

Planning Policy and Projects

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Christine Symes

Department for Communities and Local Government

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3rd October 2012

Dear Madam,

Appeal by Helioslough Ltd

Land in and Around Former Aerodrome, North Orbital Road, Upper Colne Valley, Hertfordshire

Application REF 5/09/07/08

With reference to your letter of 19th September asking for comments on the Secretary of States proposal to reopen the Radlett inquiry and conjoin it with the SIFE inquiry.

It is very difficult to respond fully to this consultation due to the lack of information about exactly what is being proposed and the lack of any proper explanation as to how decisions have been made to date.

Nevertheless, the Council's preferred solution would be for Goodman to withdraw its appeal. Failing this, it would like to see the SIFE inquiry rescheduled as quickly as possible. The Council considers that there is no justification for reopening the Radlett appeal, but if this does happen, the inquiry should be strictly limited to the question of alternatives in order to avoid unnecessary delay and expense.

Since the only justification for postponing the SIFE inquiry was on the grounds of efficiency and the only justification given for reopening the Radlett inquiry and conjoining it with SIFE is to create a more coherent and consistent decision making process, it is considered that these should be the tests that should be applied to the Secretary of State's proposal.

It appears, however, that the Planning Inspectorate's flawed decision to postpone the SIFE inquiry has led to a much more inefficient and expensive inquiry process and that the proposal to reopen the Radlett inquiry and conjoin it with SIFE will make this even worse and lead to a less coherent decision making process.

The Council does not understand why Goodman was not encouraged to withdraw the SIFE appeal as it proposed in its letter to the Secretary of State on 4th September. This would then have allowed the Secretary of State to determine the Radlett appeal in the knowledge that Goodman were not intending to promote SIFE in the short term.

Since much of the current difficulties appear to stem from the decision to postpone the SIFE inquiry, it is necessary to examine this in some detail.

Postponement of the SIFE Inquiry

The need to postpone the SIFE was considered at the Pre Inquiry Meeting on 20th August. Goodman and the Council made detailed legal representations setting out why the inquiry should or should not be postponed. These arguments were considered by the Inspector who concluded in his notes published on 24th August that, on balance, there was no reason to delay the opening of the inquiry.

It can only be assumed that PINS and the Secretary of State were happy with the Inspector's conclusion since they did not intervene to prevent all of the parties from preparing their Proofs of Evidence which were due to be exchanged on 10th September.

Both PINS and the DCLG have confirmed that they received no further representations about a possible postponement until Goodman sent its letter to the Secretary of State on 4th September. This short letter provided no new information but contained the threat that it would be forced to withdraw the appeal by noon 7th September unless it heard by then that the inquiry was postponed.

It is not clear how this constituted a threat or why the Secretary of State would wish to stop an appellant from withdrawing its appeal if it wanted to. Nevertheless just before the noon deadline on the 7th September the Planning Inspectorate agreed to postpone the SIFE appeal on the grounds that it could not proceed efficiently if it started on the 9th October.

No further explanation was given for this decision which appears to be illogical since it will result in a more inefficient inquiry process. If the Inspectorate had not agreed to the postponement, Goodman would presumably have withdrawn the appeal. Not only would this mean that there would be no need for the SIFE inquiry, the Radlett one could have concluded without the need to consider Colnbrook as an alternative site.

It is recognised that as a result of the postponement the SIFE inquiry cannot go ahead as planned but the Council considers that the most efficient way to proceed is to reschedule it as soon as possible, even if the Secretary of State has still not made a decision on Radlett.

It is not considered that this would cause any significant difficulties. The Secretary of State will be making the final decision on both appeals and will be able to ensure that there is an overall coherent and consistent decision making process. The SIFE Inspector did not consider that the Inquiry needed to be postponed and all of the other parties were content to proceed.

The only exception was Goodman who appears to be in some difficulty in making its case. The proposal to reopen the Radlett inquiry and conjoin it with SIFE appears to have put Goodman in a worse position than when it previously threatened to withdraw its appeal. We are still in the "unsatisfactory environment" that Goodman complained about in its letter of 4th September in that we don't know what the Secretary of State's decision will be with regard to Radlett, we don't know on what basis the inquiry will be conducted and we don't know what the timetable will be. At the same time the proposed arrangements will add substantially to the length of the inquiry and the costs incurred by all parties.

As a result, assuming Goodman do not decide to withdraw it's appeal, it is not considered that there are any reasons why the SIFE inquiry should not take place as originally planned.

If the SIFE inquiry has to be conjoined with Radlett, it is important that it takes place in the most efficient way possible.

Radlett Inquiry

The Borough Council did not take part in either of the public inquiries into the Radlett proposal. It only became involved when the Secretary of State disagreed with the Inspector's recommendation and refused the Radlett proposal on the grounds that it is possible that a proposal for a SRFI at Colnbrook could be less harmful to the Green Belt.

The Council disagreed with this conclusion and provided evidence to the Judicial Review which resulted in the Secretary of State's decision being quashed by the High Court.

The Secretary of State has subsequently sought written representations on matters related to the Radlett appeal which have included the Council as an interested party.

Having sought representations on the implications of the publication of the guidance note on Strategic Rail Freight Interchangers, the Secretary wrote to all of the interested parties on 1st February stating that there were no substantive issues which would require the Inquiry to be re-opened and he was in a position to re-determine the appeal on the basis of all of the evidence and representations now before him.

The Secretary of State indicated that he would issue a decision on or before 5th April, but on 29th March sought further written representations regarding the implications of the National Planning Policy Framework. This made it clear that comments must be confined to issues related directly to the Framework and that a decision would be made on or before 13th June.

It should be noted that the Secretary of State had not sought any information about the SIFE appeal or the relative merits of the two proposals and gave no indication that there was a need for any more information or a need to reopen the inquiry.

As a result the Council was surprised that in his letter of 19th September the Secretary of State announced that he no longer considers that it is appropriate for him to determine the Radlett appeal on the basis of the evidence and representations which were before him. The letter refers to the fact that the SIFE appeal had been submitted in March 2012 and that a decision on the Radlett proposal and the reasoning for that decision may have a significant bearing on his determination of the Colnbrook proposal.

It should be noted that the SIFE appeal was lodged on 5th March and so the Secretary of State would have been aware of the SIFE appeal when he previously sought written representations on other matters.

It is not clear what additional information the Secretary of State may need now, but he still has the opportunity of seeking further written representations from the interested parties without having to re-open the inquiry. This may lead to more delay but is considered to be a much

more efficient way of dealing with any outstanding matters rather than re-opening the inquiry. The Secretary of State has previously concluded that there were no substantive issues which would require the Inquiry to be re-opened and so it is considered necessary for him to explain the reasons for him changing his mind before putting all of the interested parties to the expense of having to appear at a public inquiry.

The proposal to conjoin Radlett with SIFE will make it even more expensive and complicated for the parties who were previously just going to attend the SIFE inquiry. The Inquiry will be much longer, involve multiple parties and presumably will have to be held in two locations. As a result it is not clear how this will be a more efficient process than holding an inquiry just for SIFE.

If a conjoined inquiry is to take place it is important that the scope is clearly defined so as to minimise the amount of time it will take. The Radlett proposal has already been the subject of two public inquiries and successive Inspectors and Secretaries of State have concluded that there are no reasons for refusal other than the question of alternative sites. As a result there should be no question of the reasons for refusal or the Inspector's and Secretary of State's conclusions on these being reconsidered.

Since the Radlett Inquiry is being re-opened it is essential that it is heard by the same Inspector who is familiar with all of the evidence and so there will be no need to present the evidence all over again.

Although all of St Alban's reasons for refusal have been fully considered at two public inquiries, Slough's reasons for refusal have not. Whilst one of the Council's reasons for refusal is that Radlett is a better site than SIFE, there are other substantive reasons for refusal which are not dependent upon Radlett being a better alternative. As a result it is important that the conjoined inquiry allows the opportunity for all of the issues relating to SIFE to be fully considered. It is also important that Colnbrook residents, who have been excluded from this consultation process, are given every opportunity to participate. As a result it is essential that a substantial part of the inquiry should be held in Slough.

Conclusions

The Borough Council considers that the Planning Inspectorate's decision to postpone the SIFE inquiry was flawed and resulted in interested parties carrying out abortive work and incurring wasted costs which cannot be recovered. There was no reason to take such a decision just to prevent Goodman from withdrawing its appeal. It is not considered that the decision to postpone will result in a more efficient inquiry process.

The Council also considers that the proposal to re-open the Radlett Inquiry and conjoin it with SIFE is completely unjustified. This will lead to an even more inefficient inquiry process and will not lead to a more coherent or consistent decision making process. The Secretary of State has not given any reasons as to why he cannot rely upon the evidence which is before him, what additional information he requires or why he couldn't continue deal with it with written representations.

As a result there is no justification for taking this action which will put all of the interested parties to considerable inconvenience and expense.

If a conjoined inquiry is to take place it is essential that it is organised in such a way as to make it as efficient as possible so as to minimise costs. This would include appointing the same Inspector who held the Radlett Inquiry, limiting the scope of the consideration of the Radlett proposal to the issue of alternatives and providing the opportunity for a full examination of the SIFE reasons for refusal.

Yours faithfully

A handwritten signature in black ink, appearing to read 'P. Stimpson', with a long horizontal line extending to the right.

Paul Stimpson
Head of Planning Policy and Projects