ST ALBANS CITY AND DISTRICT COUNCIL LOCAL PLAN EXAMINATION

Stage 1 Matters, Issues and Questions

Hearing Statement on Matter 7

On behalf of

Helioslough Ltd

Representor ID: 1182085

Contents

Matter 7 – The Broad Locations for development – Specific Matters (Policy S6 (i) to (xi)

1. This document addresses Matter 7 Questions 1, 4, 5, 6, 7 and 8.

2. To avoid duplication in its answers and in its responses to various hearing matters, Helioslough has also provided a "Core Note" ("CN") as a generic appendix to all its hearing statements which provides the essential framework within which the specific answers are given and to which reference is given where appropriate below by [CN/paragraph number].

3. These answers proceed from the Core Note – and it is assumed that the Core Note has been read first.

4. Attached to the Core Note is a paginated "Core Bundle" of material common to all the Stage 1 matters to which reference is made in the individual hearing statements by [A/page number].

5. The "Site" is the former airfield at Radlett; the "SRFI" is the Strategic Rail Freight Interchange approved the Secretary of State ("the SoS") in 2014 ("the 2014 Decision"). OAHN is "objectively assessed housing need". The "PSGV" is the Park Street Garden Village.

Park Street Garden Village S6 (xi) (A new garden village to help deliver changes to the services on the Abbey Railway Line and provide a new secondary school)

Q1: ***Is the site suitable for housing and are there any specific constraints or requirements associated with it, or the need for mitigation measures?***

6. The Site is not suitable for housing and there are overwhelming constraints to its allocation for housing and to its delivery for housing.

7. The Site is fundamentally unsuitable for a housing allocation because of the SRFI. There is a compelling need for an SRFI to be delivered here to secure the huge advantages of sustainable transport. The PSGV will defeat the allocation. See CN/20; 25 - 31. The 2014 permission has been implemented and Helioslough is pushing ahead with it and will continue to do so. There is no alternative location to meet the compelling need.

8. In any event, there are insuperable obstacles to delivery of housing here. The northern access land is controlled by Helioslough and will not be released for a housing development. The rail improvements required are at best highly uncertain and at worst undeliverable. The housing would be likely to have severe implications on the highway network.

Q4: ***What further infrastructure work (including technical and environmental studies) needs to be undertaken, and is this appropriate to be left to the masterplanning stage?***

9. Major further work on rail and road feasibility, ability to deliver that which is required to make this an acceptable development and scoping to assess whether it can accommodate the claimed housing numbers is required before the acceptability in principle of this site can be established. This cannot be left to the masterplanning stage.

10. In any event an indicative masterplan is required now to allow any realistic assessment of what can be delivered here and what its impacts would be so as to allow a realistic comparison with other sites.

Q5: ***What is the justification for the substantial new Country Park and have its financial implications been considered?***

11. Unknown. PSGV simply "cut and pastes" that part of the country park in HCC's ownership from the SRFI country park. No justification for it has been set out.

Q6: ***Does the Abbey Railway Line have capacity to support the proposal?***

12. Unknown. The required feasibility study has not been undertaken (at least with any detailed input from NR). The improvements to the line were the key reason for identifying it through the May 2018 site selection exercise and no solid progress appears to have been made.

Q7: ***What evidence is there to demonstrate that services would be increased? Can rail operators provide the increased peak period service sought?***

13. There has been no evidence put forward to suggest that an increased service on the Abbey Line would be justified or supported.

14. SADC's IDP 2018/19 states that full exploration was required – but that does not appear to have been carried out. :

Q8: ***Is the passing loop on the Abbey Railway line justified and deliverable?***

15. Within the IDP it is stated that there are plans to deliver a New park and rail facility as part of the Park Street Garden Village and that the policy for the PSGV seeks to deliver a 15 - 20-minute peak period service on the Abbey railway line which is likely to require a passing loop on the Abbey line.

16. There has been no evidence put forward to suggest that the Abbey Line loop would be deliverable. Network Rail have not provided support or acknowledgment for an Abbey Line Loop.

Appendices to all Hearing Statements Matter 7 – Index

FORMER AIRFIELD, RADLETT – SRFI OR HOUSING ALLOCATION

CORE NOTE "CN"

(Generic appendix to all hearing statements of Helioslough Limited)

1. This document sets out Helioslough's core case in objecting to St Albans City and District Council's ("SADC") proposed housing allocation of land at the Former Aerodrome, Radlett ("the Site") for Park Street Garden Village ("PSGV") and the failure to allocate the land for the strategic rail freight interchange ("SRFI") granted permission by the Secretary of State ("the SoS") in 2014 ("the 2014 Decision"). It provides the framework within which all the Stage 1 Matters are addressed in the accompanying individual hearing statements. Accompanying the Core Note is a paginated bundle of material common to all the Stage 1 matters (references to which are given as "[A/page number]"). This bundle has been kept as small as possible and only key extracts provided - the full documents are available on request[1]. Agreement will be sought with SADC as to the factual accuracy of the attached chronology and materials.

2. In short summary, Helioslough's case is that the proposed allocation of the Site[2] in the Local Plan ("the Plan") for PSGV is unlawful and unsound and must therefore fail for each of the following reasons:

    a. there is a compelling need for a nationally significant SRFI to serve London and the South East in the north west sector which need can only be met at the Site. NPPF104c/e [A/36] and NPPF20b [A/32] directly apply and there is no factual, legal or planning justification for not complying with them;

    b. given the findings of the SoS in the 2014 Decision, the delivery of an SRFI here necessarily constitutes a strategic priority under s.19(1B) of the Planning and Compulsory Purchase Act 2004 [A/4] and SADC must therefore have policies to address it (s.19(1C)) but has (inexplicably) failed to do so;

    c. it is unsound, unlawful and unreasonable for SADC to have as a major element of its Plan a housing allocation (S6(xi)) which has the effect of (and/or is for the purpose of) defeating delivery of approved nationally significant infrastructure for which there is a compelling need and which can only be located here;

    d. SADC sets up a false choice between meeting its objectively assessed housing need ("OAHN") and meeting the national need for an SRFI here. It is required to meet both, a proper planning approach would be to do so and there is no

[1] A hard copy of Helioslough's extremely extensive historic bundle on Radlett will be available at the hearings should any more detailed information be required.

[2] Helioslough makes no objection or comment on any other large scale allocations or the process or Sustainability Appraisal in respect of those large scale allocations.

reason why it cannot do so – but SADC has made a choice to only meet *its* OAHN and not the compelling national need for an SRFI here;

e. its approach to, and reasons for rejecting other housing sites to deliver the OAHN, are misconceived in principle, unjustified on the merits and internally inconsistent and illogical;

f. in making the choice between an SRFI and housing on the Site, SADC has misdirected itself in law and on policy; has made unsound planning judgements and undertaken the comparison of advantages and disadvantages in a misconceived way in particular ignoring the wide-ranging benefits of delivery of an SRFI here and the disadvantages of failing to deliver it;

g. the Sustainability Appraisal is flawed in respect of the Site (and other omitted housing sites especially North East Redbourn – "NER") because it failed from the outset to address the central issues – namely:

    i. the disadvantages of housing at the Site given that housing here prevents delivery of the nationally significant SRFI to serve London and the South East; and

    ii. the advantages of housing on omitted sites by meeting the OAHN and allowing delivery of the SRFI thus avoiding the "false choice" referred to above; and

h. in any event, the PSGV allocation here is unsound and undeliverable.

3. SADC appears to have accepted the force of many of these points in its Re-Evaluations (the first time the SRFI was considered in the process) but has ploughed on regardless.

4. Further, whilst the above points are individually amply sufficient to require the removal of the allocation, it appears to Helioslough that the PSGV allocation is an attempt to defeat the SRFI and avoid the consequences of the 2014 Decision and thus unlawful on that basis also. SADC cannot use its plan making powers for the purpose of defeating the 2014 Decision of the SoS.

5. The permission for the SRFI has been implemented[3] and, absent the proposed allocation, there is no significant impediment to delivery. A site plan is at [A/1].

6. S6(xi) and all references to PSGV should be deleted. There are ample appropriate sites to allow the full OAHN to be met via an early review of the plan or main modifications[4].

[3] This is not understood to be controversial and so is not considered further here. If SADC disputes implementation, Helioslough has a complete pack of material which demonstrates compliance with all conditions precedent and the s106 and the carrying out of relevant works which can be provided.

[4] Even if this is not possible, or there is a shortfall, there is ample time for any shortfall to be rectified in an early review of the Plan given that PSGV was not anticipated to start delivery of housing until at least 2026.

There is no need for the Plan to be withdrawn. A strategic policy to support and facilitate the delivery of the SRFI here should be included.

Statutory requirements

7. So far as relevant, s.19 [A/2] requires:

    a. the development plan to identify strategic priorities for the development of land in the area (s.19(1B)) and have policies to address those priorities;

    b. the LPA to have regard to national policies (s.19(2)(a)) in formulating their plan and their strategic priorities; and

    c. a sustainability appraisal to be prepared (s.19(5)).

8. Reference is also made below to the duty to co-operate (s.33A) [A/4]. It is submitted that both: (1) the provision of an SRFI to meet the needs of London and the south east; and (2) cross boundary housing sites are strategic matters under s.33A(4). Even if this is not correct, the obligations of collaboration under the NPPF are triggered.

Policy

9. The NPS on National Networks 2014 ("the NPS") addresses SRFIs at para 2.42ff [A/21]. It confirms long standing policy [para 2.11[5]) that there is a "compelling need" for an expanded network of SRFIs (para 2.56[6]). The status quo is not acceptable (para 2.57 - 2.58[7]). The NPS notes the limited number of suitable locations for SRFIs and the particular difficulties in provision to serve London and the South East (para 2.58).

10. As to the NPPF:

    a. NPPF104e [A/36] provides that planning policies "*should provide for any [SRFIs] that need to be located in the area"* taking into account the NPS for nationally significant infrastructure projects ("NSIPs"). SADC correctly accepts that the SRFI at Radlett is to be treated as an NSIP [A/159 under Section 4]. In the light of the 2014 Decision [A/50 @ [53]], the SRFI "needs to be located" here.

    b. NPPF104c requires planning policies to "*identify and protect, where there is robust evidence, sites and routes which could be critical*" in developing relevant infrastructure – in the light of the 2014 Decision there is such robust evidence here.

    c. NPPF20(b) [A/32] requires that "*strategic policies*" should make sufficient provision for transport infrastructure in accordance with NPPF11 (objectively

[5] going back to at least 2001.
[6] see also paras 2.1 [A/17], 2.2, 2.8, 2.10, 2.58 as correctly interpreted in Colnbrook at IR12.89 [A/91]and DL24 [A/84]
[7] As accepted by the SoS in the Colnbrook DL @ [25] [A/84]

assessed needs not just for housing): [A/30]. The 2014 Decision makes clear that that includes an SRFI here.

d. The NPPF2019 framework is a significant strengthening of the approach to SRFIs in NPPF2012 (see para 162 and just "take account of the need" and para 182 just "seeks to meet") under which the publication draft LP was prepared.

e. NPPF25/26 [A/33] requires SADC to work with other strategic planning authorities and infrastructure providers to determine where additional infrastructure is necessary. There has been no work by SADC to determine where, if not at the Site, an SRFI can be provided. The 2014 Decision provides the answer to where additional infrastructure is necessary – namely at the Site. The question posed by NPPF25/26 has been conclusively answered.

SRFIs

11. SRFIs are (now[8]) *nationally significant* infrastructure and are required to meet the national need for an enhanced network. They have **extremely exacting locational requirements** – very large[9], unfragmented, flat sites close to the strategic rail freight and road networks and the conurbations they serve (NPS para 2.45 [A/21]). These requirements are far more onerous than for any site to meet housing needs. As a result, it has proved "**extremely problematic**" (Radlett DL @ para 31 [A/46]) to find sites for them especially in the south east as confirmed in the NPS2.58.

The SRFI at Radlett

12. The proposal for the SRFI is shown in the masterplan at [A/2]. It includes the construction of an intermodal terminal and rail and road served distribution units (331,665m2 in Use Class B8 including ancillary B1/B2 floorspace) within the central area labelled 1; with associated road and rail and other infrastructure facilities and works within Areas 1 and 2 (including earth mounds and a Park Street/Frogmore relief road) in a landscape setting and further landscaping and other works within Areas 3 to 8 inclusive to provide public accessible open land and community forest.

13. The Country Park ("CP") proposed as part of the SRFI includes the parcels of land numbered from 3 to 8 in **A/2**. The main road access to the SRFI (or any housing development) would be from the A414 to the north on land owned by the Gorhambury Estate. Whilst HCC owns a small part of the site frontage in proximity of the Midland Main Line bridge that land could not be used for access purposes due to its proximity with the junction of the A414 with the B5378.

[8] They were not at the time of the application leading to the 2014 Decision – but see now s.26 of the 2008 Act and art 4B of SI2010/101 as accepted by SADC at [A/159 last para].
[9] 60ha

The background to and reasons for the 2014 Permission

14. After an extremely detailed, highly contentious and protracted process over many years (see Appendix 1[10]) in which SADC played a full part and which the question of alternative sites to meet the need was a central issue, the SoS made the 2014 Decision.

15. He attached "very considerable weight": DL53 [A/50] to the need for SRFIs to serve London and the south east, concluded that the appropriate area of search was the north west sector [DL34] and that there were no more appropriate locations for an SRFI to meet the need within that sector. He thus found that there were very special circumstances justifying the grant. A High Court challenge to the 2014 Decision by SADC failed**.**

16. At every stage of the process SADC fought extremely rigorously using every opportunity available to it to defeat the SRFI: see Appendix for the headline points.

17. Throughout that process SADC relied extensively on an alternative site for an SRFI at Colnbrook. The Inspector found that it could not rationally be concluded that Colnbrook met the needs for an SRFI in a less harmful way than Radlett [A/74: para 13.103] and, following a High Court judgment concerning the approach to that issue, the SoS agreed: DL39 [A/48]. An appeal in respect of an SRFI at Colnbrook has since been refused: [A/80]. On the Colnbrook appeal, the SoS assumed Radlett would proceed [Colnbrook DL26].

18. There have been no other relevant proposals, applications, allocations or permissions for SRFIs to serve the north west sector and, save for progress at the Site, no progress in meeting the "compelling need" elsewhere since 2001. As to the rest of London, a renewal application at Howbury was refused in 2019 [A/105].

19. Through this local plan process, SADC has (correctly) not suggested that: (1) the compelling need no longer exists; (2) there is any suitable alternative location for an SRFI in the north west sector; or (3) that the need can be met in some other way perhaps through joint working with other authorities (NPPF footnote 42). SADC purports to "fully acknowledge" the need and the lack of alternatives. There has been no collaborative work with infrastructure providers to secure the necessary SRFI elsewhere.

[10] Appendix 1 sets out the Chronology of applications, appeals and statutory challenges from 2006 – 2017. This has been an exceptionally prolonged planning dispute during which SADC has had ample and repeated opportunities over many years to oppose the SRFI and to set out why an SRFI should not be provided here.

Necessary starting point for local plan preparation

20. Whilst the findings of the SoS on the 2014 Decision may not be *strictly* legally binding on SADC in formulating its local plan (*R(Evans) v. Attorney General)* [2015] UKSC 21 @ para 66 [A/118] and *R(Stonegate) v Horsham DC [2016] EWHC 2512; [2017] Env LR 8 @* para 66 [A/131] this case has all the relevant features which indicate that SADC is unlikely to be able to point to any rational basis for departing from them:

    a. they were reached after full examination in formal inquiry including significant testing in cross-examination *by SADC*;

    b. those conclusions were subsequently strengthened by the conclusions of the SoS at Colnbrook;

    c. they were reached by the SoS at the apex of the planning system in the light of all the evidence and his policy on SRFIs. The same policy (s.19(2)) and factual matters (NPPF104e/c and NPPF20b) are necessarily material to the formulation of the local plan – indeed the position has been strengthened by changes in the NPPF and the NPS; and

    d. there is no suggestion that anything material has changed since re: SRFIs.

21. There is thus no possible (or claimed) lawful or rational basis (*Mayor of London v Enfield [2008] Env LR 33] @* paras 1 and 29 **[A/136]** for SADC to proceed in its local plan preparation other than on the basis that:

    a. this nationally significant infrastructure "needs to be located" here (NPPF104e);

    b. there is "robust evidence" as accepted by the SoS that this site needs to be protected for an SRFI (NPPF104c);

    c. an SRFI here is necessarily a "strategic priority" (s.19(1B)) and strategic policies are necessary to make sufficient provision for it here (NPPF20b); and/or

    d. the "compelling need" (NPS 2.56) can only be met here;

    e. "additional infrastructure" [NPPF/26] is "necessary" here; and therefore

    f. there is a compelling need for a nationally significant SRFI to be located at the Site. Network Rail's representations to this Examination confirm that position: [A/422].

22. Had that necessary starting point been adopted, it is inconceivable that SADC could rationally have chosen to allocate the Site for PSGV. In the light of it, there is no sound or rational basis for the PSGV allocation.

SRFI Deliverable

23. The Radlett permission has been implemented. Helioslough has exclusive options over the northern access land. It has made major progress with Network Rail to secure detailed sign off through its GRIP process. Once this allocation is deleted there is no reason to suppose that it will not secure the other land required from Tarmac and HCC.

24. As to HCC as landowner, HCC is awaiting the outcome of this Local Plan land allocation process before deciding whether to sell its land holding for the SRFI. Absent a housing allocation it has been repeatedly advised by its own Queen's Counsel that it would have no legal choice but to sell for the SRFI. For the latest public Advice see [A/197][11].

The unlawful and unsound approach of SADC

25. The evolution of the local plan and its approach to this Site is considered in **Appendix 2**. It shows that save for the belated "Re-Evaluations" [A/152; and A/175]– which are considered below - through the whole process from 2017, SADC was (inexplicably) silent on SRFIs (despite the 2014 Decision, NPPF20/25/26/104; NPS2.56).

26. In assessing sites to meet the OAHN and in formulating the indicative publication draft, there was no explicit consideration whatsoever of the implications for the SRFI, the NPS; NPPF104; 20, 25-26 or the sustainability implications of not delivering the SRFI.

27. Very belatedly, SADC sought to fill that hole in the justification for its proposed allocation of the Site through the Re-Evaluations. They appear to proceed on the basis that SADC had a choice to make between competing priorities – housing and SRFI – it could only have one not both [A/167 top three paras].

28. That approach is unsound – legally, factually and in policy terms. The Plan can and should meet the OAHN ***and*** the need for the SRFI ***not*** just one or the other. SADC has thus set up a **false choice**.

29. It is only because of setting up that false choice that SADC could have had any possible rational basis for departing from the 2014 Decision.

30. The adoption of that false choice means that the Plan in respect of the Site is unsound. Either the allocation for housing will be delivered in which case the compelling need for a nationally significant SRFI here will not be met; or the SRFI is built out and the Plan will not deliver the housing necessary for its OAHN. The only way to square this circle is to allocate this land for the SRFI and to undertake an early review of the plan or make main modifications to include other sites for housing.

[11] Just one of a suite of advices it has received on this issue.

31. S6(ix) is thus:

a. **unsound** under NPPF35 because (using the words from that paragraph appropriately adjusted) it is:

i. not positively prepared in that it fails to meet the objectively assessed need either for the SRFI or the housing and is not based on any alternative assessment as to where the need for an SRFI can be met;

ii. unjustified because: (1) it is not an appropriate strategy - any appropriate strategy would necessarily plan to deliver both OAHN and the SRFI; (2) there are no reasonable alternative means to meet the need for an SRFI and there are other reasonable alternative means to deliver the housing; and (3) the Plan is not based on a proportionate evidence base – the evidence base and in particular the conclusions of the SoS in the 2014 Decision all point in the opposite direction to a housing, rather than an SRFI, allocation here. Housing need can be met in a variety of ways - it is (relatively) footloose, the SRFI is not. The facts give rise to an inescapable conclusion that this site must be allocated for an SRFI; and/or

iii. inconsistent with national policy: see NPPF104; 20; 25-26; and 59-72; NPS 2.56 – 2.58. There is no requirement for the OAHN to be met here – but there is a requirement for the need for an SRFI to be met here. The strategic and site-specific policies are inconsistent with national policy;

b. **unlawful** because:

i. it does not identify provision of an SRFI as a strategic priority (s.19(1B)) or contain the required strategic policies (s.19(1C) and NPPF20b). In identifying the strategic priorities, SADC was required to, but did not, have regard to the NPPF and NPS in relation to SRFIs (s.19(2(a)). Had SADC considered the relevant policies correctly in formulating its strategic priorities it would have had no rational option other than to identify provision of an SRFI here as a strategic priority, allocate the site for the SRFI, and/or refuse to allocate it for housing;

ii. in *preparing* it, SADC has not taken into account the NPS and national policy on SRFIs contrary to s.19(2)(a) – the consideration of the SRFI in the "Re-Evaluations" was (as shown in appx 2) an after-thought when the housing allocation was a *fait accompli.* Even then, the belated "Re-evaluations" are a device to defeat the SRFI;

iii. SADC cannot rationally consider a site to be available for housing which is required for the SRFI. So far as Helioslough is aware, there has never

been a case in which a development plan allocates a site for a "footloose" use X when that site has a permission for, and is the only possible site for, a nationally significant development (use Y) for which there is a compelling need. The reason there are no examples is obvious – use X can be met elsewhere and must give way to use Y; and

iv. whilst Helioslough necessarily succeeds as a matter of law well before this point, on examination of the history from 2016 - 2018, it is clear that SADC housing allocation here is designed to frustrate (and has the direct effect of frustrating) the 2014 Decision and the delivery of the SRFI. By analogy with *R v. Warwickshire CC ex parte Powergen* [1998) 75 P&CR 89 [A/147], SADC cannot rationally use its plan making powers to frustrate the delivery of nationally significant infrastructure for which there is a compelling need and no alternative site.

Delivering housing and the SRFI – no inconsistency – both readily achievable

32. As confirmed by SADC in its Re-Evaluations [A/170: Alternative housing strategy], there is no reason why the OAHN and the need for an SRFI cannot both be met. There are sufficient sites (other than this Site) which could appropriately be released from the GB. Thus, the correct understanding here is that SADC has *decided* to (rather than been compelled to) make this an either/or choice.

33. Helioslough has no comment on the other strategic allocations – its concerns are only with the process leading to the proposed allocation of this Site.

34. The detail to support the following headlines is in **Appendix 3**:

    a. the reasons for rejecting the site at North East Redbourn ("**NER**") are misguided because:

        i. the starting point is that there is an "either/or" choice between NER and this Site for housing and that therefore it is a beauty parade between them. That is the wrong starting point – this Site is not available for housing;

        ii. they are based on a significant understatement of the policy position in favour of the SRFI and the harm caused by not delivering it at the Site and a significant overstatement of the problems with the delivery of housing at NER;

        iii. they ignore the key advantage of NER - namely that housing there would help meet the OAHN *whilst also* enabling an SRFI and all its major advantages in the national interest at the Site;

iv. whilst the first part of NER is smaller than Radlett, its allocation would leave around just 845 units to be met right at the end of the plan period (from 2032-33). There is scope for those units to be provided on the remainder of NER or other sites;

v. NER makes less contribution to the purposes of the Green Belt than the Site – if this was a beauty parade, NER should win; and

vi. the alleged benefits of housing at Radlett are significantly overstated and those at NER significantly understated,

b. the reasons for rejecting other sites are misconceived. By way of example only:

i. Smaller sites: SADC has rejected apparently all smaller scale additions to existing settlements irrespective as to the site-specific merits of such additions, the capacity of local infrastructure, the extent to which the sites serve Green Belt purposes and despite NPPF68. As demonstrated by its own Green Belt review, there is ample capacity for such releases through a Site Allocations document: see [Appx 3 para 1 – 3];

ii. Gaddesden Lane [Appx 3 para 7-9] has been assessed as making little or no contribution to most Green Belt purposes. There are no constraints to delivery of 339 units. It is an obviously suitable site for expansion of Redbourn utilising and contributing to local infrastructure. The site in total is of sufficient scale to be considered a strategic site (more than 14ha) but it straddles the boundary with Dacorum (with 13.2ha being in SADC's area). Without any explanation as to how the duty to co-operate has been pursued here for a classic cross-boundary issue, the site is rejected *just* on the basis that it is too small. It appears that there has been a clear failure to address the duty to co-operate in respect of this site;

iii. Windridge Farm [Appx 3 para 10 – 12]– the very large broad area of search was rejected in the GBR. This small part of it does not have similar impacts on the GB to the wider whole and, on SADC's logic, should have been tested against Radlett and NER;

iv. Carpenter's Nursery [App 3 para 13 – 14]- the site was considered as part of one of the larger Green Belt parcels rejected in the 2013 GBR, but it is located in proximity of the green-rated "Land North of St Albans" which extends further north in the Green Belt. HCC stated in the Call for Sites 2018 that there is the potential to accommodate up to 350 dwellings on site if 50% of the site is developed at 30 dwellings per hectare. This 50% could be concentrated on the western part of the site to retain the small gap between St Albans and Sandridge and

concentrate the urban expansion in proximity of the allocated "Land North of St Albans" site and the existing built-up area to the south.

v. Land West of Redbourn: [Appx 3 para 15] the site was not considered to "*significantly contribute to any of the five Green Belt purposes*" in the 2013 GBR but was subsequently removed from the pool of sites identified for development without appropriate justification. The site is deliverable and developable and could accommodate up to 240 new homes at a density of 40 dwellings per hectare.

c. In any event, Radlett is only projected (apparently highly optimistically - see below) to start to deliver housing in 2026. There is ample time for a plan review or a site allocation local plan to make further allocations if necessary.

Even if SADC had to make a choice, its choice is unsound

35. In the "Re-Evaluations", SADC attempts (retrospectively) to justify the choice it has made between the SRFI and housing. That choice is unsound and unlawful for reasons already addressed and for the basic reason that **housing is footloose** (not tied to a specific location) whilst SRFIs have extremely exacting locational requirements which make finding sites to meet the compelling need extremely problematic and the SRFI to serve this sector of London and the South East can only go here.

The Sustainability Appraisal is unsound and unlawful

36. The Sustainability Appraisal ("the SA") is flawed in respect of the Site (and the alternatives to it) for the following reasons:

a. the SRFI was an "existing significant permission" at all the relevant stages of the Local Plan preparation but SADC expressly did not consider it a "reasonable alternative". This is unreasonable as a matter of fact – by definition it is a reasonable alternative given that the SoS has given permission for it after an exceptionally prolonged process;
b. SADC should have taken into consideration the SRFI since the very early stages of the SA. Instead, they tried to remedy the inexplicable omission of the SRFI from the SA 2018 by providing a belated comparison between the SRFI and the PSGV in the SA Report Addendum March 2019. The SA Report Addendum March 2019 tried, without success, to remedy the fundamental structural and procedural flaw of the SA Report September 2018;
c. SADC stated that the presence of a granted planning permission disqualifies certain locations from being considered "reasonable alternatives" for future development (Chapter 4.5 SA Report September 2018) but, inconsistently with that, considered PSGV a "reasonable alternative" notwithstanding the SRFI planning permission for the same site;

d. in addition, the SA should have highlighted the sustainability credentials of the SRFI at the outset and treated that as the baseline for comparison purposes – because all the advantages which justified the 2014 Decision would be lost if it was allocated for housing and this is necessarily highly material to any valid or rational comparative analysis.

Allocation of Park Street Garden Village in any event not sound

37. *Available and Deliverable:* SADC assume [A/169/170] without any evidence or investigation that the PSGV's land is available and deliverable. It is not:

    a. the road access would have to be at the location shown at A/1. During the evolution of the SRFI proposals, HCC was entirely clear that moving that roundabout any further east (and thus avoiding the need to acquire the Gorhambury land) was not possible because of the railway bridge and the requisite visibility and merging distances. The PSGV is thus dependent on securing the Gorhambury land – but Helioslough has an exclusive option over it which it will not give up. PSGV cannot therefore be accessed;

    b. Helioslough has no intention of abandoning the SRFI. It will continue to seek to secure the land for the SRFI by all avenues open to it. There is no guarantee (and no evidence) that it will be available for housing.

    c. The SRFI permission has now been implemented.

38. *Feasibility of HCC's Masterplan*: The HCC's Regulation 19 representation [A/431] seeks to support the PSGV with a masterplanning exercise, but acknowledges that the site has major constraints for residential development and that the masterplan is a high-level exercise, is at a preliminary stage and lacks detail in key areas such as technical and environmental studies. Without that the deliverability and developability of the PSGV cannot be demonstrated. Instead of providing a clear framework for the PSGV, HCC's Regulation 19 representation is forced to admit the intrinsic weaknesses and limitations of the masterplan and, in turn, of the allocation. In particular, the Regulation 19 representation underlines the presence of the following "major site constraints" affecting the masterplan:

    - visibility issues across the site from the railway line;
    - the optimal location for access to the PSGV is in the same position as the proposed access to the SRFI, outside the ownership of HCC;
    - HCC's land adjacent to the A414 has visibility issues;
    - Noise levels from the A414 and M25 may influence the location and capacity of the site for any development;

- Maintaining tree belts and hedgerows necessary to contain any development on site

39. HCC's Regulation 19 representation concludes by noting that "*further technical and environmental studies would be required to verify and develop the masterplan to ensure the policy is deliverable and developable*" and, more importantly, that this work should be undertaken "***if*** *the SRFI planning consent is not, for whatever reason, implemented*". As discussed, the SRFI planning consent has now been implemented, so further work on any masterplan for the PSGV would be academic.

40. *Rail Improvements:* The allocation is predicated on, and dependent on, the delivery of the improvements to the Abbey Line. These improvements are speculative and unsupported by NR. HCC admitted in its Regulation 19 representation that a "major transport infrastructure study" is required to assess the "potential" of the improvements. There does not appear to have been any detailed feasibility study carried out in conjunction with Network Rail. Absent those improvements the core alleged benefit of PSGV will not be delivered and SADC's justification for its allocation evaporates.

41. *Road:* There is no evidential basis to have any confidence that the PSGV allocation can be delivered without severe consequences for the highway network in the locality.

42. *Schools:* there is no suggestion that PSGV is the only possible site for any required secondary school. It does not therefore justify the allocation.

43. *Real Interest?* The lack of any properly worked up or thought through scheme is telling. The serious lack of any real progress on proposals for housing and the formulation of a meaningful master plan, the huge hurdles to delivery and the very long timeframe assumed for first delivery (2026) suggest that the proposed allocation has not been properly thought through. This is a speculative allocation for the purpose of frustrating the SRFI.

The Result

44. The PSGV allocation (S6 (xi)) and all references to it (e.g. at S1) must be deleted. An allocation for an SRFI should be included. Any Plan which does not do so will be unlawful.

45. Alternative housing allocations can be secured through an early review of the Local Plan, Main Modifications to the Local Plan or a new site allocations Local Plan. There is no requirement for the Plan to be withdrawn. The issues raised here need not disrupt progress on the rest of the Plan.

Appendix 1: Chronology including history of Applications/Appeals at Radlett and Colnbrook

27/07/06	First Application for SRFI at Radlett ("PA1")
02/11/06	SADC refuse PA1 on multiple grounds
06/11/07	Inquiry into appeal on PA1 (26 days)
01/08/08	SoS refuses appeal on sole ground of flaws in alternative site assessment [DL58]
09/04/09	Second Application for SRFI at Radlett ("PA2") – identical to PA1 with new ASA
21/07/09	SADC refuse PA2 on substantially same grounds as PA1 despite SoS Decision on PA1
08/10/09	PIM - Inspector advises that re-running arguments when no material change of circumstances risked costs
24/11/09	Inquiry into appeal on PA2 opens (15 days)
19/3/10	Inspector's Report recommending permission be granted – Colnbrook could not rationally be considered a better alternative [IR13.103]. Costs award against SADC.
07/10/10	SoS refuses permission on the basis that it had not been demonstrated that Colnbrook was not a suitable alternative location in the north west sector [DL25]
July 2011	High Court quashes the 2010 Decision.
19/10/11	SoS seeks, and receives, first set of further representations (R1)[12]
29/11/11	SoS seeks, and receives, second set of further representations (R2)
29/03/12	SoS seeks, and receives, third set of further representations in response to NPPF12 (R3)
18/04/12	SoS seeks and receives fourth set of further representations (R4)
19/09/12	SoS considers re-opening Inquiry and receives representations from SADC supporting this (R5 and R6). SADC argue for conjoining reopened inquiry with Colnbrook on the basis that there is a choice between Radlett or Colnbrook for where the necessary SRFI will go
28/11/12	SADC resolves to undertake Green Belt Review

[12] The full rounds of correspondence are not provided but are available on request

14/12/12	SoS decides not to re-open Inquiry
21/12/12	SoS issues minded to grant letter (subject to s.106 agreement signed by HCC being received)
19/02/13	SoS seeks and receives seventh set of further representations (R7)
01/03/13	SADC seek to challenge by way of judicial review the refusal to re-open the Inquiry (refused permission by the High Court twice)
21/10/13	HCC report to committee considering entering into s.106 agreement and alternative uses of land
04/11/13ff	HCC receives Advice on entering in the necessary s.106 agreement. SADC makes representations to HCC re: entering into the s.106 agreement
Nov 13	Green Belt Review reports
9/12/13	HCC considers whether to enter s.106 and to sell land
Feb 2014	GBR Stage 2
14/07/14	**SoS grants permission – "2014 Decision"**
22/08/14	SADC challenge 2014 Decision
Sept 14	Local Plan draft for consultation
14/12/14	HCC considers alternatives to SRFI
13/5/15	High Court dismisses challenge to 2014 Decision, SADC seek permission to appeal and refused twice.
July 2015	Following completion of legal proceedings, Helioslough commences work on preparation of RMAs.
Oct 15	HCC/Segro meet on sale
10/11/15	Petition to HCC re: SRFI
14/12/15	HCC report – seeking to find alternatives uses for Site to avoid sale for SRFI
10/06/16	HCC receive Advice as to duty to sell
04/07/16	HCC report on expressions of interest for housing and duty to sell
17/07/16	SoS refuses Colnbrook appeal
2016	Publication draft LP
2016	Inspector finds failures under duty to co-operate

12/07/17	SADC fail to quash Inspector's conclusion on duty to co-operate
12/09/17	SADC PPC report on how to progress Local Plan and possible responses to higher OAHN
Sept 17	HCC submission to SHLAA Call for Sites raising PSGV
Oct 17	SADC PPC on potential approaches to OAHN
7/11/17	SADC approve Reg 18 Issues and Options and Call for sites

The chronology after this is well known to the Inspectors through the various reports to PPC and the various documents prepared by the Council in response to the Inspector's questions.

Documents to "prove" the above chronology are available on request but there should be no dispute on it and hence it has not been thought proportionate to provide them all at this stage.

Appendix 2: Evolution of the Local Plan

1. Until about 2017, the expected housing provision in this local plan was about 436 per annum.

2. In 2013 a high level Green Belt review had been carried out. The Green Belt in SADC's area was divided into strategic parcels to allow an assessment of the extent to which each contributed to openness and purposes of including land in the GB. Eight strategic sub-areas (within those strategic parcels) which contributed least to GB purposes were identified – the possible Broad Locations of Growth ("BLGs") - and 3 small scale sub – areas.

3. Neither the Site nor North East Redbourn ("NER") had been identified as possible BLGs. Of the other sites to which Helioslough make reference, Gaddesden Lane (SA/SS2) was identified as a small site contributing least to GB purposes.

4. In the consultation draft LP (2014) [A/400] and the Publication Draft 2016, SADC proposed 4 of the BLGs (but none of the small-scale sub-areas) to deliver about 4000 units in the period to 2031. In the light of the 2014 Decision and the failed challenge to it, both versions recognised the existence of the SRFI permission and its implications [see e.g. A/405]. There was no proposed housing allocation of the Site or NER.

5. At a preliminary hearing into the 2016 Version however the Inspector concluded that the duty to co-operate had not been complied with. SADC's challenge to that decision failed in June 2017.

6. Meanwhile those against the SRFI were focussing on persuading HCC not to sell the land to Helioslough [see Chronology]. By late 2016, it was clear that the only potentially available route to avoid HCC having to sell for an SRFI was via securing an alternative allocation here. Thus, expressions of interest for a garden village on the Site were sought and received by HCC in 2016 and the Site was put forward by HCC to SADC in a SHLAA update in September 2017 [A/229] "*if the site is not required for [an SRFI]"*.

7. By 2017, it was clear that the housing requirement would be much higher than previously thought – about 913 per annum.

8. A number of options to meet the increased requirement to 2036 were set out for the planning policy committee in September 2017[13]. It was assumed that all 8 of the formerly identified BLG would be allocated (para 4.11) and a range of other possible options was considered (extension to existing villages, garden suburbs, garden towns and a garden village). An indicative trajectory at that time assumed 250 dwellings per annum from 2026 from a "Garden Village", some contribution from small GB releases

[13] Reports to the PPC are not included in the bundle because they will be well known to the Inspectors and SADC

and very small contributions from neighbourhood plans. Whilst SADC did not state as much at the time, it already had well in mind PSGV at the Site.

9. Throughout 2017, SADC's committees/reports were (inexplicably) silent on the need to provide an SRFI at the site. There was no consideration whatsoever of how to meet the housing and SRFI needs. Minutes of discussions with HCC at the time are (inexplicably) silent on the need to provide an SRFI at the site. Either SADC was inexplicably forgetting about the 2014 Decision re: the SRFI and the former policy formulation to address it, or they were deliberately creating a strategy to defeat the 2014 Decision by ignoring it. As demonstrated below, it was the latter.

10. By January 2018, SADC had decided that any major garden village release from the GB would have to deliver "unique" contributions to public services (e.g. public transport) and "unique" infrastructure and other benefits – criteria which were self-evidently formulated with the purpose of applying to and benefitting PSGV (the branch line and the country park).

11. An Issues and Options paper and call for sites was issued in January 2018. The Issues and Options paper was inexplicably silent on the need for an SRFI at the Site – ignoring the 2014 Decision, the previous draft policy formulation for the site; and the implications of not providing this nationally significant SRFI here.

12. In response to the call for sites in early 2018, HCC formally submitted its proposal for a housing allocation of the Site [A/242] which it had been promoting to defeat the SRFI (see below). Its proposed allocation was dependent on land over which it had no control and over which Helioslough has control. It was wrongly asserted that HCC could deliver.

13. In a letter dated 8th March 2018 [A/407], Helioslough explained the significance of the 2014 Permission in objecting to the HCC proposal. There has never been any response to that letter although (as shown below) it appears to have triggered an attempt by SADC to justify retrospectively housing on this site in preference to an SRFI through the Re-Evaluations.

14. In March 2018, the response to the Issues and Options consultation was reported and a site selection process was agreed. It used a RAG (red, amber, green) approach with the Stage 1 being based on contribution to GB purposes. Any site judged to have a "higher impact" on GB would be rejected. That term was not defined. Stage 2 was to consider overriding constraints on development and availability. Stage 3 was to consider all benefits and disbenefits in the round to form an overall judgment.

15. In May 2018, the results of the site ranking exercise were presented in a report to the 22nd May meeting of the PPC. The key points from the Report are as follows:

a. at stage 1, NER and Radlett were the only two new locations which were considered. The judgments reached by SADC at this stage are disputed and are addressed under the site specific issues in e.g. appendix 3 and Helioslough's reg 19 representations. A number of small sites which in 2013 had been identified as making least contribution to GB purposes were not taken forward – all small sites being automatically treated as "red";

b. the analysis of the Site referred to the existing SRFI permission. It was concluded that 2500 units would have "broadly the same" impact on the GB (at Stage 1) as the SRFI. There was said to be no reason to change the amber for GB by reference to the SRFI permission;

c. at stage 2, on "over-riding constraints to development", the Site inexplicably scored a green – no constraints. There was no consideration of the implications of the loss of the nationally significant SRFI, the inability to meet the need elsewhere, NPPF104/20/25-6 or the NPS. In accordance with basic principle, the Site should inevitably have been under ruled out at that stage.

d. There was no consideration of deliverability of the part of the Site not owned by HCC. There are insuperable obstacles to delivery of the necessary access because Helioslough has exclusive options over it and will not release those options.

e. At stage 3, given that the criteria on benefits had been pre-set to favour the allocation of the Site it is no surprise that the Site scored well at this stage. The weighting, the judgements reached and overall balancing were flawed. The benefits of the SRFI were not taken into account and the impacts of not delivering the nationally significant SRFI were not taken into account.

16. It is thus clear that the decisions on the Site were made and it was included in the emerging Local Plan (and NER also rated amber, other GB options rejected and small GB sites excluded) ***before*** any consideration of the implications for and of the SRFI. As we shall see that consideration was an afterthought.

17. At the meeting:
    a. the March 2018 letter from Helioslough was tabled raising all these points but there was (surprisingly and inexplicably) no comment or discussion on it;
    b. Hogan Lovells ("HL") on behalf of Helioslough had written in immediate response to the publication of the report for the 22nd May meeting of the PPC. The 21st May letter [A/410] explained the fundamental flaws underpinning the proposed allocation. Inexplicably it was not referred to the 22nd May committee;

c. members resolved to move forward with the process outlined in the report including the indicative local plan which even at that very early stage showed the site being allocated as a garden village - it was a fait accompli;
d. at the meeting of 22nd May and for *the first time* and "following legal advice" (no doubt in response to Segro's letter of March 2018) it was noted that the allocation of this site would require a fresh re-evaluation on the relative merits of housing and the SRFI (see HL letter of 30th May to Mr Briggs) and para 4.16 of the Report. The fundamental issue concerning the appropriateness of this site for housing was thus to be addressed for the first time in the local plan process – after the methodology and preferred approach had been confirmed and after the Site had been included as an allocation in the far advanced draft.

18. The "Draft Park Street Broad Location - re-Evaluation [sic] 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" ("the Draft Re-Evaluation") was then produced [A/152]. The position there set out was expressly subject to revision – "significant potential for revision" especially given the likely emergence of a new NPPF. "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".

19. The June 2018 committees were to approve the publication draft Local Plan. At the 12/6/18 meeting, the HL letters were tabled and noted but (inexplicably) not the subject of any discussion. The Draft Re-Evaluation was included in the report but there was no discussion of it. The meeting adjourned to consider only the pro-formas returned by the landowners of the proposed sites. At the 18/6/18 meeting there was no discussion of the HL letters or the Draft Re-Evaluation. The Publication draft was silent on the SRFI. The Sustainability Appraisal Note for Council was silent on the SRFI and its analysis of factors was silent on the implications of not delivering the SRFI.

20. The essential point is this. In assessing the sites and in formulating the indicative publication draft, there was no explicit consideration whatsoever of the implications for the SRFI, the NPSNN or sustainability of not delivering the SRFI and no consideration of the disbenefits of allocating this site for housing by virtue of the loss of the SRFI. It was only at the last minute that an attempt was made to fill that hole in the justification for the allocation of the site. The Draft Re-Evaluation is fundamentally flawed at every point.

21. On 18th June, SADC received HCC's proforma on the site. It asserted confidence with site assembly. That is not understood – no approach to Helioslough has been made and their interests are vital to secure access to the proposed residential site. Delivery of the rail link and a new station was emphasised.

22. The publication draft and its SA were then worked up and published in September 2018. HL and RPS repeated the fundamental issues with the proposed allocation in further representations.

23. In March 2019, SADC received but made no comment on the updated re-evaluation on the SRFI versus housing [A/175]. In the summary of representations the issue raised was wrongly summarised as limited to the Plan not being positively prepared as it disregards the SRFI permission - the answer to which was only that:

> ***"Site selection is firmly based on comprehensive GB work which identified the allocated Broad Locations. The main site owners has promoted the site as available and deliverable for housing. Considerations have taken into account the existing planning permission for a alternative use and other relevant factors"***[14]

[14] See schedule of responses to consultation on policy S6(xi).

Appendix 3: Flawed approach to Other Housing Sites – Meeting the OAHN not at the Site

1. SADC has failed to justify why the choice of allocating growth in the 8 BLGs has not been supplemented by the allocation of smaller sites within smaller sub-areas that were assessed as making the least contribution towards Green Belt purposes.

2. SADC should have recognised that existing communities and settlements can have significant development capacity in association with related infrastructure investment, and that the creation of "new communities" in large sites is not the only, or here, the appropriate, option.

3. An adequate review of smaller sites would have allowed SADC to pursue broad locations for development, allocated the remaining housing growth in smaller sites and avoid the allocation of housing at the Site.

4. More specifically, the housing allocated in the PSGV (**2,300 dwellings**) of which only approximately **1,700** is intended to be delivered in the plan period, could readily be split and redistributed in smaller sites which have been omitted on Green Belt grounds without an appropriate Green Belt review of each of them. The more obvious alternative options for housing allocation include the site at North East Redbourn ("**NER**"), the Land at Gaddesden Lane, Redbourn ("**Gaddesden Lane**"), the Land at Windridge Farm ("**Windridge Farm**"), the land to the rear of Bridge Cottage ("**Carpenters Nursery**"), and the Land West of Redbourn ("**West Redbourn**").

5. The **NER** alone could accommodate **825 dwellings** in a village extension that would follow the existing pattern of development and could include services, care, education and community facilities. Contrary to what was suggested by SADC in the May 2018 PPC Report, the allocation of NER would not be, and does not need to be, a "substitute" to the allocation of the PSGV, but it would be one of the alternative sites which, collectively, would allow SADC to meet its OAHN and deliver the SRFI. With it, there would only be a requirement for about another 845 units in the plan period.

6. The Green Belt review prepared by the owners of NER and submitted in the Reg 19 representation demonstrates that the sites makes little or no contribution to the purposes of the Green Belt. Furthermore, Helioslough's Reg 19 representation demonstrates that the score of the PSGV in the SA should be downgraded, resulting in NER scoring higher in sustainability terms than PSGV. Taken together, the evidence available to SADC and the Inspector clearly shows that the NER has the credentials to be allocated for housing through a Main Modification of the Local Plan. Once the benefits of the SRFI are included in the analysis, the case for NER becomes overwhelming.

7. SADC's GBR in 2013 considered that **Gaddesden Lane** made limited or no contribution towards the five Green Belt purposes and could accommodate **339 dwellings**. However, the site was given a "red" rating at Stage 1 of the 2018 assessment because it marginally fell below the 500 dwellings or 14 hectares threshold required to be considered a "strategic site" due to it being partially within Dacorum Borough Council. In total it is larger than 14 ha. There is no evidence of any attempt by SADC to discuss this cross-boundary issue with DBC and why the findings of the 2013 GBR were ignored. The fact that it fell just below the threshold appears to have been fatal to its allocation. That is an unsound approach and contrary to the duty to co-operate.

8. The Reg 19 representations by the landowner show that the Gaddesden Lane site is a large single arable field in single ownership with existing reserved highway accesses and that no overriding issues would prevent its development within the plan period.

9. **Windridge Farm** was identified in the St Albans Emerging Core Strategy (July 2009), as a Proposed Strategic Housing Site (Area of Search 1) for the period to 2026 with an estimated potential to accommodate **between 1,000 to 1,200 dwellings**. The site was also included in the 2009 Strategic Housing Land Availability Assessment (SHLAA). Despite this, SADC restarted the allocation process afresh with all previous sites dismissed, including Windridge Farm. The starting point for SADC for identifying which large sites should be allocated for residential/mixed use development was the 2013 GBR, which itself was not subject to consultation. Only those parcels that contributed least to the purposes of the Green Belt were assessed further. However, if either then or now, Windridge Farm had been subject to a *site specific* rather than parcel wide green belt assessment in the same way as the green and amber sites had been, it would have been recognised that it had did not have such impacts on the Green Belt as to rule it out.

10. Whilst the site makes a partial contribution to the quite substantial gap between Hemel Hempstead and St Albans of 3.8km, it has strong boundaries on all sides including to the west towards Hemel Hempstead in the form of the A414/M1 junction, the A4147 and established woodland which would prevent further sprawl in this direction. The narrow gap of 0.2km between St Albans and Chiswell Green would not be compromised by development in this location given the existing intrusive nature of the A414 which forms the southern boundary of the land. The 2013 GBR also acknowledges that land adjoining St Albans has some urban influence.

11. The Regulation 19 representation submitted by the site's land promoter contains a detailed Development Framework Document setting out the vision, development parameters and expected housing numbers achievable on site through a masterplan

which would deliver around 1,200 homes, children play areas and sport pitches, a primary school, a new local centre and highway improvements. This detailed document demonstrates that the site is capable of accommodating a significant portion of SADC's housing needs during the early stages of the plan period in an urban extension of St Albans.

12. Hertfordshire County Council stated in its 2018 Call for Site submission that **Carpenters Nursery** could accommodate approximately **350 dwellings** if 50% of the site is developed at 30 dwellings per hectare. The site was considered as part of one of the larger Green Belt parcels (GB37) in the 2013 GBR. Again, the parcel wide assessment meant that the site specific characteristics were not assessed. That flaw then impacted the 2018 exercise too. The site lies directly to the east of the green-rated site, Land North of St Albans, which extends further north towards Harpenden than site 606 and is now identified as "North St Albans Broad Location" in Policy S6 (vi).

13. To avoid compromising the gap between St Albans and Sandridge along St Albans Road, there is potential to reduce the size of the site by moving the eastern boundary parallel with the garden centre. This would have limited impact on the Green Belt given the potential allocation of Land North of St Albans and the railway line to the west, in addition to the existing built development to the south of the site.

14. **West Redbourn** was not considered to "*significantly contribute to any of the 5 Green Belt purposes*" in the 2013 GBR but the site was subsequently removed from the pool of sites identified for development in the Local Plan without appropriate justification. Taking into account the existing constraints and opportunities on the site, the site is considered to have potential to deliver approximately **240 dwellings** at a density of 40 dwellings per hectare. According to the representor of the site's owner, the site is a deliverable and developable source of housing land with an expectation of completions achievable in the Plan Period.

15. Taken together, the sites mentioned above could accommodate between approximately **2,750 and 2,950** dwellings, thus allowing the delivery of housing required by SADC's OAHN within the plan period without the necessity of allocating housing at the Site and prevent/scupper the delivery of the SRFI.

Appendix 4: Transport issues relating to Park Street Garden Village

1. The location of the Site means that the existing transport connections and sustainable transport choices are limited for a garden village. The A414 dual carriageway to the north, the Midland Main Line railway to the east and the M25 to the south all form significant barriers for the range of transport connections required for a permeable and sustainable development. The ability to provide improved connections across each of these constraints is limited and potentially financially challenging.

2. With these constraints and the current Green Belt designation there are few existing public transport services in the area, with these limited to hourly buses to the west of the site and the hourly Abbey Line train service.

3. The only specific public transport proposal in the PSGV policy is for a peak period improvement to the Abbey Line service. Even if such a service is provided, this provision will only provide a very limited public transport function because it is located remotely from the residential development site, and the location of the Abbey Line station in St Albans is neither near the mainline station nor the city centre.

4. Given these circumstances it is unclear how the provision of a suitably located park and rail facility (*Policy S6 xi 14*) will support a sustainable development both in terms of attractiveness for users and vehicle emissions or how it justifies exceptional circumstances.

5. Given the limited public transport proposals suggested in the PSGV policy it is clear that there will need to major investment for bus services. As a minimum these will need to be to St Albans and use roads which have limited potential for bus priority.

6. A development of a minimum of 2,300 units will generate a significant volume of traffic and it has been shown that the PSGV will result in more traffic than the SRFI both at peak times and over 24 hours. This will be most acute in the AM peak hour (+ 81.5% as against the SRFI).

7. The SRFI was granted consent following detailed consultations on a transport strategy and mitigation which ensured that there was no adverse impact on the local highway network. This ensured that there was suitable capacity for the SRFI although additional capacity was limited.

8. Since the consent was granted HCC have produced the A414 Corridor Study which notes that '*Severe traffic congestion is experienced at different points along the corridor'.* It follows that the additional residential traffic volumes will be on a highway network with severe traffic conditions. The priorities for the A414 Corridor Study for

Segment 6 include maintaining the dual 2-lane carriageway standard on existing dualled sections but not seek an increase in highway link capacity. Hence it can be concluded that the residual impact with PSGV would be to add to the severe conditions on the A414.

9. Unlike the SRFI, the PSGV will generate more traffic movements on local roads, particularly the A5183 into St Albans, and to a lesser extent on the High Street in London Colney.

10. Given these points and as set out above, the SADC Sustainability Appraisal has been unrealistically optimistic in its grading of Greenhouse Gas Emissions, Air Quality and Sustainable Locations objectives of the PSGV. It is of course to be noted that it omits the sustainability advantages of an SRFI especially on GHG.

11. It can be concluded that the PSGV is unable to deliver the attributes of a garden village and at the same time it will generate a significant volume of traffic on a busy local road network. This is in contrast to the SRFI, which can provide a targeted transport strategy which meets the need of the specific attributes of such a facility without such adverse impact on the local highway network.

12. In relation to access, Hertfordshire County Council's agents acknowledged in their Regulation 19 representation that "*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*" and that the land on which the proposed main access to the site is proposed (the A414 access) is "*in the ownership of the Gorhambury Estate*". Helioslough has an exclusive option over that access land.

13. It is also worthy of note that the masterplan proposed by HCC in their Regulation 19 representation correctly <u>does not</u> attempt to suggest that the main vehicular access from the north to the PSGV could be further to the north east closer to the bridge. The provision of a suitable junction for 2,300 units on land outside the Gorhambury Estate is simply not possible. The limited land frontage owned by HCC means that it is not possible to provide an all movements junction with the A414. It might be thought that the current layby, which incorporates the bridleway entrance, could be used as a left in / left out junction. However, this would have serious implications on traffic capacity as up to 50% of arriving or departing vehicles would need to make U turns at the nearby congested junctions, thereby further reducing the capacity of the A414. In addition, as HCC highways made clear through the SRFI planning process, there is no ability to provide a suitable and safe physical access junction at the north east because

of the existing alignment of the A414, and particularly the railway bridge to the east. This means that most safety standards for approaches to a junction cannot be met; for example, the substandard horizontal and vertical approaches from the east are fixed by the bridge and there are substandard approach visibilities, which are particularly relevant on a road with a speed limit of 70mph.

Appendix 5: Feasibility of Abbey Line improvements

1. The proposals for upgrading the St Albans Abbey branch line to support housing development on and around the Site produced the following response from Network Rail in their 2016 presentation to local stakeholders, which noted:

    - Current journey times along the line do not allow for a 30-minute service frequency;
    - To achieve an enhanced service for all remitted options infrastructure interventions are required;
    - If Hertfordshire CC wish to progress the scheme to feasibility (GRIP 2) this will be as a third-party funded enhancement (for a cost of £257k);
    - Costs for the train service enhancements as proposed would range from £15m to £75m;
    - A full business case would need to take into consideration a range of factors including: rolling stock implications, any increase in operator subsidy or profit, agreement of Track Access Rights, DfT and train operator agreement, planning consents, revenue allocation, safety considerations and wider capacity utilisation on the West Coast Main Line.

2. The local stakeholders appear to have excluded any Network Rail involvement in, or validation of, a subsequent 2019 feasibility study into the possibility of upgrading Network Rail's infrastructure on the branch line. The report concludes that:

    - There is an 80% probability of the capital costs of this option being <£8.6m;
    - The value of the scheme benefits being sufficient to compensate for the capital expenditure, but not the operating costs;
    - A two-pronged strategy is recommended - seeking ways of reducing the operating costs, and other sources of funding income. Particularly promising for the latter are said to be potential development gain monies from a large local housing development at the Site;
    - However, the status of this passing loop project needs to be compared to other local transport ideas, also designed to address the worsening transport problems of the area;
    - The next stage of technical work might also aim to include open dialogue with Network Rail.

3. It is not understood on what basis it can now be said that the necessary Abbey Line improvements to support the PSGV allocation can be delivered.

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.
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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.
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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

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.

Benefits of Housing

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…

Deliverability / developability of the site for housing

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.