



Chris Howsham

From: Erica Mortimer [erica.mortimer@cgms.co.uk]
Sent: 11 November 2011 16:22
To: Chris Howsham
Subject: FW: APP/B1930/A/09/2109433 Helioslough Response to CLG letter of 19th October
Attachments: LETTER TO CLG 11 11 11.pdf; Helioslough Statement of comments on representations 11 11 11.pdf

Dear Mr Howsham

On behalf of the appellant, Helioslough I attach our comments on the representations received. I would be most grateful if you could confirm that you have received this email . I look forward to receiving copies of any comments received from other parties in due course

Kind regards
Erica

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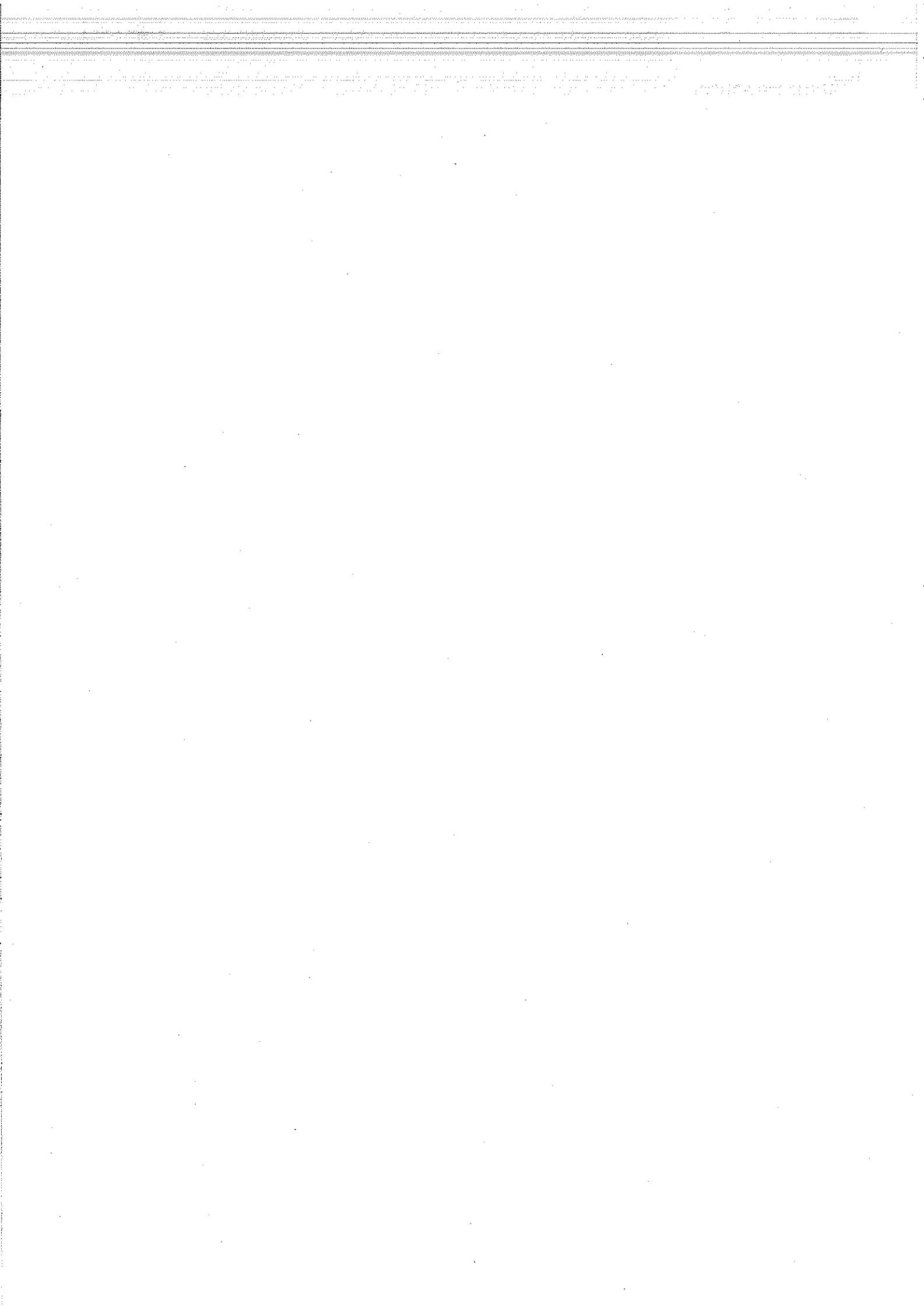
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Christine Symes
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SW1E 5DU

11 November 2011

Dear Ms Symes

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY HELIOSLOUGH LTD
LAND IN AND AROUND FORMER AERODROME, NORTH ORBITAL
ROAD, UPPER COLNE VALLEY, HERTFORDSHIRE
APPLICATION REF: 5/09/07/08**

I am writing on behalf of Helioslough the appellants in the above appeal, to submit comments on the written representations as requested in your letter of 19 October.

I duly attach a statement of response. For the reasons set out in the attached Statement we would ask that permission should now be granted.

I look forward to receiving copies of any other responses made by other parties in due course.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Erica Mortimer'.

**Erica Mortimer
Director**

**LAND IN AND AROUND FORMER AERODROME, NORTH ORBITAL ROAD, UPPER COLNE VALLEY,
HERTFORDSHIRE APPLICATION (DCLG Appeal Reference: APP/B1930/A/09/2109433)**

COMMENTS BY HELIOSLOUGH LTD ON REPRESENTATIONS

Introduction

1. The main parties are not seeking a re-opening of the Inquiry and there is no need for any re-opening. All the substantive relevant matters now raised by the objectors – most particularly the City and Council of St Albans (“the Council”) - to the proposal have already been comprehensively considered through two major public inquiries and two clear Secretary of State decisions. For reasons explained in our first representations dated 12th October (“the Initial Representations”), it is not now rationally open to the SoS to revisit those matters.
2. In these further representations we do not go over ground covered in our Initial Representations. Further, in the main text we address only what we understand to be the most important points raised by objectors. Other matters are covered in the appendix.
3. We deal with the issues in three sections: (A) landownership; (B) planning considerations; and (C) rail considerations.

A: Landownership and Delivery

4. The penultimate paragraph of the letter from Hertfordshire County Council (“HCC”) of 13th October 2011 conclusively demonstrates that the legal and policy tests (Circular 11/95 and the SoS’s 2002 letter) for imposition of a *Grampian* condition are met. Paragraph 3b of the Council’s letter dated 14th October 2011 is wrong. Once permission is granted, as landowner, HCC will consider its position on this “matter of regional importance”. It has not suggested, nor could it lawfully suggest, that it would refuse in principle to enter into negotiations for the sale of its land.
5. Given the obvious political sensitivities in HCC, the appropriate approach here is to grant planning permission with the appropriate condition 33 (and the additional definition to the conditions if Alternative 2 is preferred) as set out in the Initial Representations. A “minded to grant” letter is unnecessary and would introduce further delay.

B: Planning Considerations

6. By way of fundamental introduction, the DfT letter of 13th October 2011 and its appendices demonstrate the continuing strong imperative to deliver SRFIs close to London. The historic and current facts demonstrate quite how hard it has been to find an appropriate site. On the conclusions of the SoS in the 2010 DL Radlett is an appropriate site. For reasons addressed in the Initial Representations, reliance on Colnbrook as a better alternative cannot be lawfully sustained.

The Council's Case

7. Woods Hardwick ("WH") on behalf of the Council has produced a report titled "Changes in Circumstances". The following paragraphs respond to that report. It is telling that there is no attempt by the Council (in the WH report or in the report from Steer Davies Gleave ("SDG")) to seek to address the fundamental points raised in the High Court challenge including the "like for like" issue and the SG point. There is simply no answer by the Council to these points which have been consistently made on behalf of the Appellant since at least the 2010 Inquiry¹.

8. Revocation of Regional Strategy: It is said that the anticipated abolition of the regional strategy ("RS") will undermine the policy support for Radlett:
 - a. fundamentally, the revocation of the RS will not remove the need for SRFIs or the very strong central government policy support for SRFIs to serve London and the wider south east as most recently demonstrated by Annex A to the DfT's representations dated 13th October 2011;
 - b. the policy case for Radlett was never critically reliant on the RS and the Inspector and the SoS's reasoning was not dependent on it;
 - c. policy T10 in the RS provides that it would not apply if there were better sites to serve London elsewhere out of the East of England region. That is the policy framework against which this proposal was judged. It meant that it was relevant to consider sites outside the East of England region (including, of course, Colnbrook). Those sites were assessed in the 2009 ASA. Therefore the point made in WH para 2.1 has already been addressed. Given the conclusions of the Inspector (and the judgment of the High Court) there are no other better sites in the NW (or even west) of London to provide an SRFI. The proposed revocation of the RS does not affect this basic point; and
 - d. the SoS has already taken into account the proposed revocation of the RS in the 2010 DL [2010 DL 7].

9. The Council's Draft Core Strategy: In respect of the Council's draft Core Strategy ("the draft CS"), there has been no material change adverse to the Radlett proposals. The attempt by the Council to designate the site as an Eco-Park has failed at the first hurdle: see WH para 2.2. In any event, the SoS gave the draft CS very limited weight in the 2010 DL and there has been no significant progress on it since such as affect the weight which should be attached to it (as Goodman recognises in its representations).

10. London Plan: There was no material change between the draft London Plan ("LP") considered at the inquiry and that finally adopted. The LP is strongly supportive of SRFIs. There is nothing in the LP which affects the merits of Radlett. Barking is acknowledged to be a possible (albeit small) site to serve the north east and eastern area. It is not relevant to the

¹ If the Council or any other party seeks to address these points in their further representations, natural justice demands that the appellant be given an opportunity to respond.

NW quadrant and has already been correctly discounted from the alternative site work by the Inspector and the SoS for good reasons. The matters raised by SDG on behalf of the Council at para 7.1 have all been comprehensively addressed in respect of Radlett and the Appellant's proposals there have been found by the SoS to be acceptable on all those matters.

11. Slough Site Allocations DPD: The Slough Site Allocations DPD does not justify the assertion in WH3.4 which is plainly inconsistent with the judgement of the High Court and which therefore requires no further comment. Goodman correctly recognises that the Site Allocations document provides "no new policy context" and that there is no material change in the policy context applicable to the Colnbrook site since the 2010 Decision.
12. Draft NPPF: In respect of the draft NPPF, the SoS has repeatedly indicated in other decisions that limited weight should be attached to it. That approach has been adopted in the Initial Representations. If greater weight is to be attached to it, the draft NPPF substantially strengthens the Appellant's case for the reasons given in those Initial Representations. Additional comments on the detailed points are made in the Appendix.
13. PPS4: PPS4 does not involve any change in the countryside protection policies applicable to the site (WH4.13). It confirms and strengthens the case for development which fosters economic growth – see our Initial Representations.
14. Refusal of Colnbrook: Contrary to WH para 5.1 and SDG para 8.2, the robust and detailed reasoning for refusal of Colnbrook, which is consistent with the logic of the judgment of the High Court, is a significant material change in circumstances.
15. It shows that it has not been possible for Goodman to demonstrate that which the SoS assumed might be capable of being demonstrated in the 2010 DL. Slough Borough Council's representations of 11th October 2011 confirm that after careful consideration it has concluded that the regional need can be better met at Radlett. That conclusion is consistent with the 2010 IR - "cannot be rationally concluded".
16. Nothing in SDG's representations on the approach of Slough BC highlights any new facts not known at the previous inquiry. Indeed, SDG's representation (para 8.5) demonstrates the practical operational constraints at Colnbrook - the need for trains travelling to and from the west of England to reverse on or off the Colnbrook branch (assuming Network Rail would allow this). Contrary to SDG para 8.5, Slough has never accepted that Colnbrook is better related to the highway network than Radlett and any such conclusion would be wholly unjustified for reasons comprehensively addressed by the Appellant in its alternative site assessment (ASA) of 2009 which was accepted by the SoS in 2010 and in its critique of Colnbrook's 2011 ASA.
17. Further, there is as yet no appeal against Slough's refusal (para 8.2).

18. It is said that Goodman have proposed to enter into s.106 obligations which would provide a high degree of confidence that Colnbrook would operate as an SRFI (para 8.6). That package remains inchoate and has not been tested. By contrast, such a package which gives the requisite confidence in respect of Radlett (not least the major commitment to loading gauge enhancement on the main line, see below) has already been signed, examined and endorsed. SDG has, yet again, seriously misunderstood and downplayed what that package of conditions and s.106 obligations secures at Radlett (para 8.8 – much of which is simply factually wrong) – see below.
19. SDG then (para 8.10) repeat assertions that were made at the 2009 Inquiry and which did not affect the Inspector's (and the SoS's) conclusions. In any event the issue identified by the SoS is whether Colnbrook can meet the need which Radlett is designed to meet with less harm to the GB. In answering that issue, GB and SG issues come to the fore not comparative rail related advantages. The Council's representations raise no new points on that core issue.

Goodman's Planning Case

20. Goodman continues to rely on its previous representations on those SG policies even though the High Court has now conclusively ruled that the approach it urged the SoS to adopt was wrong. It is plain from page 4 of Goodman's representations that they continue to fundamentally misunderstand the history, purpose, justification for, and effect of the SG policies in play at Colnbrook. Their approach is simply irreconcilable with the words used in the policies and the High Court's approach.
21. It is not correct to claim (bullet 4 page 4) that these matters can be put off to later consideration – they are fundamental to a lawful consideration of whether there is a better alternative to Radlett now.
22. On that issue, even now in their representations, there is no attempt by Goodman to demonstrate that Colnbrook is better on a "like for like" basis or even that, applying SG and GB policy correctly, a smaller Colnbrook is better than a larger Radlett. The omission is stark.

Other Matters

23. There has been no material change in the highway related issues. The implications of the M25 widening and Butterfly World were addressed at the 2009 Inquiry.

C: Rail Considerations²

Overview

24. The claim by the City and Council of St Albans ("the Council") that there are rail related impediments to the successful development of an SRFI at Radlett have now been the subject

² This section responds specifically to the comments of SDG in its report on behalf of the Council. In so doing it also responds to the comments of STRIFE in its letter of 14th October 2011 and Goodman's letter of the same date.

of two very detailed investigations in public inquiries before very experienced inspectors with access to substantial evidence from experts. Clear conclusions have now been reached twice.

25. SDG for the Council now seeks to re-argue issues on which it has twice been found to be wrong without being able to point to any relevant material change in circumstances. The documents it relies on do not herald any material change adverse to Radlett. A number of its assertions are repeats of assertions previously made and rejected. As the SoS has now twice held, there is no rail related impediment to the successful development of an SRFI at Radlett. We are not aware of any concerns from either the Department of Transport or Network Rail in this regard.
26. SDG has misunderstood the proposals at Radlett. The conditions and s.106 obligations properly understood will deliver a successful SRFI at Radlett as the SoS has already accepted.
27. That Radlett can and will operate as a successful SRFI is demonstrated by the DB Schenker letter attached to these Representations. If there were gauge, access and capacity issues (or if Radlett was in the wrong place re: the SFN) then it is inconceivable that DB Schenker, as the largest rail freight operator in Europe, would be so supportive of it – “strategically vital site”.

Essential Starting Point

28. First, the development of a successful SRFI at Radlett is not (contrary to the assumption underlying the whole of SDG’s critique) reliant on publicly-funded loading gauge enhancement works. A robust package of conditions and s.106 obligations is in place which will secure at the developer’s expense necessary rail related works to ensure full accessibility to the Radlett site from and to the wider rail network via London junctions.
29. Second (and consequent on the above point) the development of a successful SRFI at Radlett is not dependent on Network Rail’s investment decisions relating to strategic freight routes for the future, nor its plans for funding electrification and gauge enhancement. To the extent (if any) to which any of the documents suggest a different emphasis from that which was in place at the time of the 2009 Inquiry as between the GWML and the MML (which is not accepted for reasons which follow) those changes are wholly irrelevant to the acceptability of, and successful delivery of, the Radlett proposals. In short, even if NR’s approach had changed (which it has not) and it had said (which it has not) that MML was no longer part of its Strategic Freight Network, that would in no way undermine the ability of Radlett to operate successfully as an SRFI. In short the successful delivery of Radlett is not dependent on the matters now relied upon by SDG.
30. Third, it is not accepted that there is any material change in approach reflected in these documents. On a proper understanding of them, the “new” documents relied on by SDG do not change any of the fundamental issues about SRFIs, the appropriate locations for them or the increasing importance of maximising the use of the Strategic Freight Network, of which the MML is a core part, by provision of a network of SRFIs. There is nothing in them which

undermine or change the appropriateness of Radlett. All the matters addressed in them are consistent with the factual, policy and planning background against which the rail related conclusions of the Inspector and the SoS in the 2010 IR and 2010 DL were reached.

Gauge enhancement, accessibility and capacity of Radlett

31. The success of the Radlett SRFI is not dependent on any gauge enhancement works, other than those which will be delivered through the conditions and s.106 obligations. There are no major technical obstacles to achieving gauge enhancement here [2010 IR 13.82]. SDG's repeated claims to the contrary were comprehensively rebutted at now two major public inquiries.

32. In terms of accessibility, the Inspector at the 2009 Inquiry was clear: "...I do not doubt the ability of the SRFI to be accessed from all the key destinations" [2010 IR13.82]. The SoS adopted all the rail related conclusions of the Inspector and made express reference to IR13.82 [2010 DL20]. To make good its case, yet again the Council has to ignore these clear conclusions. It is unable to point to any material change.

33. In terms of capacity, SDG revisit the implications of the Thameslink programme on the availability of freight paths (para 4.10). All the facts as to train numbers are the same as those analysed at the 2009 Inquiry. These issues were the subject of detailed debate and evidence at the 2009 Inquiry including from First Capital Connect. There is no rational basis to revisit that issue. Further, contrary to the implicit assumption in the SDG Report, the RUS does not forecast that remaining spare capacity on MML will be fully utilised with the result that there will be insufficient capacity for trains to serve Radlett. The position in this regard is the same as at the 2009 Inquiry.

34. Further, there have been no material changes in either:

- (1) the direction of NR's plans for the rail freight network; or
- (2) the existing rail infrastructure

which impact adversely upon the fundamental conclusions which have been reached.

35. In so far as gauge enhancement on the GWML may be being progressed, that is a positive advantage for Radlett anticipated and commented on by the Inspector in paragraphs adopted by the SoS: [2010 IR 13.81 – 2 and 2010 DL 20]. In short, if the GWML is gauge enhanced as proposed, then that provides a direct W10 gauge link to Southampton which Radlett can take advantage of. It is wrong to imply that GWML gauge enhancement is only (or principally) of benefit to Colnbrook.

New documents

36. SDG identify a number of documents (SDG/2.1) and then analyse (selectively and out of context) a small selection of them. They omit some key references and fail to address other documents.

37. The headline point, though, is that none of these documents change anything in respect of the rail related merits of an SRFI at Radlett (or the comparative merits of Colnbrook) from the position which was addressed by the Inspector at the 2009 Inquiry and in respect of which the SoS has reached clear conclusions. The only principal change has been that the intermodal rail freight market has continued to grow, beyond that originally forecast – but without any SRFI capability in London and the South East to benefit from and further support this growth.

Other Matters

38. SDG carry out a critique of Slough's decision on Colnbrook. Those matters are largely addressed above. It is wrong to claim that Colnbrook "would be" connected to a gauge cleared route from the outset – there is no guarantee of the GWML works being carried out and no proposal by Goodman to fund them if they are not funded by the public sector. In contrast, there is a guarantee of the rail related works at Radlett.

39. SDG conclude, for reasons criticised above, that Colnbrook is more capable than Radlett of achieving a modal shift. No empirical evidence to demonstrate this is set out. It ignores the fact that Colnbrook is half the size. It repeats assertions repeatedly made in the past and not accepted and it points to no material change in circumstances.

APPENDIX – FURTHER DETAILED POINTS

Planning considerations

1. The Draft NPPF and the Council's representations on it
 - a. the comments on the draft NPPF (WH4.1ff) fail to grapple with the key paragraphs of the draft NPPF which give the clear policy support for SRFIs;
 - b. the claim that this SRFI is not sustainable (and therefore is in conflict with the overarching approach of the draft NPPF) is parasitic on the misplaced representations on rail accessibility (see below);
 - c. the assertion that the first phase of development will not be rail linked (para 4.4) ignores condition 12 as recommended by the Inspector [2010 IR p 198] and 2010 IR13.81;
 - d. it is correct ("WH para 4.5) that the draft NPPF does not make any changes in respect of the policy relating to GB. That supports the Appellant's case as explained in the Initial Representations;
 - e. the added layer of protection in respect of the Strategic Gap ("SG") at Colnbrook (WH4.5 and 4.9 – 4.10) was adopted without objection by the SoS even though national policy showed that such added protection should only be provided in exceptional circumstances. There is no change to this approach in the draft NPPF. Thus the inclusion of the additional layer of protection for the SG demonstrates the opposite of what is claimed. It demonstrates that the added layer of protection is exceptionally justified at Colnbrook.
 - f. the policy approach in respect of community forests (draft NPPDF para 147) has not changed adversely to Radlett (WH4.6 – 4.7). As the text of the draft NPPF expressly sets out, GB policies should continue to be applied. There is therefore no relevant change.


Rail Related Issues

SDG Rail related documents

2. *RUS*: SDG4.1 – 4.4 refer to routes from the ports. There is no change in this respect from the position at the 2009 Inquiry. Radlett will be able to connect into all these routes.
3. The WCML and not MML is identified as the preferred route north for through trains *from London Gateway* for the reasons addressed at para 4.5. Those factors were addressed in detail at the 2009 Inquiry and do not undermine the acceptability of Radlett as a location for an SRFI. The fact long distance through traffic will be routed elsewhere is an advantage for Radlett, not a disadvantage.

4. Capacity issues have been addressed above (SDG para 4.5 – 4.6). The Appellant has never been dependent on MML being the main freight route to the north and its routing strategy has always assumed its trains using the WCML and other radial main line routes (not just or primarily MML to the north). Colnbrook is not on the WCML and has no advantage re: WCML and routes to the north over Radlett.
5. Gauge constraints and s.106 obligations are addressed above (SDG4.7). In terms of disruption from the works, gauge enhancement works are being, and have been, successfully carried out across the UK, on other major mixed-traffic rail routes.
6. Para 8.5.2 of the RUS notes that HS2 will release capacity on MML. (SDG4.9).
7. IIP: This is a consultative/lobbying document. It does not have any official status as confirmed policies or committed programmes and does not in any way detract from NR's approach to Radlett as examined with care at the 2009 Inquiry. Comments on the *possible* (not committed) gauge clearance on the GWML have been made above. The fact that the IIP does not advocate gauge enhancement on the MML as a current priority is irrelevant for reasons already covered.
8. It is plain that the MML remains a "core" route of the Strategic Freight Network³ and this document does not suggest otherwise. Thus, this document demonstrates no adverse change in the position re: the MML from that considered at the Inquiry.
9. SDG's conclusion from this document and the RUS is that the rail industry is planning for development at Colnbrook (para 3.6) and not development at Radlett. This is simply wrong. The RUS and IIP are neutral on this. In respect of the IIP, the assertion of SDG ignores p99 – which stresses the importance of others stakeholders bringing schemes forward and p129 para 10.3 which encourages third party investment. In any event, the IIP was worked up in the period after the refusal of Radlett and before the HCJ. It is hardly surprising that the IIP does not address Radlett in those circumstances. Further, it is entirely clear from other evidence that NR considers Radlett appropriate in rail related terms (see its comments during the 2009 Inquiry); and the rail freight industry is highly supportive of Radlett. There is nothing in the IIP which can serve to materially alter the conclusions of the SoS. The document read fairly and as a whole provides significant further additional support to Radlett. It emphasises the potential for growth in rail freight (para 2.5.1), recognises the key importance of SRFIs in this (p87); confirms the need to maximise the rail related warehousing - thus making the Appellants "like for like" case (p90 – 91). On site specifics it highlights the electrification of the route from Gospel Oak to Barking which would significantly enhance the accessibility of Radlett by electric trains from the ports (p85). The case for electrification of the MML north of Bedford "remains strong" (p105 and see also p103, 131).

³ Britain's Transport Infrastructure - Strategic Rail Freight Network The Longer Term Vision – DfT September 2009 Annex A

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10. GW RUS: That line has significant capacity issues which need to be resolved. The possible gauge enhancement of it does not extend to the Colnbrook branch. It is therefore not correct to claim that Colnbrook will connect to a gauge cleared route from the outset. Furthermore, trains travelling between Colnbrook and destinations to the west along the Great Western Main Line would have to first travel east along the GWML to Acton, in order for the locomotive to “run round” its train to then head west, as the alternative method (reversing a long intermodal train in excess of 600m from the branch onto the main line, to then head west) would be rejected outright by Network Rail on safety grounds.

 11. EM RUS: It is important to put the comments on construction traffic growth into context (para 6.2 – 6.4). Construction traffic growth will be far greater on the GWML than on the MML: see Freight RUS (fig B2). The EM RUS demonstrates the commitment of NR to preserve freight capacity in the context of the new Thameslink timetable. That issue has been addressed extensively in respect of Radlett at the 2009 Inquiry. Radlett is specifically mentioned in this RUS (table 4.2). Contrary to the whole thrust of SDG’s case it is clear from this document that NR is planning for development of a freight network which would support a terminal at Radlett, which is consistent with NR’s evidence at the 2009 Inquiry (on which SDG is silent). SDG make no reference to section 7.4 of the RUS. This section is inconsistent with SDG’s case and it is inexplicable why it has not been referred to: see in particular para 7.4.1, 7.4.2 and 7.9. Table 4.2 sets out planned schemes for enhancements of the MML.

