

7 July 2010

Erica Mortimer
CgMs Ltd
Morley House
26 Holborn Viaduct
London
EC1A 2AT

Our Ref: APP/B1930/A/09/2109433

Your Ref: 5/09/0708

Dear Ms Mortimer,

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

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, A Mead, BSc(Hons), MRTPI, MIQ, who held a public local inquiry on dates between 24 November and 18 December 2010 into your client's appeal against a decision by St Albans City & District Council ('the Council') to refuse outline planning permission for: *construction of a Strategic Rail Freight Interchange (SRFI) comprising an intermodal terminal and rail and road served distribution units (331,665m² in Use Class B8 including ancillary B1/B2 floorspace) within Area 1, with associated road, rail and other infrastructure facilities and works within Areas 1 and 2, (including earth mounds and a Park Street/Frogmore relief road) in a landscaped setting, and further landscaping and other works within Areas 3 to 8 inclusive to provide publicly accessible open land and community forest, at land in and around Former Aerodrome, North Orbital Road, Upper Colne Valley, Hertfordshire in accordance with application Ref 5/09/0708 dated 9 April 2009.*
2. On 29 July 2009 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990. This was because the appeal concerns a proposal for development having more than local significance and relates to proposals of major significance within the Green Belt.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed and planning permission granted. For the reasons given below, the Secretary of State disagrees with the Inspector's recommendation and refuses planning permission. A copy of the Inspector's report (IR) is enclosed for the main parties. For all other parties, a copy of the Inspector's conclusions is enclosed. Copies of the full IR can be obtained upon request to the address at the foot of the first page of this letter. All references to paragraph numbers, unless otherwise stated, are to the IR.

Procedural Matters

4. In reaching his decision, the Secretary of State has taken into account the Environmental Statement (ES) which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (IR13.7). The Secretary of State is content that the Environmental Statement complies with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the application.
5. An application for costs was made by Helioslough Ltd against St Albans City & District Council. The Secretary of State's decision on the costs application is the subject of a separate letter.

Matters arising after the close of the inquiry

6. Following the close of the Inquiry, written representations were received by the Secretary of State from Peter Dixon of Savills and a number of Hertfordshire residents. All the post inquiry correspondence is listed at Annex A to this letter. The Secretary of State has taken account of all these representations in his determination of this appeal but does not consider that they raise any matters that would affect his decision or require him to refer back to parties for further representations prior to reaching his decision. Copies of the correspondence can be made available upon written request.
7. On 6 July 2010 the Secretary of State revoked all Regional Strategies including the East of England Plan (EoEP) referred to at IR5.2 – 5.3 and 13.21 – 13.23. The EoEP therefore no longer forms part of the development plan and the Secretary of State has taken this into account in determining the appeal. In view of the general policy support for the provision of SRFIs other policy documents (paragraph 10 of this letter and IR13.111), he does not consider that revocation raises any matters that would affect his decision or require him to refer back to parties for further representations prior to reaching his decision.

Policy considerations

8. In deciding the application, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
9. In this case, the relevant part of the development plan now comprises the City and District of St Albans Local Plan Review (LP), adopted 1994. The Secretary of State considers that the development plan policies most relevant to this case are those listed by the Inspector at IR13.27.
10. Other material considerations which the Secretary of State has taken into account include those national planning policy documents listed by the Inspector

at IR5.8, PPS5: *Planning for the Historic Environment* (which superseded PPG15 after the close of the Inquiry), Circular 11/95: *The Use of Conditions in Planning Permission*, Circular 05/05: *Planning Obligations*, and the *Community Infrastructure Levy (CIL) Regulations* which came into force on 6 April 2010. Relevant policy in the 2008 London Plan and in the former Strategic Rail Authority and DfT documents referred to at IR5.7 and 13.29 - 13.33 are also material.

11. The Secretary of State has had regard to the draft *St Albans City & District Core Strategy Development Plan Document*. However, this draft document is at consultation stage (IR13.28) and, like the Inspector, he has afforded it little weight.

Legal submissions on previous decision

12. The Secretary of State has considered the submissions made by the appellant, the Council and STRIFE about how the current case should be approached in view of the previous decision made by a former Secretary of State in respect of the appeal site and issued on 1 October 2008. He agrees with the Inspector's reasoning and conclusions on this matter, as set out at IR13.8 – 13.19.

Main issues

13. The Secretary of State considers that the main issues in this case are those set out by the Inspector at IR13.20.

Green Belt

14. The Inspector summarises the views expressed by the previous Inspector and the conclusions reached by the former Secretary of State on this matter in determining the earlier appeal (IR 13.35). Like the Inspector, the Secretary of State considers that there is no reason to disagree with those conclusions and that the proposal before him now would be inappropriate development in the Green Belt and would conflict with national and local policy in this regard (IR13.35). For the reasons given by the Inspector at IR13.37 – 13.38, the Secretary of State remains of the opinion that the proposal would not lead to the merging of neighbouring towns (IR13.38). He also agrees with the Inspector that the aim to encourage the recycling of derelict and other urban land would not be frustrated by the proposal (IR13.40).

Other Harm

15. The Secretary of State agrees with the Inspector's reasoning and conclusions with respect to the proposal's landscape and visual impact, as set out at IR13.41 – 13.44. Like the Inspector, he considers that the effect of the proposal on the landscape and visual impact would be moderately adverse and would be contrary to Policy 104 of the Local Plan (IR13.44).
16. The Secretary of State agrees with the Inspector's reasoning and conclusions with regard to the proposal's impact on ecology, as set out at IR13.45 – 13.46. He considers that the proposal would conflict with Policy 106 of the Local Plan (IR13.45) and, despite there being no more bird species recorded than there were at the time of the previous Inquiry and despite the lack of objection from Natural England, he agrees with the Council that more weight should be attached to the harm to ecological interests (IR13.46). For the reasons given by the Inspector at IR13.47 – 13.48, he does not consider that it would be reasonable to

refuse planning permission for the development on account of sustainability concerns relating to the likely pattern of travel to work by the workforce.

17. The Secretary of State has given careful consideration to the Inspector's assessment of the impact of the proposal on highways, as set out at IR13.49 – 13.58, and agrees with his reasoning and conclusions on this matter. Like the Inspector, he does not consider that there would be any significant harm in relation to highways issues or that there would be any conflict with the development plan in this respect (IR13.58).
18. The Secretary of State agrees with the Inspector's reasoning and conclusions, as set out at IR13.59 – 13.71, with regard to the impact of noise generated by the proposed development. He is satisfied that, with the inclusion of the three recommended conditions on noise, the noise generated by the activity of the site during the night would not be unacceptable and would not bring the proposal into conflict with the development plan (IR13.71).
19. The Secretary of State agrees with the Inspector's reasoning and conclusions with respect to air quality and lighting issues (IR13.72 – 13.73), the impact of the proposal on Park Street and Frogmore and the Napsbury Conservation Area (IR13.74) and the impact on existing footpaths and bridleways (IR13.75).

Whether the development would operate as an SRFI

20. The Secretary of State agrees with the Inspector's reasoning and conclusions, as set out at IR13.76 – 13.83, with respect to whether the proposed development would operate as a SRFI. He has had regard to Network Rail's view that there are no major technical obstacles to achieving a connection as is proposed at the site (IR13.79). He agrees with the Inspector that the timetabling and bidding process should ensure that sufficient paths to enable access to be gained would be made available to serve the SRFI during the interpeak hours and overnight (IR13.80). Like the Inspector, the Secretary of State does not doubt the ability of the SRFI to be accessed from all the key destinations (IR13.82).

Alternatives

21. For the reasons given at IR13.84 – 13.88, the Secretary of State agrees with the Inspector that the broad approach of the appellant in focusing on the north west sector in the assessment of alternatives is reasonable (IR13.88). He agrees with the Inspector, for the reasons given at IR13.89 – 13.91, that the general approach by the appellant to the assessment of alternatives and producing the 'long list' has been robust and realistically pragmatic (IR13.91). For the reasons given by the Inspector at IR13.92 – 13.94, the Secretary of State is satisfied that the criteria used by the appellant to assess the 'long list' of sites were realistic and did not lead to potential sites being inappropriately discarded. He agrees with the Inspector's reasoning and conclusions, as set out at IR13.95 – 13.98, with regard to the sites at Upper Sundon, Littlewick Green and Harlington.
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 notes that the Inspector considers that 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 in the Strategic Gap and that the following paragraph 2.30 outlines criteria that would have to be satisfied in the event of an application being made 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 prejudge the outcome of an alternative sites assessment in the event of another application for a SRFI at Colnbrook being made.
25. For the reasons given above and having regard to the evidence before him, the Secretary of State is not satisfied that the appraisal of alternative sites has clearly demonstrated that there would be no other suitable location in the North West Sector that would meet the need for an SRFI in the foreseeable future in a significantly less harmful way than the appeal site. He therefore disagrees with the Inspector's opinion that it cannot be rationally concluded that the Colnbrook site would meet the needs for an SRFI in a less harmful way than the appeal site (IR.103).

Other benefits

26. The Secretary of State agrees with the Inspector's reasoning and conclusions, set out at IR13.104, with respect to the benefits of the scheme that would arise from the proposed Park Street and Frogmore bypass. He also agrees with the Inspector's reasoning and conclusions with regard to benefits to the countryside, as set out at IR13.105.

The Planning Balance including Prematurity

27. The Secretary of State agrees with the Inspector's assessment of harm to the Green Belt (IR13.106) and other harm (IR13.107 – 13.109). He agrees with the Inspector that the evidence heard at the Inquiry reaffirms the conclusions of a previous Secretary of State that the harm to the Green Belt would be substantial (IR13.106). He has attached substantial weight to that harm. He agrees with the Inspector that the proposal would also cause harm due to the impact on landscape and ecology (IR13.109).
28. The Secretary of State agrees with the Inspector's reasoning and conclusions with regard to the benefits of the scheme, as set out at IR13.110. He also agrees with the Inspector's reasoning and conclusions at IR13.111, and he acknowledges that the need for SRFIs to serve London and the South East is a material consideration of very considerable weight. He accepts that, as no new SRFIs have been developed since his predecessor's decision, the weight to be accorded to that consideration has not diminished (IR13.111).
29. The Secretary of State agrees with the Inspector's assessment of alternatives, as set out at IR13.112 – 13.113, and has taken into account the views expressed by the previous Secretary of State in her decision letter of 1st October 2008 that provided it could be demonstrated that there were no other alternative sites for the proposal, it would almost certainly have led her to conclude that this consideration, together with other benefits referred to, would have been capable of outweighing the harm to the Green Belt and the other harm identified (IR13.113). For the reasons set out above, the Secretary of State is not satisfied that there are no other sites in the north west area of search which would be likely to come forward in the foreseeable future which would cause less harm to the Green Belt. He disagrees with the Inspector that the location of Colnbrook within the Green Belt in a Strategic Gap between Slough and London weighs heavily against preferring it to the appeal site as an alternative location for an SRFI (IR13.115). He has also had regard to the Inspector's opinion that, in the event a proposal was brought forward for scrutiny in the same way as the appeal proposal, then it is possible that the differences between the two locations would, other than the Green Belt issue, be marginal (IR13.115). However, given that he does not accept the Strategic Gap designation at Colnbrook weighs heavily against that location and bearing in mind it appears a substantially smaller development is currently envisaged at Colnbrook, he considers it is possible that a proposal for an SRFI at Colnbrook could be less harmful. In view of this he is not satisfied that the need for the proposal or the benefits referred to above constitute other considerations which clearly outweigh the harm to the Green Belt and other harm which this development would cause. Accordingly, he is not satisfied that very special circumstances to justify the development have been demonstrated.
30. For the reasons given by the Inspector at IR13.116 – 13.117, the Secretary of State has no reason to conclude that determination of the proposal would be premature (IR13.117).

Conditions & Obligations

31. The Secretary of State has had regard to the proposed conditions set out at annex A of the Inspector's Report, the Inspector's assessment of conditions, as set out in IR12.1 – 12.25, and the policy tests in Circular 11/95. With the exception of proposed condition 33, which is considered further below, the Secretary of State is satisfied that the proposed conditions are reasonable and necessary, and meet the tests of Circular 11/95. However, he does not consider that they overcome his reasons for refusing the application.
32. The Secretary of State has carefully considered the planning obligation as executed by the appellant and made by Unilateral Undertaking under s.106 of the Town and Country Planning Act 1990. He considers that the provisions in the undertaking are relevant and necessary to the proposed development and comply with both the policy tests in Circular 05/2005 and with the statutory tests in the Community Infrastructure Levy Regulations 2010. However, he observes that the covenants only bind those parts of the application site owned by the signatories to the undertaking, and a major part is in the ownership of Hertfordshire County Council and it has declined to join as a party to the undertaking (IR12.20).
33. The Secretary of State considers that the County's interest would also need to be bound if the obligation is to be enforceable. However, he disagrees with the Inspector that it would be appropriate to impose either alternative 1 or alternative 2 of suggested condition 33 which attempts to deal with this deficiency (IR12.21 – 12.24). This is because he considers that alternative 1 would be contrary to the current national guidance in paragraph 13 of Circular 11/95 and that alternative 2 would fail the test of precision unless the 'approved rail works' can be properly identified and defined. The Secretary of State agrees with the Inspector that, following the advice in para 83 of Circular 11/95, alternative 3 would be unlawful in that it would require the payment of money by condition (IR12.25). For these reasons, the Secretary of State places very limited weight on the undertaking in reaching his decision. However, he has not considered it necessary to refer back to the parties on this matter because even if the flaws in the undertaking could be rectified this would not overcome the reasons for dismissing the appeal proposal.

Overall Conclusions

34. The Secretary of State agrees with the Inspector's overall conclusions at IR13.118. For reasons given above, the Secretary of State concludes that the proposal does not comply with the development plan as it is inappropriate development in the Green Belt, and that it would also cause substantial further harm to the Green Belt. He has also identified harm to the landscape and visual impact and to ecological interests and concludes that the proposal would also conflict with the development plan on these matters. For other reasons given above, the Secretary of State is not satisfied that the appraisal of alternative sites has clearly demonstrated that there would be no other suitable locations in the North West Sector that would meet the need for an SRFI in the foreseeable future in a significantly less harmful way than the appeal site. Consequently he disagrees with the Inspector's conclusion at IR13.119.
35. Having balanced the benefits of the proposal against the harm to the Green Belt, the Secretary of State concludes that the benefits of the proposal, taken either individually or cumulatively, would not clearly outweigh the harm to the Green

Belt and other harm. He does not therefore consider that there are very special circumstances in this case that would justify inappropriate development in the Green Belt. He therefore concludes that there are no material considerations of sufficient weight which require him to determine the application other than in accordance with the development plan.

Formal decision

36. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses outline planning permission for: *the construction of a Strategic Rail Freight Interchange (SRFI) comprising an intermodal terminal and rail and road served distribution units (331,665m² in Use Class B8 including ancillary B1/B2 floorspace) within Area 1, with associated road, rail and other infrastructure facilities and works within Areas 1 and 2, (including earth mounds and a Park Street/Frogmore relief road) in a landscaped setting, and further landscaping and other works within Areas 3 to 8 inclusive to provide publicly accessible open land and community forest, at land in and around Former Aerodrome, North Orbital Road, Upper Colne Valley, Hertfordshire in accordance with application Ref 5/09/0708, dated 9 April 2009.*

Right to challenge the decision

37. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

38. A copy of this letter has been sent to St Albans City and District Council and all parties who requested a copy of the decision.

Yours sincerely

Julian Pitt

Authorised by Secretary of State to sign in that behalf

ANNEX A – SCHEDULE OF POST-INQUIRY CORRESPONDENCE

Name	Date of letter or email
S Hedges	15/5/10
P Dixon	17/5/10
M Aldridge	4/6/10
R Biddlecombe	15/6/10
J Chattaway	15/6/10
M Mark	15/6/10
S Beesley	15/6/10
A Russell	16/6/10
P Matteucci	16/6/10
J Rice	16/6/10
C Horton	16/6/10
S Statt	17/6/10
J Byrne	17/6/10
EK Kaye	17/6/10
S Statt	17/6/10
P Ruckin	18/6/10
B Greenwood	18/6/10
B Gardner	18/6/10
M Novitt	19/6/10
D Tribe	19/6/10
R Tompkins	20/6/10
J Bacall	20/6/10
F & K Loud	21/6/10
R Harrington	21/6/10
E Thurston	21/6/10
C Mitchell	23/6/10
G Parish	24/6/10
MJG Lewis	25/6/10