback to the Council but if you should need anything else then please do not hesitate to contact me by telephone or by email as can be seen below.

I look forward receiving further information from you on how to proceed in due course.

Yours sincerely

[redacted]

Laurence Chipperton BSc (Hons) MSc
For Harrow Estates plc
Tel: 01928 797900
Email: laurence.chipperton@harrowestates.co.uk

HERTFORDSHIRE COUNTY COUNCIL

Agenda Item No.

5

RESOURCES & PERFORMANCE CABINET PANEL
MONDAY, 4 JULY 2016 AT 10.00AM

FORMER RADLETT AIRFIELD SITE

Report of the Director of Resources

Author: Dick Bowler, Estate Manager (Tel 01992 556223)

Executive Member: Chris Hayward, Resources & Performance

Local Member: Aislinn Lee, St Stephens Division

1. Purpose of report

1.1 To inform members of the 'expressions of interest' that have been made regarding this site, following the resolutions of Cabinet made at its meeting on 14 December 2015.

1.2 To provide Cabinet with the advice received from leading counsel on the statutory powers under which the County Council holds the land.

1.3 To set out for Cabinet what actions might be taken in respect of the 'expressions of interest' having regard to the earlier resolution of County Council on 10 November 2015:

"notwithstanding its preference not to see a change in the current green belt status of this land or to dispose of it, calls upon the Leader of the Council to use the resources of the Council proactively to seek alternative uses for the site which would secure such value thereby potentially giving Cabinet more than one option to consider should the Council become legally obliged to dispose of the land."

["such value" refers to value at least equivalent to the value of the land if used for a Strategic Rail Freight Interchange]

2. Summary

2.1 An alternative use for the site has been proposed, to provide a new Garden Village development for c 2000 dwellings, which has potential to respond well to the resolution of County Council. The proposal may fit the eligibility criteria for a bid to the Locally-Lead Garden Village prospectus as set out in the DCLG prospectus of March 2016. The prospectus states that a bid would be made by the Local Planning Authority and be made by 31 July

2016.

2.2 Advice has been received from leading counsel on the powers under which the site is held. The advice confirms the information provided in earlier reports to Cabinet, that the land was acquired for and is held for the purposes of the Local Government Act 1972, section 120, sub-section (b), i.e. “For the purposes of the benefit, improvement or development of their area,”.

3. Recommendations

3.1 Cabinet Panel is asked to recommend that Cabinet agrees to:-

a) Note the expression of interest from Taylor Wimpey North Thames;

b Note the advice of Counsel regarding the statutory powers under which the County Council holds the land;

c) Note that Taylor Wimpey North Thames intend to engage with the City & District of St Albans Council regarding submission of an expression of interest under the Department of Communities and Local Government’s Locally Led Garden Villages programme; and

d) The Chief Executive and Director of Environment inform the City & District of St Albans Council of this report and these decisions.

4. Background

4.1 Cabinet received a report at its meeting on 14 December 2015 that included, in section 3, the key events regarding this site for the period December 2013 to November 2015. That report can be seen at this link:

https://cmis.hertsdirect.org/hertfordshire/Calendarofcouncilmeetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/339/Committee/8/SelectedTab/Documents/Default.aspx

4.2 The decisions of Cabinet, which responded to the Resolutions made by the County Council at its meeting on 10 November 2015, were as follows:

“Cabinet agreed:-

1. That all parties that are interested in development of the Council’s land at the Former Radlett Airfield site (the ‘Council’s Land’) following written request:

(a) be allowed access to the Council’s Land on such terms as the Assistant Director Property, Resources & Performance, in consultation with the Executive Member for Resources &

Performance considers appropriate; and

(b) be provided with such of the County Council's information about the Council's Land as the Assistant Director Property, Resources & Performance, acting reasonably considers appropriate in order that they may all pursue their investigations of potential alternative uses of the Council's Land.

2. That the Assistant Director Property, Resources & Performance, in consultation with the Executive Member for Resources & Performance prepares a brochure in respect of the Council's Land and makes it widely available to all potentially interested parties, including housing developers, who may wish to propose alternative use and development of the Council's Land.

3. That the Assistant Director Property, Resources & Performance, in consultation with the Executive Member for Resources & Performance be authorised to undertake such further actions as she considers appropriate in order to comply with the resolutions of the Council on 10 November 2015 relating to Item 4A.

4. That the Chief Executive and Director of Environment inform the City & District of St Albans Council of the foregoing decisions."

5. Information

5.1 The actions that have been taken following those resolutions are as follows:

Site access.

5.2 Access to the site has been granted to Helioslough Limited, to carry out ground conditions investigations, and to Taylor Wimpey North Thames to undertake a visual inspection.

Brochure

5.3 A brochure regarding the site has been prepared and circulated widely to potentially interested parties, including housing developers. A mailshot was sent to over 200 agent and industry contacts on the applicants register for surplus property maintained by Hertfordshire Property. The brochure was published electronically; it can be seen at this link:

http://www.hertsdirect.org/your-council/hcc/resandperf/hertsprop/RADAIR/

Cabinet and Local Members and the Chief Executive of City & District of St Albans Council were notified of its publication. No closing date was set at the outset, so that any clear interest could be given sufficient time to undertake any investigations and preparation work considered to be appropriate before making a clear formal submission.

SADC

5.4 The resolutions of Cabinet were notified to the Chief Executive of City & District of St Albans Council.

6. Expressions of Interest

6.1 Initial publication of the brochure resulted in a significant number of telephone enquiries, where the main purpose was to understand the planning background without having to read the very extensive information that could be accessed and read in the published documents signposted by hyperlinks in the brochure. These initial approaches did not result in the submission of expressions of interest.

6.2 A single house builder enquiry lead to a site inspection, as advised at paragraph 5.2 above, and to that company advising that it would undertake an appraisal of the site for primarily residential development, with c. 2000 dwellings, with appropriate supporting infrastructure and main accesses taken off the A414 to the north and the A5183 to the south-west, linked by a central boulevard.

6.3 That interest from Taylor Wimpey North Thames (a division of Taylor Wimpey UK Limited) resulted in it submitting a formal letter dated 1 June 2016 with a document entitled Radlett Aerodrome Vision Document May 2016. The letter is attached at Appendix 1 and a synopsis of the vision document is at Appendix 2. The full vision document is contained in the background papers.

6.4 Of particular note is the route by which the vision is proposed to be promoted – via an expression of interest responding to the initiative from the Department for Communities and Local Government [DCLG] published in March 2016 and entitled “Locally Led Garden Villages, Towns and Cities”, under the criteria for Garden Village proposal. The DCLG document can be seen at this link:

https://www.gov.uk/government/publications/locally-led-garden-villages-towns-and-cities

6.5 A summary of the scheme criteria is provided at Appendix 3 and it will be noted that expressions of interested are to be made to the Homes and Communities Agency by 31 July 2016 and must be made by the Local Authority, and that bids supported by private developers and/or landowners are welcomed.

6.6 Helioslough Limited, via its parent company SEGRO plc, made enquiries of the actions being taken under the Cabinet decisions and submitted a letter dated 14 April 2016 providing an update on their actions over the previous 6

months, stressing their commitment to progressing the SRFI scheme and stating that it remains very interested in acquiring the County Council's land. That letter is at Appendix 4.

6.7 No other expressions of interest have been received.

7. Land Ownership and Holding Purpose

7.1 In sections 5 and 8 of the report to Cabinet on 9 December 2013, information was provided regarding the early agreements that led to the development of the site for minerals working and the transfer of ownership of the site to the County Council. In particular at section 8.9, it was stated that "The County Council proceeded using its general powers of land acquisition that are contained in section120 (1) (b) of Local Government Act 1972.", and those powers were set out in section 8.10.

7.2 That statement was challenged after publication of the report, with assertions made that the County Council acquired and holds the land for protection of green belt purposes and consequently that position would inhibit any possible decision of the County Council to make the site available for any use that is incompatible with the green belt planning policies within the Development Plan.

7.3 In order to provide further clarification of those matters, the opinion of Leading Counsel has been obtained and that advice is at Appendix 5. In summary Leading Counsel advises that the land was acquired using the County Council's general powers of land acquisition that are contained in section 120 (1) (b) of Local Government Act 1972. Counsel notes that it was clear that it was in everyone's contemplation that the land would remain Green Belt for the foreseeable future in order to protect it from inappropriate development. Counsel advises that the position changed when the Secretary of State decided that the site should be developed for a SRFI despite being in the Green Belt. Counsel further advises that the County Council is bound by that decision unless there have been changes in circumstances since it was made. As and when the County Council receives an offer to buy its land, it will need to take into account all material considerations at that time, including its fiduciary duty to its taxpayers.

8. Financial Implications

8.1 None directly arising from this report. The actions outlined in this report will be met from within existing available resources. If planning permission were granted for primarily residential development of the site at a scale of c. 2000 dwellings, it may be expected, having regard to the pattern of land use values in Hertfordshire, that the site value for that use would significantly exceed its value for use as an SRFI.

9. Conclusions and Suggested Actions

9.1 An alternative use for the site, to provide a new Garden Village development, has been proposed that has potential to respond well to the resolution of County Council set out at paragraph 1.3 above.

9.2 The route for promotion of that scheme is submission of an expression of interest to the Homes and Community Agency by 31 July 2016, in response to the DCLG invitation in its publication Locally Lead Garden Villages, Towns and Cities.

9.3 It could be open to the County Council, as landowner, also to support the bid.

Background papers

Radlett Aerodrome Vision Document May 2016, and

As per the hyperlinks contained in the report.

Taylor Wimpey

Dick Bowler
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Hertfordshire WD6 1JN

T: 020 8236 3800
F: 020 8236 3801

www.taylorwimpey.co.uk

BY EMAIL

3rd June 2016

Dear Mr Bowler,

Re: Expression of Interest - Former Radlett Airfield, Hertfordshire

In relation to the email issued by Hertfordshire County Council on the 25th January 2016, inviting developer Expressions of Interest in the above site. Please find attached the Expression of Interest prepared by Taylor Wimpey. This document sets out Taylor Wimpey's vision for the site.

Initially we propose to promote the site as a 'Locally-led Garden Village' with St Albans District and City Council, in line with the DCLG guidance note issued in March 2016.

The vision document sets out one way in which a JV could be structured. We don't require an immediate response in relation to how a deal could be structured.

We would welcome the opportunity to meet with you to discuss the document in more detail.

Should you have any further questions please do not hesitate to contact me.

Yours Sincerely,

[redacted]

Peter Gurr
Managing Director
Taylor Wimpey North Thames

Taylor Wimpey UK Limited
Registered Number:
1392762 England and Wales.
Registered Office:
Gate House, Turnpike Road
High Wycombe, Buckinghamshire
HP12 3NR

Taylor Wimpey North Thames is a division of Taylor Wimpey UK Ltd

Key points from Radlett Aerodrome Vision Document, submitted by Taylor Wimpy (North Thames) Ltd

1. Responds to the County Council's invitation of Expressions of Interest, production team includes JTP (London Studio) master-planners and Neil Tulley Associates urban designers/landscape consultants.

2. Includes a key section on Strategic Local Plan Promotion which asserts:

   "The SLP is however subject to significant objections in respect of a number of factors, including the number of new homes it proposes to deliver over the plan period. Indeed, there is compelling evidence to suggest that housing targets in the SLP should be significantly higher than currently proposed and seemingly legitimate questions remain over the legal compliance of the SLP in terms of the Duty to Co-operate and the Strategic Environmental Assessment. As a result, there is a strong likelihood that the SLP, in its current form, will not be found sound by an examining inspector or, at the very least, the examination will be deferred in order to allow SACDC an opportunity to rectify deficiencies in the SLP. This would present an opportunity to introduce Radlett Aerodrome as a holistic solution, which would significantly increase the supply of new homes in the district in a manner which is sustainable and properly planned, bringing wider community benefits." and

   "There are no other strategic sized sites within the District that are able to deliver an equivalent balance of new homes and community benefits. We are therefore confident that Radlett Aerodrome is very well placed to take advantage of any delay to the SLP."

3. The Constraints and Opportunities diagram is helpful to understand the site context, and the diagram is below.

4. The Illustrative Masterplan shows a scheme for c 2000 dwellings with social infrastructure. Principal access is taken from the access on the A414 at the north, via a central boulevard running north-south and ending at the south access onto the A5183 just north of the M25 overbridge. The masterplan is below.

5. The Land use and density schedule provides an analysis of the potential contribution the site could make to the housing, employment and education/social needs of the District. The schedule summary shows:

Housing/mixed use:	641,382 sq M over	64.14 Ha
Employment:	32,081 sq M over	3.21 Ha
Education/social:	20,000 sq M over	2.00 Ha [i.e. a 2FE primary site]
Open Space:	area	47.88 Ha
Park & Ride:	500 spaces area	1.40 Ha
Total site		118.63 Ha [293.13 acres]

6. The Residential density calculations show 3 primary areas with:

Area A:	962 units at 35 dw per ha
Area B:	591 units at 30 dw per ha
Area C:	383 units at 25 dw per ha
Mixed Use:	66 units at 40 dw per ha
Totals:	2002 units at 31.2 dw per ha; or 12.63 dw per acre

   An overall density of 12 dwellings per acre is similar to that established by the Garden City movement developments of the early 20th century.

7. The Preliminary land use plan, is below and shows the above land use allocations.

8. The proposed Relationship and deal structure is a form of joint-venture with the County Council providing land and Taylor Wimpy capital and expertise. Accessed and serviced development land parcel sales are sold after the construction of the principal infrastructure, with shares of receipts paid on an as and when basis. The indicative deal structure is below.

CONSTRAINTS AND OPPORTUNITIES



1. Main access
2. Cold northerly wind
3. Potential pedestrian access via PRoW
4. Potential station
5. Natural dip
6. Existing bund
7. Potential secondary access
8. Motorway noise
9. Former Handley Page works
10. Prevailing winds

Illustrative Masterplan (not to scale)



ILLUSTRATIVE CONCEPT MASTERPLAN

KEY

1. Primary access from A414
2. Park and ride
3. Station and transport interchange
4. Hi-tech employment in landscaped setting
5. Local centre
6. Primary school
7. Pedestrian / cycle link with potential for future Bus Rapid Transit (BRT) link via existing spur
8. Pedestrian / cycle links
9. Greenway
10. Potential secondary access points tbc
11. Landscaped noise buffer
12. M25

ILLUSTRATIVE MASTERPLAN

The illustrative masterplan shows how the masterplan principles could be applied to create a new urban extension to Park Street with up to 2,000 new homes, community services, primary school allotments and high-quality employment. This includes sustainable transport connections, including Park and Ride for around 500 cars, a new station and potential for a guided bus or light railway. The new community would be well connected to Park Street, but would establish a clear separation from St Albans and London Colney / Napsbury to the east. It would sit between the permanent and enduring physical boundaries created by the M25, railway line, Park Street, and A414 and therefore represents a logical and suitable location to accommodate future new development.

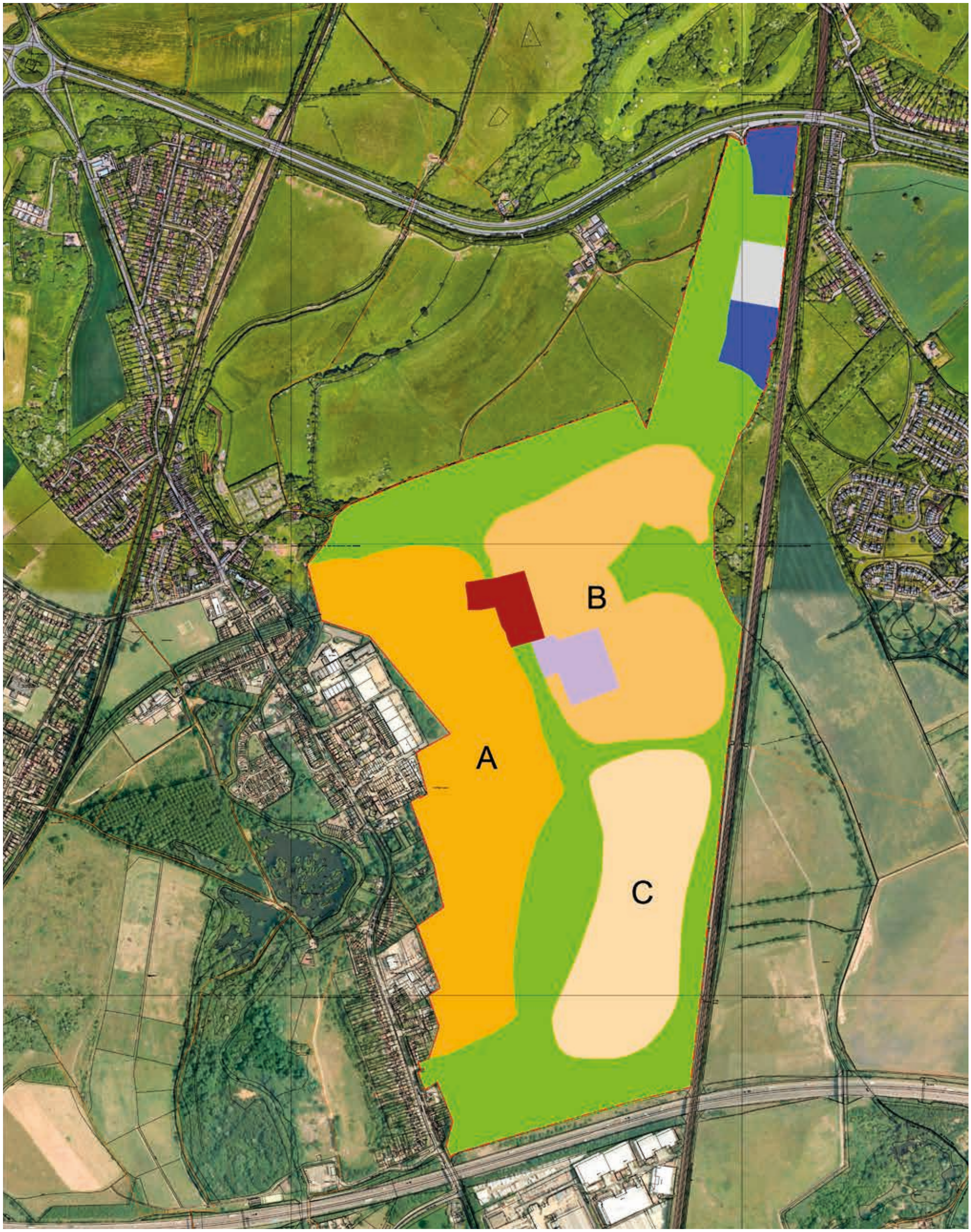
The residential element of the masterplan comprises three high quality neighbourhoods connected by a landscaped greenway, with a new mixed-use local centre at their heart. Employment buildings include hi-tech pavilion buildings in a semi-woodland setting, with close access (and limited visibility) to the A414, proposed station and park and ride facility, with other employment buildings clustered around the proposed station forecourt.

The existing landscape structure and green belt separation would be strengthened by a shelter belt of woodland to the north, additional visual screening to the railway embankment and a new landscaped wetland area with a lanscaped bund affording noise protection from the motorway.

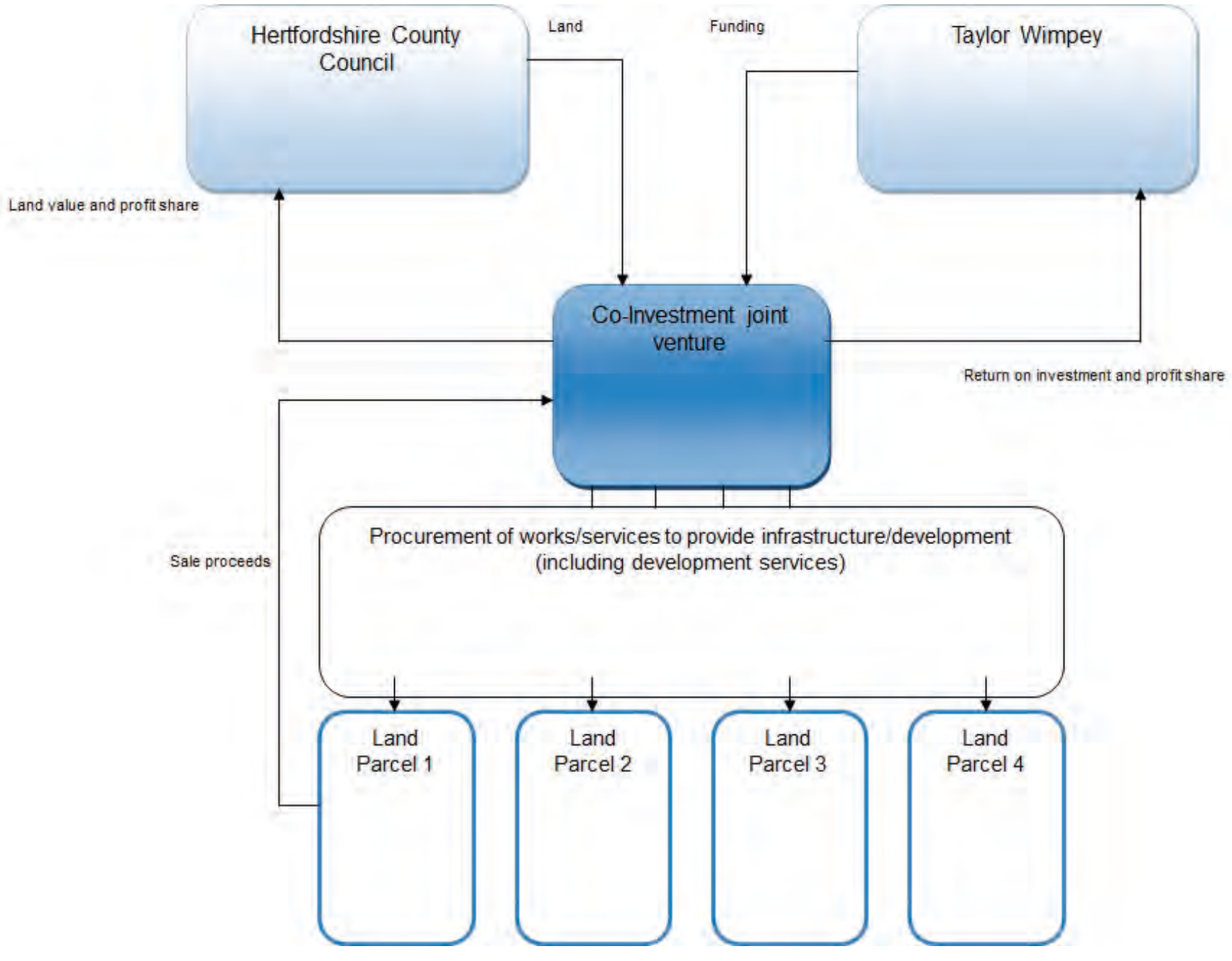


A new local centre with a community hub and other services clustered around a new high quality civic space

PRELIMINARY LAND BUDGET
PRELIMINARY LAND USE PLAN



PROPOSED RELATIONSHIP AND DEAL STRUCTURE



SUMMARY CRITERIA – DCLG PUBLICATION:

LOCALLY LEAD GARDEN VILLAGES [TOWNS AND CITIES] - MARCH 2016

Context:

a) DCLG issued the document with a forward from the Secretary of State for Communities and Local Government and the Minister for Housing and Planning that included the statement ".. to ensure that strong communities are at the heart of new development, we made a commitment in our manifesto to support locally-led garden cities and towns in places where communities want them."

b) The document set out a prospectus extended the existing offer to support local areas who want to create garden communities on a smaller scale, and offers tailored support to local areas which want to deliver a new garden village, town or city.

c) The prospectus invites expressions of interest by 31 July 2016 for new 'garden villages' of between 1,500 to 10,000 homes. The DCLG intention is to support up to 12 new garden village proposals.

Eligibility Criteria:

Must be for a new settlement of 1,500 – 10,000 homes.

Must be a new discrete settlement, and not an extension of an existing town or village.

Expressions of interest must be led by local authorities.

Prioritisation criteria:

Should have the backing of the local authorities in which they are situated. We expect expressions of interest to demonstrate a strong local commitment to delivery. They should also set how the local community is being, or will be, engaged at an early stage, and strategies for community involvement to help ensure local support.

Good design is essential if we are to create sustainable places where people want to live and be part of the local community.

We encourage expressions of interest which make effective use of previously developed land (brownfield land) and/or public sector land.

Expressions of interest need to demonstrate how the new settlement, including the necessary infrastructure, will be delivered. And demonstrate a credible route to delivering quality places without additional public subsidy.

We will want to support expressions of interest that offer a strong prospect of quantified early delivery, a significant acceleration of housing delivery, and genuinely additional housing supply.

Include provision for high quality starter homes, to be offered at least a 20% discount for young first-time buyers.

Provide opportunities to promote a diverse range of house builders, including small and medium sized firms, in the delivery of the garden village.

We encourage expressions of interest that include innovative forms of delivery

Infrastructure needs are clearly assessed and met as part of any proposal.

Application process

An expression of interest must be submitted by a local authority. We would welcome bids that are supported by private sector developers and/or landowners.

Expressions of interest must be **submitted by 31 July 2016** through the Homes and Communities Agency

Expressions of interest must be able to demonstrate clearly that they meet the requirements set out in this prospectus.

They should provide an indication of the tailored government support they are seeking and key issues that may require brokerage from government.

Applications are to:

Articulate a clear vision for the new garden village, with reference to the prioritisation criteria outlined above, and include specifically:

- a map setting out the proposed site boundary
- a general description of the proposal, including both policy aims and technical aims so far as they can be known (such as housing numbers, likely delivery methods, retail and other commercial space, extent of green space, timescale for delivery etc.)
- evidence which demonstrates that the scheme responds to issues of local affordability, and that there is strong growth potential over the medium to long-term
- information on the specific advice and technical research that will be undertaken should the bid be successful
- available evidence on scheme viability, including infrastructure costs and any abnormal costs
- if available, any analysis/data evidence on the financial, social and economic benefits of the proposals
- evidence on design and local consultation

  any information on transport infrastructure projects underway or committed around the proposed area.

Final decisions on which expressions of interest to support will be made by DCLG ministers in the light of advice from HCA and DCLG officials.

RESOURCES AND PERFORMANCE CABINET PANEL
MONDAY 4 JULY 2016

Recommendations*

Cabinet Panel is asked to recommend that Cabinet agrees to:-

a) confirm the Council's strong preference not to see a change in the current green belt status of this land or to dispose of it;

b) note the advice of Counsel regarding the statutory powers under which the County Council holds the land;

c) recognise that circumstances might arise under which the Council could be legally obliged to dispose of the land;

d) welcome alternative uses for the site which would secure value at least equivalent to the value of the land if used for s Strategic Rail Freight Interchange thereby potentially giving Cabinet more than one option to consider should the Council become legally obliged to dispose of the land;

e) Note the expression of interest from Taylor Wimpey North Thames and that of Harrow Estates;

f) Note that Taylor Wimpey North Thames intend to engage with the City & District of St Albans Council regarding submission of an expression of interest under the Department of Communities and Local Government's Locally Led Garden Villages programme;

g) The Chief Executive and Director of Environment inform the City & District of St Albans Council of this report and these decisions;

h) not to take any decision regarding the disposal of its land to any interested party for any non-green belt use prior to receiving and considering Counsel's advice on any offer or offers subsequently received.

*Red text shows the amendments to the original recommendation and new text added

Appendix 7 – HCC Position

f. HCC Call for Sites response 2017

Site 7

Former Radlett Airfield , Radlett

SHLAA Reference (Internal use only)|

Call For Sites - Site Identification Form

Residential, Employment, Health, Schools, Gypsy and Traveller, 'Other' uses.

Please return the **site map and form** to the Spatial Planning Team
By online consultation portal: www.stalbans.gov.uk/callforsites2018
By e-mail to: planning.policy@stalbans.gov.uk
By post to: St Albans Council Offices, St Peters Street, St Albans, AL1 3JE

This form has two parts –

Part A – Site Identification. Please submit a separate form for each site you wish to promote.
Part B – Contact details (you need only submit one copy of Part B).
Please provide **a map** clearly identifying the extent of the site.
Please give your email address/postal address so that we can contact you to clarify site information if needed.

You are invited to put forward any new sites, and the latest information/position regarding existing/known sites, that you would like the Council to consider for its new Local Plan.

Although this 'Call for Sites' focuses primarily on sites for residential development, we are also looking for sites for other uses, such as sites for Employment, Health, Schools, Gypsy and Traveller, and 'Other' uses.

Unfortunately, we cannot treat any of the information you provide as confidential.

Please do not submit sites that already have planning permission for development, unless a new and different proposal is likely in the future

If you wish to update any information about a site previously submitted please use relevant sections of the form.

Part A: Site Identification Form

Site address: Please provide a brief description e.g. land to the south west of (settlement), between the A500 and railway.

Former Radlett Airfield

Ownership details: Please indicate whether freehold or leasehold and length of lease (it is possible that a site may be in multiple ownership).

Freehold

Area of site (hectares)

Approximately 119ha

Current use(s)

Former Airfield/mineral extraction and restoration site.

Are there any factors that could make the site unavailable for development? (Please provide any details in the boxes labelled a to d below)

a. Ownership Constraints (e.g. multiple ownerships, ransom strips, tenancies, operational requirements)

n/a

b. Awaiting relocation of current use

n/a

c. Level of developer interest (i.e. low, medium, high)

n/a

d. Likely timeframe for development (i.e. completion). Please indicate if you anticipate that development may be split over different time periods.

To 2020	2021-2031	2031 onwards

Are you aware of any particular constraints that might make the site unsuitable for development? (Please provide any details in the boxes labelled a to d below)

a. Environmental Constraints e.g. floodplain, Sites of Special Scientific Interest (SSSIs) or Local Nature Reserve, sites of geological importance.

n/a

b. Other Designations e.g. Conservation Area, Listed Buildings, Archaeological Sites.

Part of the site in the west lies within the Conservation Area of the Park Street Frogmore Character Area. Article 4 Direction

c. Physical Constraints e.g. poor access, steep slopes, uneven terrain, ground contamination, Tree Preservation Orders

Close proximity to Historic Parks

d. Policy Constraints e.g. Green Belt, Landscape Character Area, high quality agricultural land, designated employment area, public or private green space, site with social or community value.

Green Belt, Landscape Development Area

If any constraints have been identified above, do you think that they could be overcome? If so, how?

Any potential constraints could be mitigated through design and development management.

What is the estimated number of dwellings that could be provided on the site?
You will need to take into account matters such as:

- appropriate site densities to reflect local circumstances.
- overall size and character of the site
- suitable housing mix for the site

This site would be a suitable location for a Garden Village. Approximately 2,000 houses could be provided with employment uses and supporting infrastructure.

Sketch scheme (submitted for information if necessary)

No

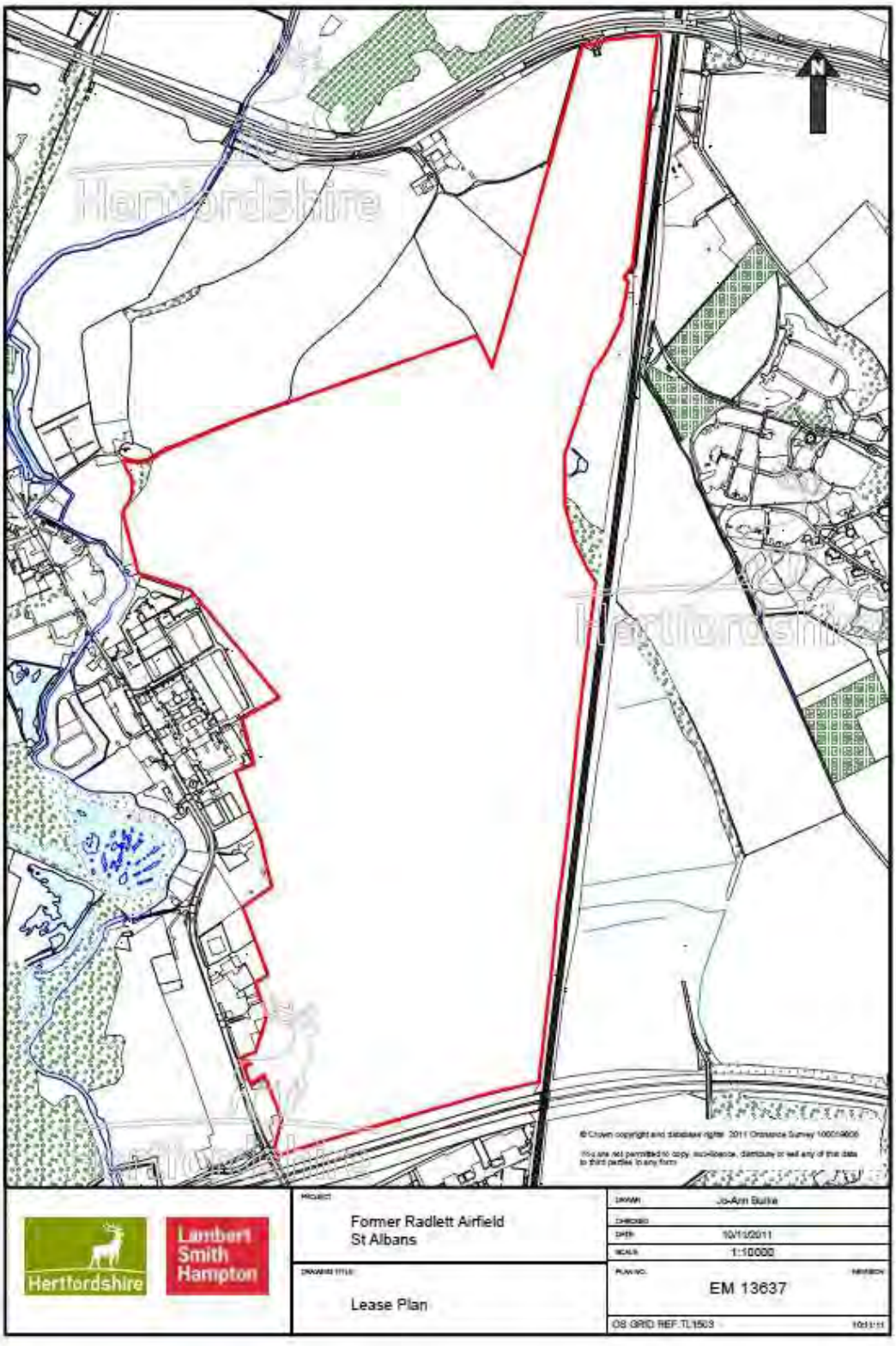
Is there any other information that you would like to provide in relation to your proposed site?
If yes, please give details below (and attach if necessary)

This site forms the major part of land bounded by the M25 Motorway to the south, the Midland Main Line railway to the east, the A414 principal road to the north and the urban edge of Park Street to the east. It is located only three miles to the south of St Albans. It is a 'self-contained' block of land, with long term defensible boundaries, where the County Council is the majority land owner, and the remaining minor part is in a single ownership. See on plan the attached, HP2959, and the County Council's land is shown edged red.

These lands already have outline planning permission, granted by the Secretary of State, for development as a Strategic Rail Freight Interchange (SFRI), to meet a north of London regional transport infrastructure need. It is anticipated that full detailed planning permission will be agreed by SCADC, at its Committee on 5 March 2018. Once reserved matters are approved and all conditions precedent have been satisfied, the development of the SRFI scheme can be lawfully begun and if that occurs the planning permission will then enure permanently for the benefit of the lands. The County Council has not been approached to make its land available but if it is it will have to make its decision in accordance with public law principles.

It is considered that the site is large enough to accommodate a Garden Village, which could include housing and employment along with the infrastructure to support the community, including schools.

Site Plan 7 - Former Radlett Airfield



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Appendix 7 – HCC Position

g. Submission to Brownfield Register

HERTFORDSHIRE COUNTY COUNCIL
PROPERTY (DEVELOPMENT SERVICES)

ST ALBANS CITY AND DISTRICT COUNCIL

SUBMISSION TO DRAFT BROWNFIELD REGISTER (BLR) AND STRATEGIC HOUSING LAND AVAILABILITY ASSESSMENT (SHLAA) CALL FOR SITES

ON BEHALF AS HERTFORDSHIRE COUNTY COUNCIL AS LANDOWNER

SEPTEMBER 2017

1.0 Introduction

1.1 This document is submitted by Hertfordshire County Council (HCC) Property (Development Services) in response to the St Albans City and District Council Draft Brownfield Land Register (BLR) and Strategic Housing Land Availability Assessment (SHLAA) Call for Sites consultation.

2.0 Identified Sites in HCC Ownership

2.1 A total of 15 sites in the ownership of the County Council have been identified for inclusion in the SHLAA to assist the District Council in achieving its housing and employment land requirements.

2.2 Each of these sites is listed below with plans and completed submission forms for each site contained in in Appendix A.

- Detached Playing field of Aboyne Lodge School
- Smallford Farm and Smallford Pit, Smallford
- Land at Perham Way, London Colney
- Rural Estate land south of Napsbury
- Rural Estate land north of Napsbury
- Smallford Recreation Ground, Oaklands Lane, St Albans
- Beaumont School, St Albans
- Land to rear of Harpenden Fire Station, Leyton Road, Harpenden
- Redbourn Library, Lamb Lane, Redbourn
- Land at Stephens Way and Flamsteadbury Lane Redbourn
- Rural Estate land at Waterdell, adj to Mount Pleasant JMI
- Rural estate land at Highfield Farm, Tyttenhanger
- Former Radlett Aerodrome, Radlett
- Carpenter's Nursery, Sandridge
- Land at Kingfisher Close, Wheathampstead

2.3 A completed contact form is contained in Appendix B.

3.0 Conclusion

3.1 HCC (Development Services) welcomes the opportunity to participate in the SHLAA consultation. Further information can be provided on any of the submitted sites by contacting the Development Services team.

Site 13

Former Radlett Aerodrome, Radlett

SHLAA Reference (Internal use only)|

Strategic Housing Land Availability Assessment (SHLAA) Site Identification Form

Please return the **site map and form** to the Spatial Planning and Design Team
By online consultation portal (**Call for Sites events** – **annual):**
http://stalbans-consult.limehouse.co.uk/portal/
By e-mail to: planning.policy@stalbans.gov.uk
By post to: St Albans Council Offices, St Peters Street, St Albans, AL1 3JE

The best way for you to make representations is using the online consultation portal during a **Call for Sites event.**

This form has two parts –

Part A – Site Identification. Please submit a separate form for each site you wish to promote.
Part B – Contact details (you need only submit one copy of Part B).
Please provide **a map** clearly identifying the extent of the site.
Please give your email address/postal address so that we can contact you to clarify site information if needed.

St Albans City and District Council updates its Strategic Housing Land Availability Assessment (SHLAA) on an ongoing basis to support its Development Plans work. Full details of the SHLAA process including Call for Sites can be found on the Council's website (Planning Policy Library of Documents).

You are invited to put forward any new sites that you would like the Council to consider in its SHLAA for possible housing development. The Council will take account of the submissions previously received since 2009. There is no need to resubmit information on these sites as they will form part of the Council's assessment.
Unfortunately, we cannot treat any of the information you provide as confidential.

It is important to note that not all sites will be appropriate for consideration as part of the SHLAA. As a general rule:

We encourage you to submit sites that:

- are likely to become available for housing development or redevelopment between now and 2031.

Please do not submit sites that:

- are already included as a housing allocation in the St Albans District Local Plan Review (November 1994) – i.e. sites that are listed in 'saved' Policies 4 and 5, or already included in the Draft Local Plan process;
- have already been submitted to the Council for consideration (please note any such sites will be noted as part of the Council's SHLAA process but will not be assessed or reassessed);
- already have planning permission for development, unless a new and different proposal is likely in the future; or
- are situated outside St Albans City and District's administrative area.

If you wish to update information about a site previously submitted please use relevant sections of the form.

Part A: Site Identification Form

Site address: Please provide a brief description e.g. land to the south west of (settlement), between the A500 and railway.

Former Radlett Aerodrome

Ownership details: Please indicate whether freehold or leasehold and length of lease (it is possible that a site may be in multiple ownership).

Freehold

Area of site (hectares)

Approximately 119ha

Current use(s)

Former Airfield/mineral extraction and restoration site.

Are there any factors that could make the site unavailable for development? (Please provide any details in the boxes labelled a to d below)

a. Ownership Constraints (e.g. multiple ownerships, ransom strips, tenancies, operational requirements)

n/a

b. Awaiting relocation of current use

n/a

c. Level of developer interest (i.e. low, medium, high)

n/a

d. Likely timeframe for development (i.e. completion). Please indicate if you anticipate that development may be split over different time periods.

To 2020	2021-2031	2031 onwards

Are you aware of any particular constraints that might make the site unsuitable for development? (Please provide any details in the boxes labelled a to d below)

a. Environmental Constraints e.g. floodplain, Sites of Special Scientific Interest (SSSIs) or Local Nature Reserve, sites of geological importance.

n/a

b. Other Designations e.g. Conservation Area, Listed Buildings, Archaeological Sites.

Part of the site in the west lies within the Conservation Area of the Park Street Frogmore Character Area.
Article 4 Direction

c. Physical Constraints e.g. poor access, steep slopes, uneven terrain, ground contamination, Tree Preservation Orders

Close proximity to Historic Parks

d. Policy Constraints e.g. Green Belt, Landscape Character Area, high quality agricultural land, designated employment area, public or private green space, site with social or community value.

Green Belt, Landscape Development Area

If any constraints have been identified above, do you think that they could be overcome? If so, how?

Any potential constraints could be mitigated through design and development management.

What is the estimated number of dwellings that could be provided on the site?
You will need to take into account matters such as:

- appropriate site densities to reflect local circumstances.
- overall size and character of the site
- suitable housing mix for the site

This site would be a suitable location for a Garden Village. Approximately 2,000 houses could be provided with employment uses and supporting infrastructure.

Sketch scheme (submitted for information if necessary)

No

Is there any other information that you would like to provide in relation to your proposed site?
If yes, please give details below (and attach if necessary)

This site has outline planning permission for a Strategic Rail Freight Interchange (SFRI).

If the site is not required for this use the County Council could make this site available to meet the growth needs of the District, particularly housing. It is considered that the site is large enough to accommodate a Garden Village, which could include housing and employment along with the infrastructure to support the community, including schools.

Appendix 7 – HCC Position

h. HCC Call for Sites response 2018

Agenda Item No.

11

HERTFORDSHIRE COUNTY COUNCIL

CABINET
MONDAY 19 FEBRUARY 2018 AT 2.00PM

ST ALBANS CITY AND DISTRICT COUNCIL LOCAL PLAN CALL FOR SITES CONSULTATION (JAN/FEB 2018)

Report of the Director of Resources

Report Authors: Andrea Gilmour, Interim Head of Development Services 01992 556477
Dick Bowler, Estates Manager 01992 556223

Executive Member: David Williams, Leader of the Council (as responsible for Resources, Property & the Economy)

Local Members: John Hale, Colney Heath and Marshalswick
David Williams, Harpenden North East
Annie Brewster, Harpenden Rural
Teresa Heritage, Harpenden South West
Dreda Gordon, London Colney
Chris White, St Albans Central
Anthony Rowlands, St Albans East
Charlotte Hogg, St Albans North
Sandy Walkington, St Alban's South
Sue Featherstone, St Stephen's

1. Purpose of report

1.1 To inform Cabinet of the landowner representations to be submitted by Property (Development Services) officers to the current St Albans City and District Council Local Plan Call for Sites consultation, attached at Appendix A to the report.

1.2 To invite Cabinet to reconsider its policy regarding land at the former Radlett Airfield and to seek agreement of the proposed landowner representations for that site.

2. Summary

2.1 The County Council has been consulted on the St Albans City and District Council (SACDC) Issues and Options Local Plan consultation, which will show what can be built, and where, up to 2036. The draft Local Plan has an annual housing target of 913 homes. This will mean 9,000 to 10,000 homes will have to be built in the Green Belt. Growth for employment and other purposes is proposed too. The consultation includes a Call for Sites. It is clear from the consultation papers that

SCADC will need to look for additional green belt land releases in order to accommodate the scale of growth now required. The deadline for submission of responses to these consultations is 21 February 2018.

2.2 As part of the deliverability testing of sites that will be chosen by SACDC at the Preferred Options stage of their plan making process, and at later stages of examination of a submitted plan, it is important that site owners have advised that sites proposed for development will be made available to meet the growth requirements. The County Council has a number of sites that are potentially suitable for development for the growth needs of the District.

2.3 In September 2017, in response to the Draft Brownfield Register (BLR) and Strategic Housing Land Availability Assessment (SHLAA) call for sites the County Council submitted 15 sites within its ownership. The sites are ones that are now, or may be expected to become within the period of the plan, surplus to the County Council's requirements.

2.4 This list has now been reviewed and officers are proposing to continue to promote a total of eight sites in the ownership of the County Council from the original 15 sites previously submitted through the current consultation for consideration by SACDC for inclusion in the Local Plan to assist the District Council in achieving its housing and employment land requirements. Attached at Appendix B to this report is a table showing what feasibility work has been undertaken to date and what needs to be carried out in respect of each site in order to confirm deliverability.

2.5 This work is usually carried out under Chief Officer delegations, with officers from the Development Services team responding to Call for Sites consultations on behalf of the County Council as a landowner.

3. Recommendations

3.1 The Resources, Property and the Economy Cabinet Panel will consider a report on this item of business at its meeting on 14 February 2018. The Panel will be invited to recommend to Cabinet that:-

i) The County Council supports the promotion of the eight sites referred to in the report through the Local Plan process to assist St Albans City and District Council in achieving its housing and employment land requirements; and

ii) The inclusion of the Former Radlett Airfield in this process is authorised to enable the site to be considered by St Albans City and District Council for inclusion in the Local Plan.

3.2 The Cabinet Panel's recommendation/s to Cabinet will be reported orally at the Cabinet meeting and circulated to Members in the Order of Business sheet.

4. Background

4.1 A summary of each of the eight sites being considered is given below, with the attached Appendix B table highlighting both the feasibility work undertaken to date and that required to support the promotion. All of the sites are located within the Green Belt.

Site 1 Land South of Napsbury

4.2 Part of this landholding has been identified in the current SACDC Local Plan Consultation as a broad location for development (Land at London Colney). Detailed technical feasibility work undertaken in 2007/2009 indicates that the site could accommodate around 447 dwellings. This feasibility work would need to be refreshed.

4.3 The land south of Napsbury Park has been the subject of extensive technical investigations which informed the preparation of a master plan. This work confirms the suitability, deliverability and availability of the site, prior to any further consideration.

4.4 The technical investigations concluded that there were no significant impediments to development and that up to a maximum of 447 dwellings could be accommodated on land south of Napsbury; with community benefits including the potential provision of a local community centre with facilities as required, enhanced public access and landscape improvements.

4.5 It is also considered that the wider landholding offers the opportunity to provide additional community facilities, including schools, if these are required. However, further feasibility and technical investigations would need to be undertaken.

Site 2 Land North of Napsbury

4.6 Detailed technical feasibility work undertaken in 2007/2009 indicates that the site could accommodate around 149 dwellings and a two form entry primary school. This work would need to be refreshed.

4.7 The land north of Napsbury Park has been the subject of extensive technical investigations which informed the preparation of a master plan. This work confirms the suitability, deliverability and availability of the site, prior to any further consideration. The technical investigations concluded that there were no significant impediments to development and that a maximum of 149 dwellings could be accommodated on land north of Napsbury.

Site 3 Land East of Kay Walk, St Albans

4.8 This site forms part of a larger area identified in the current SACDC Local Plan Consultation as a broad location for development (East St Albans). The larger area has previously been identified by SACDC for up to 1,000 homes. Detailed feasibility is required to determine the

quantum of development that could be achieved on the land in the County Council's ownership.

Site 4 Land at Stephens Way and Flamsteadbury Lane, Redbourn

4.9 This site is currently leased as open space to the parish council. It is anticipated that it only has potential for development if there were to be a wider green belt release at this location, which could retain the play area within it and see development on the other component the County Council's land. The site could potentially provide between 25 and 30 dwellings. No feasibility work has been undertaken.

Site 5 Land at Waterdell, adjacent to Mount Pleasant JMI

4.10 This site lies to the south west of Bricket Wood on the boundary between SACDC and Watford. No feasibility has been undertaken but it is anticipated that it could accommodate between 30 and 40 dwellings.

Site 6 Land at Highfield Farm, Tyttenhanger

4.11 Planning applications for the residential redevelopment of the existing farm buildings at Highfield Farm are to be submitted outside of the Local Plan process. Feasibility work has been prepared for the development of the site around the farm buildings. This would need to be extended.

Site 7 Former Radlett Airfield, Radlett

4.12 This site forms the major part of land bounded by the M25 Motorway to the south, the Midland Main Line railway to the east, the A414 principal road to the north and the urban edge of Park Street to the east. It is located only three miles to the south of St Albans. It is a 'self-contained' block of land, with long term defensible boundaries, where the County Council is the majority land owner, and the remaining minor part is in a single ownership. See on the plan attached at Appendix C to the report, HP2959, and the County Council's land is shown edged red.

4.13 This site already has outline planning permission, granted by the Secretary of State, for development as a Strategic Rail Freight Interchange (SFRI), to meet a north of London regional transport infrastructure need. It is anticipated that full detailed planning permission will be agreed by SACDC, at its Committee on 5 March 2018. Once reserved matters are approved and all conditions precedent have been satisfied, the development of the SRFI scheme can be lawfully begun and if that occurs the planning permission will then enure permanently for the benefit of the site. The County Council has not been approached to make its land available but if it is it will have to make its decision in light of the decision to grant planning permission for an SRFI and in accordance with public law principles.

4.14 Cabinet at its meeting on 11 July 2016 confirmed the County Council's strong preference not to see a change in the current green belt status

of this land or to dispose of it. Since that decision, the need for the much higher levels of growth in the District has become clear.

4.15 The purpose of submitting this site now to the Call for Sites process is to enable SACDC to consider it as a possible site for a Garden Village. SACDC can only do this if the County Council as landowner includes it in response to the Call for Sites The work undertaken by two large housing developers in 2016 in response to the County Council's invitation of 'expressions of interest' showed proposals for development of the County Council's land a Garden Village. Their separate submissions made clear that there is a major opportunity to create a mixed use development of exceptional design quality and potential to integrate a wide range of sustainability measures. Contributions of about 2000 dwellings, employment land and all necessary social infrastructure, to include a high proportion of affordable housing, would be possible.

4.16 If SACDC were to decide to remove this land from the green belt and allocate it for a housing led development this would be a material consideration for Cabinet as and when the County Council receives an offer to purchase its land. A housing led scheme would be less damaging to the Hertfordshire environment, be more valuable in meeting Hertfordshire's need for additional housing and have a higher land value than the permitted SRFI scheme.

4.17 This site is considered to be a suitable and sustainable location for a Garden Village, which would include both housing and employment land. It has sustainable transport links due to its adjacency to the Abbey Line railway and has the potential to include a 'park and ride' facility to access the railway line. It is also of sufficient size to accommodate the necessary infrastructure, including a by-pass for Park Street, a local centre, a secondary school, several primary schools, recreation and open space facilities, which would be required to support the 2,000+ dwelling community that could be provided.

4.18 The development would provide a very major boost to the patronage of the Abbey Line and help to provide the impetus for a passing loop to significantly enhance train frequency on the Line. Opportunities for alternative alignments to the Abbey Line to directly serve the site could also be explored as would the potential for a new station (at Napsbury) on the Midland Mainline, offering further direct access to London and to Luton, Bedford, Leicester, Manchester, Leeds, etc.

Site 8 Carpenter's Nursery, Sandridge

4.19 There has been no feasibility undertaken on this site which forms part of a larger County Council land holding. An archaeological assessment would be required to inform the developable area as the northern area lies within an Archaeological site.

5. Town Planning

5.1 The SACDC Call for Sites forms part of the SACDC's process to prepare a local plan.

6. Property Implications.

6.1 The County Council as landowner seeks to assist Local Planning Authorities in their plan making processes by ensuring that any of its land that may be suitable, available and deliverable to meet growth requirements is identified and can be considered by them against the appropriate planning criteria for site allocation.

6.2 It is clear from the SACDC papers that there is 'exceptional circumstances' justification for removal of additional lands from the green belt, in suitable locations, to meet the higher growth needs of the area. On that basis officers have looked at the County Council's landholdings that may be capable of meeting the growth needs and the planning criteria for site selection.

6.3 Should any of the sites be allocated in an adopted local plan for housing and/or employment use the County Council would then be able to contribute important land supply to assist meeting the growth and infrastructure needs. Additionally it may be expected that very significant latent capital can be unlocked as the land values associated with urban land uses are may multiples of rural land use values.

6.4 Where sites are currently in service use for the purposes of the Rural Estate it would be necessary to re-provide or to close the individual service use.

7. Financial Implications.

7.1 The successful promotion of these sites through the local plan process to achieve an allocation for alternative development would result in very significant increases in value of these County Council landholdings.

7.2 Should it be necessary to terminate Rural Estate service use holdings there may be compensation payable to tenants. These sums are modest in relation to the increase in land value, once planning permission has been granted.

8. Equality Act Implications.

8.1 When considering proposals placed before Members it is important that they are fully aware of, and have themselves rigorously considered the Equality implications of the decision that they are making.

8.2 Rigorous consideration will ensure that proper appreciation of any potential impact of that decision on the County Council's statutory obligations under the Public Sector Equality Duty. As a minimum this requires decision makers to read and carefully consider the content of any Equalities Impact Assessment (EqIA) produced by officers.

8.3 The Equality Act 2010 requires the County Council when exercising its functions to have due regard to the need to (a) eliminate discrimination, harassment, victimisation and other conduct prohibited under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The protected characteristics under the Equality Act 2010 are age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief, sex and sexual orientation.

8.4 It is considered that there are no equalities implications arising from this report, the matter will however be kept under review.

Background Information

July 2016 Cabinet Minutes
https://cmis.hertfordshire.gov.uk/hertfordshire/Calendarofcouncilmeetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/346/Committee/8/SelectedTab/Documents/Default.aspx

HERTFORDSHIRE COUNTY COUNCIL
PROPERTY (DEVELOPMENT SERVICES)

ST ALBANS CITY AND DISTRICT COUNCIL

SUBMISSION TO LOCAL PLAN CALL FOR SITES CONSULTATION

ON BEHALF OF HERTFORDSHIRE COUNTY COUNCIL AS LANDOWNER

JANUARY 2018

1.0 Introduction

1.1 This document is submitted by Hertfordshire County Council (HCC) Property (Development Services) in response to the St Albans City and District Council Local Plan Call for Sites consultation.

2.0 Identified Sites in HCC Ownership

2.1 A total of 15 sites in the ownership of the County Council have been identified for inclusion in the Local Plan to assist the District Council in achieving its housing and employment land requirements.

2.2 Each of these sites is listed below with plans and completed submission forms for each site contained in in Appendix A.

1. Rural Estate land south of Napsbury
2. Rural Estate land north of Napsbury
3. Land East of Kay Walk, St Albans
4. Land at Stephens Way and Flamsteadbury Lane Redbourn
5. Rural Estate land at Waterdell, adj to Mount Pleasant JMI
6. Rural estate land at Highfield Farm, Tyttenhanger
7. Former Radlett Airfield, Radlett
8. Carpenter's Nursery, Sandridge

2.3 A completed contact form is contained in Appendix B.

3.0 Conclusion

3.1 HCC (Development Services) welcomes the opportunity to participate in the Local Plan Call for Sites consultation. Further information can be provided on any of the submitted sites by contacting the Development Services team.

Site 1

Rural Estate land south of Napsbury

SHLAA Reference (Internal use only)|

Call For Sites - Site Identification Form

Residential, Employment, Health, Schools, Gypsy and Traveller, 'Other' uses.

Please return the **site map and form** to the Spatial Planning Team
By online consultation portal: www.stalbans.gov.uk/callforsites2018
By e-mail to: planning.policy@stalbans.gov.uk
By post to: St Albans Council Offices, St Peters Street, St Albans, AL1 3JE

This form has two parts –

Part A – Site Identification. Please submit a separate form for each site you wish to promote.
Part B – Contact details (you need only submit one copy of Part B).
Please provide **a map** clearly identifying the extent of the site.
Please give your email address/postal address so that we can contact you to clarify site information if needed.

You are invited to put forward any new sites, and the latest information/position regarding existing/known sites, that you would like the Council to consider for its new Local Plan.

Although this 'Call for Sites' focuses primarily on sites for residential development, we are also looking for sites for other uses, such as sites for Employment, Health, Schools, Gypsy and Traveller, and 'Other' uses.

Unfortunately, we cannot treat any of the information you provide as confidential.

Please do not submit sites that already have planning permission for development, unless a new and different proposal is likely in the future

If you wish to update any information about a site previously submitted please use relevant sections of the form.

Part A: Site Identification Form

Site address: Please provide a brief description e.g. land to the south west of (settlement), between the A500 and railway.

Rural Estate land south of Napsbury

Ownership details: Please indicate whether freehold or leasehold and length of lease (it is possible that a site may be in multiple ownership).

Freehold

Area of site (hectares)

86.2ha

Current use(s)

Agricultural - Arable

Are there any factors that could make the site unavailable for development? (Please provide any details in the boxes labelled a to d below)

a. Ownership Constraints (e.g. multiple ownerships, ransom strips, tenancies, operational requirements)

The site is part of the HCC Rural Estate and is currently leased to tenants.

b. Awaiting relocation of current use

n/a

c. Level of developer interest (i.e. low, medium, high)

n/a

d. Likely timeframe for development (i.e. completion). Please indicate if you anticipate that development may be split over different time periods.

To 2020	2021-2031	2031 onwards

Are you aware of any particular constraints that might make the site unsuitable for development? (Please provide any details in the boxes labelled a to d below)

a. Environmental Constraints e.g. floodplain, Sites of Special Scientific Interest (SSSIs) or Local Nature Reserve, sites of geological importance.

Ancient Monuments and Archaeological Site subject to recording conditions can be found within the proposed site. Part of the site falls within Floodzone 2/3.

b. Other Designations e.g. Conservation Area, Listed Buildings, Archaeological Sites.

Close proximity to Conservation Area, Historic Parks

c. Physical Constraints e.g. poor access, steep slopes, uneven terrain, ground contamination, Tree Preservation Orders

N/A

d. Policy Constraints e.g. Green Belt, Landscape Character Area, high quality agricultural land, designated employment area, public or private green space, site with social or community value.

Green Belt, Landscape Development Area

If any constraints have been identified above, do you think that they could be overcome? If so, how?

Only part of the site is subject to environmental constraints. These can be mitigated by good design and layout with development avoiding the protected areas and flood zone.

What is the estimated number of dwellings that could be provided on the site?
You will need to take into account matters such as:

- appropriate site densities to reflect local circumstances.
- overall size and character of the site
- suitable housing mix for the site

The land south of Napsbury Park has been the subject of extensive technical investigations which informed the preparation of a master plan. This work confirms the suitability, deliverability and availability of the site, prior to any further consideration.

The technical investigations concluded that there were no significant impediments to development and that up to a maximum of 447 dwellings could be accommodated on land south of Napsbury, with community benefits, including the potential provision of a local community centre with facilities as required, enhanced public access and landscape improvements.

It is also considered that the wider landholding offers the opportunity to provide additional community facilities, including schools, if these are required. However, further feasibility and technical investigations would need to be undertaken.

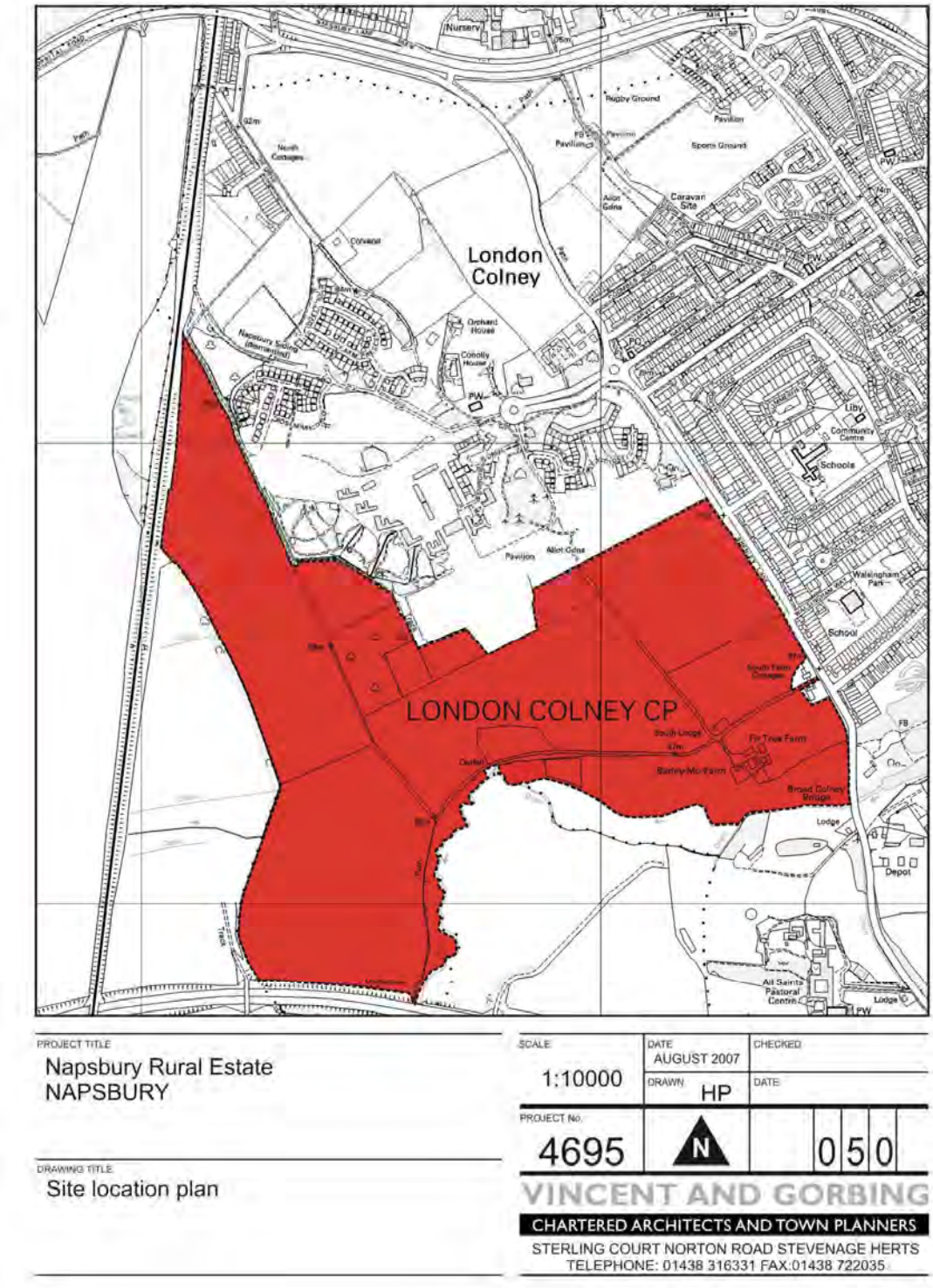
Sketch scheme (submitted for information if necessary)

~~Yes~~ / No

Is there any other information that you would like to provide in relation to your proposed site?
If yes, please give details below (and attach if necessary)

Detailed information has previously been submitted to SADC regarding this site. Further copies can be provided on request.

Site Plan 1 - Rural Estate land south of Napsbury



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Site 2

Rural Estate land north of Napsbury

SHLAA Reference (Internal use only)|

Call For Sites - Site Identification Form

Residential, Employment, Health, Schools, Gypsy and Traveller, 'Other' uses.

Please return the **site map and form** to the Spatial Planning Team
By online consultation portal: www.stalbans.gov.uk/callforsites2018
By e-mail to: planning.policy@stalbans.gov.uk
By post to: St Albans Council Offices, St Peters Street, St Albans, AL1 3JE

This form has two parts –

Part A – Site Identification. Please submit a separate form for each site you wish to promote.
Part B – Contact details (you need only submit one copy of Part B).
Please provide **a map** clearly identifying the extent of the site.
Please give your email address/postal address so that we can contact you to clarify site information if needed.

You are invited to put forward any new sites, and the latest information/position regarding existing/known sites, that you would like the Council to consider for its new Local Plan.

Although this 'Call for Sites' focuses primarily on sites for residential development, we are also looking for sites for other uses, such as sites for Employment, Health, Schools, Gypsy and Traveller, and 'Other' uses.

Unfortunately, we cannot treat any of the information you provide as confidential.

Please do not submit sites that already have planning permission for development, unless a new and different proposal is likely in the future

If you wish to update any information about a site previously submitted please use relevant sections of the form.

Part A: Site Identification Form

Site address: Please provide a brief description e.g. land to the south west of (settlement), between the A500 and railway.

Rural Estate land north of Napsbury

Ownership details: Please indicate whether freehold or leasehold and length of lease (it is possible that a site may be in multiple ownership).

Freehold

Area of site (hectares)

26.31ha

Current use(s)

Agricultural - Arable

Are there any factors that could make the site unavailable for development? (Please provide any details in the boxes labelled a to d below)

a. Ownership Constraints (e.g. multiple ownerships, ransom strips, tenancies, operational requirements)

This site is part of the HCC Rural Estate and is currently leased to tenants.

b. Awaiting relocation of current use

n/a

c. Level of developer interest (i.e. low, medium, high)

n/a

d. Likely timeframe for development (i.e. completion). Please indicate if you anticipate that development may be split over different time periods.

To 2020	2021-2031	2031 onwards

Are you aware of any particular constraints that might make the site unsuitable for development? (Please provide any details in the boxes labelled a to d below)

a. Environmental Constraints e.g. floodplain, Sites of Special Scientific Interest (SSSIs) or Local Nature Reserve, sites of geological importance.

n/a

b. Other Designations e.g. Conservation Area, Listed Buildings, Archaeological Sites.

Part of the site lies within an Historic Parks designation.
Close proximity to a Conservation Area.

c. Physical Constraints e.g. poor access, steep slopes, uneven terrain, ground contamination, Tree Preservation Orders

N/A

d. Policy Constraints e.g. Green Belt, Landscape Character Area, high quality agricultural land, designated employment area, public or private green space, site with social or community value.

Green Belt, Landscape Development Area

If any constraints have been identified above, do you think that they could be overcome? If so, how?

The constraints identified above could be mitigated through good design and layout of development.

What is the estimated number of dwellings that could be provided on the site?
You will need to take into account matters such as:

- appropriate site densities to reflect local circumstances.
- overall size and character of the site
- suitable housing mix for the site

The land north of Napsbury Park has been the subject of extensive technical investigations which informed the preparation of a master plan. This work confirms the suitability, deliverability and availability of the site, prior to any further consideration. The technical investigations concluded that there were no significant impediments to development and that a maximum of 149 dwellings could be accommodated along with a 2 form of entry primary school.

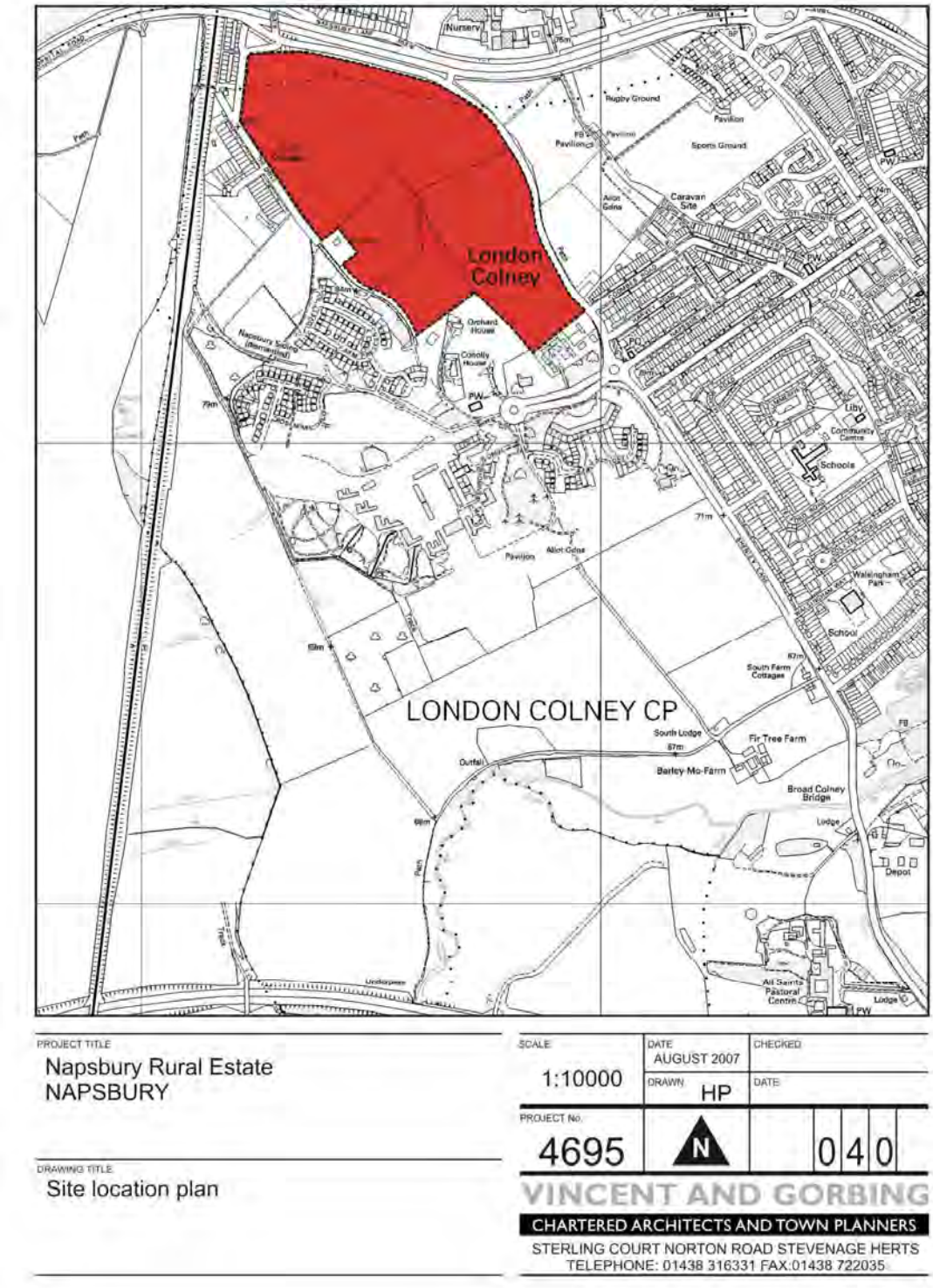
Sketch scheme (submitted for information if necessary)

~~Yes~~ / No

Is there any other information that you would like to provide in relation to your proposed site?
If yes, please give details below (and attach if necessary)

Detailed information has previously been submitted to SADC regarding this site. Further copies can be provided on request.

Site Plan 2 - Rural Estate land north of Napsbury



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Site 3

Land East of Kay Walk, St Albans

SHLAA Reference (Internal use only)|

Call For Sites - Site Identification Form

Residential, Employment, Health, Schools, Gypsy and Traveller, 'Other' uses.

Please return the **site map and form** to the Spatial Planning Team
By online consultation portal: www.stalbans.gov.uk/callforsites2018
By e-mail to: planning.policy@stalbans.gov.uk
By post to: St Albans Council Offices, St Peters Street, St Albans, AL1 3JE

This form has two parts –

Part A – Site Identification. Please submit a separate form for each site you wish to promote.
Part B – Contact details (you need only submit one copy of Part B).
Please provide **a map** clearly identifying the extent of the site.
Please give your email address/postal address so that we can contact you to clarify site information if needed.

You are invited to put forward any new sites, and the latest information/position regarding existing/known sites, that you would like the Council to consider for its new Local Plan.

Although this 'Call for Sites' focuses primarily on sites for residential development, we are also looking for sites for other uses, such as sites for Employment, Health, Schools, Gypsy and Traveller, and 'Other' uses.

Unfortunately, we cannot treat any of the information you provide as confidential.

Please do not submit sites that already have planning permission for development, unless a new and different proposal is likely in the future

If you wish to update any information about a site previously submitted please use relevant sections of the form.

Part A: Site Identification Form

Site address: Please provide a brief description e.g. land to the south west of (settlement), between the A500 and railway.

Land East of Kay Walk, St Albans

Ownership details: Please indicate whether freehold or leasehold and length of lease (it is possible that a site may be in multiple ownership).

Freehold

Area of site (hectares)

3.3ha

Current use(s)

Scrubland

Are there any factors that could make the site unavailable for development? (Please provide any details in the boxes labelled a to d below)

a. Ownership Constraints (e.g. multiple ownerships, ransom strips, tenancies, operational requirements)

n/a

b. Awaiting relocation of current use

n/a

c. Level of developer interest (i.e. low, medium, high)

n/a

d. Likely timeframe for development (i.e. completion). Please indicate if you anticipate that development may be split over different time periods.

To 2020	2021-2031	2031 onwards

Are you aware of any particular constraints that might make the site unsuitable for development? (Please provide any details in the boxes labelled a to d below)

a. Environmental Constraints e.g. floodplain, Sites of Special Scientific Interest (SSSIs) or Local Nature Reserve, sites of geological importance.

n/a

b. Other Designations e.g. Conservation Area, Listed Buildings, Archaeological Sites.

Site is adjacent to a TPO area to the east.

c. Physical Constraints e.g. poor access, steep slopes, uneven terrain, ground contamination, Tree Preservation Orders

N/A

d. Policy Constraints e.g. Green Belt, Landscape Character Area, high quality agricultural land, designated employment area, public or private green space, site with social or community value.

Green Belt

If any constraints have been identified above, do you think that they could be overcome? If so, how?

No environmental and physical constraints have been identified.

What is the estimated number of dwellings that could be provided on the site?

You will need to take into account matters such as:

- appropriate site densities to reflect local circumstances.
- overall size and character of the site
- suitable housing mix for the site

This site forms part of a larger area included in the Strategic Local Plan (SLP) prepared by SADC, as the East St Albans (Oaklands) Broad Location, an area to be excluded from the Green Belt principally for housing. The wider site was identified in the SLP for up to 1,000 homes.

Sketch scheme (submitted for information if necessary)

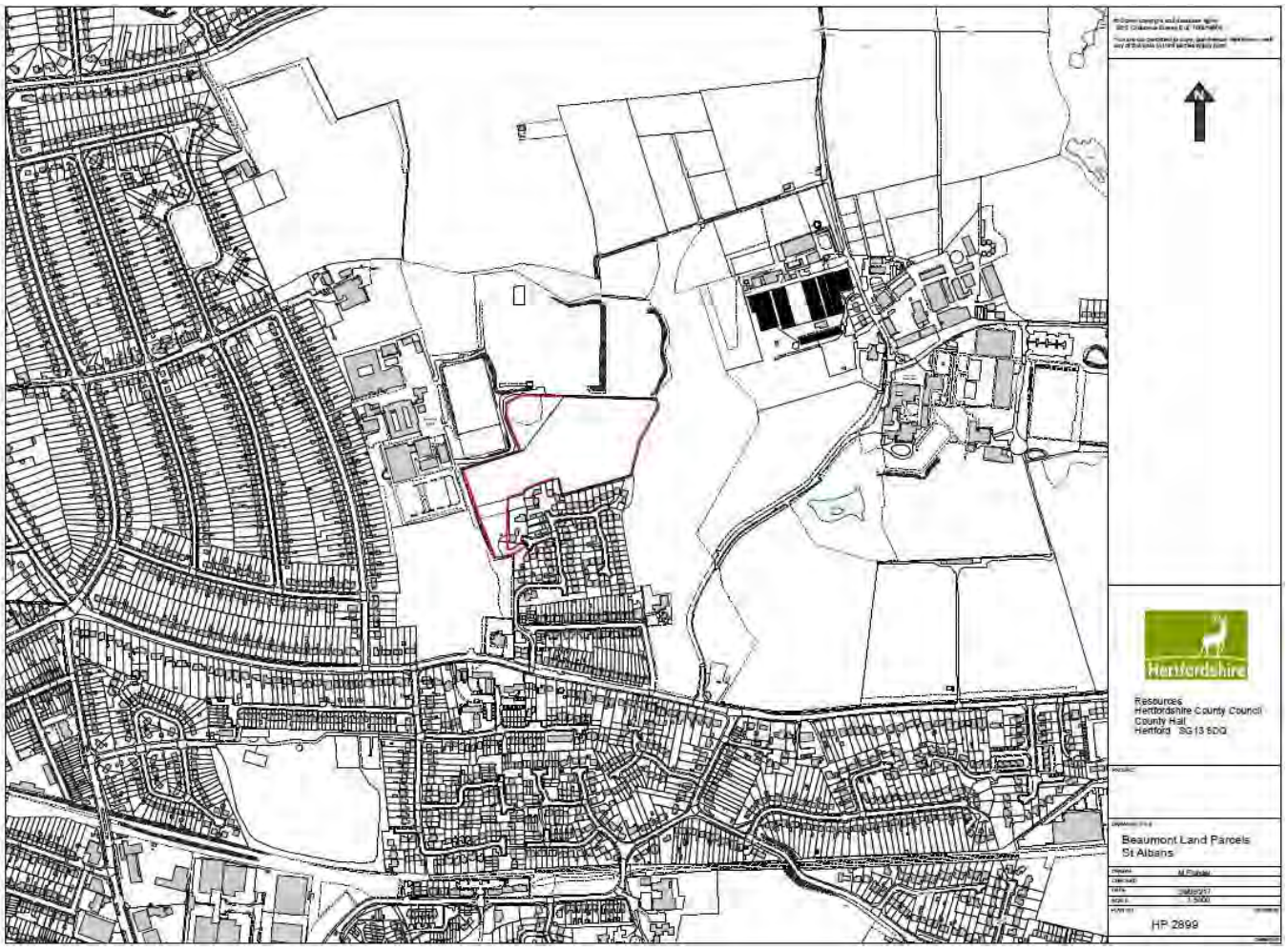
~~Yes~~ / No

Is there any other information that you would like to provide in relation to your proposed site?

If yes, please give details below (and attach if necessary)

This site forms part of a larger area included SLP as the East St Albans (Oaklands) Broad Location, an area to be excluded from the Green Belt principally for housing.

Site Plan 3 – Land East of Kay Walk, St Albans



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Site 4

Land at Stephens Way and Flamsteadbury Lane Redbourn

SHLAA Reference (Internal use only)|

Call For Sites - Site Identification Form

Residential, Employment, Health, Schools, Gypsy and Traveller, 'Other' uses.

Please return the **site map and form** to the Spatial Planning Team
By online consultation portal: www.stalbans.gov.uk/callforsites2018
By e-mail to: planning.policy@stalbans.gov.uk
By post to: St Albans Council Offices, St Peters Street, St Albans, AL1 3JE

This form has two parts –

Part A – Site Identification. Please submit a separate form for each site you wish to promote.
Part B – Contact details (you need only submit one copy of Part B).
Please provide **a map** clearly identifying the extent of the site.
Please give your email address/postal address so that we can contact you to clarify site information if needed.

You are invited to put forward any new sites, and the latest information/position regarding existing/known sites, that you would like the Council to consider for its new Local Plan.

Although this 'Call for Sites' focuses primarily on sites for residential development, we are also looking for sites for other uses, such as sites for Employment, Health, Schools, Gypsy and Traveller, and 'Other' uses.

Unfortunately, we cannot treat any of the information you provide as confidential.

Please do not submit sites that already have planning permission for development, unless a new and different proposal is likely in the future

If you wish to update any information about a site previously submitted please use relevant sections of the form.

Part A: Site Identification Form

Site address: Please provide a brief description e.g. land to the south west of (settlement), between the A500 and railway.

Land at Stephens Way and Flamsteadbury Lane, Redbourn

Ownership details: Please indicate whether freehold or leasehold and length of lease (it is possible that a site may be in multiple ownership).

Freehold

Area of site (hectares)

0.8ha

Current use(s)

Open space.

Are there any factors that could make the site unavailable for development? (Please provide any details in the boxes labelled a to d below)

a. Ownership Constraints (e.g. multiple ownerships, ransom strips, tenancies, operational requirements)

This site is currently leased as open space to the parish council and used as play area.

b. Awaiting relocation of current use

This site only has potential if there were to be a wider green belt release being considered which could retain the play area within it and see development on the other component HCC land.

c. Level of developer interest (i.e. low, medium, high)

n/a

d. Likely timeframe for development (i.e. completion). Please indicate if you anticipate that development may be split over different time periods.

To 2020	2021-2031	2031 onwards

Are you aware of any particular constraints that might make the site unsuitable for development? (Please provide any details in the boxes labelled a to d below)

a. Environmental Constraints e.g. floodplain, Sites of Special Scientific Interest (SSSIs) or Local Nature Reserve, sites of geological importance.

n/a

b. Other Designations e.g. Conservation Area, Listed Buildings, Archaeological Sites.

TPOs in the south of the site boundary

c. Physical Constraints e.g. poor access, steep slopes, uneven terrain, ground contamination, Tree Preservation Orders

N/A

d. Policy Constraints e.g. Green Belt, Landscape Character Area, high quality agricultural land, designated employment area, public or private green space, site with social or community value.

Green Belt, Landscape Development Area

If any constraints have been identified above, do you think that they could be overcome? If so, how?

The layout and design of a development would consider the protected trees in the southern part of the site.

What is the estimated number of dwellings that could be provided on the site?

You will need to take into account matters such as:

- appropriate site densities to reflect local circumstances.
- overall size and character of the site
- suitable housing mix for the site

It is anticipated that between 25 and 30 dwellings could be achieved on the site. The density would need to be informed by any feasibility, including the impact upon the protected trees.

Sketch scheme (submitted for information if necessary)

~~Yes~~ / No

Is there any other information that you would like to provide in relation to your proposed site?

If yes, please give details below (and attach if necessary)

This site has been previously submitted.

Site Plan 4 - Land at Stephens Way and Flamsteadbury Lane Redbourn



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Site 5

Rural Estate land at Waterdell, adj to Mount Pleasant JMI

SHLAA Reference (Internal use only)|

Call For Sites - Site Identification Form

Residential, Employment, Health, Schools, Gypsy and Traveller, 'Other' uses.

Please return the **site map and form** to the Spatial Planning Team
By online consultation portal: www.stalbans.gov.uk/callforsites2018
By e-mail to: planning.policy@stalbans.gov.uk
By post to: St Albans Council Offices, St Peters Street, St Albans, AL1 3JE

This form has two parts –

Part A – Site Identification. Please submit a separate form for each site you wish to promote.
Part B – Contact details (you need only submit one copy of Part B).
Please provide **a map** clearly identifying the extent of the site.
Please give your email address/postal address so that we can contact you to clarify site information if needed.

You are invited to put forward any new sites, and the latest information/position regarding existing/known sites, that you would like the Council to consider for its new Local Plan.

Although this 'Call for Sites' focuses primarily on sites for residential development, we are also looking for sites for other uses, such as sites for Employment, Health, Schools, Gypsy and Traveller, and 'Other' uses.

Unfortunately, we cannot treat any of the information you provide as confidential.

Please do not submit sites that already have planning permission for development, unless a new and different proposal is likely in the future

If you wish to update any information about a site previously submitted please use relevant sections of the form.

Part A: Site Identification Form

Site address: Please provide a brief description e.g. land to the south west of (settlement), between the A500 and railway.

Rural Estate land at Waterdell, adj to Mount Pleasant JMI

Ownership details: Please indicate whether freehold or leasehold and length of lease (it is possible that a site may be in multiple ownership).

Freehold

Area of site (hectares)

10.49ha

Current use(s)

Arable Farming

Are there any factors that could make the site unavailable for development? (Please provide any details in the boxes labelled a to d below)

a. Ownership Constraints (e.g. multiple ownerships, ransom strips, tenancies, operational requirements)

This site is part of the HCC Rural Estate and is currently leased to tenants.

b. Awaiting relocation of current use

n/a

c. Level of developer interest (i.e. low, medium, high)

n/a

d. Likely timeframe for development (i.e. completion). Please indicate if you anticipate that development may be split over different time periods.

To 2020	2021-2031	2031 onwards

Are you aware of any particular constraints that might make the site unsuitable for development? (Please provide any details in the boxes labelled a to d below)

a. Environmental Constraints e.g. floodplain, Sites of Special Scientific Interest (SSSIs) or Local Nature Reserve, sites of geological importance.

n/a

b. Other Designations e.g. Conservation Area, Listed Buildings, Archaeological Sites.

n/a

c. Physical Constraints e.g. poor access, steep slopes, uneven terrain, ground contamination, Tree Preservation Orders

Close proximity to TPO areas

d. Policy Constraints e.g. Green Belt, Landscape Character Area, high quality agricultural land, designated employment area, public or private green space, site with social or community value.

Green Belt, Landscape Development Area

If any constraints have been identified above, do you think that they could be overcome? If so, how?

The design and layout of any development would consider the impact upon the protected trees.

What is the estimated number of dwellings that could be provided on the site?

You will need to take into account matters such as:

- appropriate site densities to reflect local circumstances.
- overall size and character of the site
- suitable housing mix for the site

Between 30 and 40 dwellings could be accommodated on the site subject to feasibility.

Sketch scheme (submitted for information if necessary)

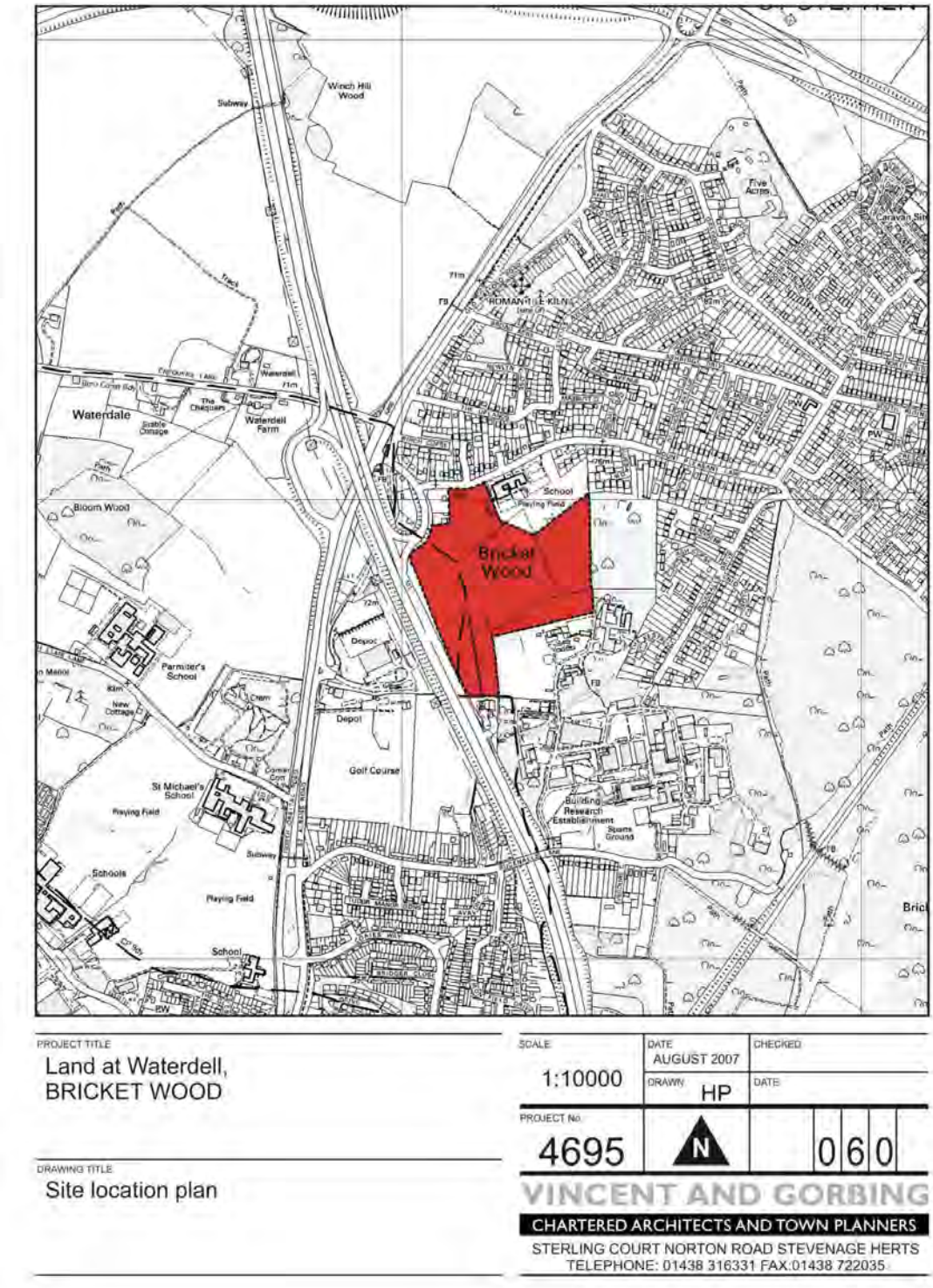
~~Yes~~ / No

Is there any other information that you would like to provide in relation to your proposed site?

If yes, please give details below (and attach if necessary)

This site has been previously submitted.

Site Plan 5 - Rural Estate land at Waterdell, adj to Mount Pleasant JMI



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Site 6

Rural Estate land at Highfield Farm, Tyttenhanger

SHLAA Reference (Internal use only)|

Call For Sites - Site Identification Form

Residential, Employment, Health, Schools, Gypsy and Traveller, 'Other' uses.

Please return the **site map and form** to the Spatial Planning Team
By online consultation portal: www.stalbans.gov.uk/callforsites2018
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This form has two parts –

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Please provide **a map** clearly identifying the extent of the site.
Please give your email address/postal address so that we can contact you to clarify site information if needed.

You are invited to put forward any new sites, and the latest information/position regarding existing/known sites, that you would like the Council to consider for its new Local Plan.

Although this 'Call for Sites' focuses primarily on sites for residential development, we are also looking for sites for other uses, such as sites for Employment, Health, Schools, Gypsy and Traveller, and 'Other' uses.

Unfortunately, we cannot treat any of the information you provide as confidential.

Please do not submit sites that already have planning permission for development, unless a new and different proposal is likely in the future

If you wish to update any information about a site previously submitted please use relevant sections of the form.

Part A: Site Identification Form

Site address: Please provide a brief description e.g. land to the south west of (settlement), between the A500 and railway.

Rural estate land at Highfield Farm, Tyttenhanger

Ownership details: Please indicate whether freehold or leasehold and length of lease (it is possible that a site may be in multiple ownership).

Freehold

Area of site (hectares)

Approximately 97ha

Current use(s)

Agricultural Land, Farm buildings, Forestry, etc.

Are there any factors that could make the site unavailable for development? (Please provide any details in the boxes labelled a to d below)

a. Ownership Constraints (e.g. multiple ownerships, ransom strips, tenancies, operational requirements)

The site forms part of the HCC Rural Estate and is currently leased to tenants.

b. Awaiting relocation of current use

n/a

c. Level of developer interest (i.e. low, medium, high)

n/a

d. Likely timeframe for development (i.e. completion). Please indicate if you anticipate that development may be split over different time periods.

To 2020	2021-2031	2031 onwards

Are you aware of any particular constraints that might make the site unsuitable for development? (Please provide any details in the boxes labelled a to d below)

a. Environmental Constraints e.g. floodplain, Sites of Special Scientific Interest (SSSIs) or Local Nature Reserve, sites of geological importance.

n/a

b. Other Designations e.g. Conservation Area, Listed Buildings, Archaeological Sites.

There are three listed buildings within the site boundary.
The site is designated as an Archaeological site subject to recording condition (Local Plan Policy 111).

c. Physical Constraints e.g. poor access, steep slopes, uneven terrain, ground contamination, Tree Preservation Orders

Close proximity to TPO areas

d. Policy Constraints e.g. Green Belt, Landscape Character Area, high quality agricultural land, designated employment area, public or private green space, site with social or community value.

Green Belt, Landscape Development Area

If any constraints have been identified above, do you think that they could be overcome? If so, how?

Any potential impact on the setting of the listed building and the archaeology could be mitigated through design and layout of any proposed development.

What is the estimated number of dwellings that could be provided on the site?
You will need to take into account matters such as:

- appropriate site densities to reflect local circumstances.
- overall size and character of the site
- suitable housing mix for the site

Low density due to the listed buildings on the site.

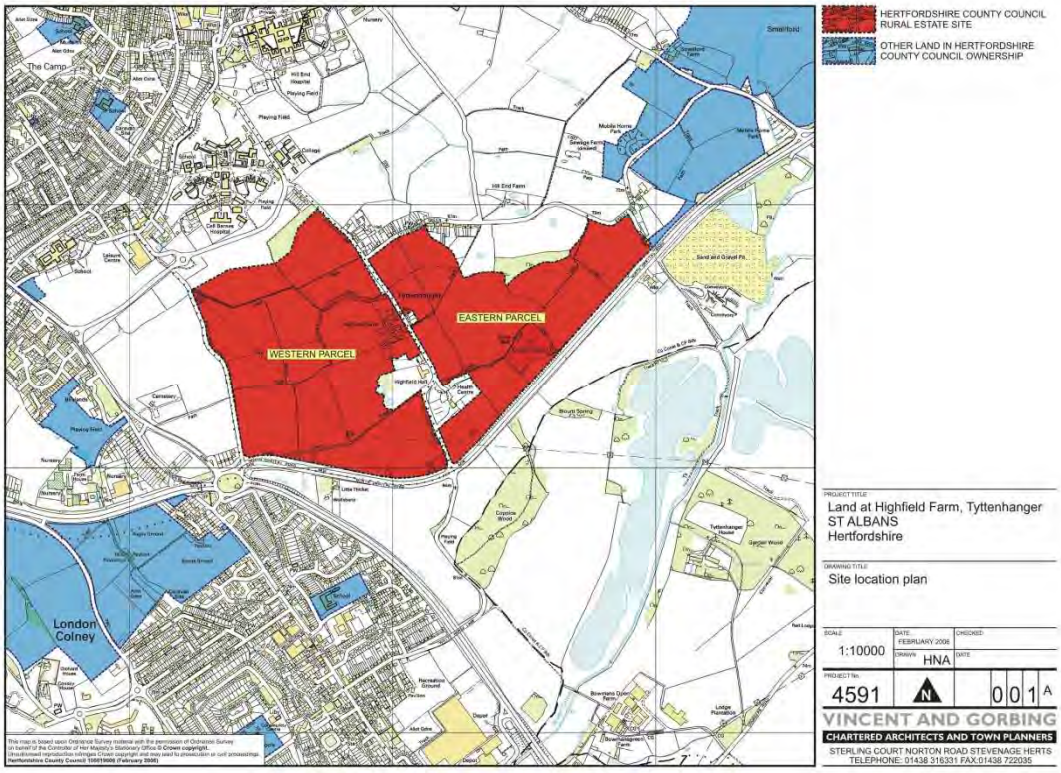
Sketch scheme (submitted for information if necessary)

~~Yes~~ / No

Is there any other information that you would like to provide in relation to your proposed site?
If yes, please give details below (and attach if necessary)

Previous feasibility considered that development on the site should be concentrated around the existing farm buildings which may be suitable for conversion to residential with some additional new build.

Site Plan 6 - Rural estate land at Highfield Farm, Tyttenhanger



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Site 7

Former Radlett Airfield , Radlett

SHLAA Reference (Internal use only)|

Call For Sites - Site Identification Form

Residential, Employment, Health, Schools, Gypsy and Traveller, 'Other' uses.

Please return the **site map and form** to the Spatial Planning Team
By online consultation portal: www.stalbans.gov.uk/callforsites2018
By e-mail to: planning.policy@stalbans.gov.uk
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Unfortunately, we cannot treat any of the information you provide as confidential.

Please do not submit sites that already have planning permission for development, unless a new and different proposal is likely in the future

If you wish to update any information about a site previously submitted please use relevant sections of the form.

Part A: Site Identification Form

Site address: Please provide a brief description e.g. land to the south west of (settlement), between the A500 and railway.

Former Radlett Airfield

Ownership details: Please indicate whether freehold or leasehold and length of lease (it is possible that a site may be in multiple ownership).

Freehold

Area of site (hectares)

Approximately 119ha

Current use(s)

Former Airfield/mineral extraction and restoration site.

Are there any factors that could make the site unavailable for development? (Please provide any details in the boxes labelled a to d below)

a. Ownership Constraints (e.g. multiple ownerships, ransom strips, tenancies, operational requirements)

n/a

b. Awaiting relocation of current use

n/a

c. Level of developer interest (i.e. low, medium, high)

n/a

d. Likely timeframe for development (i.e. completion). Please indicate if you anticipate that development may be split over different time periods.

To 2020	2021-2031	2031 onwards

Are you aware of any particular constraints that might make the site unsuitable for development? (Please provide any details in the boxes labelled a to d below)

a. Environmental Constraints e.g. floodplain, Sites of Special Scientific Interest (SSSIs) or Local Nature Reserve, sites of geological importance.

n/a

b. Other Designations e.g. Conservation Area, Listed Buildings, Archaeological Sites.

Part of the site in the west lies within the Conservation Area of the Park Street Frogmore Character Area. Article 4 Direction

c. Physical Constraints e.g. poor access, steep slopes, uneven terrain, ground contamination, Tree Preservation Orders

Close proximity to Historic Parks

d. Policy Constraints e.g. Green Belt, Landscape Character Area, high quality agricultural land, designated employment area, public or private green space, site with social or community value.

Green Belt, Landscape Development Area

If any constraints have been identified above, do you think that they could be overcome? If so, how?

Any potential constraints could be mitigated through design and development management.

What is the estimated number of dwellings that could be provided on the site?
You will need to take into account matters such as:

- appropriate site densities to reflect local circumstances.
- overall size and character of the site
- suitable housing mix for the site

This site would be a suitable location for a Garden Village. Approximately 2,000 houses could be provided with employment uses and supporting infrastructure.

Sketch scheme (submitted for information if necessary)

No

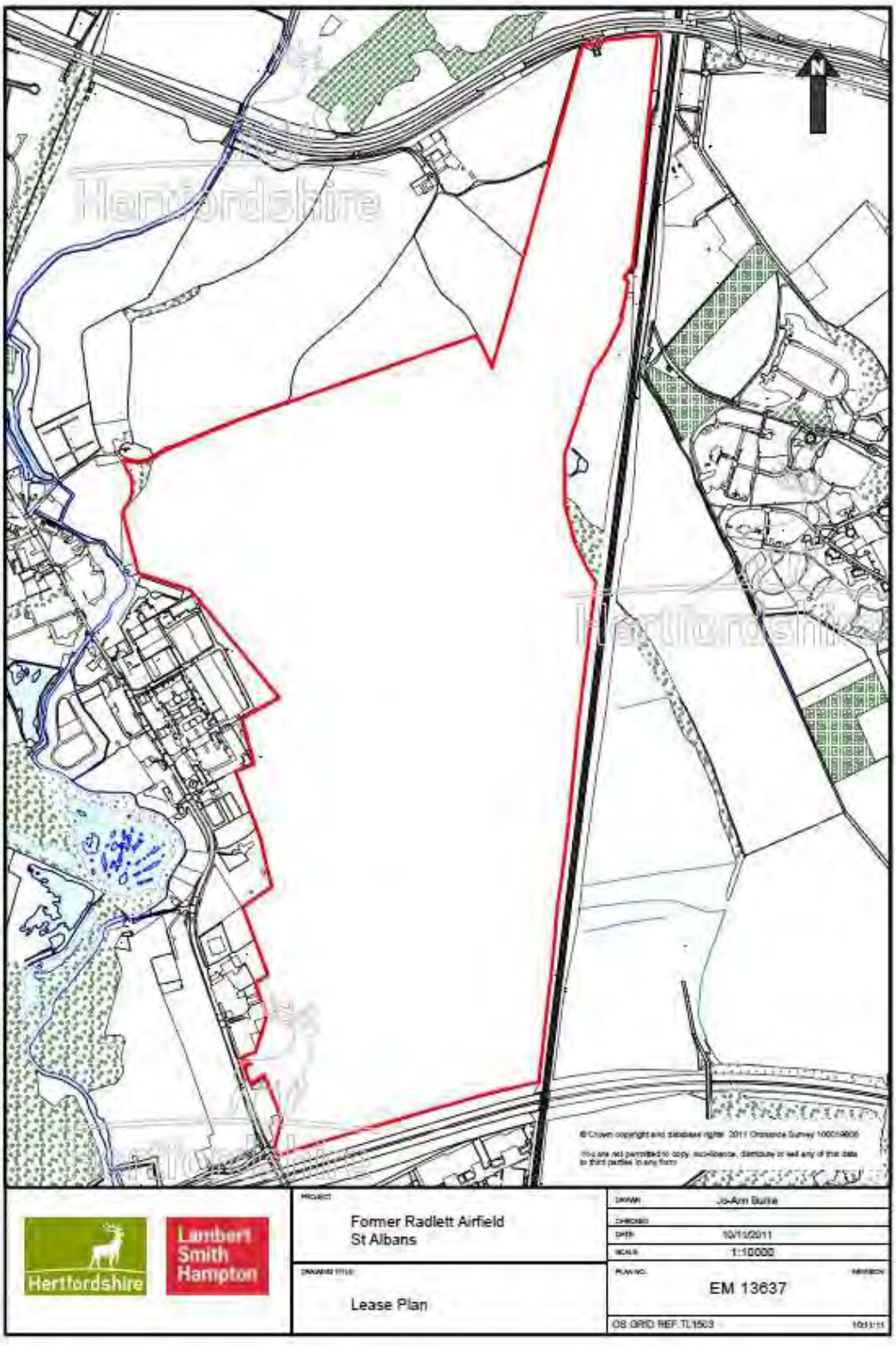
Is there any other information that you would like to provide in relation to your proposed site?
If yes, please give details below (and attach if necessary)

This site forms the major part of land bounded by the M25 Motorway to the south, the Midland Main Line railway to the east, the A414 principal road to the north and the urban edge of Park Street to the east. It is located only three miles to the south of St Albans. It is a 'self-contained' block of land, with long term defensible boundaries, where the County Council is the majority land owner, and the remaining minor part is in a single ownership. See on plan the attached, HP2959, and the County Council's land is shown edged red.

These lands already have outline planning permission, granted by the Secretary of State, for development as a Strategic Rail Freight Interchange (SFRI), to meet a north of London regional transport infrastructure need. It is anticipated that full detailed planning permission will be agreed by SCADC, at its Committee on 5 March 2018. Once reserved matters are approved and all conditions precedent have been satisfied, the development of the SRFI scheme can be lawfully begun and if that occurs the planning permission will then enure permanently for the benefit of the lands. The County Council has not been approached to make its land available but if it is it will have to make its decision in accordance with public law principles.

It is considered that the site is large enough to accommodate a Garden Village, which could include housing and employment along with the infrastructure to support the community, including schools.

Site Plan 7 - Former Radlett Airfield



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Site 8

Carpenter's Nursery, Sandridge

SHLAA Reference (Internal use only)|

Call For Sites - Site Identification Form

Residential, Employment, Health, Schools, Gypsy and Traveller, 'Other' uses.

Please return the **site map and form** to the Spatial Planning Team
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By post to: St Albans Council Offices, St Peters Street, St Albans, AL1 3JE

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Part B – Contact details (you need only submit one copy of Part B).
Please provide **a map** clearly identifying the extent of the site.
Please give your email address/postal address so that we can contact you to clarify site information if needed.

You are invited to put forward any new sites, and the latest information/position regarding existing/known sites, that you would like the Council to consider for its new Local Plan.

Although this 'Call for Sites' focuses primarily on sites for residential development, we are also looking for sites for other uses, such as sites for Employment, Health, Schools, Gypsy and Traveller, and 'Other' uses.

Unfortunately, we cannot treat any of the information you provide as confidential.

Please do not submit sites that already have planning permission for development, unless a new and different proposal is likely in the future

If you wish to update any information about a site previously submitted please use relevant sections of the form.

Part A: Site Identification Form

Site address: Please provide a brief description e.g. land to the south west of (settlement), between the A500 and railway.

Carpenter's Nursery, Sandridge

Ownership details: Please indicate whether freehold or leasehold and length of lease (it is possible that a site may be in multiple ownership).

Freehold

Area of site (hectares)

Approximately 23.52ha

Current use(s)

Agricultural Land, Nursery

Are there any factors that could make the site unavailable for development? (Please provide any details in the boxes labelled a to d below)

a. Ownership Constraints (e.g. multiple ownerships, ransom strips, tenancies, operational requirements)

Part of the site was re-let to Carpenter's Nursery in 2015 for a 20 year term.

b. Awaiting relocation of current use

n/a

c. Level of developer interest (i.e. low, medium, high)

n/a

d. Likely timeframe for development (i.e. completion). Please indicate if you anticipate that development may be split over different time periods.

To 2020	2021-2031	2031 onwards

Are you aware of any particular constraints that might make the site unsuitable for development? (Please provide any details in the boxes labelled a to d below)

a. Environmental Constraints e.g. floodplain, Sites of Special Scientific Interest (SSSIs) or Local Nature Reserve, sites of geological importance.

n/a

b. Other Designations e.g. Conservation Area, Listed Buildings, Archaeological Sites.

Part of the site in the north lies within the Archaeological Sites (subject to Recording Conditions) (Local Plan Policy 111).

c. Physical Constraints e.g. poor access, steep slopes, uneven terrain, ground contamination, Tree Preservation Orders

Close proximity to TPOs, Article 4 Direction and Ancient Monuments

d. Policy Constraints e.g. Green Belt, Landscape Character Area, high quality agricultural land, designated employment area, public or private green space, site with social or community value.

Green Belt, Landscape Development Area

If any constraints have been identified above, do you think that they could be overcome? If so, how?

The proximity to Archaeological Sites would need to be considered through design and layout of any development.

What is the estimated number of dwellings that could be provided on the site?

You will need to take into account matters such as:

- appropriate site densities to reflect local circumstances.
- overall size and character of the site
- suitable housing mix for the site

No feasibility has been undertaken for this site so it is not known how the archaeology could impact upon the developable area. If 50% of the site is developed at 30 dwellings per hectare approximately 350 residential units could be provided on the site.

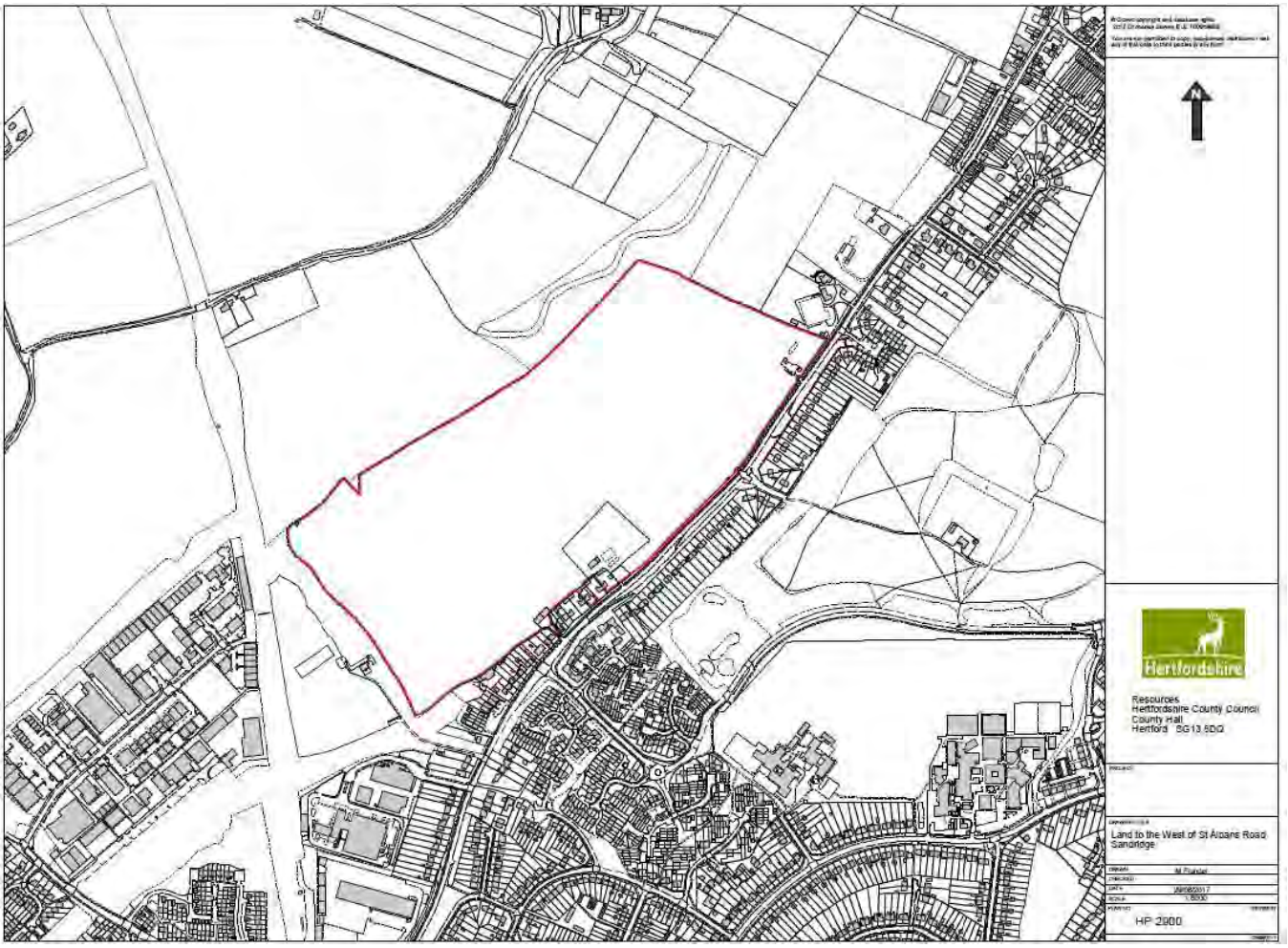
Sketch scheme (submitted for information if necessary)

~~Yes~~ / No

Is there any other information that you would like to provide in relation to your proposed site?

If yes, please give details below (and attach if necessary)

Site Plan 8 - Carpenter's Nursery, Sandridge



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Part B: Contact Details

Name

Andrea Gilmour

Company/Organisation (if relevant)

Hertfordshire County Council

Address

Development Services,
Hertfordshire County Council,
County Hall,
Pegs Lane,
Hertford SG13 8DQ

Telephone number

01992 556477

Email address

development.services@hertfordshire.gov.uk

Please tick all of the following that apply to you:

Landowner	✓
Land agent	
Planning consultant	✓
Registered social landlord	
Developer	
Other	

Appendix 8 – Emerging Strategic Local Plan

a. 2014 Vision

Strategic Local Plan 2011-2031

Draft for Consultation

September 2014



St Albans
City & District Council

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Note: This document contains some technical terms which have a specific meaning and usage in planning law and practice. General readers will be assisted if they refer to the Glossary at Appendix 3

4. Strategy

Introduction

4.1 The Sustainable Community Strategy vision is for the district to be progressive, unique and vibrant, valuing its environment, heritage and culture. The Local Plan Vision and Strategic Objectives take forward this vision spatially i.e. geographically on the ground. The *SLP Spatial Strategy* defines what role the City, towns, villages and small settlements will play in maintaining and improving quality of life and building a more sustainable District for all residents, businesses and stakeholders, now and in the future. It also shows how they will accommodate further development. The *SLP Development Strategy* identifies broad locations for new major green field Green Belt development.

4.2 The general distribution of new development and the provision of major green infrastructure are outlined here.

The General Distribution of Development

4.3 National planning policy and local evidence collected for the SLP suggest a continued general approach of support for development in urban areas and restraint on green field Green Belt land. This evidence includes particularly studies of development need, environmental capacity, urban development potential and a comprehensive Green Belt Review. Sustainability Appraisal work and responses to public consultation have also provided support for this approach. The SLP response to local development pressures is therefore as follows:

- Maximising development opportunities in existing urban areas, where consistent with good design and employment/economic development needs
- Containing the spread of urban development by continued application of Green Belt policy to keep green field land permanently open
- Prioritising development opportunities that give the greatest economic, social and environmental benefits overall ('sustainable development' as defined in the NPPF).
- Minimising the changes to Green Belt boundaries necessary to achieve an appropriate balance between seeking to meet development need and consistency with achieving overall sustainable development

4.4 The SLP sets a Spatial Strategy that determines the general distribution of development. Under this Strategy the urban areas of St Albans, Harpenden and London Colney are the main foci for new development. This is because they provide access to a wide range of services, facilities and employment opportunities and also the best transport options. They are therefore the most 'sustainable' locations. The Spatial Strategy will be supported by relatively constraining levels of development in the villages excluded from the Green Belt and more so in the Green Belt settlements, as they provide lower levels of services, facilities and employment opportunities and also present a lesser range of transport options. The Plan does however anticipate some significant redevelopment of previously developed land in

the Green Belt in accordance with national planning policy; these are necessary exceptions to the Spatial Strategy.

4.5 The SLP therefore also includes a specific Development Strategy that identifies a series of Broad Locations for significant new areas of development that fit within the Spatial Strategy. This development requires areas of green field land to be excluded from the Green Belt. The areas are sub divided into Broad Locations for either Mixed Use or Housing. This subdivision reflects the site specific opportunities and constraints the individual areas present. Broad Locations are identified in the Key Diagram and Spatial Diagrams below. Detailed boundaries for these areas, including revisions to the Green Belt boundary, will be defined in the DLP. An important part of the Development Strategy is mixed use development at Broad Locations to the east of Hemel Hempstead. These Broad Locations are planned to allow for long term expansion of Hemel Hempstead and are conceived in a sub regional planning context. Due to the close proximity of Hemel Hempstead to the District and the potential for local home and job linkages, development needs arising in the District can readily be met in this location. Hemel Hempstead is a major town with commensurate services and facilities.

4.6 The implementation of the spatial strategy will assist the District to positively evolve over time. Each settlement will retain its essential identity and character and benefit from some growth to deliver wider community benefits. High quality design will play a key role in ensuring that the highly valued individual character of all settlements is preserved and enhanced.

4.7 All proposals for development are to be seen in the context of the district-wide Spatial Strategy as shown on the Key Diagram. The Key Diagram sets out the Council's vision for sustainable development in the District up to 2031 and integrates the necessary infrastructure for delivering development, whilst safeguarding and enhancing key existing environmental, social and economic assets and resources.

4.8 Housing, employment, retail, leisure and all other built development will be prioritised within urban areas, and on all forms of Previously Developed Land (PDL), including PDL in the Green Belt, This will ensure efficient use of land and minimise changes to the extent and openness of the Green Belt. All types of development will make the best use of previously developed land (PDL) and buildings. New housing will be built in sustainable locations and aid in securing appropriate infrastructure provision and overall community benefits for the district as a whole.

4.9 This SLP is specifically limited to the fundamental principles or key proposals that are necessary to deliver the overall Vision. The subsequent DLP will provide guidance on policy detail and proposals at a more local scale. Where communities wish to have them, Neighbourhood Plans will be supported by the Council, which may also provide further fine grained detailed planning guidance at a more localised level.

St Albans City

4.10 The historic City of St Albans functions very well in general as a major town. However, whilst the City centre is healthy and vibrant it does not cater for

with significant opportunity for employment uses, including development of some areas in Green Belt to provide significant community benefits.

6.28 Within the principles set out above, the SLP makes limited provision for Green Belt boundary change to allow building on green field Green Belt land. This is necessary to meet growing population and demographic pressures and consequent development needs. The SLP includes a specific Development Strategy, in accordance with the overall Spatial Strategy, to meet these development needs. The SLP Development Strategy results from a full assessment of reasonable choices in selecting development strategy and site options within the Sustainability Framework. The Strategy will meet development needs with minimum impact on the Green Belt and best prospects for delivery of appropriate social, economic and environmental objectives and specific community benefits.

6.29 The Development Strategy consists of a series of Broad Locations which can accommodate substantial housing development. There are two main types of Broad Location:

Broad Location - Mixed Use (to be excluded from Green Belt)

- East Hemel Hempstead (North)
- East Hemel Hempstead (South)

6.30 The SLP Development Strategy is centred on a major expansion of Hemel Hempstead that will meet a wide range of local development needs for the district and sub-region over the plan period and beyond. This requires a significant loss of land from the Green Belt. This development will be planned in detail in a joint East Hemel Hempstead Area Action Plan (AAP). Because of the lead time involved in planning a major urban extension, residential completions are likely to start from approximately 2019 onwards.

Broad Location – Principally Housing (to be excluded from Green Belt)

- North West Harpenden
- East St Albans (Oaklands)

6.31 The plan includes these two Broad Locations principally to meet housing development needs in the first half of the Plan period (to 2021). The Broad Locations are selected to minimise adverse impact on Green Belt purposes. The two sites allow for some housing development in each of the main settlements in the District. The East St Albans (Oaklands) Broad Location also offers unique community benefits through enabling (financial and physical) improvements to education facilities. Though identified as a Broad Location – Housing, housing development will be planned around retained and / or re-provided and improved education facilities.

6.32 The development strategy also assumes some small scale green field Green Belt residential developments where directly supported by local communities to deliver significant community benefits. These will be proposed in detail through the DLP,

which will review and define detailed Green Belt boundaries. Also, where there is an established local need, some land adjoining or within villages may be developed to provide affordable housing where it is supported by the local community. Such small-scale 'rural exception' sites will help address the needs of lower-income households with a close family or employment connection to that settlement. These small scale Green Belt boundary changes and intentions for negotiation of rural exception sites may be identified through the Neighbourhood Planning process, if Town and Parish councils chose to progress such Plans.

Local Housing Target / Requirement

6.33 Taking the approach set out above and looking at recent trends, the most up to date information on housing land supply has been analysed to give confidence of housing delivery. The table below indicates land supply sources & approximate proportion of planned supply:

Source (whole Plan period)	**Dwelling Numbers**	**Percentage of Overall Delivery (rounded)**
Completions from 1 April 2011 (base date for Plan period) to 1 April 2014	1,075 (actual)	11.8%
Urban/Non-Green Belt Capacity (identified)	Minimum of 1,750 (estimated)	19.2%
Urban/Non-Green Belt Capacity (windfall)	Minimum of 1,800 (estimated)	19.7%
Large scale greenfield Green Belt Broad Locations (residual development requirement affecting land currently designated as Green Belt) Includes potential for flexibility in scale and timing of development at these locations – especially East Hemel Hempstead.	Up to 4,000 (estimated)	43.8%
Small scale greenfield Green Belt supported by local communities through DLP, or Neighbourhood Plan process, including exceptions policies for affordable housing	500 (estimated)	5.5%

Total projected supply	Up to 9,125	100% (on 9,125 base)

6.34 National planning policy requires the SLP and DLP to ensure that the housing target can be delivered with confidence and to provide for contingency. An up-to-date Housing Trajectory outlining the current housing land supply position against the locally derived housing target / requirement is set out annually in the Authority's Monitoring Report[3]. A notional trajectory based on the draft SLP and the current land supply position (April 2014 base date) is set out at Appendix 2. This trajectory and the table above illustrates that it is reasonable to assume that the Plan proposals can deliver approximately 9,000 dwellings in the period to 2031. This is a cautious assumption and builds in a considerable degree of contingency/flexibility, as required by the NPPF.

6.35 The trajectory illustrates the realistic potential to achieve a relatively even level of housing delivery over the Plan period. However it is important to acknowledge that delivery issues are complicated and will be dependent on general and site specific market conditions through the Plan period

6.36 Taking account of all relevant aspects, including market factors and allowing for contingency, the approach supports the following approach to a local housing target / requirement:

Policy SLP8 – Local Housing Requirement /Target and Provision

Additional Homes 2011 - 2031 = 8,720 = average 436 per annum across the plan period.

Sites currently permitted or available for development together with the Development Strategy (set out in Policy SLP1) will deliver the land required to meet this Local Housing Requirement / Target in general accordance with the Spatial Strategy (again as set out in policy SLP1).

Further policies and detailed site allocations to support delivery of the Housing Target will be set out in the DLP. These will include making provision for older persons housing of all forms. Where such provision is made the supply of new homes will be taken as contributing to meeting the local housing requirement / target.

6.37 The Council's Local Housing Requirement / Target is set at 436 dwellings per annum on the basis of the best evidence available on the need for new housing development in the District and a Plan that sets out to meet reasonable long term estimations of need in full. Housing needs research suggests that, using a demographic projection of future household growth and taking account of longer term estimates of migration (ten year projection period), an annual average provision of 436 new dwellings would meet full need. This estimate of need has been used directly as the Plan housing requirement/target. It is acknowledged that other calculations of need currently exist and new calculations of need will be made over time. Unless there is a highly significant change in future long term estimations of

[3] Authority Monitoring Reports are published annually in December.

need, the 436 target/requirement is considered not be affected by current or future alternative projections.

Affordable Housing

6.38 The District's house prices are amongst the highest in Hertfordshire and the whole country and as a result local people on lower level incomes, especially younger people and key workers, often find themselves priced out of the market. This is also reflected by the number of people on the Council Housing register which suggests that there is a high need for affordable housing in the district.

6.39 The Council has long had a corporate priority to provide an appropriate amount of affordable homes. This priority has been considered as one of many factors in deciding the right amount of overall housing in the District.

6.40 The planning system has an important part to play in providing affordable housing for those unable to access the housing market. The need to provide affordable housing is important for two main reasons: firstly to enable people who cannot afford to rent or buy on the open market to live in a home that is suitable for their needs and that they can afford; and secondly to provide housing for people working in different aspects of the local economy, thus underpinning economic activity.

6.41 Housing needs and viability research has been undertaken to establish the realistic level at which affordable housing can be delivered as a percentage of private housing in the district and provides strong evidence to increase the percentage target and reduce the development size threshold for affordable housing provision in new developments. In view of this evidence, the Council will be seeking 40% affordable housing on all housing development sites to assist in addressing the shortfall in affordable housing.

6.42 Affordable housing includes social rented, the new government model of 'affordable rent' and intermediate housing. This includes key worker housing for teachers, nurses, care workers etc and shared ownership homes. The balance between affordable and market housing and the size mix of affordable units is a key component of achieving a well balanced community.

6.43 The District requires more smaller market units and a range of small to medium sized affordable units. The Local Housing Requirement / Target (Policy SLP 8) allows for a balance in providing market and affordable housing and provides enough cross subsidy to fund new affordable housing.

6.44 Affordable homes are mostly delivered by developers as a percentage of private housing developments. It is important to make clear that Affordable Housing relates to specific definitions primarily relating to tenure and ownership (permanently retained social rented, affordable rented and intermediate housing provided to eligible households whose needs are not met by the market), which is distinct from common understanding of what may constitute relatively affordably priced market housing.

Gypsies and Travellers

6.62 Policy SLP12 seeks to establish a positive framework for how provision for Gypsies and Travellers will be made in the district. This will help to prevent unauthorised sites, help guide development to more sustainable parts of the district, provide enhanced quality of life benefits for the Gypsy and Traveller community and ensure that environmental concerns, impact on the Green Belt and community cohesion are proactively addressed.

6.63 A local evidence base will be produced using the principles of the new Government guidance on Planning Policy for Traveller Sites, including consideration of existing locations. This will establish the local level of need for traveller accommodation, in the context of local historic provision, provision by neighboring authorities and inform policy in the DLP.

Policy SLP12 - Gypsies, Travellers and Travelling Show People

Sites will be identified, allocated and safeguarded by means of allocations in the DLP to meet a locally derived target. In identifying sites and considering proposals for accommodation, the Council will have regard to the following:

1. The provisions of SLP Policies 1-4 and 26-29.
2. The potential and suitability of extending existing sites.
3. The suitability of sites with temporary permissions.
4. The suitability and potential of new sites as part of Broad Locations for development (SLP13).
5. That development should be in general accordance with the Spatial Strategy for the district, as set out in Chapter 4 of this SLP and criteria contained in Government guidance on Planning Policy for Traveller Sites.

Further detail on the level of provision and locally specific locational criteria may also be included in the DLP.

Appropriate provision will be specifically required as part of the development of east Hemel Hempstead Broad Locations. Proposals will be detailed in the DLP and / or East Hemel Hempstead Area Action Plan.
.

Broad Locations for Development

6.64 The SLP Development Strategy identifies a series of “Broad Locations” for development to contribute to meeting housing and other development needs over the plan period. The locations are classified as follows:

- Broad Location - Mixed Use (to be excluded from Green Belt)
- Broad Location – Principally Housing (to be excluded from Green Belt)

6.65 Broad Locations are identified in indicative form on the Key Diagram.

6.66 Broad Locations - Mixed Use (to be excluded from the Green Belt) are identified for large urban extensions that will accommodate new housing and a range of other uses. Green Belt boundaries will be changed to accommodate new development areas. Detailed boundaries for the development sites and revised Green Belt and any detailed site development requirements will be set out in the DLP and its Policy Map.

6.67 Broad Locations – Principally Housing (to be excluded from the Green Belt) are identified for urban extensions that will primarily accommodate new housing development. Green Belt boundaries will be changed to accommodate new development areas. Detailed boundaries for the development sites and revised Green Belt and any detailed site development requirements will be set out in the DLP and its Policy Map.

6.68 Policies for each Broad Location are set out below.

East Hemel Hempstead (North) Broad Location - Mixed Use

Background

6.69 East Hemel Hempstead (North) Broad Location forms part of the Gorhambury Estate (Crown Estate). It will accommodate a major urban extension of Hemel Hempstead. The location lies within the St Albans Housing Market Area and is also well related to the urban area of Hemel Hempstead. Whilst the Broad Location is quite extensive it would not over dominate the town or the nearest urban areas, or significantly alter the settlement hierarchy of Dacorum and St Albans. It would form an urban extension which would integrate well with the proposed Spencer's Park development, Maylands Business Park and Woodhall Farm neighbourhood. Development at the broad location will support local economic and employment growth aspirations for Maylands Business Park. This would provide employment opportunities for St Albans City and District and Dacorum Borough residents and wider benefits for economic development in the sub region.

6.70 Whilst there is a good range of services and facilities with easy access from the Broad Location, the proposed development is of a scale to deliver significant additional services for both existing and new communities in the area.

Policy SLP 13 a) - East Hemel Hempstead (North) Broad Location - Mixed Use

Objective

To provide a major urban extension of Hemel Hempstead to meet the needs of the St Albans housing market area and sub regional economic development objectives for growth in the M1 corridor.

Site Constraints

Relationship of development to neighbourhood structure of Hemel Hempstead and need for integration
Highway access and improvement strategy and transport approach
Relationship with oil depot and pipelines, including health and safety constraints
Electricity transmission line
Retention of important trees and landscape features

Appendix 8 – Emerging Strategic Local Plan

b. 2016 Version

Strategic Local Plan 2011-2031

Publication Draft

2016



St Albans City & District Council

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Note: This document contains some technical terms which have a specific meaning and usage in planning law and practice. General readers will be assisted if they refer to the Glossary at Appendix 3

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.

7. A Thriving Economy

Strategic Objective 3 - A thriving economy

Ensuring that the District becomes even more economically vibrant, reinforcing existing economic strengths in the higher-level knowledge and skills sectors. The District will offer employers a highly skilled and flexible workforce and individuals the very best opportunities to learn, train, start businesses and improve their employability.

Economic Prosperity and Employment

7.1 The unique and exceptional quality of the built and natural environment is very important in supporting the prosperous local economy and providing a range of jobs for all. The District has a strong economy, a highly skilled workforce, is in an excellent location for rail, road and airports and is seen by many employers and employees as a desirable place to be. The Council considers a thriving local economy to be essential in supporting all its economic, social and environmental aspirations. Economic development is driven by active engagement with key partners, including the Council, St Albans and District Strategic Partnership (SP), Economic Sustainability Partnership, Hertfordshire's Local Enterprise Partnership (LEP), key local employers, St Albans District Chamber of Commerce and small business representatives.

7.2 There are two main economic aims:

- To foster a healthy, diverse and strong local economy, with a focus on knowledge industries, financial and business services, the rural economy, the green technology sector, creative industries and the visitor economy.
- To offer employers a highly skilled and flexible workforce and individuals the very best opportunities to learn, train, start businesses, develop entrepreneurial opportunities and improve their employability.

7.3 Most local employment is in the financial and business services, research and development, retail and education sectors. However, St Albans is also a significant regional/sub-regional legal centre, with its Crown and Magistrates Courts. The visitor economy is also an increasingly important job sector. Nearly half of local residents of working age have a degree qualification or above and the majority of residents are employed in professional and managerial occupations. This is a considerably higher rate than at the county or national level. The Building Research Establishment (BRE) and Rothamsted Research are important employers in the district which are the subject of special employment location policies. Together the BRE, Rothamsted Research and the University of Hertfordshire (which borders the District) form an innovative partnership called the "Green Triangle". The Green Triangle is a partnership initiative based around three world-leading research institutes, focused on supporting the growth and acceleration of green industries. It aims to establish Hertfordshire as a globally renowned centre of excellence in Green Technology /Enviro – Tech activity.

Appendix 9 – Helioslough Responses to proposed PSGV allocation

a. 8th March 2018 letter

SEGRO

RECEIVED
- 9 MAR 2018

GJO/alc
8 March 2018

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Mr Chris Briggs,
Spatial Planning Manager,
St Albans City and District Council,
St Peters Street,
St Albans,
AL1 3JE

Dear Mr Briggs,

Re: Radlett – Strategic Rail Freight Interchange – Planning permission reference 5/2009/0708

I am aware that the responses to the Call for Sites (Local Plan 2018 Consultation) will be used to inform the content of the new Local Plan and it is in this context that I am writing to you.

I understand that following the Call for Sites process Hertfordshire County Council has put forward a number of their landholdings.

One of the landholdings (the former Radlett Airfield) is part of the overall site which has been granted planning permission by the Secretary of State for a Strategic Rail Freight Interchange (SRFI).Hertfordshire County Council is looking to promote it for housing.

As I am sure you will appreciate the decision by the Secretary of State to grant planning permission on this Green Belt land was not taken lightly and was subject to a legal challenge that failed.

The Secretary of State granted planning permission because the application related to the provision of nationally significant infrastructure in the form of a SRFI. It has been long established government policy to promote this type of strategic infrastructure development. This was given increased emphasis in the NPS for National Networks, which states that there is a compelling need for an expanded network of SRFIs (Para 2.56).

The site characteristics required for this form of development are very specific and during the planning determination process a comprehensive review of all alternative sites was carried out.

The Secretary of State concluded that the SRFI is a form of development that satisfies the very special circumstances required to justify the removal of the land from the Green Belt. In reaching this conclusion, he states in Para 53 of the 2014 decision-letter that: "the factors weighing in favour of the appeal include the need for SRFIs to serve London and the South East, to which he has attributed very considerable weight and the lack of more appropriate locations in the north west sector which would cause less harm to the Green Belt".

Whilst I recognise that the provision of housing is important I would point out that this type of development can be carried out across a range of locations and does not have the same site specific requirements as a SRFI.

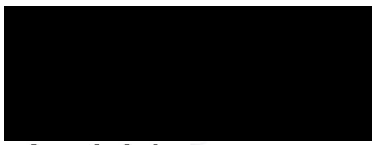
To allocate this site as a location suitable for housing would frustrate the long held government policy to encourage the development of a network of SRFI facilities. The current position is that it is the only site with planning permission that could serve the crucial London market.

Our advice is that the Council would need to have extremely strong justification to allocate the site for housing where both exceptional circumstances are needed to amend the Green Belt boundary and to make the allocation would frustrate a development for which very special circumstances have been shown to exist. In the absence of such justification, the plan could not be found sound. Pursuit of a draft plan that was inherently unsound would

expose the Council to considerably increased risks of Government intervention in its renewed local plan-making process from the very beginning.

I would respectfully ask that you and your colleagues take full account of this position when arriving at the preferred ranking for the Green Belt sites to be brought forward to address the housing needs of the District and accordingly that you do not pursue a possible allocation of the site for housing.

Yours sincerely



Gareth Osborn
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Appendix 9 – Helioslough Responses to proposed PSGV allocation

b. Various letters of May 2018

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21 May 2018

By email and post

Our ref C2/GALLIMOM//6902796
Matter ref 1U0475/000015

Ms Tracy Harvey
Chief Planning Officer
St Albans City and District Council
St Peters Street
St Albans
A11 3JE

Dear Ms Harvey

RADLETT - STRATEGIC RAIL FREIGHT INTERCHANGE PLANNING PERMISSION REFERENCE 5/2009/0708

We write further to our client's (Helioslough Ltd's) letter to the Spatial Planning Manager, dated 8 March 2018, which is attached as an appendix to your report to the 22 May 2018 Planning Policy Committee. The report describes the draft outcome of the strategic site selections following the Call for Sites selection.

1. **ASSESSMENT OF FORMER RADLETT AERODROME SITE**

Appendix 3 of your report sets out the site assessment forms including an assessment of the Former Radlett Aerodrome site against the 8 criteria agreed at the March PPC meeting for assessing potential strategic housing sites. We note that the overall evaluation is in the amber and not red category, and thus it is proposed to progress it for consideration at the meeting on 22 May and at the presentations on 23 and 24 May.

2. **NEED FOR SRFI**

We have reviewed the Radlett Aerodrome assessment and reached the conclusion that it is fundamentally flawed as a planning appraisal because it gives no weight to the decision or reasoning of the Secretary of State to grant permission for the development of an SRFI to serve London and the South East. Although the permission is mentioned in the assessment, this is under the section dealing with impacts on the purposes of the Green Belt, which appears to seek to compare the Secretary of State's assessment of the impact of the SRFI on the Green Belt with your assessment of the impact of 2,300 houses. However, as highlighted in our client's earlier letter, the Secretary of State's decision to grant planning permission was made due to the national importance of making provision for SRFI's and absence of alternative sites to meet the important identified need for SRFI's in the South East of the country and in particular the NW sector (an area covering a large part of London and the south east). As you are aware with the recent approval of Reserved Matters on the site the SRFI is being actively pursued.

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In these circumstances where the Secretary of State has determined that there is a national need to release the site from the Green Belt to develop an SRFI, any consideration of the "suitability" of the site for housing development (section 2 of the evaluation) must consider and evaluate fully all of the implications of allocating the site for housing and the incompatibility with the Secretary of State's decision if such an allocation is pursued. The evaluation which has been carried out by the Council contains no such analysis. The evaluation treats housing and SRFI's as effectively comparable land uses whereas one (the SRFI) has demanding site location criteria which make it not "footloose" and the other (housing) is in relative terms easier to accommodate in a variety of locations. This is a fundamental issue which is effectively ignored in the planning appraisal.

We note that the Committee report at paragraph 3.4 sets out various factors which may be relevant to the allocation of housing sites. One of the factors is "unique contribution to other infrastructure provision or community benefits". In that context it is clear that the evaluation of the site should have included a comparative assessment of the ways in which a housing allocation would contribute to infrastructure provision or community benefits as against how the approved SRFI would achieve such contributions. The Secretary of State has very clearly addressed the contributions which the SRFI would make in the decision letter granting permission for that scheme.

3. DELIVERABILITY

A further issue which the site evaluation fails to address in any meaningful way is the question of the ownership of the site and thus the deliverability of the site for housing. Whilst there is a statement "the site assessed includes additional land not submitted as part of the HCC Former Radlett Airfield submission" there is no explicit acknowledgement that a significant part of the site is neither owned nor controlled by HCC. This raises a fundamental question over HCC's ability to secure control of the entire site and thus over the deliverability of a housing development, which are vital issues when the Council determines the appropriateness of the site for a housing allocation.

4. SOUNDNESS TESTS FOR THE LOCAL PLAN

Our client's earlier letter drew to your attention the obvious difficulties of the Local Plan passing the soundness tests if a housing allocation were pursued at the former Radlett Aerodrome. The appendix to your committee report demonstrates that any such claim to soundness would have to rely on ignoring the Secretary of State's decision and reasoning about the need to develop an SRFI on the site. In such circumstances, we consider that there is no realistic possibility of the Local Plan being found sound in the face of the manifest availability of a variety of alternative sites on which to accommodate housing. We reiterate our client's request that you should not pursue the allocation of the site for housing any further.

If the Council continues with a Local Plan process which involves this site as a proposed housing allocation our client will be forced to consider all potential remedies including a possible legal challenge to that process and its outcome.

Please let me know if you have any questions in relation to any of the issues set out in this letter or in relation to the matter as a whole.

Yours sincerely

[redacted]

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24 May 2018

By email and post

Our ref C2/GALLIMOM//6902796
Matter ref 1U0475/000015

Ms Tracy Harvey
Chief Planning Officer
St Albans City and District Council
St Peters Street
St Albans
A11 3JE

Dear Ms Harvey

RADLETT - STRATEGIC RAIL FREIGHT INTERCHANGE PLANNING PERMISSION REFERENCE 5/2009/0708

I refer to my letter dated 21 May which was sent by email and post.

I am disappointed not to have received a response to that letter. I am also concerned that the letter was not drawn to the attention of Members at the meeting of the Planning Policy Committee on 22 May.

Further representations will be submitted to you on these issues in advance of the Committee meeting on 11 June and we will be requesting that they are drawn to the attention of the Committee prior to or at that meeting.

I look forward to hearing from you in response.

Yours sincerely

[redacted]

Michael Gallimore
Partner
michael.gallimore@hoganlovells.com
D 0207 050 3400

cc Chris Briggs, Spatial Planning Manager
Charles Turner, Legal Department

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30 May 2018

By email and post

Our ref C2/GALLIMOM//6902796
Matter ref 1U0475/000015

Ms Tracy Harvey
Chief Planning Officer
St Albans City and District Council
St Peters Street
St Albans
A11 3JE

Dear Ms Harvey

RADLETT - STRATEGIC RAIL FREIGHT INTERCHANGE PLANNING PERMISSION REFERENCE 5/2009/0708

I refer to my previous correspondence regarding the above site in the context of the proposed housing allocations in the Local Plan. This matter is due to be considered further at a meeting of the Planning Policy Committee on 11 June. The following issues are all highly relevant to any consideration of the appropriateness to allocate the Former Radlett Aerodrome site for housing. Will you please confirm that all of these issues will be drawn to the attention of the Committee either prior to or at the meeting on 11 June:

1. The assessment of the Radlett Aerodrome site in terms of its appropriateness for a housing allocation which has been carried out to date by the Council is fundamentally flawed because it gives no weight to the decision or reasoning of the Secretary of State to grant planning permission for the development of the site as an SRFI to serve London and the South East.

2. The decision by the Secretary of State was made due to the national importance of making provision for SRFI's and the absence of alternative sites to meet the important need for SRFI's in the South East of the country and in particular the North West sector (an area covering a large part of London and the South East).

3. The SRFI is being actively pursued, as evidenced by the recent approval of Reserved Matters on the site.

4. Any consideration of the "suitability" of the site for housing development must consider and evaluate fully all of the implications of allocating the site for housing and the incompatibility of such an allocation with the Secretary of State's decision if such an allocation is pursued. The evaluation carried out by the Council to date contains no such analysis. The evaluation which has been carried out treats housing and SRFI's as effectively comparable land uses, which is clearly not a sound approach. The SRFI has demanding site location criteria which make it not "footloose" whilst housing is in relative terms easier to accommodate in a variety of locations.

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5. The evaluation of the site should have included a comparative assessment of the ways in which a housing allocation would contribute to infrastructure provision or community benefits as against how the approved SRFI would achieve such contributions. The Secretary of State has very clearly addressed the contributions which the SRFI would make in the decision letter granting permission for that scheme.

6. Deliverability of sites allocated for housing should be an integral element of the Council's approach to the decision on housing allocations. To date, there has been no acknowledgement that a significant part of the site is neither owned nor controlled by HCC. This raises a fundamental question over HCC's ability to secure control of the entire site and thus over the deliverability of a housing development.

In ignoring all of the above issues and taking a decision to allocate the site for housing the Council would be making a decision which is not sustainable. In these circumstances we reiterate our previous comment that we consider there is no realistic possibility of the Local Plan being found sound in the face of the manifest availability of a variety of sites on which to accommodate housing.

Accordingly, we repeat our request that the Council should not pursue the allocation of the site for housing any further. We also repeat our client's position that if the Council continues with a Local Plan process which includes this site as a proposed housing allocation our client will be forced to consider all potential remedies including a possible legal challenge to that process and its outcome.

I would be grateful if you would acknowledge receipt of this letter and send the confirmation requested in the first paragraph of the letter.

Yours sincerely



Michael Gallimore
Partner
michael.gallimore@hoganlovells.com
D 0207 050 3400

cc Chris Briggs, Spatial Planning Manager
Charles Turner, Legal Department

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30 May 2018

By email and post

Our ref C2/GALLIMOM//6902796
Matter ref 1U0475/000015

Mr Chris Briggs
Spatial Planning Manager
St Albans City and District Council
St Peters Street
St Albans
A11 3JE

Dear Mr Briggs

RADLETT - STRATEGIC RAIL FREIGHT INTERCHANGE PLANNING PERMISSION REFERENCE 5/2009/0708

I refer to my recent correspondence with Tracy Harvey on the above site.

At the meeting of the Planning Policy Committee on 22 May you made various comments to the Committee under agenda item 11 dealing with the "Indicative new draft Local Plan for Publication (Regulation 19 stage) Consultation". Included in those comments was a statement in relation to the 'conditional allocation' of Park Street Garden Village. You stated that:

"*After legal advice, this allocation will be the subject of a fresh re-evaluation following the gathering of evidence on the relative merits and importance of delivering the site either for housing or the Strategic Rail Freight Interchange, for which it was found that there was a national need. The re-evaluation will include looking at alternative strategies which would deliver the identified housing elsewhere including options such as identifying a Housing Target for Neighbourhood Plan areas.*"

I copied to you my letter to Tracy Harvey dated 21 May in which we set out a number of issues which are highly relevant to the "re-evaluation" to which you referred in your statement. As noted in my letter of 24 May to Tracy Harvey we will be submitting further representations before the Committee meeting on 11 June.

I would be grateful for your confirmation that:

(a) All of our representations submitted on this issue will be fully taken into account as part of the "re-evaluation" which you are carrying out, and

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(b) All of our representations will be reported to the Committee meeting on 11 June.

With regard to the "re-evaluation" exercise can you please confirm when you anticipate that this will be conducted and when you anticipate that the results will be available.

I look forward to hearing from you.

Yours sincerely

[redacted]

Michael Gallimore
Partner
michael.gallimore@hoganlovells.com
D 0207 050 3400

cc Tracy Harvey, Chief Planning Officer
Charles Turner, Legal Department

Appendix 9 – Helioslough Responses to proposed PSGV allocation

c. Letter to Inspector April 2019

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25 April 2019

By email

Our ref C2/GALLIMOM//7425760
Matter ref 1U0475/000015

Inspector Louise Crosby MA MRTPI and
Inspector Elaine Worthington BA(Hons) MT MUED MRTPI
c/o Louise St John Howe
Programme Officer
P O Services
P O Box 10965
Sudbury
Suffolk, CO10 3BF

Dear Ms Crosby and Ms Worthington

ST ALBANS CITY AND DISTRICT LOCAL PLAN
HELIOSLOUGH LIMITED/FORMER RADLETT AERODROME SITE

We refer to the above referenced Local Plan in relation to which you have been appointed as the Inspectors to conduct the examination of the Plan.

We act for Helioslough Limited who are the developers of the Strategic Rail Freight Interchange ("SRFI") on the site of the former Radlett Aerodrome in Park Street. Outline planning permission for this development was granted by the Secretary of State on 14 July 2014. Since then our client has been progressing the development, including obtaining approval for all reserved matters under the planning permission (which have been obtained) and carrying out detailed design and preparatory work. The development will meet a national need for a facility of this type and this was a determining factor in the Secretary of State`s decision to grant planning permission.

Despite the clear endorsement given to the development by the Secretary of State, the Council has seen fit to propose in its draft Local Plan that the site be allocated for housing development. We have made representations on behalf of our client throughout the Local Plan process to date, resisting this allocation and explaining why we consider it to be inappropriate. We will continue to resist the proposed allocation through the Local Plan examination.

The purpose of this letter is to draw our client's position to your attention at the earliest possible point in the examination of the Local Plan and to place on record the fact that we do not consider the Local Plan to be sound. The reasons for this have been rehearsed in the correspondence to which we refer in the next paragraph of this letter. In summary, it cannot be a sound approach to allocate our client's site for housing when the strategic importance of delivering a SRFI has been demonstrated and then endorsed by the Secretary of State and when there are clearly a variety of alternative sites which can be allocated for housing. We trust that by drawing this issue to your

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attention at this stage, you will be able to consider the appropriate steps to be taken, including the potential early identification of fundamental flaws in the Plan, as envisaged under the Planning Inspectorate's Procedural Practice in the Examination of Local Plans.

Whilst writing we should point out that we have during the Local Plan process drawn the Council's attention to what we consider to be legal deficiencies in that process to date. Whilst we remain of the view that those deficiencies exist we are content to allow the statutory examination process to continue and to respect the preclusive provisions of the legislation. We will however consider any outstanding issues and the appropriateness of a legal challenge after the examination process when the Plan is proposed to be adopted.

We would be happy to assist with any further information which it may be helpful to provide at this stage.

Yours sincerely

[redacted]

Michael Gallimore
Partner
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Appendix 10 – Network Rail

a. Original objection

Network Rail (Infrastructure) Ltd
Floor 3A
George Stephenson House
Toft Green
York
YO1 6JT

16/10/18 15:16

Comment Receipt

Event Name	St Albans Local Plan Publication 2018
Comment by	Network Rail (Infrastructure) Ltd (Mr Anthony Rivero - 1184616)
Comment ID	PLP458
Response Date	16/10/18 15:16
Consultation Point	St Albans Local Plan Regulation 19 Publication (View)
Status	Submitted
Submission Type	Web
Version	0.1

Question 1

Please give the name or number of the Policy or Paragraph your comment relates to: Policy

Park Street Garden Village Policy S6(xi) pg22/23

Question 2

Do you believe the Local Plan &/or its sustainability appraisal is:

(1) Legally compliant	No
(2) Sound	No
(3) Complies with the Duty to co-operate	No

Question 3

If you have entered *No* to 2.(2), continue with Q3, otherwise please go straight to Q4

Do you consider the Local Plan is unsound because it is NOT: . (1) Positively Prepared (it is not providing a strategy which, as a minimum, seeks to meet the area's objectively assessed needs; and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and

is consistent with achieving sustainable development)

- (2) Justified (it is not an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence)
- (3) Effective – (not deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground)
- (4) Consistent with national policy (not enabling the delivery of sustainable development in accordance with the policies in the NPPF)

Question 4

Please give details of why you consider the Local Plan &/or its sustainability appraisal is or is not legally compliant, unsound or fails to comply with the duty to co-operate. Please be as precise as possible. If you wish to support the legal compliance or soundness of the Local Plan &/or its sustainability appraisal or its compliance with the duty to cooperate, please use this box to set out your comments.

In relation to the proposed new settlement at Park Street Garden Village, Network Rail is aware of aspirations to increase service patterns on the St Albans Abbey branch line to support this new community, and it is reassuring to note that the Council acknowledges that new/enhanced infrastructure will be required.

However, this is not a committed rail industry scheme and delivery would be subject to a feasibility study and funding, together with all necessary consents. In addition we cannot support any increase in frequency along the Abbey line unless the level crossing at Cotton Mill Lane is closed.

Note is made of the proposal for a strategic development at Park Street Garden Village. Notwithstanding the proposed allocation, you will be aware that outline consent exists for the development of a strategic rail freight interchange {SRFI}, granted on appeal by the Secretary Of State in 2014 (reference 5/2009/0708).

Network Rail has consistently supported the proposals for creation of a SRFI at this location. This would align with the Government's policy objectives for SRFI as set out in the National Policy Statement on National Networks 2014 (NPS), which states that there is a compelling need to create an expanded network of SRFI. The NPS notes that most intermodal RFI and rail-connected warehousing in London and the South East is on a small scale and/or poorly located (para 2.57), and that the number of locations suitable for SRFIs will be limited, which will restrict the scope for developers to identify viable alternative sites (para 2.56).

Our long-term planning has taken account of Radlett as one of the quantum of SRFI expected to be developed, through the Freight Market Study 2013 and the Freight Network Study of 2017. Our latest Freight & National Passenger Operators (F&NPO) Route Strategic Plan 2018 states that we will facilitate new terminal developments at Radlett and elsewhere nationally, specifically through the facilitation of new main line connections and associated network capability as required.

In this context Network Rail is working with Helioslough on the delivery of the SRFI at Radlett. Outline planning permission was granted in July 2014 and approvals have been granted for the reserved matters applications to facilitate the delivery of the project. Indeed the Authority will be aware that we have provided responses recently on several reserved matters with the aim of enabling these to be progressed to close out. We are therefore continuing to assist Helioslough in development of the SRFI at Radlett and its integration into the national rail network.

The apparent allocation of the whole of the site is in direct opposition to the outline consent for the SRFI and can only be viewed as an attempt to frustrate the development of the latter. Given the support of the Secretary of State to the proposal following lengthy consideration of the merits of the scheme, and its strategic importance in serving the north of London and the weight given to meeting targets for creating sustainable patterns of freight delivery we cannot see any justification given for the allocation of the whole site at Park Street. It may be that some development could be accommodated in the north

west corner of the site, and so long as this would not prejudice the delivery of the freight facility the objection to the allocation on freight grounds could be removed; however the issue of Cottonmill Level Crossing (below) remains pertinent and would still be outstanding.

Question 5

Please set out what modification(s) you consider necessary to make the Local Plan &/or its sustainability appraisal legally compliant or sound. Please have regard to any answer you have given at 3 and 4 above. (NB: Please note that any non-compliance with the duty to co-operate is incapable of modification at examination). You will need to say why this modification will make the Local Plan &/or its sustainability appraisal legally compliant or sound. It will be helpful if you are able to put forward your suggested revised wording of any policy or text. Please be as precise as possible.

The deletion of the Radlett SRFI land from Park Street village allocation.

A commitment to closing Cottonmill LC as part of any increase in frequency of service along the Abbey line.

Page 43 – Harpenden – NR support the proposals to look at providing additional car parking at Harpenden and look forward to participating in the "full exploration of options".

Policy L19 – road safety (page 44)

This should also consider the impact of development on level crossings and we seek to alter criterion (i)

by adding: ***"This should also take into account the impact on adjacent or nearby railway level crossings".***

Decisions relating to developments adjacent to, or affecting, rail lines (including those resulting in a material increase or change of character of the traffic using a rail crossing) will have regard to the views of Network Rail. Development should be refused unless any significant impacts can be adequately mitigated.

The justification for this would be to be consistent with the new advice in the NPPF (bold is our emphasis):

Para 108. In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:

a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;

b) ***safe and suitable access to the site can be achieved for all users; and***

c) ***any significant impacts from the development on the transport network*** *(in terms of capacity and congestion), or* ***on highway safety****, can be cost effectively mitigated to an acceptable degree.*

Para 109 Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Para 110.

Within this context, applications for development should:

a) give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use;

b) address the needs of people with disabilities and reduced mobility in relation to all modes of transport;

*c) **create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles,** avoid unnecessary street clutter, and respond to local character and design standards;*

d) allow for the efficient delivery of goods, and access by service and emergency vehicles; and

e) be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations.

Leyland Avenue Triangle site

Should this site be brought forward for residential development the layout should be designed to accommodate a diversionary route to allow Cottonmill Level crossing to be closed.

Question 6

If your representation is seeking a modification, do you consider it necessary to participate at the oral part of the examination? Yes

Question 7

If you wish to participate at the oral part of the examination, please outline why you consider this to be necessary:

We believe that there are serious operational and safety railway issues that have not been assessed by the council and that Network Rail needs to be present to ensure that the implications of the proposed allocations are fully explained and understood by an appropriate expert. In addition to this the council is seeking to allocate a Strategic Freight Site for which the Secretary of State granted approval at appeal and Network Rail can present further information for why this is an important site which should not be allocated alternatively in the Local Plan.

Question 8

Do you wish to be notified of any of the following? Please mark all that apply.

. (a) when the Local Plan has been submitted
. (b) when the Inspector's Report is published
. (c) when the Local Plan is adopted

Appendix 11 – Intermodality update on rail issues

intermodality
transport strategy & delivery

Shepherds Lodge
Coln Rogers
Cheltenham
Gloucestershire GL54 3LA

John Thompson
Development Director
Helioslough Limited
258 Bath Road
Slough SL1 4DX

Our Ref: IMT J0018 NGJT.docx
Your Ref:
Date: 12/12/19

Office: 0845 130 4388
Mobile: 07736 872582
Email: nick@intermodality.com
Website: www.intermodality.com

Dear John

RE: Proposed Strategic Rail Freight Interchange at Radlett – review of Network Rail engagement

Following your recent request, I have set out below the current state of engagement with Network Rail with regard to the consented SRFI project.

Network Rail has consistently supported the proposals for a SRFI at Radlett; indeed, Network Rail's predecessor Railtrack was itself considering development of the site for the same purpose. Network Rail has repeatedly written in support of the proposals, providing submissions to both Public Inquiries and responding to questions. Network Rail has also made repeated reference to the existence of, and support for, development of a SRFI at Radlett, the latest statement in the Freight & National Passenger Operators Route Strategic Plan of February 2018 noting (page 114):

"What we plan to do… Facilitate new terminal developments – e.g. Rossington, Radlett and East Midlands Gateway."

Network Rail has also formally objected to the designation by the local authority of the proposed SRFI site for residential use.

Helioslough and Network Rail have maintained a contractual relationship via a Basic Services Agreement (BSA) which remains in place, managed on a day-to-day basis through a dedicated Network Rail Scheme Sponsor. The various stages of work undertaken through the BSA has required pre-authorisation from Network Rail following internal scrutiny by multi-disciplinary panels, which have repeatedly supported continued engagement on the project.

Since being granted outline planning consent and reserved matters consent for the scheme, Helioslough has commissioned further design development of the rail works, in order to achieve a level of maturity commensurate with the conclusion of Network Rail's GRIP[1] Stage 2 (feasibility). Network Rail has reviewed this work and is satisfied that the project can now move on to GRIP Stage 3 (option selection), to select the preferred design option for the main line connection, as the precursor for detailed design and development in GRIP Stages 4 – 8.

[1] Governance for Rail Investment Projects

Limited Company registered in England No. 11743715

RISQS Railway Industry Supplier Qualification Scheme No.6688

Network Rail has also worked with the Helioslough team to evaluate the viability of pathing freight trains on and off the Midland Main Line (MML), as the MML south of Bedford is currently formally declared as "congested infrastructure" (in terms of providing additional future capacity for new freight paths). The pathing analysis undertaken by Helioslough with the support of Network Rail's timetable planning team, demonstrated that the proposals can be developed to allow freight trains to and from the SRFI to be integrated into the existing quantum of freight paths within the working timetable, at all times outside of the morning and evening peaks.

Yours sincerely



Nick Gallop
Director

Limited Company registered in England No. 11743715

Appendix 12 – Park Street Garden Village Masterplans

a. Taylor Wimpey Masterplan

Indicative masterplan of Park Street Garden Village

To St Albans

A414

Park Street Station

Potential New Station

London Colney

FROGMORE

How Wood Station

Railway

Railway

M25

To Watford

Colney Street

- Proposed Access
- Proposed Schools & Community Buildings
- New Parks
- Screen Planting
- SUDs System
- Residential Areas
- Footpath/cycleway

Appendix 12 – Park Street Garden Village Masterplans

b. HCC's Regulation 19 Representation

VINCENT+GORBING

Park Street Garden Village Broad Location

Representations

On behalf of
Hertfordshire County Council

October 2018

Prepared by
Vincent and Gorbing



Representations to the St Albans City and District Draft Local Plan for Publication

Contents

1.0	INTRODUCTION	1
2.0	SITE DETAILS	4
3.0	HIGH LEVEL MASTERPLAN	6
4.0	SUMMARY AND CONCLUSIONS	11

Representation report drawings

5241/600	Site location plan
5241/601	Site constraints plan
5241/602	High level masterplan

1.0 INTRODUCTION

1.1 Vincent and Gorbing (VG) have been commissioned by Hertfordshire County Council (HCC) to prepare representations in respect of Park Street Garden Village (former Radlett Aerodrome Site) identified as a **Broad Location Policy S6xi)** in the Draft Local plan for publication (Regulation 19 Stage) (Draft Local Plan) and to submit such representations to St Albans City and District Council (SADC) in response to the public consultation.

1.2 The Draft Local Plan identifies the following objective for the Park Street Garden Village Broad Location:

"To provide a new Garden Village, deliver a step change in the services on the Abbey Railway line and provide a new secondary school to improve school accessibility in the south of the District (delivery of approximately 600 of the dwellings to be beyond 2036).

1.3 In order to satisfy this objective, the plan sets out proposals to secure this delivery:

"1. Masterplanned development led by the Council in collaboration with local communities, landowners and other stakeholders

2. Minimum capacity 2,300 dwellings

3. The 2,300 dwelling figure above includes at least one 50+bed C2 Residential or Nursing Care Home, at least one 50+ C3 Flexi-care scheme and 20 units to provide special needs accommodation, in accordance with Policy L2

4. Minimum 40% Affordable Housing in accordance with Policy L3

5. Minimum overall net density 40 dwellings per hectare

6. Housing size, type and mix as set out in Policy L1 and Appendix 6

7. Strategic and local public open space, including managed woodland and ecological network links

8. Countryside access links, including improved off-road paths (rights of way) and links to a community food zone retained in the Green Belt

9. A substantial new country park providing facilities for new and existing communities

10. Retention of important trees and landscape features.

11. One 3FE and one 2FE primary schools, including early years provision to serve the new community.

12. An 8FE secondary school to serve the new and existing communities

13. Transport network (including walking and cycling links) and public transport services upgrades/improvements, including a local by-pass route for Park Street and improvements to the A414 as a strategic route for the wider area

14. New park and rail facility on the Abbey Railway Line south of the A414.

15. 15-20-minute peak period service on the Abbey Railway Line from date of first housing occupation. This will likely require a new passing loop on the Abbey Railway line, either on site or delivered elsewhere.

16. 3% homes to be self-build housing

17. New neighbourhood and local centres, including commercial development opportunities

18. Recreation space and other community facilities, including health provision.

19. Community Management Organisation with sufficient assets to provide sustainable management of community facilities, open spaces and parklands.

20. Excellence in design, energy efficiency and water management

21. Appropriate renewable energy production and supply mechanisms

22. Two 15 pitch Gypsy and traveller sites.

23. Full exploration of possibilities for direct services to Euston via Watford and/or links to a future Metropolitan Line extension in Watford.

24. Full exploration of possibilities for an Abbey Line stop or active travel routes/measures directly serving the BRE.

25. Full exploration of possibilities for an additional station on the Midland Mainline.

1.4 The Draft Local Plan establishes a Broad location for the development in the Key Diagram.



1.5 The Draft Local Plan establishes the boundaries of the Broad Location (BL) on Policy Map 4.



1.6 The BL allocation identifies an area of land to be removed from the Green Belt (area in white) and an area of land which is identified for Transport Strategy (improvements in Green Belt) set out in Policy L18 which specifically refers to,

"Improvements to the Abbey Line Railway to increase the frequency of services to make it a genuine commuting option and enhance onward bus transport to St Albans City Centre."

There may be other criteria within the policy that specifically relate to the hatched area identified on Policy map 4 but these are not clear from the policy which is mostly general in its intent unless sites are specifically referenced. Some of the criteria in Policy L18 require built development and since the Transport Strategy area at Park Street is shown as retained in the Green Belt it is not clear how these elements will be compatible with Green Belt policy. Further clarity to the policy would helpfully identify which criteria pertain to which BL policy map area and what the expectation of the policy is for those BL locations where the designation is in the Green Belt.

1.7 The Park Street Garden Village Broad Location is a site that currently has planning consent for a Strategic Rail Freight Terminal granted on 14 July 2014 by the Secretary of State for Communities and Local Government (applicants Helioslough Ltd). The outline planning permission agreed the principle for a rail freight interchange together with means of access, siting for the development and landscaping scheme. Following the grant of outline planning permission three reserved matters applications were submitted to agree details. At SADC Planning Referrals Committee (May 2018) planning permission for the three reserved matters applications was granted subject to conditions.

1.8 Currently, it would appear that there are a number of planning conditions attached to the outline planning consent that are still awaiting discharge. As such, HCC is proceeding with caution and has not, at this stage, commissioned a detailed feasibility study to confirm the developability and deliverability of the proposed BL allocation.

1.9 At the request of SADC in May 2018, a high-level masterplan for residential development was prepared which shows how Policy S6xi might be delivered subject to further detailed technical and environmental investigations. This representation comprises the work undertaken thus far on the high- level masterplan which could later be developed into a preliminary masterplan informed by technical and environmental studies thus ensuring deliverability and developability of the BL allocation.

1.10 HCC is also aware of a masterplan recently prepared by Taylor Wimpey for this site. For the avoidance of any doubt HCC would like to be clear that this work has not been commissioned by them.

1.11 Section two of this representation sets out a brief summary of site details.

1.12 Section three of this representation sets out the preliminary masterplan design parameters and the layout for the uses set out in **Broad Location Policy S6xi)**.

1.13 Section four of this representation comprises the summary and conclusions.

2.0 SITE ASSESSMENT

Site location

2.1 The Broad Location (BL) site (as identified in the Draft Local Plan) is located east of Park Street (Plan 5241/600). The area shown on plan 5241/600 is 119.08ha.

Land ownership

2.2 The area shown on Plan 5241/600 (which is the majority of the BL allocation) is in the ownership of the County Council. There are some small parcels of the BL site not in HCC ownership, namely; the area hatched as part of the transport strategy policy L18 and part of the housing allocation outside the northern boundary of HCC land ownership.

Buildings and uses

2.3 Based on preliminary boundary site inspection there would appear to be no buildings in the BL allocation although a full access site visit has not yet been undertaken.

Vegetation

2.4 There are existing well established areas of woodland on the site along the north-western boundary of the site, eastern boundary to the railway line, and isolated plantations around the site. No tree survey has been undertaken on any part of the BL site. This would be required at the detailed masterplan and application stages.

2.5 There are a number of hedgerows on the site along existing field boundaries apparent from the aerial photograph (Plan 5241/602).

Landscape and visual assessment

2.6 The south-western part of the site is bunded and the majority of the site is at a lower level, due to former gravel extraction, than the adjoining areas. There are views of the site from the railway and from existing rights of way outside of the site to the north-west of the site. There is a right of way extending into Park Street which is heavily sloped but links into the public right of way along the northern boundary. A landscape and visual assessment has not been undertaken.

Site constraints

2.7 The major site constraints that affect high level master planning are set out below.

- Visibility: there are views across the site from the railway line
- Access: the optimal location (to be proven by technical assessment) for access is likely to be from the A414 (outside the ownership of the County Council) in the same position as proposed for the SRFT as the County Council's land ownership lies adjacent to the A414 where visibility is poor and Park Street to the south, thus enabling a through route by-pass
- Noise: noise levels from the A414 and M25 may influence the location and capacity of the site for any development
- Vegetation: maintaining tree belts and hedgerows to contain any development on the site

2.8 There may be other site constraints which can only be identified at the next stage of technical and environmental capacity assessment. At this stage, as this is a high-level exercise, the EIA for the SRFT application (which would set out environmental constraints) has not been reviewed.

Technical studies

2.9 A range of technical and environmental studies was undertaken as part of the EIA for the SRFT application. No studies have been undertaken that specifically relate to the use of the site for residential development. However, it has been assumed that a residential use of the site may be less intensive than a SRFT use. As such there should be few impediments to a residential development allocation.

3.0 HIGH LEVEL MASTERPLAN

3.1 This section of the representation sets out the high-level masterplan presented to SADC in May 2018. The masterplan illustrates possible design approaches to developing the site.

Design Parameters

3.2 The Former Radlett Aerodrome site has not been subject of any significant previous masterplan preparation by HCC (although layouts were prepared in draft by housebuilders and sent to SADC in 2016). HCC has recently been advised that Taylor Wimpey (TW) has produced a Garden Village masterplan for the site. It is not known whether the recent TW masterplan has been informed by technical or environmental studies accompanied those plans.

3.3 To inform the preparation of this high-level masterplan the Strategic Rail Freight Terminal (SRFT) planning application has been used to:

- Identify development limits of the garden village (given that this developable area has been the subject of an EIA)
- Position the SRFT by-pass which has been retained at this stage but to be informed by further highway capacity appraisal
- Position the access to the development onto the A414 which has been retained at this stage but to be informed by further access appraisal
- Position the access to the development onto the A5183 which has been retained at this stage but to be informed by further access appraisal
- Retain the Country Park proposals as far as possible in keeping with the SRFT proposals

3.4 It is acknowledged that these parameters require land outside HCC control in the ownership of the Gorehambury Estate. Technical work on the access arrangements (to either the A414 or A5183) would need to be undertaken to inform the masterplan preparation process and to define the level of development that could be served by one or both of the access points. This work will take some months to complete.

3.5 HCC have cited the following site area requirements for secondary and primary schools:

- Secondary School: minimum 12ha to provide for a BB103 (area guidelines for mainstream schools) compliant school and to allow for any abnormals that might emerge following technical and environmental investigations during a detailed site and building design
- Primary School: minimum 2.0ha to provide for a BB103 (area guidelines for mainstream schools) compliant school and to allow for any abnormals that might emerge following technical and environmental investigations during a detailed site and building design

3.6 Similarly, the secondary and primary education uses therefore require a total area of 14ha which might be reduced depending on abnormals or the delivery of an all through school, but it should not be assumed at the local plan preparation stage that areas can be significantly reduced.

High level masterplan

3.7 The high-level masterplan (Plan 5241/602) for the Former Radlett Aerodrome proposes:

- Residential development in 6 parcels providing 1530 units at 30dph and 2040 units at 40dph which exceeds the minimum 500 dwelling requirement for strategic scale sites and enables flexibility in density levels
- Development form reflecting the orientation of the former aerodrome runway pattern to provide a continuous historic reference and Garden City planning principles (green link running through the development formed by tree lined boulevard referencing Parkway (Welwyn Garden City), and a central green core with water feature referencing Kennedy Gardens (Letchworth)
- Landscaped entrance to the south to improve environmental conditions and providing a woodland setting adjacent to existing residential development along Park Street
- Vehicular access to the site from North Orbital (point fixed by previous SRFT appraisals) linked to a by-pass around the development (which may or may not be required depending on further technical work) and through routes into the development for the Garden Village traffic
- Country Park on land to the north-west of the site (replicating SFRT Country Park) and creating a permeable pedestrian/cycle link through to Park Street (which would need to be improved) and to the north and north-east linking to a retained Wrights Farm (Community Food Zone)
- Segregation of pedestrian and vehicular traffic flows and the retention of existing rights of way and informal footpaths with potential pedestrian links to the Land west of London Colney (north and south of Napsbury) development
- New woodland planting in the Country Park, extensions to the existing native woodland and new formal planting patterns to way mark streets and pedestrian links replicating existing way marking and creating new rights of way networks to the north, east, west and south
- Village centre (mixed use retail/community and residential) which is located close to northern entrance to the development and adjoins park and ride/rail to encourage passing trade as well as meeting the needs of the development (concentrates traffic flows associated with this use close to the A414 whilst still being accessible to residential areas)
- Potential new station on the Midland Mainline (former station location) and car park for station use only (further technical work required on need and viability particularly given enhanced links to Park Street (Abbey Line) station
- Potential site area for secondary school located in the heart of the residential development (13ha) but substitution of RA2 could lead to a loss of 520 dwellings (with a new secondary school on land west of London Colney there may not be a requirement for a second secondary school on land at Park Street Garden Village if sustainable transport links (cycling/walking) can be established under the Midland Mainline Railway to create good accessibility
- Primary school (3ha) enough for 2fe site which could possibly be extended to create 3fe primary school (area adjustments to RA2)

Compliance with proposed policy

3.8 The high-level masterplan complies with the proposed land allocation as follows noting that some matters will need to be dealt with at the preliminary masterplan stage informed by additional technical and environmental studies:

Table One: Proposed policy compliance	
Minimum capacity 2,300 dwellings	High level masterplan response: 1530-2040 units which is currently below the target for the site but could be increased with density approaches to existing parcels, by stretching the definition of parcels and by a mixed-use approach to the village centre
The 2,300 dwelling figure above includes one 50+ bed C2 Residential or Nursing care home, at least one 50+ home Flexi-care scheme and 20 units to provide special needs accommodation, in accordance with Policy L2	High level masterplan response: 1530-2040 units can include at least one 50+ bed C2 Residential or nursing care home and at least one 50+ C3 Flexi-care scheme These uses can be identified at the preliminary masterplan stage.
Minimum 40% Affordable Housing in accordance with Policy L3	HCC would ensure compliance at any detailed planning application stage Phasing and design
Minimum overall net density 40 dwellings per hectare	Preliminary masterplan stage Phasing and design at planning application stage.
Housing size, type and mix as set out in Policy L1 and Appendix 6	HCC would ensure compliance at any detailed planning application stage Phasing and design
Strategic and local open space, including managed woodland and ecological network links	High level masterplan response: new country park is proposed and woodland areas along site boundaries with links to Country Park areas to the east of the site (under pass the railway) and north of the site into existing rights of way networks
Countryside access links including off road paths (rights of way) and links to a community food zone retained in the Green Belt	High level masterplan response: development links directly into off road paths and links to the community food zone (Hedges Farm) which is proposed for retention
A substantial new Country Park providing facilities for new and existing communities	High level masterplan response: this is proposed (northwest of the site) as part of the development
Retention of important trees and landscape features	High level masterplan response: trees on site boundaries are proposed for

	retention and enhancement – further work will be required at later stages to determine the impact on other landscape features in more central areas of the site
One 3FE and one 2FE primary schools, including early years provision to serve the new community	High level masterplan response: primary school site (3ha) has been identified which could be extended to provide 3fe but a second primary school site has not yet been identified and further work will be required at the preliminary masterplan stage
An 8FE secondary school to serve new and existing communities	High level masterplan response: secondary school site has currently been identified at the expense of residential development parcel RA2 leading to a loss of 520 dwellings but further work at the detailed feasibility stage could address this requirement more fully and there maybe the option of creating provision at Land west of London Colney to serve both Broad Locations.
Transport Network (including walking and cycling links) and public transport services upgrade/improvements, including a local bypass route for Park Street and improvements to the A414 as a strategic route for the wider area	High level masterplan response: segregated walking and cycling links have been created through the development and linked to adjoining existing rights of way and informal footpaths and into adjoining land
New park and rail facility on the Abbey Railway line south of the A414	Preliminary masterplan stage – major transport infrastructure study required to assess potential
15-20-minute peak period service on the Abbey railway line from date of first occupation. This will likely require a new passing loop on the Abbey Railway line, either on site or delivered elsewhere	Preliminary masterplan stage – major transport infrastructure study to assess potential
3% of homes provided to be self-build housing	Detailed planning application stage: Phasing and design
New neighbourhood and local centres, including commercial development opportunities	Detailed planning application stage: Phasing and design
Recreation space and other community facilities, including health provision	High level masterplan response: village centre shown on masterplan which can include all these uses
3% homes to be self-build housing	Deed planning application stage: Phasing and design

Community Management Organisation with sufficient assets to provide sustainable management of community facilities, open spaces and parklands	Detailed planning application stage: S106 agreement
Excellence in design, energy efficiency and water management	Detailed planning application stage: Phasing and design
Appropriate renewable energy production and supply mechanisms	Detailed planning application stage: Phasing and design
Two 15 pitch Gypsy and Traveller sites	Preliminary masterplan stage
Full exploration of possibilities for direct services to Euston via Watford and/or links to a future Metropolitan Line extension in Watford	Preliminary masterplan stage
Full exploration of possibilities for an Abbey Line stop or active travel routes/measures serving the BRE	Preliminary masterplan stage
Full exploration of possibilities for an additional station on the Midland Mainline	Preliminary masterplan stage

4.0 SUMMARY AND CONCLUSIONS

4.1 The Former Radlett Aerodrome site has been identified as a Broad Location (BL) site for development in the St Albans City and District Draft Local Plan for Publication (Regulation 19 Stage).

4.2 The majority of the BL site allocates land which is in the ownership of Hertfordshire County Council.

4.3 The BL site is currently the subject of a planning permission for a Strategic Rail Freight Terminal (SRFT) which was granted outline planning consent in July 2014. Subsequent reserved matters applications were granted planning consent in May 2018.

4.4 Following a request from SADC, HCC commissioned the preparation of a High-Level masterplan, for the BL allocation, informed by the development parameters from the SRFT application. This masterplan is submitted as part of this representation. Further technical and environmental studies will be required to develop a preliminary masterplan which will confirm that all the requirements in Policy S6xi can be addressed. Consequently, the enclosed high-level masterplan could significantly change.

4.5 Further technical and environmental studies would be required to verify and develop the masterplan to ensure the policy is deliverable and developable.

4.6 It is recommended that the work required to support a preliminary masterplan should be undertaken if the SRFT planning consent is, for whatever reason, not implemented.



SITE BOUNDARY
119.08ha

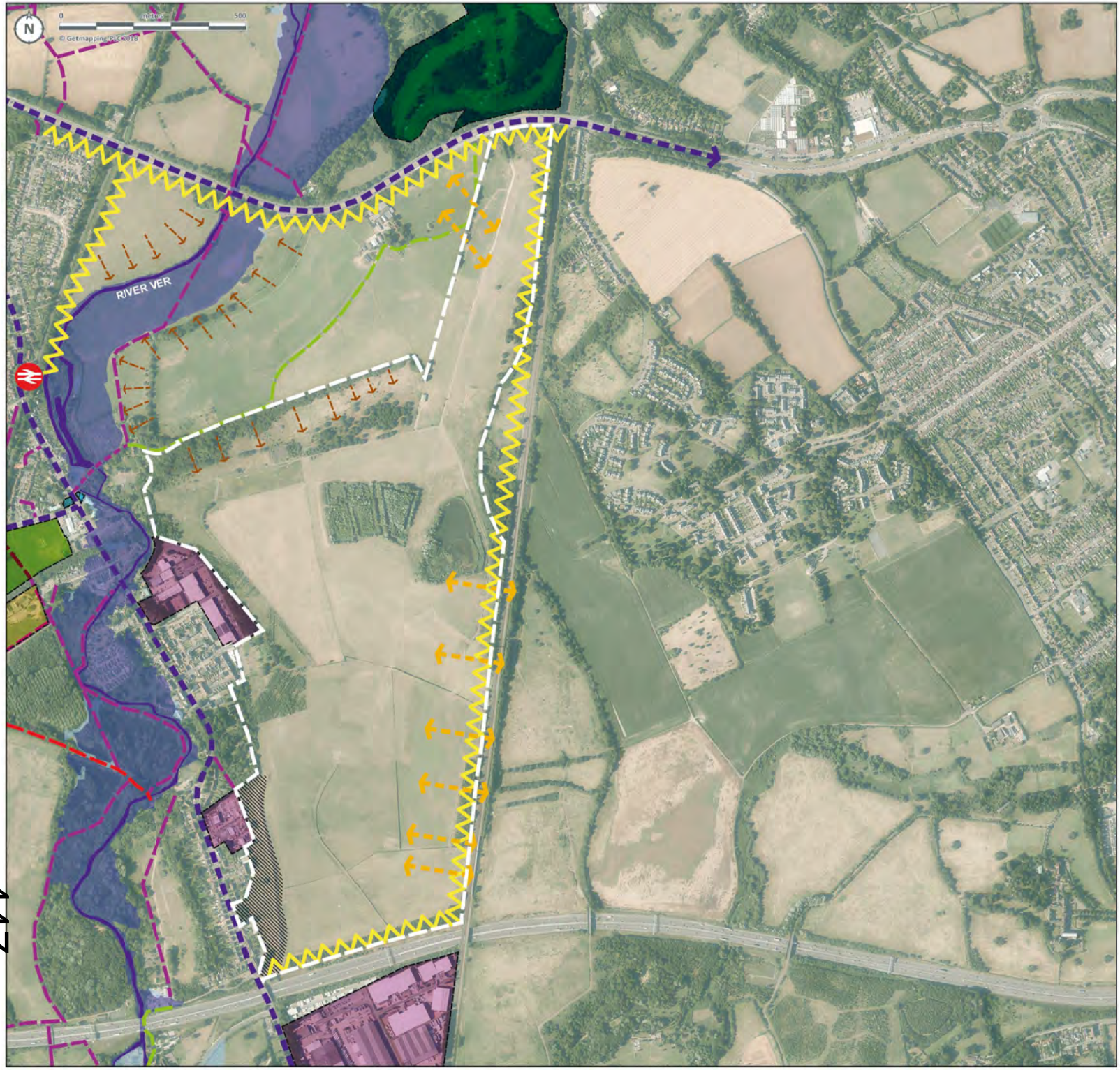
PARK STREET GARDEN VILLAGE BROAD LOCATION

Site location

PROJECT NO	DRAWING NO	REV
5241	600	
DRAWN	DATE	SCALE
HNA	OCTOBER 2018	1:10000

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- SITE BOUNDARY
- EMPLOYMENT SITES
- RETAIL FACILITIES
- LEISURE FACILITIES
- OPEN SPACE
- EDUCATIONAL FACILITIES
- EXISTING RAILWAY STATION
- BUND AREAS
- FLOOD ZONE 3
- FLOOD ZONE 2
- NOISE SOURCES
- VISIBILITY LINES
- SLOPE
- RESTRICTED BYWAY
- BRIDLEWAY
- PUBLIC FOOTPATH
- INFORMAL PATH
- BUS ROUTES

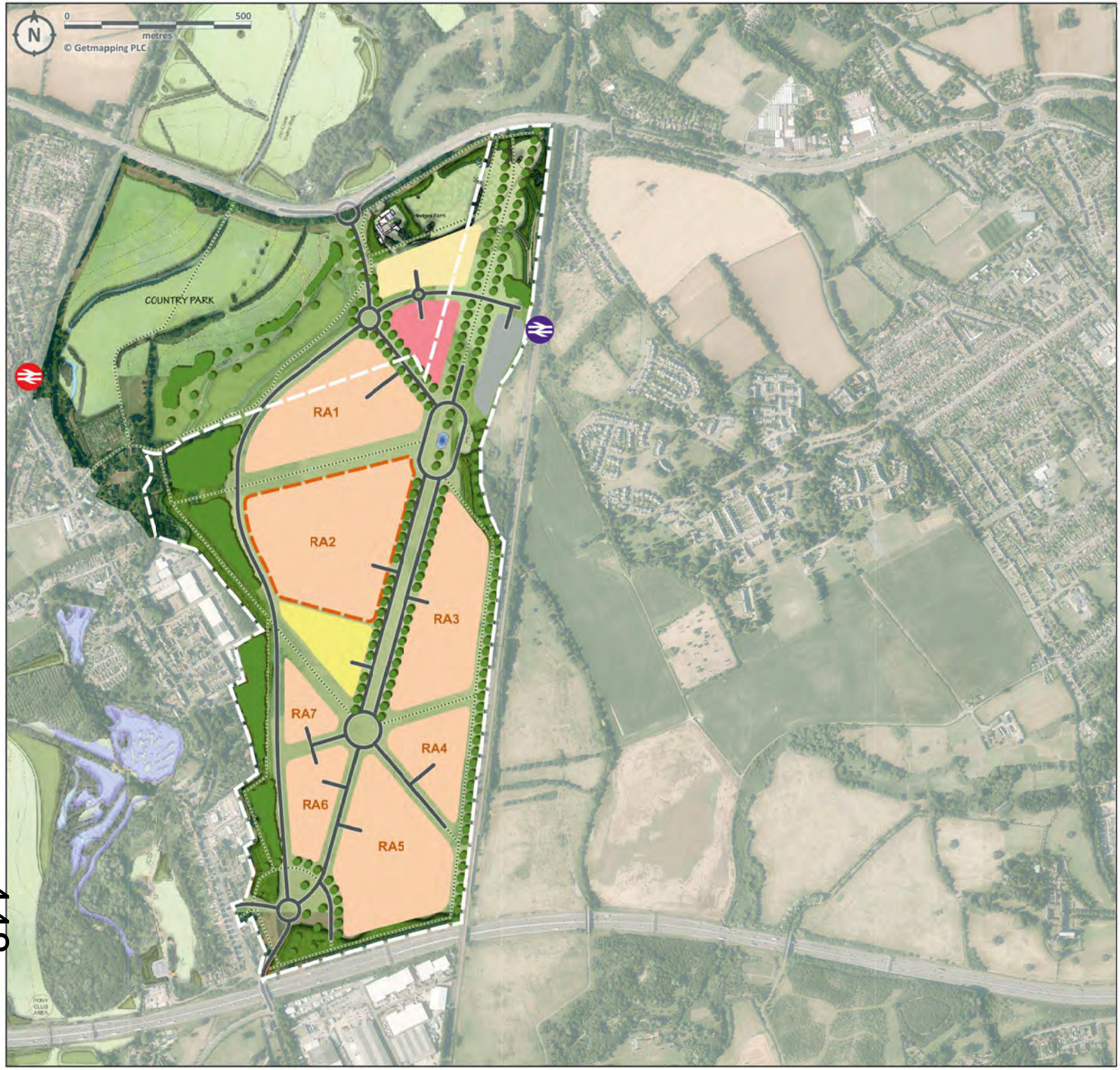
PARK STREET GARDEN VILLAGE BROAD LOCATION

Site constraints

PROJECT NO	DRAWING NO	REV
5241	601	
DRAWN	DATE	SCALE
HNA	OCTOBER 2018	1:10000

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RESIDENTIAL

PRIMARY SCHOOL

SECONDARY SCHOOL POTENTIAL SITE

VILLAGE CENTRE

PARK AND RIDE

EXISTING STATION

PROPOSED STATION

STATION CAR PARK

MAIN ACCESS ROADS

FOOTPATHS/CYCLEWAYS

LAND USE SCHEDULE

RESIDENTIAL PARCEL AREA		UNITS (30dph)	UNITS (40dph)
RA1	9.50	285	380
RA2	13.00	390	520
RA3	9.00	270	360
RA4	4.00	120	160
RA5	10.00	300	400
RA6	3.50	105	140
RA7	2.00	60	80
TOTAL	**51.00**	**1530**	**2040**

PRIMARY SCHOOL	3.00
VILLAGE CENTRE	2.50
PARK & RIDE	3.00
STATION CAR PARK	1.75

PARK STREET GARDEN VILLAGE BROAD LOCATION

High level masterplan

PROJECT NO	DRAWING NO	REV
5241	602	
DRAWN	DATE	SCALE
HNA	OCTOBER 2018	1:10000

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