
**To: All Members of the County Council
All Chief Officers**

From Legal, Member &
Statutory Services

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**CABINET
9 DECEMBER 2013**

MINUTES

ATTENDANCE

MEMBERS OF THE CABINET

D A Ashley, F Button, T L F Douris, R I N Gordon (Chairman), C M Hayward, T C Heritage,
R M Roberts, R A C Thake, C B Wyatt-Lowe

Other Members Present

D Andrews, J Billing, C Clapper, E M Gordon, A Lee, L F Reeve, A S B Walkington

Upon consideration of the agenda for the Cabinet meeting on 9 December 2013 as
circulated, copy annexed, executive decisions were reached and are recorded below:

*Note: No conflicts of interest were declared by any member of the Cabinet in relation to the
matters on which decisions were made at this meeting.*

1. MINUTES

The minutes of the Cabinet meeting held on 25 November 2013 were confirmed as
a correct record.

2. QUESTIONS FROM MEMBERS OF THE COUNCIL TO EXECUTIVE MEMBERS

None.

**3. NORTH ORBITAL ROAD UPPER COLNE VALLEY – HELIOSLOUGH LTD: TO
CONSIDER LETTERS FROM THE DEPARTMENT FOR COMMUNITIES AND
LOCAL GOVERNMENT; AND TO CONSIDER THE FUTURE OF THE LAND AT
THE FORMER RADLETT AIRFIELD
(Forward Plan ref: A054/13)**

Prior to consideration of this item of business, the Leader of the Council as
Chairman of Cabinet, advised Cabinet that this was a special meeting of the

Cabinet to consider whether the County Council should enter a s106 Agreement in relation to land at the former Radlett Airfield and also whether the County Council should agree in principle to dispose of its land to enable the development of a Strategic Rail Freight Interchange to take place if the Secretary of State does grant planning permission for that scheme. The Policy, Resources and Transformation Cabinet Panel had considered these matters earlier and the Panel's recommendations were before Cabinet. It was the function of Cabinet to make decisions on these matters. Cabinet were not bound by the recommendations of the Panel. All Members of Cabinet were either on the Panel or were present at the Panel meeting. Further presentations would not, therefore, be made to Cabinet. Cabinet could have regard to the discussion at Panel but did need to consider the matter themselves at the meeting. Members needed to consider the matter at this meeting with an open mind taking into account all relevant matters and leaving out irrelevant considerations. It was for Cabinet now to make a decision on the report, taking into account the matters raised in the report before Cabinet and the discussions at Cabinet.

The Chief Legal Officer then made the following statement:-

"In coming to any decision Members must take into account that the Secretary of State has formed his view that it is in the public interest for the rail freight scheme to proceed despite its environmental impact and despite the traffic generation, and he has indicated that he is minded to grant planning permission subject to the County Council's land being bound by the planning obligations. It is not now for the County Council to revisit those issues. Members must come to decisions taking into account all relevant matters and leaving out irrelevant considerations.

Members of Cabinet who were also on Cabinet Panel earlier today or who may have considered the SRFI planning application elsewhere must keep an open mind and, when at this meeting, must consider all of the information before Cabinet and all other relevant factors in reaching their decision."

Decision

Cabinet AGREED UNANIMOUSLY the following:-

The County Council:-

1. disagrees with the Secretary of State in his conclusion (summarised in paragraph 44 of his letter of 20 December 2012) that the factors weighing in favour of permitting the Strategic Rail Freight Interchange development outweigh the harms it will cause;
2. nonetheless, acknowledges that the Council is obliged to accept that the conclusion of the Secretary of State is binding on it and must act consistently with that conclusion, even though it disagrees with it;

3. therefore, the Council agrees to enter into a s106 planning obligation in respect of its land at the former Radlett Airfield site in connection with the proposed Strategic Rail Freight Interchange scheme (but, in doing so, does not imply its support for the development) and authorises the Deputy Chief Executive, in consultation with the Executive Member for Resources & Transformation and the Chief Legal Officer, to finalise the terms of the s106 Agreement;
4. recognises that the Secretary of State's letter of 20 December 2012 indicates only that he was then 'minded' to approve the application and urges him to review his conclusion, reconsidering all the evidence available and taking account of:
 - (a) any change in circumstances since that date including the impact of London Gateway on the potential container business for this site;
 - (b) all representations received by him since that date which might influence his conclusions on the balance of benefit and harm;
 - (c) the relative merits of alternative sites including any new sites which may have emerged; and
 - (d) the views of the Council that the S106 obligations are inadequate;
5. defers any decision on the possible disposal of its land pending an absolute decision by the Secretary of State and the final outcome of any legal challenge to such decision; and
6. recognises that, should a lawful planning consent be granted, the Council will make any decision on the disposal of its land at the appropriate time having regard, in particular, to the purposes for which it holds the land, any alternative uses then available and its fiduciary duty. Notwithstanding if, in such circumstances, the Council is under a legal duty to dispose of its land, this duty might not require the Council to dispose of the land for use as a Strategic Rail Freight Interchange if a rational alternative was then available.

Reasons for the decision

Arising from legal agreements entered into in 1985 the County Council now owns the site of the former Radlett Aerodrome. That ownership is subject of covenants that restrict use of the land to uses compatible with the site's location within the Green Belt. In 2003, Helioslough entered into commercial agreements with other land owners in the area with the intent of promoting a development scheme for a rail/road freight and distribution facility. Helioslough subsequently made two planning applications; both refused by St Albans City & District Council as the local planning authority. Both applications were then subject of planning appeals and Public Inquiries. The first application was dismissed by the then Secretary of State. The second was also dismissed by the current Secretary of State, but that decision was quashed by the High Court. Consequently, the Secretary of State had to re-take his decision. On 20 December 2012, the Secretary of State issued a letter stating that he was 'minded to approve' the grant of planning permission for the scheme and invited Helioslough to provide a planning obligation binding on all those with an interest in the site by 28 February 2013. The County Council is the only landowner with an interest in the site that has not entered into a planning

obligation; the others having done so in 2009. Cabinet gave initial consideration to the content of that letter at its meetings in February and March 2013; at these meetings Members commissioned work to enable them to consider this matter in more detail. The matter was further considered by Cabinet in October 2013, resulting in the time allowed for submission of a suitable planning obligation covering the land owned by the County Council being extended to 20 December 2013.

At this meeting Cabinet was asked to consider two key issues; (1) whether to enter into a S106 planning obligation in respect of its land at the former Radlett Airfield and in connection with the application for a strategic rail freight interchange (SRFI) development and (2) whether to agree, in principle, to the disposal of the Council's land at the former Radlett Airfield to enable the development of an SRFI to take place if the Secretary of State does decide to grant planning permission for that scheme and, if so, a potential basis for its disposal.

In reaching its decisions, Cabinet's considerations included:-

1. The petition opposing the sale or lease of the County Council's land for the development of a SRFI and containing 10,000 signatures, presented to the County Council in March 2013
2. The petition opposing the sale or lease of the County Council's land for the development of a SRFI presented to the Policy, Resources & Transformation Cabinet Panel on 9 December 2013
3. The oral presentations provided to the Policy, Resources & Transformation Cabinet Panel, both against and in support of, the proposals set out in the officer report
4. The matters referred to in the officer report and the advice received from Leading Counsel (attached as Appendix 10 to the report and also that dated 7 December 2013 circulated prior to the meeting)
5. The recommendation of the Policy, Resources & Transformation Cabinet Panel.

In coming to its decision to enter into the s106 Cabinet expressed its disagreement with the Secretary of State's conclusion in his letter of 20 December 2012 but took account of the advice of Leading Counsel for the County Council that he did not consider that there existed a rational and, therefore, lawful, basis upon which the County Council may decline to enter into the section 106 Agreement. The County Council needed to consider the purposes for which it held the land and the Secretary of State's minded to grant letter. The Secretary of State's view was that it was in the public interest for the proposed development to proceed despite the effect on the green belt and the County Council could not go behind those conclusions even if it did not agree with them.

Cabinet also recognised that the Secretary of State's letter of 20 December 2012 was only a 'minded to grant letter' and urged him to review his conclusion, reconsidering all the available evidence and taking account of the matters mentioned above.

Cabinet decided to defer the decision on disposal of the land so as to wait until such time as a planning permission had been granted by the Secretary of State and the outcome of any legal challenge to such planning permission. It would also allow time for other potential options for the land to be developed and considered, together with any planning permission which may be granted for the SRFI, in the context of the County Council's legal obligations and fiduciary duty.

Any alternative Options considered and rejected

Cabinet considered not entering into a s106 planning obligation in respect of its land at the former Radlett Airfield; however, legal advice obtained from Leading Counsel instructed by the County Council was that he did not consider that there existed a rational and, therefore, lawful, basis upon which the County Council may decline to enter into the s106 Agreement.

Cabinet also considered a proposal to agree, in principle, to the disposal of the land to enable the development of an SRFI to take place. Leading Counsel advised that the County Council could lawfully defer a decision on disposal and Members decided to do so pending grant of planning permission and the challenge to any such permission.

**KATHRYN PETTITT
CHIEF LEGAL OFFICER**