Judicial Review
Acknowledgment of Service

Name and address of person to be served

name	Mike Lovelady Head of Legal Services

address City and District Council of St Albans District Council Offices St Peter's Street, St Albans Hertfordshire AL1 3JE

In the High Court of Justice Administrative Court	
Claim No.	CO/2388/2013
Claimant(s) *(including ref.)*	The Queen (on the application of City and District Council of St Albans) (ref: Mike Lovelady)
Defendant(s)	The Secretary of State for Communities and Local Government (ref: Priyesh Patel)
Interested Parties	(1) Helioslough Limited (2) Goodman Logistics Development (UK) Limited (3) Slough Borough Council

SECTION A
Tick the appropriate box

1. I intend to contest all of the claim	X	complete sections B, C, D and E
2. I intend to contest part of the claim		complete sections B, C, D and E
3. I do not intend to contest the claim		complete section E
4. The defendant (interested party) is a court or tribunal and **intends** to make a submission.		complete sections B, C and E
5. The defendant (interested party) is a court or tribunal and **does not intend** to make a submission.		complete sections B and E

Note: If the application seeks to judicially review the decision of a court or tribunal, the court or tribunal need only provide the Administrative Court with as much evidence as it can about the decision to help the Administrative Court perform its judicial function.

SECTION B
Insert the name and address of any person you consider should be added as an interested party.

name	**name**
address	**address**
Telephone no. / **Fax no.**	**Telephone no.** / **Fax no.**
E-mail address	**E-mail address**

SECTION C

Summary of grounds for contesting the claim. If you are contesting only part of the claim, set out which part before you give your grounds for contesting it. If you are a court or tribunal filing a submission, please indicate that this is the case.

Please see attached summary grounds.

SECTION D

Give details of any directions you will be asking the court to make, or tick the box to indicate that a separate application notice is attached.

1. That permission be refused and the claim dismissed.
2. That the Claimant do pay the Interested Party's costs.

If you are seeking a direction that this matter be heard at an Administrative Court venue other than that at which this claim was issued, you should complete, lodge and serve on all other parties Form N464 with this acknowledgment of service.

SECTION E

**delete as appropriate*

The defendant believes that the facts stated in this form are true.
I am duly authorised by the defendant to sign this statement.

(if signing on behalf of firm or company, court or tribunal)

Position or office held
Partner

(To be signed by you or by your solicitor or litigation friend)

Signed M Gallimore

Date
22 March 2013

Give an address to which notices about this case can be sent to you

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Completed forms, together with a copy, should be lodged with the Administrative Court Office (court address, over the page), at which this claim was issued within 21 days of service of the claim upon you, and further copies should be served on the Claimant(s), any other Defendant(s) and any interested parties within 7 days of lodgement with the Court.

Administrative Court addresses

- Administrative Court in **London**
  Administrative Court Office, Room C315, Royal Courts of Justice, Strand, London, WC2A 2LL.

- Administrative Court in **Birmingham**
  Administrative Court Office, Birmingham Civil Justice Centre, Priory Courts, 33 Bull Street, Birmingham B4 6DS.

- Administrative Court in **Wales**
  Administrative Court Office, Cardiff Civil Justice Centre, 2 Park Street, Cardiff, CF10 1ET.

- Administrative Court in **Leeds**
  Administrative Court Office, Leeds Combined Court Centre, 1 Oxford Row, Leeds, LS1 3BG.

- Administrative Court in **Manchester**
  Administrative Court Office, Manchester Civil Justice Centre, 1 Bridge Street West, Manchester, M3 3FX.

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Claim No: CO/2388/2013

BETWEEN:

THE QUEEN
(on the application of ST ALBANS CITY AND DISTRICT COUNCIL)
Proposed Claimant

and

SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
Defendant

HELIOSLOUGH LIMITED
First Interested Party

and others

SUMMARY GROUNDS ON BEHALF OF HELIOSLOUGH LIMITED

Introduction

1. These are the summary grounds of the interested party, Helioslough Limited ("HS"), in response to St Albans City and District Council's ("the Council's") application for permission to apply for judicial review of the decision of the Secretary of State ("the SoS") dated 14th December 2012 not to re-open the inquiry into the Radlett appeal and conjoin it with the inquiry into the Colnbrook Appeal.

2. In 2008, HS submitted a second application for a Strategic Rail Freight Interchange ("SRFI") at Radlett in the area of the Council. Following refusal by the Council (partly on the basis that there might be a better site for an SRFI at Colnbrook in the area of Slough Borough Council), in 2009 a substantial inquiry was held. At that inquiry all parties (including the Council and the promoters of an alternative site at Colnbrook – Goodman) had ample opportunity to present their case as to the respective merits of the Colnbrook and Radlett sites. The Inspector recommended to the SoS that permission be granted to Radlett because it could not rationally concluded that Colnbrook would better meet the need for SRFIs to serve London.

3. The SoS's decision (disagreeing with the Inspector on this issue) was quashed by the High Court because the SoS had misdirected himself on the meaning and effect of strategic gap policies protecting the site at Colnbrook which the Inspector had correctly understood. The SoS therefore had to redetermine the Radlett appeal.

4. After 5 rounds of written representations over more than a year:

a. no party requested that the Inquiry be re-opened;
b. the SoS had confirmed he had all the information he required to determine the appeal; and
c. a statutory timetable for that timetable was set (and breached) by the SoS. At the time of the matters complained of the SoS remained in breach of the statutory timetable he had set.

5. After the close of the written representations and at a time when the SoS was required to move to a decision on the Radlett redetermination, for reasons which are not understood, on 19th September, the SoS of his own motion asked for comments on the appropriateness of re-opening the inquiry and co-joining it with an appeal brought by Goodman against the refusal of its application by Slough Borough Council for permission for an SRFI at the Colnbrook site.

6. HS rigorously resisted that suggestion in detailed correspondence. The promoters of Colnbrook made clear that they would withdraw their appeal in respect of Colnbrook if the 19th September suggestion was adopted. The Council (opportunistically and entirely contrary to its earlier position through five rounds of representations when, despite knowledge of the Colnbrook application and appeal had never suggested that a re-opening of the inquiry and its conjoining with the Radlett inquiry was appropriate) supported the 19th September suggestion.

7. On 14th December, the SoS correctly decided that to continue to a decision on Radlett as he had previously indicated he would. A minded to grant letter in respect of Radlett was issued on 20th December 2012 and the SoS is now moving towards the grant of permission at Radlett.

8. The claim is based on a fundamentally flawed understanding of a number of matters:
   a. first, the chronology leading up to the 19th September, the circumstances pertaining at that time and the powers available to the SoS. Given the chronology at the time of the Decision it is clear that:
      i. the SoS had already decided that he had all the information necessary to make a decision on the Radlett appeal;
      ii. all parties had had numerous opportunities to ask for the inquiry to be reopened including in the light of the Colnbrook application and appeal and had not done so;
      iii. in the light of i. and ii. and his duty to determine the Radlett appeal, the SoS had set a statutory timetable which, by 19th September 2012, he was in breach of and could not further extend; which meant that
      iv. the SoS had no power and no legitimate basis to seek to reopen the Radlett inquiry and/or to cojoin it with Colnbrook;

b. second, the proper procedure for considering alternative sites in a s.78 appeal. The correct forum for determining whether there was a better alternative to Radlett on the Radlett appeal was in the Radlett inquiry. Everyone had full opportunity to put forward their evidence there - and the Council pursued a very detailed (although misconceived case) as to why Colnbrook was better. Goodman too made representations too the Inspector;
c. third, the nature of the SoS's letter of 19th September 2012 – the letter was not a conclusion that the inquiry should be re-opened and conjoined but a suggestion on which representations were invited. When those representations were received, the SoS made a decision not to pursue the 19th September suggestion. There is no arguable illegality in that;
d. fourth the duty to give reasons. There is no duty to give reasons in this context. In any event, an informed reader of the 14th December 2012 would be aware of the history, the chronology and the representations to the SoS following the 19th September 2012. His conclusion on the 14th December does not disclose any failure to provide adequate reasons (*South Bucks v. Porter* [36]).

The Facts

9. It is appropriate to consider the facts in two sections: (1) up to the SoS's letter of 19th September 2012; and (2) following that letter.

10. Once that exercise is properly undertaken it becomes clear that: (1) the 19th September 2012 letter proposed a significant departure from the SoS's earlier approach and his earlier procedural decisions; and (2) that through the subsequent correspondence leading up to December 2012 the SoS was persuaded to revert to his earlier position as he was legally obliged to do

1: Up to 19th September 2012

The First Inquiry and Decision

11. The Radlett Proposals had been the subject of an earlier application and Inquiry in 2007 ("the 2007 Inquiry"), an Inspector's Report in 2008 ("the 2008 IR") and a decision of the SoS in 2008 ("the 2008 DL"). In the 2008 DL, the SoS dismissed HS's appeal on the sole basis that he was not satisfied that it had been demonstrated that there was no alternative location for the Strategic rail freight interchange ("SRFI") less harmful to the Green Belt ("GB"). The SoS nonetheless concluded that had it been demonstrated that there was no preferable alternative site the "very special circumstances" necessary to justify this development in the GB would "almost certainly" have been established.

The Second Inquiry and Decision

12. Consequently, HS prepared a detailed Alternative Sites Assessment ("ASA") and re-submitted the application in 2009. It was refused by the Council on a number of grounds. An inquiry was held at which, fundamentally, all parties had full opportunity to criticise the ASA and to show why alternative sites were to be preferred. The 2009 Inquiry was the opportunity to address alternative sites and the sole basis for refusal in 2008. The Council is correct (grounds para 7) to concede that the availability of alternative sites (including Colnbrook) was a principal issue at the Radlett inquiry.

13. As made clear by the 2008 DL and by the statutory scheme, this was the opportunity for those promoting any alternative site (and objectors to Radlett) to demonstrate that the need should not be met at Radlett because it could be better met elsewhere. Goodman made written representations in that process and objectors to Radlett (including the Council) sought through very detailed evidence to demonstrate that Colnbrook was to be preferred to Radlett.

14. The Inspector recommended the grant of permission for the Radlett proposals in clear and forthright terms and found that Colnbrook could not rationally be considered a preferable site [IR13.103].

15. The SoS nonetheless refused permission on 7th July 2010 on the basis that he attached less weight to the strategic gap ("SG") policies at Colnbrook and therefore he thought there was a possibility that a much smaller scale of development at Colnbrook would cause less harm to the GB than the larger Radlett Proposals.

The High Court Challenge – 2011

16. That decision was challenged in the High Court including on the basis that the SoS had, through his reasons, demonstrated that he had misunderstood and misapplied the SG policies. The Decision of the SoS was quashed by Order dated 4th July 2011. J83 – 86 demonstrate a fundamental failure to understand the policy context at Colnbrook. It was not simply a failure to give reasons which led to the SoS's decision being quashed – compare Council's Grounds para 17.

17. During the course of the High Court proceedings, an application at Colnbrook was submitted (27th September 2010). On 8th September 2011 it was refused by Slough BC ("Slough") on a number of grounds.

Redetermination –Rounds – 1 to 5

18. On 15th September 2011 (after the refusal at Colnbrook), in respect of the Radlett redetermination, the SoS sent out the letter required by regulation 19 of the Town and Country (Inquiries Procedure) (England) Rules 2000 identifying the matters with respect to which further representations were invited setting a deadline for comments on those matters of 14th October 2011. This will be referred to as Round 1. The intention was that there would then be a short opportunity for a final round of comments. The SoS also notified the parties that they could in Round 1 ask for the inquiry to be re-opened.

19. Neither the Council nor any other party asked for the inquiry to be re-opened and all the parties and the SoS thereafter proceeded throughout on the basis that it would not be reopened. The Council's current position is wholly at odds with the position there adopted. Goodman made representations in Round 1 indicating an intention to appeal.

20. On 19th October 2011, the SoS invited comments on the representations received in Round 1. Whilst he did "not propose to allow a lengthy series of cross-representations" he indicated that he would accept representations on any other material changes in circumstance. Comments were to be received by 11th November 2011 ("Round 2"). Nobody requested that the inquiry be reopened in Round 2. HS was at that stage entitled to conclude given the representations made by the SoS that he would move to a decision.

21. Nonetheless on 29th November 2011, the SoS commenced Round 3 (in the same terms as Round 2) including inviting comments on three new government documents. Round 3 closed on 30th December 2011. Nobody requested a further round of representations or a re-opening of the Inquiry. Three rounds of written representations on a redetermination is, so far as Helioslough is aware, unprecedented.

22. Goodman – the promoters of the Colnbrook Proposals - took part in all three rounds. They did not ask for the inquiry to be re-opened even though they made clear from the outset that they would be appealing against the refusal of permission for an SRFI at Colnbrook - see e.g. section 4 of Goodman's letter of 14th October 2011 (Round 1).

23. Despite the Council knowing all this it did not request that the Radett inquiry be re-opened or conjoined with the Colnbrook inquiry or that the decision in Radlett should await and be contemporaneous with the decision in Colnbrook.

24. The three rounds of representation culminated in a decision of the SoS on 1st February 2012 in which he stated: "On the basis of the submissions

received, he is of the view that there are no substantive issues which require the inquiry to be re-opened and he has therefore decided that he is in a position to re-determine the appeal on the basis of all the evidence before him." This was after the debate between Goodman, HS and the Council recorded at Council's Grounds para 26 – 32. The submissions and evidence to which the SoS was referring included evidence through the statutory procedures as to the comparative merits of Radlett and Colnbrook. The SoS was correct to reach the conclusion he did at that stage and HS proceeded thereafter on that basis. There was no challenge to the SoS's decision.

25. The SoS then set a timetable as he was required to do under paragraph 4 of schedule 2 of the Planning and Compulsory Purchase Act 2004 stating that his decision would be made **on or before 5th April 2012**. The SoS did not invite any further representations. The decision could and should have been made at that time (at the latest). HS was seriously dissatisfied with the delay but given the setting of a statutory timetable decided not to take action at that time.

26. The position at this point was therefore that:
    a. no party had asked for a re-opened inquiry;
    b. the SoS had decided none was required;
    c. everyone knew that Goodman intended to appeal re: Colnbrook and under the rules that meant that any appeal had to be lodged by 7th March 2012 (6 months after notice of refusal) and yet no-one had requested that the Radlett inquiry be re-opened and conjoined or that the Radlett decision was put on hold so that the Colnbrook and Radlett decisions could be made together;
    d. the SoS had decided that he had everything he needed to issue a decision on Radlett; and
    e. he was binding himself to provide one as required by the statutory scheme on or before 5th April 2012 which was of course inconsistent with any claim that further evidence was on Colnbrook was required through the Colnbrook appeal process before a decision would be made on Radlett. There was no challenge by the Council to this decision.

27. By reason of the above facts, the SoS was under a statutory obligation to make his decision by 5th April 2012 and HS had a legitimate expectation that, absent any circumstances that "prevented" a decision being made, the SoS would make a decision by 5th April 2012. It had a further legitimate expectation, that the SoS would make his decision on the then available material and that the inquiry would not be reopened.

28. On 5th March 2012, Goodman appealed in respect of Colnbrook. The SoS himself recovered the appeal on 14th March. Thus from this date, the SoS knew there was a live appeal there. The statutory start date for that

inquiry was 3rd May 2012 and a timetable for preparation for that inquiry was set at around that time. That timetable is inconsistent with the SoS having concluded that evidence on Colnbrook inquiry was required before the SoS could make a decision on Radlett.

29. On 29th March 2012 (and notwithstanding the earlier timetable), the SoS initiated Round 4 of representations in respect of the redetermination of the Radlett proposals. He sought representations only on the impact of the National Planning Policy Framework for the redetermination. Representations "must be confined" to that issue "and must not seek to raise any other matters". The timetable was altered with the final date for the decision moving from 5th April to 13th June 2012. The sole reason for this change in the timetable was to give him time to receive and take into account the representations received on the NPPF. Those making representations in Round 4 correctly limited their representations to the impact of the NPPF. The SoS was not raising any wider points even in the knowledge of the Colnbrook appeal.

30. Notwithstanding that the Colnbrook appeal had been lodged, nobody contended that the fact of the Colnbrook appeal meant that the decision should be delayed, that the inquiry should be reopened or that further evidence from the Colnbrook inquiry was required before the Radlett decision could be made.

31. On 18th April 2012, the SoS gave a final chance for comments on the NPPF representations received in Round 4 ("Round 5"). No party asked for the inquiry to be re-opened in Round 4 or 5. Round 5 closed on 26th April 2012. The timetable was not further varied. At this point the written representations rounds had been completed. Neither the SoS nor any other party has since identified any planning reason never mind any "very good planning reason" *(Kings Cross Railways Land Group)* or any material change in circumstance to justify reopening the written representations or the inquiry.

32. At 26th April 2012:
    a. the SoS had undertaken an unprecedented 5 rounds of written representations;
    b. the SoS had determined that there was no requirement for the Inquiry to be re-opened (even though he was well aware Goodman had appealed) and the parties had engaged in the written representations on that basis;
    c. the SoS had set a timetable as he was required to do and moved it once to another fixed date in purported pursuant of his power under sch 2 para 6;
    d. the SoS had gradually limited the matters on which he wished to be addressed to the point where the representations had fully closed (and at no point had he or any other party raised the implications of

the prospective and then actual Goodman appeal for his redetermination);

e. by 26th April 2012, he had stated that he had all the information he required and was moving towards a decision by the timetable date of 13th June 2012.

33. The Council did not challenge nor indicate any dissatisfaction with the approach being adopted.

34. On 7th June 2012, the SoS informed the appellant by email that the decision would not be made in mid-June.

35. In the run up to the Colnbrook inquiry, on 4th September 2012, Goodman said that they would withdraw their appeal unless their inquiry was postponed until after the Radlett decision had been given. The SoS therefore granted the postponement of the Colnbrook appeal.

36. Immediately prior to 19th September therefore the SoS had decided that he had everything necessary to make the Radlett decision, had stated that nobody had asked for the inquiry to be re-opened; had set a statutory timetable for a decision and had granted a postponement of the Colnbrook inquiry pending the Radlett decision. All of this is plainly inconsistent with any reopening or conjoining of the inquiry.

37. This history is fatal to the Council's claim. In order to try to make good its claim, the Council has to ignore the significance of all of this. It takes the 19th September 2012 letter as the starting point of the process leading to the criticism of the 14th December 2012 decision – rather than recognising the significance of all that had gone before to the letters of 19th September, 12th October and 14th December 2012. Yet the history provides the essential starting point for consideration of matters following 19th September.

2. 19th September 2012 and following – Rounds 6 and 7

Round 6: 19th September 2012

38. Entirely contrary to the position which had been reached previously on 19th September 2012, the SoS invited the parties to give their views on his "proposed approach" of re-opening the Radlett inquiry and conjoining it with the Colnbrook inquiry. No indication has been given as to what prompted this suggestion to be made.

39. On 27th September, Helioslough set out detailed representations as to why the proposed approach would be unlawful and irrational, was unnecessary and would serve no useful purpose. The whole letter should be referred to but in summary:

a. the comparative merits of Radlett and Colnbrook had been the core issue at the 2009 Inquiry on which all parties had had a full opportunity to challenge the ASA submitted and to demonstrate that Colnbrook would be a better site than Radlett;
b. the Inspector reached robust conclusions on that issue;
c. following the quashing of the 2010 DL, all parties (including the SoS) had proceeded on the basis that there was no need to re-open the inquiry and nobody had suggested conjoining;
d. in its statement of case on its appeal, Goodman made it clear that it was not competing against Radlett [para 6.5];
e. consistent with that position, Goodman sought a postponement of its appeal until Radlett had been determined. On 4th September 2012 it said that it would withdraw its appeal unless its inquiry was postponed and the SoS granted that postponement;
f. the SoS had determined that the inquiry was not to be re-opened and had set a statutory timetable for the determination which he could not retrospectively change; and
g. there was no proper basis for re-opening the inquiry to consider the comparative merits.

40. Goodman also indicated that it was "vehemently opposed" to the co-joining of the appeals and repeated its position that it might be forced to "withdraw its appeal" if the SoS went down that route. See Council's Grounds para 46 for key points in Goodman letter.

41. Entirely contrary to its earlier position, the Council opportunistically supported the SoS's suggestion. It did not point to any change in circumstances to justify a different approach from that which it had previously adopted. Its position is inconsistent with that which it had previously adopted and took no account of the history set out above.

Round 7: 12th October 2012

42. In a further letter dated 12th October 2012, the SoS invited further representations. HS responded.

43. On 14th December 2012, the SoS decided not to conjoin.

Law

44. Regulation 19 is correctly summarised at Council's Grounds para 62. *Land Development Limited* (Council's grounds para 63) is inapplicable. The Inspectors 2009 report was not quashed or criticised by the High Court. This was patently not a "clean sheet" case – it was the SoS and not the Inspector who had erred in law.

45. Further, the unchallenged parts of the SoS's DL setting out what the SoS had concluded on the unchallenged issues remained highly material.

46. The Council does not identify any statutory basis for the letter of 19th September nor does it address the points made in the pre-action protocol letter submitted by HS about the statutory timetable and its implications for the procedure to be followed. HS therefore proceed on the basis that its analysis is accepted.

The Grounds

What the Council does not address

47. Despite the Council knowing all the above through its involvement in this matter throughout, the Grounds do not:
    a. explain under what statutory power the SoS could order a conjoined inquiry given that he had already set a statutory timetable nor what duty he is said to be in breach of in refusing to go down the conjoining route. There is no relevant duty and in the circumstances no available power.
    b. Even assuming that the SoS had a discretion to conjoin, the Council does not explain on what public law grounds his decision is unlawful. It is plain that the SoS was not suggesting in his 14th December 2012 letter that the comparative merits of Colnbrook and Radlett were irrelevant. All he was deciding was that, on the Radlett appeal, he had sufficient information through the 2009 Inquiry, the 2010 Inspector's Report and the later representations, to reach a conclusion.

48. The Council implies that somehow the preliminary views in the 19th September 2012 and 12th October 2012 letters were binding on the SoS. That is misconceived. The SoS was inviting representations on the proposed approach – it is necessarily the case that his preliminary views might change in response to the representations received. Indeed, HS goes further. The preliminary view was a misconceived suggestion of the SoS which was contrary to the statutory scheme and all his previous actions. It was inevitable that once he was reminded of the basic facts and the statutory scheme he would realise that it was not appropriate to follow the proposed approach.

49. The Council assert without any details that the decision was based on failing to take into account material considerations or irrational. On the contrary, once the history is taken into account the only rational and lawful conclusion that there should not be any conjoining.

50. The Council misunderstands and mis-states the import of much of the history in paragraphs 68 and following:

a. the last sentence of para 68 is not an accurate summary of what the SoS had said. It is to be noted that when the statutory timetable for Radlett was set, Colnbrook was already appealing and a timetable for its inquiry had been set. There was no relevant change in circumstances here;
b. para 69-70 - the SoS's conclusions on the SG at Colnbrook had been quashed because of a basic misunderstanding of those policies not just because of a lack of reasoning.
c. para 71 – nobody had ever suggested that the comparative merits of Colnbrook were irrelevant to the Radlett decision – the simple point was that those merits had been addressed in the correct forum already. The SoS's approach to Colnbrook is not "admissible" – it was specifically that part of the SoS DL which was the subject of the successful challenge in the High Court order resulting in the quashing of the decision – para 71
d. para 72 – nobody was saying that the SG policies alone "determined conclusively" the decision on the Radlett appeal.

Response to the Grounds

51. The Council contends (para 2) that the 14th December 2012 decision was unlawful because: (1) the SoS failed to give reasons; (2) it was irrational; and (3) failed to take into account material considerations.

Reasons

52. It was plain and common ground that the comparative merits of the Colnbrook and Radlett proposals would be material to the Radlett decision. That did not however mean that the inquiry had to be reopened and conjoined. That very issue had properly been a principal issue at the 2009 inquiry.

53. The Inspector in 2009 had concluded, on a correct understanding of the SG policies at Colnbrook, that there was no rational basis for preferring Colnbrook over Radlett. The SoS's disagreement with this was based on a fundamental misunderstanding of SG policies and was quashed. In the redetermination, fully aware of the all the surrounding circumstances and arguments re: Colnbrook, the SoS had earlier concluded that he had all the information required to redetermine the Radlett appeal without reopening or conjoining.

54. On 19th September, unprompted by any party and in what HS considers to be a legally and procedurally misconceived suggestion, the SoS consulted on whether to re-open and conjoin.

55. He received very detailed responses which were available to the parties and which were referred to in paragraph 2 of his letter. The SoS had given

"very careful" consideration to all the comments made and had reached the conclusion that it was "unnecessary" to reopen and conjoin (para 4) because he was satisfied (as previously) that he could "determine the Radlett proposal on the basis of the evidence before him". He was thus simply reverting to his earlier position.

56. The logic is plain. He had the Inspector's Report following a full public inquiry at which all parties had had every opportunity to put forward their case on comparative merits, he had had three rounds of representation on which parties could raise further issues on Colnbrook and where anyone (including the Council and Goodman) could have asked for a conjoined inquiry but had not done so. Goodman was specifically not trying to compete with Radlett.

Irrational and Material Considerations

57. These grounds add nothing. They proceed on the patently flawed assumption that the SoS had to have new material to justify a change in approach between September and December 2012. The real issue for him was whether he had adequate information over the previous 4 years to determine the Radlett appeal.

58. Permission should be refused with costs.

59. HS seeks its costs of this Acknowledgement of Service.

David Forsdick
19th March 2013