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Our Ref A/DAC/Strife/731/01
Your Ref APP/B1930/A/09/2109433

19 December 2011

Dear Mr Howsham,

**RULE 19 TOWN AND COUNTRY PLANNING (INQUIRIES PROCEDURE) (ENGLAND) RULES 2000
SECTION 78 TOWN AND COUNTRY PLANNING ACT 1990
LAND IN AND AROUND FORMER AERODROME, NORTH ORBITAL ROAD, UPPER COLNE VALLEY,
HERTFORDSHIRE
APPLICATION REF 5/09/07/08**

We write on behalf of STRiFE Ltd ("STRiFE") in response to your letter of 29 November 2011. As invited, we wish to comment on the documents listed at §2(a)-(c) of your letter ("the New Policy Documents"). We do not seek to comment on the majority of the representations annexed to your letter since, we hope, our position on the material issues is already clear. However, we do wish to comment on certain aspects of the representations made by Network Rail and the Department for Transport ("DFT").

The New Policy Documents

1. The New Policy Documents do not seek to replace, but merely to update, the former Strategic Rail Authority's Strategic Rail Freight Interchange Policy - March 2004 ("the SRA Policy"), which therefore remains a core material consideration. The New Policy Documents express the same, strong, policy support for SRFIs with the same aim (namely achieving modal shift from the road to the rail network). In updating the SRA Policy therefore, and not replacing it, it is plain that the Government has not substantively changed it.
2. Notably, nothing in the New Policy Documents identifies any greater need for SRFIs, or any need for more SRFIs, than supported by the SRA Policy. There is no statement which contradicts the support previously expressed, for example, for three to four SRFIs to serve London and the South East, upon

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which basis the Secretary of State determined the second appeal and by virtue of which Radlett and Colnbrook have always been seen as alternatives, meeting the same need, such that an alternative sites assessment was an essential, indeed determinative, part of the decision-making process.

3. Further, nothing in the New Policy Documents offers differential support as between any potential sites to serve London and the South East, for example between Colnbrook and Radlett. As with the SRA Policy, any policy support expressed for the development of SRFIs within the New Policy Documents is equally applicable to all potential SRFI sites, as are all of the locational and operational requirements for SRFIs.
4. Finally, nothing in the New Policy Documents changes the broader planning policy matrix within which all planning applications for SRFIs must be considered and determined. The same planning policy considerations therefore apply now as they did when the Secretary of State made his previous decision, including with regard to the Green Belt and/or any Strategic Gap.
5. In all of the above regards, therefore, the New Policy Documents do not constitute a material change in circumstances at all.
6. We note, however, that the context within which the New Policy Documents have been published is the expressed concern that there is a need to unblock the stalled development of SRFIs, especially in the South East Region where only one has been granted planning consent. Three points need to be made in this regard.
7. First, some of those applications, including at Radlett, have been refused by the Secretary of State himself after a very careful weighing of the planning balance, including the unchanged policy support for SRFIs to serve London and the South East and the planning harms occasioned by the development of an SRFI at a particular location. It would, self-evidently, be absurd if the fact that the Secretary of State has decided to refuse consent for an SRFI at a particular site, having carefully weighed the necessary, and unchanged, planning balance, could now become a reason to grant it.
8. Second, the New Policy Documents restate (though do not change) the policy support for SRFIs to which the Secretary of State will have regard when considering an SRFI application on appeal from a refusal by a Local Planning Authority (such as, it is to be expected, in relation to the Colnbrook application). The New Policy Documents therefore re-emphasise that the Secretary of State will scrutinise carefully the refusals of Local Planning Authorities in the light of the restated policy support for SRFIs.
9. Third, and of core importance in the unblocking of stalled development of SRFIs, is that where planning permission has already been granted for an SRFI but it has not been delivered, for example at Howbury, the New Policy Documents provide new support for Government tools to be exercised to secure delivery. That is, of course, not to change the planning decision-making process or applicable planning policy since permission has already been granted. Rather, what is being contemplated is the use of other tools, such as economic tools, to achieve viability and deliverability.
10. For all of these reasons the New Policy Documents, while constituting an important tool in delivering SRFI development, do not constitute a material change of circumstance in planning terms capable of supporting any different decision to that previously made by the Secretary of State in this case.

Network Rail's letter of 1 November 2011

11. We note that, in its letter of 1 November 2011, Network Rail commented critically on the Steer Davies Gleave Report commissioned by St Albans City & District Council which had argued, in effect,

that the RUS favoured Colnbrook over Radlett. However, it is important to note what conclusions were ultimately reached by Network Rail: that *"each site has its own advantages"*; that, whilst the Steer Davies Gleave Report drew accurately upon the RUS, Network Rail believed *"a more neutral view should be drawn from the RUS"*; that *"both sites will face rail capacity challenges over time"*; that *"enhancing the loading gauge at the south end of the MML would be a major challenge"* in respect of Radlett; and that whilst this was *"a particular issue for primary distribution traffic to Radlett"* it *"need not be insurmountable."*

12. Three points need to be made with regards to the above. First, the above conclusions do not offer any support to Radlett over and above Colnbrook; if anything, they offer the opposite. Second, nothing in Network Rail's letter is inconsistent with the conclusions reached by the Inspector following the second Inquiry, or the decision of the Secretary of State when refusing permission at Radlett. Third, as before, Network Rail does not state that the Radlett proposal will be accessible to sufficient trains and cannot do so since the assessment under its Governance for Railway Investment Projects process is at such an early stage¹.
13. Nothing, therefore, in Network Rail's conclusions constitutes or evidences a material change of circumstance capable of supporting any different decision to that previously made by the Secretary of State.
14. We note, also, that Network Rail compares the markets which might be served by Radlett and Colnbrook and appears to contend that there is room for both Radlett and Colnbrook to be developed as SRFIs. However, the SRA Policy support is for three to four SRFIs to serve London and the South East and is unchanged by the New Policy Documents. The Secretary of State has previously, and consistently, decided (in agreement with Helioslough's approach) that this means that one SRFI is needed to serve the North West Sector and that Colnbrook and Radlett are alternative candidates to meet that need. That, indeed, is why the alternative sites assessment was a determinative issue in both applications at Radlett. Nothing has changed to justify an alternative approach now. Certainly, such a view is not supported by any statement within the New Policy Documents.
15. Furthermore, it is important to keep in mind that Network Rail is not responsible for making or applying planning policy, or for deciding whether planning permission is to be granted for an SRFI at any proposed site, taking into account all material planning considerations, including Green Belt policy and the need to demonstrate very special circumstances before inappropriate development on so large a scale can be granted consent. That is the exclusive province, on appeal, of the Secretary of State; and through the decisions made in respect of Radlett, the Secretary of State has decided that, in proper application of Green Belt policies, only one of the Radlett or Colnbrook alternatives is to be permitted.

DFT's letter of 11 November 2011

16. Finally, we turn briefly to the DFT's letter of 11 November 2011, in which it refers to Network Rail's analysis of the Steer Davies Gleave Report and in which it confirms its ongoing policy support for SRFIs as expressed in the November 2011 Policy Guidance. We have dealt with these issues above and do not repeat them here. We merely re-emphasise that these documents do not constitute material changes of circumstance capable of supporting any different decision to that previously made by the Secretary of State. The DFT, rightly, does not seek to use them in this way and explicitly states that it is not for it to comment on Helioslough's specific application.

¹ For reasons expressed in previous correspondence STRiFE is firmly of the view that the Secretary of State can have no confidence that the Radlett proposal will be accessible to sufficient trains.

Conclusion

17. The Secretary of State has scrutinised Helioslough's proposal with great care on two occasions and has rightly rejected it. There is no basis, either in the New Policy Documents or elsewhere, to justify a volte-face by the Secretary of State so as to permit such an unsuitable development.
18. It is to be hoped that the New Policy Documents may assist the unblocking of the development of the permitted SRFI at Howbury, and perhaps encourage other proposals in suitable locations to serve London and the South East. However, the position in relation to Helioslough's proposal remains as before: it is in competition with a proposal at Colnbrook which is preferable because of its lesser scale, greater efficiency and the additional advantages we have set out in previous correspondence.
19. Although the Secretary of State's reasoning on the Strategic Gap issue in the 7 July 2010 Decision Letter was successfully challenged, his substantive judgment that the Helioslough proposal should be rejected on the basis of the potential Colnbrook alternative was, and remains, sound.
20. We therefore urge the Secretary of State once again to refuse planning permission for the Helioslough proposal.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Wayne Leighton', with a long horizontal flourish extending to the right.

WAYNE LEIGHTON