



# St Albans City & District Council

## Legal, Democratic and Regulatory Services

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Our Ref: L/11682/ML/bam

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Date: 18 January 2013

**BY EMAIL : [christine.symes@communities.gsi.gov.uk](mailto:christine.symes@communities.gsi.gov.uk)**

Ms Christine Symes

Decision Officer

Department for Communities and Local Government

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In the matter of 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 5/09/0708 ("the Radlett Appeal").

Proposed Defendant

*Secretary of State for Communities and Local Government*

Proposed Claimant

*St Albans City and District Council*

**Letter before Claim (pursuant to Annex A of Pre-Action Protocol for Judicial Review under CPR Part 54)**

Dear Madam

**The Proposed Claimant**

The proposed Claimant is St Albans City and District Council, St Peter's Street, St Albans, Herts AL1 3JE.

**The Details of the Matter Being Challenged**

The decision of the Secretary of State not to re-open the inquiry into the Radlett appeal and conjoin it with the inquiry into the appeal for a Rail/Road Freight Interchange at Colnbrook, Slough (Ref: APP/J0350/A/12/2171967) ("the Colnbrook appeal") dated 14 December 2012.



## Summary of the Claimant's Case

1. This letter is sent in accordance with the pre-action protocol for judicial review claims to notify you of the Council's intention to challenge the decision of the Secretary of State, dated 14 December 2012, not to re-open the inquiry into the proposed Strategic Rail Freight Interchange ("SRFI") at Radlett and conjoin it with the forthcoming inquiry into the proposed SRFI at Colnbrook (reference APP/J0350/A/12/2171967). The purpose of this letter is to identify the issues in dispute and establish whether litigation can be avoided.
2. The Council also notes the contents of the Secretary of State's further letter dated 20 December 2012 indicating that he is now minded to grant planning permission for the SRFI at Radlett subject to conditions. The Council is of the opinion that if the Secretary of State were to proceed to grant permission for the reasons stated in that letter then that decision would also be susceptible to challenge. However, representations in respect of the 'minded to' letter will be submitted under the cover of a separate letter and do not form a part of the intended challenge to the conjoining decision.

### The background to the decision

3. Following the most recent inquiry into the proposed SRFI at Radlett the Inspector's Report recommended that the appeal pursued by Helioslough Ltd. be allowed subject to conditions. The Secretary of State, however, disagreed with the Inspector's conclusions in respect of the alternative sites assessment conducted by Helioslough. Contrary to the Inspector, he did not regard the designation of an alternative site at Colnbrook as part of a strategic gap in the Slough Local Plan to be determinative of the question of whether the development of an SRFI at Colnbrook would meet the need for an SRFI in a way that caused less harm to the Green Belt than the Radlett proposal. In light of this the Secretary of State went on to consider the emerging plans for an SRFI at Colnbrook of a smaller scale than that proposed at Radlett. His conclusions were stated in his decision letter of 7 July 2010 refusing the appeal:

*22. The Secretary of State has given very careful consideration to the Inspector's assessment of the Colnbrook site at IR13.99 – 13.103. He has had regard to the appellant's statement that the site would perform materially worse than Radlett due to its location in a designated Strategic Gap (IR13.100). He noted that the Inspector considers that the substantial weight should be applied to the Strategic Gap designation set out in a saved policy of the Slough Local Plan (IR13.100). However, in this particular case, the Secretary of State considers it appropriate to give less weight to the saved policy and he does not consider this should be regarded as a determining factor.*

*23. In reaching his conclusions above, the Secretary of State has borne in mind the more recent Slough Core Strategy 2006 – 2026, adopted in December 2008. He observes that paragraph 2.29 of the Slough Core Strategy specifically mentions a proposal for an SRFI. Read in conjunction with those paragraphs, the Secretary of State considers that Slough Core*

Strategy Policy 2 does not necessarily bar inappropriate Green Belt development such as an SRFI in the Strategic Gap. Whilst no application has yet been made at Colnbrook, the Secretary of State has taken into account the documentation presented to the Radlett inquiry about an emerging SRFI proposal at Colnbrook (Radlett inquiry document 9/G/1.1). This indicates that a substantially smaller scale of rail-connected warehousing is envisaged at Colnbrook compared with the appeal proposal. The Secretary of State considers that if an application were to be made for a SRFI at Colnbrook of about the size indicated in evidence to the Radlett inquiry, then harm to the Green Belt might, subject to testing in an alternative sites assessment, be found to be significantly less than the harm caused by the Radlett proposal. He also notes the Inspector's observations that an SRFI at Colnbrook could, in common with the Radlett proposal, offer other benefits which in the case of Colnbrook would be opportunities for improvements to the footpath and bridleway network, biodiversity and landscape (IR13.101).

24. The Secretary of State has also considered a previous Secretary of State's decision to dismiss an appeal relating to earlier application for a SRFI proposal at Colnbrook in August 2002 (the 'LIFE' proposal), including the comment in that decision which the Inspector notes (IR13.100). However, the current Secretary of State finds nothing in the 2002 decision that would prejudice the outcome of an alternative sites assessment in the event of another application for a SRFI at Colnbrook being made.

4. This decision was subsequently quashed by the High Court and remitted to the Secretary of State on the basis that he had failed to give adequate reasons for disagreeing with the Inspector's conclusions on the strategic gap policy applicable at Colnbrook. Following the quashing of that decision the Secretary of State invited further written representations from interested parties on a number of matters and at a number of stages between September 2011 and September 2012.
5. On 19 September 2012, the Secretary of State wrote again noting that an appeal against the refusal of planning permission for an SRFI Colnbrook had been submitted in March 2012, that the determination of this appeal had been recovered by the Secretary of State and that the Planning Inspectorate had postponed the planning inquiry into the appeal which had been due to open in October 2012. He went on to state:

*The Secretary of State is of the view that the two schemes raise similar and inter-related issues. He considers it likely that their comparative merits will be a significant material consideration in his determination of the Radlett proposal. Furthermore, he considers 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. Given this, he is of the view that re-opening the inquiry into the Radlett appeal and conjoining it with the planned inquiry into the proposed SRFI at Colnbrook is likely to lead to a more coherent and consistent decision making process overall.*

*In the light of this, Secretary of State no longer considers that it is appropriate for him to determine the Radlett appeal on the basis of the evidence and representations which are currently before him" [Emphasis added]*

6. The responses to this letter which were received were circulated on 12 October 2012 for further comments. In that letter, the Secretary of State indicated his response to a number of matters of relevance to the case:

*A number of parties questioned the purpose of conjoined inquiries and the relationship between the two appeals. Both schemes are before the Secretary of State for determination and the Secretary of State considers that both schemes raise similar and inter-related issues. He is inviting representations on his view that considering the two schemes at conjoined inquiries would lead to be a more coherent and consistent decision making process. It should be stressed that the Secretary of State has not reached a view on either of the appeal schemes, or what his eventual decision on either of them will be. Possible outcomes of conjoined inquiries would be a decision to dismiss both appeals, a decision to allow both appeals, or a decision to allow just one of the appeals.*

*Some parties have suggested that some of Mr Mead's conclusions in respect of the Radlett proposal ought not to be revisited. The Secretary of State's 2008 decision on the previous Radlett appeal and Mr Mead's 2010 report on the current Radlett appeal will be material considerations to be taken into account by the Inspector. The Inspector would also be expected to take account of any new material considerations raised in the written representations submitted following the close of the 2009 inquiry and the evidence submitted to a re-opened inquiry.*

*A number of parties expressed views about whether either Mr Phillipson (who held the inquiry into Radlett in 2007) or Mr Mead (who held the inquiry into Radlett in 2009) should preside if conjoined inquiries were held into the two schemes. The Planning Inspectorate is responsible for administering the appeals process, including the management of inquiries, and the appointment of an Inspector would be for them to determine at the appropriate time.*

*A number of parties made comments about the resource implications of re-opening the inquiry into Radlett and conjoining it with Colnbrook. In the event that the Secretary of State decides to conjoin the inquiries, he will pass the Planning Inspectorate the comments from parties in respect of the timing and location of the event. However, parties will be expected to meet their own expenses if they decide to participate at the inquiries.*

*If you, or those to whom this letter is being copied, wish to provide a further representation, please send that, preferably by email, to the address at the foot of the first page of this letter by Monday 29 October 2012.*

7. On 14 December 2012, the Secretary of State wrote again to the interested parties with his decision on the question of conjoining the inquiries. His conclusion was as follows:

*Having given careful consideration to all the comments made, the Secretary of State has concluded that it is unnecessary for him to re-open the inquiry into the Radlett appeal and conjoin it with the planning inquiry into the Colnbrook appeal. He is satisfied that he can determine the Radlett proposal on the basis of the evidence before him" [Emphasis added]*

8. Following this decision, the Secretary of State circulated a letter on the Radlett appeal dated 20 December 2012 indicating that he now intended to grant planning permission for the SRFI at Radlett subject to the submission of a suitable planning obligation under section 106 of the Town and Country Planning Act 1990 which bound all those with an interest in the appeal site. His conclusion on the question of relative harm at the alternative site at Colnbrook was stated as follows:

*The Secretary of State has given very careful consideration to the Inspector's assessment of the Colnbrook site at IR 13.99-13.103. He has also taken account of the representations relating to Colnbrook submitted after the close of the inquiry and the fact that Appeal Reference: APP/J0350/A/12/2171967 was made on 5<sup>th</sup> March 2012. The Secretary of State observes that Slough's Core Strategy states that development will only be permitted in the Strategic Gap "if it is essential to be in that location" and, in common with the Inspector (IR13.100) he attributes substantial weight to the Strategic Gap designation. Having taken account of the Inspector's analysis and the other evidence submitted on this matter, the Secretary of State sees little reason to conclude that Colnbrook would meet the needs for an SRFI in a less harmful way than the appeal site.*

The grounds for challenging the decision

9. The Secretary of State's letter of 19 September 2012 inviting views on conjoining the Radlett and Colnbrook inquiries made clear his position that the comparative merits of the Colnbrook and Radlett proposals would be a significant material consideration in the determination of the Radlett appeal. This is consistent with the approach previously adopted in the quashed decision of 7 July 2010 in which the Secretary of State considered that the strategic gap designation was not determinative of the question of relative harm and that the scale and other benefits associated with the emerging Colnbrook proposal indicated that the Colnbrook site might meet the need for an SRFI in a less harmful way than the Radlett proposal. Although that decision was quashed, the challenge succeeded on the sole ground that the Secretary of State had not provided sufficient reasons for disagreeing with the Inspector as to the significance of the strategic gap. The Court found no error in the Secretary of State's decision to have regard to the evidence before the inquiry of an emerging proposal for a smaller scale SRFI at Colnbrook when considering the question of whether the Radlett proposals had established very special circumstances.
10. The Secretary of State's position as at 19 September 2012 was, therefore, that the scale and other benefits associated with the proposed SRFI at Colnbrook continued to be relevant considerations in his determination of the Radlett appeal and that the question of relative harm between the two sites was not determined conclusively by the strategic gap policy which applied to the Colnbrook site. That is unsurprising given that the significance of the strategic gap designation could only be judged in the light of the relative harm in visual and other terms of the Colnbrook development. In the light of the fact that the Colnbrook proposal had progressed from an emerging plan to a fully developed proposal which was imminently to be the subject of an Inquiry, the Secretary of State took the view that the evidence and representations then before him were insufficient to reach a conclusion on whether the need for an

SRFI could be met in a less harmful way at Colnbrook. It was for this reason that the Secretary of State suggested re-opening the inquiry into the Radlett appeal and conjoining it with the Colnbrook inquiry. His position as at 12 October 2012 was clearly no different. His responses to the various representations which had been made by Helioslough, Goodmans and Slough Borough Council as to the appropriateness of conjoining the two appeals explained how the various issues relating to appropriateness and practicality could be dealt with.

11. Despite this, on 14 December 2012, the Secretary of State took the decision not to conjoin the inquiries. The explanation given for this decision was that the Secretary of State was now satisfied that he had sufficient evidence before him to determine that Radlett appeal. That conclusion directly contradicts both the view he took as at 19 September 2012, reached less than three months previously, and the approach he was ostensibly taking on 12 October 2012. This conclusion was reached despite the fact that none of the representations received in response to the letter of 19 September 2012 provided any significant further evidence relating to the comparative merits of the SFRI scheme being promoted at Colnbrook beyond that which was already before the Secretary of State when he initially proposed conjoining the inquiries. The letter of 14 December 2012 gives no explanation or reasons to justify why the Secretary of State came to a completely opposite conclusion on this question. There is no reference to what, if any, representations or further evidence received in response to his letter of 19 September 2012 informed his new conclusion nor any reasons as to why such material caused him to change his mind.
12. The decision not to conjoin the inquiries was, in the light of this, based either upon an irrational analysis or failed to take into account material considerations, for example, the plain lack of any evidence to persuade him out of the view he had previously taken that he had insufficient evidence to reach a conclusion on the relative merits of the two schemes and that Colnbrook might be less harmful. Given that no significant further evidence on this issue became available to the Secretary of State between the time of his letter of 19 September 2012 and the decision not to conjoin the inquiries there was and can be no rational explanation for the entirely inconsistent conclusion reached on 14 December 2012 that there was sufficient evidence before him to determine the Radlett appeal.

#### **Action Expected from the Defendant and the Date of Reply**

13. The Secretary of State is requested to:
  - a) reconsider his decision not to re-open the Radlett appeal and conjoin it with the inquiry into the Colnbrook appeal; and,
  - b) reach the conclusion that the two appeals should be conjoined.
14. The Secretary of State is requested to reply within 7 days of the date of this letter.

## **Details of Interested Parties**

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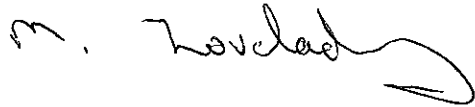
I confirm that a copy of this letter has been sent to the interested parties listed above.

**Legal Advisers and the Address for Reply and Service of Court Documents**

Please address all correspondence and questions relating to this matter to Mike Lovelady, the Head of Legal, Democratic and Regulatory Services, St Albans District Council, at the above address.

I await hearing from you.

Yours faithfully

A handwritten signature in black ink, appearing to read 'M. Lovelady', with a stylized flourish at the end.

**M Lovelady LL.B. (Solicitor)**  
**Head of Legal, Democratic and Regulatory Services**